THE INQUIRY PROCESS: COMPREHENSIVE REVIEW OF RESOURCE PROPOSALS?

THE WEST COAST OIL PORTS INQUIRY, A CASE STUDY

by

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ABSTRACT

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Recognition of the need to review large-scale resource development proposals has become a major concern for those involved in the use of Canada's natural resources. Uncertainty exists over what review requirements are necessary. This thesis suggests that a comprehensive review is necessary, to ensure that there is a reasonably complete understanding of a proposal's effects on the natural environment and on society, prior to a project decision.

This thesis suggests that function and structure influence the fulfillment of comprehensive review: function being the purpose of an activity; structure, the framework or process which uses mechanisms or means to produce a desired outcome. A comprehensive review's function ensures that all information relevant to a proposal is given to decision-makers. A comprehensive review's structure depends upon the mechanisms which are used to identify, obtain and analyse relevant information.

A critical examination reveals that comprehensive review is not possible in existing Canadian reviews. Recently, due

to review inadequacies, the public inquiry has been used to assess resource proposals. This thesis analyzes the extent to which the function and structure of a federal inquiry, the West Coast Oil Ports Inquiry, provided for a comprehensive review. This Inquiry was established in March 1977 to investigate and report upon the environmental, social and navigation safety aspects of a proposed oil port at Kitimat, British Columbia and of proposed American sites, as they might affect Canada's west coast.

Interviews were conducted with individuals associated with the West Coast Oil Ports Inquiry, other resource development inquiries and existing Canadian review processes. In addition, data was collected by examining Inquiry documents, including hearing transcripts and staff correspondence.

Two conclusions have been reached based on the case study analysis:

1. the Inquiry's function was influenced negatively by the selection of the Commissioner, the Inquiry's budget and reporting date limitations and was not comprehensive;

2. the Inquiry's structural mechanisms, which might have been comprehensive, were not adequately tested due to the Inquiry's termination.

The thesis concludes that the public inquiry has both desirable and undesirable review attributes. The political nature of an inquiry limits the extent to which an inquiry can provide for comprehensive review. If Canadian reviews

are to be improved, serious consideration must be given to legislation which specifies a review's function and establishes guidelines for review procedures, in order to ensure that large-scale resource proposals are comprehensively reviewed.

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Don and Liz: here's to hypotheses, crème de menthe and sardines.

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INTRODUCTION

1.1 RATIONALE

Over the past two decades increased population and consumer consumption has led to increased demands for resource development. Societal demands on natural resources are complicated because people see most resources as capable of meeting several incompatible, and often competing, needs. Resource use decisions must be made, but such decisions often create more conflict and are seldom subject to public review.

One way to reduce these conflicts is to ensure that large-scale resource development proposals come under comprehensive review; a proposal being a request to use natural resources for the benefit and profit of a segment of society. A review, a method used to identify, obtain and analyse information, provides the basis for a decision on a proposal; a decision being a conscious choice between at least two possible courses of action (Castles et al., 1971). A comprehensive review ensures that resource proposals are subject to public scrutiny, and that decision-makers are provided with a reasonably complete understanding of a proposal's significant effects on the environment and on

society[1]. Those who decide on a proposal's acceptability are elected representatives or government authorities who have been delegated such authority (Franson and Burns, 1974; Lucas and Peterson, 1978). This thesis examines the extent to which one type of review, the public inquiry, can provide for comprehensive review.

1.2 THE NEED FOR REVIEW

Natural resource uses create short and long term effects, or impacts, which are beyond the immediate physical and economic consequences of a proposal. Traditionally social, biological and economic effects have not been considered in the review of proposals. Such effects are often not apparent until either an irrevocable commitment has been made to the proposal or the project is complete (Berger, 1976; 1977 (a); Emond, 1978; Lucas and Peterson, 1978; Sax, 1973).

A proponent, defined as an individual, company, group of companies or government department or agency proposing a resource development, can no longer assume that a proposal will be approved without some form of review. This is largely due to increased public awareness of the impacts of

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[1] The thesis focusses on review of large-scale resource proposals. These types of proposals raise complex biological, social and economic issues; an issue focusses different public interests on a given topic, and results in increased awareness (Downs, 1972). It is these issues which require review before a project decision. Resource use and resource development are used synonymously throughout the text.

resource use. The growth of the environmental movement of the sixties and early seventies generated public concern over resource issues. The increased scale of resource use and resultant complex impacts, such as dumping untreated industrial wastes into a river, has created public dissatisfaction with the management of Canada's natural resources.

This dissatisfaction has led to demands for additional information and involvement in the resolution of matters likely to affect different public interests. As well, accountability of both decision-makers and reviewers of resource proposals has been questioned (Anderson, 1971; Berger, 1977 (a); Canadian Council of Resource and Environment Ministers (CCREM), 1978; Emond, 1978; Franson and Burns, 1974; Lucas and Peterson, 1978; Sewell and Coppock, 1978; Thompson, 1978; Wengert, 1976).

Thus, it is becoming increasingly necessary to consider proposals in terms of their broad social, environmental, economic and institutional effects, with the appropriate level of concern changing from a local to a regional and national scale (Sewell, 1976). No longer are concerned citizens all-trusting; they are too aware of past mistakes and apprehensive of the implications of future decisions. No longer can a government afford to implement a major resource use decision which has not considered input from concerned sectors of society.

1.3 COMPREHENSIVE REVIEW REQUIREMENTS AND CANADIAN REVIEWS

The establishment of a review does not mean that the review will be comprehensive; nor does it mean a comprehensive review will be carried out, even if appropriate mechanisms are in place. Two factors are critical for the accomplishment of comprehensive review: function and structure.

Function is defined as the purpose of an activity. Structure is defined as the framework or process which uses mechanisms or means to produce a desired outcome (VanLoon and Whittingdon, 1976). A comprehensive review's function is to provide all relevant information to decision-makers so that a wise decision can be made on a proposal. A comprehensive review's structure is dependent upon mechanisms which are used to identify, obtain and analyse all information needed to carry out a comprehensive review.

In Canada, the federal and provincial governments have constitutional powers to manage natural resources (Ince, 1976; LaForest, 1969; MacNeil, 1971) and both levels of government have initiated reviews of proposals. In the fifties and early sixties such reviews were narrow in perspective, focussing on benefit/cost analyses; that is quantification of a proposal's economic variables. The number of jobs created and increased tax revenues were almost all the information needed for project justification and, if politically advantageous, virtually guaranteed project approval.

Review of these analyses was generally confined to an internal examination by a single government department, with limited exchange of information between departments, other levels of government, or any public interests, excluding the proponents.

Review techniques evolved in the sixties to include the quantification of social variables, such as the value of recreation, and fish and wildlife resources. Other intangible factors, such as loss of wildlife habitat or construction of a powerline across a recreational area, were usually omitted or added as qualitative statements outside the benefit/cost analysis (CCREM, 1978).

Since the early seventies, various techniques have been used by Canadian governments to review proposals. These include the enactment of legislation, establishment of new agencies, re-organization and/or creation of government departments, participatory experiments at the local, regional and national scale, the development and implementation of impact assessment policies and procedures (CCREM, 1977; 1978; Emond, 1978; Lucas and Peterson, 1978; Lundquist, 1974; Mitchell and Turkheim, 1977; Schatzow, 1977; Sewell and Coppock, 1977; Vindasius, 1974). Thus, by the mid-seventies, review processes had been established by all federal and provincial governments.

Resource use decisions have been based on these different types of reviews. Some proposals, such as B.C.'s Bennett Dam and Quebec's James Bay hydro development projects, have been approved without any public consideration of significant effects. Public dissatisfaction has led to the cancellation of reviewed and approved proposals. Examples include the construction of Toronto's Spadina Expressway and use of the pesticide DDT. More recently, some proposals are being publicly reviewed prior to a decision. A few examples include the natural gas pipeline development of the Mackenzie Delta and Ontario's proposed hydro corridors (Mitchell and Turkheim, 1977; Sewell, 1977).

However, established Canadian reviews have some or all of the following characteristics: they are technical in-house reviews with no provision for the disclosure of information; they restrictively define public participation opportunities; they are subject to the discretionary powers of the responsible minister(s) or regulatory authorities. Thus, Canadian reviews do not provide for comprehensive review.

1.4 PUBLIC INQUIRIES AND COMPREHENSIVE REVIEW

When existing processes are found wanting, new ones are invented. These are likely to be of an *ad hoc* nature until more permanent institutional processes are defined and implemented (Thompson, 1978). This thesis examines one *ad hoc* process and a recent Canadian phenomenon, resource

development public inquiries. This type of inquiry's function is to investigate publicly and report to responsible minister(s) on the effects of proposed resource use(s) defined in the inquiry's terms of reference. The structure of such inquiries establishes the framework within which the inquiry fulfills its terms of reference.

The central assertion of the thesis is that an Inquiry's function and structure influence whether or not there will be a comprehensive review. Analysis is based on a case study, the federal West Coast Oil Ports Inquiry (WCOPI or the Inquiry), established 10 March 1977 "to investigate and report upon the environmental, social and navigational safety aspects of a proposed oil port at Kitimat, British Columbia (B.C.), and of proposed American sites as they might affect Canada's west coast" (WCOPI, Orders-in-Council P.C. 1977-597; 1890; 3687).

1.5 CONTRIBUTION OF RESEARCH

The functions of Canadian reviews have been documented (CRREM; 1977; 1978; Mitchell and Turkheim, 1977). However, structural mechanisms have not been a focus of research attention in Canada. Ingram and Ullery (1976) have assessed the extent to which the American National Environment Policy Act, (NEPA)[2] rules and regulations altered the flow of

[2] Proper legal citation for legislation referenced in the thesis is listed in Appendix F: Glossary of Abbreviations and Cited Legislation.

information upon which federal American resource development decisions are based. No similar analysis has been undertaken on how Canadian reviews identify, obtain and analyse relevant information, although some case studies do exist (Draper, 1976; Heberlein,1976; Lucas and Moore, 1973; Lucas and Bell, 1976; Sinclair, 1977; Vindasius, 1974).

Very little research has been undertaken on Canadian public inquiries. The function of inquiries has been documented (LRC, 1977), but analysis of their function and structure is a neglected research area; an assertion supported by the observation that what little material exists on Canadian inquiries is to be found in their published reports, transcripts and newspaper articles (Salter, 1978). Likewise, there has been minimal analysis of resource development inquiries.

The thesis contributes to these deficient research areas by documenting specific WCOPI mechanisms and analysing the extent to which the Inquiry's function and structure influenced its ability to carry out a comprehensive review. The thesis also identifies the importance of function when there is disagreement on review requirements. Thus, the thesis evaluates the usefulness of the inquiry process as a means of reviewing resource proposals.

The next chapter compares Canadian reviews to ten comprehensive review requirements. Chapter Three identifies the

function and structure of inquiries. Chapter Four examines the jurisdictional responsibilities, and the issues raised by the proposed oil port. The WCOPI's function and structure, identified in Chapter Five, are analysed in Chapters Six and Chapter Seven respectively. Chapter Eight contains concluding observations on the use of the public inquiry as a review process and on comprehensive review requirements.

Chapter II

COMPREHENSIVE REVIEW

2.1 RESOURCE MANAGEMENT RESPONSIBILITIES

Jurisdictional responsibility for the management of Canada's resources rests with the federal and provincial governments, based on powers enumerated under the British North America Act (BNA Act). A brief discussion of these powers, which provide the legal basis for governmental review of resource proposals, is followed by the rationale for ten comprehensive review requirements and the characteristics of Canadian reviews.

The federal government is empowered to make laws for the "peace, order and good government of Canada" (BNA Act, section 91). The prevailing legal view is that this power could support any federal statute dealing with a matter of national concern (Munro v. The National Capital Commission 1966 S.C.R. 663; Pronto Uranium Mines v. The Ontario Labour Relations Board (1956) 5 DLR 92nd, 342 (Ont. HC.)). This power provides for federal regulation of projects which cross provincial and international boundaries. Federal power over the use of Canada's seacoast and inland fisheries, and navigation and shipping, gives it authority to regulate any waters frequented by fish and any navigable

water body. The federal government can also regulate interprovincial trade and commerce, and any transportation or communication works or undertakings which extend beyond a provincial or international boundary (BNA Act, sections 91(2), 92(10)(a)).

Section 92(10)(c) provides that the federal parliament can declare any work wholly situate within a province to be for the general advantage of Canada. Thus, the federal government could regulate resource development which, without the invocation of this power, would be under provincial jurisdiction. For example, this power could be used if the federal government wanted to control the sale and export of potash, a resource wholly situate within Saskatchewan.

Provincial governments have considerable powers because resources within any province are vested in that province, until the province conveys them to a company or an individual. In addition, provinces have authority to legislate in relation to property and civil rights, and matters of a private and local nature (BNA Act, sections 92(13)(16)). Thus, provinces can pass legislation regulating the use of land, air and water resources located within their boundaries and under their jurisdictions.

It is beyond this thesis's scope to analyse the complex jurisdictional questions arising from the management of Canada's natural resources (See Gibson, 1973; Ince, 1976;

LaForest, 1969). It is important to note that, although Canadian governments can pass legislation and establish policies to manage natural resources, "grey" areas exist[3]. Often, neither level of government has the constitutional power to deal with all the issues raised by a proposal because a government's regulatory powers can be confined to one aspect (Ince, 1976). For example, although a provincial government may review and authorize construction of a hydro dam, the federal government will need to be involved in a decision, if the proposal involves a navigable river or the transport of hydro power beyond the province. The type of review initiated to examine such proposals is case specific. Joint reviews have been initiated, as exemplified by the current federal/B.C. task force established to review management options for B.C.'s Fraser River estuary.

Although the management of natural resources has a legal foundation, conflicts raised by proposals are often resolved in a political context. This imposes certain constraints as some proposals may receive approval without any review while other may be rejected, to provide a bargaining tool for other governmental priorities. Any analysis of review

[3] Any government can pass laws so long as they are constitutionally valid; that is within the government's constitutional powers conferred by the BNA Act. Otherwise, if challenged in the courts, such legislation would be ruled as ultra vires, or invalid. By the doctrine of paramountcy, in any jurisdictional conflict, a federal law is supreme, and a provincial law is inoperative, to the extent of its repugnancy to the federal law (Local Prohibition Case (1896) A.C. 348).

processes must consider political constraints and jurisdictional parameters.

In summary, federal and provincial governments have the power to manage natural resources under their jurisdictional authority. Such power is exercised through the passage of regulatory laws, the implementation of policies, and the establishment of reviews.

2.2 COMPREHENSIVE REVIEW REQUIREMENTS AND CANADIAN REVIEWS

Analysis of literature on review processes suggests that ten requirements are necessary for comprehensive review*:

1. that there be a legislative requirement that a mandatory, independent review be commenced and concluded before any irrevocable decision is made on a proposal;

2. that the reviewer(s) have the power to identify, examine and assess all proposed actions with significant impacts, so that the proposed use(s) would proceed only with a reasonably complete understanding of possible effects on the natural environment and on society;

3. that the reviewer(s) have the power to establish procedures to undertake the review;

4. that review proceedings be open to public scrutiny;

5. that there be dissemination of information on review proceedings and findings so that the public is informed on how to participate and on the review's outcome;

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* Based on Anderson, 1971; Berger, 1976; 1977(a)(b); Booy, 1972: CCREM, 1977: 1978; Emond, 1978; Franson and Burns, 1974; Gamble, 1978; Heberlein, 1976; Hunt, 1978; Lucas and McCallum, 1975; Lucas and Peterson, 1978; Lucas, 1976; Morley, 1972; Sax, 1971; Sewell and Coppock, 1977; Sewell and O'Riordan, 1976; Sewell, 1976; Thompson, 1978; Vindasius, 1974; Wengert, 1976.

6. that there be an opportunity for interested persons, or groups of persons, to participate in the review, including the provision of financial aid and research time, when need can be established;

7. that there be full disclosure of all relevant information, including consideration of alternatives to the proposed use(s);

8. that all information considered by the review be made public, except when the reviewer(s) can give just reason for not releasing information;

9. that the reviewer(s) have the power and budget to provide for necessary legal, technical and other expertise, as required to carry out the review; and

10. that review proceedings be subject to judicial review.

A discussion on the rationale for these ten requirements illustrates why comprehensive review is desirable[5].

2.3 REQUIREMENT 1: MANDATORY REVIEW LEGISLATION

Legislation is not the ultimate answer. Fairfax (1978) has observed that legislation does not guarantee that better decisions will result. However, if a review's function and structure is based on policy statements and guidelines,

[5] There is a distinct difference between a review and an environmental impact statement (EIS). A review is the process which asesses a proposal and is sometimes called an environmental impact assessment (EIA). An EIS, a document describing the proposed use(s) and physical setting, its likely impacts, and proposed mitigative measures, is usually submitted by a proponent to those reviewing the proposal. Some reviews require that an EIS be submitted and have developed guidelines on what it should contain. Other reviews do not require an EIS. Although an EIS is usually submitted by a proponent, the actual preparation of the document is generally done by private consultants contracted by the proponents. Under NEPA, the Federal agency or department involved in assessing a proposal writes the EIS.

there is no guarantee that any review will occur at all and there is no possibility for judicial review of non-compliance. This is a problem which can be rectified through legislation because legislation has two attributes which policy statements and guidelines lack; it is public and can be enforced.

Legislation can guarantee that proposals either be comprehensively reviewed, or, if a proposal is to be exempted from review, then such a decision could be put to the courts to ascertain if there were significant impacts in need of comprehensive review and if so, require that a proposal be reviewed prior to a project decision. Because legislation, by definition, is a public document, review legislation would be available for anyone's perusal, to ascertain whether review requirements were being satisfied and if court action is necessary to enforce compliance.

There is no federal or provincial legislative requirement for the mandatory review of proposals, prior to a project decision. There is no federal requirement that any assessment take place, in contrast with the American NEPA legislative requirements. Although NEPA is not a comprehensive review, it is the first attempt to incorporate an EIS into the federal government's decision-making process (Dreyfus and Ingram, 1976; Fairfax, 1978; Ingram and Ullery, 1977; Wichelman, 1976).

2.4 REQUIREMENTS 2,3: POWER TO REVIEW SIGNIFICANT IMPACTS PRIOR TO PROJECT DECISION

If a review is to be comprehensive, an independent and unbiased person or group of persons must have the power to identify, examine and assess all proposed actions with significant impacts publicly, so that the proposal will proceed only with a reasonably complete understanding of possible effects on the natural environment and on society.

Issues arising from concerns about a proposal must be examined so that resolvable and unresolvable issues can be identified for decision-makers. Resolvable issues, such as mitigative or preventive measures that need to be incorporated into project planning, can be identified and examined based on technical information. It is the non-technical, value-orientated issues that are more difficult to resolve, such as project need and socio-economic impacts, because of differing points of view. A proposal to log a watershed may benefit the forestry industry and generate employment. But, if a major salmon spawning stream is involved then, understandably, fishing interests including the federal government, will want to be involved in assessing potential impacts.

A review must not favour one interest to the detriment of another. Thus, a reviewer must be empowered to establish procedures which provide equal participant opportunities for interested parties in the identification and examination of

relevant, or pertinent, information and to disseminate information on review procedures and events. Because each proposal is different in terms of the type of intended resource use, location, construction time, and so on, a reviewer must be empowered to establish specific procedures to ensure that an unbiased review of all relevant information will be conducted and that, on the basis of such information, recommendations on project approval will be submitted to the responsible ministers, before a project decision is made.

2.5 REQUIREMENT 4: PROCEEDINGS OPEN TO PUBLIC SCRUTINY

Rationale for the inclusion of public interests in a review is based on the rules of natural justice; that is "minimum standards of fair decision-making imposed by the common law on persons and bodies who are under a duty to act judicially" (deSmith, 1971, p. 561). There are two natural justice rules. The first, *nemo judex in causa sua*, provides that an adjudicator must not have any direct financial or proprietary interest in a proceeding's outcome and must not be reasonably suspected, or show a real likelihood of bias. The second rule, *audi alteram partem*, provides that no one shall be penalized by a court or tribunal's decision unless the person has been given prior notice of the charge or case to be met, a fair opportunity to answer and has put forth his own case (deSmith, 1971, pp. 561-564).

It is beyond the scope of the thesis to discuss the legal requirements of natural justice exhaustively (See deSmith, 1971; Reid, 1978; Wade, 1978). Of significance to any analysis of resource review procedures is the principle that natural justice rules do not apply to an administrative tribunal whose function is merely investigative (Grauer Estate v. The Queen (1973), F.C. 355; Guay v. LaFleur (1965), 47 D.L.R. (2d) 226).

Recently, there has been a tendency in the courts to address the "duty to act fairly" (R. v. Gaming Board, Ex. p. Benaim (1970), 2 W.L.R. 1009; Re H.K. (An Infant), (1976), 2 Q.B. 617; Lazarov v. Secretary of State of Canada (1974) 39 D.L.R. (3d) 738). The Nicholson v. Haldemand-Norfolk Board of School Commissioners (1978) 88 D.L.R. (3d) 671 decision held that boards or tribunals which do not have a legal statutory duty to follow natural justice rules, may still have a lesser duty to act fairly. This decision is seen to establish a "halfway-house, between the vigorous rights to a full judicial hearing and the arbitrary action by an administrative tribunal" (Harvison, 1979). Thus, the legal duty to act fairly is used as the basis for the requirement that members of society who are likely to be affected by a review's outcome should be heard and be able to participate in the review.

It must be recognized that the public has many interests (Berger, 1976; 1977 (a) (b); Booy, 1972; Emond, 1978; Lucas, 1976; Sax, 1973; Thompson, 1978). The Berger Inquiry commissioner observed that although public interest groups:

> represent identifiable interests that should not be ignored, . . . they do not represent the public interest, but it is in the public interest that they should be heard (Berger, 1977 (a), p. 255).

Public input can provide useful information to those responsible for reviewing resource proposals, particularly when values which are difficult to quantify are involved, such as the aesthetic value of a recreational area, which is undisturbed by logging activity, although there is merchantable timber in the area and when there is not time to do adequate baseline studies. Provision for a wide range of public input can also help identify public concerns associated with a proposal and may result in issue clarification for those involved in the review.

In addition, accountability of political and government authorities is likely to be reinforced if a review is open to public scrutiny as openness puts pressure on administrators to follow required procedures and on decision-makers to give reasons for their decisions (Anderson, 1971; Canada, 1972; Emond, 1978; Franson and Burns, 1974; Lucas and McCallum, 1974; Lucas and Peterson, 1978; Sewell and O'Riordan, 1976). Governments and their agencies have often failed to protect the public from the external costs of resource

development. Sometimes they have shared the development-orientation of society's private sector, and have undertaken environmentally damaging activities (Anderson, 1971; Auerbach, 1977; Franson and Burns, 1974; Sewell and Coppock, 1977).

One typical government response has been to establish legislative requirements for public hearings; a public hearing being one of the oldest, and perhaps most legitimate means of obtaining public opinion (Wraith and Lamb, 1971). Sinclair (1977) defines a hearing as a formal gathering in which any person who wishes may make an oral or written submission to a board, commission or agency representative. A hearing board is usually a government body whose function is to study a problem and to make recommendations to the government. Heberlein (1976) has identified five hearing functions which are similar to Arnstein's (1969) ladder of degrees of citizen participation[6]. These three authors

[6] Heberlein's five hearing functions are based upon public involvement which increases from the first to fifth function: 1) informational; 2) co-option; 3) ritualistic; 4) protective; 5) interactive. In the first stage, a proponent or government official informs the interested public of a proposal's characteristics. This is a much lower level of public input than is provided in an interactive hearing, where information is exchanged between the reviewer and the public. The three types of hearings identified by Sinclair (1977) are based upon when a hearing is held in relationship to a project decision: 1) preliminary; 2) pre-final; 3) final. A preliminary hearing serves to inform the public about a proposal and perhaps identify public concerns. A pre-final hearing is used to incorporate public concerns into the project decision-making process. The final hearing is held to obtain public responses to a project decision.

conclude that different types of hearings are applicable to different situations.

There are problems with hearings as a review mechanism:

> Where public hearings are held, they tend to have restricted terms of reference and for the most part are directed towards the regulation of activities with the view to ensuring compliance with the law and the achievement of an identified standard of environmental quality. In some instances, an agency is statutorily required to hold hearings as a condition precedent to its making a decision. In other instances, these public hearings are held at the discretion of an agency which has been given an environmental management-pollution control decision-making responsibility. And, of course, wherever there is discretion. . . there is nothing that the citizen can do in his capacity to compel the exercise of that discretion. Where the holding of a public hearing is compulsory, how the hearing is designed is at the discretion of the agency which will hold the hearings and there is little that a citizen can do to require an agency structure its hearings in any particular way, at any particular time, nor in any particular place (Morley, 1975).

A public hearing may be a prerequisite to valid government action, but the selected course of action need not be influenced in any way by the views expressed at a hearing (Bisselman, 1969). This supports Heberlein's third hearing classification: a ritualistic hearing held because it is required by law, not to examine a proposal's merits. Public participation is almost synonymous with a public hearing, but participation may be meaningless if a hearing does not identify and examine public concerns. If a review's purpose is narrowly defined and its hearings subject to the responsible ministers' and review authorities' discretionary pow-

ers, then it cannot provide for meaningful public examinations of resource proposals.

2.6 REQUIREMENT 5: DISSEMINATION OF INFORMATION

The requirement that, when a review carries out its procedures, notice is given to legally interested persons, is based on natural justice rules. However, legal interest is narrowly defined and equated with proprietary interest. But, fairness dictates that those persons affected by, or interested in, a proposal should be informed that a review of the proposal is being carried out, and be made aware of review procedures (Arnstein, 1969; Heberlein, 1976; Lucas and McCallum, 1975; Lucas and Peterson, 1978; Sewell and Coppock, 1977; Vindasius, 1974).

The existence of a review does not mean that public interests will be aware of it, or its review procedures. A review must establish mechanisms whereby information on current and potential proposals, and review activities, is accessible to interested persons. Information on review dates, time and location, as well as specific participation procedures, should be disseminated by review officials. The media and other mechanisms, such as mailing lists, should be used to ensure that public interests other than those of a proponent and government, are aware of a review.

2.7 REQUIREMENT 6: PROVISION FOR FINANCIAL AID AND RESEARCH TIME

Financial resources, research and legal expertise are likely to be unevenly distributed among interest groups and organizations (Berger, 1976; 1977 (a); Franson and Burns, 1974; Thompson, 1978). Thus, the provision of financial assistance, when need can be established, and of adequate time to enable public interests "to prepare their case", is the sixth requirement.

There is some precedent for this kind of assistance, but not in existing resource development reviews. Examples include the awarding of hearing costs to intervenors in the Canadian Radio-Television and Telecommunications Commission broadcast licencing hearings and the awarding of funds to public interest groups involved in Ontario's Municipal Board and Alberta's Utilities Board hearings (Lucas and McCallum, 1975). Canadian governments are being pressured to provide financial assistance of this kind (CCREM, 1978, p. 19).

2.8 REQUIREMENT 7: DISCLOSURE OF RELEVANT INFORMATION

This requirement is necessary because, without access to relevant information, a reviewer cannot be fully informed about the issues under review. It follows that no one can effectively participate in a review without access to all pertinent information.

It is not sufficient to have review documents available only to selected parties. Access to a proposal's design features may be critical to understanding its intended use and issues. Without access to such information, the significance and magnitude of a proposal's impacts cannot be adequately assessed by reviewer or by public interests.

As well, the media relies upon access to documents for reporting and analysing events. Without such access, the media cannot provide the general public with reliable reporting of a proposal's issues. This can also lead to the disclosure of confidential information to the press, as happened in the case study. Without access to relevant information, the general public cannot be kept fully informed on a proposal's implications.

The seventh requirement does not exist in any Canadian review, as neither the federal nor provincial governments have passed freedom of information legislation, in contrast to the American federal Freedom of Information Act. The lack of a Canadian freedom of information law means that relevant review information is not usually publicly available. Technical studies done by governments, at taxpayers expense, cannot usually be obtained by the public, even when it is doubtful that such studies should be kept secret. As well, proponents are not compelled to make their plans public (Berger, 1976, 1977 (a); Emond, 1978; Gamble, 1978; Lucas and Peterson, 1978; Thompson, 1978).

It has been asserted that much of the public participation controversy is due to this concept (CCREM, 1978, p. 7). Information is the key to any review: the possessor of information controls all else (Gamble, 1978; Ullery and Ingram, 1977). Gamble (1978) also states that there is an obligation on those possessing information, such as a proponent or government officials, to expose such information, at a very early stage, for public scrutiny (See Anderson, 1971; Berger, 1976; 1977 (a); Emond, 1978; Franson and Burns, 1974; WCOPI Interim Submission of Commission Counsel (Interim Submission), December 1977).

There must be a review procedure which requires the public disclosure of all relevant documents, and provides public access to such information. If full disclosure of relevant information on the issues under review is not available, and in a comprehensible form for all participants, then public input becomes meaningless (Lucas and Peterson, 1978) and comprehensive review is an impossibility.

2.9 REQUIREMENT 8: INFORMATION BECOMES PUBLIC DOCUMENTS

The rationale behind this requirement is closely related to the seventh requirement; both focus on access to information. Documents considered by a reviewer should be made public and accessible to interested parties, including the general public. Potentially confidential information, such as a proponent's patented means of production, should be

made accessible to the reviewer. The reviewer must be empowered to rule on the relevency of such information. Unless just reasons are given, such information should be made accessible to all participants. Access to relevant information ensures that a a proposal's characteristics will be exposed to the examination of all.

2.10 REQUIREMENT 9: POWER AND BUDGET FOR STAFF

There must be provision for a staff capable of identifying critical issues, gathering relevant information and identifying information deficient areas. This ninth requirement is significant because, even if a review satisfies other review requirements, without staff expertise and available time and money, a comprehensive review is impossible. Review authorities must ensure that a competent staff exists so that relevant information can be obtained and analysed. The need for adequate financial and time resources are obvious necessities to fulfill this requirement.

2.11 REQUIREMENT 10: REVIEW SUBJECT TO JUDICIAL REVIEW

The need for judicial review is based on the notion that those aggrieved by a decision should be permitted legal recourse, to enforce compliance with mandatory review procedures, such as the hearing of public concerns. Under the Canadian parliamentary system, the legislatures create laws and the courts determine whether legal requirements, such as

the right to a hearing, have been adhered to by those enforcing Canadian laws. In contrast, due to the separation of powers concept, American courts can decide if a law's provisions have been adhered to and, if the provisions are considered to be inadequate or unfair, the courts can specify procedures to be adhered to, thereby creating new laws.

In Canada, judicial review is relevant only when an administrative decision is made. Because reviews are generally not decision-making bodies, and thus do not render decisions, the only possible form of judicial review is one of procedure. This applies to the rules of natural justice such as bias, proper notice and adequate preparation time.

The rationale for ten comprehensive review requirements, to ensure that a proposal's effects will be examined in a public manner, and be reasonably understood prior to project decision, have been identified. As stated in Chapter One, the existence of a review does not mean that it is comprehensive, or that a comprehensive review will be carried out, even if appropriate mechanisms are in place. A comparison of comprehensive requirements to existing reviews reveals that, although there are various combinations, no comprehensive review exists in Canada.

2.12 CANADIAN REVIEWS

Federal Policies and Legislation

Two important federal review processes have been initiated and are based on policy decisions rather than legislation: the Environmental Assessment and Review Process (EARP) and TERMPOL, a Code of Recommmended Standards for the Prevention of Pollution in Marine Terminals. In addition, there is a proliferation of federal statutes regulating resource uses. These include the Canada Water Act, the Clean Air Act, the Northern Inland Waters Act, and the National Energy Board Act (NEB Act). None of these statutes establish comprehensive reviews. The powers and procedures of EARP, TERMPOL and the National Energy Board (NEB), a regulatory agency established under the NEB Act, are examined due to their relevance to the case study.

EARP

Initiated by a cabinet directive on 20 December 1973, EARP was established to ensure that:

1. environmental effects are taken into account early in the planning of new federal projects, programs and activities;

2. an environmental assessment is carried out for all projects which may have an adverse effect on the environment before commitments or irrevocable decisions are made; projects with potential significant environmental effects are submitted to the Department of the Environment for review;

3. the results of these assessments are used in project planning, decision-making and implementation[7].

EARP is applicable only to projects of federal departments, agencies and specified crown corporations, those for which federal funds are solicited, and those involving federal property. EARP begins "as early in the planning process as possible", when the department initiating or having responsibility for a proposal (IDepartment), screens the proposal for potential adverse environmental effects. Screening guidelines are available from FEARO to aid in this procedure (Canada, 1978(c)). If a proposal poses no significant impacts, no further reference to EARP is necessary. The IDepartment is responsible for implementing measures to prevent or mitigate identified effects and must ensure that all legislative, regulatory and cabinet requirements related to project implementation are satisfied.

If the environmental effects are not fully known, then a more detailed initial environmental evaluation (IEE) is prepared or procured by the IDepartment[8]. Following a review of the IEE, the IDepartment decides if the proposal poses significant environmental effects. If not, the IDepartment is responsible for implementing appropriate mitigative mea-

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[7] Unless otherwise indicated, discussion on EARP procedures are based upon Canada 1979 (a). The Federal Environmental Assessment Review Office (FEARO) in Ottawa administers EARP.

[8] FEARO has prepared guidelines to help proponents prepare an IEE and has also established regional screening and co-ordinating committees to provide advisory services during the screening, IEE preparation and panel review of a proposal (Canada, 1976 (a)).

sures, and no further reference to EARP is necessary. If effects are judged to be significant, the IDepartment submits the project to the Department of the Environment for a formal EARP panel review. Once a project is thus submitted, it may not proceed until the review is completed and a ministerial decision made on panel recommendations.

A new panel is established for each project, chaired by FEARO's permanent chairman or his representative, but a panel's purpose remains the same: to review the environmental consequences of a project and its alternatives; to evaluate the significance of the environmental effects which might result from project implementation; and to advise the Minister of the Environment on project acceptability. Panel members, usually four to six in number, are selected, based on their knowledge and expertise relevant to the technical and environmental factors associated with the proposal. The IDepartment appoints one panel member; the rest, appointed by FEARO's permanent chairman, may include persons from outside the federal public service, whose selection must be approved by the Minister of the Environment.

A panel generally adheres to procedures which begin with the issuance of guidelines for an EIS preparation. These project-specific guidelines are used by the IDepartment to prepare or procure an EIS. Upon receipt of an EIS, the panel determines its completeness and acceptability. This means

that the panel can obtain information and expert opinions from the Department of the Environment, other federal departments and agencies, and any other sources as it requires (Canada, 1978 (c)).

Unless the panel is otherwise directed by the Minister of the Environment, in consultation with the initiating Minister(s), the guidelines, EIS and all other formal panel correspondence are made public. This is done before any public meetings are held. Such meetings, arranged by the panel to obtain oral and written public reaction to a project, are generally held at the location of the proposed project. After receipt and review of public comments, and "any other information it feels is required", the panel prepares a report for the Minister of the Environment. A panel can recommend that a project be halted, proceed as planned, or proceed with terms and conditions. The panel report is submitted by FEARO's permanent chairman to the Ministers[9].

The Minister of the Environment must decide whether or not to accept panel recommendations, and if the report should be made public. These decisions are made in consultation with the initiating minister(s). Disagreement among ministers would probably result in a cabinet referral for resolution. Regardless of the outcome, the Minister of the Environment is not compelled to release a panel's report; to

[9] See Canada 1978 (a) (e) (f); 1979 (b) for references to EARP's review of the Roberts Bank Port Expansion project.

date no minister has refused to release a report.

EARP also provides for the establishment of joint federal/provincial reviews, and an independent Environment Review Board (ERBoard), to be composed entirely of members outside the federal public service. An ERBoard can be established for those projects which are considered to be "special cases because of wide public interest". Joint federal/provincial reviews have been undertaken, such as the Roberts Bank port expansion panel review, but no ERBoard has been established. One was recommended by the Minister of the Environment for the proposed Vancouver International Airport expansion. However, approval of the initiating minister is necessary, and because the Minister of Transport objected in this case, no ERBoard was established (Emond, 1978, p. 227).

There are numerous limitations to EARP. It has no legal basis, exists solely as a matter of policy and is a "self-assessment", "self-referral" process. FEARO cannot compel review of all federal projects for their potential impacts. Instead, FEARO is dependent upon government departments' referral of potential projects to its offices and maintaining its own "watchdog" of potential projects. If a federal department or agency will not subject a project to EARP, there is no mechanism to resolve such a dispute, except through cabinet (Emond, 1978, p.217).

These procedures are undesirable for several reasons. First, not many government departments have the technical expertise or the "public conscience" to recognize significant environmental effects. To allow these departments to decide upon the significance of posssible environmental effects is "nonsensical", as project referral to EARP is "subject to all the forces of bureaucratic self-interest" (Emond, 1978, pp. 220-222). Thus, EARP does not satisfy the first three comprehensive review requirements.

Second, by the time projects are brought under EARP, they may have received cabinet approval, such as New Brunswick's Point Lepreaux nuclear generating station and Nova Scotia's Wreck Cove hydro electric power proposals. The Alaska Highway panel is an example of a project being reviewed when cabinet approval was imminent (Emond, 1978). It has been suggested that the investment of time and money, and the IDepartment's reputation, makes the chances of halting or radically changing a proposal to be virtually nil (Emond, 1978, p. 217). In the Roberts Bank case, National Harbours Board and Port of Vancouver officials indicated that port expansion was a given when the port was constructed in 1970 (Beak-Hinton, 1977; Canada, 1979, (b)).

Third, an EARP panel cannot address economic issues surrounding a proposal, as exemplified by the Roberts Bank proposed port expansion. The need for port expansion was

raised by public interest groups and representatives from the federal Department of Fisheries and the Environment's (DFE) Vancouver office (Canada, 1978 (f)). However, because a panel's mandate is restricted to consideration of a proposal's physical and social impacts and does not extend to economic rationale, the panel did not consider economic justification for port expansion. Although a panel report can identify economic concerns, it cannot make recommendations on economic justification of a proposal (Requirement 3).

Fourth, although there is increasing disclosure of formal panel communications, such as EIS guidelines, the EIS and responses to these documents, a panel cannot compel the production of information, and thus does not always have access to relevant information, such as the full extent of a proposed development[10]. The "other" sources of information used by a panel are not publicly disclosed. Thus, there are no means whereby the interested public can know what factors influenced a panel's recommendations (Requirements 5,7,8).

Fifth, there is no legal requirement that public interests be included in EARP (Requirements 4,6). The holding of public meetings is subject to the approval of the Ministers

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[10] FEARO publishes a register on the status of projects being reviewed by EARP. This is available free-of-charge from FEARO's Ottawa office (Canada 1978 (b)). Public meeting transcripts are usually available to interested parties, at cost.

of the Environment and the IDepartment. The procedures for these meetings are established by each panel chairman. There is no public establishment of credentials, or cross-examination of information presented at a public meeting. It is up to panel members to assess the validity, accuracy and significance of information presented to a panel.

Sixth, there is no provision for the funding of interest groups. The Shakwak Highway panel report did recommend that intervenor funding become part of EARP (Canada, 1978(d)). As a result of this recommendation, a study was undertaken by FEARO's Ottawa office to examine how funding could be made available. This study is incomplete, but FEARO is considering this requirement, and implementation would probably expand the range and quality of public input. These six limitations indicate that EARP does not satisfy comprehensive requirements.

TERMPOL

TERMPOL, another federal review, is a voluntary, in-house process, specific to the Department of Transport's jurisdictional authority, and to one resource use, marine port operations. This process has been initiated by the provisions of the Navigable Waters Protection Act (NWP Act), where no one may install any work in navigable waters without the approval of the Minister of Transport (NWP Act, section 5). Approval to build or modify ship terminals is granted if an

assessment shows that the work will not have an adverse effect on navigation. If a proposal is identified as posing a hazard, a TERMPOL submission may be required by the Minister of Transport. A TERMPOL submission is prepared according to TERMPOL code guidelines; guidelines which identify the criteria used by the Canadian Coast Guard's Ship Safety Branch to determine the technical need for preventative regulations or precautionary measures (Canada, 1977(b)).

A Ship Safety Branch's representative chairs an inter-departmental committee, a TERMPOL Co-ordinating Committee (TCC), which is established to review a TERMPOL submission. Other TCC members are from the Ministry of Transport, the Coast Guard, DFE, the Department of Public Works, and where applicable, the National Harbours Board. The Minister of the Environment is included in TERMPOL because, pursuant to section 33 of the Fisheries Act, this Minister has the power to review marine terminal proposals which affect waters frequented by fish. TERMPOL environmental guidelines have been developed to specify the factors which the Minister considers to be necessary for a TERMPOL submission.

The Minister of the Environment, after review of a TERMPOL submission, can recommend acceptance of a proposal, rejection or conditional approval (TERMPOL Code Guidelines, Part II, section 2.19). A TCC's recommendations can be one of these three options given to the Minister of Transport,

who is ultimately responsible for project approval, and specification of terms and conditions.

There are problems with TERMPOL. It is a non-mandatory, "in-house" review, concerned only with a proposed terminal system. Certain aspects of a proposal are exempt from TERMPOL review, including land areas and rivers above tidal influence; shore installations and hinterland cargo-handling facilities (TERMPOL Code Guidelines, Part I, section 1.2). This means that important issues raised by a proposal may not be included in TERMPOL, as exemplified by the case study (Requirement 2). There is no provision for public review or disclosure of information relevant to a TERMPOL application (Requirements 4,5,8).

The NEB

Canadian energy resources, such as gas, oil and hydro resources, are regulated by the federal and provincial governments. Those industries which develop and supply energy solely within one province are regulated by that province. Those involved in interprovincial or international energy movements are regulated at the federal level by the NEB. Under sections 22, 26 and 27, the NEB is responsible for issuing certificates of public convenience and necessity for the construction of such projects, and advising the federal cabinet on the use of Canada's energy resources. Under sections 27 and 28, a proponent submits an application to

the NEB. As provided by sections 12 and 35, the application is circulated and examined amongst NEB members and staff and if inadequacies exist, a deficiency statement is issued to the proponent. These deficiencies are to be answered to the NEB's satisfaction before a hearing date is set.

Under section 10, the NEB establishes its own hearing practices through the issuance of a hearing order, prior to the actual hearing. Hearings are held in Ottawa and in regions "convenient as possible to the residences of persons in the area affected, who have indicated that they wish to intervene in the proceedings" (B.H. Whittle to G. Gallon, 7 January 1977). Notice of hearing time and place is generally given six weeks in advance of the hearing date and must be published in specified newspapers. As well, the provinces and certain other parties must be notified. Under section 45, the NEB has the potential to exclude all third parties, but in practice it hears those intervenors who file notice of their intent to intervene.

A unanimous NEB decision is submitted to cabinet after its hearing. A NEB recommendation against a proposal is final unless challenged on a point of law or excess of jurisdiction (NEB Act, section 18(1)). Cabinet may accept or reject a proposal which the NEB recommends should be approved. If approval-in-principle is given, as provided by section 76, the proponent then submits design details of the

project to the NEB. NEB staff review this information, which must include construction plans and mitigative procedures. No project may proceed until the Minister of Energy, Mines and Resources grants a certificate.

Provisions of the NEB Act have given rise to additional NEB review requirements. An environmental assessment report, pursuant to the NEB's rules of practice and procedure, must be filed as part of any applications made under sections 44, 49 and 63 of the NEB Act. The criteria used in preparing this report are contained in the NEB document, Guidelines Respecting the Environmental Information Required in Applications for Certificates and Orders for Pipelines under Part III of the National Energy Board Act. These guidelines, based upon parts I and II, sections 17 and 14 respectively of the NEB Act, require "an assessment of the probable environmental impact of the pipeline including a description of the existing environment and mitigative measures".

Much has been written on the NEB's practices and procedures (Fishers, 1971; Gibbs, 1971; Lucas and Bell, 1977; Lucas and McCallum, 1975; Lucas and Peterson, 1978). There are several observations of specific interest to this thesis. First, there are no specifications on the social and environmental issues that the NEB must consider. Second, there is no guarantee that it will consider these broader issues (Lucas and McCallum, 1975; Lucas and Bell, 1977).

Examination of the NEB environmental guidelines reveals that the impacts which must be considered are those specifically related to a pipeline's terrestrial impact.

In the past, the NEB has not been consistent in its hearing procedures, as evidenced by the Dow-Dome ethane export application[11]. In this case the NEB decided to hear the application publicly, but in an ex parte manner, where only the applicant was permitted to present oral evidence and submit oral argument. Intervenors could make written representations only (Lucas and Bell, 1977). However, as a result of court cases challenging NEB hearing procedures, the NEB must ensure that all interested parties are given an equal opportunity to be heard. But, the NEB's mandate and technical expertise is specific to one resource area, namely energy, and is confined to federal jurisdictions.

The significance of these observations is that the NEB has yet to establish public credibility as an independent review agency, capable of adequately assessing relevant environmental and social issues raised by applications

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[11] See the NEB's Report to the Governor General-in-Council in the Matter of Application under the NEB Act of Dome Petroleum Ltd., Amoca Canada Petroleum Ltd., Pan Canadian Gas Products Ltd., and Cochin Pipe Lines Ltd., May 1973 and Report to the Governor General-in-Council in the Matter of Application under the NEB Act of Dome Petroleum Ltd. and Cochin Pipe Lines Ltd., January 1974. See also the Federal Court Trial Division's decision on the NEB's hearing procedures of these two applications, in A.G. of Manitoba v. The NEB and Dow Chemical of Canada Ltd., [1974] 2. F.C. 502 (F.C.T.D.).

before it (Thompson, 1978, pp. 93-94). Thus, the NEB does not fulfill comprehensive review requirements 1,2,4,5,6,7,8,10.

Federal policies and legislation provide for reviews which are dependent upon the administrative discretion of the respective cabinets, government departments and regulatory agencies (CCREM, 1978) and consider a narrow range of a proposal's potential impacts. These reviews usually focus on establishing pollution controls, rather than assessing a project's total impacts. In addition, these reviews are usually implemented in an "after-the-fact" regulatory manner; that is approval-in-principle is given to a proposal before it is subject to review. There are very few provisions which guarantee public input or the disclosure of information. Thus, federal reviews are not comprehensive.

Provincial Policies and Legislation

All provincial governments have initiated reviews, based on policy decisions or legislation. The powers and procedures established under these reviews vary among the provinces. Some apply only to provincial agencies or crown corporations: others apply to all major developments of a specific type, such as pipelines and power plants (CCREM, 1977; 1978; Mitchell and Turkheim, 1977).

There are three provincial statutes which establish mandatory reviews: Alberta's Land Surface Conservation and Reclamation Act (Land Surface Act), Ontario's Environmental Assessment Act (EA Act) and Quebec's An Act to Amend the Environmental Assessment Quality Act (EQ Amendment Act). The provisions and procedures of these Acts are examined in terms of their comprehensiveness, as are the characteristics of B.C.'s Environment and Land Use Act (ELU Act) and the Pollution Control Act (PC Act), due to their relevance to the case study.

Alberta's Land Surface Act

This Act authorizes the Alberta Department of the Environment to order the preparation and submission of an EIS for any proposed development, operation or activity which will result in a disturbance of the earth's surface. Those proposals requiring review are decided by the Minister of the Environment (Land Surface Act, section 8). This decision may be based on recommendations from the general public, elected representatives, or provincial departments or agencies.

An environmental impact assessment system (EIA system) has been initiated by the Department of the Environment to review proposals. An EIS must be submitted by a proponent and must contain a project description, environmental inventory, description of impacts, irreparable impacts and miti-

gative measures. The Department of the Environment's Environment Co-Ordination Services distributes the EIS to government agencies for review and recommendations. This must be done before the proponent applies for project approval, including licenses and permits (Alberta, 1977).

An acceptable EIS is then submitted to a cabinet committee; a committee which informs the proponent whether the project proceeds to a "permitting stage", as EIS acceptance does not guarantee final project approval. Applications for needed permits and licenses must be submitted according to applicable legislation, such as the Coal Conservation Act and the Oil and Gas Conservation Act. Permits and licenses obtained under these statutes establish the conditions and standards for a project's operation. These terms, combined with the EIA system's recommendations, are used to formulate an environmental protection plan. It is under this plan that a proposal is implemented.

The EIS system provides for the inclusion of public interests during the EIS preparation. It is the proponent's responsibility to "actively seek and maintain" public involvement at the outset of planning a project, and throughout its implementation. The interested public should be included in the identification and analysis of possible environmental effects at the earliest possible date through the use of public meetings, seminars or workshops (Alberta,

1977). These public concerns are to be included in the EIS, but there is no provision that public interests be included in the "in-house" EIA system's EIS review.

The provisions of Alberta's Land Surface Act are subject to ministerial discretion (Land Surface Act, section 8). Exemption, whether by a minister or regulatory agency, is a form of review itself (Lucas, personal communication, 11 April 1978). Thus, there is no compulsory requirement that proposals be subject to this Act's review procedures. The Act does not require public input or provide for public access to relevant information, and does not fulfill comprehensive requirements.

Ontario's EA Act

This Act is applicable to any major activity or proposal, plan or program involving any significant change of activity (EA Act, section 1 (c), (d)). A proponent is required to submit an EIS which must include a project description, environmental inventory, description of project alternatives, impacts and proposed mitigative measures. The EIS must be submitted and reviewed before any license, permit, approval, permission or consent required under any statute, regulation or by-law is granted (EA Act, sections 5,6).

The EIS, and the Ministry of the Environment's review of it, is made public and anyone can, by written notice to the

Minister of the Environment, request a hearing on the proposal be held by the Environmental Assessment Board (EA Board) (EA Act, section 7(2)). If a hearing request is considered to be frivolous, vexatious, or will cause undue delay in project implementation, the Minister of the Environment can decide that a hearing is unnecessary (EA Act, section 12 (2)(b)).

The EA Board, a panel of not more than five cabinet appointed members, is responsible for conducting a hearing (EA Act, section 18(1)). The EA Board member(s) who conducts the hearing is empowered to decide upon the EIS's acceptability and whether approval to proceed with the proposal should be given, withheld, or given subject to terms and conditions (EA Act, section 12 (2)(c)(d)(e)). Section 18(17) requires that reasons for the decision must be given to the Minister of the Environment, and others specified in the EA Act. Section 24 provides that the EA Board's decision may be varied or rescinded by the Minister with cabinet approval, or any minister designated by cabinet[12].

Ontario's EA Act review provisions satisfy some comprehensive requirements. These include the requirement that a review be undertaken prior to project approval; that the interested public be included in the review; and that some

[12] There is an appeal provision in this Act whereby any person, or group of persons, may appeal to cabinet within twenty-eight days after the EA Board's advisement (EA Act, section 13).

review information, such as the EIS, be made public (EA Act, sections 5(1), 12(4), 19). However, under section 30, the Minister of the Environment can exempt specific classes of projects, as defined by regulations passed pursuant to this Act[13]. The use of this ministerial clause has limited the extent to which comprehensive review is possible in Ontario.

Quebec's EQ Amendment Act

This Act, passed on 2 December 1978, provides for the establishment of a bureau d'audiences publiques sur l'environnement (the Bureau). Under section 6(b), the Bureau, composed of not more than five cabinet appointed members, is empowered to inquire into any matter relating to the quality of the environment, submitted to it by the Minister of the Environment. The Bureau, empowered to hold public hearings into a resource proposal, but only at the Minister's request, can adopt its own hearing procedures (EQ Amendment Act, sections 6(c)(d)(e)(f)). Section 6(g) requires that the Bureau's findings be reported to the Minister of the Environment who, upon receipt of the report, must make it public within sixty days.

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[13] The EA Board has conducted hearings under the Ontario Water Resources Act and the Environmental Protection Act. Both of these Acts require proposal review, but neither provide for the more comprehensive procedures of the EA Act.

Under section 31(b), the Act's review procedures begin with a proponent's filing of notice before the Minister of the Environment, on the proposal's general nature, followed by preparation of an EIS. Section 31(c) states that the Minister is responsible for stipulating the EIS's scope, nature and extent, and must make the EIS public after it has been submitted and that, as required by cabinet regulation, the proponent must provide the public with proposal information. Under sections 31(c) and (d) any person, group or municipality may, within a prescribed time period, apply to the Minister of the Environment, for a public hearing on the proposal. Unless such a request is considered frivolous, the Minister shall direct the Bureau to hold a public hearing, and report its findings to the Minister and, if the Minister considers it necessary, may also request that a proponent disclose any information, study certain matters more thoroughly, or undertake research.

When the Minister of the Environment considers the EIS to be satisfactory, it is submitted to Cabinet. Under section 31(e), Cabinet may refuse to issue, or issue with conditions a certificate of project authorization. This decision must be transmitted to the proponent and to persons having made representations during the Board's public hearing. This Act has a ministerial exemption clause, section 31(f), whereby cabinet may exempt a proposal, wholly or partially, from an EIS preparation or other review procedures. Within fifteen

days of such a decision, notice must be published in the Gazette officielle du Quebec.

Quebec's EQ Amendment Act has one very significant provision which does not exist elsewhere in Canada. Section 19 (a) recognizes that:

> Every person has a right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, to the extent provided for by this Act and the regulations, orders, approvals and authorizations issued under any section of this Act.

Injunction relief may be provided to any individual whose right to a quality environment is affected by a specific project. This provision could provide increased public access, through the use of the courts. A person dissatisfied with the Bureau's review procedures, could obtain a court order stipulating general procedures to which the Bureau's hearing must conform. This provision requires judicial interpretation, to demonstrate its impact.

The Act provides for some comprehensive requirements: the holding of public hearings; disclosure of information, notably the proponent's EIS and the Bureau's report; inclusion of interested persons in the Bureau's hearings. However, Quebec's EQ Amendment Act is silent on the procedures which the Minister may use when the Bureau's hearing process is not followed. This could lead to an "in-house" review, and exclude interested members of society. More importantly, as experience with Alberta's and Ontario's exemption clauses

has shown, such a provision may be used by cabinet to avoid the review procedures established under the Act. This clause could limit implementation of the EQ Amendment Act review procedures.

Thus, although three provinces have legislation establishing mandatory reviews of proposals, none meet comprehensive requirements.

B.C.'s Environmental and Land Use Act

This is B.C.'s most important review legislation. Under section 3, an environment and land use cabinet committee (ELUC) has a mandate under this Act to ensure that there is a proper balancing of land use and resource development with environmental protection. The ELUC, empowered to inquire into or study matters relating to B.C.'s environment or land use, is aided by a government body, the ELUC Secretariat (the Secretariat), (ELU Act, section 6).

The Secretariat is responsible for implementing three review levels which have been initiated under the ELU Act. The first level is a cross-agency review of uses such as timber harvest permits. At the second level, cross-agency studies review small-scale projects, such as marinas and ski developments. A third multi-stage assessment procedure is used for large-scale power, industrial and port projects. Preliminary impact studies must be undertaken at all review

levels, prior to the issuance of necessary permits, leases or licences (Mitchell and Turkheim, 1977).

The multi-stage review include three stages. Stage One requires a proponent to prepare a submission for Secretarial review, and must contain a project description, environmental inventory, and selection of an alternative to the proposed project. Stage Two involves proponent preparation and submission of a detailed EIS. Stage Three, which follows an in-house review of the EIS, involves selection of a preferred project for final design. Site specific impacts, and compensatory and mitigative measures, are identified at this stage. The Secretariat examines the EIS and submits an appraisal to the ELUC. It is the ELUC who decides if a project is to be approved, conditionally approved or rejected.

The province of B.C. claims to have "an integrative approach to reviewing resource proposals" (Mitchell and Turkheim, 1977). However, this approach is not comprehensive. The inclusion of public interests is discretionary. Public meetings to hear public concerns have been held at the end of the Secretariat's three review stages but, to date, there has been no public examination of a proposal under the ELU Act. (Requirements 4,5,6). There is no provision for public disclosure of relevant information (Requirements 7,8).

In addition, this Act does not empower the B.C. government to examine issues which involve federal jurisdictions, as the case study exemplifies (Requirement 2). An inter-departmental task force was established to review the proposed Kitimat oil port. Issues raised by this proposal, such as marine and navigational ones, were not under B.C. jurisdiction and could not be adequately reviewed by the task force. The task force's report to cabinet was not subject to any public review. Thus, review under the ELU Act is not comprehensive; neither are the procedures established under the PC Act.

B.C.'s Pollution Control Act

This Act regulates air and water pollution in B.C. by prohibiting, with few exceptions, the discharge of wastes into or on air, land or water, without a permit. Under section 5(1), a discharge of waste application must be made to the pollution control branch, the government body responsible for administering this Act. Persons with an interest in the land or who are holders of a permit or licence under the Water Act, who claim their interests will be affected, may object to the pollution control director (the Director).

The PC Act recognizes that persons other than those with a specified interest may want to make objections to an application. Such objections may be considered by the Director, but the Act does not specify what procedures are to be

followed to hear these objections, or how these objections are to be resolved. The Director, in his sole discretion, decides whether a hearing on the application will be held. Although there is no guaranteed right to a hearing, common law requirements have been established by several cases (Piatocka v. Director of Pollution Control et al, [1971] W.W.R. 626 (B.C.S.c.); Re Hogan and Director of Pollution Control (1972), 24 D.L.R. (3d) 363 (B.C.S.C.).

The provisions of this Act are specific to the regulation of air, land and water pollution, and to the authority of the Pollution Control Branch. These procedures do not satisfy comprehensive review requirements. There are numerous additional Acts regulating the use of B.C.'s resources, such as the Land Act and the Coal Mines Regulation Act. None of these Acts, or those cited above, provide the powers or procedures for comprehensive review.

Characteristics of Canadian Reviews

Nowhere in Canada is there a statutory duty for a court to enforce, as there is no legislation stating that a minister or regulatory agency shall identify and assess all significant effects of a proposal, prior to a decision (Requirements 1,10). Even Quebec's recent EQ Amendment Act contains ministerial exemption clauses which, through interpretation of the courts, may not provide for judicial review of the Bureau's hearings or resultant decisions. The advisory

nature of Canadian reviews means that there is no statutory duty whereby the courts can interpret the extent to which review procedures adhere to the rules of natural justice, and other review requirements specified by law. Until legislation is redrafted to contain clear and unambiguous legal duties for decision-makers and provide citizens' rights to a clean, healthful, and aesthetically pleasing environment, the opportunity for judicial review is restricted.

Various techniques have been used to include public interests in Canadian reviews (Requirements 3,4,6). Some have been restrictive in their definition of, and provision for, public input as evidenced by the hearing procedures of EARP, the NEB and B.C.'s PC Act. Other techniques have incorporated a broad range of participation opportunities, such as the International Joint Commission, the Okanagan River Basin study and Parks Canada's current planning for Kluane National Park[14]. Canadian experience shows that there is "no one best way to carry out citizen participation on the environmental aspects of project decisions" (CCREM, 1978, p. 18).

However, a recurring criticism of existing reviews is that they sometimes exclude public interests entirely. The Mitchell and Turkheim (1977) study identified only one Act

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[14] See Emond, 1978; Draper, 1976; Heberlein et al., 1976; Lucas and Bell, 1977; Lucas and Moore, 1973; O'Riordan, 1976; Sinclair, 1977; Vindasius, 1974 for case studies.

that provides for the mandatory inclusion of public interests, Ontario's EA Act. However, because the responsible minister is empowered to exempt proposals, the minister can restrict public participation opportunities. The same may prove to be true of Quebec's EA Amendment Act provisions. Thus, no Canadian review satisfies the review requirement that members of the public are ensured of a legal right to participate in the review of proposals (Requirements 1,2,4,6,10). In addition, other than Ontario's Ministry of the Environment's EA Update, a Digest for People interested in Environmental Assessment, a very good source identifying the status of resource proposals in Ontario's review and approval processes, and FEARO's aforementioned register of panel projects, information dissemination mechanisms are not in place under other Canadian reviews (Requirement 5).

In most Canadian reviews, the EIS is made public, as is provided under EARP and the Alberta, Ontario and Quebec reviews. However, release of this information, and all other review information, is subject to ministerial approval and exemption clauses. Disclosure of relevant review information, such as government assessments of proposals, and records of minutes between government officials and proponents, is not provided for under any Canadian review (Requirements 7,8). The policy recommendations of the Shakwak EARP panel (Canada 1978 (d)), is the only example of a Canadian review which has publicly acknowledged the need to fund public interests (Requirement 6).

Another criticism of existing reviews is that they lack the staff expertise, financial and time resources needed to carry out their responsibilities (Requirement 9). EARP has been singled out as being unable to monitor potential proposals effectively and to review specific ones because of inadequate staff, time and financial resources (Emond, 1978; Lucas and Peterson, 1978).

2.13 CONCLUDING OBSERVATIONS

The comparison of existing Canadian reviews to comprehensive review requirements demonstrates that no such review exists. The Canadian response to the problem of reviewing resource development proposals has been to proceed on an administrative case-by-case basis, rather than establishing a legislative review requirement. When resource proposals pose a multitude of complex issues, it is difficult for normal government processes to cope. When existing processes are found wanting, new ones are invented. These are likely to be of an *ad hoc* nature, until more permanent institutional processes are defined. The use of resource development inquiries is an example of this *ad hoc* response, since these inquiries perform a function which government cannot adequately perform (Thompson, 1978).

Thus, because existing reviews do not provide for comprehensive review, public inquiries have been used to assess resource proposals. Characteristics of the public inquiry

process and resource development inquiries are discussed in the next chapter. This is followed by an identification of the factors which are thought to influence the extent to which an inquiry can provide for comprehensive review and establishes the analytical framework for the case study.

Chapter III

THE INQUIRY PROCESS

3.1 PUBLIC INQUIRIES

A public inquiry is a body established on an ad hoc basis by executive order to investigate a problem and recommend solutions (Chapman, 1973; Law Reform Commission (LRC), 1977; Ritchie, 1973; Salter, 1978). Public inquiries are not new to the Canadian way of life[15]. Since 1868 approximately 1,900 commissions of inquiry have been established (LRC, 1977). Some inquiries have been controversial, others have been almost totally ignored, but all have examined matters of public importance and concern. Examples include the Rowell-Sirois Inquiry into federalism in the 1950's and the LeDain Commission into the non-medical use of drugs in the early 1970's (Thompson, 1978).

An inquiry is part of the Canadian policy-making process. Elected representatives are pressured to act on or solve a social problem, thereby exercising their democratic responsiblities (Doern and Aucoin, 1971; VanLoon and Whittingdon,

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[15] A public inquiry is established by an act of the legislature under the seal of the Lieutenant Governor. A royal Commission is established under the seal of the Queen. Because the Lieutenant Governor is the Queen's representative in Canada there is no practical difference between a public inquiry and a royal commission.

1977; Wilson, 1971). The establishment of an inquiry symbolizes political concern for societal issues. An inquiry also provides information for policy decisions, from which corrective legislation may result (Salter, 1978; Wilson, 1971). Lucas and Peterson (1978) observe that, from a political point of view, an inquiry's attractiveness is obvious:

> To establish an inquiry is to appear to act decisively on an issue. The public sees inquiries as an independent, that is essentially non-political institution. Issues committed to inquiries often appear to be too technical for the responsible political decision-makers. The public sees a serious effort to obtain information and sort out complex issues. And of course, public inquiries buy time and relieve pressure on political officials ultimately responsible for decisions.

Inquiries are part of the Canadian policy-making process and are not a decision-making process[16]. Rather, an inquiry is an information-gathering process, used to identify, obtain and analyse information relevant to an inquiry's terms of reference. The person(s) appointed to conduct an inquiry report to the minister(s) responsible for establishing an inquiry[17]. It is these recommendations which a government can use to take action to resolve the problem

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[16] A decision-making process involves the identification and ranking of goals, cataloguing of methods to achieve these goals, and investigation of these goals' possible consequences. For theory on issue-formation, information-gathering processes see Ingram and Ullery, 1977; Kasperson, 1969; Lucas, 1976; O'Riordan, 1976; 1977; Sewell, 1976; Wengert, 1976.

[17] The person appointed to conduct an inquiry is called a commissioner. There may be several commissioners, just as there may be several ministers responsible for an inquiry. All references to a commissioner are in the singular.

investigated by the inquiry.

Three components specific to an inquiry's function were identified by LeDain (1973):

1. to identify issues;
2. to ascertain the facts;
3. to make policy recommendations.

Federal public inquiries have been established in two broad investigative areas: allegations of wrongdoing in public life and controversial policy questions of public concern (Berger, 1977 (a); LRC, 1977; LeDain, 1973; Ritchie, 1973; Salter, 1978; Thompson, 1978). Inquiries fulfill other purposes which are important because they are functions which cannot be carried out effectively by other institutions, and include the ability to: 1) inform, clarify and develop public awareness and understanding of a complex problem; 2) gather and transmit representative opinion by providing an additional forum for the expression of the views of individuals and groups; 3) bring objectivity and expertise, free from the constraints of a parliamentary timetable, to the recommended solution of a problem; 4) allow time for the development and identification of public attitudes (Cartwright, 1975; LeDain, 1973; LRC, 1977; Salter, 1978).

3.2 LEGISLATIVE BASIS OF FEDERAL INQUIRIES

The Inquiries Act, currently under revision, empowers the federal 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" (Inquiries Act, section 2). Part II, section 6 provides that any minister may, with cabinet's approval, establish an inquiry to "investigate and report upon the state and management of the business of government departments". The Act further provides for the appointment of a commissioner and specification of what will be inquired into by providing the commissioner with terms of reference[18]. These terms of reference define the issues before an inquiry and shape an inquiry's function.

A commissioner's powers provided under the Inquiries Act include the adoption of necessary rules of practice and procedure, the power of subpoena,and the power to engage the services of legal, technical advisors, accountants and other

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[18] There are at least forty-seven federal statutes, such as the Canada Shipping Act, that confer powers of inquiry and refer to the Inquiries Act. There are also at least forty other statutes which confer powers of inquiry without referring to the Inquiries Act. These statutes contain particular powers of inquiry, or else provide for the establishment of an inquiry, with powers to be decided by cabinet (LRC, 1977). One such statute, the Territorial Lands Act, provided for the establishment of the Mackenzie Valley Pipeline Inquiry in March 1974 (Berger Inquiry, Order-in-Council P.C. 1974-641). Provincial governments all have legislation providing for inquiry into matters of provincial jurisdiction (Calami, 1977; LRC, 1977. See B.C.'s Public Inquiries Act).

required experts. These powers are based on three judicial concepts: 1) an impartial recommendation will be rendered; 2) no special interest will be given undue weight; 3) proceedings will be public (Cartwright, 1975; Chapman, 1973; LRC, 1977; LeDain, 1973; Pape, 1978; Wraith and Lamb, 1971). The use of these powers shape the structure of an inquiry.

3.3 RESOURCE DEVELOPMENT INQUIRIES

The use of public inquiries to assess resource development is a recent Canadian phenomenon. The function of such inquiries has been to identify, collect, examine and assess all information on a resource proposal(s) in a public way and to report findings to the responsible ministers (Anthony, personal communication, 27 September 1978; Berger, 1976; 1977(a)(b); Gamble, 1978; Lysyk, 1977; Thompson, 1978).

Structural mechanisms have been based on two concepts. The first, participation by public interests in the public examination of issues, is based on the review requirement that those interests interested in, or affected by, a proposal are provided, if need is shown, with the means and financial aid to participate (Requirements 4,5,6,10). The second concept, provision of relevant information, is based on the review requirement that those with the right to participate should be given access to relevant information (Requirements 7,8,9,10). Mechanisms used to implement these

requirements include the use of formal and community hearings as a means of gathering technical and public information, and participant funding as a means of incorporating a broad range of interests into an inquiry.

Gamble (1978) observed that as the Berger Inquiry, the first resource development inquiry, set about to carry out its review, "it became evident that the development of an appropriate methodology was crucial for the inquiry to discharge its responsibility effectively". Appointed as sole commissioner, Mr. Justice Thomas Berger was directed by the Minister of Indian and Northern Affairs, to:

> inquire into and report upon the terms and conditions that should be imposed in respect of any right-of-way that might be granted across Crown lands for the purposes of the proposed Mackenzie Valley Pipeline having regard to:
>
> a) the social, environmental and economic impact regionally, of the construction, operation and subequent abandonment of the proposed pipeline in the Yukon and Northwest Territories, and
>
> b) any proposals to meet the specific environmental and social concerns set out in the Expanded Guidelines for Northern Pipelines as tabled in the House of Commons on June 28, 1972 by the Minister.

After holding hearings in the north and south of Canada, the commissioner reported to the federal government on 15 April 1977 (Berger, 1977(a)).

The federal Alaska Highway Pipeline Inquiry (Lysyk Inquiry), a three member federal inquiry established in April 1977 and reported on July 29th of the same year, was directed to[19]:

> prepare and submit to the Minister of Indian and Northern Affairs a preliminary socio-economic impact statement concerning the construction and operation of the proposed Alaska Highway gas pipeline. The statement should identify:
>
> a) the principle socio-economic implications of the Alaska Highway Pipeline proposal;
>
> b) the attitude to the proposal of the inhabitants of the region it would affect;
>
> c) possible deficiencies in the application of the proponent;
>
> d) possible courses of action that might be taken to meet the major concerns which are identified and to correct any major deficiencies in the application (Lysyk et al., 1977, p. 155).

Four noteworthy provincial inquiries have been established since 1974. Ontario's Royal Commission on Electrical Power Planning, Order-in-Council 1975-2008 (Porter Commission) was established in July 1975, to examine the long range electrical power planning of Ontario Hydro. The five commissioners were to consider the domestic, commercial and industrial utilization of energy; environmental and

[19] The inquiry's chairman, K. Lysyk, Dean of the University of B.C.'s Law School, was appointed by the Minister of Indian and Northern Affiars. One commissioner was appointed by the Yukon Territorial Council; the third by the Council of Yukon Indians. This three member composition was a requirement specified in the inquiry's terms of reference.

socio-economic factors; and the broader issues related to electric power planning. The final report was to be submitted on or before 31 October 1979.

Another Ontario inquiry, the Royal Commission on the Northern Environment, Order-in-Council 1975-1900 (Hartt Commission), was established 13 July 1977 to examine and assess the environmental effects of major enterprises north of the fiftieth parallel; to recommend methods for their assessments; and to examine alternative uses for Ontario's northern resources. Commissioner Hartt submitted an interim report on 4 April 1978 and left the inquiry to head another Ontario commission on native issues. Mr. J. Fahlgren, appointed as Hartt's successor in August of 1978, is carrying out the inquiry's mandate and has no specified reporting time.

The province of Saskatchewan established a three member commission on 1 February 1977, to inquire into the probable environmental, health, safety, social and economic effects of a proposed uranium mine and mill at Cluff Lake, Saskatchewan, as well as the social, economic and other implications of expansion of the uranium industry in the province (Cluff Lake Board of Inquiry, Order-in-Council 1977-222 (Bayda Inquiry)). This inquiry reported to the Saskatchewan cabinet on 31 May 1978.

The fourth inquiry, B.C.'s three member uranium inquiry, was established in February of 1979 (Royal Commission of Inquiry into Health and Environmental Protection, Uranium Mining, Order-in-Council 1979-170 (Bates Inquiry)). This inquiry has been asked to inquire into the adequacy of existing federal and provincial requirements in B.C. for the protection of the health and safety of workers associated with the exploration, mining and milling of uranium, and the protection of the environment and the public. Technical and community hearings are to be held into mid-1980, with a report expected later this year.

3.4 FACTORS INFLUENCING AN INQUIRY AS A COMPREHENSIVE REVIEW

As noted in Chapter One, a comprehensive review must ensure that all relevant issues and public interests are included in a public examination of a proposal, so that a wise decision can be made on the proposal. It is argued that unless the function and structure of an inquiry permit the identification, submission and analysis of information relevant to issues surrounding a proposal, an inquiry will not provide for comprehensive review.

It is argued that there are criteria which affect an inquiry's function; the most influential being an inquiry's terms of reference and political constraints. A second level of influential criteria include the commissioner's powers,

as conferred by the Inquiries Act, reporting timeframe and budgetary provisions. A third level of criteria is the commissioner's understanding of an inquiry and review processes. This understanding will influence the use of the commissioner's powers, and the reporting timeframe and monies allocated to an inquiry. In turn, these factors will influence the fulfillment of an inquiry's terms of reference and the political constraints operating on an inquiry.

If an inquiry is to carry out a comprehensive review, its terms of reference must provide for such a review. The commissioner must have the power to identify, examine and assess all potentially significant issues publicly before a project decision is made (Requirements 1,2,4,7,8,10, Chapter Two) and must have the power to carry out such a review (Requirement 3). Monies must be available for the salaries of the commissioner, inquiry staff and other required expertise (Requirement 9), the funding of participants (Requirement 6) and dissemination of information (Requirement 5).

The most influential structural criteria are the use of different methods of gathering and analysing information, and the inclusion of a wide range of interests on a continuous basis. A second level of influential criteria include the provision of financial aid and research time, when need can be established, and the use of mechanisms allowing public access and scrutiny of relevant information. A third

level of criteria is the existence of a staff capable of identifying critical issues and affected interests, and of obtaining relevant information.

An inquiry's staff must be capable of identifying interests and information which need to be included in an inquiry (Requirement 9). The inclusion of these interests and information sources will result in the use of different means of gathering and analysing information, and in the inclusion of a wide range of different interests (Requirements 4,5,6,7).

Analysis of the case study will show how these different factors influenced the WCOPI and will examine the extent to which this inquiry's function and structure provided for comprehensive review.

Chapter IV

THE KITIMAT OIL PORT PROPOSAL

4.1 THE PROPOSAL

Kitimat Pipe Line Limited (KPL) proposed to build a deep sea oil port at Kitimat, B.C. and a 753 mile, 30 inch diameter pipeline to Edmonton, Alberta (KPL, 1976 (a) (b)). This proposal involved the transport of Alaskan, Indonesian and Middle East crude oil by tanker through B.C.'s northern coastal waters to Kitimat (See Map 4-1 Marine Approaches to Kitimat, B.C.). From there, via the new pipeline to Edmonton, crude oil would be delivered to markets in the northern United States[20].

The filing of KPL's NEB and TERMPOL submissions on 8 December 1976 identified KPL's need for regulatory approval from the NEB for the proposed pipeline and the Ministers of Transport and the Fisheries and Environment for the marine

[20] KPL, a "new company established to bring the proposed line into being", was a consortium of six firms: Ashland Oil Canada Ltd., Farmers Union Central Exchange, Inc., Hudson's Bay Oil and Gas Co. Ltd., Interprovincial Pipeline Ltd., Koch Industries, Inc. and Murphy Oil Corporation (KPL, 1976 (c)). Appendix A: West Coast Oil Port Proposals 1977 describes the proposed KPL marine facilities and pipeline route. This appendix also outlines other west coast oil port proposals and alternatives under consideration in 1976, 1977. See Map 4-2 Existing and Proposed Oil Pipelines 1977. References to oil port proposals are to west coast proposals and not those on the east coast.

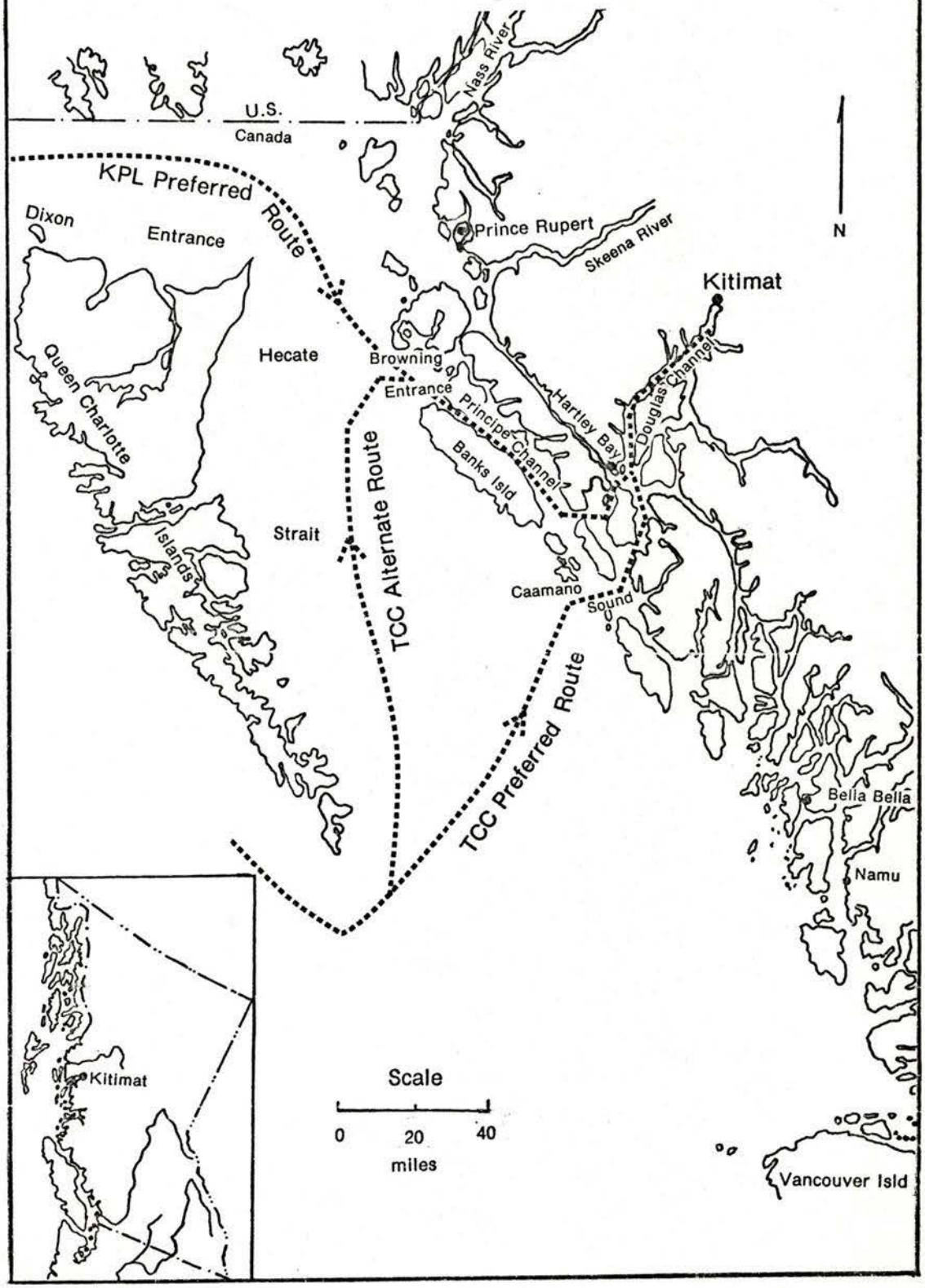
port. However, the proposal raised six significant issues which ultimately led to the establishment of the Inquiry:

First, the proposed movement of "supertankers" down the B.C. coast and into Kitimat posed navigational safety questions. Concerns expressed by environmental, fishing and native interests, as well as federal and B.C. civil servants, were over port and route selection; assessment of alternative port sites; possible marine traffic conflicts, particularly between fishing vessels and oil tankers; and international laws applicable to the movement of foreign crude oil from foreign sources to a Canadian port. This last concern was due to uncertainty over the adequacy of Canadian legislation and the ability of the Canadian government to enforce pollution controls and navigational safety standards on foreign vessels, particularly on "flag of convenience" ships.

Second, the possibility of oil spillage and the impact of oil upon B.C.'s marine resources was a major concern. The impact of oil on fish, particularly salmon and shellfish, and on marine vegetation; responsibility for oil spill clean-up; the capability of those responsible to respond to an oil spill; liability and compensation measures, were specific issues of concern.

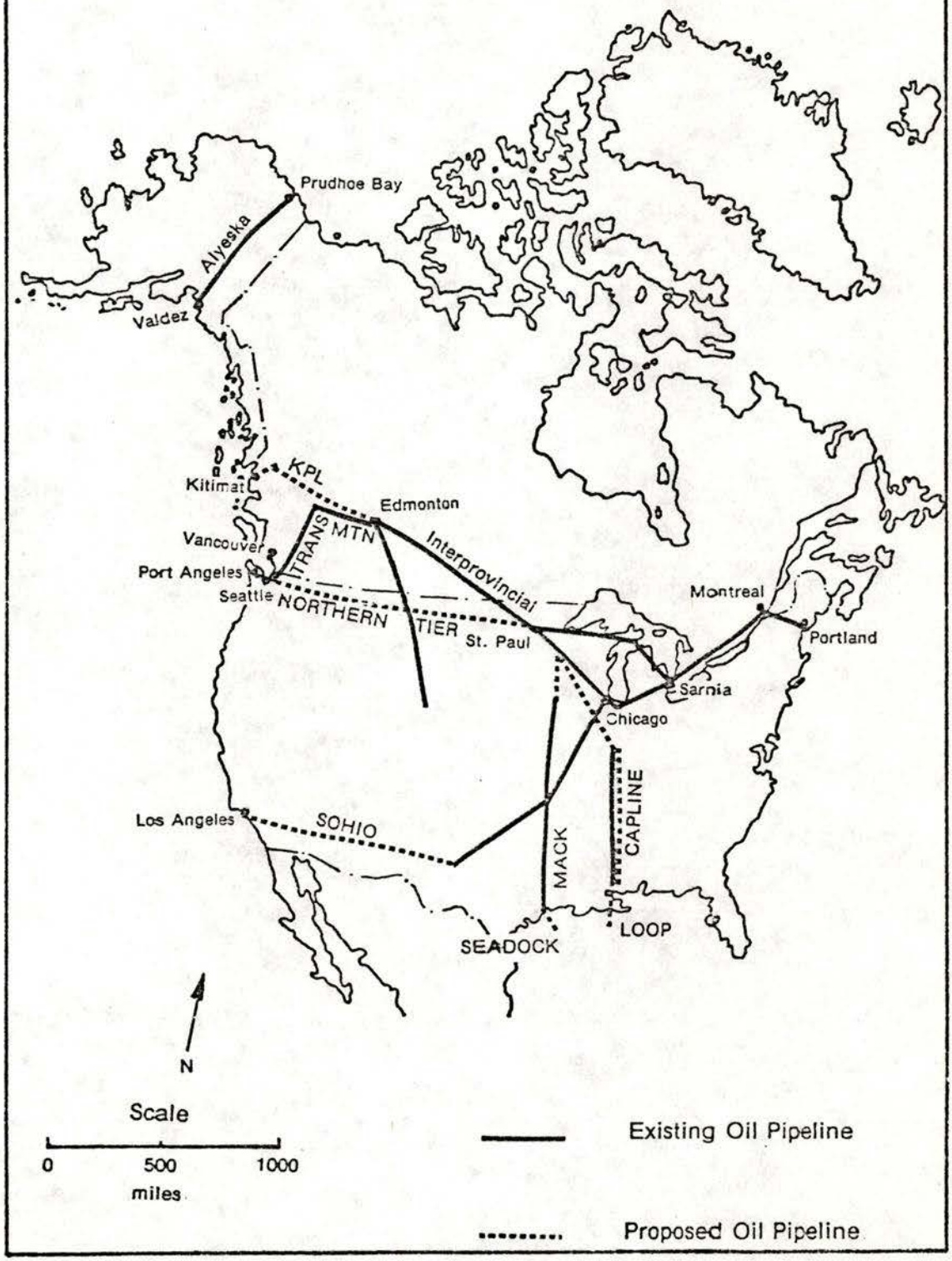
Third, the siting of an oil port for the disposition of Alaskan and other offshore crude oil to supply American

MAP 4.1 PROPOSED MARINE APPROACHES TO KITIMAT, B.C.



MAP 4.2

PROPOSED AND EXISTING OIL PIPELINE SYSTEMS, 1977



markets, created an issue of obvious Canadian and international significance. Specific concerns were expressed on the need for such a port and the benefits and costs to Canada and B.C. One question posed was whether Canadians, and British Columbians in particular, should accept the costs of inevitable oil pollution to provide American markets with the benefits, namely oil.

Fourth, the impact of the construction and operation of KPL's port and pipeline was an issue for residents living in the area, and for responsible local and regional B.C. governments.

Fifth, the adequacy of existing information on marine resources at risk as well as hydrographic and meteorological information on the marine approaches to Kitimat, was questioned. In particular, the reliability and validity of the data used in KPL's submissions was challenged[21].

Sixth, the ability of existing federal and B.C. reviews to assess these issues adequately was raised by environmental and fishing interests. The American Federal Energy Administration's preliminary report, "Crude Oil Supply Alternatives for the Northern Tier States", released in

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[21] Federal authorities considered the hydrographic information for Lorado Sound and area as "obsolete". Tidal current information was "inadequate" for the marine approaches to Kitimat (Minutes of a Federal/Provincial Meeting on the Trans Provincial Pipeline Proposal, 12 June 1976).

August of 1976, confirmed this concern for a B.C. public interest group, the Scientific Pollution and Environmental Control Society (SPEC). This report supported KPL's proposal because "it can be constructed the quickest (sic) of all the pipelines, both in actual construction time and the regulatory process approval time" (G. Gallon to F. Zarb, 21 October 1976). Resolution of these six issues was not possible under existing reviews. This becomes obvious when federal and B.C. jurisdictions involved in the proposal are examined.

4.2 RELEVANT FEDERAL JURISDICTIONS AND REVIEWS

The review of, and decision on, the KPL proposal was a federal matter due to the energy issues raised by the interprovincial pipeline facility, the use of vessels to transport oil through Canadian waters to a Canadian port, and the Minister of the Environment's responsibilities (BNA Act, sections 91(2), 91(10), 91(12), 92(10)(a)). There were six federal jurisdictions directly involved in the KPL proposal, as identified in Figure 4-1. Of these, the NEB had paramount jurisdiction over terrestrial pipeline aspects and the Ministries of Transport and of Fisheries and the Environment were responsible for marine aspects. The inadequacies of these jurisdictions, their responsibilities and their review processes are identified.

Figure 4-1

Federal Jurisdiction and Regulation of KPL's Proposal

1. MINISTRY OF ENERGY, MINES & RESOURCES

NEB Act. The NEB determines, after hearing an applicant, if a certificate of public convenience and necessity will be granted. NEB approval is needed for construction of interprovincial pipelines and associated terrestrial facilities. If a decision is negative, it is final. If NEB approves an application, final approval is subject to a cabinet decision.

2. MINISTRY OF TRANSPORT

NWP Act. Any proposed ship terminal must conform to this Act's provisions. Section 5 protects the public right of navigation by prohibiting the building or replacement of any work in, upon, over, under, through or across a navigable waterway without Ministerial approval. If an undertaking does affect navigation and poses a significant hazard, the applicant may be required to submit a non-mandatory TERMPOL application based on the TERMPOL Code Guidelines of the Canadian Coast Guard's Ship Safety Branch. This TERMPOL submission is used to determine the technical aspects of a proposed terminal and associated shipping practices. Members of the TCC established to review KPL's submission included representatives from the Ministries of Transport, Fisheries and the Environment, Public Works, Industry, Trade & Commerce, Regional and Economic Expansion, and External Affairs.(1) TCC recommendations on a TERMPOL submission go to the Minister, who then presents the information to cabinet.

Canada Shipping Act. Under this Act the Minister has the power to regulate shipping traffic and enforce safety regulations, including pollution control regulations. These are applicable to Canadian and non-Canadian ships using Canadian waters, including those ships not covered under the Arctic Waters Pollution Prevention Act.(2)

Pilotage Act Pilotage in all Canadian waters in and around B.C. comes under the authority of the Pacific Pilotage Authority, which is empowered to enforce pilotage regulations.

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(1) The National Harbours Board was not a TCC member because Kitimat is one of twenty public harbours in B.C. which are administered by the Ministry of Transport. A port commission is established when a harbour generates sufficient revenues to cover the costs of its administration. Normally the Harbours Board would be involved in a TCC review.

(2) Regulations passed pursuant to this Act include the Maritime Pollution Claims Fund, Reg. SOR 71-495; Navigational Appliances Reg. SOR 73-5; Oil Pollution Prevention Reg. SOR 71-495; SOR 73-500; Pollutant Substances Reg. SOR 73-113 and Ship Routing Reg. SOR 74-136; SOR 75-138.

Figure 4-1 (Continued)

3. MINISTRY OF FISHERIES AND THE ENVIRONMENT AND OF STATE FOR THE ENVIRONMENT

Canada Water Act. This Act provides for federal protection of Canada's water environment through the establishment of national effluent standards and, with the co-operation of provincial governments, of specific projects. Under section 11, the Minister may, in federal or interjurisdictional waters where there is an urgent national interest in water management, act unilaterally and set up a management agency responsible for the specified water body. To date this power has never been used.

Environmental Contaminants Act. This Act comes into force when proclaimed by an order-in-council and provides for the establishment of regulations for any substance which may endanger human health or the environment. Under section 7(3)(3) cabinet has the authority to establish geographical areas where regulations are effective.

Fisheries Act. This Act applies to all waters frequented by fish and includes the regulation of undertakings affecting fish. Section 33 provides that any undertaking that is likely to influence the waters frequented by fish by the disposition of deleterious substances must provide the Minister with a plan of the proposed activity. The Minister may require modification or prohibit the activity. Under section 20(1) if free passage of fish is to be obstructed, even temporarily, the Minister must be notified, who then may require construction of a fishway, fish hatchery, etc. to ensure the return of migratory fish. This Ministry is included in the TERMPOL process, and reviewed KPL's submssion.

Migratory Birds Convention Act. Regulations passed pursuant to this Act afford protection of waters and other areas frequented by migratory birds, including the prohibition of the disposition of oil.

Ocean Dumping Act. This Act requires the permission of the Minister, by way of a permit, to dump materials into Canadian waters.

Figure 4-1 (Continued)

4. MINISTRY OF JUSTICE

Inquiries Act Section 2, part 1 provides that the government may, whenever it deems it expedient, to cause inquiry into and concerning matters connected with the good government of Canada or the conduct of any part of the public business thereof. The WCOPI was established under this Act on 11 March 1977.

5. DEPARTMENT OF EXTERNAL AFFAIRS

An Agreement between the Government of Canada and the Government of the United States of America Concerning Transit Pipelines. This Agreement, signed in February 1977, provides for terms and conditions for all pipelines between the two countries, and is designed to ensure the uninterupted flow of pipeline hydrocarbons. These restrictions would apply to any pipeline proposal, such as KPL's.

Territorial Sea and Fishing Zone Act. Canada extended its jurisdictional waters to 200 miles in January 1977. This means that Canada's regulatory powers of navigation and shipping were also extended, and could be used to influence international tanker traffic and oil pollutant carrying vessels because Canada is an international treaty power within the legally defined international community.

6. DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS

Indian Act. Any pipeline going through Indian land requires cabinet approval, as stipulated in section 35 (1). KPL's proposed route involved three such areas. Resolution of land claims, including sovereignty over B.C.'s marine resources further involved this Department with specific native peoples groups concerned about KPL's proposal, such as the Haida and Nishga peoples of northern coastal B.C.

National Park Act. Any pipeline going through a national park requires cabinet approval for the construction of a right-of-way (section 6(2)). KPL's route went through Jasper National Park.

Ministry of EMR and the NEB

If one considered only terrestrial pipeline aspects, the KPL proposal was essentially an energy question, requiring NEB approval. The NEB's legislative mandate which provides for the review of economic and technical matters of pipeline construction and operation has been discussed in Chapter Two.

The most significant aspect of the NEB's review was that its jurisdictional authority does not extend beyond the terrestrial aspects of a pipeline[22]. This limitation meant that the NEB was not responsible for, nor capable of, examining the broad marine, environmental and social issues related to KPL's proposed port. The WCOPI commissioner (the Commissioner) emphasized this review inadequacy when he wrote, "neither the tradition and expertise, nor the legislative mandate of the NEB provides for complex socio-economic and environmental assessment (Thompson, 1978, p.94). A similar observation is contained in the interim submission of the Inquiry's Commission Counsel (Counsel): "because of its responsibilites and experience, the NEB is more expert on terrestrial and energy policy matters, than on marine and related social and environmental concerns; concerns which

[22] The NEB ruled on the limits of its jurisdiction after the establishment of the WCOPI, in its approval of the Tennaco Liquified Natural Gas application. The NEB recognized that there was "some uncertainty about the safety aspects of marine operations" and ruled that these factors "do not come under NEB jurisdiction" (NEB, Reasons for Decision, November 1977, p. 14-2).

are of paramount importance in the KPL proposal" (Interim Submission, p. 32).

SPEC was very concerned that the NEB was basically "oil industry orientated", did not have an objective view of environmental and social factors (SPEC, Newsletter, 23 October 1976) and argued that if NEB hearings on KPL's proposal were held only in Ottawa, this would restrict the number and type of interested parties financially capable of acting as intervenors, and the type of information that would be presented to the NEB. All of these limitations meant that the NEB could not adequately review the marine issues associated with KPL's proposal.

Ministry of Transport and TERMPOL

Under the provisions of the NWP Act and the Canada Shipping Act, approval for proposed dock and terminal facilities must be obtained from this ministry. In accordance with the procedures established under these Acts, KPL prepared its six volume TERMPOL submission[23]. There are limitations to TERMPOL, as discussed in Chapter Two. Some were very significant because the KPL proposal involved increased tanker traffic along B.C.'s coast.

[23] A TCC established to review KPL's submission took over four months to assess it. A deficiency letter sent to KPL on 25 February 1977 posed forty-six questions that the TCC wanted answered before a final TCC report was prepared. The TCC publicly released its findings in May of 1977, three months after the WCOPI's establishment (Canada, 1977(c)).

The Ministry of Transport's jurisdictional authority and responsibility is to ensure that Canada's shipping and navigational regulations are applied to vessels in Canadian waters. The Ministry is also responsible for controlling and regulating marine pollutants, such as oil. Yet TERMPOL, the only review in place under this ministry, does not require an assessment of coastal marine resources at risk along proposed transportation routes and does not place any enforceable requirements upon applicants for the installation of navigational aids, pollution clean-up responsibility or equipment provisions. Correspondence from the Department of External Affairs to SPEC substantiates these TERMPOL limitations:

> (TERMPOL) is primarily concerned with ensuring that the new port development does not obstruct important existing navigation routes. There is no provision under the Act (NWP Act) which would permit the Department to refuse a license on environmental grounds. The consortium has, however, agreed to prepare its applications to the Department of Transport and the NEB in the context of the draft TERMPOL guidelines. These guidelines contain detailed standards for terminal design and operation related to the assessment and reduction of the possibility of oil spillage at the terminal in question. The guidelines at present lack the force of law, but they have been in use on a voluntary basis. . . With respect to the Department of Transport licencing process, there are no formal arrangements for departmental or public input. However, the restricted scope of factors which the Department of Transport can consider under the NWP Act tends to limit the scope of intervention (J. Sharpe to G. Gallon, 8 December 1976).

This same source observed that:

> A number of departments outside of the Department of Transport and the NEB are preparing to review the Kitimat proposal once the consortium's

> application is submitted. Environment Canada is interested in examining the environmental aspects of the proposal, both in terms of the Kitimat area and in the general context of the west coast oil movements. The Department of EMR will, in the natural course of events, consider the impact of the proposal in terms of Canadian and bilateral energy supply. This Department (External Affairs) follows the question in the context of U.S./Canadian relations, bearing in mind both environmental considerations and the various options for the movement of Alaskan crude to U.S. refineries particularly those in Washington State and the Northern Tier traditionally supplied from Canadian oil fields.

TERMPOL brings together known data, can request additional information and analyses navigational safety, oil spill risk, containment and clean-up, and environmental and social impacts of the operation of a marine terminal, like Kitimat. But, the inability of TERMPOL to consider coastal marine tanker traffic and associated risks, and marine information gaps, led to pressure for an additional review.

Ministry of the Environment and TERMPOL

Two major questions were raised about this ministry's role in the TERMPOL review of KPL. First, how would environmental, social and economic analyses be incorporated into the technical, in-house TERMPOL review? Second, what weight would the Minister of the Environment's recommendations have among other TCC representatives? These concerns were expressed in a letter from SPEC to Prime Minister P.E. Trudeau:

> The Department is being relegated to the back-seat by the older and more established Ministry of Transport and the NEB. This is one of the largest

> environmental issues to face B.C. in years and Environment Canada is without a final say in the matter. It has been reduced to being an environmental eunuch advisor to the Ministry of Transport and the NEB, having no regulatory powers of its own to adequately protect the environment. It does not have an environmental protection act like Ontario or the United States with which it can fully assess and regulate the environmental impact of major developments like Kitimat (G. Gallon to P. Trudeau, 16 December 1976).

Additional inadequacies in the Ministry of the Environment's review powers to assess KPL's proposal were further illustrated by the non-applicability of EARP, the federal review process discussed in Chapter Two.

Ministry of the Environment and EARP

EARP was not applicable to KPL's proposal because no federal monies, lands or departments were directly involved in the proposal. If EARP had been applicable, it would not have had the mandate to review and assess technical navigational and tanker traffic issues. This is because EARP examines site specific environmental impacts of proposed development. Another very important drawback to EARP is its lack of public credibility as an adequate, independent review.

The three most important federal reviews provided for a segmented and incomplete examination of the issues surrounding KPL's proposal. The NEB was responsible for the pipeline. The TERMPOL review did not examine socio-economic and environmental issues and EARP was not applicable at all.

4.3 RELEVANT B.C. JURISDICTIONS AND REVIEWS

The province of B.C. was involved in assessing KPL's proposal because of the proposed use of provincial land (BNA Act, sections 92(5),(10),(13),(16)). The port was to be built at Kitimat, and the pipeline route was to extend "north from Kitimat to Wilson Creek to the Telkwa Pass and then east to Edmonton, passing through Burns Lake, Prince George, McBride, Jasper, Hinton and Edson" (KPL, 1976 (c)). Although KPL's proposal required a federal decision the government of B.C. was concerned about the proposal's implications because provincial reviews and regulatory processes become applicable if federal approval is given to proposals, like KPL's, with stipulations that they are in strict accordance with provincial regulatory and permitting processes[24]. Figure 4-2, which identifies the B.C. ministeries and departments involved in KPL's proposal, shows that the B.C. government's response was to form an Energy, Transport and Communications Task Force (ETC Task Force) in October 1976.

ETC Task Force

The ETC Task Force, whose membership included six departments and agencies, was given the mandate to examine KPL's proposal, investigate both seaward and landward issues, and

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[24] The thesis confines itself to the province of B.C. in the examination of relevant provincial jurisdictions. The province of Alberta was involved because of the proposed use of Albertan lands for the pipeline route. However, this role was minimal compared to the involvement of B.C.

Figure 4-2

Potential B.C. Jurisdiction and Regulation of KPL's Proposal

1. MINISTRY OF ENERGY, TRANSPORT & COMMUNICATION

Energy Act. This Minister provides for and regulates B.C.'s energy, transportation and communiction facilities. The BCEC is responsible for the administration of this Act, and answers to cabinet through the Minister. Section 30(4) provides that no person can construct or operate any energy utility without first obtaining a certificate of public convenience and necessity from the BCEC. The NEB has paramount jurisdiction over this Act in KPL's case because the proposed pipeline was an interprovincial one. Section 19 provides that the BCEC advise cabinet, when asked, on provincial energy matters. Section 103 provides for public hearings into provincial energy matters and could be used to assess proposed utilities, such as KPL's. This Act provided the basis for the interdepartmental ETC Task Force review. Membership included representatives from the Ministeries of Economic Development and Intergovernmental Affairs, the Secretariat, the Attorney General's Department and the Premier's Office. The ETC Task Force's recommendations went to cabinet through the Minister of ET&C.

Pipelines Act. This Act was not applicable to KPL's interprovincial proposal as it applies to the approval and regulation of intraprovincial pipelines. Provisions in the Act become significiant when the NEB rules that an interprovincial pipeline is subject to provincial regulations. In B.C. such regulations include approval from the Department of Highways for all highway crossings, or infringement of highway right-of-ways and the impositions of standards and regulations for technical operating procedures for all aspects of pipeline related activity, as specified in Regulations for Pipelines B.C. Reg 451/59.

2. MINISTRY OF THE ENVIRONMENT

Ecological Reserves Act. Section 5 provides that any area established as an ecological reserve is immediately withdrawn and reserved from further disposition that might be granted by an Act in force in B.C. The proposed KPL route did not go through any reserves, but marine oil pollution could have affected existing and proposed coastal reserves.

ELU Act. Sections 3,4 and 6 provide that the ELUC may make recommmendations to cabinet on any matter respecting the environment, development and use of land or other natural resources in B.C.; that the ELUC may hold a public inquiry if needed; and that cabinet may issue orders relating to the use of B.C.'s environment, orders which would override existing legislation unless otherwise specified. The ELUC's mandate provided for the inclusion of the Secretariat in the ETC Task Force review of KPL.

Figure 4-2 (Continued)

Land Act. The Minister may dispose of crown lands as he may deem advisable for the public interest and impose necessary terms (section 9). Section 37 stipulates the restrictions placed upon right-of-way and easement grants. Section 31 provides for environmental and economic studies of applications for proposed land use. In KPL's case, because of the NEB's jurisdiction and the fact that the terminal site was privately owned, this Act appears to have been applicable only to the disposition of crown lands from the townsite of Kitimat to Mount Robson, along Highway 16, although KPL did not recognize these regulatory requirements in its submissions. The Lands Branch, responsible for administering this Act, was included in the Secretariat's input to the ETC Task Force.

Pollution Control Act. This Act regulates the discharge of domestic and industrial wastes into B.C.'s environment through a permit system authorized by the pollution control branch of the water resource service. No one shall, directly or indirectly, discharge, cause or permit the discharge of sewage or other waste material or contaminant on any land or water or into the air without a permit or approval of the Director (section 5). Any land based activity, such as KPL's proposal, which could result in discharges, such as oil waste water from the tank farm or emissions from storage tanks, cannot proceed without a pollution control permit. The pollution control branch was not represented on the ETC Task Force although it was examining the proposal.

Water Act. All matters pertaining to the use of B.C.'s water resources are the responsibility of the Water Resources Branch, as provided under this Act, since the right to use and the flow of water in B.C. is vested in the Crown in the right of the province. Any use of water, such as during pipeline construction, must be authorized by a permit from the Comptroller of water rights and must adhere to the conditions set down in the permit.

3. MINISTRY OF RECREATION AND CONSERVATION

Fisheries Act. The Fish & Wildlife Branch, responsible for the maintenance, protection and enhancement of freshwater fish and terrestrial wildlife resources for the benefit of the people of B.C., administers this Act. Any person undertaking a work which will use, divert, obstruct, impound or change the natural flow or course of a river or stream, or otherwise utilize B.C.'s waters, must have the approval of the federal Minister of Fisheries to ensure safe and adequate fish passage (section 34(1)). Sections 34(2) and (3) provide for the submission of plans to the Minister of such undertakings. No one can remove gravel from, or displace gravel within the high water wetted perimeter of any watercourse without the written permission from the federal regional director or a federal fisheries officer (B.C. Fisheries Reg. P.C. 1954-1910). The Marine Resource Branch of this ministry was also involved reviewing KPL's proposal because, pursuant to this Act, the branch has a shellfish and marine plant protection mandate. The Marine Resource Branch's comments on KPL's proposal went through the Secretariat to the ETC Task Force, as did the Fish & Wildlife's assessment.

Figure 4-2 (Continued)

4. MINISTRY OF MUNICIPAL AFFAIRS

Municipal Act. This Act provides for the governing of local governments in B.C.. The District, the RDs of Kitimat-Stikine and Prince Rupert-Queen Charlottes were involved in KPL's proposal because the proposed marine and pipeline routes, and the port site, were in their jurisdictions.

5. DEPARTMENT OF THE PROVINCIAL SECRETARY

Archaeological and Historic Sites Protection Act. No person can destroy any historical artifact in B.C., knowingly or not (section 4). The Minister can, under section 7(2), halt any activity in whole or in part until all site survey and site investigation work is done. At the time of the KPL submissions, large portions of the proposed route were not surveyed nor inventoried.

Inquiries Act. This Ministry is responsible for the use of this Act, which could have been used to establish a provincial inquiry into matters related to the KPL proposal. This department is also responsible for the Indian Advisory Branch, and is involved in matters relating to B.C.'s native peoples.

6. B.C. HARBOURS COMMISSION

Harbour Commission Act. B.C. has a Harbours Board, a crown corporation which researches and proposes harbour development. This board was not involved in the ETC Task Force review although it undertook an engineering study of the port site possibilities at Kitimat; a study which cabinet was requested to undertake by the District and the RD of Kitimat-Stikine.

7. MINISTRY OF ECONOMIC DEVELOPMENT

This Ministry had no direct involvement in KPL's proposal. Its responsibility for B.C.'s economic policy resulted in the inclusion of this Ministry on the ETC Task Force, to provide information on the economic effects of the land portion of KPL's pipeline, such as employment income, number of anticipated jobs and projected tax revenue.

8. MINISTRY OF THE ATTORNEY GENERAL

The Ministry is responsible for the administration of justice and the enforcement of laws in B.C., and was a member of the ETC Task Force.

9. DEPARTMENT OF INTERGOVERNMENTAL AFFAIRS

This department was included in the ETC Task Force to ensure that contact was maintained with the Premier's office and to ensure that ETC Task Force procedures and recommendations followed appropriate channels.

advise cabinet through its energy committee on deficiencies in KPL's proposal. This advice was to be used for formulation of a provincial government position on the proposal.

The ETC Task Force's mandate demonstrates that KPL's proposal was given cabinet priority as an energy issue rather than environmental or social ones; an assertion further supported by the fact that a B.C. Energy Commission (BCEC), an agency which regulated B.C. energy utilities and advised cabinet on energy policy matters, representative was chairman of the ETC Task Force. Also, the Secretariat's role on this task force reflects that environmental, socio-economic issues were not paramount review concerns.

ETC Task Force and the Secretariat

As discussed in Chapter Two, the ELUC is responsible for the co-ordination of decision-making in policies and issues of environmental matters which surpass the interests of a single department. The ELUC could have pressed for the use of the ELU Act as a means of reviewing KPL's proposal. If the government had wished to use this Act, section 6 could have been invoked, through an order-in-council, to establish a public inquiry to examine the benefits and costs for B.C. resulting from KPL's proposal. However, the B.C. government obviously chose an alternate mechanism, an in-house technical review. Cabinet did not want to get involved in the public debate on the proposal, and did not want the Secretariat to be responsible for the government's review.

Prior to the establishment of the ETC Task Force, information on the proposal went to the Secretariat, but after its formation, information went directly to the ETC Task Force's chairman. The Secretariat, the government body with the strongest resource management responsibilities in B.C., was relegated to a secondary position on the ETC Task Force. Rather than organizing the analysis of KPL, the Secretariat's role was to co-ordinate input from those departments and agencies with resource use responsibilities. These included the Ministry of the Environment and the then Ministry of Recreation and Conservation, as identified in Figure 4-2.

There were two reasons for this role. First, Cabinet saw KPL's major issues to be energy ones, not socio-economic or environmental. Second, the Secretariat had developed a high public profile over the KPL proposal, something that cabinet wanted to avoid. In early October 1976 two confidential Secretariat memos were leaked to the Vancouver Sun (Vancouver Sun, 7 October 1976). These reports stated that the KPL proposal posed distinct adverse effects for B.C.'s marine environment, and for the province of B.C., as specified in the first memo:

> The choice of Kitimat as an oil port terminal will make the entire northern half of the B.C. coast vulnerable to spills. Difficult navigation routes and poor climate greatly enhance the likelihood of spills. In fact, Trans Mountain's consultants assume spills will be inevitable. Biological damage caused by spills will be very serious (D. O'Gorman to ELUC, 8 June 1976).

The second memo identified additional concerns. Two of these were:

1. that a risk analysis of oil spills has not been done by Trans Mountain's consultants so it is impossible to determine the relative likelihood of a spill or the magnitude of impact posed to the coastal waters by the proposed Kitimat tanker traffic; and

2. that federal agencies confirm that the north coast region and in particular the approaches to Douglas Channel are subject to exceptional severe weather and navigational hazards with average wind speeds approximately twice as strong as those experienced in the Strait of Juan de Fuca (D.O'Gorman to ELUC, 28 June 1976).

These documents were probably leaked because some B.C. civil servants were very concerned that the proposal was being reviewed in an in-house fashion[25]. Leakage to the press was the only way these civil servants could inform the public of issues and events the B.C. government was not prepared to disclose. The involvement of the B.C. Lands Branch shows how KPL's proposal affected another provincial jurisdiction.

ETC Task Force and the Lands Branch

KPL did not acknowledge that its route selection would require permits from the B.C. government[26]. KPL stated in

[25] The two reports were mailed in a plain wrapper to a northern B.C. resident concerned about the proposed port. This person sent the reports to Vancouver contacts, who in turn gave the documents to the Vancouver Sun.

[26] The proposed terminal site at Kitimat was to be located on two lots owned by the Aluminum Company of Canada. These foreshore and upland areas had been granted outright to this company by the province of B.C. in 1954.

its submissions that the pipeline's route would follow established highways, railways, pipelines or other utility corridors (KPL, 1976 (c)). There was no recognition of the Lands Branch's permitting process was needed for the use of right-of-ways. B.C. Hydro, a lessee of portions of KPL's proposed route, wrote to the lands branch protesting a pipeline along its corridor, as the flow of liquid causes induction in its powerlines. B.C. Hydro indicated that it would intervene in NEB hearings to state its concerns. These route selection problems illustrate some of the complexities arising from KPL's proposal. The NEB had the power to decide whether the interprovincial pipeline would be allowed, but there were significant B.C. concerns which needed review, as Figure 4-2 illustrates.

4.4 DEMANDS FOR ADDITIONAL REVIEW

Various interests lobbied the federal and B.C. governments with their concerns about the issues raised by an oil port. During the fall of 1976, environmental interest groups were formed throughout B.C. in direct response to the issues raised by increased coastal tanker traffic. These included the Queen Charlotte Island Coalition Against Supertankers (COAST) and Prince Rupert's Save Our Shores (SOS). Existing public interest groups, notably the Queen Charlotte Island's

KPL intended, through private transactions, to buy these lands for its terminal facilities. The proposed pipeline route from the docking facility to the tank farm would also be on private land.

Protection Committee (IPCommittee), the Telkwa Foundation (TFoundation) and SPEC were involved in organizing groups opposed to an oil port.

Citizens in B.C.'s Pacific North-West region were among the first members of the general public to learn that an oil port was proposed in the area[27]. Several people from this region said that any proposed development for the area soon becomes local knowledge. If a boat is chartered for hydrographic studies, awareness of this circulates through the "local pipeline". Telephone calls between local government officials and developers are further indications that "something is up". In the case of KPL, the leaked Secretariat memos served to reinforce concerned citizens' opinions that the proposal was being seriously considered by government.

The proposed port and pipeline was a major concern of most northern B.C. public interest groups. In one resident's words, the issue created a "time of golden environmental consciousness". People in the region talked of the proposal in local bars, at grocery stores and expressed their views in local newspapers. A few were prepared to show their opposition through civil disobedience, if Kitimat became the site of an oil port. In early November 1976, public interest groups from this region sent a letter and a signed petition from local residents to Iona Campagnola, M.P.

[27] This region includes the Queen Charlotte Islands (QCIslands)-Prince Rupert-Smithers-Kitimat region.

(Liberal-Skeena), outlining citizen concerns and demanding that a "Berger-type" inquiry be established to review the environmental and marine issues raised by a proposed oil port to make sure that "people could have their say"[28].

Other interest groups were involved in demanding a public inquiry. SPEC, B.C.'s largest environmental interest group, had been monitoring the issue of coastal tanker traffic since the early seventies. By November 1976, SPEC had organized a slide show illustrating the risks and issues associated with tanker traffic and with KPL's proposal. SPEC representatives travelled throughout B.C.'s lower mainland and north coast communities, informing people about the issues and expressing concerns about inadequate federal and B.C. reviews.

Fishing interests were also concerned about the possibility of an oil port. The B.C. Fisheries Association made it known to Department of Fisheries and the Environment (DFE) Vancouver representatives in August 1976 that they objected to the proposed Prince Rupert and Kitimat sites (Minutes of federal/provincial meeting on the interprovincial pipeline, August 1976). The United Fishermen and Allied Workers' Union (UFAWU), a B.C. union representing fishermen, tendermen and shoreworkers, expressed concerns on navigational safety and

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[28] Iona Campagnola was then the federal minister for fitness and amateur sport. She was a strong cabinet voice in support of the establishment of a public inquiry.

the impact of oil on fish and other marine resources. The UFAWU sent letters to federal ministers, issued press releases and was one of the founding members of the Coalition Against Supertankers (COAST).

COAST, a coalition of B.C. interest groups including SPEC, the B.C. Wildlife Federation (BCWFederation) and the IPCommittee, sent a telegram to Prime Minister P.E.Trudeau, requesting that the DFE hold a public inquiry into the environmental issues raised by KPL's proposal. When COAST learned that KPL was meeting with the B.C. cabinet, the coalition asked that it be given an equal opportunity to express its opposition (COAST, press release, 9 January 1977). The B.C. response was that, because KPL's proposal required a federal decision, the province could do nothing and it would not establish a provincial inquiry, or give COAST an opportunity to speak with cabinet.

In addition to the lobbying of interest groups for a public inquiry, different government interests were concerned about the review of KPL's proposal. The District of Kitimat (the District), the local government responsible for the townsite of Kitimat, wanted to be included in TERMPOL, but was refused by the Ministry of Transport. The District then asked the federal government for a review process in which it could be included. The province of B.C.'s official position was that KPL's proposal was a federal matter,

requiring a federal decision and that, although the ETC Task Force was "watch dogging" the proposal, B.C. had no real review powers. But, as one B.C. civil servant observed, the B.C. government had "complained" to federal authorities that it was not actively involved in the federal review of KPL.

4.5 FEDERAL IN-HOUSE REVIEW OF KPL'S PROPOSAL

The federal government was aware that industry was considering an oil port in late 1975[29]. An interdepartmental working group was established by DFE's Vancouver office to review this proposal as it developed. By early April 1976, a meeting had been held to assess the proposal's broad implications and to advise the proponent on formal application requirements (Minutes of DFE meeting, 12 April 1976). Following a 30 April 1976 meeting between the proponent and DFE representatives, a confidential appraisal from DFE's Vancouver office was sent to senior DFE officials in Ottawa. The contents of this document apparently identified concerns about inadequate review of the proposal's impacts.

A 9 June 1976 meeting of proponent, B.C. and DFE representatives identified the information the proponent had gathered and that which would be required by the two governments[30]. There was no mention of a TERMPOL submission

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[29] At this time, the port site being considered was Ridley Island, near Prince Rupert. The main proponent was Trans Mountain Pipe Line Company Ltd. (Trans Mountain), a B.C. pipeline transportation company.

at this meeting although, by late June 1976, DFE's working group had identified the proposal's major environmental concerns and suggested that an appropriate review should include a TERMPOL application and project-specific environmental assessment guidelines. However, a 12 August 1976 meeting between DFE and B.C. representatives, to identify relevant federal and provincial regulations and review processes, did not discuss the DFE working group's review recommendations[31]. Following a 22 September 1976 meeting of federal, B.C. and proponent representatives, it was clear that Kitimat was the proposed site and a TERMPOL submssion was required. Minutes of this meeting also show that, although federal authorities were aware of existing review limitations, the proponent did not share these concerns. A federal representative asked if the proponent intended to hold public hearings on their proposal. The response was that public information would be provided to Kitimat and

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[30] At this time, the proposal was supported by a loose consortium of industry interests. Each had contracted out studies on the proposal. One of the leaked Secretariat memos addressed topics discussed at this meeting.

[31] Federal representatives at this meeting included those from DFE, Department of Transport and Emergency Planning Canada. B.C. representatives included those from the Secretariat, the Fish and Wildlife, Marine Resources and Pollution Control branches and the BCEC. Records of this meeting show that specific concerns which were raised included the need for a comparative analysis of site and route selection; the impact of chronic, low level oil pollution; and the applicability of B.C.'s guidelines for linear development. The proponent anticipated that its application would be filed by November 1976 and that, if approved, the pipeline would be operating by 1979.

Terrace residents. When told that there would be strong objections to proposed tanker routes by fishing interests, and that the proponent should be prepared to defend its position with alternative routes, the proponent's response was that its NEB submission and resultant NEB hearings would be "sufficient to bring this out".

A DFE representative then told the meeting that the NEB's jurisdiction did not extend seaward of the proposed dock area. Another DFE official said that the NEB could hear evidence of navigational concerns, as a matter of public interest, but that the NEB was not legally bound to. The significance of these exchanges was that, although government civil servants were aware of issues raised by public interests, the proponent did not consider these issues to be major problems.

Additional meetings on KPL's proposal were held over the remainder of 1976. By late December 1976, following KPL's submissions, DFE civil servants in Vancouver had concluded that a public review involving the B.C. government was needed on KPL's proposal and suggested in a letter to the Minister of Fisheries and the Environment that a public hearing be held. This suggestion was one of four options before the federal cabinet when it deliberated on how to review KPL's proposal, because, following KPL's submissions, the demands for additional review of the proposal increased.

4.6 FEDERAL GOVERNMENT OPTIONS

Three existing policy options were considered by the federal government to review KPL's proposal: EARP, a combination of EARP and the Inquiries Act, and existing legislation. EARP, the first option, was not used for four reasons. First, EARP was publicly unacceptable because it is not viewed as an independent review, even with the ERBoard option. Second, EARP does not have a firm mandate to consider socio-economic matters. Third, cabinet wanted a "greater sense of legal formality" than could be provided under EARP's hearing procedures. Fourth, the government has problems obtaining information from proponents legally, as EARP does not have the legislative backing needed to ensure witness attendance and to compel document production. Thus, EARP was not considered to be a viable policy option.

The use of the second option, a combination of EARP and the Inquiries Act was considered but cabinet did not want civil servants to be involved in a public review of KPL's proposal. Because an independent, "outside" review was needed, this combination option was not used. Under the third option, cabinet could have used existing legislation to request additional information from KPL as provided under the Fisheries and NWP Acts. As a senior DFE civil servant observed, this option was not used due to "a matter of credibility" as Cabinet wanted to establish an independent review, to provide for the "least biased type of assessment".

This same DFE source observed that the choice of policy option depends on "the politics of the situation" and on how much time and money is available. The specific "politics" of the KPL situation were not specified, but this source identified three reasons why the fourth option, a public inquiry, is used: 1) civil servants "flag" issues they cannot resolve; 2) there is direct public pressure on responsible ministers, (a combination of organized and pressure was identified as the most effective); 3) if there is no mechanism to satisfy these concerns, an inquiry is established. Thus, the federal government acted by establishing the WCOPI on 11 March 1977 (Vancouer Sun, 12 March 1977). Analysis of the WCOPI's function and structure follows in Chapters Six and Seven.

4.7 METHOD OF ANALYSIS

Three important points must be made on thesis data collection and presentation. First, various people were interviewed and/or corresponded with, including the Commissioner, most of his staff, all but one of the major participants, and federal and B.C. civil servants associated with the Inquiry and other review processes[32]. Second, these

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[32] The Union of BCIC was the only major participant not personally interviewed although several unsuccessful attempts were made to arrange an interview. Observations on this major participant are based on Inquiry documents and other sources comments. The list of contacts in the bibilography identifies the persons contacted by the author.

sources, due to the interest they represented, were not knowledgeable in all aspects of the Inquiry. Thus, as Appendix D shows, two interview schedules were used to allow for these differences. Third, comments collected through interviews are presented according to the interests' sources represented, rather than identifying individual sources.

Chapter V

THE WEST COAST OIL PORT INQUIRY

This chapter identifies specific characteristics of the WCOPI: its terms of reference and the structural mechanisms which were established to carry out the Inquiry's review. See Appendix B for a summary of Inquiry events.

5.1 FUNCTION

The Inquiry's purpose was specified in its initial terms of reference. Pursuant to Part I of the federal Inquiries Act, Dr. Andrew Thompson was appointed as sole commissioner[33]. He was empowered to:

a) inquire into and report upon

i) the social and environmental impact regionally (including the impact on fisheries) that could result from the establishment of a marine tanker route and construction of a marine terminal (deep water oil port) at Kitimat, B.C.;

ii) navigational safety and related matters associated with the establishment of a marine tanker route and construction of a marine terminal at Kitimat, B.C.; and

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[33] Andrew Thompson, a University of B.C. law professor, was chairman of the B.C. Energy Commission from 1973 to 1976. His expertise and interests include oil and gas regulation, and resource management issues. He acted for counsel for the Canadian Arctic Resources Committee in the Berger Inquiry.

iii) the broader concerns and issues related to oil tanker movements on the West Coast as might be affected by the proposal; and

b) to report upon representations made to him concerning the terms and conditions which should be imposed, if authority is given to establish a marine terminal at Kitimat, on the size, construction and operation of tankers in the approaches thereto.

The Commissioner was authorized to hold hearings in B.C., to adopt rules of practice and procedure as he wished, and to exercise all the powers conferred upon him by part II of the Inquiries Act. These included the power to compel the production of documents, to subpoena witnesses, to engage necessary staff, and to rent office and hearing facilities. All expenditures were to be subject to Treasury Board approval. The full assistance of federal government departments and agencies was to be provided to the Inquiry. The Commissioner was to report to the Ministers of Fisheries and the Environment and of Transport by 31 December 1977, and to file all Inquiry documents with the federal archivist in Ottawa thereafter[34]

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[34] There were seven federal ministers directly involved in cabinet consideration of KPL's proposal: the Ministers of EMR, Transport, Fisheries and the Environment, Justice, External Affairs, Fitness and Amateur Sport and State for the Environment. Two ministers had primary responsibility for the WCOPI: the Ministers of Transport and of Fisheries and the Environment, although the Minister of State for the Environment was more involved than the other four aforementioned ministers. Throughout the thesis, these three ministers are referred to as the Ministers.

The original terms of reference were revised 30 June 1977 specifically to include all oil port proposals that might affect Canada's west coast. Section (a) (iii) was changed to read:

> the broader Canadian concerns and issues related to oil tanker movements on the West Coast as might be affected by the Kitimat Pipeline Ltd., Trans Mountain Pipe Line Company Ltd., and other proposals.

The Inquiry's name, which had been the Kitimat Oil Port Inquiry, was changed at this time (WCOPI, Supplementary Rulings, 5 July 1977, p.3 (Supplementary Rulings)). One further amendment to the Inquiry's terms of reference, in late December 1977, provided for the extension of the Inquiry's reporting date to March 1978:

> The Committee (of the Privy Council) further advise that Dr. Thompson be directed to report to the Minister of Fisheries and the Environment and the Minister of Transport before the end of March 1978 and to file with the Dominion Archivist, the papers and records of the Inquiry as soon as may be reasonable after the conclusion thereof; provided that if another serious application to establish a marine terminal on the West Coast of Canada is made in 1978, Dr. Thompson and the Minister of Fisheries and the Environment and the Minister of Transport will consult regarding a further extension of the life of the Commission or the re-establishment hereof.

5.2 STRUCTURE

The Commissioner's paramount concern from the Inquiry's outset was to fulfill the following review requirements:

1. to include affected interests in a public examination of the issues;

2. to provide public interests in need of financial assistance with funds to participate in the Inquiry;

3. to provide for a public examination of the issues;

4. to disseminate information on the Inquiry so that the public would be aware of how to participate and of Inquiry events;

5. to provide public access to relevant information and to the Inquiry process itself;

6. to establish a competent Inquiry staff.

Identification of the different mechanisms established to satisfy these requirements follows. The WCOPI's structure is illustrated in Figure 5-1.

Inclusion of Public Interests

An Inquiry participant was defined as

> any person or group of persons appearing at the formal hearing who give their name and address to the Inquiry or those who advise the Inquiry in writing of their intention to appear (WCOPI, Preliminary Rulings - Rules of Practice and Procedure, 27 May 1977 (Preliminary Rulings), Rule 1(i)).

Major participants were defined as "those who intend to appear on a sustained basis at the formal hearing to call evidence and cross-examine the evidence of other parties" (Preliminary Rulings, Rule 1(ii)). Regular participants were those persons or groups of persons who were interested in appearing before the Inquiry but not on a sustained basis. Figure 5-2 identifies the interests represented by the ten major participants, the issues they were concerned with, their approach to the formal and community hearings,

FIGURE 5-1 STRUCTURE OF THE WCOPI

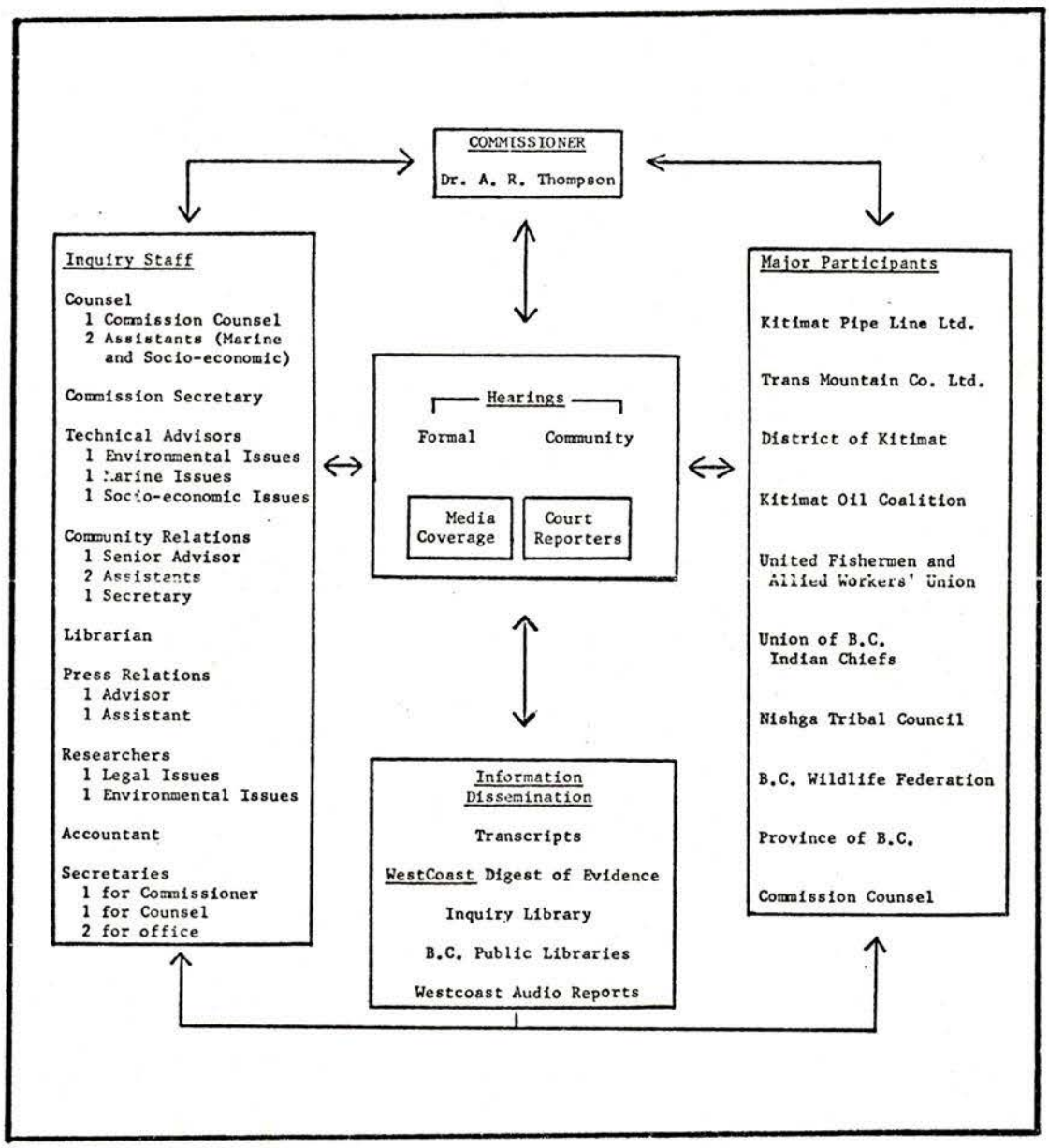

FIGURE 5-2 MAJOR PARTICIPANTS

PARTICIPANT	ISSUES	PARTICIPATION		FUNDING
		Formal Hearings	Community Hearings	
Pro-Development				
1. KPL Consortium proposed to build port at Kitimat and pipeline facilities to Edmonton. Withdrew proposal 1 June 1977 in support of Trans Mountain's proposal.	ECONOMIC need for offshore oil port to supply northern U.S. refineries with access to Alaskan and foreign crude.	Counsel (1) Consortium Consultant (1)	None	No
2. Trans Mountain B.C. liquid petroleum transportation company proposed expansion of their existing pipeline system from Cherry Point, Wa. to Edmonton, and of ARCO's Cherry Point terminal and storage facilities. Proposal rejected by Magnuson Amendment in October 1977.	ECONOMIC need for west coast oil port to supply Canadian and U.S. refineries.	Counsel (1) Representative (1)	Representative in audience at Steveston Hearing	No
3. The District Local government responsible for development of townsite of Kitimat.	ECONOMIC need for Canadian access to offshore oil for economic development. Expansion of B.C.'s northwest region's economy and District revenue generation. ENVIRONMENTAL regulation of marine and terrestrial aspects of KPL's proposal, including effective means of regulation enforcement. Special protection of Kitimat's recreational resources (salmon, trout and potential waterfront development areas).	Representative from Mayor's office (1)	None	$5,000 for formal hearing participation and to prepare socio-economic evidence
Opposition				
4. KOCoalition Coalition of approx. 20 B.C. interet groups respresenting community groups and professional organizations.	ECONOMIC justification of Canadian need for oil port, including federal and provincial energy policies. MARINE and non-marine alternatives to proposals. Regulation of marine transport of oil, oil terminals and vessel traffic management. Tanker insurance and liability. ENVIRONMENTAL/SOCIO-ECONOMIC effects, risks and clean-up problems associated with oil spills.	Counsel (2) Coordinator (1) Consultant (1 Environmental Issues)	Community organizers throughout B.C.	$100,000 for formal hearing participation and to prepare economic, environmental and socio-economic evidence
5. UFAWU B.C. trade union representing 7,000 fishermen and shoreworkers.	ECONOMIC justification of Canadian need for and benefits from an oil port. MARINE navigational conflicts between tankers and fishing vessels. ENVIRONMENTAL/SOCIO-ECONOMIC destructive impact of oil on marine life, and impact on commercial fishery. Risks to public safety.	Counsel (2) Organizer (1) Consultant (1 Economic Issues) Researchers (2 Biological Issues)	Community Organizers (Namu, Steveston, Sooke)	$60,000 for formal hearing participation and to prepare evidence on fishing industry issues

FIGURE 5-2 MAJOR PARTICIPANTS (CONTINUED)

6. Union of BCIC Organization representing B.C. coastal native bands.	ECONOMIC justification of need for and benefits to B.C. and Canada from an oil port. ENVIRONMENTAL risks to water, native food sources and native fishing industry. SOCIO-ECONOMIC need for settlement of land claims before any consideration of oil port approval.	Counsel (2) Organizer (1)	Community Organizers (Mount Currie, Lillooet)	$35,000 for formal hearing participation and to prepare evidence on native issues.
7. Nishga TC Organization representing 4,000 Nishgas of the Nass River system.	ENVIRONMENTAL preservation and protection of the Nass River's fishing and foreshore resources. SOCIO-ECONOMIC need for settlement of claim that Nishgas and other coastal native peoples have legal and moral rights to parts of B.C.'s coastal fishery which have not been extinguished by treaty.	Counsel (1) Researcher (1 Biological Issues)	Organizing for hearings in Nass River	$25,000 for formal hearing participation and to prepare evidence on native issues.
8. BCWFederation Federation of 154 B.C. clubs concerned about the preservation of sport hunting & fishing resources.	ECONOMIC resolution of need for oil port, including examination of federal and provincial energy policies. MARINE navigation and ship safety. ENVIRONMENTAL/SOCIO-ECONOMIC impacts of proposals on B.C. fish, wildlife, sports fishing and recreation resources.	Representative (1)	Representative spoke at Sooke Hearing	$10,000 for formal hearing participation.
<u>No Position</u>				
9. Province of B.C. B.C. provincial government.	ECONOMIC impacts of proposals on B.C.'s economy and implications for B.C. energy policy. MARINE/ENVIRONMENTAL assessment of each proposal's risks and costs, and ways to minimize these.	Counsel (2) Civil servants advisors	Civil Servant Observers	No
10. Counsel. Inquiry's "public trust".	"FULL AND FAIR" public examination of issues as identified in Figure 5-4: WCOPI Formal Hearing Phases and Subject Matter.	Counsel (3) Staff advisors (3 Marine, Environmental, Socio-Economic)	Community Relations Staff (1 Advisor, 2 Assistants)	Inquiry Budget

whether they received funds and for what purpose. Figure 5-3 identifies similar information pertinent to regular participants. Major participants had different positions on the need for an oil port and are discussed in terms of their "pro-development", " opposition" and "no position" interests and the issues they were concerned with.

Major Participants

There were three pro-development major participants: KPL, Trans Mountain and the District. KPL, one of the two WCOPI proponents, supported its Kitimat proposal as the best means of supplying Alaskan and other off-shore oil to northern U.S. refineries. The other proponent was Trans Mountain, a B.C. pipeline transportation company and a subsidiary of Imperial Oil. Trans Mountain proposed to expand existing Atlantic Richfield marine facitities at Cherry Point, Washington and to utilize its existing Sardis, B.C. to Edmonton, Alberta pipeline to deliver offshore oil to Canadian and American refineries (See Appendix A for specifics on these proposals). Both proponents stressed the economic need for Canadian and American access to offshore oil caused by the phasing out of Canadian crude oil exports to American refineries and declining American crude oil reserves (Cressey, WestCoast 1 (1977): 5; Hall, WestCoast 1 (1977): 7-8).

The District, the only funded major participant in support of a port proposal, argued that Canada had to have

access to offshore oil to maintain industrial development and that Kitimat was a good site, with low environmental risks. This position, put forth by Kitimat's mayor at the opening statement hearing, identified the District's pro-development orientation:

> Although the people of Kitimat have a high regard for the environment, Kitimat is by no means an 'environmental wonderland'. It is however, a major industrial city in the northwest. Its history has been closely related to the resource extractive and manufacturing industries and its policy has been to encourage industry to locate and expand in Kitimat.
>
> The District of Kitimat believes that the Federal Government's lack of policies on energy and the environment are directly responsible for the delays in the establishment of industry such as pipelines. B.C. needs the kind of investment represented by the Kitimat development. It would expand the economy of the entire northwest and would add aprroximately $1.6 million per year in property taxes to the revenue of the District (Thom, WestCoast 1 (1977): 14).

The five major participants opposed to an oil port, all funded by the Inquiry, represented environmental, fishing, native and sports hunting/fishing interests. One of these, the Kitimat Oil Coalition (KOCoalition), was a coalition of B.C. public interests including environmental, fishing and conservation groups. The most critical issue for the KOCoalition was the economic need for an oil port; a concept the KOCoalition was "unalterably opposed to" (Pearse, WestCoast 1 (1977): 13). Organized by a co-ordinator in Vancouver, the KOCoalition hired a consultant to develop evidence for the environmental phase and two counsels to present and

cross-examine formal hearings evidence, which they did with the assistance of the co-ordinator and the consultant. Meetings throughout B.C. and a newsletter were used to inform and organize various KOCoalition member groups for community hearings. As Figures 5-2 and 5-3 show, these members included major and regular participants such as the UFAWU, the IPCommittee and the WCELAsociation.

The UFAWU, a trade union representing more than seven thousand fishermen, shoreworkers and tendermen along the B.C. coast, was funded on the understanding that it would represent B.C. fishing industry interests. The Commissioner made it clear to the UFAWU president that he expected the UFAWU to address shoreworker's and boat owner's concerns, as well as those of fishermen (A.Thompson to J.Nichol, 8 June 1977). Thus, the onus was on the UFAWU to co-ordinate and organize the various B.C. fishing industry interests. An independent co-ordinator, a person not strongly associated with any particular B.C. fishing interest, was hired by the UFAWU to do this. In addition to contacting local UFAWU unions and individual fishing organizations identified in Figure 5-2, the UFAWU held several meetings with the B.C. fishing industry committee on the environment[35].

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[35] Membership on this committee included the UFAWU, the Fisheries Association, representing the large companies such as B.C.Packers and the Canadian Fishing Company; the Vessel Owner's Association; the Pacific Trawlers' Association; native co-operatives excluding the Port Simpson co-operative; the Native Brotherhood, representing fifteen hundred Indian fishermen and allied workers; the

The UFAWU co-ordinator was aware of the difficulty of presenting a unified position because of the various competing interests within the industry and knew that some interests wanted to present their own briefs[36]. The UFAWU's intention was to ensure that major fishing industry concerns, that is the biological and economic impact of chronic and massive oil spills on the marine environment, and on fish particularly, were adequately presented and examined in the formal hearings. Thus, two marine biologists, hired to do literature research on the impacts of oil, concentrated their efforts on the southern Vancouver Island-Puget Sound area and B.C.'s north coast, particularly along the proposed tanker approaches into Kitimat.

Amalgamated Shoreworkers Union, representing cannery and shoreworkers. This committee was established prior to the WCOPI, to provide these interests with information on B.C. fisheries management issues such as oil pollution and the salmonoid enhancement program, and to provide an organizational base for these concerns.

[36] There was not unanimous agreement on the approach that fishing interests should take. One regular participant, the Prince Rupert Fishermen's Co-operative Association (PRFCAssociation) indicated that it did not work with the UFAWU because this group felt its interests would be better represented through its own group's representations. A Prince Rupert Fishing Vessel Owners' Association (PRFVOAssociation) organizer felt that the UFAWU did a good job and that there was a need for representation of fishing interests in the formal hearings. An organizer of another Prince Rupert based group, the Co-operative Fishermen's Guild (CFGuild) wrote that the UFAWU did an excellent job representing the fishing industry.

As the formal hearings progressed, the significance of Phase Two's subject matter became more apparent. As a result the UFAWU hired an economist to prepare evidence on oil supply and demand issues. As the UFAWU's president noted, a "philosophically sympathetic" lawyer was used throughout the formal hearings when a strong point was to be made by the UFAWU. The services of another counsel were used for research and cross-examination preparation. To ensure that fishing interests were informed of and attended community hearings, the UFAWU established a strong organizational base through the use of its locals and distribution of a newsletter.

Two native interests were major participants: the Union of B.C. Indian Chiefs (Union of BCIC), representing B.C. coastal native groups and the Nishga Tribal Council (Nishga TC), a native group from B.C.'s northern Nass River valley. Both of these groups were opposed to any oil port because of the need for a settlement of land claims and the destructive impact of oil on marine life and on dependent native lifestyles (Manuel, WestCoast 1 (1977): 10; Rosenbloom, WestCoast 1 (1977): 15). The destruction of salmon by oil pollution was of prime importance to the Union of BCIC, while the Nishga TC's counsel said that settlement of land claims and aboriginal title to the Nass River foreshore, oil pollution in this river valley, and the impact of oil on native fisheries specifically and commercial fishing generally were the issues of specific interest to his client.

The Union of BCIC, represented by counsel in the formal hearings called four witneses in Phase One. It was impossible to ascertain how evidence was obtained by this participant, but it is obvious that the Union of BCIC's commitment to the Inquiry was political in nature. This group refused to participate if the Commissioner did not hold hearings in river-based communities as it did not want "to exacerbate the split between coastal and river people" (A.Pape, WCOPI notes on community hearing organization meeting, 24 August 1977).

The Nishga TC hired a marine biologist to research and prepare evidence on the impact of oil on marine resources, particularly in the inter-tidal zone. This group, after consultation between Nishga TC leaders, counsel and the biologist, decided to concentrate on the land claims issue and as counsel stated, maintain a "high public profile" around this issue and prepare Nishga residents for community hearings.

The fifth opposition participant, the B.C. Wildlife Federation (BCWFederation), an organization representing B.C. sports fishing/hunting interests, was the only major participant supporting the concept of a port at or west of Port Angeles. However, without economic justification of this concept, the BCWFederation maintained that it would oppose any oil port development because of the impact of oil on the

marine environment (Anderson, WestCoast 1 (1977): 11). This participant was originally a KOCoalition member but because it did not want to lose credibility as a legitimate interest group with its own points of view, the BCWFederation organized its own Inquiry participation. This was exemplified by the attendance of a representative who cross-examined witnesses but called no evidence. Individual BCWFederation members spoke at the Steveston community hearing, indicating that this group's membership base was kept informed of the Inquiry.

Two major participants adopted a "no position" stance to the Inquiry: the government interest of the province of B.C and the "public trust" interest of Counsel. The province of B.C.'s position was that it "did not intend to adopt any formal policy or support any particular proposal under consideration by the Inquiry until more information on the myriad of issues involved is available" (Pearlman, WestCoast 1 (1977): 9).

The "public trust" responsibility of Counsel was articulated at the opening statement hearing:

> This Inquiry has a public trust. The projects being proposed involve hundreds of millions of dollars. They all have risks associated with them, risks that by and large the public of British Columbia must bear. Is there not an obligation therfore, on all of us involved in this Inquiry to ensure that there is a full, fair and public examination of these projects so that we can understand them, their costs, their benefits and the alternatives (Anthony, WestCoast 1 (1977): 4)

It was Counsel's responsibility to ensure that all relevant information was identified, brought before the Inquiry and properly cross-examined. Counsel, assisted by the Inqury's technicial advisors, was to contact those interests who needed to be included in the formal hearings but were not represented by the major or regular participants. The Inquiry's community relations staff were responsible for informing local community interests of upcoming community hearings. These Inquiry staff responsibilities are discussed more fully under the sixth mechanism, Inquiry office and staff.

Regular Participants

Figure 5-3 identifies the WCOPI's regular participants; that is those who had an interest in a specific aspect of the Inquiry such as a particular formal hearing phase or a community hearing. These interests were kept informed of Inquiry events through Inquiry mailings or major participant organizations. Identification of these participants shows the range of interests that were or could have been heard by the Inquiry.

Three groups representing very different interests, supported the concept of an oil port. The Fusion Energy Foundation supported Trans Mountain's proposal (Liebowitz, West-Coast 1 (1977): 12). The Coalition Against Oil Pollution, a Washington State public interest group, supported the "ine-

FIGURE 5-3 REGULAR PARTICIPANTS

PARTICIPANT	ISSUES	PARTICIPATION		FUNDING
		Formal Hearings	Community Hearing	Amount
Pro Development				
1. Fusion Energy Foundation Represented Fusion Energy Foundation and North American Labour Party in support of Trans Mountain's proposal.	ECONOMIC need for cheapest and fastest means of delivering oil to mid-western Canada and the U.S.	Oral submission, opening statement hearing	No	No
2. Coalition Against Oil Pollution American coalition of 30,000 people convinced that an oil port in the American northwest is inevitable and that one terminal should serve Puget Sound refineries, northern U.S. states and lower mainland B.C., to be located at or west of Port Angeles, Washington.	ENVIRONMENTAL protection in planning of terminal; to find the most acceptable and least environmentally damaging site.	Oral submission, opening statement hearing	No	No
3. Kitimat Coalition for Pipeline and Port Group of less than five Kitimat businessmen in support of development.	ECONOMIC gain from port development for Kitimat.	Oral submission, preliminary hearing	No	No
Opposition				
a. WCEL Association* B.C. non-profit society of lawyers and laymen interested in environmental protection through the law.	MARINE legislation inadequacies for tanker traffic (tanker design, construction, training of crews) for oil spill and clean-up measures, and compensation for victims of oil spills.	Representative (1)	No	Indirectly as a KOCoalition member
5. VOICE* Committee of Kitimat, Terrace and Prince Rupert labour councils.	SOCIO-ECONOMIC impact of capitalistic development in B.C.'s northwest region.	Representative (1), Oral submission, interim submission hearing.	Preparing for hearings	$15,000 for formal hearing participation and to prepare socio-economic evidence.
6. COAST* Coalition of QCIslands public interest groups.	ENVIRONMENTAL impact of oil on marine, intertidal and shore environments. SOCIO-ECONOMIC threat of tankers to coastal lifestyles.	Oral submission, opening statement and interim submission hearings	Community organizers preparing for hearings	$5,000 for survey of QCIslands coastal lifestyles (never completed).
7. Bluepeace Foundation of Victoria* Foundation formed in response to concerns over increasing tanker traffic in Strait of Juan de Fuca.	MARINE safety of tankers. Adequacy of Canadian Coast Guard regulations, navigational aids and traffic managment systems, present and planned. SOCIO-ECONOMIC oil spill contingency planning in the Puget Sound/Strait of Juan de Fuca areas. Impacts of major oil spill on the Victoria area.	Oral submission, opening statement hearing	Preparing for hearings with KOCoalition	$5,000 for evaluation of oil terminal and spill clean-up capability in Vancouver and Puget Sound areas.
8. Kitamaat Band Council/Haisla Environmental Group Band Council representing Haisla native community, four miles downchannel from Kitimat, and directly opposite the proposed KPL site.	ECONOMIC impacts on Kitamaat Village and on other villages along tanker route. ENVIRONMENTAL devastation of marine environment by oil. SOCIAL impact on native culture and lifestyle.	Oral submissions, opening statement and interim submission hearings	Preparing for hearings	Indirectly through funded food fishery study.

FIGURE 5-3 REGULAR PARTICIPANTS (CONTINUED).

9.	Haida Nation Native interest opposed to any development that would jeopardize their aboriginal rights, land claims and their lifestyle.	ECONOMIC validity of oil energy crisis. ENVIRONMENTAL impact of oil on marine resources. SOCIAL threat to culture and lifestyles for the benefit of wasteful southern lifestyles.	Oral submission, opening statement hearing	Preparing for hearings	Indirectly through UBCIC
10.	SCS* Prince Rupert community interest group formed over oil port issue.	MARINE safety of oil tankers. ENVIRONMENTAL impact of oil and tanker traffic on fishing industry. SOCIAL impact of large scle development on northern B.C.	Oral Submission, preliminary hearing	Preparing for hearings. Fact sheet on Inquiry issues.	Indirectly through KOCoalition
11.	TFoundation* Interest group, based in Telkwa, B.C. formed in summer of 1976 over grizzly bear and pipeline issues.	MARINE impact of tanker traffic. ENVIRONMENTAL impact of oil and tanker traffic on sports and native fisheries, particularly salmon.	No members worked with KOCoalition	Preparing area for hearing: 1 for native peoples; another person for local schools	Indirectly through KOCoalition
12.	Board of Clallam County Commissioners Local government from Port Angeles, Washington which declared that Northern Tier's proposal was "incompatible" with the County's existing uses and passed prohibitive legislation.	ECONOMIC need for pipeline and consideration of alternatives. Impact of Northern Tier proposal on County's economic base. ENVIRONMENTAL protection of County's amenities and resources.	Oral submission, opening statement hearing	Representative spoke at Sooke hearing. Invited Inquiry to hold a "session" at Port Angeles	No
13.	PRFVCAssociation+ Fishing vessel owners based in Prince Rupert.	MARINE navigational safety of KPL's routes and tanker traffic generally. ENVIRONMENTAL impact of oil on fish resources.	Oral submission, preliminary hearing	Waiting for hearing in area	No

14. Sixteen Environmental Interest Groups*:

Amalgamated Shore Workers' and Clerks' Union, Prince Rupert, B.C.
Canadian Society of Environmental Biologists, Victoria, B.C.
Citizens Association to Save the Environment, Victoria, B.C.
Clean Shores, Nanaimo, B.C.
Clearwater, Duncan, B.C.
Federation of B.C. Naturalists, Vancouver, B.C.
GREENPEACE Foundation, Vancouver, B.C.
Hartley Bay Stop Tankers Committee, Hartley Bay, B.C.
House of Sooghenet, Prince Rupert, B.C.
[illegible]Committee, Queen Charlotte Islands, B.C.
Kitimat SPEC, Kitimat, B.C.
Save Terrow, Oppose Pollution, Edmonton, Alta.
SPEC, Vancouver, B.C.
Sierra Club, Victoria, B.C.
Sooke Bluepeace, Sooke, B.C.
Terrace Alliance Against Supertankers (TASSK), Terrace, B.C.

FIGURE 5-3 REGULAR PARTICIPANTS (CONTINUED)

No	Position				
15.	RD of Kitimat-Stikine Regional government located in Terrace, B.C. responsible for 10,000 miles of shoreline along KPL's proposed tanker routes.	ECONOMIC short and long term impacts of development. Service and housing requirements for KPL's project and their impact on Kitimat and Terrace. Alternate planning strategies for the Kitimat/Terrace area. SOCIO-ECONOMIC impacts that might affect the marine and shore-related recreational opportunities in the Kitimat/Terrace area.	Oral submission. opening statement hearing	Representatives spoke at Sooke and Steveston hearings	$5,000 for presentation of evidence in socio-economic phase.
16.	European Pulp & Paper Co. Ltd. Pulp and paper company located near KPL's proposed site.	MARINE/SOCIO-ECONOMIC oil spill contingency planning for port site.	Oral submission, preliminary hearing	Waiting for hearing in area	No
17.	Fraser River Coalition B.C. organization of lower mainland groups concerned about the continuing productivity of the Fraser River estuary and oil port development in the Strait of Georgia.	ENVIRONMENTAL impact of oil on Fraser River estuary and delta, including fisheries, waterfoul and shorebird habitats. SOCIO-ECONOMIC impact on recreational and educational opportunities for Vancouver area population.	Oral submission, preliminary hearing	Waiting for hearing in area	No
18.	Island Trust Level of B.C. government responsible for the "preservation and protection" of B.C.'s Gulf Islands from the Canadian border north to Lasqueti and Thornby Islands.	ECONOMIC need for port. ENVIRONMENTAL impact of oil on Gulf Island marine resources. SOCIO-ECONOMIC prevention of oil spills and enforcement of oil spill contingency plans. Compensation of victims.	Oral submission, opening statement hearing	Representative spoke at Sooke hearing	No
19.	PRFCAssociation Fish producers based in Prince Rupert.	MARINE navigational safety and west coast vessel traffic management. ENVIRONMENTAL impact on fishing areas at risk.	No	Waiting for hearing in area	No
20.	CFGuild+ Prince Rupert fishing interests.	MARINE navigational safety and west coast vessel traffic management. ENVIRONMENTAL impact of oil on fish.	No	Waiting for hearing in area	Indirectly as UFAWU member.

The remaining regular participants, listed according to the interests they represented, made no evidence submissions to the WCOPI but were on the Inquiry's regular participant mailing list:

Fishing
1. Fisheries Association of B.C., Vancouver
2. Prince Rupert Fish Exchange, Prince Rupert

Industry
3. B.C. Petroleum Association, Vancouver
4. Canadian Pipeline Advisory Council, Vancouver

Information Dissemination
5. Editor, the Digest, Vancouver
6. Westcoast Reports, Co-op Radio, Vancouver
7. Kitimat Public Library, Kitimat

Labour
8. Canadian Association of Smelter and Allied Workers Union, Local 1, Kitimat
9. Canadian Labour Congress, Ottawa

Local Government
10. RD of Skeena-Queen Charlotte, Prince Rupert

Marine
11. Company of Master Mariners of Canada, Vancouver

"*" indicates KCCoalition member.
"+" indicates UFAWU member.

vitable" port site at or west of Port Angeles, Washington while the Kitimat Coalition for Pipeline and Port supported KPL's proposal (Weiner, WestCoast 1 (1977): 16).

There were twenty-five regular participants opposed to any oil port. Twenty were KOCoalition members, including the West Coast Environmental Law Association (WCELAssociation), Victims Against Industry Changing Environment (VOICE), COAST, SOS and the TFoundation (Anderson, WestCoast 1 (1977): 13; Persky, WestCoast 1 (1977): 13; Fischer, WestCoast 1 (1977): 11). The Fraser River Coalition, a coalition of interest groups from B.C.'s lower mainland was concerned about the environmental and socio-economic impacts of an oil port in the Straits of Georgia (Stace-Smith, WestCoast 1 (1977): 10). A fishing interest, the PRFCAssociation was associated with the UFAWU while the Kitamaat Band Council, the Haisla Environmental Group and the Haida Nation represented native interests (See Lightbown, WestCoast 1 (1977): 15). The local government responsible for the planning of Port Angeles, Washington attended the opening statement hearing to emphasize this government's opposition to Northern Tier's proposal and stated that the government was looking to the Inquiry for an alternate site analysis (Richards, WestCoast, 1 (1977): 16).

Seven regular participants grouped under "no-position" in Figure 5-3 included several B.C. government interests. The

regional government of Kitimat-Stikine (RD of Kitimat-Stikine), responsible for the 10,000 miles of shoreline along KPL's proposed tanker routes, did not adopt an official position (Parfitt, WestCoast 1 (1977): 14). One government employee indicated that it was common knowledge in the area that senior officials supported KPL. The Queen Charlotte-Prince Rupert regional district and the Islands Trust were two other government interests concerned about the environmental and socio-economic impacts of oil spillage (See Tyhurst, WestCoast 1 (1977): 12).

One industry interest, the Eurocan Pulp and Paper Company, located near KPL's proposed terminal site, was concerned about the need for oil spill contingency planning at the terminal. A company spokesman said that KPL posed potential costs for Eurocan if logs needed for processing became contaminated with oil. The fishing interests included in this grouping were concerned about navigational safety issues. A fourth grouping of regular participants are those who did not make a submission, such as the B.C. Petroleum Association and the Company of Master Mariners of Canada, but were informed of Inquiry events.

One reason that there was such a range of interests in the Inquiry was due to another mechanism, the provision of funds for needy public interests.

Funding of Needy Public Interests

When the WCOPI's establishment was announced, the federal government stated that it was commited to a public participation program. In recognition of the need for public input, and the need to provide financial aid to some public interests, a total of $380,000 was allocated. It was the Commissioner's responsibility to establish funding criteria, review submissions and advise the Ministers on the allocation of funds[37]. The Commissioner established six criteria to be met by those requesting financial assistance; criteria based upon the Berger Inquiry:

1. There should be a clearly ascertainable interest that ought to be represented at the Inquiry.

2. It should be clear that separate and adequate interest representation of that interest will make a necessary and substantial contribution to the Inquiry.

3. Those seeking funds should have an established record of concern for, and should have demonstrated their commitment to the interest they seek to represent.

4. It should be shown that those seeking funds do not have sufficient financial resources to enable them adequately to represent that interest, and will require funds to do so.

5. Those seeking funds should have a clear proposal as to the use they intend to make of the funds, and should be sufficiently well organized to account for

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[37] These procedures were discussed with the Minister and senior federal civil servants prior to the Commissioner's appointment. In his preliminary budget the Commissioner "guestimated" the required amount after considering the type of interests that would probably want to get involved and the type of information that might be presented. The Commissioner applied for and received more monies than the Ministers were initially prepared to allocate.

the funds.

6. Coalition of interest groups representing a broader interest will be encouraged so as to avoid duplication in the preparation and presentation of evidence (WCOPI, Funding Guidelines, 21 April 1977 (Funding Guidelines), p.1).

Thirty-four submissions were received. These included community-oriented interest groups concerned about the impact of increased tanker traffic and possible oil spills on B.C.'s marine resources and coastal lifestyles, such as the northern-based COAST, IPCommittee, and VOICE, and southern-based Sooke and Victoria Bluepeace groups. Groups applying for funding with a B.C. provincial membership-base included SPEC, the B.C. Sierra Club and the BCWFederation. Two fishing interests applied: the UFAWU and Prince Rupert's Amalgamated Shore Workers' Union, as did two native groups: the Union of BCIC and the Nishga TC. The Company of Master Mariners and the RDs of Kitimat-Stikine and Queen Charlotte-Prince Rupert also applied, as did the District. Two pro-development submissions were received from Kitimat and Terrace citizen groups, with one submission from an "alternate energy" interest group.

All of these groups wanted funds to attend and participate in formal and community hearings. Some of these, notably the Union of BCIC, VOICE and the RD of Kitimat-Stikine, submitted research proposals to specify how requested funds would be spent. Two submissions for dissemination of infor-

mation were received as well: one from the Kitimat Public Library; the other from a Prince Rupert community group. These two funding requests wanted to provide local residents with Inquiry-related information.

Funding decisions, announced by the Commissioner on 27 May 1977, allocated funds for three different purposes: major participants, regular participants, and special studies. Two principles were followed in the awarding of major participant funding: 1) that funding should contribute to a fair and effective conduct of the formal hearings by providing a sustained appearance with expert advice and witnesses by the main interest groups affected by the Inquiry; 2) that these main interest groups should be encouraged to demonstrate support for their positions by appealing for additional funds from their members and the public at large (WCOPI, Report on Participant Funding, 27 May 1977, (Participant Funding), p.2).

Application of these principles and the six funding criteria resulted in the funding of three major participant interests[38]:

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[38] Expert witnesses monies were taken from the Inquiry's budget, not from the $380,000 public participation program monies. This $120,000 was to be divided equally among the three groups.

UFAWU		$ 60,000
KOCoalition		100,000
Native Interests	(a) Nishga TC	25,000
	(b) Union of BCIC	35,000
Expert Witnesses		120,000
		$340,000

Five regular participants, funded because of their "special expertise to contribute, or a special interest in a particular hearing phase which could otherwise be represented on a sustained basis through one of the main interest groups or Counsel" (Participant Funding, p. 3), were allocated the following funds:

BCWFederation	$10,000
COAST	5,000
The District	5,000
RD of Kitimat-Stikine	5,000
VOICE	15,000
	$40,000

Two special studies for the development of evidence on native peoples dependancy on food from the sea and river-systems were funded from the Inquiry's budget:

Study by 7 Bands in the Kitimat region	$25,000
Study on Vancouver Island, QCIslands and Fraser, Thompson and Skeena Rivers (co-odinated by the Union of BCIC)	15,000
	$40,000

Funding criteria and decisions provided for participation of a range of public interests in the hearing mechanism used to examine Inquiry issues.

Public Examination of the Issues: Formal and Community Hearings

The Commissioner, empowered to hold public hearings in B.C., established two types of hearings for the accumulation and testing of issues: 1) formal hearings for technical information; 2) community hearings for local knowledge and public concerns.

Formal Hearings

The intention of the Inquiry's formal hearing procedures was that proponents would present their proposals, supporting them with expert witnesses and documentary evidence. Participants, including Counsel, were entitled to examine these witnesses and to present their own evidence. This way "all known facts about the proposals should be laid before the Inquiry with the opinions of experts brought to bear on all the major issues" (Preliminary Rulings, p. 7)

A total of thirty hearing days were held. During the opening statement hearing held in Vancouver on 18 to 20 July 1977, major participants stated their positions and identified the issues they would address. As Figure 5-4 identifies, formal hearings were organized into six phases according to subject matter. Phase One, International, U.S. and Canadian Legislation and Current International Negotiations, began 26 September 1977 in Vancouver's Devonshire Hotel, lasted thirteen hearing days and adjourned 13 October 1977.

FIGURE 5-4 FORMAL HEARINGS -PHASES AND SUBJECT MATTER

PHASE ONE: LEGISLATIVE AND REGULATORY ISSUES

Legislation and conventions regarding the construction and operation of oil terminals and tankers, and the extent of Canada's jurisdiction in these matters.
Environmental proection controls affecting the pollution of water and air as a result of terminal or tanker operation.
Liability and compensation regulations pertaining to damages resulting from terminal or tanker operation.

PHASE TWO: SUPPLY AND DEMAND ISSUES

Need for a west coast oil port and related pipeline facilities, and the extent to which the proposals under consideration fulfill this need.
Number and size of port and pipeline facilities required and the number, size and origin of tankers that could be expected in association with port development.

PHASE THREE: MARINE ISSUES

Navigational advantages and disadvantages of alternative approaches to each port.
Possible conflicts between tanker traffic and other ship traffic.
Risks inherent in oil transport and various means available to reduce risk and to deal with emergency situations.

PHASE FOUR: ENVIRONMENTAL ISSUES

Values associated with coastal environments, including fish and wildlife resources, recreational and heritage resources and the effectiveness of oil spill countermeasures.

PHASE FIVE: FISHING ISSUES

Impact of oil terminal development and tanker traffic on commercial and recreational fishing.
Nature and extent of both Native commercial fishing and Native food fishing, and possible losses from damage caused by oil port related activities.

PHASE SIX: SOCIAL AND ECONOMIC ISSUES

Short and long term social and economic impacts associated with the construction and operation of a port facility.
Native and non-Native community attitudes towards port development.
Impacts of oil port development, tanker traffic and possible oil spills on other commercial and non-commercial uses of coastal waters.
Liability and compensation for social, economic and environmental damages caused as a result of port or tanker related activities.

Based on Counsel's opening statement hearing submission of 18 July 1977 as reported in WestCoast 1 (1977): 4.

During this phase, Counsel called fourteen witnesses in four separate panels covering international, American and Canadian statutes, for nine hearing days. The UFAWU called one witness who addressed habitat provisions and procedures of the federal Fisheries Act. B.C. called two separate witnesses to give evidence on provincial legislation. The Union of BCIC called a panel of four witnesses, addressing native land claims and sovereignty over Pacific coastal marine resources. The KOCoalition called one witness who gave evidence on the federal maritime pollution claim funds. The WCELAssociation called one witness who addressed the water pollution provisions of the federal Fisheries Act (Interim Submission, pp. 24-25).

Following a week of community hearings, Phase Two, Crude Oil Supply and Demand: Implications for Port Development and Tanker Traffic, began in Vancouver on 24 October 1977. This phase, adjourned after ten hearing days on 4 November 1977, was to have examined present and anticipated use of oil ports and tanker traffic implications of new port proposals. Of the ten witnesses who gave evidence, eight were major oil company representives, appearing on their own behalf. Counsel called two witnesses from the federal Department of EMR (Interim Submission, p. 25). The remaining four phases were not held due to the Inquiry's termination.

Mechanisms for the preparation, presentation and examination of evidence were established because the Commissioner and Counsel recognized a need for procedures to identify and organize evidence[39]

Preparation of Evidence

Two preparation of evidence mechanisms were implemented by the Inquiry: 1) list of documents; 2) circulation of evidence. These were established to ensure that all major participants would be "mutually advised of the nature of the evidence to be called and mutually co-operative in the presentations of witnesses" (R.Anthony to A.Rounthwaite, 20 September 1977). Identification of witnesses and the subject matter of their testimony was done through meetings of participant counsels and/or their representatives. These meetings were organized by Counsel. However, because there was a need to identify all relevant information sources and to make such information available to all participants, the first evidence preparation mechanism, the list of documents procedure, was established.

Under this procedure, participants were instructed to file with the Inquiry and circulate to other participants, a list of reports, studies or other documents within their possession or power which were relevant to Inquiry subject

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[39] References to participants are to major participants, not regular participants unless specified.

matter, including those for which privilege might be claimed (Preliminary Rulings, Rule IV (i))[40]. Any participant could demand production of any document listed (Preliminary Rulings, Rule IV (ii)). A participant could also request production of any particular report, study or document known to him and in the possession or power of any other participant (Preliminary Rulings, Rule IV (iii)). As no federal department or agency was an Inquiry participant, Counsel was instructed to solicit and file the list of documents on behalf of the Government of Canada (Preliminary Rulings, Rule IV (iv)).

Under the second preparation of evidence procedure, circulation of evidence, every participant before giving evidence or calling a witness had to file with the Inquiry, and circulate to participants, a text of the evidence and any references that were used or might be referred to. This had to be done at least two weeks prior to the presentation of the evidence to the Inquiry (Preliminary Rulings, Rule V).

These two mechanisms were established to ensure that Inquiry evidence would be identified and accessible to participants prior to the second formal hearing procedure, pre-

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[40] The following groups were asked to comply with this ruling whether or not they intended to become major participants: Counsel, KPL, Trans Mountain, the Province of B.C., KOCoalition, UFAWU, RD of Kitimat-Stikine, and the BCWFederation. The original 17 June 1977 date for circulation of these lists was changed to 13 July 1977 when the opening hearing date was rescheduled to 15 July 1977.

sentation of evidence.

Presentation of Evidence

Information submitted to the Commissioner was presented orally or in written form, under oath, and because it became part of the Inquiry record, was accessible to any interested person. The Commissioner ruled that:

> it must be shown that adverse environmental and social impacts, and navigational safety, and other public concerns, can be managed within reasonable bounds, if the applicants' projects are to receive favorable assessment (Preliminary Rulings, p. 14).

As a general rule, KPL was to lead its evidence first, followed by the other proponents, remaining participants and Counsel (Preliminary Rulings, Rule III (i)). This order could vary depending on the nature of the evidence and particular situations. Counsel was responsible for organizing the presentation of evidence in a logical order. In some instances, this could include taking the lead in presenting evidence. Two variations were possible: 1) evidence on a particular subject matter could be presented by Counsel, on behalf of all participants; all participants had to agree to this arrangement "to enable varied and perhaps conflicting evidence to be presented together before any cross-examination"; 2) cross- examination could be postponed until all participants, including Counsel, had presented their witnesses on a particular subject; cross-examination of all these witnesses would follow (Preliminary Rulings, Rule III (iii)).

There were two additional presentation of evidence mechanisms: tabling of briefs and presentation of American government evidence. Time had become a major factor in the formal hearing's daily operation when Phase Two began. As a result, rather than having witnesses read their testimony aloud for the Inquiry record, the text was verbally summarized and the full written text was tabled as evidence. This change did reduce the hearing time necessary for presenting evidence and was possible because of the brief circulation mechanism; the mechanism which supplied participants with upcoming Inquiry evidence. This change increased the importance of brief circulation as participants could not rely upon hearing transcripts for the full text of a witness's evidence.

Counsel developed procedures for the presentation of American government evidence, due to the importance of Phase Two's international oil supply and demand issues. These procedures provided that, rather than being sworn in by the Inquiry, written evidence was sworn in and authenticated by an American process, such as an American consul. The Inquiry's procedures were amended to provide that the authenticated evidence was filed with the Inquiry at least two weeks before the witness appeared, when the witness read it into the Inquiry record and answered participant questions required to clarify and understand the evidence. All other questioning normally associated with cross-examination

were handled in written form and transmitted by Counsel to the witness who was expected to respond in authenticated form and, when necessary, further supplementary participant questions were allowed. All questions and answers became part of the Inquiry record (R.Anthony to J.Rouse, 12 August 1977).

All formal hearing evidence was to be examined under the third hearing procedure, cross-examination.

Examination of Evidence

Cross-examination was the means used to interpret and test Inquiry information. The participant calling a witness was to question the witness and table the witness's written text. The witness would then be cross-examined, or questioned, by other participants and the Commissioner. Witnesses, who appeared either singly or in panel form, could be re-examined (Preliminary Rulings, Rule III (iii)).

Another mechanism relevant to cross-examination, the use of unsolicited information, was not formally established by a ruling. Counsel, in his opening hearing statement, said that information provided to the Inquiry by letter would be used for the development of questions for Inquiry witnesses (Anthony, WestCoast 1 (1977): 4). This mechanism was never used. However, if a letter had been received outlining a specific concern, such as weather conditions experienced

along the north coast of the QCIslands, then a witness expert on this topic would have been questioned. The fact that such a mechanism was considered indicates that the Commissioner and Counsel were aware of potential information sources open to the Inquiry.

The other hearing mechanism, community hearings, was established to ensure that public concerns were identified and included in the Inquiry.

Community Hearings

The Commissioner ruled that he would go to B.C. coastal communities to obtain evidence from individuals who have special knowledge about the B.C. coast (Preliminary Rulings, p.8). Five community hearings were held. The first was on the 22 and 23 July 1977 at Namu, a seasonal fish camp in B.C.'s central coast region. Three hearings were held in mid-October. On 17 October 1977 one was held at the Mount Currie Indian reserve located on the Birkenhead River some 150 kilometers north of Vancouver. A session was held on 18 October 1977 at the Indian community in Lillooet, located on the Fraser River some 180 kilometers north of Vancouver.

The week of community hearings continued on October 21st and 22nd, in the urban fishing centre of Steveston, located on Lulu Island at the mouth of the Fraser River. The fifth and final hearing was held at Sooke, a coastal community

located on the Strait of Juan de Fuca some thirty kilometers west of Victoria, on November 25th and 26th.

Community hearing procedures were similar in that the Commissioner would open a hearing by briefly identifying the Inquiry's purpose, stating why it was in a particular community and acknowledging the presence of court reporters and press equipment, to inform people why such facilities and personnel were at the hearing. Persons wishing to speak to the Commissioner were asked to give their names to an identified community relations staff person. Each speaker, after being sworn in under oath by the commission secretary and introduced by name, would address the Commissioner. A microphone on a table facing the Commissioner was used for this purpose, allowing the speaker to sit while speaking. There was no cross-examination; nor was counsel for any participant present at any hearing. Inquiry advisors, B.C. civil servants and participant organizers attended most hearings.

Information Dissemination

The Inquiry's information dissemination techniques had three specific goals: 1) to inform the general public about the Inquiry's existence, its issues and how to participate; 2) to inform participants on Inquiry proceedings and events, and to provide access to all Inquiry information; 3) to reach certain segments of the public with local information and knowledge to be used in community hearings. To accom-

plish these three goals and to satisfy Requirements 3,5,7,8, the Inquiry focussed on two areas: media coverage and a public information program. The Inquiry mechanisms used in these two areas reveal how the Inquiry disseminated information.

Media Coverage

The role of the media was to report Inquiry events. Coverage by radio, television and newspaper reporters was encouraged by the provision of facilities in the formal and community hearings. It was the Inquiry press relations officer's responsibility to provide media people with information on the Inquiry, including brief submissions and press releases announcing upcoming hearings and witnesses, and to ensure that necesary facilities were accessible, such as typewriters and telephones. From the Inquiry's outset, the Commissioner and his staff recognized that the Inquiry needed to disseminate information, rather than relying solely on media coverage to fulfill the Inquiry's three information dissemination goals. Thus, the Inquiry established an information program.

Public Information Program

This program's overall purpose was to "assist individuals in keeping abreast of the evidence presented throughout the Inquiry" (Preliminary Rulings, p.9). Six different mechan-

isms were implemented to realize this objective and to fulfill the Inquiry's three information dissemination goals: 1) transcripts; 2) WestCoast Digest 3) Inquiry library; 4) public libraries; 5) community information program; 6) Westcoast Reports.

The first mechanism, transcripts, or verbatim recordings of the formal and community hearings, had a threefold purpose, as identified by the Commissioner. Transcripts were to provide: 1) a record for those involved in the hearings for the preparation of cross-examination and evidence submission; 2) a legally acceptable record of Inquiry proceedings in case any aspect should be taken before the courts; 3) a historical record for future use. Transcripts were distributed to the Commissioner, Inquiry staff, major participants and eleven B.C. public libraries.

The Inquiry used five additional mechanisms to reach the general public (Goal Three). One of these, the WestCoast Digest of Evidence (the Digest), was established to inform the interested public of evidence before the Inquiry and if there was a need for interested persons to provide the Inquiry with other information or to supplement existing information. This mechanism was implemented because, at the Inquiry's outset, the Commissioner and his staff recognized that there was a need to record the evidence heard by the Commissioner and distribute it to the interested public.

The Commissioner knew that the Inquiry could not be responsible for this due to possible criticism of information selection, prior to hearing all evidence. Thus, a contract for the production of a digest of evidence was established between the Inquiry and the University of B.C.'s WestWater Research Institute. This institute was responsible for the contents and the production of the Digest's eleven issues. An editor, hired to attend all hearings, used brief submission and transcripts to summarize evidence. The Digest, its text supplemented by maps, photos and graphics depicting Inquiry events, was distributed free-of-charge by the Inquiry office to any individual or organization who informed the office by phone or mail of their interest in the Digest[41].

A third mechanism, an Inquiry library, was established to provide for additional public and participant access to Inquiry information. A library, maintained at the Inquiry's Vancouver office, had a three-fold purpose: 1) to serve as a depository for information which Inquiry staff had collected; 2) to provide public access to this information; 3)

[41] Two Digest issues covered the opening statement hearing. Three issues addressed Phase One proceedings; two were produced on Phase Two and one on the interim submission hearing. An issue was produced for each of the Namu, Mount Currie/Lillooet, Steveston and Sooke community hearings. Of the 4,839 names on the January 1978 Digest mailing list, 2,303 were individual citizens. Major participants, public libraries, B.C. public schools and universities, federal and provincial government departments and politicians accounted for the remainder of Digest mailings.

to direct requests to other existing technical and specialist libraries, as the intention was not to duplicate existing libraries (A.Pape to A.Thompson, 19 May 1977).

The Inquiry made use of B.C.'s existing public library system. Under this fourth mechanism eleven libraries agreed to receive copies of the proponents' submissions, the TERMPOL assessment of KPL's proposal and the transcripts, and make them available to the public (WCOPI, press release, 27 May 1977).

A fifth mechanism, a community information program, was not used to any great extent. This program, the responsibility of the community relations staff, related to the Inquiry's third information goal, that of informing and familiarizing the interested public of Inquiry issues and upcoming community hearings. The Inquiry needed its own program to fulfill this goal as it is "not something that just happens".

Three mechanisms were established. The first two, leaflets and posters, were very colorful and "eye-catching" in their graphic representation of a black outline of a tanker inside a yellow caution sign on a green background[42]. This symbol was accompanied by a few sentences, identifying Inquiry issues and announcing that the Commisioner wanted to

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[42] The leaflets measured 9" by 4"; the posters were larger, 17" by 12".

hear public concerns at an upcoming community hearing. A blank space was left so that the date, location and time of each hearing could be stamped on. Distributed at local outlets, including libraries, meeting halls, and grocery stores, these two mechanisms were used for the Steveston and Sooke community hearings.

A third community information program mechanism, information meetings, was to be used as a pre-community hearing mechanism, to familiarize interested people on hearing procedures. Only two meetings were held: one at Sooke; the other on Saltspring Island.

A sixth mechanism, Westcoast Reports, provided for the production of audio reports of "unbiased highlights of Inquiry testimony". Vancouver Co-operative Radio, under an Inquiry contract, produced three minute and half-hour reports on a bi-weekly basis. These reports were sent to B.C. radio stations including those in Kitimat, Prince Rupert, Smithers and Prince George (Vancouver Co-operative Radio files).

Television coverage of Inquiry hearings had been proposed by stations in northern B.C. centres. However, as the Commissioner observed, such coverage would have been very expensive and prime time coverage could not be allocated. Thus, Westcoast Reports were used as an additional mechanism to reach the public outside B.C.'s lower mainland.

Public Access to Information

One of the Commissioner's overriding concerns was to ensure that relevant information was accessible to interested people, whether they were major participants or individual citizens. The Commissioner was particularly concerned that relevant information be available to him as his recommendations had to be reflective of a comprehensive review (Requirements 2,7,8).

There were numerous mechanisms which provided for public access to Inquiry information. The information dissemination mechanisms, such as the transcripts, Inquiry library and the Digest, were established to provide interested persons with Inquiry information. Different formal hearing procedures, such as the list of documents and brief circulation mechanisms, were established to provide participants with access to relevant information to aid in their cross-examination of evidence. Another hearing provision, that of providing public seating space, was to ensure that there was public access to the actual hearing room. There were few public spectators during most of the formal hearings but Inquiry staff was not surprised at this low attendance. In Counsel's words, the general public "comes and goes as the issues affect them, but the Inquiry had to provide public access to the hearing room".

Inquiry Office

When the WCOPI was established, the Commissioner appointed Counsel and a commission secretary to undertake initial administrative duties which included selecting office space, securing hearing-room facilities and court reporting services, preparing budget forecasts, and identifying staff needs and hiring staff. The Inquiry office, located in downtown Vancouver, was opened in mid-April 1977. Hearing facilities were obtained in the Devonshire Hotel, several blocks away from the Inquiry office.

As identified in Figure 5-1, there were twenty-one persons on the Inquiry's staff: Counsel, two assistant counsels, a commission secretary, three senior technical advisors, a community relations advisor, a press relations advisor, a librarian, support staff. Discussion of the role of these positions reflect upon the Commissioner's final objective, that of establishing a competent Inquiry staff.

The role of Counsel was threefold: first, to ensure that all relevant information was examined by the Inquiry; second, to advise the Commissioner on Inquiry matters; third, to organize the formal hearings. The first role involved the direction of WCOPI staff in the preparation and presentation of evidence called by Counsel, and preparation for cross-examination of other witnesses.

During the organization of the formal hearings, Counsel liased between the participants and the Commissioner, advising participants on what the Commissioner wanted and vice versa. In the actual hearing room, Counsel was a participant as opposed to the Commissioner's advisor, Counsel's second role. This second role involved the exchange of advice and ideas between the Commissioner and Counsel throughout the Inquiry. Due to this role, Counsel was involved in the Inquiry's initial organizational aspects, particularly staff requirements and formal hearing procedures. Counsel's advisory role was most prevalent when the Commissioner was writing his interim statement, when Counsel advised him on Inquiry evidence. Counsel was not involved in community hearing organization or procedures and did not attend any of these hearings.

There were two assistant counsel. Their roles were to develop evidence and provide advice in the areas of their expertise, namely marine and socio-economic issues. These counsels were used only when issues specific to their expertise needed examination. Thus, the socio-economic counsel was not used to any extent as these issues were not fully researched or examined. Marine counsel developed evidence with the Inquiry's marine advisor on marine navigation issues, including the operation of ports throughout the world.

The role of the commission secretary was two-fold and related to the hearing of evidence and direction of office staff. The first role involved the swearing in of witnesses and the recording of Inquiry exhibits in formal and community hearings. This meant that the secretary attended all hearings and was responsible for the safe storage of Inquiry exhibits, and the duplication and distribution of such documents to participants, the media and other interested parties. The second role involved the supervision of office procedures including the hiring of support staff, Digest mailings, maintaining and authorizing payrolls and other Inquiry expenditures and securing hearing space for those to be held outside of Vancouver.

There were two types of senior staff advisors: three for the technical formal hearings evidence; one for the community relations program. The role of the technical advisors was threefold: first, to identify and obtain evidence to be heard by the Inquiry; second, to ensure that all Inquiry evidence was properly cross-examined; third, to advise the Commissioner, in confidence, on the Inquiry's technical issues. Three positions were created to cover the environmental, economic and marine transportation/navigation issues. The environmental and marine advisors were seconded from the federal government on a full-time basis[43].

[43] The environmental advisor was from DFE's Vancouver office; the marine advisor from the Department of Transport's Vancouver office.

These advisors' first role involved informing relevant public agencies and private organizations of the Inquiry, identifying information sources and potential witnesses and supervising contracted Inquiry research. If Counsel was calling a witness, the appropriate advisor was responsible for contacting the person, reviewing the evidence and advising the witness on when it would be presented. The second role involved the reading of briefs and preparing questions for Counsel to use in cross-examination. The third role was to advise the Commissioner on Inquiry evidence when he prepared his interim statement.

The role of the community relations advisor was twofold: first, to organize the community hearings; second, to advise the Commissioner on matters related to the Inquiry. The first role involved working with various participant representatives to plan for the scheduling of community hearings. The second advisory role included discussions with the Commissioner on community hearing scheduling, location and procedures. This person was also involved in advising on the Inquiry's information program needs and funding allocations.

The role of the press relations officer was to provide for press coverage of the Inquiry. This meant ensuring that there were press facilities at all formal and community hearings, including typewriters, telephones and copies of

evidence. This position also involved establishing contacts and distributing Inquiry information to local, regional, national and international newspapers and radio.

The librarian was responsible for the Inquiry's library. This included cataloguing and filing Inquiry material and maintaining a cummulative transcript index.

The remaining staff included two research assistants, one for legal issues, the other environmental. These people aided the technical advisors in identifying and researching critical issues, maintained contacts with potential witnesses, and helped in the preparation of Inquiry evidence and cross-examination of other evidence. The role of the two community relations assistants was to aid the senior advisor in preparing and organizing community hearings. This involved communication by telephone, mail and personal meetings with various participants and community interest groups. The accountant, who worked under the supervision of the DFE's Vancouver accounting department, was responsible for incorporating Inquiry expenses into DFE's accounts. This position was necessary because of the administrative structure of the Inquiry's budget, which came from DFE monies. The commission secretary was kept informed of the accounts as she issued pay cheques and paid Inquiry expenditures.

One of the five Inquiry secretaries, the Commissioner's personal secretary, was responsible for scheduling meetings

with participants and federal authorities, the Commissioner's travel itinerary and correspondence. One secretary did the continual updating of the Inquiry mailing lists. Another was responsible for all community relations correspondence and files. The remaining two performed general office work, including typing technical staff correspondence and files.

Analysis of the extent to which the Inquiry's function and structure provided for comprehensive review follows in the next two chapters.

Chapter VI

ANALYSIS OF FUNCTION

6.1 FACTORS INFLUENCING THE WCOPI

Most sources agreed that the general purpose of any inquiry is to provide political decision-makers with the information necessary to resolve a given issue.[44] However, there were divergent interpretations on the WCOPI's function and on the type of inquiry which was needed to fulfill its terms of reference. Analysis of function shows how the selection of the Commissioner, formulation of his terms of reference, imposition of a reporting date and budget allocations led to the Inquiry's termination before its review was completed.

Selection of the Commissioner

The selection of an appropriate commissioner was stressed by all sources. Three criteria were identified as being important: 1) competence; 2) availability; 3) number. Competence, a function of credibility, independence, impartiality and capability was considered to be the most important factor influencing the choice of a commissioner. A commissioner

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[44] The exception was the KOCoalition's request that the Commissioner ask for a revision of his terms of reference to include specific provisions for a yes or no recommendation on KPL's proposal (M.Storrow to A.Thompson, 3 May, 1977).

needs to be acceptable to all interests involved in an inquiry, including the general public, government officials and ministers, to ensure that all will co-operate with the inquiry and that there will be due consideration of the commissioner's recommendations. A commissioner cannot be seen to favour one particular interest over another. Conflict of interest can lead to resignation demands by participants, as happened when Marshall Crowe, then NEB chairman, was forced to resign as chairman of the NEB's review of the proposed northern natural gas pipeline due to his past involvement with the application. As well, a commissioner must be capable of "running the show" and not let any particular interest "control" the inquiry.

Due to the legal aspects inherent in an inquiry, particularly if evidence is received and cross-examined, some sources suggested that a commissioner should be a lawyer. Others felt that a judge provided the impartiality needed in an inquiry. Not all sources, notably those from the District and DFE, assumed that a commissioner needed to have a legal background. Familiarity with the legal process is desirable because a commissioner must be aware of inquiry powers and how these can be legally exercised, to ensure that issues are examined fairly.

Availability, the second criteria to be considered when a commissioner is selected, was considered to be a problem.

In one Inquiry advisor's opinion, to head an inquiry is a full-time commitment, particularly when there is a sole commissioner. Because many competent individuals are unable to devote the time needed to head an inquiry, one proponent's counsel felt there is a tendancy to appoint academics or government officials; the assumption being that it is easier for these people to leave their regular duties. One source felt that because of availability problems, selection of a commissioner is essentially "pot luck".

The third important criteria, appropriate number of commissioners generated a range of responses. The Commissioner, in support of a single commissioner, said it is "efficient and easier to run an inquiry if there is a sole commissioner". He felt that handling "high pressure" press questions becomes difficult with more than one commissioner, as questions will arise over what inquiry matters are to be discussed publicly and in what detail. Such questions would necessitate consultation among commissioners, thereby delaying responses to media questions. The Commissioner also observed that having more than one commisisoner increases the possibility of compromise, a situation which can result in "shades of grey" in an inquiry's final recommendations.

Comments on the disadvantages of a sole commissioner included the observations that an inquiry is vulnerable to a commissioner's personal weaknesses and that a commissioner

must be "clearly neutral". Concern over whether one person is capable of understanding and resolving all issues before an inquiry, and consideration of hearing and travel time commitments, caused some sources to state that more than one commissioner is desirable. Two suggestions were put forth on how more than one commissioner should be selected. The first was that commissioners should represent different interests involved in the issues, with one member appointed as chairman as was done in the Lysyk Inquiry. The second suggestion was that a hearing board should be composed of members selected on the basis of their technical expertise. However, these suggestions do not provide for an independant reviewer and because there are usually numerous interests and issues involved in a proposal, do not solve the problems of a sole commissioner.

The choice of commissioner and number is ultimately a political decision and is dependent upon the particular circumstances. There can be no doubt that selection is critical to an inquiry as was revealed by comments on the appropriateness of the Commissioner.

DFE sources indicated that the intention was to select a competent commissioner. However, these sources gave the impression that they were definitely not happy with the choice once the Commissioner began his review. One person reflected this dissatisfaction when he wrote that the "WCOPI

was turning into a 'Rolls Royce' when in fact it was only a 'Chevy' that was ordered".

This observation subtly identifies the differences which existed between the Minister and the Commissioner. The Ministers wanted an inquiry which would "bring forth and canvas public concerns and issues". This type of inquiry did not include a public examination of Inquiry issues or the technical aspects of the proposals, as desired by the Commissioner. The differences in perceptions of the Inquiry's function was clearly identifed by a DFE source involved in the formulation of the Inquiry's terms of reference, who wrote that:

> an inquiry should 'bring forth' perceived public concerns and issues. The technical review requires experienced professionals, firstly, on the part of industry to plan and design and, secondly, on the part of government to undertake the review.

This same DFE source said that to conduct a "proper" hearing, one has to organize public interests to focus upon the issues and, to be credible, this must be done "within a reasonable amount of time". This "proper" type of hearing was identified as having three essential requirements: 1) a hearing officer; 2) hearing staff and office space; 3) hearing facilities. Four "questionables" were identified as being non-essentials: 1) cross-examination; 2) hearing transcripts; 3) community hearings; 4) use of lawyers. These "questionables" were part of the Inquiry's structure, again

stressing that the type of inquiry envisaged by federal authorities differed from the inquiry desired and implemented by the Commissioner.

The Commissioner said that the Ministers were aware of his professional background, personal interests and his commitment to a rigorous examination of the issues and that they should have anticipated the type of inquiry he would implement. The Commissioner made it clear that he did not see himself as a decision-maker. Rather, as a compiler of information, his intention was to gather the best information available because there was "no technical answer to the issues under investigation". This information, submitted in a report to the Ministers, was to provide politicians and the public with a good definition of these issues. Through his report, the Commissioner hoped to raise public consciousness of the critical issues so that the Ministers could obtain a "good reading" on the range of public opinions and enable federal politicians to make a decision which would be reflective of these public concerns.

Major participants, who did represent a broad range of public interests, had differing opinions on the choice of the Commissioner. Proponents "did not doubt his capability" but felt he was "too lenient and sympathetic" towards opposition interests. At the time of the Commissioner's appointment, the UFAWU felt that "a Liberal party supporter, with

his mind already made up on the need for an oil port", had been selected. This impression was based on a Vancouver Sun Page Six article in which the Commissioner stated that the fundamental issue was not if such a port was needed, but where it should be located (Vancouver Sun, 5 February 1977). As the Inquiry progressed, the UFAWU and other opposition participants were satisfied that the choice was a good one, based on the type of inquiry the Commissioner implemented and because he was seen to be sympathetic to their opposition cause.

Other participants, notably Counsel, B.C. civil servants and proponent sources, felt he was "too lenient" with opposition interests, and "let them run the show". Two Inquiry advisors observed that the Commissioner should not have been closely aligned with <u>any</u> participant interest. The seemingly sympathetic relationship between the Commissioner and opposition participants was in part due to the Inquiry's funding procedures. The Commissioner recognized this as a problem and suggested changes, as is discussed in Chapter Seven. Another reason that the Commissioner was seen to be sympathetic to opposition interests, was due to his concern that the inquiry process not intimidate the inexperienced. Opposition participants tended to have less regulatory hearing experience and legal support than other participants. The Commissioner genuinely wanted to provide all interested persons with an opportunity to examine the issues and to

address him. Thus, he was "deliberately low key" in his attitude towards adherence to hearing procedures.

The Commissioner was faced with the difficult task of trying to implement and carry out a review which had to incorporate very different and adversarial interests, as well as having to negotiate the Inquiry's continuance. Hindsight evaluation shows the Commissioner made mistakes and that a comprehensive review was not carried out. The Inquiry's terms of reference, its reporting date and budget, emphasized this problem.

Terms of Reference

DFE civil servants involved in the WCOPI's administration had useful comments on the Inquiry's political purpose and the federal government's reasoning for establishing its terms of reference. Although the WCOPI was established to obtain information for a political resolution of KPL's issues, the Ministers' paramount objective was to maintain control of the Inquiry. A DFE source emphatically stated that because the Berger Inquiry was "too independent, uncontrollable and costly" as it did not have a reporting date and cost $5.3 million, another "Berger type" inquiry was not wanted.

But, the independent review needed in KPL's case presented problems for the federal government. If a review is

overtly controlled by government, the review's independence and recommendations are likely to be questioned publicly. DFE sources gave the impression that the federal government would have preferred an approach similar to the one it used for the Alaska highway pipeline proposal, where the six month Lysyk Inquiry prepared a socio-economic report and an EARP panel reported on preliminary environmental issues (Canada, 1977(a); Lysyk, 1977). However, as discussed in Chapter Four, the only type of credible independent and publicly acceptable review of KPL's proposal was a public inquiry.

Thus, as a DFE source observed, although a public inquiry was the only review option open to the government, the Ministers' intention when "cautiously formulating the WCOPI's terms of reference was to limit the type of inquiry which could be undertaken and not grant unlimited powers to the Commissioner" Two approaches were considered:

1. to establish specific terms of reference and limit the areas of investigation, such as empowering the Commissioner to examine navigational hazards posed by an oil port at Kitimat;

2. to establish very general terms of reference, such as the implications of west coast tanker traffic, and use other factors to limit the Commissioner's powers.

The second approach was used for the WCOPI. The limiting factors identified by DFE sources were the imposition of a 31 December 1977 reporting date and a finite budget allocation of $1.4 million. Clearly, the federal government

expected the Commissioner to carry out his review within these specified time and budget provisions and that the Inquiry's function was to identify public concerns in a report that would be used to make a cabinet decision:

> Many of the questions which you are investigating must ultimately be addressed by our colleagues and ourselves in Cabinet. A key factor which we will consider in our discussions will be the views of groups and individual citizens of the west coast. It should go without saying that the completion of your Commission's work does not exhaust the means by which concerned citizens may seek to influence a final decision by government (R.LeBlanc and O.Lang to A.Thompson, 27 October 1977, p.3).

Participants had differing interpretations of the WCOPI's function. Proponents felt the Inquiry should have held technical, site-design hearings on their proposals. A KPL source suggested a hearing into public concerns should follow this technical review. Other major participants felt the Inquiry should have addressed the broad issues raised by the proposals, but all had different levels of commitment to the Inquiry as a means of reviewing these issues. Native interests saw the Inquiry as another forum for the advancement of native land claims, in contrast with the B.C. government's refusal to examine this issue, which was considered to be irrelevant to the Inquiry. Opposition participants, with the exception of the BCWFederation, left no doubt that their intention was to use the Inquiry to defeat the proposals. Counsel was the only participant committed to ensuring that the Inquiry's terms of reference were fully examined in a public review; a commitment shared by the Commissioner.

The Commissioner identified his understanding of the WCOPI's function when he opened his Inquiry:

> This inquiry may be seen as an ad hoc process whereby all of the consequences of proposed west coast oil ports can be reviewed and a report made that brings all the information together in a comprehensible form. While this inquiry will fulfill an integrating role that the normal functioning of government cannot adequately perform, it must not be seen as a substitute displacing normal government processes. Rather, it must function as an adjunct to those processes. In the end these government processes will be brought to bear, along with my report, for ultimate decision-making in accordance with our parliamentary traditions.
>
> Should someone ask me what I consider to be of utmost importance in this Inquiry, I would say "the process, itself". For the strength of any recommendations in my report will be measured by the extent to which the process is judged to have provided a full, complete and fair assessment of the facts and issues (Thompson, WestCoast 1 (1977): 1).

To the Commissioner, a "full" inquiry meant a vigorous public examination of issues; exemplified by the hearing model he established. A "fair" inquiry meant that rules of natural justice would be adhered to; exemplified by Inquiry participant opportunities, funding allocations and hearing procedures.

When questioned on his terms of reference, the Commissioner recalled that when he met federal officials in Ottawa in February 1977 to discuss his possible appointment, he knew he did not want two things: 1) a reporting date; 2) narrow terms of reference. He also recalled that, at the time, although the words "economic impacts" were not speci-

fied, he equated economic to be synonymous with social impacts. The Commissioner tried unsuccessfully to convince federal authorities that the siting of an oil port was of national signficance and the Inquiry should not be restricted to a regional, B.C. perspective. But, as this matter was not argued strongly, the Inquiry's scope was not negotiated further.

The Commissioner also said that the Ministers were aware that he wanted a rigorous examination of the isses: "an investigative inquiry that was not going to be slip-shod or easy on the companies". However, given the length of time and budget allocated to the Inquiry, the Commissioner assumed that the Ministers either wanted a different inquiry or they were ignorant of the issues and interests involved.

In retrospect the Commissioner said he did not give his terms of reference enough attention, noting that there was pressure for a public announcement of how the federal government intended to review KPL's proposal. The Commissioner did identify two mistakes: 1) acceptance of a December 1977 reporting date; 2) acceptance of responsibility for funding administration. Proposed adminstrative changes discussed in Chapter Seven reflect upon the problems created by the Commissioner's funding responsibilities. The Commissioner's other mistake, acceptance of a reporting date, influenced his ability to carry out a comprehensive review.

Reporting Date

The first reporting date put forth by the Ministers was 15 September 1977, indicating that they initially envisaged a six month inquiry. The Commissioner would not accept this timeframe and left the Ottawa discussions with the understanding that he would be appointed to an open-ended inquiry; that is one without a reporting date. Informed a few days later that the Prime Minister refused to establish an open-ended inquiry, the Commissioner agreed to the December reporting date on the understanding that he would be given a time extension if he requested one; an understanding confirmed in the Minister of Justice's announcement of the Inquiry's establishment. Thus, from the beginning, the Commissioner understood that his reporting date would be extended if he considered it to be necessary.

The Inquiry's reporting date influenced the proponents' approaches to the Inquiry as is fully analysed in Chapter Seven. KPL's withdrawal created problems for the Inquiry's hearing procedures since Trans Mountain was left as the sole proponent, and one which did not actively participate in the Inquiry. KPL's action raised the question of the need for an Inquiry proponent, and resulted in the revision of the Inquiry's terms of reference to include Trans Mountain.

However, on 5 October 1977, the American Congress passed an amendment to the Marine Mammals Protection Act forbidding

construction of trans-shipment facilities in Puget Sound, Washington and when this Magnuson amendment became law later that month, effectively ruled out Trans Mountain's Cherry Point proposal. The Inquiry and the NEB were formally advised by Trans Mountain on 31 October 1977 that consideration of its proposal be terminated. KPL subsequently informed the Inquiry that it was considering its options and would advise the Inquiry of any future plans. The effect of these events was that by late October 1977, there was no active proponent before the Inquiry. As discussed under the Inquiry's hearing mechanism in Chapter Seven, the formal hearings could not function without a proponent. This, in part, accounted for the formal hearing adjournment.

The Inquiry's subject matter, which was very complex, highly technical and controversial, created additional timing concerns. The identification of potential witnesses, preparation of their evidence and arrangement for submission for public examination, proved to be more time consuming and complex than was first anticipated by the Commissioner and his staff, particularly since proponents were not prepared to submit evidence on the marine aspects of their proposals. To carry out its review the Inquiry needed more time than was provided for by the December 1977 reporting date.

Uncertainty over the time available to the Inquiry meant that opposition participants focussed their efforts on

demanding more time and money to examine the issues properly. Demands for an extension of the Inquiry used hearing time, reinforced the adversarial nature of the Inquiry hearings and reflected upon another critical factor: the Inquiry's budget.

Budget

The significance of budget allocations is obvious. Extension of the Inquiry's reporting date needed to be accompanied by additional monies since the $1.4 million had been allocated for expenses up to the end of December 1977.

Significance of Factors

The choice of Commissioner was perhaps the most important factor affecting the WCOPI. The structural impact is obvious: the Commissioner established the type of inquiry he felt was necessary to fulfill the Inquiry's terms of reference. The functional impact, perhaps less obvious, was of critical importance: the Ministers had to be convinced of the need to authorize additional time and monies for the completion of the Commissioner's review. The Commissioner was unable to do this, as demonstrated by the Commissioner/Ministers' negotiations.

6.2 COMMISSIONER/MINISTERS NEGOTIATIONS

By early August 1977 it was obvious to the Commissioner, Counsel and some participants, notably the UFAWU, KOCoalition and BCWFederation, that if the Inquiry's review was to be completed, the Inquiry's reporting date had to be extended and more monies granted. The Commissioner articulated this need when he proposed a scenario whereby formal and community hearings would be completed by mid-March 1978 and a report submitted by mid-July 1978. The estimated cost of such an extension was between $750,000 and $1,000,000 and included further participant funding (A.Thompson to O.Lang and R.LeBlanc, 10 August 1977).

The Commissioner had Counsel circulate this revised schedule among the participants; some responded by proposing a schedule in which hearings would be held until September 1978, to be followed by the Commissioner's report. These demands were relayed by the Commissioner to the Ministers when he wrote that these participants found the Inquiry's hearing schedule to be inadequate and that:

> they have now got their feet wet in terms of preparation for the hearings to the point where they have pretty expensive notions about the evidence they intend to bring forward and the extent of community hearings which they will advocate. If hearings are to be held in 64 different villages and communities, the time implication for the Inquiry is vastly different than if only 15 or 20 community hearings are held (A.Thompson to O.Lang and R.LeBlanc, 8 September 1977).

The Commissioner also indicated in this letter that he and his staff were "reassessing our planning for the community hearings" and that he felt the participants' time estimation for the formal hearings was "over-stated". However, the Ministers did not respond favourably to these demands. Their reluctance to extend the Inqury's reporting date, to allocate additional funds and their preference for an inquiry which conforms to its timeframe, were articulated in their response:

> Your projections for the future cause us concern. On the one hand, we recognize that you are attempting to do as comprehensive and complete a job as possible. This is, of course, appreciated. On the other hand, a further extension of time and funds raises a number of serious questions.
>
> We say "further" extension because you will recall that our initial intention was to have a completion daate of September 30, 1977. The initial funding anticipated was also considerably less than the 1.437 million dollars now allocated for this purpose. Earlier this year you convinced us, and our officials and colleagues, that a reporting deadline of December 31, 1977 was a realistic timeframe for the Inquiry. Our concerns about hearings which appear to be endless were then made known to you and to Mr. Anthony. Although this schedule might now appear tight, the credibility of results from timely reporting is enhanced in the eyes of the public, the government decision-makers, and the affected industry, as was recently exemplified by the Lysyk Alaska Highway Pipeline Inquiry (R.LeBlanc and O.Lang to A.Thompson, 15 September 197).

The Commissioner responded that he could not agree with the way the Ministers presented the matter of the December reporting date:

> I argued strenuously for the elimination of any reporting date and you agreed to take to Cabinet an Order-in-Council which did not have a time

> limit. Subesquently owing to the insistence of Cabinet, I was prevailed upon to agree to the date of December 31st, 1977, but only on the understanding that an extension would be granted if the requirements for a proper hearing made this necessary. . . At that time I thought it would be possible to complete the formal hearings by the end of the year with a report to follow two or three months later. Now it appears that even that assessment was optimistic. In part the reason is that we were delayed in getting started both because it took longer than expected to get our budget through the Treasury Board and to finalize the funding of participants and because of the time taken to amend the Order-in-Council when the Kitimat Pipe Line Company changed its situation. My illness has caused us a further three weeks delay (A.Thompson to O.Lang and R.LeBlanc, 26 September 1977).

Lack of agreement on a reporting date extension led to an Ottawa meeting in mid-October 1977 between the Commissioner, Counsel and federal authorities, after the completion of Phase One[45]. As a result of this meeting the Minister informed the Commissioner that they were prepared "to seek authorization" from Cabinet to extend the Inquiry's reporting date to 31 March 1978 and to approve an additional maximum of $300,000. It was requested that the Commissioner's final report "be in our hands as a typed manuscript by that same date whereafter the Government will arrange for its publication (R.LeBlanc and O.Lang to A.Thompson, 27 October 1977). The language of this letter suggests that the Ministers did not want the type of inquiry the Commissioner had established:

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[45] Federal authorities attending the meeting included the Minister of State for the Environment, and the Ministers' executive assistants. The Ministers of Transport and of Fisheries and the Environment did not attend.

> We appreciate that this may require you to revise some aspects of the Inquiry, such as the community relations activities and the location of the hearings, but we are sure that this can be done without doing damage to the main thrust of the Inquiry's work. . . . We can assure you that we have considered carefully the implications for the Inquiry of the above mentioned limitation of timing and funding. You will appreciate, however, that for your Inquiry to be most useful to the Government and to the people of British Columbia, it must be timely as well as of high quality. We are fully convinced that you can prepare a credible and comprehensive report within the limits of time and funds available.

These proposals were totally unacceptable to the Commissioner. He replied that "the difference between us over timing and funding involves fundamental issues concerning the Inquiry" (A.Thompson to R.LeBlanc and O.Lang, 3 November 1977). The Commissioner's letter emphasized the type of inquiry he was committed to and that he was not prepared to alter the fundamentals of his inquiry model:

> While some trimming of my budget is possible, the limits you state in your letter of three months and $300,000 are simply not responsive to the problem. You are asking me to reshape the very nature of the Inquiry.
>
> I am prepared to consider the options which seem open to me based on the evidence that has been presented to the Inquiry to this date. For that reason I have made arrangements to meet with you in Ottawa next week.
>
> I must add that I am not reassured by your expression of confidance that I can prepare a credible and comprehensive report within the limits of time and funds set forth in your letter. The TERMPOL Assessment took more than a year to prepare by a staff much larger than mine and yet its role was merely to define some of the issues which I must deal with in the Inquiry.

> Should your letter suggest that the participation of the intervenors and the community hearings are of such minor importance that they are to be dispensed with, I do not agree.
>
> The other item you refer to in terms of cost saving is the publication and distribution of my report. Since this is a Public Inquiry, I consider it my responsibility to determine how the reporting will be carried out within the limits of the budget. This matter can be discussed with you after we have dealt with the more basic issues at our meeting next week.

Phase Two hearings were recessed so that the Commissioner could go to Ottawa. This meeting resulted in the adjournment of the formal hearings. However, there were differences expressed on the purpose of this action. When announcing the hearings recess, the Commissioner stated that:

1. the formal hearings would be reconvened either by him or on the direction of the Ministers;

2. the Inquiry would not be reconvened unless there was a serious proposal before the federal government for the establishment of an oil port;

3. he would be submitting a statement of proceedings to the federal government early in 1978 and inviting oral and written submissions from participants concerning matters that should be covered in his review;

4. his review would make recommendations on when the Inquiry should be reconvened and what an applicant will have to do by way of preparing and presenting its proposal for review when the Inquiry resumes (WCOPI, press release, 9 November 1977).

The Commissioner's reasons for the recess were made clear in the closing paragraph of his statement:

> The evidence to date has made it clear that there is no pressing need for any immediate decisions concerning a west coast oil port and therefore the Inquiry will not be rushed into premature deliberations of any application.

The federal government's press release stated that:

> Cabinet will be asked to pass an amending Order-in-Council which would provide for the adjournment of the Inquiry and allow Dr. Thompson until the end of March to prepare and submit his review (Ministry of Fisheries and the Environment, press release, 9 November 1977).

The Commissioner felt that "public misunderstanding remained after the issuance of this press release" and wrote the Ministers "to ensure that we have a clear, mutual understanding so that, by our statement and actions, we can gradually set the public record straight", identifying nine points:

1. His review of proceedings would be written by early February and ready for publication prior to 31 March 1977;

2. Cabinet would be asked to amend the Inquiry's Order-in-Council by deleting the reporting date of 31 December 1977, substituting the date of 31 March 1978 for the submission to Cabinet of his review of proceedings; No final reporting date was to be included and the terms of reference would remain the same;

3. If the Kitimat application was not renewed and there was no other oil port proposal then, at an appropriate time after the end of March, the Ministers and the Commissioner would agree on a basis for terminating the Inquiry; the Commissioner noted that we would all want assurances that no other application for a west coast oil port would come forward or be considered for a considerable number of years;

4. If the Kitimat application was renewed, his staff would review and advise the Commissioner on how and when to resume the hearing;

5. Since the greatest likelihood was that the Kitimat application will be renewed in the very near future, there should be a mutual understanding of the responses of the Government and the Commissioner will make. The Commissioner stated he intended to say he would reconvene the hearings soon after the submission of his review, a likely date being April or May 1978;

6. As Commissioner, with the power to reconvene the hearings, he anticipated the reconvened hearings would take at least one year and possibly longer to allow for co-ordination with NEB hearings;

7. Funding would have to be provided for the fiscal year starting on 1 April 1978 at a level comparable with that provided in 1977;

8. The Inquiry would continue to operate until 31 March 1978 within the authorized expenditures;

9. The Commissioner intended to provide some core funding to major participants during the interim period (A.Thompson to R.LeBlanc and O.Lang, 18 November 1977).

Much to the consternation of the Commissioner, Counsel, and the funded participants, the amending Order-in-Council was not immediately forthcoming. A reply to the Commissioner's 13 December 1977 telex asking for a public announcement on the Inquiry's reporting date extension by noon of 15 December 1977, the last day of the interim submission hearing, was received on that date. This reply stated that the Ministers "would be seeking to amend the Order-in-Council" (L.Marchand, R.LeBlanc and O.Lang to A.Thompson, 15 December 1977). In other words, the Ministers had not put the matter before cabinet. Another telex sent to the Commissioner asked for his response to the wording of the proposed amendment (R.LeBlanc to A.Thompson, 19 December 1977)[46]. The Commissioner's response was that the proposed amendment was:

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[46] The wording of this amending Order-in-Council is quoted in Chapter Five.

> not at all in conformity with our agreement. I did not agree to report by 31 March 1978 but only to submit an interim review of proceedings (A.Thompson to R.LeBlanc, 20 December 1977).

The Commissioner did not want the words "to report" in his amended terms of reference because after the March 1978 date his powers would end; a situation which the Commissioner specifically discussed in his interim statement:

> When I adjourned the hearings last November, my understanding of our agreement was that, should a serious west coast oil port application be made, I would make the decision to reactivate the Inquiry. Now that KPL has reapplied, it should be my responsibility as Commissioner to decide when to resume hearings. That is the normal practice of a commissioner conducting a public inquiry under the Inquiries Act.
>
> Instead, the amending Order-in-Council of December 22, 1977 has turned things around. It is the Cabinet which now will make this decision whether to extend the Inquiry. If the Cabinet does not reach a decision before the end of March, the Inquiry will automatically terminate. This turnabout raises the question whether the Government has changed its mind about wanting an inquiry. If that is the case, the Government should make its position known as soon as possible (Thompson, 1978, p.x).

In addition to these negotiations, three events which influenced the Inquiry's fate took place in January 1978. The first event, KPL's announcement on 9 January 1978 that it had reapplied to the NEB for certification of its proposal, meant that the Inquiry could not resume its examination of KPL because hearings were adjourned until the Commissioner's interim statement was submitted to the Ministers.

A second influential event was the passage of the American Congressional Udahl Bill and a Senate bill, which imposed an early 1978 presidential decision on an oil port site. This resulted in increased pressure on the Canadian federal government for a "timely" decision; that is one conforming to the American timetable. This created concern because if such a Canadian decision was to be made, then the Inquiry hearings needed to be re-activated to ensure that marine issues could be fully examined.

A third event also influenced the Inquiry's fate: the Minister of EMR's request on 16 January 1978 that the NEB hold an energy policy hearing and:

> investigate and report to me on a range of possible oil supply situations over the course of the next 10 to 15 years and the import dependency which might develop for B.C. consumers as well as for Eastern Canadians. Where significant imports are required your views on the size, location and timing of petroleum ports of entry are requested (A.Gillespie to J.Stabback, 16 January 1978).

These three events increased demands for the Inquiry's reactiviation so that marine issues could be examined prior to any project decision (Requirements 1,2).

6.3 TERMINATION OF THE WCOPI

Within the context of these three events, the unresolved negotiations over the extension of the Inquiry's reporting date and budget, and the uncertain state of interim funding, the Commissioner identified two options open to the federal government in his 23 February 1978 interim statement:

1. It can decide that the Kitimat proposal is unnacceptable and must be ruled out. This course of action can be taken now. The United States Congress took similar action when it ruled out oil port trans-shipment facilities in Puget Sound.

2. It can decide that the assessment of the project should proceed. In that case the review of the environmental, social and navigational safety risks must be given weight equal to the examination of energy issues. It is these environmental, social and navigational safety issues, not the energy ones, that are the serious impediments to oil port planning. There is no doubt that the United States is preparing for a west coast oil port decision early in 1979. If the Government wishes to keep open the option that this port be located at Kitimat, it must be prepared with a decision within this U.S. timeframe. In this case the Inquiry must be reactivated immediately. If I take advantage of the start we have made and the readiness of the participants to begin where we left off, I can complete the hearings and submit a final report to you in time for a decision early in 1979. Otherwise, if reactivation of the Inquiry were delayed until after the NEB completes its oil import policy report in the fall, the impact assessment would have to be compressed within a 3 or 4 month timetable (Thompson, 1978, p.ix)

Later the same day the Minister of State for the Environment announced in Ottawa that federal government "sees no need for a west coast oil port now or in the foreseeable future and doubts the benefits of establishing such a port would be sufficient to offset the danger of risking a major oil spill" (Minister of State for the Environment, press release, 23 February 1978). This policy announcement effectively rejected KPL's proposal and terminated the Inquiry's mandate. The Ministers clearly felt that they had sufficient information upon which to make a decision, without the completion of the Inquiry's review.

6.4 CONCLUSIONS

In Chapter Three it was asserted that if an inquiry is to carry out comprehensive review, its terms of reference must provide for such a review. Three factors were identified as being critical to the accomplishment of comprehensive review: commissioner selection, time and budget allocations. The commissioner must have the power to identify, examine and report upon all potentially significant issues publicly prior to a project decision (Requirements 1,2,3,4,7,8,10). Monies must be available for the dissemination of information, funding participants, and the salaries of the Commissioner, inquiry staff and other required expertise (Requirements 5,6,9).

Clearly, the choice of Commissioner, imposition of a reporting date and budgetary allocations were politically imposed constraints. The combination of these factors meant that the Commissioner could not exercise his powers beyond the 31 March 1978 date, even though his review was incomplete. These factors all influenced the Inquiry, demonstrating that it is best to analyse the overall impact of these factors upon an inquiry's function and structure, and not examine an hierarchial relationship.

The WCOPI's function was not comprehensive. The Commissioner was not provided with the time or monies needed to carry out his Inquiry, prior to a decision on KPL's proposal

(Requirements 1,2,3). Significant marine issues specified in the Commissioner's terms of reference, notably those relating to navigational concerns and the impact of oil on B.C.'s marine resources, were not publicly reviewed at all. Analysis of structure examines the Inquiry's mechanisms and the extent to which they provided for a comprehensive review.

Chapter VII

ANALYSIS OF STRUCTURE

As identified in Chapter Five, the Commissioner felt that six requirements were necessary to carry out his terms of reference: 1) Inclusion of public interests: 2) Funding of needy public interests; 3) Public examination of issues: formal and community hearings; 4) Information dissemination; 5) Access to information; 6) Inquiry office and staff. Comments on these requirements, and the mechanisms used to fulfill them, form the basis for the analysis of the Inquiry's structure.

7.1 PARTICIPATION OPPORTUNITIES

The Requirement

Most sources notably the Commissioner, Inquiry staff and opposition participants, supported the need for the inclusion of public interests for the following reasons: 1) if the issues were to be examined fully, then the Inquiry had to provide for the participation of affected public interests; 2) in the interest of fairness, all parties had to be given an equal opportunity to participate.

In contrast, federal and B.C. civil servants and proponent representatives felt that the need to include a range of public interests was seen to be dependent upon a review's purpose. If its purpose was to assess a proposal's technical aspects, then these sources saw no need for the participation of public interest, other than those of technical experts representing industry and government[47]. If a review was to assess public opinion, then they felt public interests other than those of industry and government needed to be part of the review.

A comprehensive review requires that procedures to assess both technical and public issues relevant to a proposal and that members of the public be included in this examination (Requirements 2,3,4,6). The Commissioner recognized this need and the WCOPI provided for the inclusion of public interest.

The use of major and regular participant categories, which recognized that different interests had different participation requirements, was a good approach. Major participants had a legitimate need to be included in the technical formal hearings. The inclusion of fishing, native and environmental interests as major participants provided these

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[47] A technical review is one which considers a project's construction requirements and economic justification. This type of review does not usually examine a project's environmental and social impacts or resultant public concerns.

traditionally under-represented interests in the examination of Inquiry issues. Other interests were concerned about specific aspects of the proposals, such as the socio-economic impact of development on B.C.'s northwest region. These interests, including VOICE, WCELAssociation, COAST and the RD of Kitimat-Stikine, were appropriately designated as regular participants.

Still other public interests, particularly those in communities along proposed tanker routes, were primarily concerned with being able to voice their opinions and tell the Commissioner of their local knowledge which was pertinent to the Inquiry's terms of reference. The community hearing mechanism provided for participation of these public interests. Although all interested groups and individuals were provided with the opportunity to participate, seven interests were identified as inadequately participating: oil industry; B.C. fishing companies; native; marine shipping and navigation; small "pro-development" businesses; marine recreational users. Without input from these interests a comprehensive review was impossible as these interests, and those of major and regular participants, needed to be involved.

Inadequately Participating Interests

The first interest, the oil industry, was identified by several sources, including the KOCoalition and UFAWU. The non-participation of various proponents was specifically questioned by the UFAWU during the opening statement hearing. Without the participation of proponent interests, an assessment of the various proposals' designs and capacities, their resultant navigational, environmental and socio-economic impacts, and economic justification, was difficult as these interests possessed project-specific information needed to review their proposals (Nichol, WestCoast 1 (1977): 9). It was Counsel's responsibility to ensure that the Inquiry obtained information possessed by these interests, all of whom had declined Counsel's request that they become Inquiry participants.

A second interest, B.C. fishing companies, was identified by the UFAWU. As Figures 5-2 and 5-3 show B.C. fishing companies, such as B.C. Packers and the Canadian Fishing Company, were not directly involved in the Inquiry, although a representative from the Fisheries Association, an umbrella group which includes company interests, attended UFAWU organizational meetings. This criticism was made known to the Commissioner when the UFAWU submitted a revised funding application after the 4 May 1977 preliminary hearing:

> (it) seems we will be charged with the responsibility of developing the industry's case. Frankly, we are disturbed at the absence of some of the major companies and their very obvious intent not

> to intervene in a major way. . . The UFAWU initially intended to concentrate on environmental and fishing aspects, delegating responsibility to the Coalition. We have had to review our thinking not because of any quarrel with the Coalition, with which we remain affiliated, but because of the extent to which we are charged with the responsibility of defending the fishery resources of the Pacific Coast. . . We are not prepared to let the industry go by default (J.Nichol to A.Thomspon, 10 May 1977).

B.C. fishing interests were provided with the opportunity to participate, as all interest groups were. The fact that fishing companies choose not to participate with the UFAWU is reflective of competing interests within the fishing industry and not upon whether they were given the opportunity to participate in the Inquiry.

Inadequate input from the Native Brotherhood was identified by the Nishga TC. The Native Brotherhood was aware of the Inquiry and could have participated and applied for funding. A fourth interest, marine shipping and navigational concerns, was considered to be lacking by the Inquiry's marine advisor. Interests involved in marine navigation along B.C.'c coast, such as the B.C. Pilotage Authority, the Canadian Coast Guard and the Company of Master Mariners, along with shipping interests, such as major towing companies, were all informed of the Inquiry. These interests, due to their use of B.C. coastal waters, were affected by the proposals. Had the formal hearings' marine phase occurred, these interests needed to appear before the Inquiry either on their own behalf or as participant witnesses.

Participation of a fifth interest, government interests, was considered to be deficient. The BCWFederation, disturbed about the lack of federal and appropriate provincial government involvement, voiced its concern at the opening statement hearing:

> The future Canadian need for a west coast oil port must be established. In the future, major population centres on ice-free tidewater will be required to switch to offshore tanker-borne crude. The refineries of the B.C. lower mainland are obvious candidates. Ontario may also soon be forced to turn to offshore oil to meet demands. However, it may well be that a west coast port and pipeline system is not the most efficient means of meeting these needs.
>
> These issues involve important questions of national and provincial policy. Therefore, we believe that for the Commission to proceed without the full participation of the federal Department of Energy, Mines and Resources and the relevant provincial departments of the governments of B.C., Alberta and Ontario is next to pointless (Anderson, WestCoast 1 (1977): 11).

The federal government made a conscious decision not to be a participant when it established the Inquiry. Instead, full co-operation of all federal departments and agencies was specified in the Inquiry's terms of reference. Inquiry advisors had contact with various federal civil servants. Phase Two witnesses called by Counsel were from the federal department of EMR, indicating that Inquiry staff was aware of the need to hear from government sources.

As identified in the previous quote, the BCWFederation felt that oil supply and demand issues could not be properly examined without the inclusion of appropriate provincial

energy departments. Again, Inquiry staff were aware of the need to hear from these sources and had been contacting various departments to arrange evidence presentation. The Commissioner was concerned that local governments were not involved in the Inquiry. One such interest, the District, was a funded major participant, and as Figure 5-3 shows two regional governments in northern B.C. were regular participants; one of these the RD of Kitimat-Stikine was funded to prepare socio-economic evidence relevant to its interest. A third B.C. government interest, the Islands Trust, was preparing background information for a formal hearing brief submission and a representative presented a brief at the Sooke community hearing. In addition, Inquiry staff was in contact with various local governments with coastal management responsibilities, such as the Vancouver and Victoria regional governments. Thus, while perhaps not obvious at the time of the Inquiry's termination, local and regional government interests were aware of the WCOPI.

A sixth interest, small businesses in support of economic development, such as chambers of commerce, was identified by the Commissioner as an interest he expected to hear from. The Commissioner did hear from the Sooke Chamber of Commerce (See WestCoast 11 (1977): 59-62). Had the Inquiry gone to northern communities, it probably would have heard from some business interests in support of development but these interests were definitely not represented by either major or regular participants.

A final seventh interest, marine recreational users, was also identified as lacking by the Commissioner. He felt he should have heard from numerous recreational users, as happened at the Sooke community hearing when concerns were expressed about the impact of oil on marinas, sports fishing and shoreline-based recreation (Brooks, CH: 829-831). Major participants, such as the KOCoalition and the BCWFederation, intended to present evidence on recreational resources at risk. Regular participants, such as COAST, were also planning to present information on local marine-based recreation use. The author, while working on the WCOPI staff, was involved in contacting various receational organizations, such as the B.C. Council of Yachts and the Outdoor Recreation Council of B.C.. Had the WCOPI continued, these interests needed to be heard by the Inquiry.

In summary, the WCOPI recognized the need, and provided, for public participation (Requirements 2,3,4,6). It was the choice of these interests as to whether they participated in the Inquiry. Representation by oil industry and other prodevelopment interests was definitely lacking. Although the WCOPI did not hear from most of the other participating interests, had the Inquiry continued, it is likely that these interests would have been involved in either a formal or community hearing for two reasons: 1) these interests were informed of the Inquiry's existence; 2) if these interests did not come forward with evidence, then such informa-

tion should have been presented by Counsel because of his "public trust" responsibility.

Although an interest, such as the oil industry, did not want to be an Inquiry participant, relevant information possessed by such interests could have been obtained through the Commissioner's subpoena powers. Excluding these interests, the other major participants adequately represented the range of interests concerned with the proposals.

7.2 PARTICIPANT FUNDING

The Requirement

Most sources felt that the provision of public funds was necessary to ensure that all interested groups could effectively participate in the Inquiry for two reasons: 1) funding was necessary in the interest of fairness because not all interests have the financial means to participate in a lengthy and costly process; 2) funding broadened the range of Inquiry interests and the type of information obtained by the Inquiry. If there had been no funding, some sources felt that only those interests with money, notably proponent and government interests, could afford to participate and these interests would naturally present information in their favour.

Some sources questioned this requirement. Pro-development, civil servants, and an Inquiry advisor suggested that 1) the need for funding depends on circumstances because a group may apply and receive funding, even though it has adequate financial resources; 2) funding is not necessary if an inquiry holds community hearings; 3) there is no need to fund local interests as these should be represented by local government; 4) funding provides the opportunity for an opposition forum, rather than issue examination.

A comprehensive review requires that there is provision for financial aid and research time for needy participants (Requirement 6). The Inquiry provided funding for certain participants and provided research time for all participants, indicating that the Ministers and the Commissioner recognized the need for this review requirement.

Specific comments on three funding criteria: coalition of similar interests, funding allocations, recipient accountability, funding administration, reflect upon philosophical and practical problems encountered under this requirement.

Coalition of Similar Interests

There were two objectives behind this criteria: first, to avoid duplication of research by focussing similar interests into one group and second, to maximize the limited amount of

funding available to the Inquiry. Application of this criteria resulted in two coalitions: the KOCoalition's environmental interests and the UFAWU's fishing industry interests.

Sources from both coalitions commented on this funding requirement. The KOCoalition co-ordinator identified two basic models for the participation of public interest groups. The first model, where groups with similar interests have input to a reviewer through one representative was considered to be "the easier for government to deal with, is a compromise product which channels the various interests into one mouthpiece and encourages the delegation of authority among the groups because of the need for an umbrella organization". While the need for an overall co-ordinator implies that participation is left to a few dedicated members, this concept does provide a co-ordinating mechanism for developing evidence and planning a participation approach, with experienced members helping the novices. This contrasts with the second model; the one the KOCoalition co-ordinator seemed to prefer. This model provides for more direct involvement for individual groups in issue examination as each can speak on its own behalf without compromising statements, as necessitated under the first model.

The first model appears to be most applicable in a formal hearing situation, as existed in the WCOPI, because in theory coalition of similar interests should provide for a

"pooling" of resources and a focussing of research concerns, resulting in a stronger case for these interests. The second model is most appropriate in a hearing situation when identifying public concerns is a review's primary objective. This model was used in the WCOPI's community hearings where individuals, including those represented by participants, could speak directly to the Commissioner on their specific concerns.

In addition to the KOCoalition co-ordinator's comments, UFAWU and BCWFederation representatives made observations on the WCOPI's coalition concept. These groups were KOCoalition members at the Inquiry's beginning but both felt that, since their group's particular interests were sufficiently different from the KOCoalition's, they needed to be represented separately. The UFAWU made it clear to the Commissioner that fishing interests were different from the KOCoalition's broader environmental concerns, and that the UFAWU intended to participate to represent fishing interests (J.Nichol to A.Thompson, 10 May 1977). The BCWFederation's concern that opposition interests were not necessarily similar interests, and should not be forced to form a coalition, was put to the Commissioner before funding decisions were made:

> (We) do not believe that all the various opponents to the Kitimat proposal can be lumped together and treated alike. We represent sports fishermen; the UFAWU, commercial fishermen and shoreworkers. Our views have often been in conflict and may be in conflict in the future. Similarly, the Native People in the area may have very different (and even conflicting) attitudes toward the pipeline and

> terminal. We cannot see how they can be properly represented by a coalition with ourselves, whose views on the native hunting and fishing "rights" are varying indeed (B.Ottway to A.Thompson, 25 April 1977).

These concerns all identify the problem of trying to co-ordinate public participation so that the number of review participants do not become unwieldly. The coalition of similar interests concept was used by the WCOPI for funding purposes and did not limit the inclusion of similar interests as participants, if they were willing to bear participation costs. The UFAWU and the BCWFederation were considered to be major participants, even though both were KOCoalition members at the Inquiry's outset.

Funding Allocations

A second funding criteria, allocation of funds for three specific purposes, received considerable comment because of disagreement on the purpose of funding and of criticism on the types of interests funded. The Commissioner felt that allocating major participant funds for two specific purposes was a good approach as it provided the Inquiry with some control over funding expenditures. If promised evidence was not forthcoming, the Commissioner said he could withhold payment until the Inquiry received the evidence; the underlying assumption being that if funds were allocated for "general participation", the Inquiry would have had no guarantee that information relevant to participant interests would be submitted.

The Commissioner made it clear that funds awarded for formal hearing participation were the responsibility of each funded group because all had different objectives and approaches to the Inquiry. The Commissioner felt that it was only fair that such groups should be able to plan and spend these funds as they desired, and be accountable for these expenditures. The UFAWU questioned this allocation method and told the Commissioner that "our participation in the Inquiry would be greatly enhanced if we are allowed responsibility for deciding how best to use the entire funds allocated" (A.Thomlinson to A.Thompson, 13 October 1977). This request was not supported by the Commissioner because, as noted above, funds allocated for evidence presentation had to be used for that purpose.

A DFE civil servant questioned the need to fund public interest groups to obtain information. This person, involved in establishing the Inquiry's funding procedures, said such groups generally hire a consultant to obtain information. The consultant then goes to government departments to get information, and then takes it back to the group, who in turn present the information to the reviewer. This process, seen to be inefficient in terms of time and money, was also considered to be unnecessary. This source who felt that government information is best presented by government sources, also commented on public concern of the "pro-development" attitude of governments. Since governments often

employ the private sector to aid in the technical planning and design of resource development, this person wrote that the pro-development bias of government is "not as inbred as some public interest groups would like you to believe". For these reasons, the funding of interest groups to obtain information was not supported by this source.

However, a group with a legitimate concern is not going to be satisfied unless it has access to the same information as other interests involved in the review of a proposal (Requirements 7,8). It is through the interpretation of information that different opinions arise. For this reason public interests, regardless if they are funded, should be able to obtain information which is relevant to their concerns. The validity of their information should stand the test of examination by other participants and by the reviewer.

In addition to a questioning of the need to fund public interests to obtain information, there was criticism on the types of interests funded by the WCOPI. A B.C. civil servant and proponent source felt that funding provided the opportunity for an "opposition forum" since seven of the nine funded participants were opposed to oil port development. The District was the only funded pro-development interest as the RD of Kitimat-Stikine did not officially support KPL. Funding was not awarded to proponent interests

as none applied. It is quite doubtful, had they applied, that these interests would have been able to establish that they did not have sufficient financial resources to enable them to represent their positions adequately (Funding Guidelines, Requirement 4).

Although funded participants obviously supported the funding concept, there was unanimous agreement among the opposition groups that the level of funding was inadequate and could not ensure effective participation of these interests. This concern was made known to the Ministers before the Inquiry hearings began (Union of BCIC, press release, 8 June 1977). The BCWFederation was upset that as a long established group concerned with B.C. resource management issues, it was awarded less monies than the newly-formed KOCoalition. The District, also dissatisfied with the amount it was awarded, wrote to the Commissioner that District funding was "insufficient to represent citizens adequately and was not proportionate to the monies and level of interest allocated by you to other groups" (G.Thom to A.Thompson, 1 June 1977[48]). Interestingly, one UFAWU source said the UFAWU "was surprised" that it received funding; another source noted that rival fishing groups "were annoyed" that

[48] The District's funding submission had stated that it was an "undue burden" to expect the District to finance studies, provide for legal counsel, environmental consultants and undertake the administrative burden of continual representation when development is planned for Kitimat by government and private industry (A.Jones to A.Thompson, 6 May 1977).

the UFAWU had been funded. Funding amounts were allocated on the ability to pay, based on the Commissioner's second funding principle (Participant Funding, p.2). This accounts for the differing amounts.

It is hard to judge the adequacy of funding because major participants appeared to be able to afford counsel and research services, and regular participants were developing evidence specific to their concerns. Nishga TC and UFAWU respondents indicated that, if funds had not been awarded, participation would have been "geared to a different level, towards more political agitation". Such "agitation" would probably have focussed on lobbying the Ministers, rather than preparing and cross-examining evidence as the Commissioner wanted. Two regular participants who represented fishing interests and did not receive funding, said that their memberships were levied fees to cover Inquiry-related expenses because it was in these groups' self interest to participate.

These comments emphasize that Inquiry participants had different wants and needs. Funding decisions had to be made by the Commissioner, within the pressures of time and limited funds and before examination of the issues could begin. Satisfying all funding submissions was an impossible and difficult situation for the Commmissioner. He wanted to select needy interests which would make worthwhile contribu-

tions. The intention of his decisions was not to meet all participation costs.

Rather, the primary purpose was to ensure that some monies were available to interests who would have otherwise been unable to obtain and present information relevant to their interest, such as the KOCoalition, the Nishga TC and COAST. Funding the two native food fisheries studies further demonstrated the Commissioner's commitment to ensure that identified undocumented information was obtained and brought before him (Requirement 2). Had interests such as the Nishga TC and the UFAWU not been funded for developing evidence, it is probable that these interests would not have participated at this level.

Thus, Inquiry funding decisions illustrated the Commissioner's commitment to provide public interests with an opportunity to participate; to supplement needy interests financially; and to ensure that relevant information, including undocumented information, would be brought before the Inquiry (Requirements 2,5,6).

Recipient Accountability

Accounting for the expenditure of public funds was stressed as an absolute necessity by all sources questioned on funding. The Commissioner and Counsel acknowledged that a certain amount of funding was wasted as most interests were

"new at the game". The DFE accountant responsible for auditing funding expenditures said he was satisfied with submitted accounts. The need to submit all transactions and receipts to an auditor was emphasized but doubt was expressed about the accountability of some WCOPI funded participants.[49] For example, the Union of BCIC received the funds allocated for the native food study it co-ordinated, although the study was never completed.

The WCOPI environmental advisor observed that the contribution of funded participants was not impressive but that these interests were not judged in terms of their important "behind the scenes" work; that is the evidence they were gathering to present in support of their assertions. This useful information was not submitted to the Inquiry because it was primarily concerned with the environmental, fishing and socio-economic phases which were never held. The lack of supportive evidence caused one DFE source to say that there was "not one iota" of value for all the money which was allocated to participants. Another DFE source indicated that, despite administrative attempts, those who were funded were not accountable. Accountability is an absolute necessity and participants must use their funds as allocated and be accountable, particularly when scepticism exists on the

[49] Contracts were signed between the Commissioner and the funded groups. There was no direct billing of expenses to the Inquiry. Incurred expenses were recovered subsequently by participants from the Inquiry. A DFE accountant audited these expenditures.

need to provide public funding.

Funding Administration

How this mechanism was implemented emphasized the difference between the Commissioner and the Ministers on the purpose of funding. Funding administrative problems encountered by the WCOPI, particularly during the adjournment period, emphasized that although funding did provide for participation of a range public interests, problems were caused by the Commissioner's funding responsibilities and by the arrangement that funding monies came solely from DFE's budget and by the Inquiry's November 1977 adjournment.

The Commissioner, Counsel and a DFE civil servant speculated that the Department of Transport did not allocate any funds because it did not want to set a departmental precedent for funding interest groups. In retrospect, allocation of monies from a responsible department's budget was seen to be a mistake by the Commissioner and Counsel. Both suggested that Inquiry monies should have come from the Consolidated Revenue Fund administered by Treasury board, the board ultimately responsible for all federal financial authorizations. In a time of fiscal restraint Counsel observed that allocating monies to an ad hoc inquiry created bad feelings with DFE official, resulting in an "interloper" image for the WCOPI; an interloper which forced DFE to give money to "yippy public interest groups". The DFE source did indicate

that it was probably more expedient to utilize funding already allocated to the Ministers and that one way or another all monies come from Treasury Board's general revenues. However, having a single department responsible for Inquiry funding was unsatisfactory due to the previously identified reasons.

Two additional funding administrative changes were proposed: first, there should be conditional funding where, if the Commissioner was not satisfied with the participation of funded interests, funds could be terminated; second, and more fundamental, the Commissioner should not be responsible for any funding administration. These changes were put forth by a B.C. civil servant, the Commissioner and a DFE civil servant.

The Commissioner suggested, in retrospect, he should have perhaps appointed an independent person to be solely responsible for funding. The DFE source suggested that an independent management consultant should have been employed to ensure proper funding administration, and stressed the need to control Inquiry legal fees and ensure participant accountability. This source felt that adequate control over these two areas was lacking in the WCOPI.

Not surprisingly, all funded participants had no problems with the Commissioner's responsibilities because he was seen to be "approachable and sympathetic to the underdog". How-

ever, having the Commissioner responsible for establishing criteria and awarding funds created tensions among participants because funding was seen to favour opposition interests, as discussed under the funding allocation criteria. Also, pro-development interests who were funded either chose not to participate actively, as exemplified by the District, or, like the RD of Kitimat-Stikine, were not heard by the Inquiry.

In addition, the Commissioner's funding commitments differed fundamentally from the Ministers', as illustrated by the interim funding controversy which arose during the Inquiry's adjournment period. When the Inquiry was adjourned in early November 1977 no one involved in the hearings, including the Commissioner, knew how long the adjournment would last or if hearings would resume. The Commissioner and funded participants were concerned that, without funding for the interim period, participant organizers would seek other employment, and their valuable contacts and knowledge of the Inquiry would be lost. The Commissioner had discussed his intention to provide interim funding with the Ministers during their meetings on the Inquiry's adjournment, as the Commissioner recalled in a letter to the Ministers (A.Thomson to O.Lang, R.LeBlanc, L.Marchand, 18 November 1977). Funded participants submitted core budget requirements for a January to March 1978 adjournment period to the Commissioner as he had requested and, in late Novem-

ber, the Commissioner had signed interim funding contracts totalling $89,000.

The Commissioner was aware that he could not directly grant funding but understood that, through contracts, he could expeditiously allocate funds which the Inquiry had been authorized to spend. Although the Commissioner informed the DFE accountant of this procedure in early December 1977 (A.Thompson to R.Stevens, 6 December 1977), a month passed before the accountant responded that DFE was "unable to agree to your proposal and that intervenor funding through other than the grants and contribution vote (of Cabinet) would be incorrect and from an auditor's point of view, considered a contrivance to avoid the regulations under the Financial Administration Act" (R.Stevens to A.Thompson, 13 January 1978).

This response meant that cabinet authorization of interim funding would be necessary. Thus, the Commissioner requested that the Minister of State for the Environment take the necessary steps to arrange for this funding authorization (A.Thompson to L.Marchand, 13 January 1978). The Commissioner was clearly displeased with the Ministers' inaction as he closed his letter with: "I find it aggravating that the Department has only now given me an indication of the position in Mr. Steven's letter". But this request did not result in a response, forcing the Commissioner to

send a telex asking if additional funding had been applied for and, if so, when approval would be forthcoming (A.Thompson to L.Marchand, R.LeBlanc, 26 January 1978). A 30 January 1978 telephone call from the Inquiry office to the Minister of State for the Environment's office resulted in a telex which read:

> We have not applied to Treasury Board for additional funding for intervenors. Ministers prefer to await the receipt of your report before deciding on additional intervenor funding and on the possibility of reactivating the Inquiry (L.Marchand to A.Thompson, 31 January 1978).

The Commissioner was not the only one concerned about the uncertain state of interim funding. A telegram sent by the UFAWU to the Ministers articulated funded participants' concerns:

> Collectively you have betrayed the trust placed in you by the Commissioner. Indeed, it is no exaggeration to say that you have double-crossed him. You agreed in November to extend intervenor funding along with the promised indefinite extension of the life of the Inquiry, and thus, ensure that when the hearings resume participants would be present and well prepared to give evidence.
>
> We regard your action as contemptuous and insulting towards the Commissioner, and in turn to us, as participants in the Inquiry. Your act of bad faith seems calculated to be injurious to funded participants, for we can see no other reason for your delay in notifying the Commissioner of your decision. If a private citizen or business conducted its affairs as you have in this instance, they would be guilty of an illegal offence (J.Nichol to L.Marchand, R.LeBlanc and O.Lang, 1 February 1978).

The interim funding question remained in its uncertain state until the Commissioner submitted his interim statement

on 23 February 1978 when he publicly announced that, having made contractual funding commitments to some participants on the faith of the understanding that he and the Ministers had reached in November 1977, he was now receiving legal advice on his commitment (WCOPI, press release, 23 February 1978). A day later the federal government announced that it would allocate interim funding, providing that participants submitted expenditures to the federal accountant (Ministry of State for the Environment, press release, 24 February 1978).

The significance of this controversy is that while the Commissioner felt that funded participants were an essential part of his review, the federal government did not. Because hearings were adjourned in early November 1977, federal authorities could see no need for further public funding, particularly in a time of fiscal restraint. It is probable that the Ministers envisaged a funding program which provided for brief submissions only, in contrast to the Commissioner's desired active participation of all interests, as evidenced by the Inquiry's funded participants opportunities which included the right to present and cross-examine evidence, as well as submitting briefs. Major participant opportunities and their approaches to the hearings are examined in the next section.

7.3 FORMAL HEARINGS: EXAMINATION OF EVIDENCE

The Requirement

The Inquiry hearing model, based on the Berger Inquiry, was used because the Commissioner felt that two different types of information existed and that two hearing processes were needed to incorporate these information sources into the examination of Inquiry issues. This accounts for the use of formal hearings for examining technical information and community hearings for obtaining local knowledge and identifying public concerns.

The formal hearing model was established to fulfill several review requirements: that the reviewer has the powers to identify, examine and assess all significant impacts, to come to a reasonably complete understanding of the proposed use, prior to project approval (Requirement 2); that the reviewer has the power to establish procedures to undertake the review (Requirement 3); that the review is open to public scrutiny (Requirement 4); that the public is able to participate actively in the review (Requirement 6); that there is full disclosure of relevant information (Requirement 7); that review information become public documents (Requirement 8).

However, there was not unanimous agreement that this hearing model was appropriate. Three different hearing

models were identified: 1) a technical hearing on project design; 2) a hearing on public concerns; 3) a technical hearing on public concerns. The first hearing model, a technical hearing on project design, was supported by pro-development interests and civil servants. KPL's respondent felt there should be a "technical evaluation of the likelihood and characteristics of a project's impacts". This hearing should precede any "political" evaluation; an evaluation undertaken to obtain public and political responses to a given proposal. This source's main concern was to bring out project facts in the WCOPI's "essentially emotional" formal hearings. Trans Mountain respondents felt that a hearing should be held by those making project decisions; preferably a board with relevant expertise, which for a pipeline was the NEB. District sources and B.C.'s counsel supported this hearing model and said that the WCOPI's formal hearings should have been more similar to NEB hearings, with a "gentlemanly exchange" on a project's technical matters. The first hearing model does not satisfy comprehensive requirements as it excludes public interests other than those of the proponent and government, and does not provide for the examination of social, environmental or economic issues which may be relevant to a proposal.

The second hearing model, the hearing of public concerns, identified as the appropriate hearing model by DFE sources, does not satisfy comprehensive requirements either. Under

this model interested persons, or groups of persons, are provided with the opportunity to tell the reviewer of their concerns about a proposal. It does not provide for an examination of a project's technical aspects or relevant social, environmental or economic issues. In one DFE civil servant's opinion, such issues did not need to be defined or debated by the Inquiry because they were specified in its terms of reference. It was the Commissioner's role to obtain and report upon public concerns on these issues. Assessing a project's technicalities was considered to be the responsibility of government departments and agencies, with unsatisfactory details to be worked out with the proponent. Because this hearing model does not provide for public examination of all relevant issues, it does not satisfy comprehensive requirements.

The third hearing model, a technical hearing on public concerns, has two essential review characteristics which the first two models lack, as it: 1) allows for the accumulation and testing of all facts and is not restricted to technical design questions; 2) is based upon a public examination of these facts, meaning that public interests are afforded equal participation opportunities. This type of hearing was identified as the appropriate model by the Commissioner, Counsel, most of the Inquiry staff and all funded opposition participants.

Identification of these hearing models reflect upon the differing interpretations among those involved or associated with the Inquiry on the need for a public examination of Inquiry issues and on the appropriate hearing model. These three models also demonstrate different levels of understanding on comprehensive review requirements; differences which become most apparent when the Inquiry's hearing mechanisms are examined. Several topics are discussed: need for mechanisms, role and approaches of participants, relevancy of subject matter, scheduling of phases and location of formal hearings.

Need for Hearing Mechanisms

Access to information was an obvious concern of the Commissioner, as evidenced by the preparation of evidence mechanisms. The list of documents procedure ensured that all participants and the general public had access to relevant Inquiry information (Requirements 7,8). A B.C. civil servant said that one of the WCOPI's best characteristics was that work done by civil servants was publicly identified and available. Interestingly, a December 1976 request by SPEC for a copy of KPL's TERMPOL submission was refused by the Department of Transport. Yet, under the Inquiry's production of documents mechanism, all Inquiry-related material including the TERMPOL submision, were publicly available.

The circulation of evidence mechanism was useful for two reasons: 1) participants needed to be aware and in possession of written material so that cross-exmination could be prepared prior to the actual presentation of the evidence, a need identified by Counsel, the Inquiry's environmental advisor and the KOCoalition's co-ordinator; 2) if the participant does not want to cross-examine at the time of evidence presentation, a participant needs to know what a witness has said for future use, a need also identified by Counsel. This mechanism was very important to those participants who could not afford to have someone in the hearing room on a full-time basis, like the Nishga TC.

The procedures for American government evidence illustrated two important points: 1) that American government officials recognized the international implications of the Inquiry's terms of reference and were willing to co-operate by presenting evidence; 2) that the Commissioner wanted to ensure fair procedures were used for the presentation of all evidence. The Inquiry had received a legal opinion that if all participants were provided with the same opportunity to review and cross-examine through written interrogatories, then these procedures, which did not follow established Inquiry procedures, did not breach the rules of natural justice.

All but two sources felt that cross-examination was a necessity for the following reasons: 1) evidence is not true until tested and it is not tested until it is cross-examined; 2) cross-examination provides for the identification and interpretation of technical facts; 3) cross-examination is necessary in the interest of fairness. Seven specific observations elaborate on why there was support for this mechanism.

First, through cross-examination the assumptions and logic in technical studies can be identified so that a witness's reasoning can be well understood. The Inquiry's legal assistant felt this provided for an evaluation of differing technical opinions. Second, a Trans Mountain source felt that without cross-examination, it was unfair as people following could refute preceding information. Third, if evidence was presented by brief submission only a B.C. civil servant felt that witnesses would be less concerned with accuracy than if they knew they would be cross-examined. Fourth, without cross-examination, information would be submitted voluntarily. Counsel felt this is "not good enough particularly when there is conflicting technical information since it is human nature not to reveal shortcomings". Fifth, a B.C. civil servant felt that cross-examination puts pressure on witnesses to be truthful and accountable; two groups identified as being in need of this pressure were oil industry representatives and civil servants. Sixth, as a UFAWU

source observed, through cross-examination "one can make a fool out of the opposition and destroy the credibility of a witness". Seventh, as a TFoundation source observed, cross-examination is "a must, no matter who is right or wrong, to bring out information".

Only two sources, both federal civil servants, did not think that cross-examination was a necessity. One source did not give any reasons for his opinion, but the other wrote that the Inquiry should have been "inquisitorial rather than adversarial, like EARP hearings". Thus, brief submissions with no cross-examination, but "with debate", was identified by this source as the best means of bringing forth information and resolving issues.

Although there was almost unanimous support for cross-examination, there were differing opinions on the need for lawyers. The focus of these differences was on whether lawyers rather than technically-trained people should be used as cross-examiners. Sources supporting the use of lawyers felt that lawyers are trained to ferret out information by narrowing and focussing in on critical questions. Those supporting the use of lawyers included the Commissioner, most of his staff and some opposition participants. One KOCoalition source observed that one's interest is best represented by a lawyer when one is dealing with professional people who "know the rules of the game". If a witness

is experienced in appearing before a hearing board and being cross-examined, has an interest and money at stake, then the unskilled cross-examiner might have difficulty obtaining information that a witness does not want to disclose. This source, who was also involved in the Berger Inquiry, felt that a good lawyer will "cut off all escape routes and get the answer to the question being asked".

Counsel said that questioning can be done by lawyers or others, but that lawyers save time in the long run because those who are not trained to confront and challenge, may take a technical approach and miss the issue which needs to be addressed. The Inquiry's legal assistant said that in a seminar situation, when everyone is there for the "common good", then there is no need for a lawyer. But, in an adversarial hearing like the WCOPI, there was a definite need for a lawyer.

The need for legal representation was questioned by those concerned about the motives and costs of lawyers. The Inquiry's economic advisor observed that lawyers want to win a case and this does not necessarily mean bringing out relevant information. This person felt that the criminal court approach of some participant lawyers, that is focussing on witness intimidation, was inappropriate in a technical hearing searching for facts. B.C.'s counsel and a District source both felt that a more "gentlemanly exchange", as

occurs in NEB hearings, was more appropriate than the Inquiry's adversarial, criminal court approach. The Inquiry's public relations officer and an assistant counsel, and a B.C. civil servant, all suggested that some lawyers were "debating for debate's sake".

One specific negative aspect arising from the use of lawyers, the high cost of legal fees, was cited by the District, KOCoalition and DFE sources. DFE civil servants were also particularly critical of the use of lawyers in cross-examination. One said that lawyers were unnecessary for the examination of technical information and should be used only for "procedural or court-conduct matters"; thereby reducing the amount of time a lawyer is in the hearing room and resultant legal fees. Another significant comment on the use of lawyers came from a KOCoalition source. He observed that the choice of lawyer is important. A "high-priced, high-powered" lawyer may not have the right approach for his client's interest, the necessary time commitment, or be able to relate to the client's interest. A lawyer's unfamiliarity with critical issues was identified as a real concern by a B.C. civil servant and the Inquiry's community relations advisor.

An alternative to high legal fees and the possibility of a lawyer's unfamiliarity with issues or inappropriate approach, is to use a "non-lawyer" cross-examiner. Such a

person should have a consistent overview of relevant issues, access to technical information and be skilled in cross-examination techniques. This alternative, advocated by an Inquiry community relations staff member, was used by the UFAWU. The UFAWU co-ordinator, who did a considerable amount of cross-examining, said that one does not have to be a lawyer to cross-examine effectively. One can learn with experience particularly when, as existed in the WCOPI, the reviewer is tolerant of non-lawyer cross-examination. This person felt that the Commissioner did not want to let the legal aspects of the hearing intimidate such an approach to examining evidence.

The use of a lawyer depends on a participant's role. If a hearing deals with legal procedures, such as the submission and cross-examination of evidence, then it is probably in any participant's interest to be represented by a lawyer. How the lawyer is used is the critical factor. A lawyer need not attend all hearing procedures; nor do all the questioning. The appropriate approach can be worked out between the lawyer and the participant employing the lawyer. The main objective should be to ensure that the participant's interest is represented in the best way, and in a way which is not detrimental to the review.

Cross-examination took longer than the Inquiry's schedule allowed for. This created rescheduling problems because of

witnesses' prior commitments and also contributed to high Inquiry costs, due to the time lawyers spent in the hearing room and the use of the hearing facilities. The Commissioner and his counsels were concerned about reducing the hearing time and costs associated with the presentation and examination of evidence. One assistant counsel proposed that "testimony submitted at counsel meetings which was not controversial could simply be filed, saving the time of the Inquiry" (B.Williams to R.Anthony, 1 November 1977). Two procedural changes were implemented in Phase Two to overcome these problems: 1) cross-examination time was divided equally among all participants; 2) outstanding questions after the completion of cross-examination could be submitted in writing to the witness and a written response would be obtained (Drexel, WestCoast 6 (1977): 34). The need for these changes were identified by Counsel:

> Because of the very complex nature of the issues to be discussed and because of the great number of isues raised by the proposals to build a west coast oil port, it is essential that an efficient and effective method of proceeding be created. This means that the system must be one that can operate swiftly, yet effectively, in examining the various issues. The present procedure of filing statements of evidence in advance and exchanging information on witnesses to be called, should be continued and expanded. In order to get beyond the conventional wisdom of the international marine industry and arrive at conclusions specific to the coastal B.C. situation, a considerable depth of expertise will be required. Very technical evidence should be made available to the Inquiry more than two weeks in advance of its presentation so that a greater effort to analyse evidence and prepare cross-examination could be made. This additional time would be necessary to enable participants to make use of experts not locally resident.

> A further procedure whereby the statement of evidence, after circulation, can be filed without the necessity of a witness attending, might be similarly followed in those areas where the evidence is not in dispute. The Inquiry has already amended its original requirement that witnesses orally present their complete statement of evidence.
>
> If the Inquiry wishes to receive the evidence of people with stature, it must be prepared to establish a procedure that will ensure the efficient presentation of their evidence. For example, it wil be impossible to obtain the voluntary atttendance of experts from other countries if the Inquiry is unable to indicate in advance when it is that they will be required and for how long. Experts in the international community are prepared to assist the Inquiry and to attend, for a reasonable time, to ensure their evidence is thoroughly presented and tested by questions. They may not, nor should they be expected to, travel great distances merely to be informed that their evidence cannot be heard because of poor scheduling on our part.
>
> While recognizing this problem, Commission Counsel is opposed, in principle, to the concept of limitation of cross-examination. It may be necessary, however, to institute limitations if participants are not in a position to advise of the length of expected cross-examination, in advance of the witness's attendance. Such agreement would have to be reached before the attendance of the witness (that is upon review of the written statement of evidence). In those instances where agreement of length of cross-examination cannot be reached, times should be assigned by the Commissioner, with the right of written interrogatories (Interim Submission, pp. 135-136).

The above quote identifies that the Inquiry encountered problems with its hearing mechanisms. Analysis of WCOPI participants' role, and their respective approaches to the WCOPI's hearing procedures, confirms that a major problem existed in the preparation, presentation and examination of evidence and was one reason that a comprehensive review was not possible.

Role and Approaches of Participants

The role of all participants, and not just Counsel, was to ensure that all relevant information was brought before the WCOPI for public examination. Counsel was concerned that both proponents and other participants were taking a restrictive approach towards their obligation to call evidence, "being satisfied merely to call that evidence which directly supports their current positions". This was articulated further in Counsel's interim submission:

> In our view all participants before the Inquiry, not only Counsel, carry an obligation to ensure that all evidence relevant to the issues before the Inquiry is available. There should be no doubt in the minds of the participants that if there is evidence they feel should be before the Inquiry and if none of the other participants is intending to call that evidence, they have an obligation to call the evidence themselves. If that evidence is not totally in support of a position they wish to take, they have the opportunity to make that position clear to the Inquiry and, in fact, cross-examine on evidence called in that way. Counsel will, of course, assist in ensuring that that evidence does come before the Inquiry, if such assistance is required. That is a very different role, however, to the one whereby participants merely wait until the last moment, identify witnesses they want and leave it to others to ensure that attendance of those witnesses.
>
> Because of this broad responsibility of participants, Counsel has initiated a concept of meetings of counsel and representatives to review the evidence to be called. Too often, however, the participants have been unwilling or unable to indicate the nature of the evidence they propose to call or the amount of time that evidence will take. While this is often the result of the fact that there is a lack of clarity of the issues and the short time available to review the evidence of others, there is also a reluctance to exchange such information. Because of the very complex and often very sophisticated nature of the evidence to be called, it is not possible for each participant, whether

> proponent or intervenor or Counsel, to proceed in isolation. It is necessary that we know the general nature of the evidence to be called far enough in advance to do the proper preliminary research and consider the general nature of the further evidence to be called. In our view, a more detailed and comprehensive exchange of information on witnesses must be followed to ensure the orderly and effective presentation of evidence (Interim Submission, pp. 132-133).

Analysis of the participants' approaches to the formal hearing procedures confirms Counsel's assertions, and reflects upon these difficulties, as they meant that a "full and fair" examination through the use of WCOPI hearing procedures was not possible. The Inquiry's intended procedure was to have proponents prepare and submit information and supportive witnesses, but this did not happen. None of the three pro-development major participants actively participated in preparing and presenting evidence in support of their respective proposals. Both proponents called evidence which was site specific and would not submit information on the broader marine, environmental and socio-economic issues relevant to coastal tanker traffic.

KPL, at the opening statement hearing, promised to give the Inquiry information on its proposal (Cressey, WestCoast (1977): 5). What this meant in practical terms was articulated in an August letter from KPL's counsel to Counsel:

> . . . we are instructed to advise you that the role of KPL Ltd. in the WCOPI as it relates not only to Phase Two, but to all phases of the Inquiry, will be as follows:
>
> 1. KPL will file as exhibits its NEB Application and related Deficiency Letter together

with the TERMPOL Submission and other related Deficiency materials as well as any other relevant documents which it feels should be filed.

2. A.J. Cressey, Vice President and Project Manager of KPL Ltd., will be produced as an officer of that corporation to answer any questions pertaining to the material as filed.

3. KPL Ltd. will not be presenting any direct evidence, although, as indicated, A.J. Cressey will be available to answer any questions in cross-examination on behalf of KPL as the Inquiry proceeds (F.Saville to R.Anthony, 15 August 1977).

Counsel, who found this approach to be "unfortunate and completely unacceptable", responded as follows:

> As was made clear at the opening of the Inquiry and at each subsequent attendance, the Inquiry has requested the voluntary co-operation and assistance of all corporations and individuals who have information relevant to the matters before the Inquiry. The very fact that KPL has an application pending before the NEB and has compiled the reports and documents listed and filed with the Inquiry amply demonstrates that KPL does have information relevant to the matters before the Inquiry. I regard the decision not to call evidence as a matter of breach of faith with the Inquiry (R.Anthony to F.Saville, 17 August 1977).

KPL's position remained unchanged and KPL confirmed that, while its proposal had risks associated with it, KPL felt no obligation to provide information on such issues as tanker traffic or ship safety. The proponent further informed Counsel that it "did not have any direct information as to tanker operating practices and procedures, and the use of tankers in oil transport but that some of the proponents of

our company would be prepared to discuss this with you" (J.Cressey to R.Anthony, 26 August 1979).

A Trans Mountain source indicated that the company "drew the line of responsibility" and "tried not to get involved in issues surrounding the marine transport of oil". As a carrier providing pipeline transportation services for commodities such as oil, this company does not own any of the commodities it transports and thus has no direct responsibilities other than when its facilities are in use. The District, funded to present and examine information, withdrew after two hearing days. A District source said this was done since the hearings were "a waste of time and money because unsubstantiated statements were being made". Thus, this participant presented no evidence and chose "to go the political route" to win support for KPL's proposal, rather than to participate the WCOPI's hearings.

This lack of proponent participation and other pro-development interests was a concern of the Commissioner and Counsel in that it made the WCOPI appear to be one-sided, to favour of opposition interests. Four reasons for such a minimal level of pro-development participation were identified by Counsel. First, it costs money to attend hearings. Second, if a company participated actively, then it becomes an obvious target for criticism. Third, there were avenues other than the WCOPI to win support for a proposal, notably

the NEB and federal and B.C. cabinet ministers. Fourth, the seriousness of the proposals was questionable, particularly KPL's.

The first two reasons are self-explanatory. The last two require some elaboration. Counsel, opposition participants, most of the Inquiry staff and B.C. civil servants all voiced the opinion that the June 1977 KPL withdrawal was a tactical move; the intention being to ride out the Inquiry's reporting date. Because KPL had the option of reapplying after the Inquiry had completed its review, these sources felt that KPL would not have to subject a new proposal to public scrutiny. Also, as one KOCoalition source observed, had the oil industry supported KPL's proposal and wanted the WCOPI's approval, KPL and other oil industry interests would have presented evidence and used "capable, high powered" lawyers, as occurred in the MVPI.

Additional support for the speculation that the oil industry was not supportive of KPL can be found in Phase Two evidence which showed that there were differing industry opinions on the need for a port and on existing and potential alternative sites. Opposition participants, particularly the KOCoalition, asserted from the beginning that KPL anticipated Canadian regulatory approvals would take less time than American ones. When it became apparent that the WCOPI was not going to be an "easy" review process, KPL

chose the "path of least resistance", and withdrew its application.

The intention of KPL was to win support for its proposal. To do this, the approach KPL selected was to keep a low profile and to avoid participating actively in the hearings. This minimal participation approach of both KPL and Trans Mountain was identified as unsatisfactory by the Commissioner, Counsel, Inquiry staff and opposition participants. However, as a KPL source indicated, the WCOPI was a "biased, no-win situation in which the deck was stacked against the proposal". Thus, KPL and other pro-development interests did not want to get involved in the WCOPI. One reason that the WCOPI was seen to be a "no-win" situation was due to the approach of opposition participants to the WCOPI hearings.

The intention of these participants was no different from those supporting a port proposal: their intention was to win. For opposition participants this meant defeating the proposals. This common interest resulted in the cooperation of four participants, the UFAWU, KOCoalition, Nishga TC and Union of BCIC, in their preparation, presentation and examination of evidence.[50] A working committee was established when funding was allocated, to co-ordinate the day-to-day technical aspects of the hearings (Union of BCIC, press

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[50] The BCWFederation did not co-ordinate its participation with the other opposition interests and is discussed separately.

release, 8 June 1977).

This co-ordinated effort was most evident in the collecting of evidence and sharing of counsel. The KOCoalition's consultant focussed on gathering information on previous oil spills and had contacted some twenty potential witnesses, including persons from the prestigious Canadian Bedford Institute and the American Wood's Hole Marine Institute. A European trip planned to establish contact with other potential witnesses never occurred due to the Inquiry's termination. The Nishga TC's counsel said, that when in Japan on other business, he had contacted potential witnesses for evidence on oil spill experiences in Japan's Inland sea. This information was to be shared with other participants because it was of mutual importance and presentation to the Inquiry was not "a question of one upmanship". The UFAWU focussed on organizing evidence on fishing issues; that is the navigational risks associated with the proposed routes and increased tanker traffic, and the impact of oil on fish resources. As well, there was a sharing of the KOCoalition's counsel because such cooperation on reduced legal expenses and counsel of other participants was not always available.

However, UFAWU and Nishga TC sources stressed that, when an important point was to be made for their particular interest, their counsel did so. This shows that each group's

particular interest wanted to be represented on its own merits and that there were different philosophical commitments to the Inquiry; a difference which was particularly evident between the UFAWU and the KOCoalition. The KOCoalition supported the inquiry process as the best means to review a proposal, as evidenced by its founding members' demands for a Berger type inquiry, in the decision to represent KOCoalition concerns by counsel in the formal hearings, and the request that the Commissioner have a "yes/no" clause in his terms of reference.

In contrast, the UFAWU felt the KOCoalition's "faith in the Commissioner and his Inquiry was naive". The UFAWU demanded that its fishing interests be represented separately, making it clear to the Commissioner that the UFAWU would make its own decisions on how its concerns would be best represented, as illustrated by the UFAWU'S use of its own counsel and a November trip to Ottawa to speak with the Ministers about extending the Inquiry's reporting date and participant funding. These differences emphasize that even among similar interests, there were conflicting philosophical commitments to the WCOPI.

The overall co-operative effort of the four opposition participants contrasted with the BCWFederation's position that its participant role was to identify potential witnesses to be called by Counsel, and to cross-examine these

witnesses, rather than to prepare supportive evidence on behalf of the BCWFederation. This was made clear to the Commissioner when this group applied for participant funding:

> . . .the main burden of technical analysis and criticism must be on the shoulder of the government departments involved and the responsibility for calling such witnesses and examining the company's proposals must remain with the Inquiry staff and yourself. . . . Our role is that of watchdog, intervenor and critic and not that of counter-applicant.
>
> Where the Commission Staff fail to question, or fail to call pertinent witnesses, we intend to intervene but we do not see that it is possible, at this late stage, for intervenors to take on the whole burden of analysis and a full sifting of the complications of the proposal (B.Ottway to A.Thompson, 25 April 1977).

Just as proponents took a restrictive approach to calling evidence, opposition participants did likewise. These participants did not adhere to the WCOPI procedures established for this purpose, as illustrated by different requests that Counsel call some witnesses and that the Commissioner subpoena others. These approaches to calling evidence suggest that either these participants were unfamiliar with WCOPI hearing procedures, or they deliberately chose not to adhere to these procedures. The latter seems most likely as the following examples illustrate.

In response to a 18 September 1977 KOCoalition request that Counsel call two Phase One witnesses, Counsel wrote that "both the timing and the nature of your request make it difficult for me to respond in the manner you requested and

that the procedure for calling these witnesses is well known to you" (A.Rounthwaite to R.Anthony, 8 September 1977; R.Anthony to A.Rounthwaite, 20 September 1977).[51] As well, rather than directly contacting witnesses and developing evidence with them for submission, these participants requested that the Commissioner sub poena witnesses, as evidenced by the UFAWU's request for the Phase Two attendance of Jack Cressey, KPL's vice president and project manager; Earl Joudrie, KPL's chairman and president; Don Getty, Alberta's minister of energy; William Hopper, president of PetroCanada; and Marshall Crowe, then NEB chairman.

In Counsel's opinion, the Commissioner seemed to accept this approach. As reported in the Digest, in support of Counsel's opinion, the Commissioner only pointed out that the responsibility for calling witnesses is shared by Counsel and the various participants; that funds have been allocated for this purpose; and that he was disappointed that the participants had not made greater use of these funds (Thompson, WestCoast, 6 (1977): 33). The Commissioner then agreed to arrange for the appearance of most of the

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[51] One witness, C.I.Young from the Department of Transport's regional marine emergency vessel traffic management section, was requested to provide a statistical summary of oil spill shipping incidents along B.C.'s coast. The other witness, L.L.Audette, the administrator of the marine pollution claims fund, was requested to submit information on how this fund's procedures work in practice. Audette was called by the WCELAssociation on the KOCoalition's behalf, but Young did not appear as a witness.

requested individuals.[52] As the Commissioner did not directly ask if such witnesses had been contacted, there was no incentive for these participants to adhere to the initial rules of procedure and to prepare evidence to support their interests.

The reason that participants chose this approach was probably due to the way funding was allocated. As discussed under the funding mechanism, $120,000 had been allocated to the UFAWU, KOCoalition, Union of BCIC and the Nishga TC specifically for costs incurred during the preparation and submission of evidence. Thus, by requesting that the Commissioner or Counsel call certain witnesses this money would not be used, allowing these participants to call additional witnesses. Also, Counsel observed that this approach was less work for these participants as it allowed their counsels more time for cross-examination preparation which in Counsels opinion is easier than preparing evidence. Such an approach to evidence preparation and presentation was clearly not in accordance with WCOPI funding decisions and

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[52] A review of Inquiry files indicated that the Commissioner used his power of subpoena once. Letters of invitation, rather than subpoenas, were sent to witnesses requested by the UFAWU. These letters said that the Commissioner felt the recipient's attendance would provide information relative to the Inquiry and invited the individual to attend. One subpoena was issued 20 October 1977 in response to the province of B.C. request for the attendance of BCEC employees and the energy advisor to the B.C. Minister of Energy, Transport and Communications (P.Pearlman to A.Thompson, 10 October 1977). These witnesses never appeared due to the Inquiry's termination.

hearing procedures.

The lack of adherence to evidence submission procedures was not the only misuse of WCOPI mechanisms by these participants. Many respondents expressed concern about the "obstructionist, repetitive and irrelevant" cross-examination by opposition participants; the most cited example being the UFAWU's counsel's cross-examination of an Ashland Oil company witness in Phase Two (See WestCoast 6 (1977): 33-35). Sources complaining about this approach included Counsel, Inquiry advisors, the District, proponent and B.C. respondents.

One counsel considered the lack of control over the relevancy of questioning to be a reflection upon the Commissioner, implying that he did not exercise his powers to force adherence to procedural rules. One Inquiry advisor said the fact that it was allowed to occur was an insult to the Commissioner, the witnesses and made a "sham" of the inquiry process. The need for greater control over relevant questions was stressed by all Inquiry staff associated with technical issues. In particular, Counsel felt that the Commissioner should have asked why certain questions were being asked, and instruct the cross-examiner to get to the point relevant to the evidence.

The participants who used this repetitive approach did so because repetition of questions by different interests was

seen to stress the significance of particular issues. Some sources, notably Inquiry staff, suggested that some repetition was probably due to lack of preparation by counsel. These concerns over relevancy of cross-examination were put to the Commissioner, who said he found such an approach to be difficult to handle for four reasons. First, he felt inexperienced questioning was probably due to lack of knowledge and understanding of the issues, and expected that this would have improved, had the Inquiry continued. Second, the Commissioner found it hard to curtail discussion on the basis of relevancy because of his broad terms of reference. Third, he was concerned about fairness, in that if one starts to cut off discussion, one runs the risk of appearing to be arbitrary. Fourth, the Commissioner saw the offensive manner of opposition participants as a deliberate attempt to bait him and attack the establishment. Specifically citing the UFAWU-Ashland Oil exchange as an example, the Commissioner said he was determined not "to bite the bait and provide a forum for an open fight between a participant and the Commissioner".

The Commissioner's comments illustrate that he did not want to allow the legal aspects of hearing and cross-examining evidence to intimidate the uninitiated. However, the Inquiry's participation and hearing mechanisms required that a cross-examiner be aware of previously discussed topics and address issues pertinent to the evidence at hand, rather

than posturing on behalf of a participant's interest through repetitive and irrelevant questioning. Had the Inquiry continued, this approach should not have been tolerated by the Commissioner because it does not focus on relevant information, wastes hearing time and thus does not provide for an efficient examination of relevant information.

These cross-examination techniques emphasized the adversarial nature of the issues, and influenced the extent to which all participants adhered to Inquiry hearing procedures. Respondents generally accepted that an adversarial situation was inevitable and unavoidable because Inquiry issues were adversarial by their very nature. The "battlelines were drawn" from the outset between those in support of a port and those opposed to any such development. The Commissioner felt that the adversarial situation was inappropriate but participants had different levels of understanding of the inquiry process; "some of whom were at sea and participated on an elementary level". A B.C. civil servant felt that the Commissioner accepted the adversarial situation as evidenced by the Inquiry's hearing procedures. This same source felt that polarization of opinions was good because when a commissioner's recommendations are given, everyone knows whose position is being supported.

The Commissioner aptly observed that there were differing levels of understanding among all participants of their

roles. Their perceptions differed from the Inquiry's intended role. Proponents' non-participation and willingness to call only site-specific information suggests that these participants were not prepared to participate in a hearing examining broad social, economic and environmental issues arising from their proposals. The withdrawal of both KPL and Trans Mountain meant that there was no real "testing" of Inquiry issues. The participants left after these withdrawals were, with the exception of Counsel, opposition participants; participants who were not commited to participating in the Inquiry in an efficient manner, that is, as the Commissioner observed "to submit relevant facts in a timely way".

The approaches of WCOPI participants, all of whom used the Inquiry mechanisms for their particular advantage, increased Counsel's responsibility to ensure that "the other side" was brought forward, as was done in Phase Two. The onus was on all participants to make the inquiry process work. But, due to non-compliance with the Inquiry's mechanisms for obtaining, presenting and examining information, this did not occur.

In fairness to all involved in the WCOPI, the uncertainty over the Inquiry's ability to fulfill its terms of reference, that is to hold its scheduled six formal hearing phases and community hearings before the December 1977

reporting date, transcended Inquiry proceedings and undoubtly influenced the approach of participants. The non-participation of pro-development interests and the adversarial attitude of opposition interests reflected this uncertainty.

The lack of an active proponent created another problem: it raised the question of whether the WCOPI was an issue-orientated or project-specific inquiry. Counsel's view was that, although there are a number of issues that can be properly examined with or without the presence of a proponent for evaluation, there was a definite need for a proponent in some phases:

> It would be extremely difficult to conduct some aspects of Phase Two, Three, Four, Five or Six without a proposal to consider and without the active participation of a proponent. This is because those phases of the Inquiry are structured as an assessment and not merely an examination of general questions of policy. Examining a series of alternatives or alternative scenarios rather than a defined project would result in a very complicated and repetitive process. While it is quite possible and, in many ways preferable to have at first a general discussion of the policy issues implicit in an application (such as was done in Phase One and Phase Two), one cannot do an assessment, as required by the terms of reference, unless there is something to assess.
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> It is also important that the proponents of a scheme appear before the Inquiry to state, under oath, what it is they intend to do in specific situations. Various participants will want the assurance of a representative of the proponent company that particular measures will be followed. In those circumstances, it is not sufficient merely to have consultants for proponents or member companies of a consortium appear and state what their views are, without some indication that the proponent, who is responsible for administering the project, also proposes to take the same action. It is the view of Counsel that the Commis-

> sioner require the active and responsible participation of a proponent for a west coast oil port before proceeding with the consideration of the balance of Phase Two or Phase Three, Four, Five and Six of the Inquiry (Interim Submission, pp.134-135).

Counsel's concern that, without a proponent, the WCOPI's formal hearing mechanism could not function, was shared by the Commissioner, and was one of the reasons that the hearings were adjourned prior to completion of the six hearing phases. The subject matter and scheduling of formal hearings created other problems for the Inquiry.

Subject Matter of Hearing Phases

Although a formal preliminary hearing phase is not specified in Figure 5-4, this first phase enabled the Commissioner to inform the public of the Inquiry's existence, his terms of reference, how to participate, apply for funding and keep informed of the Inquiry. This was done through informal meetings held by the Commissioner during late April and early May 1977 in Vancouver, Victoria, the Kitimat area and the QCIslands. Notice of the location and time of these meetings was placed in local newspapers. It was during this phase that participants were identified, funding criteria established, funds awarded, the Inquiry's Vancouver office established, staff hired, and the Inquiry's information dissemination mechanisms commenced (Requirements 3,5,6,9).

The Inquiry's terms of reference and proposed phases were publicly discussed at the 4 May 1977 preliminary hearing in Kitimat. This hearing resulted in the restructuring of the proposed phases' subject matter and creation of a fishing phase[53]. These changes demonstrate that although the Commissioner was presented with arguments from proponent, B.C. and District participants to carry out his review "expeditiously", he was responsive to concerns expressed by certain participants on the relevancy of fishing issues, and established a mechanism to review these concerns:

> to accommodate the fishing interests I will restructure the phases so as to introduce a new Fishing Industry Impacts Phase. This phase will cover all aspects in the Inquiry of special interest to fishermen. . .This phase will not include the environmental impacts of oil spills on marine resources, including fish, which will be dealt with in the Environmental Phase (Preliminary Rulings, p.12).

The Commissioner felt this preliminary phase served an educative function because participants were identified and "the ground rules worked out". However, in retrospect, he felt that the Inquiry's preliminary work was "too short and misdirected". The community relations advisor shared the Commissioner's opinion that it is "a waste of time to focus on commonly accepted assertions". Although the Inquiry's phases were publicly discussed, their timing and subject

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[53] Counsel had proposed four formal hearing phases: 1) Volumes and origin of west coast tanker traffic: 2) Facilities and marine operations; 3) Environmental impacts; 4) Social and economic impacts on B.C., local areas and native communities (WCOPI, Counsel Submission on Procedure, 20 April 1977).

matter restructured, the real issues, that is technical questions that experts disagree on, were not addressed by the Inquiry. The lack of focus on critical issues is reflected in respondents' comments on the subject matter of Phases One and Two.

Phase One's subject matter, originally intended to address Canadian legislation and regulation of the marine transportation of oil, was broadened by the Inquiry's revised terms of reference. The inclusion of Trans Mountain and other proposals likely to affect the B.C. coast meant that American and international laws pertaining to the marine transportation of oil became relevant to this phase. This change in emphasis did not affect the formal hearing's overall organization because the phases "as originally conceived took a broad view of oil tanker traffic on the west coast and its impact in the Kitimat region and in the Strait of Juan de Fuca" (Supplementary Rulings, p.2).

There was an acknowledged need to consider legislation relevant to the Inquiry. However, the adminstration of these laws was seen by some, notably Inquiry advisors and Counsel, to be more relevant to the marine and environmental phases. One of two changes proposed for Phase One was Counsel's proposal that each participant should have prepared a position paper on the adequacy of existing legislation, rather than presenting evidence in the hearing room. The second change,

put forth by the Inquiry's legal assistant, was that Phase One should have been scheduled as the final phase. After hearing all of the evidence, this person felt that participants would have been better informed of the real issues of concern, and could have focussed upon legal requirements to rectify the situations.

These comments reinforce the observation that information which is critical to a resource proposal must be identified prior to the review's examination and must be the focus of evidence presentation. Otherwise, a review may go "through the motions" of receiving relevant information, but the critical points may be excluded and not examined. The question as to what information is relevant arises, as demonstrated by comments on Phase Two's subject matter, a controversial aspect of the Inquiry.

Federal and B.C. civil servants and proponent sources felt that the Inquiry had "no business" addressing complex oil supply and demand questions as its terms of reference did not specifically include this topic. These sources all indicated that the NEB was the appropriate hearing body, with the necessary experience and technical expertise. The Inquiry's economic advisor also wondered if Phase Two were not beyond the Inquiry's mandate. However, both the Commissioner and Counsel indicated that, although, economic issues were not specified in the Inquiry's terms of reference, they

had "no problem" with the inclusion of Phase Two. When asked specifically about the Inquiry's ability to examine complex economic questions, the Commissioner and his economic advisor said that the evidence would have been the same whether it was heard by the Inquiry or the NEB[54].

Phase Two, as originally planned, was not to examine oil supply and demand issues. When the Inquiry was established, the Commissioner had discussions with NEB and federal EMR civil servants on the holding of parallel NEB and WCOPI hearings. The intention was that the NEB would hear the KPL and Trans Mountain applications. Then the Inquiry would translate the NEB's supply and demand information into number of barrels and resultant tanker traffic implications of the port proposal such as size, number, origin of tankers and their type of oil. As the Commissioner observed in late May the NEB "has stated that its hearings will commence in early August" (Preliminary Rulings, p.11).

However, the NEB did not set a hearing date and KPL withdrew its application in June 1977. At this time KPL requested that the NEB hold its application in abeyance and indicated that if Trans Mountain did not receive regulatory approval, KPL would probably want to proceed with its own

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[54] The Commissioner's analysis of Phase Two evidence presented by various oil industry interests, appearing on their own behalf, was that there was no pressing need for a port and that feasible alternatives existed to the KPL and Trans Mountain proposals (Thompson, 1978, p.viii).

application (WCOPI, Exhibit 24, as cited in Interim Submission, p. 12). KPL indicated to the Inquiry that it would still participate in the Inquiry since KPL regarded its proposal as being in abeyance, not cancelled.

By early September 1977, it was clear to the Commissioner and Counsel that the Inquiry needed to have its own supply and demand hearing because without one, the issue of need for a port would not be examined. This issue, of critical importance to opposition interests, was an obvious concern of the Commissioner and his staff. Thus, although not originally planned, Phase Two addressed the need for, and alternatives to, an oil port.

Hearings on the remaining phases were not held. Whether the holding of these phases would have resulted in a comprehensive examination of their subject matter will remain unanswered. Of importance is recognition that a mechanism was in place for a public examination of these issues (Requirement 2).

Scheduling of Phases

The ordering and subject matter of the Inquiry's six phases created scheduling problems from the Inquiry's start. At the preliminary hearing Counsel proposed that formal hearings begin on the 11 July 1977. Fishing interests wanted the hearings to be postponed until mid-October 1977 or March

1978, when the fishing season was closed so that fishermen could participate (Green, Community Hearing Transcripts (CH):139; Lipsett, CH:138; McPhee, CH:145; Nichol, CH:87). KPL's counsel wanted hearings to start as proposed because of the Inquiry's December 1977 reporting date. The Commissioner reflected upon these concerns in his preliminary rulings:

> there were strong objections to the proposals of Commission Counsel for the timing of the phases, and particularly to the proposed starting date of July 11th. These objections were in most cases based on a desire for more preparation time by participants who, until they know the extent of participant funding to be provided by the federal government, will not be in a position to make detailed preparations for Phase One (Preliminary Rulings, p.10).

Thus, the major scheduling concern at the Inquiry's beginning was that participants were unsure of the funding they might receive. Thus, it would be unfair to commence the hearing of evidence in early July 1977 as this would give funded participants only one month's preparation time. The re-arranging of the Inquiry's hearing phases "so as to be responsive as possible to the arguments for delay" (Preliminary Rulings, p.11), reflects upn the review requirement that participants be provided with needed research and evidence preparation time (Requirement 6). Proponents felt these changes were unnecessary and funded participants indicated that they still had inadequate preparation time.

As Appendix B: Summary of WCOPI Events shows, the Inquiry had additional scheduling problems. The opening statement hearings were held as scheduled in mid-July 1977 but when the Inquiry's terms of reference were revised to specifically include Trans Mountain's proposal in June 1977, the Commissioner ruled that because "the uncertainty created by recent events caused some delay in the preparation by parties and because the new focus of the Inquiry requires increased emphasis on U.S. and international laws and regulations, Phase One would be postponed until 7 September 1977 (Supplementary Rulings, p. 4). Phase One, postponed another two weeks to allow the Commissioner to recuperate from minor surgery, did not commence until 26 September 1977. Phase Two, originally scheduled to commence on 7 September 1977, did not begin until 24 October 1977.

Scheduling problems were due to two reasons: 1)organization and presentation of highly technical and controversial information; 2) the uncertainty over the Inquiry's reporting date. Both of these factors influenced the participants' approaches to the Inquiry. Uncertainty over the time available to the Inquiry, particularly because of the lack of a proponent, meant that the second hearing mechanism, community hearings, was not used as initially intended, as is discussed following consideration as a final topic specified to the formal hearings, the location of such hearings.

Location of Formal Hearings

The Inquiry's formal hearings were all held in Vancouver, although the last part of Phase Two and its oil supply and demand issues was to be held in Victoria. Phase Three's marine issues and the socio-economic issues of Phase Six were scheduled to be held in Kitimat and the fishing phase, Phase Five, was to be held in Prince Rupert. Some sources, notably the Commissioner, community relations staff, Nishga TC and some KOCoalition and UFAWU representatives, felt that formal hearings needed to be in locations other than Vancouver. Others, notably KOCoalition and UFAWU sources, felt that if a formal hearing was solely a technical hearing, then there was no need for hearings outside of Vancouver. As one UFAWU source aptly observed, "it does not really matter where formal hearings are held, as they are the arena in which the dedicated have to fight it out". Vancouver was seen to be the most convenient and cheapest formal hearing location.

Interestingly, some northern B.C. regular participant community organizers also supported having formal hearings in Vancouver. TFoundation, COAST and IPCommittee sources said that, because they were primarily concerned with informing local residents about the Inquiry and organizing for community hearings evidence, formal hearing procedures were not directly pertinent to their community-based concerns. These sources implied that, due to the KOCoalition's

formal hearing participation, the holding of northern formal hearings was not a major concern of these regular participants.

Those who supported having formal hearings outside of Vancouver were primarily concerned with the Inquiry's image. A "moving" inquiry was interpreted as one which recognizes and shows concern for those outside of B.C.'s southern mainland area and not "just another southern-based government organization". According to the Nishga TC source, being "on the move" makes an inquiry visible and generates media coverage. The scheduled Inquiry locations were described as "adequate" and "sufficient" by most sources.

A moving inquiry creates scheduling and planning problems. Transportation and accommodation had to be arranged for the Commissioner, Inquiry staff and witnesses. These are additional hearing costs that an inquiry and its participants must incur if formal, technical hearings are to be held in more than one location. In the case of the WCOPI, having formal hearings in different coastal locations was a good idea because, all too often, Vancouver is seen to be the place where provincial decisions are made. If an inquiry is to be a "public" inquiry, it must be responsive to its relevant public. The scheduling of formal hearings in locations other than Vancouver showed that the WCOPI was aware of interests outside of B.C.'s lower mainland.

7.4 COMMUNITY HEARINGS: PUBLIC CONCERNS AND UNDOCUMENTED INFORMATION

The Requirement

Three community hearing functions were identified, reflecting upon different objectives which this hearing model fulfilled: 1) information/evidence gathering; 2) hearing of public concerns; 3) public education. The first function, information/evidence gathering, identified by the Commissioner, Counsel, most of the Inquiry staff and all opposition participants, was based on the need to obtain undocumented local information, particularly on topics which experts disagreed upon such as navigation and weather conditions in B.C.'s north coast region. Other undocumented subjects relevant to the WCOPI were native dependency upon salmon and other food fisheries and lifestyles in B.C.'s coastal communities. The Commissioner specifically wanted to learn about the history and economics of these coastal communities, and the special environmental, ecological and social conditions known best by local people (Preliminary Rulings, pp.8-9). Concerned about the "fine line" between local knowledge and opinion evidence, the Inquiry's marine and economic advisors questioned this hearing function.

The second function, hearing of public concerns, was seen to be the community hearings primary purpose by funded participants, civil servant and proponent sources. The KOCoal-

ition consultant observed that "regardless of the facts, the concern is how people perceive the facts and what their concerns are". One B.C. civil servant indicated that there was value in obtaining the "political pulse in local areas" and another felt there is value in the "gauging of public opinion to assist in decision-making".

Because the Commissioner wanted to hear from the general public this second function was supported by him and Inquiry staff. However, neither the Commissioner nor his staff wanted the Inquiry to become a "roving opinion poll". In Counsel's opinion, it is important "to know public perceptions, even if they are technically wrong or exaggerated". The community relations advisor felt that it was important to "let people say their piece". Thus, the intention was to provide the Commissioner with an opportunity "to learn directly about public attitudes on the broad options open to the government and on the competing values which the government is trying to balance" and to obtain "better information for the government on the range of options available . . . as people's attitudes on these things will determine what types of solutions they will help make possible" (A. Pape to R. Anthony, 31 October 1977).

A few respondents questioned this function. A District respondent felt community hearings were strictly for public relations and that, rather than hearing public concerns,

these hearings were used to generate publicity and support for those opposed to the proposals. A DFE civil servant also questioned the objectives of this type of hearing. In his opinion, if the intention was to get the "true pulse" of public opinion at a locality, then this type of hearing was necessary. But, if the intention was issue resolution, then such a hearing model was unnecessary. Another DFE source indicated that if formal hearings were held in communities affected by a project, community hearings into public concerns were not necessary.

The third community hearing function, public education, was identified by several individuals, including the Commissioner, Counsel, both proponents and a DFE civil servant. Two proponent sources, one a counsel, the other a representative, did not support the first two community hearing models. KPL's representative told the Inquiry that its community hearing approach "amounts to an attempt to poll the jury before the evidence has been heard" (Cressey, WestCoast 11 (1977): 60). Sources opposed to the Inquiry's approach felt that the Inquiry should have gone to affected communities after the formal hearings had assessed the projects and identified community impacts. The DFE civil servant felt that the Commissioner should exercise an "educative" function, by informing community residents about the various proposals before him, rather than just hearing public concerns.

The Commissioner's comments on the Inquiry's three community hearing functions show that he was aware of these different purposes, and that all three needed to be part of the hearing mechanism, if public concerns were to be identified and examined by the WCOPI (Requirements 2,3,4,5,6,7,8,9). As with the formal hearing mechanism, there were different interpretations on the purpose of community hearings. Three specific topics, namely the Inquiry's hearing policy, resultant hearing procedures and scheduling problems, reflect upon how this mechanism was implemented.

Community Hearing Policy

There was a "parting of the ways" between the Commissioner, Counsel and the community relations advisor over the Commissioner's policy decision on the organization and overall role of community hearings. At the Inquiry's beginning, two policy approaches for planning community hearings were identified by Counsel. The first was based on meetings between community hearing staff, various participant representatives and community interests. The second was a committee approach, where meetings between Inquiry staff and representatives of all participants would form the basis for Inquiry decisions on the location and timing of community hearings.

Counsel supported the committee approach because all participants have an input into organizational decisions. When

Counsel proposed establishing such an approach to participants in early July 1977, representatives for KPL, the UFAWU, KOCoalition, Nishga TC and Union of BCIC, "all indicated an interest in the idea" (R.Anthony to A.Pape, 11 July 1977). However, the community relations staff did not support this committee approach:

> In our opinion the community hearings are the responsibility of Inquiry staff and the Commissioner. We cannot believe that any committee should be struck which would determine either the format, agenda or timing for community hearings.
>
> Obviously though, we cannot plan or create successful community hearings on our own. We will continue to plan these hearings with the co-operation of major and minor participants in the Inquiry, and a whole host of other organizations and individuals in the communities affected.
>
> We would propose to arrange a meeting for about mid-August with representatives of the companies and the other participants in the Inquiry so that we could bring them up-to-date on our thinking and hear any suggestions they might have with regard to planning and preparation of community hearings. I would hope that by then our thinking will be well enough developed, and our contacts in the communities extensive enough, that we can give them a very full sense of what we propose to do. At that point I am sure they will be able to continue giving us useful insights as well (A.Pape to R.Anthony, 15 July 1977).

The community relations advisor felt that participants had to be involved in the planning of community hearings in order to "help locate experts". People with local knowledge relevant to the Inquiry had to be identified and contacted prior to a hearing to ensure that their information would be heard. The Inquiry needed to have access to participants' membership-base to do this. This staff advisor also observed

that the Inquiry did not know what would emerge from the community hearings. Issues, such as "white outs" experienced on fishermen's radar, could have emerged as being significant. The Inquiry wanted to hear from fishermen to know if such an issue was common to specific coastal areas. To obtain such information, community hearings had to be planned with input from specific participant interests.

The Commissioner chose to use the first approach, where community relations staff worked with specific participant and community interests. This was a mistake in Counsel's opinion because this approach works well only if staff has a good working relationship with all participant interests. If there are "hostile and split" interests, as existed in the WCOPI, then the committee approach was seen by Counsel to be the better method.

The policy of including proponent interests in organizing community hearings was specifically identified by the community relations staff (See previously cited memo of 15 July 1977). However, Inquiry correspondence shows this did not occur. In early August 1977, the community relations advisor sent a letter regarding a meeting on the location and timing of community hearings to opposition participants (A.Pape to B.Gannon (VOICE); T.Pearse (KOCoalition); D.Rossenbloom (Nishga TC); R.Salter (Union of BCIC); A.Thomlinson (UFAWU), August 1977). Similarly, a 22 Septem-

ber 1977 letter on community hearing scheduling was sent by the staff advisor to these same five groups. No record of correspondence with other participants on this topic was found.

It appears that opposition interests were the only participants who the community relations staff liased. Thus, it is not surprising that respondents representing the proponents, the District and Inquiry advisors not involved in community hearing planning, felt that community hearings were biased against oil port development. Concerns on bias were put to the Commissioner, as the ultimate decision on community hearings was his.

The Commissioner recognized the existence of these concerns but did not seem to be overly concerned about the seemingly close relationship between his community relations staff and opposition interests. The Commissioner concurred with the community relations advisor's opinion that, if the Inquiry wanted the participation of interest groups, then it needed to have access to these groups' "inner circles". One such example was the participation of native interests. The Commissioner wanted information on coastal native fisheries and lifestyles. As previously discussed, the Union of BCIC would only participate if river-based native communities were visited by the Commissioner, which he did.

Hearing Procedures

Just as there was disagreement over the WCOPI's policy decision, there was disagreement over community hearing procedures. Comments on hearing procedures reflect upon two review problems encountered through the use of this hearing model: proponent involvement and the need for cross-examination. No proponent presented information at any community hearing, although a Trans Mountain representative did answer questions at the Steveston hearing. Mandatory attendance of proponents was raised by the Union of BCIC's counsel in Phase One when she requested that the Commissioner rule that corporate representatives from each of the oil port proposals accompany the Commission to the hearings to make them, and their information, available to the people (Mandel, Formal Hearing Transcript (FH): 2052).

The Commissioner declined to rule until the proponents had a chance to formulate a view as to what their position would be (Thompson, FH: 2054). KPL's response was that it would not be attending any community hearings "as the Inquiry does not have enough information before it to give community groups a meaningful basis for discussion of the issues under consideration" (Drexel, WestCoast 5 (1977): 29). Trans Mountain indicated it would send a representative to the Steveston hearing but no others, as the company saw no relevancy to hearings in the native communities of Mount Currie and Lillooet, and did not intend to go to any

northern hearings, although this would be decided as the Inquiry progressed (C.Johnson to R.Anthony and A.Pape, 29 September 1977).

The Commissioner, who invited rather than compelled proponents to attend community hearings, was very concerned about the non-attendance and non-participation of proponents in community hearings. He said that if industry interests are represented "in the flesh and blood and not in the abstract", it shows that proposals are being put forth by "people doing something for people". He also felt, as did a community relations assistant, that having proponents present to answer questions could reduce the spread of misinformation and exaggeration. Proponent sources indicated that they did not attend community hearings because these hearings were seen to be "opposition forums" and "no-win situations". The overt bias of the Inquiry's community relations staff, their planning approach to community hearings and the negative concerns which dominated these hearings, served to confirm the proponents' opinions.

The other concern specific to community hearing procedures was that without cross-examination, "misinformation can gain credibility as fact" because unchallenged opinions and assertions can be taken as factual without any supportive proof. Respondents were divided on the need for cross-examination in these hearings. Community hearing evidence

was viewed as opinion evidence by a COAST representative and two Inquiry advisors, and as such should not be cross-examined. The UFAWU co-ordinator said that people "were coming forward to have their say and were not posing as witnesses". Most opposition participants felt it was the Commissioner and his staff's responsibility to identify and resolve technical issues. Another reason against cross-examination, that people would not come forward if they knew they were going to be cross-examined by a lawyer, was given by the Inquiry's community and economic advisors and a COAST organizer. A TFoundation representative said it was "hard enough to get information out of people" and it would have been even harder to get people to speak if they knew they were "going to be intimidated by a lawyer". This person felt that native peoples would have particularly suffered under this procedure; such people were seen to be shy and uncertain in a hearing situation.

The first of two reasons in suppport of cross-examination, that if people knew they were "going to be challenged, they would have looked into their assertions and cut down on emotional inaccuracies", was identified by the Inquiry's marine advisor and a District source. The second reason, that in fairness to the proponents, community hearing procedures should have been "no different from the formal hearings", was identified by Nishga TC and District sources. The Commissioner and his community relations staff recog-

nized the need to test recurring public assertions, but cross-examination was not considered to be appropriate, because the Inquiry's paramount objective was to get local people to speak.

Thus, two other "testing" mechanisms were used: questioning by the Commissioner and formal hearing examination of specific community hearing evidence. The intention of the first mechanism, questioning by the Commissioner, was that gross exaggerations would be corrected by the Commissioner, such as statements that all marine life dies if contaminated by oil. In the community relations advisor's opinion, this technique was used "sometimes well, sometimes badly". As the Inquiry's legal assistant observed, this approach means that the Commissioner must weigh the relevance of information being heard by him. This person suggested that the Commissioner "should have pushed an individual if he wanted to rely on the given information", as the Commissioner could ask questions to focus on the validity of the individuals' assertions. A supplement to this technique suggested by the marine advisor was that Counsel and Inquiry technical advisors should have been at the hearings to ask questions directly, or pass questions to the Commissioner for him to ask. This procedure, which would have been expensive due to the necessary staff commitments and legal expenses, would still have been a form of cross-examination.

In the community relations advisor's words, "not having cross-examination does not mean that the evidence is poor. Pieces of evidence could add up to a whole picture. If a 'big' picture emerged, the Inquiry would tests its validity in the formal hearings". Thus, the intention of the second testing mechanism was that such information would be presented in the formal hearings by individual witnesses or in panel form, and be subject to cross-examination by all participants. Areas in need of "testing", such as coastal weather and navigational conditions, were emerging. An internal Inquiry memo system was established to identify potential topics cited in transcripts and raised by individual submissions to the Inquiry, but this testing mechanism was not used due to the Inquiry's termination.

Scheduling

Scheduling community hearings, that is deciding on the time and location of a hearing, was a problem throughout the Inquiry because of the uncertainty over the Inquiry's time frame. However, the Commissioner, his staff, opposition and regular participants planned community hearings on the assumption that the Inquiry would go beyond the December 1977 reporting date. Location problems focussed on identifying the communities which needed to be heard from, as it was obvious that the Inquiry could not visit every coastal community. As well, the June 1977 revision of the Inquiry's

terms of reference meant that the whole coast was relevant, rather than only those communities along the marine routes into Kitimat. Thus, the community relations staff organized coastal and coast-related communities into geographical regions. Twenty groupings, totalling over sixty communities listed in Appendix D were identified by community relations staff as being relevant.

The decision to hold a community hearing also had to incorporate timing factors, as identified by the community relations advisor in a memo to the Commissioner:

> Oil pollution of the scale we are dealing with forces us to ensure that we know the whole coast and the critical relationships to major river systems as well. Commercial fishing interests are not located in small sections of the coast, but cover many parts of it; moreover those who fish do not restrict their work to the areas around their home community. Therefore, fishermen in the Charlottes have real knowledge and interests in areas on the west coast or the south coast. Non-commercial fishing on the coast is of real significance; to document it and understand it in a fair analytical framework is difficult. Non-commercial fishing up the major river systems is of critical importance to very large numbers, and especially native Indian people. Those interests are far-flung and diverse; most important they are not popularly understood or recognized in this province and therefore they are not easy to study . . . Fishing, canning and other forms of marine harvesting work occur through most of the year. These are very labour intensive activities. Increasingly these involve people in travelling and staying away from their homes for long periods. Work is scheduled by seasons, fish runs and regulation. These things, together with weather problems, create serious scheduling difficulties for us, especially regarding community hearings (A.Pape to A.Thompson, 19 September 1977).

The community relations staff advisor identified additional timing concerns when interviewed: weather conditions, formal hearing schedules, other events in a given community, and most importantly, if a community was "ready" for the Inquiry. If the Inquiry was to obtain useful information, it could go to a community only if weather conditions provided access to the community, if no formal hearings were scheduled concurrently and if no other major community events were taking place, to ensure that interested persons and those with local information would be available and heard by the Inquiry. Scheduling under these constraints created problems:

> The nature of coastal and marine-related communities, their work schedules throughout the seasons and the complexities of travel on the coast, make it difficult to establish a schedule of hearings to fit the Inquiry's own wishes. In order to hold these hearings, the Inquiry must integrate its schedule to the rhythms of the places and people being studied. That should be no surprise to any social researcher with any field experience. It does create problems not usually experienced by urban-based studies (A.Pape to R.Anthony, 31 October 1977, p. 3).

There was continual pressure on the Commissioner and the community relations advisor because of the uncertainty over community hearing scheduling. The advisor said he found this uncertainty to be "a degrading process and could not relax", because he could not give definite answers to participants on when specific hearings would be held. The actual decision on the "when and where" of a community hearing was the Commissioner's, based on staff and participant advice. Only

five community hearings were held; all were in southern B.C.. Of the five hearings, two were in native communities organized by the Union of BCIC, two were in predominant fishing areas, organized by the UFAWU and one was in Sooke, a coastal community "just an oil spill" away from the site of Northern Tier's proposal. This fifth hearing, the only one not associated with an opposition participant, was organized by the community relations staff and various community groups, including the Women's Institute, the Chamber of Commerce and Sooke Bluepeace.

Thus, the concerns of citizens from B.C.'s north coast and Vancouver Island's west coast were not heard; nor was knowledge specific to these locations obtained by the Inquiry. There was also a recurring criticism among respondents that the interests reflected in community hearings evidence were of those opposed to oil port development. Those who voiced this opinion included the Commissioner, Counsel, and B.C. sources. One Inquiry advisor was critical of community hearings generally and felt that they were "too biased, a discredit to the Commissioner and destroyed the capacity of the Inquiry to be independent and objective". The purpose of these hearings was to gather information from a broad range of interests, and "not just the opposition". However, due to the type of communities visited, one should expect that negative aspects of port development would be the focus of a hearing.

This discussion, and the WCOPI community hearings policy decisions, reveals that the Commissioner and his staff had different ideas on the purpose of community hearings and their organization. The Commissioner's desire to hear from the range of public interests affected by the proposal(s) meant he was prepared to accommodate the demands placed on him by participant interests. This discussion also shows that the community hearing mechanism was established to obtain local public knowledge and to hear public concerns (Requirements 4,6). The people attending these hearings were definitely reflective of opposition interests. This was largely due to the Inquiry staff planning approach, the non-attendance of proponents, and a function of the type of communities which were visited. It is difficult to speculate if pro-development interests would have been heard by the WCOPI if the Inquiry had continued.

7.5 INFORMATION DISSEMINATION AND PUBLIC ACCESS

The Requirement

It is impossible to ascertain the extent to which the Inquiry's use of the media, transcripts, the Digest, the Inquiry and public libraries Westcoast Reports and hearing procedures provided for information dissemination. Specific comments were made on the usefulness of these mechanisms.

The importance of, and need for, media coverage was stressed by the Commissioner, Inquiry staff and opposition participants. However, there were differing interpretations on the media's role. Most respondents saw media coverage as being critical to the Commissioner's recommendations. As Counsel observed, the only strength of an inquiry is a commissioner's public report. The community relations advisor saw the media as an information link to politicans. In contrast, opposition participants saw media coverage as being critical to the accomplishment of their own goals, rather than those of the Inquiry. Publicity of their Inquiry participation was thought to generate public support and to show the politicans that their positions were not going to be easily accommodated, such as the publicized Phase One attendance of George Manuel on behalf of the Union of BCIC.

Regardless of a group's motives, the key to media coverage is to obtain the media's interest; no one can overtly control the reporting of the media. Also, as the press relations officer observed, the Commissioner and his Inquiry "were not out to be media stars". Thus, in addition to providing media facilities in the hearings and having the Commissioner accessible for questioning, the holding of hearings in different locations was seen to be a way of generating media interest. This resulted in local and provincial press and radio coverage of community hearings; the Namu and Mount Currie hearings received national television news coverage.

Interestingly, sources all stressed the importance of media coverage, but none were pleased with it. The Commissioner and his advisors felt that the media did not understand, or adequately analyse, the Inquiry and its issues. An effort was made by the Vancouver newspaper media to cover the Inquiry's hearings but the Commissioner, in particular, felt that because reporters are not traditionally exposed to in-depth, issue-oriented reporting, their Inquiry coverage was not overly analytical[55]. There was one notable exception, a Canadian Broadcasting Corporation reporter from Prince Rupert, was considered by the Commissioner to have developed "a good sense of the issues".

The community relations advisor felt that, because of poor analytical reporting, the media created an image of a "floundering and vulnerable" inquiry. This respondent and others, including the Commissioner, his public relations officer and opposition participants, speculated that had the proponents and other oil industry interests actively participated in the hearings, the Inquiry would have generated more media interest, resulting in a higher public profile. There was some public debate over the issue of west coast tanker traffic as evidenced by the series of Page Six articles in the Vancouver Sun, but this type of coverage was atypical and not continuous. The concensus of respondents

[55] Vancouver's two daily newspapers assigned reporters to attend and report on formal and community hearing proceedings.

was that the Inquiry did not generate a level of high public awareness, even in B.C.

The inevitable comparison to the Berger Inquiry arose during interivews with those familiar with that inquiry. These respondents all noted that the Berger Inquiry did not start out with media interest. Yet, by the end of it, Commissioner Berger had captivated the imagination and sympathetic support of the press. The ability to generate national media attention was largely due to the romantic and nationalistic issue of the development of Canada's north. Historical analysis may not support the Berger Inquiry's recommended ten year moratorium on pipeline development, but there can be no doubt that the Berger Inquiry generated national media coverage and had a very high public profile, something the WCOPI lacked. The media did serve an information dissemination role, that of informing the public of Inquiry events.

Transcripts were considered to be essential for those involved in the examination of the Inquiry's substantive issues and to aid in their preparation of evidence and cross-examination. The Commissioner, Counsel and the Inquiry's environmental advisor observed that, had the Inquiry continued, the transcripts would have been used more widely, particularly during the environmental and socio-economic phases. The cumulative subject index prepared by the

Inquiry librarian would have become invaluable as such an index makes transcripts easy to use by identifying the page location of evidence according to witness name and topic and, as Counsel observed, aided in the preparation of the Inquiry's final submission.

Because transcripts were so important, fast reproduction and distribution was a priority. This meant that the expensive services of court reporters were used for the simultaneous recording of hearing proceedings. The cost of transcripts, initially underestimated, was seen as a necessary expenditure by the Commissioner. Transcripts did fulfill the Inquiry's second information dissemination goal, that of keeping participants informed of Inquiry evidence, but this mechanism was not an instrument for disseminating information to the general public.

Most sources thought the Digest was a good idea. There were criticism of its contents, together with complimentary comments. The community relations advisor described the Digest as the Inquiry's "success story". In retrospect, if the Inquiry was to use only one technique for informing the public of the Inquiry, this advisor would choose the Digest. The use of the print medium, as a means of informing a given public, was of critical importance because it is a record which can be refered to. Verbal coverage such as news reporting is gone once it is spoken.

Proponents thought the Digest was "too one-sided", biased against an oil port. In the interim submission hearing, KPL's representative said of the Digest, that "there is a risk . . .that undue emphasis can be placed upon a given statement which does not truly reflect the evidence when viewed in total" (Cressey, WestCoast, 11 (1977): 60). Two opposition participant sources thought the Digest was "apolitical" and "tempered the lingo of the actual evidence". Other negative comments, that it was "too glossy and high-powered" were probably justified. However, as the Commissioner and Inquiry staff aptly observed, being visibly impressive and "catchy" meant that people read it. Sources did indicate that the Digest was more readable than the transcripts and provided readers with a basic awareness of the issues being canvassed.

Sources representing public interest groups said they informed their members and others of the Digest's existence but they did not rely on it to keep their membership informed of the Inquiry. All groups had their own information networks. For example the UFAWU and the KOCoalition produced and distributed newsletters, as did other B.C. fishing interests. One reason that these participants did not rely on the Digest as an information source was due to the time lag of about one month between a hearing and the mailing of a finished Digest issue. Cheaper and faster production alternatives were being considered prior to the

Inquiry's termination. Thus, the Digest fulfilled the first and second goals of the Inquiry's information program.

The Inquiry's library was viewed as being essential by the Commissioner Inquiry staff and most other respondents. Some northern-based contacts indicated that as they did not use the library, they could not comment on its usefulness. The library was primarily used by Inquiry staff and a few participants. Use by the public was very low, but the Commissioner and Inquiry staff felt that it probably would have been used more, had the Inquiry continued. The provision that the library be open for evening public use indicated that the Inquiry wanted to be able to accommodate public requests and provide easy access to Inquiry information.

A questionnaire was sent to all libraries receiving Inquiry-related material, asking about the level of public use of these material[56]. Responses indicated that public use was negligible for two reasons: 1) it takes time to get such information catalogued and "out on the shelf"; 2) the issue was topical for a short time. As several librarians wrote, it is important that libraries be used as depositories for information on issues affecting a local area. However, a review must provide information and a librarian must

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[56] These libraries included public libraries in Vancouver, Victoria, Duncan, Nanaimo, Prince Rupert, Terrace and Kitimat. The B.C. legislative library in Victoria and the Legal Aid Society on the QCIslands also received library materials.

be aware that it exists, obtain it, make it visible and readily available once it is received. A review staff must be aware of the need to contact and send useable information to appropriate libraries, and other community-based information centres, such as the QCIslands Legal Aid Society.

Sources, including two Inquiry staff members, questioned the distribution of costly transcripts and proponent submissions to regional libraries. However, this mechanism was established to fulfill the first and third information goals because relevant Inquiry information needed to be accessible to the interested public. Again, had the Inquiry continued and held hearings outside of the lower mainland, public library materials probably would have been used more.

It is difficult to assess the usefulness of other mechanisms, the community information program and Westcoast Reports. It is also impossible to assess if the Inquiry's information dissemination techniques provided for participant and public access to Inquiry information, due to the Inquiry's termination. Although it may be observed that the brief circulation and transcript mechanisms were most useful for participant preparation of evidence and cross-examination, it is more difficult to ascertain if other mechanisms adequately provided for dispersal of Inquiry information. The one exception, the Digest, meant that those with a passing interest in the WCOPI were probably kept well-informed.

It is possible to observe that the Commissioner was committed to ensuring that all relevant information was accessible to participants and the public, as evidenced by the Inquiry's list of documents, brief circulation and cross-examination hearing procedures and the Commissioner's relevancy rulings. There were two occassions which demonstrate this commitment: 1) the native land claims issue; 2) production of privileged federal documents.

Native Land Claims

The first relevancy test occured in Phase One when B.C. counsel argued that evidence proposed by the Union of BCIC, addressing native peoples' jurisdictional claims to coastal fisheries and marine resources, should not be heard by the Inquiry:

> Our examination of the outlines of evidence as provided by the UBCIC. . . indicates that they will advance certain theories of Indian sovereignty, Indian constitutional claims, based on aboriginal title. These theories . . .are unrecognized by the laws of this province, therefore B.C. will not debate these matters before you (Edwards, FH: 2455).

Counsel for the Union of BCIC argued that the evidence should be heard because "the native jurisdiction is as much a feature of the network of jurisdictional questions as is the jurisdiction of any government body" (Mandel, FH:2459). Representatives of the WCELAssociation, KOCoalition, and UFAWU supported hearing the evidence and Trans Mountain's counsel spoke against (Drexel, WestCoast 5 (1977): 32).

After hearing all who wished to address the subject, the Commissioner ruled that the evidence was important as a "background to understanding the impacts that the oil port and pipeline proposals would have on native people" and therefore the evidence would be heard (Thompson, FH:2470).

Production of Federal Documents

The second relevancy test was also raised in Phase One. The KOCoalition's counsel requested that a file on a 1974 oil spill in Vancouver's harbour be produced by a DFE witness[57]. Counsel for DFE declared the documents as privileged and unavailable because one of the documents was "a senior official's advice to a Minister of the Crown" and that" if this thing were to become available for public scrutiny, it would prevent the advice being given to the Minister on which he must act (and) would bring government . . to a halt" (MacLennan, FH:2153). The Commissioner directed that DFE counsel obtain an affidavit from the Minister of Fisheries and the Environment, declaring the documents to be privileged and that participants could submit briefs on the legal questions involved in the matter of privileged documents (Thompson, WestCoast 4 (1977): 27.

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[57] The KOCoalition's consultant had worked for DFE and was aware of the file's existence. The calling of such evidence, which was not listed in the federal government's list of documents was provided by the Inquiry's ruling that any document known to exist by any participant could be requested (Preliminary Ruling)

This controversy, begun in mid-September 1977, was not resolved until 4 November 1977 when DFE counsel informed the Commissioner that privilege would not be claimed. DFE's counsel said that it would be demonstrated through questioning of the witness that "the documents were not relevant to the Inquiry and therefore should not be submitted as evidence" (MacLennan, WestCoast 8 (1977): 50. THe KOCoalition's counsel then argued that the witness could not be questioned about the documents and their relevancy could not be debated until all counsels were permitted to see the documents. Following a lengthy debate on the legal questions of relevancy between these two counsels, the Commissioner ruled that the documents, which he had read, were clearly relevant to the Inquiry as they related "to how responsible agencies of government respond to oil spills" and that counsels could see the documents and cross-examine the witness (Thompson, WestCoast 8 (1977): 50).

During cross-examination it was discovered that a company, Burrard Dry Dock, allegedly had illegally used dispersants to clean up the spill. Local DFE officials, on the Department of Justices's recommendations, decided to prosecute. However, after being informed of this decision, the then Minister of the Environment sent a memo to DFE officials in Vancouver containing the following instruction: "No. Terse letter in form of warning to B.D. only" (Davis, WestCoast, 8 (1977); 50). The KOCoalition, who did not

anticipate that there would be a lengthy legal debate following their request for the production of the file, intended to show how Canadian laws are implemented. Their point was that although government civil servants may recommend prosecution for oil pollution incidents, ministers can intervene to prevent such action.

These two relevancy rulings illustrate the Commissioner's commitment to ensure that all relevant Inquiry information was publicly obtained and examined. The Commissioner's concept of relevant was broad ranging as demonstrated by the inclusion of native land claims and production of federal documents. The WCOPI's information dissemination techniques, hearing procedures and the Commissioner's relevancy rulings indicate that the Inquiry provided public access to relevant information.

7.6 INQUIRY OFFICE

The Requirement

The need for competent staff to advise the Commissioner and to ensure all relevant public interests and information became part of the Inquiry's public hearings, was identified as a necessary part of the WCOPI because of the review requirement that a review staff must ensure that affected interests and relevant information are identified and included in a review, and that the reviewer is provided with

the financial resources to carry out a comprehensive review (Requirements 2,3,5,6,7,9).

Factors which influenced the choice of a downtown Vancouver location of both office and hearing facilities were: immediate availability for a relatively short time period; rental cost; access to accommodation, restaurants and offices. The Howe Street office location was chosen primarily because it was available and could be kept open in the evenings for public access to the Inquiry library. Two practical factors influencing the selection of the Devonshire Hotel were accommodation of press and court reporting facilities, and public access because of its central location. Two topics, financial administration and staff positions, were identified as being important to this mechanism as they influenced the WCOPI's overall structural organization and reflect upon how the Inquiry staff fulfilled their duties.

Financial Administration

The Commissioner was responsible for administering the $1.4 million allocated to the Inquiry.[58] In the Commissioner's opinion, the overall budget was satisfactory although some individual items were initially underestimated, such as the community information program by $80,000 and transcripts by $250,000. These amounts, with the $120,000 cost of Counsel's witnesses and consultants, were included in a revised budget

[58] Appendix E identifies WCOPI expenditures.

requesting an additional $750,000 to $1,000,000 (A.Thompson to O.Lang and R.LeBlanc, 10 August 1977). This new budget, accompanied by a revised hearing schedule, proposed a July 1978 reporting date[59]. The Ministers were not receptive to these demands:

> Other points of concern, particularly as related to your letter on the budget, are the the 'underestimates' for the current year, your perception of the 'broadened' scope of the Inquiry and the extent to which you now propose to utilize consultants and witnesses for developing information for the Inquiry. In regard to an extension beyond the current year, a complete reassessment by officials of the two concerned departments of details relating to the operations and expectations of the Inquiry would appear to be indicated.
>
> A detailed breakdown of the $250,000 underestimate should be reviwed with officials of our two departments. It was understood, for example, that the $120,000 which was allocated to the intervenors for calling witnesses was in fact funding that would otherwise have been used by Commission Counsel for exactly the same purpose. The matters respecting transcripts and the community information program can also be questioned in the absence of detail with respect to available options and their anticipated consequences (R.LeBlanc and O.Lang to A.Thompson, 15 September 1977).

The Commissioner's response to these criticisms was that Counsel's $120,000 had been re-allocated because "expediency dictated that we not go back to Treasury Board for further funds and therefore my recommended levels of funding could be met by dipping into the Commission's budget" (A.Thompson to R.LeBlanc and O.Lang, 10 August 1977). In this same letter, the Commissioner accepted responsibility for the gross

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[59] The $120,000 had been part of Counsel's budget allocation but had been re-allocated to the funded major participants for witness costs (Participant Funding, p.3).

underestimation of transcript costs and the community information program and stated that, at the time of his April budget submission, the Inquiry had little idea about what was involved in such a program.

As Appendix E shows, the community information program accounted for 7.9% of the WCOPI's total expenditures; Westcoast Reports cost $34,500, the Digest $54,593. The largest expense was participant funding at 22.9%. Legal fees were second at 13.5%. Of the 14.4% costs incurred through the preparation and submission of Counsel's evidence, 11.1% was for non-Inquiry staff consultants and witnesses, 3.8% for transcripts. The Commissioner's salary amounted to 5.6% of the Inquiry's total budget. As expected, Inquiry costs were highest when hearings were in sessions, during October and November 1977, due to hearing facilities, transcripts, media relations, counsel and witness expenditures.

The Commissioner identified staff salaries, transcripts and hearing facilities as unavoidable costs but suggested that the cost of WestCoast Reports were perhaps too high. He did stress that the Inquiry did not exceed its allocated budget. Although Appendix E does not include the $89,000 interim participant funding, inclusion of this amount supports the Commissioner's assertion that the Inquiry did operate within its $1.4 million. Additional monies needed to continue the WCOPI were not allocated as requested by the

Commissioner and, as Chapter Six reveals, the Inquiry's review was not to be completed.

Staff Positions

There were differing opinions on the need for various staff positions. Most sources, including the Commissioner and his staff, said the use of counsel, while optional, was necessary, particularly in a situation involving the hearing of highly technical and controversial evidence. The Commisioner was aware of the need for advice on technical issues as evidenced by the inclusion of two assistant counsels. Respondents also identified a need for someone separate from the Commissioner and familiar with legal procedures, to "thrash out the ground rules" with participants. The community relations advisor saw Counsel as the Commissioner's "front man" and "alter ego" in that Counsel tested out the Commissioner's ideas on participants. Two other Inquiry advisors stressed the need for an advisor to the Commissioner, in case the Commisisoner became lost in evidentiary details or was being influenced by a particular participant interest. Two DFE civil servants questioned the need for counsel because these sources supported the concept of the pubic opinion hearing and thus saw no need for "expensive" lawyers.

The dual role of Counsel was commented upon by several sources who had problems resolving Counsel's independence:

Counsel, as a major participant, presented and cross-examined information and as the Commissioner's advisor, advised him on Inquiry evidence. In these people's minds, this dual role meant that Counsel was aligned closely with the Commissioner, was the Commissioner's representative and not an independent participant. Counsel was aware of being both advocate and advisor. In his opinion these two roles were not in conflict since they functioned separately in practice. Being a major participant meant that Counsel should have no closer relationship to the Commissioner than any other participant. During the Inquiry everything was done as publicly as possible, through the the hearings and participant meetings. This advocate role was paramount until the Commissioner's recommendations had to be formulated, when the advisory role became of prime importance.

The choice of Counsel was commented upon. UFAWU and KOCoalition sources observed that although Counsel was "well-intending and capable", he gave the impression of being disorganized in participant meetings. Another KOCoalition source said that Counsel was "very helpful and approachable". One funded participant thought Counsel was not "sparkly" and did not generate media attention. The KPL representative did not think Counsel was neutral because of Counsel's 15 November 1977 speech before the Special Investigations Committee of the House of Representatives Committee on Interior and Insular Affairs in Seattle, Washington.

Both KPL and Trans Mountain sources thought it "was in bad taste" for Counsel to publicly discuss the Inquiry in an American forum, prior to the Inquiry's completion. It was at this time that KPL decided that Counsel biased against their proposal and "ceased to communicate" with Counsel. A review of Counsel's speech revealed that it outlined the Inquiry's purpose; nowhere did it state opposition to, or support for, an oil port.

The point to be made is that choice of Counsel is very important. Counsel must maintain a working relationship with participants as the Commissioner needs someone to organize hearing procedures. Counsel must also be knowlegable on inquiry issues and be capable of discussing these issues with technical staff. Most importantly, Counsel must have a good working relationship with the Commissioner to be able to advise and work with the Commissioner.

Because of the immense number of documents an inquiry amasses, there was a definite need for someone to be responsible for the proper documentation of exhibits for the legal record, the safe storage of them, and the provision for quick duplication and distribution of documents to participants and the media. Exhibits and evidence were recorded by court reporters when counsel or the person tabling the document read out the name, title, source and number of the exhibit. However, there was a definite need for a useable

list of these exhibits, requiring that the commission secretary be in the hearing room.

Several Inquiry staff, including the commission secretary, suggested that this position required someone with a strong legal background, to relieve the workload of the Commissioner and Counsel. The need for a "hard nosed" staff coordinator, with budgetary experience, was also identified as necessary. There is a need for one person to oversee the organization and administration of an inquiry office since a commissioner's thoughts and attention are primarily focussed on the hearing of evidence, rather than on office administration.

Inclusion of technical advisors was viewed as important and essential, particularly in the case of a lone commissioner. The Commissioner, Inquiry staff and most participants stressed that advisors needed to be capable of understanding Inquiry issues and evidence, to prepare cross-examination and provide advice. Because the Commissioner had to make recommendations based on Inquiry evidence, the advice of his advisors needed to be reliable. Counsel indicated it was clear from the start that technical advisors for the contentious issues would be necessary. The need for technical advisors relates to a commissioner's personal expertise. No one person could possibly have been expected to have technical expertise in all WCOPI issues.

The Commissioner recognized this and had worried that he did not have enough advisors. He was particularly concerned about marine navigational issues since he saw these to be the most technical, and ones in which he had the least expertise.

There was also a recognized need for staff to organize community hearings just as there was a need for a press officer because of the need for media coverage and the importance of the Inquiry's image. The press relations officer, who worked on a contract basis, indicated he would have preferred to have been included in more staff meetings. He felt that more exposure to and better familiarity with Inquiry planning would have aided him in dealing with media questions. There was a need for competent support staff, capable of doing the "leg work" for senior advisors and, as the commission secretary's observed, it was difficult to get short term secretarial staff. It is important that such staff understand an inquiry's purpose and be aware of its events and staff expertise, as most contact with the public was through the answering of telephone calls.

There is a definite need for competent staff on any inquiry or review. The WCOPI staff positions were necessary to provide the Commissioner with advice, to identify potential information sources and to run the Inquiry office. As the commission secretary observed, it was not the intention

to "rush around hiring people"; nor was it intended that the staff fulfill a research function, as the environmental advisor stressed. Rather, the Inquiry wanted to maintain a core support staff to identify, obtain and analyse information, to identify areas where information gaps existed, and to advise the Commissioner in all of these areas. If the need arose, the Inquiry had the monies to contract additional services, such as a marine biologist.

One final aspect, related to the Commissioner/staff relationship and the close association of community relations staff with opposition participants, must be commented on. The concept that staff was to maintain a distance from the Commissioner and work under the direction of Counsel was poorly defined. Both Counsel and senior staff were involved in budget preparation and funding decisions and, with other staff and the Commissioner, discussed the options open to the Inquiry during the adjournment period. The actual development of evidence and securement of Inquiry witnesses was left to Inquiry staff.

As the WCOPI progressed, the community relations staff worked independently due to the policy decision on community hearing planning, as discussed previously under the community hearing mechanism. The resultant tension between formal and community hearings staff, while related to different staff roles, emphasized the need for a strong person to

organize and supervise staff. Such a need was particulary important because of the Inquiry's testing of community hearing evidence mechanism. The success of this procedure required cooperation between formal and community staff.

The requirement that staff should be aware of the concepts behind an inquiry and not be biased to any particular participant interest, was particularly relevant to the WCOPI. Bias of Inquiry staff affected the image of the WCOPI because, as one B.C. civil servant observed, staff was not seen to be objective and there was "no balance on staff because of the type of people who were attracted to it". Obtaining competent staff was a problem identified by the commission secretary because of needed expertise and immediate availability for a relatively short period.

Most people willing to work on an inquiry probably have some belief or commitment to the inquiry process, but it does not follow that all staff have their minds made up while working for an inquiry. As a research assistant, the only overt bias seen by the author was the community relation staff's obvious opposition to any port proposal. This bias created the previously identified tension on the Inquiry staff and, as Counsel observed, helped create the impression that the Inquiry was "out to get the oil companies".

These assertions lead to the most obvious and important comment: that any staff is a reflection of the reviewer. The Commissioner was ultimately responsible for leadership and guidance of his staff. Staff bias was not a great concern of the Commissioner, but expression of overt bias against any oil port proposal was an unfavourable reflection upon the competence of Inquiry staff. This raises the question as to whether Inquiry staff personalities influenced the Inquiry's ability to identify and obtain all relevant information. The problems created by the Inquiry's approach to community hearings suggests this was so, but due to Inquiry's termination, this question will remain unanswered.

7.7 CONCLUSIONS

Factors influencing an inquiry's structure were identified in Chapter Three. The hypothesis that there is a hierarchy of factors influencing an inquiry's structure cannot be proved or disproved because the WCOPI was terminated before its review was completed. It is sufficient that six important factors influencing the WCOPI's structure can be identified: first, inclusion of public interests as participants; second, funding of public interests; third, use of formal and community hearings to gather and examine information; fourth, the use of the Digest and transcripts as information dissemination techniques; fifth, public access

to relevant information; and sixth, establishment of an Inquiry office and staff.

The inclusion of affected interests in the hearing process provided for a public examination of the issues before the WCOPI (Requirements 4,7,8,10). The funding mechanism meant that some interests were provided with monies to aid in their participation costs; the intention being to ensure that relevant information would be brought before the Inquiry (Requirement 6). The formal and community hearing model demonstrated the Commissioner's commitment to identifying and examining both technical and public concerns relevant to the proposals (Requirements 3,7). The Digest was an effective mechanism for disseminating information to the interested public on Inquiry evidence; the brief submission and transcripts mechanisms provided participants with access to Inquiry information (Requirements 5,6). An Inquiry staff was established to carry out the type of inquiry desired by the Commissioner (Requirement 9).

In particular, the WCOPI's public participation opportunities and public hearing model illustrated two important points: first, because there were different interests, these interests required different participation opportunities; second, being provided with participation opportunities did not ensure that interests participated or that such interests participated to identify, obtain and examine relevant information.

In theory, the structural mechanisms established by the WCOPI could have provided for a comprehensive review. However, the practical use of these mechanisms limited the extent to which this was possible. The non-participation of proponents, the opposition participants' approach to the hearings and the fact that only two formal hearing phases and five community hearings were held, meant that when the Inquiry was terminated, there had not been a public examination of all the issues defined in the Inquiry's terms of reference.

The Commissioner's understanding of his powers and recognition of the need for a comprehensive review were, exemplified by the type of inquiry he established, his attempt to provide interim funding, his unwillingness to accept a reporting date and the difference which existed between the Commissioner and the Ministers over the need to extend the Inquiry's mandate, influenced the WCOPI's structure.

As discussed, it is impossible to determine whether the WCOPI's structural mechanisms would have provided for comprehensive review. This is impossible because of the Inquiry's function: the Commissioner was unable to convince the Ministers of the need to carry out his "full and fair" review. The Commssioner established mechanisms which did not conform to the Inquiry's reporting date or budget limi-

tations and, thus, were not tested to determine whether they were comprehensive review mechanisms.

It is clear that the Ministers did not want a "full and fair" review as exemplified by their negotiations with the Commissioner over extending the Inquiry's reporting date and budget allocations. The Ministers preferred a "Chevy" type of inquiry to the Commissioner's "Rolls Royce" and refused to provide the Commissioner with the powers, time and monies needed to continue his review. Thus, while the WCOPI may have established a comprehensive structure, disagreement over the Inquiry's function meant that the WCOPI was not a comprehensive review process.

Chapter VIII

CONCLUDING OBSERVATIONS

8.1 PUBLIC INQUIRIES AND COMPREHENSIVE REVIEW

The purpose of this thesis is two-fold: first, to identify comprehensive review requirements; second, to analyse one type of review, the public inquiry, and document the extent to which a case study, the WCOPI, provided for comprehensive review. The WCOPI'S function and structure were analysed in terms of ten identified review requirements. Three salient observations can be made, based on this analysis: 1) the WCOPI established structural mechanisms which could have provided for comprehensive review, but 2) the WCOPI's function did not provide for comprehensive review, and 3) there was no "testing" of the WCOPI's mechanisms in terms of their comprehensiveness.

Nine additional observations can be made on the use of the public inquiry process as a means of reviewing resource proposals:

First, the establishment of an inquiry is a political decision to solve a problem that existing institutions and political structures cannot resolve. An inquiry's political nature is the critical factor influencing the use of the

inquiry process for comprehensive review. It influences: 1) whether an inquiry's function is comprehensive; that is, whether the commissioner is empowered to carry out a review prior to a decision (Requirement 2); 2) whether an inquiry's structure is comprehensive; that is, whether the commissioner is empowered to establish mechanisms for the implementation of a comprehensive review (Requirements 3,4,5,6,7,8,9,10).

Second, the extent to which an inquiry's structure conforms to the politically desired review is manifested in two ways: 1) whether an inquiry fulfills its terms of reference; 2) whether an inquiry's recommendations are ignored, partially implemented or fully implemented. If an inquiry's review does not adhere to time and monetary limitations a commissioner's powers can be terminated through the imposition of a reporting date and a finite budget. Thus, it follows that an inquiry may not be able to examine all relevant concerns and that an inquiry's recommendations may not be used to resolve the problem.

The WCOPI case study supports these assertions. The Commissioner was not empowered to examine terrestrial issues relevant to an oil port proposal; nor was he able to examine the marine issues specified in his terms of reference due to the Inquiry's termination. The Ministers did reject the KPL proposal, a policy alternative identified by the Commis-

sioner. Yet, in December 1979, almost two years after the Inquiry's termination, there are two active oil port proposals: Trans Mountain's Low Point, Washington. and Northern Tier's Port Angeles proposals. Because both proposed sites are in the State of Washington, the proponents have submitted to appropriate American regulatory approval processes; Trans Mountain has applied to the NEB for necessary Canadian pipeline authorization. However, there is no current Canadian public review of the marine issues related to these proposals. Yet, it was these marine issues which were identified by the Commissioner to be of utmost public concern and in need of a comprehensive examination, if the risks and benefits associated with coastal tanker traffic were to be determined. The Commissioner's recommendations obviously have not been implemented.

Third, an inquiry's ad hoc nature is a positive review attribute and a negative one. An inquiry can establish a structure which implements a "fresh" approach to reviewing a problem, free of the "in-house", and often ingrained bureaucratic pro-development bias. However, because the normal governmental responsibilities may seemingly be surrogated by an inquiry, this can create tension and a lack of co-operation between government departments and an inquiry. This is an undesirable situation since co-operation is needed to ensure all relevant information is obtained and examined by an inquiry, particularly government documents and policy options.

Fourth, the extent to which an inquiry provides "freshness" and establishes a comprehensive review is dependent upon three factors: 1) selection of the commissioner and the commissioner's understanding of the inquiry process and comprehensive review requirements; 2) the time allocated to an inquiry; 3) the budget allocated to an inquiry. A commissioner can establish structural mechanisms but these mechanisms must conform to the inquiry's time and budget constraints. If not, the inquiry's review will be incomplete at the end of its mandate.

Fifth, an inquiry is not an expeditious process. It takes time to organize a staff; to identify what the critical issues are, and how all issues will be examined. It takes time to identify public interests and decide what participant opportunities will be established, to decide if there is to be funding and if so, establish criteria for those requesting funds. Then the commissioner must request, obtain and review submissions, make allocations and establish procedures for funding administration. It takes time to inform the public and organized interests of an inquiry's existence and procedures. All of this must be done before an inquiry can undertake an examination of its terms of reference; another time consuming process. Preparation of inquiry recommendations also requires time for the analysis of the vast amount of information an inquiry collects.

Sixth, appropriate information examination procedures are dependent upon an inquiry's function. If its function is to hear and identify public concerns, this can be done in a simpler, less costly and faster way than one whose function is to examine technical issues. Regardless of the procedures, it takes time for participants to prepare information for evidence submission. Preparation time must be scheduled to ensure that relevant information will be obtained and presented in a useable form.

Seventh, how an inquiry's mechanisms are used depends on three factors: 1) the commissioner's enforcement of procedures; 2) the inquiry staff's understanding of and ability to ensure that relevant information is identified, obtained and examined by the inquiry, without bias to any public interest; 3) the commitment of participants and responsible ministers to the inquiry as a legitimate review, so that all relevant issues are publicly examined and reflected in the commissioner's recommendations.

Eighth, there must be a <u>mutual</u> understanding between the commissioner and responsible ministers on an inquiry's function, prior to the commissioner's appointment. Without such an understanding, time consuming negotiations between these parties will result. Uncertainty over function will probably focus a commissioner's and participants' efforts on an inquiry's mandate, rather than on using its review mechanisms.

Ninth, and in conclusion, one important point must be stressed: political control over an inquiry is exercised through an inquiry's terms of reference. Terms of reference define an inquiry's purpose and powers, and whether an inquiry's function is comprehensive. Terms of reference changes can either give the commissioner a clear mandate to continue its review or curtail it.

These observations reflect upon the use of the public inquiry process as a means of reviewing resource proposals. Thus, it may be concluded that an inquiry's political nature determines whether there will be a comprehensive review. There is no guarantee, as the WCOPI case study shows, that an inquiry will provide for comprehensive review, even if the commissioner is commited to establishing and carrying out such a review. Concluding commments on comprehensive review requirements reflect upon dilemmas faced by those concerned about the need to review resource proposals.

8.2 COMPREHENSIVE REVIEW REQUIREMENTS

There are three priorities which must be addressed by those who are involved in the management of Canada's natural resources; that is politicians, government bureaucrats, industry, public interest groups and the general public:

1. Passage of a mandatory legislative requirement that an independent and public review be commenced and concluded before any irrevocable decision is made on a proposed resource use, so that resource development will proceed with a reasonably complete understanding of possible effects on the natural environment and on society (Requirements 1,2,10);

2. Establishment of federal and provincial reviews, the function of which is to ensure that there is an identification and examination of a proposal's significant impacts prior to a project decision (Requirement 2, 10);

3. Establishment of review mechanisms to fulfill the following requirements: a) a public review of proposal(s) and alternatives, including the powers to compel the production and public disclosure of relevant review documents (Requirements 3,4,7,8); b) public participation and funding opportunities (Requirements 5,6); c) information dissemination on the proposal(s) being reviewed, review mechanisms and on review recommendations (Requirements 7,8); d) adequate review time and staff (Requirement 9).

These three issues reflect upon the "what? who? when? how? where?" questions in need of resolution: what should be reviewed? who should conduct the review? when should a review be conducted? how should this be carried out? where should it be held? The what?, who? and when? are functional questions. The how? and where? are structural ones. Topics in need of additional consideration are discussed in three sections: mandatory legislation, review functions, procedural guidelines.

Mandatory Legislation

If Canada's resources are to be managed in the best interest of all Canadians, there must be changes in existing reviews. Existing reviews are inadequate in terms of their examination and consideration of resource proposals' impacts and needed mitigative measures. They are not comprehensive. The solution to this problem is passage of legislation whereby

it would be required by law that a comprehensive review be commenced and concluded before any irrevocable decision is made on a resource development proposal.

Canadian governments are loathe to pass such legislation. The costly court cases and project delays caused by NEPA is considered to be reason enough against mandatory review legislation. The exemptions of Ontario's EA Act, is cited as evidence that legislation will not solve review problems. Yet, the reason that such a requirement is demanded by some segments of society is because governments have not shown a commitment to ensuring that sound resource use decisions will be made.

The deplorable state of EARP is evidence of the need for mandatory federal legislation. EARP, the only Canadian review process which can be used to review resource proposals affecting Canada's national resources, was not involved in any formal review of the siting of a west coast oil port; the most important B.C. resource issue of the late 1970's and a very important Canadian energy issue. EARP's non-involvement reinforces the observation that it is not a credible review process because of its restrictive application. Because EARP is dependent upon the goodwill of participants, it cannot compel the production of relevant documents nor proponent participation, and cannot address significant issues which go beyond a proposal's immediate environmental

impacts, its review inadequacies are painfully obvious. As well, the appropriateness of having civil servants recommending whether a partly or completely government owned project should proceed leads to further questioning of EARP's independence. The establishment of federal review legislation would be a visible public commitment to reviewing resource development. It is the contents of legislation and their enforcement that will determine whether or not there is to be a comprehensive Canadian review.

The current state of the Canadian economy, the supportive alliance between government and industry, and the reticence of governments to establish independent, public reviews, as exemplified by the WCOPI case study, suggest that comprehensive review legislation is not a Canadian political priority. However, the need to review resource proposals is a concern. There are no easy answers as each proposal has its own peculiarities. Yet, the underlying assumptions and concerns remain the same. It is these functional and structural concerns which must be resolved.

Review Functions

Ideally, a review's function should ensure that there is an identification and public examination of a proposal's significant impacts so that a project decision will not be made without a reasonably complete understanding of a proposal's

effects on the environment and on society (Requirement 2). Two critical functional factors can be identified. First, those who conduct a review must have public credibility, impartiality and independence. A reviewer cannot be strongly aligned with any public interest, be it government, industry or an organized group. Selection of a reviewer is critical to the public image of an independant review. This affects the extent to which interests will participate and facilitates the implementation of review recommendations. Establishment of an ERBoard, as provided under EARP is one means of satisfying this review requirement.

Second, a review's function must permit sufficient time, financial and staff resources to ensure that all relevant information can be obtained and examined. Obviously, if a review is to be comprehensive, it takes time, money, and staff. However, a review's function is determined by political considerations, as exemplified by the case study. Two policy choices determine a review's function; that is whether it is necessary to:

1. identify and examine public and technical concerns prior to a proposal decision; or

2. give "approval in principle", subject to terms and conditions determined either through an "in-house" government review or public review.

If a review's function is to recommend upon a "go/no-go" project decision, then it must provide for a public review of a proposal's technical and public issues. If "approval in

principle" has been given, then a review may either 1) hear public concerns, to be incorporated into a project's terms and conditions; or 2) examine public concerns about technical issues, to be used either a) for incorporation into a project's terms and conditions or b) for reconsideration of project approval.

It is critical that a review's function be understood by all participants. It is the reviewer's responsibility to ensure that a review's purpose be identified, and discussed if requested by participants, prior to any proceedings. Misunderstandings and misconceptions over a review's function result in confrontations between participants and reviewers, and can instil a sense of hostility and mistrust throughout the review.

As discussed in Chapter Two, Canadian reviews are not comprehensive; none provide for a public examination of a proposal's technical and public issues prior to a project decision. Procedural guidelines can provide specific ways that these reviews can be improved.

Procedural Guidelines

Procedural guidelines should be specified in legislation as experience has shown that if there is discretion, either at the ministerial or regulatory level, there is no guarantee that appropriate review procedures will be established. It

is not appropriate to rely upon the expertise of a reviewer or review staff because of possible bias and unfamiliarity with review mechanisms. Guidelines need to be specified "for all to see", to ascertain if critical issues have been identified, how they will be examined, and by whom. Although specific procedural rules should be established by a reviewer because each proposal is different, due to the type of development, location and involved interests, review legislation must contain guidelines specifying that a review must:

1. obtain, circulate and examine relevant information;
2. subpoena and publicly disclose information to ensure that all significant issues are incorporated into a review's recommendations;
3. provide for the participation and funding of different public interests;
4. disseminate information on proposal(s) under review and on review procedures;

There are dilemmas created by these procedures. The "who? how? when?" of public participation, including the public funding question, is one. If a public interest group possesses relevant review information specific to its interest and wants to submit such information, and to question the validity of other public interests' information, then full participation opportunities, as established by the WCOPI, are necessary. Such a participation opportunity is critical because conflicts arise due to public concerns over technical issues. It is not sufficient that a review con-

sider only government and proponent information as these sources do not generally reflect a broad range of public interests and resultant concerns. Such concerns can satisfied only through the inclusion of public interests, other than those of the proponent and government civil servants.

This public participation dilemma also raises the question of public funding. Two points must be made. First, although such a mechanism has been characteristic of resource development inquiries, no existing Canadian review provides for public funding. This is an area in need of serious consideration. If a review's function is to hear public concerns and the review goes to locations affected by a proposal, then funding may not be an absolute necessity. Scheduling and information dissemination techniques become critical as it is very important that hearings be held when individuals are not working and that the public is aware when the hearings are being held, and where. Some consideration should be given to funding individuals or groups who prepare relevant information.

If a review's function is to examine a proposal's technical aspects, then it is unfair not to fund individuals or groups who demonstrate that they have significant contributions to make and inadequate financial resources, particularly when proponents have probably spent several years and thousands of dollars on the proposal.

Second, a reviewer must not be responsible for funding administration, because of possible pressure from participant interests and because it is a time-consuming task. A reviewer should be responsible for making establishing funding criteria and making funding decisions.

The purpose of funding and public participation opportunities is to ensure that a review will obtain relevant information and "test" such information in terms of its accuracy. There are no "right" answers in resource use conflicts; choices must be made between competing values. As Auerbach (1977) observed the scientific method, which depends on the ability of an independent researcher to verify an experiment and on peer judgement in terms of the data's accuracy and quality, is inadequate for the "testing" or assessment of resource proposals. More adversarial methods of peer review, such as the WCOPI's formal hearing procedures and participant opportunities, provide the needed "testing". There must be provisions which require the submission, circulation and "testing" of relevant information.

It is through "testing" that different societal values and assumptions will be clarified, so that it will be known whose interests are supported by a decision. Although government bureaucrats decry the use of cross-examination in the review of resource proposals, it is the only way that society can establish a mechanism whereby information can be

examined because of the unco-operative, hostile confrontation situations which arise. A reviewer must have the power of subpoena of witnesses and relevant information. Proponents and governments are loathe to disclose information. It is only through the subpoena power that a reviewer can be ensured of access to relevant information.

There is a need to provide advice to individuals and groups on the preparation, submission and cross-examination of evidence. Interests with relevant information do not always have the financial or manpower resources to document their case or to participate in time consuming, costly, and often legalistic, review procedures. Creation of this type of mechanism should, over time, provide more effective means of identifying, obtaining and examining public concerns.

The importance of information dissemination must be recognized as it is the only way that people can be informed of participant opportunities, review events and its recommendations. As the case study illustrates, there are also different types of information which must be made accessible. Review participants need access to review documents and transcript, while the public requires more general information.

8.3 CONCLUDING REMARKS

The extent to which Canadian reviews become more comprehensive depends on the pressure we put on our politicans. In the 1980's, as energy resource development increases, there will be a parallel questioning by some segments of society on whether such activity should be permitted. Comprehensive review can ensure that resource development decisions are made in the interest of all Canadians. The extent to which such reviews are established will reflect upon our commitment to the wise management of our natural resources, our heritage.

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[60] A "*" identifies those people interviewed by telephone. A "+" identifies those who were sent questionnaires. The remainder were personally interviewed by the author. Unless indicated by (place), interviews were in Vancouver.

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APPENDIX A

WEST COAST OIL PORT PROPOSALS, 1977 (1)

KPL
Consortium of six oil companies: Ashland Oil Cdn. Ltd., Farmers' Union Central Exchange, Inc., Hudson's Bay Oil & Gas Co. Ltd., Interprovincial Pipe Line Ltd., Koch Industries, Inc. and Murphy Oil Corp.

The Project
To build docking and storage facilities at Kitimat, B.C. and a pipeline from Kitimat to Edmonton, Alta., to provide access for Alaskan and other offshore crude oil to north-central U.S. refineries.

Port Site A marine terminal to be built six miles south of Kitimat, two miles south of existing Alcan dock, on western shore of Kitimat Arm. To receive and unload 16,350 to 320,000 dead weight ton (dwt) crude oil carriers. Two large floating docks to be connected by 48" diameter pipe to a tank farm (initial capacity of 300,000 barrels per day (bpd) to be increased to maximum 500,000 bpd storage capacity. Tanker traffic to originate from Valdez, Alaska, and Indonesian and Persian Gulf States. Initial 7 arrivals/month to be increased to 13/month at full operation. Vessels to enter B.C. coastal waters via Dixon Entrance, north of the QCIslands. After the boarding of two pilots near Triple Isld, vessel to proceed south into Hecate Strait, across Browning Entrance, through Principe Channel and Nepean Sound, turn east through Otter Passage, across Squally Channel, through Lewis Passage turning 110 to the east into Wright Sound, turning 100 to the north around Promise Island to enter Douglas Channel, continue west of Maitland Isld, into Kitimat Arm (Kitimat is located approx. 60 miles from the entrance of Douglas Channel). Upon arrival at Kitimat, vessel to be turned and pushed sideways, with tug assistance, to appropriate berthing heading, and secured.

Pipeline Route A 753 mile 30" diameter pipeline from Kitimat to connect with existing Interprovincial Pipe Line system at Edmonton, Alta. Route to go north from Kitimat to Wilson Creek, through the Telkwa Pass, south of Smithers, paraleling the CNR railway and Highway 16, through Burns Lake, Prince George, McBride, Tete Jaune Cache, Jasper, Hinton and Edson to Edmonton. (A 88 mile section to be 36" pipe). Eight initial pumping stations to increase to sixteen.

Cost $494 million for pipeline and related facilities. Anticipated 3,000 jobs for Canadian workers over two year construction period. 150 people needed to operate and maintain marine terminal pumping stations and pipeline.

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(1) Four other alternatives for the disposition of Alaskan crude were under speculative consideration in 1977/1978 (See Map 4-2): 1) Central American Pipeline Crude oil would be delivered to Guatemala by tanker, to be pumped along a new 227 mile pipeline to the Atlantic coast, and shipped by tanker to U.S. Gulf coast ports; initial capacity 600,000 bpd, costing $640 million. 2) Panama Canal Oil in large tankers from Valdez, Alaska would be transferred to smaller tankers for transport through the Canal to U.S. gulf coast ports, or tankers of small size would be used for the entire trip. 3) Exchanges with Japan Surplus Alaskan crude oil would be shipped to Japan, who in turn would deliver an equal amount of its Middle East crude oil supply directly to U.S. Atlantic and Mexico gulf coast ports. 4) Exchanges with Canada to U.S. Oil from the southern U.S. would serve Canada's eastern provinces while Canada would supply north-central U.S. refineries.

Trans Mountain
Trans Mountain, pipeline operators and Atlantic Ritchfield Co. (ARCO), refinery operators.

The Project To build additional storage and pumping facilities to existing Trans Mountain pipeline which transports Albertan crude oil from Edmonton to Puget Sound refineries and those in Vancouver. Pipeline flow to be reversed to transport Alaskan and offshore crude from an ARCO terminal at Cherry Point, Washington to Edmonton.

Port Site and Tanker Routes ARCO to add a dock and expand crude oil receiving and storage facilities at its existing terminal and refinery Cherry Point facilitiess, to increase capacity to 600,000 bpd. Approximately 7 vessel arrivals/month of 125,000 dwt tankers. Vessels from Alaska and other offshore sources to enter Strait of Juan de Fuca, pick up a pilot off Port Angeles, Washington and proceed via existing main shipping channel through Rosario Strait to Cherry Point for unloading into pipeline.

Pipeline Route The capacity of Trans Mountain's 718 miles of 24" pipe, with some 30" loops, from Edmonton to Vancouver and the 64 miles of 20" and 16" pipe connected to four Puget Sound refineries, would be increased by installing additional pumping horsepower; by reversing the 24" line or the existing 30" loops, with a new 30" parallel pipeline. This would result in delivery of 180,000 bpd of offshore crude oil eastward to Edmonton and 130,000 bpd of Albertan oil westward to Vancouver.

Cost Capital cost for additional pipeline in Canada approximately $90 million. Cost of expanded Cherry Point facilities approximately $50 million.

Northern Tier
Consortium of eight companies (incorporated in Montana State): Butler Ass. Inc., Curran Oil Co., Glacier Park Co., MAPCO Inc., Milwaukee Land Co., P.T. McDonough, Western Crude Oil, Inc. and Amoco Oil Corp.

The Project To build a "Northern Tier" Pipeline System, a common carrier facility, from Port Angeles, Washington to Clearbrook, Minnesota, consisting of new marine terminal facilities and a pipeline to supply Alaskan and offshore crude oil to north-central U.S. refineries.

Port Site and Tanker Routes Construction of a deepwater tanker unloading and onshore storage facilities at Port Angeles, Washington, located 70 miles from the Pacific Ocean on the Strait of Juan de Fuca. Vessels, up to 300,000 dwt with a capacity of 2 million barrels of crude oil each, would enter Port Angeles harbour from the Strait of Juan de Fuca.

Pipeline Route A 1,541 mile pipeline from Port Angeles to Clearbrook to be built, consisting of 40" and 42" diameter pipe with 16 pumping stations and an initial capacity of 600,000 bpd, increasing to 1 million bpd.

Cost Estimated $1.2 billion.

SOHIO Transportation Company
Subsidiary of Standard Oil of Ohio.

The Project To ship Alaskan crude oil to a new terminal at Long Beach, California. Oil to be pumped through an idle 795 mile natural gas pipeline and a new 125 mile oil pipeline to Midland, Texas. From there existing lines would carry oil to the U.S. midwest and Gulf of Mexico coastal refineries. Initial capacity of 500 bpd to be doubled if a second natural gasline became idle around 1980.

Cost Estimated $4500 million.

Sources: KPL, 1976 (a) (b) (c) and WCOPI files.

Appendix B

SUMMARY OF EVENTS

DATE	EVENT
Dec 8 1976	KPL's NEB and TERMPOL submissions
March 21 1977	Establishment of WCOPI
April 20 1977	Counsel submission on procedure
April 21 1977	Funding guidelines issued
April 28 1977	Inquiry release on participation opportunities
April 30 1977	Informal community meeting: Commissioner in Skidegate, QCIslands
May 1 1977	Informal community meeting: Commissioner in New Masset, QCIslands
May 3 1977	Informal community meeting: Commissioner in Kitamaat Village
May 4 1977	Preliminary hearing, Kitimat
May 9 1977	Informal community meeting: Commissioner in Victoria
May 10 1977	Informal community meeting: Commissioner in Vancouver
May 27 1977	Preliminary rulings: Rules of practice and procedure issued. Report on participant funding. Phase One scheduled to begin in Vancouver in mid-July 1977
June 1 1977	KPL request to hold NEB application in abeyance
June 2 1977	KPL president and counsel met with Commissioner to explain withdrawal

June 16 1977	Mininsters announce terms of reference to be revised to include proposals affecting southern B.C.
June 22 1977	Supplementary report on participant funding announced native funding allocations
June 30 1977	Revision of terms of reference
July 5 1977	Supplementary preliminary rulings announcing name change and rescheduling of Phase One
July 1977	Commissioner took trip on the 360,000 ton tanker, Al Andulas, off coast of Nova Scotia
July 18-20 1977	Opening statement hearing, Vancouver
July 22,23 1977	Community hearing: Namu (23 people addressed Commissioner)
Sept 26 1977	Formal hearing: Phase One, Vancouver
Oct 5 1977	Marine Mammals Protection Act prohibited building of trans-shipment facilities in Puget Sound, Washington
Oct 13 1977	Formal hearing: Phase One ended
Oct 14 1977	Ottawa meeting: Commissioner and federal authorities
Oct 17 1977	Community hearing: Mount Currie (20)
Oct 18,19 1977	Community hearing: Lillooet (24)
Oct 21,22 1977	Community hearing: Steveston (32)
Oct 24 1977	Formal hearing: Phase Two, Vancouver
Oct 31 1977	Trans Mountain advised WCOPI and NEB that consideration of its Cherry Point proposal be terminated
Nov 2 1977	Announcement Phase Two rescheduled to November 14th and Phase Three postponed until January 1978
Nov 4 1977	Formal hearings: Phase Two adjourned

Nov 7,8 1977	Ottawa meetings: Commissioner, Counsel, with Ministers of State for the Environment, Transport, Fisheries and the Environment, EMR and Justice
Nov 9 1977	Announcement of formal hearings adjournment by Commissioner and the Ministers.
Nov 4,5 1977	Congressional hearings, Seattle, Washington: KPL intended to reapply to NEB
Nov 25,26 1977	Community hearing: Sooke (26)
Dec 3 1977	CBC interview with KPL identified need for support of at least one more major oil company
Dec 13-15 1977	Summation Hearing, Vancouver
Dec 22 1977	Order-in-Council amendment directing Commissioner to submit interim statement before 31 March 1978
Jan 9 1978	KPL announced re-activation of NEB application
Jan 10 1978	SOHIO announced would support KPL
Jan 16 1978	Minister of EMR requested NEB examine oil supply and import dependency of B.C. and eastern Canada over the next 10-15 years
Jan 26 1978	Commissioner announced WCOPI should be reconvened "at a relatively early date" to assess the new KPL proposal
Feb 23 1978	Submission of Commissioner's interim statement to Ministers in Ottawa. Simultaneous release in Vancouver, Victoria and northern B.C. communities. Minister of State for the Environment announcment followed that the Federal government "sees no need for a west coast oil port now or in the foreseeable future"
Feb 24 1978	Commissioner's statement on interim funding situation. Commissioner's statement in response to the federal government's position on a west coast oil port

March 30 1978	End of Inquiry. Commissioner submitted six page report to Ministers.
Mid-May 1978	Inquiry records deposited with Dominion Archivist in Ottawa and with Westwater Research Institute at the University of B.C., Vancouver.

Appendix C

INTERVIEW SCHEDULES

Two interviews schedules were used: schedule 1a was for WCOPI staff; schedule 1b was for respondents associated with a WCOPI participant. Schedule 2 was used for all sources. These schedules were followed as closely as each interview permitted.

Schedule 1a. WCOPI Staff, including the Commissioner

1. When did you first hear of a) KPL? b) the WCOPI? How did you become a staff member?

2. Did you have any role in the establishment of the WCOPI? of its mechanisms? If yes, how was it decided what mechanisms the Inquiry was going to establish: types of hearings? hearings procedures? subject matter of the phases? staff needs? participant funding?

Schedule 1b. WCOPI Participants

1. When did you first hear of a) KPL? b) the WCOPI? How did you become involved with (participant name)?

2. What relevant issues did your organization/interest identify as being critical? How was this decided? How did your organization/interest collect information? How important was funding to do this? How were your associates/members informed of Inquiry issues and events?

Schedule 2. Questions on use of the WCOPI as a means of reviewing resource proposal.

1. Do you agree with the concept of formal and community hearings as a means of gathering information? (Give reasons for answer).

2. <u>Formal Hearings:</u> Was the structure (phasing) of the formal hearings reflective of the issues? Do you have any comments on hearings procedures: brief cir-

culation? written briefs? submssion of evidence? cross-examination? Did the Commissioner/participants adhere to these procedures? If no, identify who, what procedures, and significance of inadherence. Do you have you any changes to suggest for this type of hearing?

3. Community Hearings Were the locations and types of community hearings reflective of public concerns? If no, which ones and why not? Do your have any comments on hearing procedures: need for cross-examination? proponent attendance? organization? Do you have any changes to suggest for this type of hearing?

4. Participant Opportunities Was the range of participant interests reflective of public interests involved in the issues? If no, identify which ones were not and why important. Do you have any comments on the participation of a) proponents? b) opposition interests? c) B.C. government? d) Counsel? Do you think there are any differences between a public versus an in-house government review? (Give reasons for answer).

5. Funding Was funding necessary? (Give reasons for answer). Was the WCOPI funding criteria adequate? (Identify critical ones and give reasons). Do you have any comments on the contribution of funded participants? Do you have any changes to suggest for funding of public interests?

6. Selection of Commissioner What criteria should be used to select a commissioner: Expertise? familiarity with issues? others? appropriate number?. Do you have any comments on the appropriateness of the choice for the WCOPI? Do you have any comments on the Commissioner/staff? Commissioner/participants? Commissioner/Ministers relationships?

7. Inquiry Staff Do you have any comments of a) the role of and b) need for Inquiry staff positions: Counsel? Assistant counsel? Commission Secretary? Technical Advisors? Community Relations? Librarian? Press Relations? Research Assistant? Support Staff?

8. Information Dissemination Techniques Do you have any comments on a) the need for and b) usefulness of: transcripts? the Digest? Inquiry library? public libraries? WestCoast Reports? the media?

9. General Questions Do you have any coments on a) the level of public interest in the Inquiry? b) the Federal government's commitment to the WCOPI? c) the

B.C. government's commitment to the WCOPI? Is the inquiry process an effective means of reviewing resource proposals? (Give reasons for response). If you were getting involved in the WCOPI again, what would you change if anything?

Appendix D

COMMUNITY HEARING LOCATIONS

1. QCIslands
   -Skidegate
   -Masset
   -Queen Charlotte City
2. Prince Rupert
   Port Edward
   Porcher Island
3. Port Simpson
   Metlakatla
   Kitkatla
4. Kitimat
   Kitamaat Village
   Hartley Bay
5. Terrace
   Kitsemkalem
   Kitselaas
6. Kitwanga
   Kispiox
   Morricetown
   Hazelton
7. Greenville
   New Aiyansh
8. Alert Bay
   Sointula
   Port Hardy
9. Rivers Inlet
   Bella Bella
   Klemtu
   Bella Coola
10. Campbell River
    Courtenay
    Qualicum
11. Port Alberni
    Nitinaat
    Bamfield
12. Tofino
    Ucluelet
    Ahouset
    Gold River
13. Sooke
    Songhese
    Sidney
14. Cowichan
    Tsartlip
    Duncan
    Nanaimo
15. Victoria
    Southern Gulf Islands
    Saanich Peninsula
16. Steveston
    Delta
    Mount Currie
    Lillooet
17. Vancouver
    West Vancouver
    White Rock
    Musqueam
    Tsawwassen
18. Kamloops
    Prince George
    Babine Lake
    Williams Lake
    Smithers
19. Sunshine Coast
    Chilliwack
    Yale
    Seabird Island
    Coquitlam

Note: Places identified as possible locations by WCOPI community relations advisor (A.Pape to A.Thompson, 19 September 1977).

Appendix E

WCOPI EXPENDITURES(1)

	March-Aug 77	Sept 77	Oct 77	Nov 77	Dec 77	Jan 78	Feb 78	Total Amount	%
Operating Costs									
Hearing Facilities	2.4	.	5.1	4.4	3.5	.	.	15.3	1.4
Transcripts	5.0	.	14.6	18.2	2.0	3.5	.	43.3	3.8
Travel & Accommodation	24.4	3.9	5.8	6.0	1.7	.7	1.6	43.9	3.9
Rent & Office Overhead(2)	45.1	6.8	4.5	8.4	6.1	10.2	8.6	89.6	7.9
Media Relations(3)	17.4	2.8	2.6	3.3	5.5	.	1.0	32.5	2.9
Community Relations(4)	15.5	28.4	4.2	29.3	9.1	2.8	.3	89.6	7.9
								314.4	27.7
Capital Costs									
Furniture & Equipment	20.9	.	.	.	.	.2	.	21.1	1.9
Books & Maps	1.1	.2	.	.	.	.	.	1.4	.1
								22.5	2.0
Staff									
Support Staff	50.6	14.6	14.3	15.2	14.3	15.4	15.6	139.9	12.3
Professional Services									
Commissioner	27.2	4.5	5.9	14.0	4.7	.	6.9	63.0	5.6
Legal Counsels	59.2	20.6	12.0	29.5	22.0	.	10.3	153.6	13.5
Staff Consultants(5)	24.4	6.6	4.8	5.6	8.0	1.4	4.6	55.2	4.9
Outside Consultants	11.2	9.9	8.1	20.4	7.6	.5	8.9	66.5	5.9
Professional Witnesss	25.8	.	.	33.0	.4	.3	.	59.5	5.2
								397.8	25.1
Participant Funding	200.0	.	60.0	.	.	.	.	260.0	22.9
Reports	.	.	.	.	1.0			1.0	1.0
Expenses per Month	530.0	98.2	142.0	187.1	85.6	34.9	57.	1135.3	100.0

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(1) March 1978 figures were unavailable
(2) Includes rental of office equipment and postage costs.
(3) Includes salary of public relations advisor.
(4) Includes production costs of WestCoast Reports and the Digest's editor's salary.
(5) Salaries of economic and community relations advisors.

Appendix F

GLOSSARY OF TERMS AND CITED LEGISLATION

General

A Code of Recommended Standards for The Prevention of Pollution in Marine Terminals.	TERMPOL
A Digest of Evidence presented to the West Coast Oil Ports Inquiry.	The Digest(1)
Alaska Highway Pipeline Inquiry	Lysyk Inquiry
Atlantic Ritchfield Company	ARCO
barrels per day	bpd
British Columbia.	B.C.
British Columbia Energy Commission.	BCEC
British Columbia Wildlife Federation.	BCWFederation
Bureau d'audiences publiques sur l'environnement	the Bureau
Canadian Council of Resource and Environment Ministers	CCREM
Canadian Scientific Protection and Environmental Control Society	SPEC
Cluff Lake Board of Inquiry (Saskatchewan)	Bayda Inquiry
Coalition Against Supertankers.	COAST
Community hearing transcript reference.	CH
Dead weight tons.	dwt
Department of Fisheries and the Environment	DFE
District of Kitimat	the District
Energy, Transportation and Communications Task Force	ETC Task Force
Environment and Land Use Committee.	ELUC
Environment and Land Use Committee Secretariat	the Secretariat
Environment Assessment and Review Process	EARP
Environmental impact assessment	EIA
Environmental impact assessment system.	EIA System
Environmental impact statement.	EIS
Environmental Assessment Board.	EABoard
Federal Environmental Assessment Review Office	FEARO
Formal hearing transcript reference	FH

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(1) Cited as WestCoast when used as a bibliographic reference.

Initial environmental evaluation.	IEE
Initiating department	IDepartment
Islands Protection Committee.	IPCommittee
Kitimat Oil Coalition	KOCoalition
Kitimat Pipe Line Company Limited	KPL
Law Reform Commission	LRC
Mackenzie Valley Pipeline Inquiry	Berger Inquiry
Ministers of Transport, State for the Environment and Fisheries and the Environment	the Ministers
Ministry of Energy, Mines and Resources . . .	EMR
National Energy Board	NEB
Nishga Tribal Council	NTCouncil
Northern Tier Pipeline Company.	Northern Tier
Pollution control director.	the Director
Prince Rupert Co-operative Fishermens' Guild.	PRCFGuild
Prince Rupert Fishermens' Co-operative Association	PRFCAssociation
Prince Rupert Fishing Vessel Owners' Association	PRFVOAssociation
Queen Charlotte Islands	QCIslands
Regional District of Kitimat-Stikine.	RD of Kitimat-Stikine
Regional District of Queen Charlotte Islands-Prince Rupert . . .	RD of QCIslands-Prince Rupert
Royal Commission of Inquiry into Health & Environmental Protection, Uranium Mining (British Columbia)	Bates Inquiry
Royal Commission on Electrical Power Planning (Ontario).	Porter Commission
Royal Commission on the Northern Environment (Ontario).	Hartt Commission
Save Our Shores	SOS
Standard Oil Company of Ohio.	SOHIO
Telkwa Foundation	TFoundation
TERMPOL Co-ordinating Committee	TCC
Trans Mountain Pipe Line Company Limited. . .	Trans Mountain
United Fishermen and Allied Workers' Union. .	UFAWU
Victims of Industry Changing Environment. . .	VOICE
West Coast Environmental Law Association. . .	WCELAssociation
West Coast Oil Ports Inquiry.	WCOPI
WCOPI Commissioner.	the Commissioner
WCOPI Commission Counsel.	Counsel
WCOPI Funding Guidelines.	Funding Guidelines
WCOPI Interim Submission of Commission Counsel.	Interim Submission
WCOPI Preliminary Rulings -Rules of Practice and Procedure.	Preliminary Rulings
WCOPI Report on Participant Funding	Participant Funding

WCOPI Supplementary Report on
Participant Funding . . . . . Supplementary
Participant
Funding

Legislation

An Act to Amend the Environmental Quality Act,
Stats. Quebec 1979 c. 35 (EQ Amendment Act)
Archaeological And Historic Sites Protection Act,
R.S.B.C. 1972 c. 15
Arctic Waters Pollution Prevention Act,
R.S.C. 1970 c. 2 (1st Supp.) as amended
British North America Act, 1867 as amended (BNA Act)
Canada Shipping Act, R.S.C. 1970 c. S-9 as amended (CS Act)
Canada Water Act,
R.S.C. 1970 c. 5 (1st Supp.) as amended
Clean Air Act, S.C. 1970-71-72 c. 47
Coal Conservation Act,
Stats. Alta. 1973 c. 65 as amended
Coal Mines Regulation Act,
S.B.C. 1969 c. 3 as amended
Ecological Reserves Act, S.B.C. 1971 c. 16
Energy Act, S.B.C. 1973 c. 29
Environmental Assessment Act,
Stats. Ont. 1975 c. 69 (EA Act)
Environmental Contaminants Act, S.C. 1974-75 c. 72
Environmental Protection Act,
Stats. Ont. 1971 c. 86 as amended
Environmental Protection Act of 1970, Mich. Comp.
Laws ANN. 691.1201-691.1207 (Supp. 1972)
Fisheries Act, R.S.B.C. 1960 c. 150
Fisheries Act, R.S.C. 1970 c. F-14 as amended
Freedom of Information Act (Administrative
Procedure Act), 11946 as amended 1966,
P.L. 89-554; 1976, P.L. 90-23
Harbour Commission Act, R.S.C. 1970 c. H-1
Indian Act, R.S.C. 1970 c. I-16
Inquiries Act, R.S.C. 1970 c. I-13 (Inquiries Act)
Land Act, S.B.C. 1970 c. 17 as amended
Land Surface Conservation and Reclamation Act,
Stats. Alta. 1973 c. 34 as amended (Land Surface Act)
Migratory Birds Convention Act,
R.S.C. 1970 c. M-12
Municipal Act, R.S.B.C. 1960 c. 255
Navigable Waters Protection Act,
R.S.C. 1970 c. N-19 (NWP Act)
National Energy Board Act,
R.S.C. 1970 c. N-16 as amended (NEB Act)
National Park Act, R.S.C. 1970 c. N-13
Northern Inland Waters Act,
R.S.C. 1970 c. 28 (1st Supp.) as amended
Ocean Dumping Control Act, S.C. 1974-75-76 c. 55

Ontario Water Resources Act, R.S.O. 1970 c. 332
Park Act, S.B.C. 1965 c. 31
Pilotage Act, S.C. 1970-71-72 c.52
Pipelines Act,
Pipelines Act, R.S.B.C. 1960 c. 284
Pollution Control Act,
S.B.C. 1967 c. 34 as amended
Public Inquiries Act,
R.S.B.C. 1960 c. 315 as amended
Territorial Lands Act,
R.S.C. 1970 c. T-6 as amended
Territorial Sea and Fishing Zone Act,
R.S.C. 1970 T-17
Water Act, R.S.B.C. 1960 c. 405 as amended
Wildlife Act, S.B.C. 1966 c. 55

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THE INQUIRY PROCESS:

COMPREHENSIVE REVIEW OF RESOURCE PROPOSALS?

THE WEST COAST OIL PORTS INQUIRY, A CASE STUDY

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