



Integrating Effectiveness, Transparency and Fairness into a Value Elicitation Process

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1. Introduction

As part of the evaluation of Canada's proposed nuclear fuel waste disposal concept, the Federal Environmental Assessment and Review Panel (FEARP) undertook an extensive, nation-wide public hearing process. The hearing process itself was contentious and has been criticized on numerous grounds. It is our contention that the fundamental weakness of the FEARP process was that it was designed as an information-based forum, as opposed to a value-based forum.¹ Our observations and analyses of these hearings indicate that the FEARP envisioned a different purpose and a different outcome of this process than the public in general. As a result, public acceptability for the Concept or even the assessment process itself was not garnered due to a failure in the process to identify, address and incorporate values. To address this, we proposed a seven-step value elicitation process specifically designed to assess public acceptability of the disposal concept [2].

An unfortunate consequence of the flawed public consultation process employed by the FEARP is that it is unclear exactly what it is the public finds unacceptable. Both from discussions and observations, it is difficult to ascertain whether the unacceptability lies with the Concept itself and/or the process by which the Concept was to be assessed. As a result, there is uncertainty as to what questions should be asked and how should the "unacceptability" be addressed. In other words, does Canada need a new concept? Does Canada need to develop a mechanism for assessing the public acceptability of the Concept? Or both? The inability of the current process to answer such fundamental questions demonstrates the importance of developing an effective public acceptability and consultation process.

¹ We define an "information-based forum" as a process that addresses a factual dispute. A factual dispute can be resolved by acquiring and assessing data that addresses the factual issue in dispute. We define a "value-based forum" as a process that addresses people's core beliefs or guiding framework for determining right and wrong. A value-based dispute cannot be resolved by acquiring data, because the disagreement results from differences in the interpretation of the data due to people's core beliefs or guiding framework[1].

We submit that, to create an acceptable public participation mechanism, it is necessary to found the construction of such a mechanism on the principles of effectiveness, transparency and fairness. Moreover, we believe that the larger decision-making process must adhere to these same principles to the extent that the public participation process is impacted. As outlined in our earlier work [3], we have designed a value elicitation process based on the principles of effectiveness, transparency and fairness with the ultimate goal of improving the decision-making process through the incorporation of public participation. In this paper, we have identified a number of procedural concepts from this value elicitation process that are applicable to other decision-making processes involving primarily value-based disputes. We begin with a discussion of the definitions of the principles and proceed with a discussion of how these principles can be incorporated into and transform public participation processes through value elicitation.

2. Definition of Principles

To understand the rationale informing the design of the value elicitation process and thus, the transferable concepts inherent within it, it is essential to know what is meant by the principles of effectiveness, transparency and fairness. An “effective process”, by definition, is one in which it does what it purports to do. Although this assertion may sound trite, designing such a process is often quite challenging, because many of the issues, concepts or matters that people wish to assess are difficult to gauge or quantify. Consequently, surrogates are often measured as an approximation for impacts relevant to a particular matter of concern. The strength of the relationship between the actual matter or issue of concern and the surrogate predicates the accuracy of the assessment assuming that there are no other confounding factors.

In the context of a value-based dispute, we define an effective process as one that successfully identifies all the values, their role and their interplay in the dispute. In our experience, current public consultation processes examine the facts of an issue and the perceptions of the public with respect to the issue rather than the values or value systems that underpin those opinions and perspectives. Since it is unlikely that an information-based forum will be effective in addressing value-based issue, it is important first to identify accurately the nature of the dispute and then formulate a process accordingly.

We define “transparency” as that characteristic of a process whereby: any participant has free and full access to all relevant information, all steps involved in the entire decision-making process are clearly stated, the roles of participants are clearly defined, and a means for participants to see how their participation contributed to the final decision. Thus, transparency requires that both the value elicitation and the decision-making processes must be explicitly described and presented prior to commencing. Both the implementation of the value elicitation process and its

evolution must be open to public scrutiny. Transparency is a pre-condition for fairness, since fairness cannot be effectively assessed without transparency.

The process must be fair, as well as be perceived as fair to incorporate effectively public participation into decision-making processes. Without at least the perception of a fair process, members of the public are unlikely to participate. Moreover, members of the public are even less likely to agree with the results of a process which they believe is unfair. Fairness is a subjective, context-specific evaluation. We believe that the goal of fairness for the purpose of designing a process is that, even though parties may disagree with the final outcome of the process, they should agree that the process was fair.

An important consideration in assessing fairness is the application of power. The decision-maker must not have, or be perceived to have, unbridled control over the process or its outcome. It also means that members of the public must be empowered to participate in the process and thus, contribute to the decision-making process in a meaningful manner.

3. Procedural Concepts Based on These Principles

To incorporate a meaningful public participation mechanism into a decision-making process, it is our contention that the following procedural concepts could be applied when addressing a value-based dispute. For the purposes of describing these procedural concepts, the term “convenor” is used to refer to the entity that is responsible for managing the assessment of the issue in dispute and, consequently, engaging in a value elicitation process.

3.1 Initial Information Dissemination

Prior to the commencement of the value elicitation process,, information pertaining to the issue in dispute as well as the process itself should be disseminated to all members of the public. Members of the public need to be provided with the necessary information to formulate a judgement on the issue. Since it is difficult to predict what information would be required, the best approach might be to provide a background package, of reasonable length, in language that is understandable to members of the public. Additional, supplementary materials should also be available to provide more detailed information on all aspects of the issue and process.

For an effective and successful process to be attained, members of the public need to be informed about both the process itself and their role in the process. In describing the process, it is important to explain and emphasize how the participation of members of the public will be incorporated through the mechanisms of value elicitation, as well as how the outcome of the entire process will be used by the final decision-maker. Informing members of the public about the process encourages higher levels of participation collectively and enables them to participate more

effectively individually. One of the advantages of informing the broadest public possible about the issue and process is that it provides additional assurance that important values are not missed in the assessment. The information about the issue and process should be presented in a neutral manner in order to enhance trust and credibility [4].

3.2 Value Elicitation and Mapping

Members of the public should be provided with the opportunity to express their concerns, interests and values regarding the issue in dispute. As the process seeks to identify values held by individuals, members of the public will be able to express themselves freely without the constraints of boundaries generally proscribed by Terms of Reference. In other words, the participants define the boundaries according to their perception of the issue. The submissions would be interpreted by a panel of experts in value elicitation with a broad range of expertise in such relevant disciplines as ethics, anthropology, sociology, psychology and alternative dispute resolution. The panel of experts would then create a collective mapping that will identify the types of values in play, their roles and their frequency [5].

3.3 Value Representation

Before members of the public present their values, groups or organizations would be given the opportunity to present their concerns, interests and values regarding the issue in dispute. The panel of experts would analyze and record the values presented by each group or organization. The panel would then select a pre-determined number of groups² that best represent the values of the public as expressed through the collective value mapping. Since representation includes types of values, their role and frequencies, the selection of groups should take all three of these factors into account. Regardless of the pre-determined format to select the parties, a rationale for the choices should be made public, so as to adhere to the principle of transparency.

3.4 Negotiations

The representative parties determine what needs to be examined in order for members of the public to assess the issue in dispute. More specifically, the goal is to agree upon actions that should be undertaken to examine how particular values may be impacted by the issue in dispute. The parties should set the boundaries of the negotiations. This effectively empowers the parties to scope the issue in dispute. In

² The convenor should select the number of representatives based on balancing various considerations, such as the effectiveness of the number of participants in negotiating against the number of participants' ability to represent the various values expressed.

accordance with the principles of effectiveness and fairness, the convenor will select a neutral intermediary to facilitate these negotiations. In addition, the convenor will set deadlines for the negotiations such that sufficient time is provided to come to a meaningful agreement without countenancing excessive delays or filibustering.

Since each party will represent a segment of the population's values, each party has legitimacy and decision-making authority to negotiate to the extent that they act in a manner which is consistent with the values that they represent. Ultimately, the groups' and organizations' credibility is on the line for the actions taken in the negotiation, which would be publicized to further increase accountability, as well as keep members of the public informed. Thus, the actual individuals who participate in the negotiations must have decision-making authority for the group or organization that he or she is representing.

3.5 Undertaking Negotiated Actions

Once the parties come to an agreement on what needs to be done to assess the issue in dispute, the group will implement these actions. Since these actions are the product of negotiations with self-delineated boundaries, the agreed upon undertakings could be almost anything. However, at least a portion of the undertakings is likely to be a form of 'joint fact finding'. To facilitate an effective, transparent, and fair process, a rationale for the negotiated actions should accompany a description of what was undertaken and the results of its implementation, which should be made readily available to the public in an accessible form.

Once all the agreed upon results have been collected, the parties should write an assessment regarding the findings of the undertakings as they relate to the issue in dispute. Parties would have the option of writing individual or collective assessments, which would be made readily available for public scrutiny, as well as being submitted to the convenor. If consensus or even a partial consensus were reached, it would exert a stronger influence on the convenor's decision.

3.6 Public Participation Through Value Elicitation

Having been provided with information about the potential impacts on particular values, a subsequent and separate value elicitation hearing should be undertaken in order that individual members of the public may express their values. These public hearings would provide a forum for individual members of the public to assess the issue in dispute, as well as the process that was undertaken to examine it. Public participation would, once again, emphasize value elicitation, in order to avoid contorting a predominantly values-based dispute into an information-based dispute. A separate panel of experts, distinct from the first panel, would assist in these public hearings to avoid the potential conscious or unconscious biases of confirming their earlier work. The value elicitation experts would submit their report to the convenor

and make available to members of the public a report on the issue in dispute based on their analysis of the public values.

3.7 Input by Convenor to Decision-Maker

Ultimately, the convenor would submit its recommendation to the decision-maker. The convenor would have explicit material regarding the issue in dispute and should describe in detail the rationale for its recommendation. The convenor's explanation of its decision would increase the process' transparency and, thus, its credibility. As a result, the process may be perceived as being fairer, which, in turn, might increase the desire of members of the public to participate in the process and consequently, make the process more effective as it would be a more complete assessment of the public's values.

Although the convenor may only be able to submit its recommendations to the final decision-maker, the influence of the recommendations may be significantly greater due to the political power attached to the product of a more effective, transparent and fair assessment. In most cases, decision-makers will examine more than one source on information in their deliberations and, ultimately, weight different sources accordingly. To foster meaningful public participation in the decision-making process, it is important that the product of the value elicitation process receive significant weight from the final decision-maker. Furthermore, if the final decision-maker concluded that the issue was not resolved, this detailed analysis would provide a starting point for modifying an existing proposal or designing a new solution.

Conclusion

We believe that the incorporation of these procedural concepts will increase transparency, as well as enable members of the public to assess the fairness and effectiveness of a value elicitation process. Moreover, the implementation of such concepts is more likely to result in an acceptable process, both as perceived by members of the public, as well as one that more accurately reflects the values of the public. It is our contention that an acceptable process is a pre-requisite for an acceptable solution. However, we also submit that an acceptable process does not guarantee such a solution. In the context of a value-based dispute, decision making is assisted by public participation in an effective, transparent, and fair value elicitation process. It is our contention that the incorporation of these procedural concepts will assist in the creation of such a process.

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