



Whose input counts? Public consultation and the BC Water Sustainability Act

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INTRODUCTION

Public consultation has become an increasingly important feature of policy-making, intended to enhance democratic engagement by enabling citizens to influence plans and policies that affect them (Patten, 2001; Kaehne & Taylor, 2016). Consultation processes provide broad public input, with the intention of improving the outcomes (in terms of equity, sustainability, and so forth), as well as the legitimacy of government decisions (Shipley & Utz, 2012). However, consultation's poor alignment with decision-making processes, lack of transparency, and limited influence on policy and planning have at times earned it a reputation as tokenistic (Carr, 2012; Carvalho *et al.*, 2016; Cheeseman & Smith, 2001). Thus, a key question for policy-makers and the public is whether public consultation is delivering more democratic policy outcomes. Here we investigate precisely whether, and the degree to which, public input influences policy outcomes.

Specifically, this study provides a detailed analysis of the large-scale consultation process undertaken for British Columbia's Water Act Modernization (WAM), which received significant public attention and government investment. During this process, the provincial government held three rounds of public consultation from 2008-2013, resulting in over 4000 submissions that were used to refine BC's new Water Sustainability Act (WSA, 2014).

We critically examined the influence of different submitter groups on policy outcomes, and thus the role of consultation in the broader policy-making process. To do this, we developed a novel quantitative approach to systematically analyze participants' submissions on policy proposals, and compare those responses with resultant policies.

APPROACH AND RESULTS

Methods

All submissions for 15 of the 16 government-identified submitter (stakeholder) groups were analyzed, as well as 10% (482) of submissions from 'individuals'¹, totalling 867 submissions across the three stages of consultation.

Submissions were coded using a custom coding matrix that identified whether a submission supported stronger, moderate, or weaker regulation for each of 26 policy areas in the WAM process. These policy areas were identified from policy options in consultation documents released during successive consultation stages.² To highlight differences in policy preferences, the desired level of regulation for a submitter group was calculated by averaging responses within each submitter group. The average policy preference of each submitter group was then compared to the final Water Sustainability

¹ 10% of individual submissions, the largest group in the process, were randomly selected from each stage

² The Water Act Modernization discussion paper, policy proposal, and legislative proposal

Act by coding the Act using the same matrix.

Lastly, submitter comments on the consultation process were coded as either positive or negative in tone, and were classified in terms of recommendations made on changes to the consultation process.

Key results

Submitter comments on the consultation process:

- 21.0% of submissions commented on the consultation process itself, of which the vast majority were negative in tone or recommended changes to the process.
- Common recommendations were to provide more opportunities for input, to undertake meaningful consultation with First Nations, to extend the comment period, and to provide more information on proposed policies.
- Submitters emphasized that First Nations are not ‘stakeholders’, and that public consultation is insufficient to fulfill the Crown’s ‘duty to consult and accommodate.’
- The government responded to the public’s requests for further input by providing two additional stages of consultation, involving participants in a multi-stage process spanning early goal identification to feedback on actual policies.

Submitter responses to policy areas:

- Statistical analysis of submitter responses to proposed policies identified two clusters among submitter groups based on similarities in their submissions.
- The first cluster is composed of non-industry submitters (ENGOs, First Nations, Local Government, Individuals, Community Groups, and Academics), who advocated for stronger regulation of most policy areas, notably those related to water allocation, planning, and environmental protection.
- The second cluster is composed of industrial stakeholders (including agriculture, forestry, mining, oil and gas, hydropower, and business) who advocated for weak to moderate regulation for most policy areas, especially those that directly affect economic uses of water, such as water licensing, allocations, and governance.

Alignment between submitters’ policy preferences and WSA policy outcomes:

- Figure 1 illustrates the divergent alignment of industry and non-industry responses with the policy outcomes in the WSA.
- Statistical analysis of alignment between submitter responses and WSA policy outcomes resulted in the same clustering as observed in submitter responses.
- Industry group responses tended to show a desire for weaker regulation than was included in the WSA; non-industry submitters tended to want stronger regulation.
- The most obvious divergence is for policies relating to water licensing (such as ‘Allocation System’, right hand side); industry group preferences align with the policy outcomes, while non-industry submissions called for stronger regulation than included in the Act.
- Policy outcomes that align with non-industry groups’ submissions (left hand side) include new provisions for water planning and protections for households and the environment during scarcity - provisions that only apply under specific conditions.

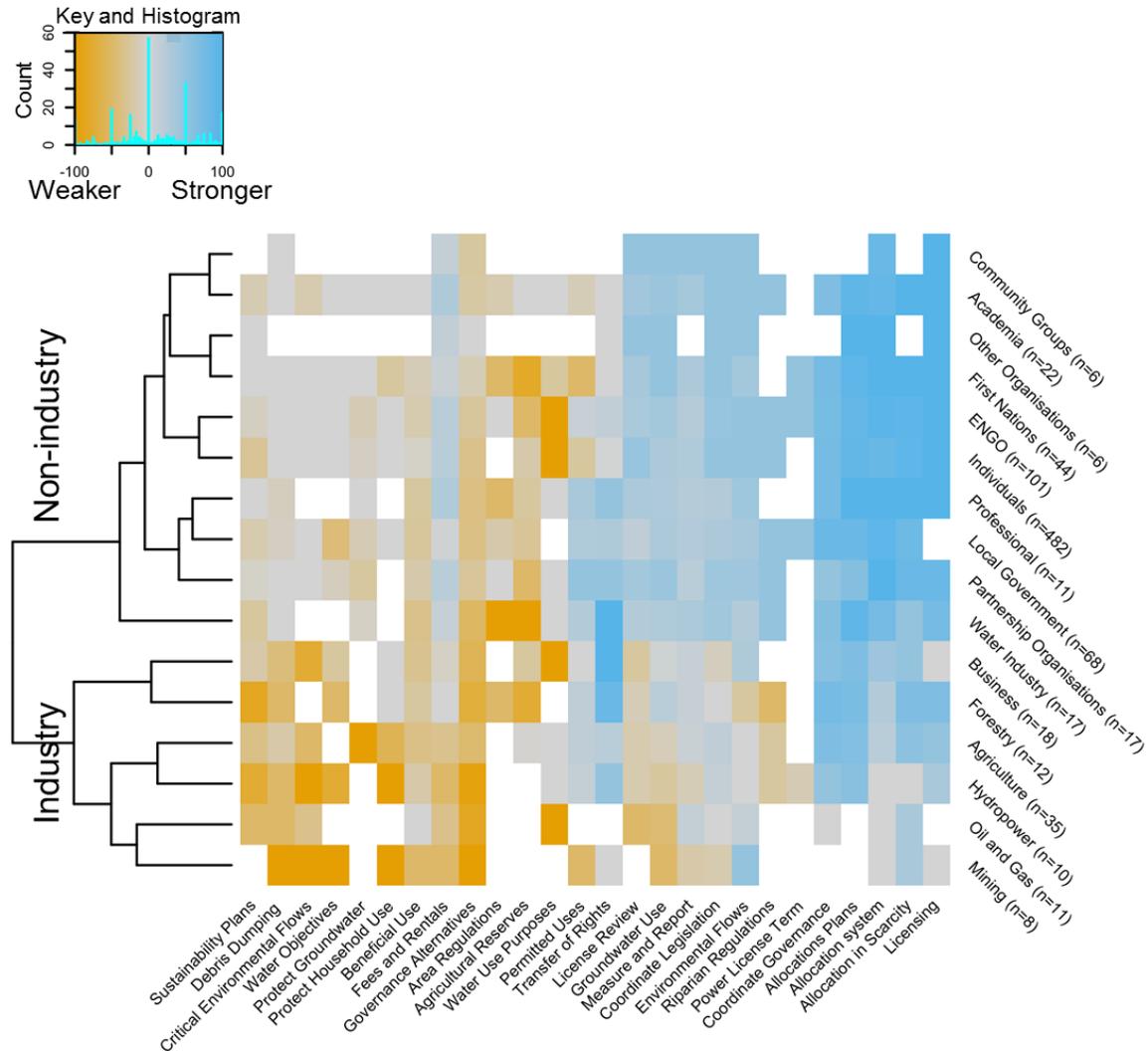


Figure 1. Heat map illustrating the degree of alignment between the average response of a submitter group and the WSA policy outcome for each policy area. Each square identifies whether a submitter group desired stronger (blue), the same (grey), or weaker (orange) regulation than was included in the WSA. Submitter groups (rows) and policy areas (columns) are clustered by similarity.

CONCLUSIONS

- Public consultation is insufficient to address the specific rights and concerns of indigenous communities; a separate process is required to fulfill the legal requirement to consult and accommodate First Nations in Canada.
- The policy preferences of industry and non-industry submitters clearly diverge. Whereas most submitters supported stronger regulation to improve environmental protection and sustainable water use, most industry submitters only supported changes insofar as they did not impinge upon existing water rights and uses.

- WSA policy outcomes aligned with the majority view for only half the policy areas.
- Core elements of the WSA defining water rights and allocation align most closely with the level of regulation desired by a small subset of submitters (i.e. industry).
- In contrast, policy outcomes that align with non-industry preferences tend to be conditional, discretionary, and may or not be fully implemented through the ongoing development of regulations.

IMPLICATIONS AND RECOMMENDATIONS

This analysis underscores the value of analyzing the outcomes of consultation; where policy outcomes do not align with public policy preferences, it is important that these patterns are identified and explained to promote transparency and accountability.

Key messages for policy makers

- Multi-stage processes such as the WAM enable meaningful public input into policy development - from goals through to regulations.
- Public consultation is not sufficient to address the specific interests and concerns of indigenous communities; a separate, community-appropriate process is required.
- Meaningful consultation for varied constituencies requires a response timeframe that does not disadvantage under-resourced or democratic organizations.
- Consideration should be given to the politics of submitter classification, including how classification affects the representation and influence of different submitters on consultation outcomes (e.g. how can submitter classification account for variability in the size and composition of submitter groups?)
- Transparency in consultation requires effective, multi-media communication – from publicizing consultation to publishing submissions and reporting on decisions.

Key messages for participants

- Given that consultation is always designed and constrained by the institution undertaking the process (in this case, the provincial government), effective participation involves: 1) working with the process by focusing on policies within the scope of consultation, and 2) preemptive lobbying to shape what topics are included in consultation.
- A well-structured response that clearly communicates key concerns and policy preferences is more likely to be effective.
- Aligned organisations can be more effective by working together to develop and distribute informational resources, target shared interests/concerns, and build consensus for key policy proposals.
- Mass submission of pre-written ('form') letters is not indicated as having a significant impact on decision-makers; form letters are perceived differently to personalized submissions.
- Consultation is demand-driven, requiring widespread interest and participation. Public pressure is thus important to ensure that government continues to invest in consultation processes, and that there are continued opportunities for public input into policy-making.

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FURTHER INFORMATION

Further information on the wider research project can be accessed via the Program on Water Governance website <https://watergovernance.ca/projects/water-in-canada/water-sustainability-act/> This webpage will be updated periodically as further results and resources become available

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