

# TACTICS FOR NEGOTIATING AGREEMENTS THROUGH COLLABORATIVE DECISION-MAKING PROCESSES

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Negotiation has been used in many natural resource dialogues, including a wide range of watershed issues. According to the legislation authorizing the Interbasin Compact Charter, a framework for negotiation is an essential component of building a lasting model for addressing water disputes in Colorado (C.R.S. 37-75-105(3)a). A negotiation framework has many different shapes, drawing not only from the most traditional negotiation literature, but also from literature on mediation, facilitation, policy dialogues, consensus processes, decision-rules, and information and fact gathering processes. Collectively, this is a body of literature that addresses the need for collaborative decision-making processes to find solutions to disputes between multiple stakeholders. It identifies tactics for participants to navigate a conflict, move from exploration to the development of proposals, and eventually reach outcomes that benefit one or all parties.

In the literature review to follow, these approaches to collaborative decision-making are explored with an emphasis on their similarities and differences to one another. *Option Tables* are included within many sections to briefly summarize the main tactics and concepts. *Example Boxes* are also scattered throughout to tie the information back to water policy and the experience of other states and communities.

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## WATERSHED DIALOGUES

Watershed management in the United States faces ongoing disputes among parties with conflicting needs and wants. The issues are complex, with poorly defined problems, different interpretations of data, and no obvious solutions (Smutko et al., 2002). Different processes have been used over the years to address these disputes including regulatory choices related to allocation of water, litigation, citizen initiatives, and, most recently, collaborative planning. It is the latter that is of interest in this paper, with watershed management viewed through the lens of a collaborative, negotiation-based decision-making model (Smith, 2005).

“The watershed movement is a political and social experiment that responds to this government fragmentation and decision-making gridlock with civic practices that attempt to produce more integrated resource management with greater local input and increased consideration of factors crossing jurisdictional boundaries” (Dakins et al., 2005).

Unfortunately the watershed experiment has resulted in mixed outcomes. As a whole, environmental mediation has demonstrated limited success, with researchers basing much of their claims of success on anecdotal or single study analyses. Even when negotiation has been successful in creating an agreement, compliance in its implementation is still a problem (Snipe, 1998). Negotiation processes sometimes succeed, but equally or more often, they fail. The public who make up the watershed groups arrive at the table with conflicting interests, competing needs, and different agendas (Dakins et al., 2005).

This can be a disheartening picture, but there is also good news. Participants in watershed dialogues have reported increased understanding of the issues including the perspectives of other interests and increased ability to address the challenging and controversial aspects of their watershed. Participants in consensus based groups have also reported positively on the ability of the group to listen to and respond to minority interests (Dakins et al., 2005). These watershed dialogues, both successful and not, have depended upon negotiation, mediation, facilitation, and consensus approaches, each of which share features and have specific strengths and weaknesses. The decisions that must be made in the design of such a process can be informed by the research on the many options. The table to follow lists the options explored in this document and the page numbers for more information.

**Options Table 1.** A List of all Options

<b>Collaborative Decision Making Approaches (pp. 4 - 9)</b>	<b>Negotiation</b>	<b>Mediation</b>
	<ul style="list-style-type: none"> <li>• Positional Negotiation</li> <li>• Integrative Negotiation</li> </ul> Consists of parties to the dispute and legal representatives/negotiators for each party	<ul style="list-style-type: none"> <li>• Facilitative Mediation</li> <li>• Transformative Mediation</li> </ul> Consists of parties to the dispute and a third party mediator/facilitator
	<b>Facilitation</b>	<b>Policy Dialogues</b>
	Consists of participants and a third party and may be used with a variety of different problems/issues	Consists of interested parties, a neutral third party, and ideally also includes traditional decision-makers

<p><b>Decision Rules</b> (pp. 9 - 12)</p>	<p><b>Unanimous</b> Allows for no minority reports, but may result in unequal agreements by assuming all parties equally agree with the decision</p>	<p><b>Unanimous-minus-1</b> Allows parties to object without fearing they will undermine the process, but risks one party arguing their needs were not met</p>	<p><b>% Agreement/ Super Majority</b> Allows multiple parties to object without fearing they will undermine the process, but may result in significant discontent with the decision</p>	<p><b>Gradients of Agreement</b> Allowing “agree with reservation” creates opportunity for more monitoring of the decision and allows facilitators to address reservations</p>
<p><b>Principles</b> (p. 14)</p>	<p>Principles for the collaborative decision process can include such things as mutual respect, inclusiveness, accessibility, clarity, transparency, responsibility, and accountability</p>			
<p><b>Practices</b> (p. 15)</p>	<p>Practices for a collaborative decision process can include how information is gathered and shared, the process for engaging participants, representation of interests, and the management and design of the decision process itself</p>			
<p><b>Using Information</b> (pp. 16 - 20)</p>	<p><b>Joint Fact Finding</b> A team based approach to fact finding, all parties are represented on a subcommittee that comes to agreement on available information and develops one report of acceptable facts</p>		<p><b>Neutral Third Party</b> One or more third parties identify and present information, helping participants to discuss and come to agreement</p>	
<p><b>Participation Rules</b> (pp. 20 - 21)</p>	<p><b>Representative</b> Considered a fair and balanced approach, finding representatives can be difficult for less organized interest groups</p>	<p><b>Democratic</b> Allowing everyone to participate, it can result in an unwieldy and inconsistent number of participants</p>	<p><b>Restricted</b> Allows interest groups not identified by the convener to participate, but the criteria that restricts participation may create problems for some groups</p>	
<p><b>Possible Barriers</b> (pp. 22)</p>	<p>Stalemates and open meetings laws can be barriers to a successful consensus process. Strategies to address both are explored.</p>			

## INTRODUCING NEGOTIATION

“Negotiation is a process in which proposals are put forward for the ostensible purpose of resolving specific disagreements among two or more parties with both conflicting and common interests” (Churchman, 1995: 2).

Although there are a wide range of approaches to negotiation, at its most basic level the theory and practice of negotiation is based on two approaches:

- Positional negotiation, also called distributive, contentious, and competitive; and
- Integrative, also called cooperative and problem solving.

Positional bargaining is often referred to as “hard” bargaining while integrative is ‘soft’ bargaining. Hard bargaining focuses on winning, lacks compromises, and includes hidden agendas and one-sided agreements. In contrast, soft bargaining is adaptable, focused on finding win/win solutions, encouraging of compromise, and sometimes innovative in the solutions created (Fisher et al., 1991) As this suggests, *positional negotiation* is an approach that is often problematic for the following reasons:

- The outcomes are focused on win/lose, with each party bringing in predetermined definitions of a ‘win’ (Wertheim, 1997);
- The lack of compromise can result in lose/lose outcomes; and
- The approach is rooted in the choice of participants and the process to focus on predetermined positions over more flexible and varied interests (Fisher et al., 1991).

However, positional bargaining is a good fit in certain situations and prominent negotiation theorists such as Churchill (1995) suggest that most negotiations follow more of a win/lose model than a win/win model.

In contrast, *integrative negotiation* has such features as:

- The process is focused on collective decision-making with compromises to reach the optimal solution for all involved (Wertheim, 1997);
- It is only possible when multiple issues are being considered, as that allows for the ‘win-win’ outcome; and
- The interests that it considers are both needs and wants, but also such things as fears, concerns, and the underlying reasons participants have for their involvement in the conflict (Fisher et al., 1991).

Traditionally, negotiated dialogues involve the parties to the dispute and the selected negotiators for each party. A negotiated dialogue that expands to include a neutral third party is more often referred to as a mediated dialogue. In the traditional negotiation model without the third party, the two types of negotiation can be seen as the selection of tactics. For example, Lamb and Taylor (1990) give the example of when an opponent begins with a meaningful concession, the negotiation begins with an integrative tactic and can receive one in response. However, if the concession was small or begrudgingly offered later in the process, the negotiation strategy may be more of a competitive, and thus positional, approach. Other tactics, given such colorful names as bombs,

button hooks, and flares, are highly specific ways to reach a 'win' for one or both party during a negotiation (Churchill, 1995).

In a mediated or otherwise planned dialogue, the two types of negotiation can be a more purposeful group decision to go in one direction or the other. However, positional negotiation may enter into the best planned negotiation process, particularly if distributional issues cannot be resolved without one or more groups failing to have their need for limited resources met.

## INTRODUCING FACILITATION AND MEDIATION

As noted previously, mediation is similar to negotiation but uses a neutral third party facilitator instead of or in addition to designated negotiators for each party. Facilitation also relies upon a neutral third party and for this reason, the two are explored together. Comparing them is a helpful way of explaining both and noting their differences. Also, well respected organizations that have helped in water compact development such as CDR Associates (<http://www.mediate.org/>) and ADR Group (<http://www.adrgroup.co.uk/>) link facilitation and mediation together in training and services, suggesting the value of finding the strengths of each approach and creating a hybrid to match the needs of the decision process.

*Facilitation* is a dialogue supported by a neutral third party who helps participants to effectively communicate and reach their desired outcomes. Facilitation remains unique from negotiation and mediation due to the wide breadth of activities that can occur within a facilitated dialogue. Facilitations may address conflict, but tend not to be used in high conflict settings. A facilitated dialogue may also work with like-minded participants to reach other types of goals such as strategic planning, implementing a program, budgeting, and more (Spangler, 2003). Consequently, the facilitator fills a variety of roles including: (Zartman, 2003).

- Managing meetings;
- Convening and preparing participants;
- Serving as an ombudsman or educator;
- Mediating low to medium levels of conflict;
- Ripening the issue;
- Helping participants to identify areas of possible agreement;
- Helping participants build an understanding of the need for compromise;
- Helping to clarify the costs of being involved and not being involved in the process; and
- Helping document the decisions.

Not all facilitators are equally skilled in the full range of roles. When selecting a facilitator, it is important to match skills to the roles that will be played during the process.

*Mediation* is a form of alternative dispute resolution, similar to negotiation, and is a more structured and predefined process than facilitation. It is intended to address moderate to high levels of conflict (Isenhardt and Spangle, 2000). Duker (1996) describes mediation as a non-adversarial process that uses some variation of consensus decision-making, does not exclude any important interests, and is facilitated by a neutral third-party. The role of the third party is to work with participants to create successful communication, compromise, and decision-making. The mediator uses empathy and

impartiality to guide the group through agreement on facts, generation of ideas, and development of agreements (Honeyman, 2003). Mediation is used in interpersonal conflicts as well as policy disputes.

In policy disputes, mediation has many styles and variations. The three primary styles of mediation are facilitative (problem-solving), evaluative, and transformative. The difference between these types is found in their outcomes and settings. Table 1 compares those styles most relevant to the charter. Evaluative mediation is left out as it is a very legalistic process that is usually the result of a court order (Zumeta, 2000). Mediators often specialize in one approach or another, suggesting the selection of a mediator is highly important to the design of the collaborative process (Fleischer and Zumeta, 1999).

**Options Table 2:** Styles of Mediation

	<b>Facilitative (Problem Solving)</b>	<b>Transformative</b>
<b>Mediator's focus</b>	The process itself	The relationships and understandings among parties to the dispute
<b>Mediator's role</b>	The mediator is a facilitator of a the process with no legal or sustentative knowledge needed	The mediator's skills and focus are on the empowerment of parties to the dispute the relationships between them
<b>Meeting style</b>	Conducted almost exclusively through joint meetings with all parties	Conducted almost exclusively through joint meetings with all parties
<b>Other features</b>	This is the traditional style of mediation	This is a more recent development in mediation, respected for its relationship building capacity
<b>Criticisms</b>	Time consuming, particularly with a large number of participants	Lacks focus on the dispute and tends to be too idealistic

Based on Zumeta (2000).

*Facilitation and Mediation* have many differences, but before noting those, a few things are shared by both approaches (Fleischer and Zumeta, 1999):

- Open meetings where information is shared, explored, and problem solving is undertaken;
- Use of a neutral, third party facilitator/mediator; and
- Use of the neutral third party to invoke ground rules and change the behavior of a participant, though with facilitation the participants can also invoke the ground rules.

Options Table 3 lists some of the key differences between facilitation and mediation, related to both process and outcomes.



**Options Table 3: Comparing Facilitation and Mediation**

	<b>Facilitation</b>	<b>Mediation</b>
<b>Goals</b>	Assist participants in accomplishing their work, whatever they define it to be	Reach a written agreement
<b>Number of Participants</b>	High, from 12 – 200	Low, from 2 - 20
<b>Process</b>	Group determined process	Pre-defined mediation process with options such as facilitative, evaluative, transformative, etc.
<b>Level of Conflict</b>	Low to moderate	Moderate to high
<b>Use of Small Groups</b>	Small groups are used to accomplish specific tasks on behalf of the full group	Private sessions with one or more parties are used to develop trust and support and explore options
<b>Generating Options/Ideas</b>	Participants are led through brainstorming and other techniques to generate ideas and prioritize options	Participants propose their solutions and options while mediator provides guidance and additions
<b>Agenda Design/Ground Rules</b>	Facilitator assists participants in developing agendas and ground rules	Mediator often brings predefined agendas and ground rules
<b>Identifying Parties to the Dialogue</b>	Identification of parties is an important first step in a facilitation process, traditionally called convening	Mediations are often conducted in situations where the parties are obvious, though this is less true in public policy mediations
<b>Methods of Decision-Making</b>	The group decides on the process of decision-making and the facilitator takes on a leadership role in implementing the process	The process of decision-making combines interest-based negotiation and consensus/compromise building
<b>Role of the Neutral Third Party</b>	The facilitator’s role varies depending on the needs of the participants and the conveners	The mediator maintains a predefined role as a “catalyst for change” in the communication process
<b>Prior Contact with Parties</b>	Facilitators consider prior contact with participants as a necessary first step in convening a decision-making process	Mediators may or may not meet with participants, depending on the needs of the situation

Based on Fleischer and Zumeta (1999) and Isenhart and Spangle (2000).

## **INTRODUCING POLICY DIALOGUES**

Negotiation and mediation also vary according to their setting. While much mediation occurs in interpersonal or court-ordered settings, it is also widely used in public policy settings. Policy dialogues are a variation that focus on public and sometimes private actors working together to make policy decisions. Similar to mediation, a policy dialogue includes convening participants, information gathering and exchange, debate, and development of solutions through a consensus process (Adler, 2003). An advisory committee is often used to begin the development of questions and aid in engaging broader participation as well as design the process. Participation in a dialogue

can be as few as a dozen or as many as fifty or more. Some policy dialogues request that participants represent their own interests, rather than represent other groups or organizations, removing the element of representative interests from the dialogue (Dukes, 1996). Some of the tools of negotiation and mediation that are also found in policy dialogues are (quoted from Adler, 2003):

- Strategies for bringing multiple viewpoints in a given topic or issue area to the table to ensure a rich diversity of ideas;
- Methods for problem "naming" and "framing," i.e. structuring the way controversial issues are stated;
- Critical inquiry tools that foster the examination of data sets, some of which may be conflicting or incomplete;
- Procedures for grappling with divergent values, worldviews, and ideologies;
- Creativity and robust brainstorming methodologies;
- Strategies for problem "taming" and exploring alternative pathways in the search for applied solutions; and
- Consensus-building and agreement-making methods that bring about specific joint decisions.

Policy dialogues are a means of providing non-experts a leadership role in democratic decision-making. They explicitly include the politics of the issue including values and beliefs. Adler (2003) lists three important things that lead to successful policy dialogues:

- Ripeness: the timing is right to address the policy issue with enough frustration with more adversarial methods that collaboration seems necessary;
- Lack of Alternatives: the alternatives already identified or likely to be available to any one group working on their own are not as high of quality as those that may come out of a collaborative process; and
- Creative Leadership: the leadership is from multiple interest groups and has a commitment to acquiring new ideas and responding to others concerns.

One of the challenges of policy dialogues is translating the outcome of the dialogue into formal public policies. The more traditional policymaking process needs to be well connected to the policy dialogue, engaging government representatives and decision-makers throughout the process (Dukes, 1996)

*Example Box 1: A Policy Dialogue Code.* The Canadian government developed a “Code of Good Practice on Policy Dialogue” for working with the voluntary sector. This document outlines key tactics for building and maintaining a healthy, strong relationship between the different sectors. It includes the values and principles that both agree upon as well as commitments they have made. In this document, a policy dialogue is treated as an opportunity to build and enhance positive relationships with carefully chosen principles guiding the dialogue including mutual respect, inclusiveness, accessibility, clarity, transparency, responsibility, and accountability (Joint Accord Table, 2002). The code is a good example of collaboration principles, roles for public and private sector, and opportunities for collaboration at different times in the policy process. For these reasons, it is included as Appendix A.

## INTRODUCING CONSENSUS AND DECISION-RULES

While decision rules and consensus process are defined in many ways, with many approaches in use, this literature review will treat consensus as a decision-making process, not a decision-making rule. This follows the definitions used by respected facilitation authors such as Kaner et al. (1996) and Gray (1989). A decision rule is the specific criteria used to accept a decision and may be such things as unanimous, majority rules, 80% agreement, etc. Decision rules can be predefined or selected by the participants in the process. A consensus process, in contrast, is how the group thinks, discusses, and works together to reach the decision-making point.

### Consensus

Consensus decision-making is a process that strongly resembles the previous discussion of integrative negotiation. It can be undertaken using many different techniques and approaches and has a clear set of overriding features. While it can be its own process, it may also be an approach brought to a mediation or facilitation process. It is based on concepts of broad participation with representatives of the stakeholder groups and ownership of the decision by all involved (Burgess and Spangler, 2003). The table below is drawn from both negotiation and consensus decision-making authors, outlining major features of consensus processes and their similarity to integrative negotiation.

**Options Table 4.** Two Types of Consensus Decision-Making and Negotiation

	<b>Non-Consensus Decision-Making/ Positional Negotiating</b>	<b>Consensus Decision-Making/ Integrative Negotiating</b>
Goal/Outcome Expected	Win/Lose ***	Win/Win ***
Roles	Adversaries *	Friends *
Value System	Competitive **	Collaborative **
Underlying Philosophy	Survival of the fittest **	Interdependence of all things **
Acceptable Outcome	One sided win or no agreement *	It's okay if one side loses, if it helps agreement *
Attitude Toward Winning	Victory * To the victor goes the spoils **	Agreement * Your success is my success **
Attitude Toward Minority Opinions	Get with the program **	Everyone has a piece of the truth **
Use of Pressure	Apply pressure to win *	Yield to pressure and compromise *
How long it takes	Faster in the short run **	Faster in the long run **
Mental/analytical activity	Analyze: break whole issues into parts **	Synthesize: integrate partial issues into whole **
Attitude toward losing	Someone has to lose **	If someone loses, everyone loses **

\* From Fisher et al., 1991: 13 on negotiation

\*\* From Kaner et al., 1996: 147 on consensus decision-making

\*\*\* From both the negotiation and consensus decision-making literature

## Decision Rules

A consensus decision-making process does not have to have a unanimous decision-rule. Successful consensus processes have used a variety of rules with different benefits and weaknesses. All attempt to accommodate minority interests in different ways, addressing concerns related to imbalances in representation and power.

*Unanimous agreement:* In high-stakes issues, unanimous agreement can be very challenging to reach and requires participants and their facilitator to have skill at coming up with “both/and” solutions instead of pressuring each other to accept the unacceptable. This type of decision-rule is time consuming and may not meet predefined deadlines, but it also uses the tension around the issue to come up with creative, new solutions to the problems at hand (Kaner et al., 1996). This decision-rule is the most extreme means of ensuring minority voices have equal power in a collaborative process. One of the downsides of this decision rule is the risk that participants feel pressured to agree so as not to derail the decision, leaving important interests or concerns unvoiced during the planning process. Another downside is the risk of reaching a decision that is the “lowest common denominator” instead of the best decision (Dankins et al., 2005).

*Unanimous-minus-one and % agreement:* Consensus processes have also used the unanimous-minus-one decision rule, while others have used set percentages or called for super majorities of 2/3 agreement or more. For example, local chapters of the Green Party have set 80% of the required percentage of participants who must agree with a decision for it to be accepted. The choice of decision-rule can greatly affect the process in both positive and negative ways. For example, the non-unanimous rules explored here risk not having 100% buy-in to the final decision, but gain a couple important things. First, the process is able to move forward even if one party disagrees, making the decision process less likely to be undermined by participants who hold back their objections until the decision-making point when they then veto the decision. Second, these decision rules also allow for legitimate objections from participants who otherwise would hold back their concerns, so as to not derail the process (Kaner et al., 1996).

*Hybrid Decision-Rules.* While unanimity may be the preferred decision-rule, a hybrid process allows for a backup for when consensus fails. A voting rule such as the unanimous-minus-one or super majority may be the fall back if the group agrees to abandon the attempt at consensus (Dankins et al., 2005).

*Example Box 2: Using Unanimous Decision-Rules.* In the Nebraska task force to address surface and groundwater issues, the members chose to use a consensus process with no voting. Not only did the final product have to be agreed to by all members of the task force, but decisions made while in process also used a unanimous decision rule. When difficult conflicts arose, the facilitators from CDR Associates helped the group to address specific concerns through idea generation in interest-based discussions, small group deliberations, and plenary sessions. The task force was successful in the development of plan that had unanimous support and was able to formalize it through the legislature (Moore et al., 2003).

*Gradients of Agreement:* Kaner et al. (1996) explores the many definitions of “yes” in his discussion of decision-rules. He reminds the reader that each participant in a process will bring different individual criteria for when they will bring up their interests and objections. Some participants will speak up at any deviation in the planned decision from their interests. Other participants may only

speak up when their top priority interests are not met. Yet other participants may be very process oriented and may speak up when others have objections as well, but remain quiet when the process is moving smoothly so as not to rock the boat.

This results in different gradients of agreement. While some participants may be willing to agree with reservations, others may only be satisfied when they can strongly endorse the final decision. Abstaining from the decision can be very different from formally disagreeing and that is different from actively blocking the decision. Understanding these individual dynamics helps to explain the value of considering not only the unanimous decision-rule, but also unanimous-minus-one, and percentage agreement decision-rules when seeking full agreement on a decision.

Isenhardt and Spangle (2000) recommend allowing gradients of agreement in the final decision, such as “agreement with reservation” or “step aside.” They explain that such gradients increase the monitoring of the decisions, with participants recognizing that new information may result in a need for refinements and adaptations to the decision. By not forcing participants to fully agree or disagree, greater room to negotiate also exists and the facilitator has an opportunity to work through reservations.

**Options Table 5: Decision-Rules**

	<b>Unanimous</b>	<b>Unanimous minus 1</b>	<b>% Agreement/ Super Majority</b>	<b>Gradients of Agreement</b>
<b>Strengths</b>	Requires all parties to agree to the final decision, allowing for no minority reports	Allows parties committed to the completion of the process to object when some interests are not met	Decreases time and challenges to finding an acceptable agreement and allows parties to object without harming the process	Allowing for “agree with reservations” or other gradients supports ongoing monitoring of the decision for needed changes
<b>Weaknesses</b>	Assumes all parties mean the same thing when they say “yes,” which may hinder implementation. Can result in low quality decisions in order to find a decision acceptable to all	Allows one party to argue their needs were not met and hinder successful implementation	Allows multiple parties to argue their needs were not met and hinder successful implementation	Gradients of agreement can be used with any of the other decision-rules and thus will face the same strengths and weaknesses of the other rules

Based on Kaner et al. (1996).

## CRITERIA FOR DESIGNING A DECISION-MAKING PROCESS

Within the *integrative negotiation* approach, many different tactics can be used. Various authors have advocated a wide range of different tactics and pre-designed approaches. Factors influencing the use of different types of negotiation approaches include:

- The complexity of the issue including the interplay of ideologies, personalities, and scientific ‘evidence’ from multiple parties (Lamb and Taylor, 1990);
- The number and type of participants, e.g. whether it is local, local and state, or local, state, and federal (Lamb and Taylor, 1990);
- The level of concern that participants (or designers) have about the interests of all the parties involved (Pruitt, 1991);
- The feasibility of the negotiation strategies given the constraints of the setting including the extent of existing common ground, problem solving skills and demonstrated success in previous negotiations, and momentum toward a positive solution, and levels of trust (Pruitt, 1991);
- The level of conflict, with facilitation more appropriate with lower levels and negotiation and mediation more appropriate with higher levels (Isenhardt and Spangler, 2000);
- Levels of interdependence among participants, with increased interdependence facilitating negotiation processes (CDR Associates, 2003);
- The importance of future relationships among participants (CDR Associates, 2003);
- Means of influence and leverage held by participants in the process (CDR Associates, 2003);
- Timelines, resources to support the process, and authority to make decisions (CDR Associates, 2003); and
- External factors that may influence the settlement such as political climate, public opinion, or economic conditions (CDR Associates, 2003).

## DECISION-MAKING PROCESS OPTIONS

As seen in the discussions above, a collaborative process has the potential to be based on negotiation, mediation, facilitation, policy dialogues, or a hybrid of these variations. While some processes are pre-defined, allowing the collaborative group to design their own process may help in building buy-in and increasing the likelihood of success. The group will also need to consider the facilitator they wish to work with, if any, the decision-rules, and elements of consensus processes to use. Information and fact-finding processes need to be developed and finally, the participation rules should be set. In addition to the broad concepts of negotiation, mediation, facilitation, and policy dialogues, many facilitators and researchers have developed customized approaches. Some examples of these approaches are included in Appendix B.

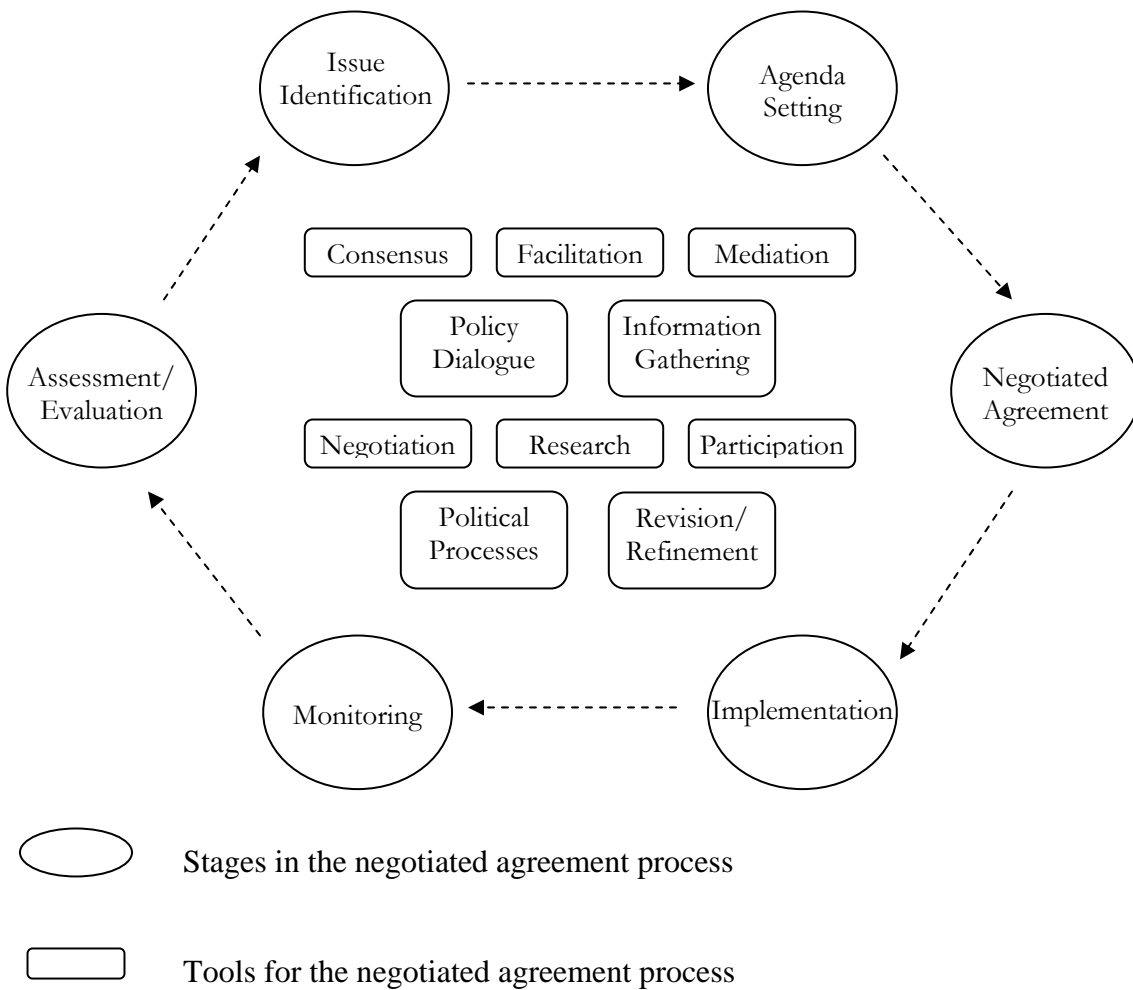
**Options Table 6: Comparing Process Options**

	<b>Negotiation</b>	<b>Mediation</b>	<b>Facilitation</b>	<b>Policy Dialogues</b>
<b>Participants</b>	Parties to the dispute and their negotiators	Parties to the dispute, their negotiators if desired, and a neutral third party	Participants who may or may not be in conflict and a neutral third party	Parties affected by the policy issue and a neutral third party
<b>Goal</b>	To reach a decision that is a win for one or more parties	To reach a compromise decision that is a win for all parties	To meet the goals of the participants and process	To build consensus on a policy action
<b>Process Design</b>	The process is determined by tactics used by the parties during the negotiation and rules set prior to the negotiation	The process may be predefined by the mediator and/or the parties to the dispute and may follow one of the models of mediation	The process is developed by the participants	The process is often determined by an advisory committee that oversees the process
<b>Relationships</b>	Relationships between parties are not a focus of the negotiation	Relationships between parties are an important part of the mediation	Relationships between parties are an important part of the facilitation	Relationships between parties are not a focus of the dialogue
<b>Power</b>	The power of different parties often affects the process and outcome	The mediator is responsible for addressing disparities in power among participants	The participants determine the role they wish power to play in their process	The power of different parties may affect the process and outcome
<b>Possible Problems</b>	Negotiations can be very adversarial and suffer from power imbalances	Mediation can be time consuming and may not result in a decision if consensus is required	Facilitation may not be as effective with high conflict groups	Policy dialogues may fail to influence policy decisions if they are not tied closely to traditional decision-makers

Based on from Fisher et al. (1991), Kaner et al. (1996) Fleischer and Zumeta (1999), Dukes (1996), and Churchill (1995).

Regardless of the type of variations selected, a collaborative decision-making process follows the basic stages of a public policy process. Issue identification is already underway in the water roundtables throughout the state, with the diverse participants helping to bring forward specific water challenges for their basin. As the issues are identified, each water roundtable will set an agenda that reflects priorities from various governmental and non-governmental partners. The process options explored in this document led to the negotiated agreements containing policy decisions for the basins. The implementation of those decisions will be a collaborative effort as well and requires monitoring and eventually evaluation or assessment to determine the success. As shown in Figure 1, this is an iterative process with assessments of the decision resulting in new issues and agendas to address.

**Figure 1:** Diagram of the Potential Negotiation Process



Adapted from Joint Accord Table (2002).

### **SAMPLE PRINCIPLES AND PRACTICES FOR A COLLABORATIVE DIALOGUE**

The Canadian policy dialogue code in Appendix A moves beyond focusing on the mediated dialogue and outlines principles, practices, and processes for dialogue between the government and the voluntary sector. The principles, quoted in Options Table 7, include many that can be generalized to other policy dialogues and may be useful in the development of a framework for negotiation.



**Options Table 7.** Code of Principles for a Policy Dialogue

<b>Mutual Respect</b>	Both sectors will listen to and consider the views of all participants and respect their legitimacy and input.
<b>Inclusiveness</b>	Both sectors will involve the broadest possible range of groups or individuals who may be affected by a policy or who can make a meaningful contribution to the debate. Increasingly, policy development must take account of the specific needs, interests and experiences of the diversity of the voluntary sector including, for example, groups representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, sexual orientation, remote, rural and northern communities and other hard-to-reach subsectors.
<b>Accessibility</b>	Both sectors will take the appropriate measures to ensure that all those invited to participate in a dialogue have access to the process. This will take account of factors such as language, region, distance, ethno-culture, religion, socio-economic background, age, knowledge or capabilities.
<b>Clarity</b>	Recognizing that a clear mutual understanding of the objectives, purpose and process of participation and feedback is vital, both sectors will establish the terms of the policy dialogue in advance and communicate them to participants.
<b>Transparency</b>	To build trust, both sectors will establish open lines of communication, provide information readily and invest in working relationships. Participants must clearly understand the context within which each decision will be made, including the scope of and limitations on dialogue.
<b>Responsibility</b>	Both sectors will participate in good faith and recognize that adequate resources and time are required for an effective process.
<b>Accountability</b>	Both sectors will provide feedback to their respective constituencies on the full range of views expressed, and clearly communicate how this input has been considered in the public policy process.

Taken from Joint Accord Table (2002: 5-6).

In addition to laying out guiding principles, the Canadian code also lists specific activities for the government and voluntary sector partners. These activities, quoted in Options Table 8, focus on information sharing, engagement and representation from local communities, and maintaining and improving the process itself.

**Options Table 8.** Code of Practices for a Policy Dialogue

<b>Information</b>	The parties commit to:
	<ul style="list-style-type: none"> <li>• ensure that assessment takes into account the differing regional impacts of policies;</li> <li>• to the fullest extent possible, make appropriate statistical and analytical information – such as survey data, research studies and policy papers – readily available in accessible and useable formats to enhance the voluntary sector’s capacity for analyzing and developing informed policy positions; and</li> <li>• use appropriate means to ensure that information about the results of dialogue and consultations (e.g., final reports, approved policies) is made available to those engaged in the policy process, so they know how their input was used, including its impact on federal government proposals or decisions.</li> </ul>

<b>Engagement and Representation</b>	<p>The parties commit to:</p> <ul style="list-style-type: none"> <li>engage in an open, inclusive and ongoing dialogue through the various stages of the public policy process, including issue identification, agenda-setting, policy design, implementation, monitoring and impact assessment;</li> <li>ensure appropriate and significant representation from across the voluntary sector;</li> <li>take specific steps to ensure that diverse groups within the sector are given an opportunity to consider issues and provide input;</li> <li>represent the views of their constituents and articulate their position clearly on particular issues that they consider important;</li> <li>identify whose views are represented when intermediary bodies express opinions on behalf of parts of the sector regarding issues of major importance to its members, supporters and users;</li> <li>where appropriate and where possible, build consensus by improving co-ordination within the sector; and</li> <li>perform an intermediary role on behalf of sector organizations by: using a range of methods to extend the dialogue's reach; canvassing an organization's members/users/volunteers before presenting views on its behalf; and including a summary of the views of the groups consulted and the methods of consultation used.</li> </ul>
<b>Process</b>	<p>The parties commit to:</p> <ul style="list-style-type: none"> <li>identify and maintain contact with policy-makers and actively seek opportunities to share policy ideas with them. develop and strengthen knowledge and policy capacity to promote more effective dialogue during the policy process and deepen understanding of their respective issues and processes;</li> <li>be aware of the policy implications of their experiences and activities, and inform one another of important conclusions; and</li> <li>identify and allocate resources and time to policy activities.</li> </ul>

Taken from Joint Accord Table (2002: 9-10).

## USING INFORMATION IN NEGOTIATION AND CONSENSUS BUILDING

The use of information within a setting of conflicts and negotiation is complex, with disputes around information reliability, the appropriate ways to interpret it, and when it should be used. While some disputes incorporate facts into the exploration of solutions, other disputes are about the facts themselves, with different parties in conflict over the “truth” (Schultz, 2004).

### Information Challenges:

According to Churchill (1995) in many negotiations all participants face “information disparities” where important, influential information is missing or gaps in information allow for an increase in conflict. Information disparities and asymmetries can be addressed in a variety of ways. One way is to rely upon a neutral third party, agreed upon by all negotiators, to provide information and “authenticate the opponent’s claim” (Churchill, 1995: 32). Even when a third party brings information to the table, it may not be trusted. Depending on who generated the information and who presents the information, it will carry different weight with different participants (Gardner, 2005). Information can also be brought to the table by the participants themselves, though they may

hold withhold some information, provide only partial information, or even provide false information.

In addition to the challenges of information disparities, participants also have different ways of framing the facts they receive. To process information, all people use frames as tools that allow complex information to be organized, shaped, brought into focus, and interpreted (Gray, 2003). Identical information provided to people with different beliefs and values will result in different interpretations due to different frames. Frames help to decide what information is important enough to keep and what can be discarded. It helps in setting the priorities of what to address (Gardner, 2005). Gardner (2005) suggests that frames help people prioritize the importance of using information that answers questions such as the cost of new water infrastructure, the remaining water available, the environmental impact of changes in water policy, etc.

Some classic frames brought by participants in a dialogue can be particularly problematic. Some participants may have a frame of complete knowledge, believing they know all the necessary information. Their inability to assimilate new information and recognize competing perspective limits results in all new information being automatically rejected. Other participants may have a frame of credibility that defines where reliable information can be obtained. Any information brought to the table from other sources will fall outside their frame. Finally, building on a comment above, some participants may have a frame of distrust, believing scientific knowledge is too biased and untrustworthy to find reliable, resulting in a rejection of new information from traditionally accepted sources (Gardner, 2005).

#### Information Tactics and Solutions:

The facilitator of a negotiation or conflict resolution process can help to shape the use of information. A few questions are important to ask in the beginning of a conflict over information (Schultz, 2004):

- What type of information is being disputed? Historical, legal, and technical information can face different types of validity challenges.
- Is there really a dispute over the information? Some disputes are the result of miscommunication while others result from beliefs that frame facts differently, even when the parties at the table agree on the facts themselves.
- What is really known and what remains unknown? Clarifying the gaps in knowledge can help settle disputes by finding agreement on the known. It also prepares the participants to consider the limitations of facts.
- Are these really facts or are they values disguised as facts? A facilitator can help to uncover when facts are actually disguised values, letting all parties then determine whether to trust the information.

To answer these questions in a dispute, two process tactics can be used (Schultz, 2004):

- Joint fact-finding: rather than each party bringing their own information, working together to identify facts they both trust can be a useful process;
- Neutral third party: as mentioned before, a third party can provide information when the participants in the dispute cannot work together to find facts.

*Joint fact finding* requires a subcommittee or team to be drawn from the participants in the conflict who are seen by their own parties as experts who they trust to assess information. It can also be valuable to have lay participants who can help in recognizing what information is the most useful to the dialogue. This team is responsible for open communication around information, with debates and discussions carefully considering available information and coming to shared conclusions. Each participant on the team is also responsible for bringing forward their information, creating an open dialogue and allowing for the team to have more knowledge and expertise available than any one participant. The end result of a joint fact finding team is a single text, representing the agreed-upon facts and their interpretations (Schultz, 2003a).

Important steps in a joint fact finding process include (Andrews, 2002):

- Determine if joint fact finding is the appropriate tool for assessing information;
- Select participants and define their roles;
- Identify ways to address disparities in expertise and skill among participants;
- Define questions that participants will address;
- Form an agreement across all parties to the broader dispute on how the result of the joint fact finding will be used; and
- When the fact finding team is finished, communicate the findings openly to all relevant parties.

Joint fact finding has both benefits and weaknesses. As each party in the dispute has participants on the team, the final information agreed upon is more likely to be trusted and used in the settling of the broader dispute. The intense discussion and debate environment may also facilitated creative thinking around solutions and interpretation of facts. By taking the dispute over facts into a subcommittee, a mediation process within the broader dispute mediation allows some conflicts to be addressed at another table between participants who are prepared to invest time and skills into analyzing information. The greatest benefit is the trust developed between participants and the increased understanding of the other points of view through the lens of information rather than beliefs and values. The primary concerns with using joint fact finding related to the power dynamics and level of conflict. If some parties have significantly more power or resources to collect facts than others, joint fact finding may unfairly benefit them. If the level of conflict is so high that participants cannot work together effectively, joint fact finding can create more conflict and distrust instead of less (Schultz, 2003a).

*Example Box 3: Fact Finding.* The White Oak River Watershed Advisory Board worked together for over a year to assemble agreed upon facts related to contamination of coastal waters. After working through available information, they developed a single document summarizing the findings. Using that document, the Board successfully set priorities for addressing pollution (urban storm water runoff) and identified tools to address the problem. This model, similar to the joint fact finding, was successful in developing agreement on (1) the nature of the problem; (2) the more important aspects of the problem; and (3) the means to address the problem. Their plan was implemented by the board and they were successful in both taking action and receiving grant funding to support their activities (Smutko et al., 2002).

*Using a Neutral Third Party* requires identifying third parties who have no stake in the outcome of the dispute. Often it helps to have multiple third party sources for information who are considered

neutral. Schultz (2003b) emphasizes the importance of using an expert who is skilled in presenting factual information and mediating the debate over the information. What this suggests is that it is not sufficient to bring information via a third party, but there must also be support to develop consensus around the acceptance and interpretation of the information. In some ways, this brings the work of the Joint Fact Finding team to the main dispute discussion as the same issues are addressed, trust in facts and interpretation of facts. The difference might be said to lie in the use of a third party not only to produce research, similar to the information collected by the Joint Fact Finding team, but also to present the research and discuss with the group its implications while they debate its use.

**Options Table 9:** Tactics for Using Information and Facts

<b>Decision-making process tactics</b>		<b>Individual tactics</b>
Joint Fact Finding: ○ Team-based approach ○ All parties are represented in a debate around facts ○ One document represents the consensus on acceptable facts and their interpretations	Neutral Third Party ○ Agreed upon third party is needed ○ Multiple third parties may be helpful ○ Presenters must be skilled at both sharing information and helping discuss it	○ Ignorance is a manipulation of information sharing and time ○ Listening allows participants to analyze and fully capture facts ○ Objections are used to push concessions on opponents ○ Questions can manipulate the dialogue to limit or expand it ○ Independent Sources are called for when participants reject each others information

Based on Churchill (1995).

*Individual tactics* to advance the needs of one party over others may be used by participants without consideration of the two process options listed above including (Churchill, 1995):

- Ignorance: a party to the dispute may feign ignorance of the information even when they are aware of it. This tactic is used to force the other party to explain the information, potentially giving away unwanted insights while also giving the ignorant party extra time to consider options.
- Listening: some participants may carefully listen and consider the information, evaluating the honesty of the presenter and taking careful notes for later consideration.
- Objections: objecting to the information presented is one tactic for pushing opponents to concede issues they would otherwise not, testing the sincerity and resolve of the other party, or even signaling areas of need or additional problem solving. The key point is that an objection to the information presented is not always due to the objector not trusting or believing the information, but may also be a manipulation of the dialogue.
- Questions: questions serve multiple purposes when dealing with disputed information. They help to determine how firmly the other party believes in the information, help determine priorities, and limit the answers that are possible by using leading questions or rhetorical questions.
- Independent sources: Finally, a participant in a dispute over information may reject the information brought to the table and turn to their own or independent sources.

## SELECTING PARTICIPANTS FOR A COLLABORATIVE WATERSHED DIALOGUE

Participants in a watershed dialogue are called “stakeholders” and can be anyone who has an interest in the outcome of the process. These stakeholders can be selected in a variety of ways, each with benefits and weaknesses (Dakins et al., 2005):

- Representative membership reflects the range of interests in the watershed with representation for each interest. Someone, often the government convener, has to determine the interests who should have a voice at the table. The representatives for each interest also have to be selected, often by the interest groups themselves, but potentially by the convening agency.
- Democratic participation allows anyone who is interested to become involved in the process, either at the beginning or at any point during the process. This open approach to involvement also gives decision-making authority to all participants.
- Restricted participation controls the open membership approach by setting criteria for participants to meet. They may include such things as being residents of the watershed, being landowners, having direct economic interests, or representing public agencies.

**Options Table 10:** Membership Systems for Watershed Groups

	Strengths	Weaknesses
<b>Representative</b>	Used to ensure “fairness, balance, and allow major constituencies a voice.”	Selection of representatives may be challenging for less organized interest groups. Also, caucuses may form among representatives, consolidating power with a few interests.
<b>Democratic</b>	All interested parties can participate in the dialogue, leaving no groups unrepresented unless they chose to not participate.	The collaborative group may become unwieldy and large. Participation may also be inconsistent, with different attendees at each meeting resulting in inconsistent decisions.
<b>Restricted</b>	Any interest can participate that meets the criteria, not only those selected by the convener.	Interested groups that fail to meet membership criteria may create problems for the process or their absence may result in important interests not being represented.

Based on Dakins et al. (2005).

Representative membership requires careful consideration for both how members are chosen and what role they play. The representative must be trusted and respected by their interest group, they must be sufficiently knowledgeable of the issues, and they must have good interpersonal skills and be able to work effectively with the other representatives (Carpenter and Kennedy, 2001). The representative also needs to be prepared to do more than attend the negotiation dialogues. In representative membership, the individual does not speak for the interest group, but rather form a two way dialogue between the negotiation process and the interest group, serving as an intermediary who returns to their group for regular consultations (Susskind and Cruikshank, 1987).

When a group does not have a natural leader, the neutral third party facilitating or mediating the collaborative decision-making process can help the interest group to identify a good representative. However, the process of selection, even with outside assistance, may not go well. When conflicts

over the representative exist, they need to be resolved before the dialogue is underway or they will undermine the process. In this type of situation, Carpenter and Kennedy (2001) suggest having the mediator interview individual members of the interest group to see what names are repeatedly mentioned as possible representatives.

*Example Box 4: Selecting Representatives.* When Nebraska legislated a task force to address problems with the management of surface and ground water, the Governor was given the task of appointing representatives to the task force. The Governor used a process that combined some of the suggestions above, asking interest groups to provide him with names of individuals who represented their interests, but also matched predefined criteria. Those named had to be “representatives able to intelligently and honestly represent their interests, negotiate in good faith, and be willing to listen to and consider the interests and concerns of other stakeholders” (3). From these lists, the Governor was able to select a task force that proved to be qualified, respectful of all involved, representatives of the major interests, and able to advocate on behalf of the interests (Moore et al., 2003).

Participation remains an issue even after representatives are selected. To continue to be actively involved, participants must believe there is greater value in remaining part of the collaborative process than abandoning it. Research on the “willingness to engage in collaborative problem solving” has found that when participants’ interests cannot be better met through litigation or other means and when their levels of trust are high, they are more likely to be engaged (Smutko et al., 2002). With mediation and consensus processes more interested in building relationships and trust, they may be more likely to maintain participation levels than negotiation processes that tend to focus on the “win” or outcome. Smutko et al. (2002) found that the following attributes of a collaborative process influence the engagement levels of participants:

- 1) level of uncertainty: higher levels increase the need for collaborative processes, but decreasing the level of uncertainty can help maintain participation;
- 2) risk: perceptions of risk can increase willingness to participate, regardless of the real risks;
- 3) time horizon effects: decisions that have immediate effects are more likely to engage participants than decisions with long-term, less immediately visible effects;
- 4) urgency of the decision: the sense of urgency can help to engage participants in a process and a set deadline may also be useful;
- 5) distribution of the effects: expectation of tangible results for a variety of interests can help in engaging participants;
- 6) clarity of the problem: though unclear problems may need more collaboration to be solved, participants are more likely to remain involved if they can clearly understand the issue being addressed.

## **ADDITIONAL BARRIERS AND CHALLENGES**

### Reaching a Stalemate

It is not uncommon for a dispute to result in a stalemate, where no decision is acceptable to all parties. However, a stalemate or deadlock can also be seen as an opportunity to begin a collaborative dialogue.

“Parties often must have reached an actual or potential hurting stalemate, that is, the disputants must be aware that they are stuck, be willing to ask for help, and be motivated to change their situation” (Christopher W. Moore, quoted in Isenhardt and Spangle, 2000: 121).

When a stalemate does risk ending a process, the participants and their mediator/facilitator can try some of the following to overcome the barrier (Isenhardt and Spangle, 2000):

- Break the dispute into smaller parts, making the issue more manageable;
- Present the case for the other party, stepping into their shoes;
- Identify and focus on those issues where there is agreement;
- Renew energy by taking a break from the process; and
- Identify new information to overcome inaccurate thinking about the problem and possible solutions.

### Open Meeting Laws

Open meeting laws, also called sunshine laws, are designed to increase public accountability for government decision-making. Boxer-Macomber (2003) identified three types of challenges that open meeting laws present to consensus building processes:

- procedural: laws may require too much advance notice of meeting times, dates, and agendas to allow sufficient flexibility for the consensus process;
- deliberative: the laws may limit the types of deliberation that can occur to public meeting settings, ruling out creative use of the internet and other resources; and
- fiscal: the mediator or facilitator may spend more time in private meetings with only one party to avoid bringing sensitive issues to light in group discussions that require open meeting laws.

Boxer-Macomber (2003) found that the barriers presented by California’s open meeting laws were sometimes legally accurate, but other times were the result of participants and facilitators having misinformation about the legal requirements. For this reason, she recommends:

- educating participants and facilitators about their legal obligations under current open meeting laws;
- assess how conservatively the law is being interpreted to identify opportunities for greater flexibility; and
- consider amendments to open meeting laws that are consistently causing problems.



*Appendix A: A Code of Good Practice on Policy Dialogue*

A Code of Good Practice on

# **Policy Dialogue**

**Building on**

*An Accord Between the Government of Canada and the  
Voluntary Sector*

*Developed by the Joint Accord Table  
of the Voluntary Sector Initiative*

October 2002

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## 1. WHY A CODE?

Signed in December 2001, *An Accord Between the Government of Canada and the Voluntary Sector* describes the key elements of a strengthened relationship between the two sectors. It sets out common values, principles and commitments that will shape the sectors' future practices as they work together for the benefit of all Canadians.

This Code of Good Practice on Policy Dialogue fulfils the Accord's commitment to take measures to put its provisions into action. As such, the Code is a tool for deepening the dialogue between the Government of Canada and the voluntary sector at the various stages of the public policy process in order to achieve better policies for Canadians.

### 1.1 Link to the Accord and Purpose of the Code

Specifically, this Code has been developed in accordance with the provision in the Accord calling for "*codes or standards of good practice to help guide interactions between government departments and voluntary sector organizations on aspects of the relationship such as policy dialogue, funding, and other issues as identified.*"

As summarized below, the Accord also contains a number of commitments by the Government of Canada and the voluntary sector related to policy dialogue:

- *The Government of Canada recognizes the need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge, and ideas in developing better public policies and in the design and delivery of programs. It also recognizes and will consider the implications of its legislation, regulations, policies and programs on voluntary sector organizations including the importance of funding policies and practices for the further development of the relationship and the strengthening of the voluntary sector's capacity.*
- *The voluntary sector is committed to serving as a means for the voices and views of all parts of the voluntary sector to be represented to and heard by the Government of Canada, ensuring that the full depth and diversity of the sector is reached and engaged.*
- *Both the voluntary sector and the Government of Canada recognize that sharing ideas, perspectives, and experiences contributes to better understanding, improved identification of priorities, and sound public policy, and agree that dialogue should be open, respectful, informed, sustained, and should welcome a range of viewpoints.*

In addition, the Code builds on the values of democracy, active citizenship, equality, diversity, inclusion and social justice, and the principles of independence, interdependence, dialogue, co-operation and collaboration and accounting to Canadians, which are the basis for the Accord (see Appendix 1).

As set out in the Accord, this Code is designed to strengthen and improve the relationship between the voluntary sector and the Government of Canada. It confirms that the two sectors are committed to deepening their dialogue in order to create better public policies for the benefit of Canadians. The Code also affirms the importance of a respectful, transparent and inclusive policy dialogue that acknowledges the independence and interdependence of both sectors.

While the voluntary sector and the Government of Canada share a long tradition of joining forces to achieve common goals, formalizing their relationship will help promote mutual understanding and more co-operative ways of working together. This Code is about building that relationship, seeking common ground and accepting one another's differences. It is about cultivating a strong civil society and a federal government connected to citizens by encouraging broad engagement and inclusiveness to ensure that the voluntary sector – including marginalized groups – knows its views are both heard and considered.

In adopting the best practices outlined in this Code, both sectors will be seeking to improve public policies by achieving the following positive outcomes:

- increased co-operation between the Government of Canada and the voluntary sector;
- increased opportunity for dialogue throughout the public policy process;
- systematic review by the federal government of major policy and program proposals using a voluntary sector “lens” or analytical framework designed to ensure appropriate and adequate consideration of the impacts and implications for the voluntary sector;
- development and use of mechanisms to engage in dialogue about the issues and concerns of the diverse voluntary sector, including harder-to-reach groups;
- information that is more readily available and accessible; and
- better understanding of one another's broad policy objectives and the role that each can play in furthering these objectives.

## **1.2 Definitions**

The Code uses the following working definitions:

- *Public Policy*: a set of inter-related decisions, taken by public authorities, concerning the selection of goals and the means of achieving them.
- *Public Policy Dialogue*: interaction between governments and non-governmental organizations (in this Code, the voluntary sector) at the various stages of the policy development process to encourage the exchange of knowledge and experience in order to have the best possible public policies.
- *Public Policy Development*: the complex and comprehensive process by which policy issues are identified, the public policy agenda is shaped, issues are researched, analyzed and assessed, policies are drafted and approved and, once implemented, their impact is assessed.

## **1.3 The Importance of Policy Dialogue Between the Two Sectors**

Policy dialogue between the Government of Canada and the voluntary sector is essential to ensure that policies benefit from the sector's experience, expertise, knowledge and ideas.

The voluntary sector plays a crucial role in representing the views of its stakeholders to the Government of Canada, in particular, those of unheard and minority voices.

In fact, much of the voluntary sector's strength derives from the diversity of its membership and sources of support. Reflecting the many faces of Canada, the people who work and volunteer in the sector are drawn from a range of backgrounds and bring with them a wealth of unique

abilities and experiences. To be effective, the public policy process must recognize and value this diversity.

Another strength of voluntary sector organizations is that they are close to the experience, interests and concerns of their constituents, a connection that gives them an important perspective on policy issues affecting the lives of Canadians. They also play an important role in raising awareness, building common ground and achieving consensus. This process of dialogue and deliberation is one in which participants can feel confident that their views have been heard and taken into account.

Informal dialogue on a day-to-day basis is a vital dimension of the public policy process at all stages, especially before policy options are identified and developed. One of the aims of this Code is to encourage interaction between the voluntary sector and the Government of Canada, especially at the earliest stages, before options have been determined.

*The government ... “will put into action the Accord it signed with the voluntary sector last December, to enable the sector to contribute to national priorities and represent the views of those too often excluded.”*

Speech from the Throne, 2002

## 1.4 Scope and Application of the Code

This Code applies to existing and future policy dialogue between federal government departments and agencies (including their regional organizations) and the voluntary sector organizations that they work with, at both the national and local levels. As a tool to be used by those who are involved in policy, this Code is expected to evolve over time. Moreover, it will be subject to regular review within the context of the Accord, which calls for regular meetings between Ministers and sector representatives to discuss the results that have been achieved.

The focus of this Code is on the relationship between the Government of Canada and the voluntary sector, and how the principles of their joint Accord apply to policy dialogue. That being said, both sectors recognize that their relationship is only one part of the broad public policy process. For its part, the federal government has a responsibility to consider many sources of input when developing policy, including the voluntary sector, other levels of government (provincial, territorial, local), private sector entities and labour unions. For example, the realities of constitutionally-based federal-provincial and territorial relationships are imbedded in many of the Government of Canada’s policy initiatives. Furthermore, the Code recognizes the particular role played by the Parliament of Canada in representing the views of Canadians, debating the policy and legislative agenda of the government, and ultimately determining the laws and fiscal parameters that give effect to that agenda.

At the same time, the voluntary sector has a number of ways that it can influence and comment on policy, one of which is through dialogue with the Government of Canada. The voluntary sector contributes to public policy-making in many areas of responsibility, including with governments at all levels and with other sectors of society.

Both the Government of Canada and the voluntary sector are committed to the full application of the Code, over time, to those policy issues on which they choose to work together. Both sectors recognize that there will be variations in the pace and manner in which the Code is applied. Furthermore, both acknowledge that the nature of the issues under consideration will influence the extent of the interaction. They recognize that there are circumstances where the Government of Canada and voluntary sector organizations may advocate different courses of policy action or choose to tackle issues of common interest separately. The Code does not compel them to work together; rather it outlines what will govern the relationship when they choose to work together.

Many departments and agencies and voluntary sector organizations are already using many of the practices outlined in the Code. Others are at different stages. All share a commitment to be guided by these good practices.

## **2. PRINCIPLES UNDERPINNING THE CODE**

Building on the Accord, this Code is based on the following shared principles:

### **The Voluntary Sector's Value**

A healthy and active voluntary sector plays an important role in helping the federal government identify issues and achieve its public policy objectives. By its very nature and particularly because of its connection to communities, the voluntary sector brings a special perspective and considerable value to its activities, including those it undertakes with the Government of Canada.

### **Mutual Respect**

Both sectors will listen to and consider the views of all participants and respect their legitimacy and input.

### **Inclusiveness**

Both sectors will involve the broadest possible range of groups or individuals who may be affected by a policy or who can make a meaningful contribution to the debate. Increasingly, policy development must take account of the specific needs, interests and experiences of the diversity of the voluntary sector including, for example, groups representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, sexual orientation, remote, rural and northern communities and other hard-to-reach subsectors. Policies must also respect the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Official Languages Act*, the *Multiculturalism Act* and the United Nations *Universal Declaration of Human Rights*, as well as Canada's obligations as a signatory of relevant international treaties and conventions, for example, on the rights of children, women

and indigenous peoples. Policies must also respect all amendments, extensions or replacements to these laws and policies.

### **Accessibility**

Both sectors will take the appropriate measures to ensure that all those invited to participate in a dialogue have access to the process. This will take account of factors such as language, region, distance, ethno-culture, religion, socio-economic background, age, knowledge or capabilities.

### **Clarity**

Recognizing that a clear mutual understanding of the objectives, purpose and process of participation and feedback is vital, both sectors will establish the terms of the policy dialogue in advance and communicate them to participants.

### **Transparency**

To build trust, both sectors will establish open lines of communication, provide information readily and invest in working relationships. Participants must clearly understand the context within which each decision will be made, including the scope of and limitations on dialogue.

### **Responsibility**

Both sectors will participate in good faith and recognize that adequate resources and time are required for an effective process.

### **Accountability**

Both sectors will provide feedback to their respective constituencies on the full range of views expressed, and clearly communicate how this input has been considered in the public policy process.

## **3. CONTEXT: THE STAGES OF THE PUBLIC POLICY PROCESS**

Dialogue between the Government of Canada and the voluntary sector will take place at the various stages of the public policy process (see diagram in Appendix 2). These stages are described briefly below.

Some activities, such as consultation and engagement, cut across the policy development process and can be used in a variety of ways at each stage. Similarly, advocacy can be used at the various stages of the public policy process as a strategy to effect change. Advocacy is defined as “the act of speaking or of disseminating information intended to influence individual behaviour or opinion, corporate conduct, or public policy and law.”<sup>1</sup>

### **Issue Identification**

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<sup>1</sup> *Working Together: A Government of Canada/Voluntary Sector Joint Initiative: Report of the Joint Tables*, Voluntary Sector Task Force, Privy Council Office, Government of Canada, August 1999.

Voluntary sector organizations can play a particularly valuable role in the identification of emerging policy concerns. The federal government respects the voluntary sector's advice, which is based on direct experience and relationships and involvement with members of organizations and communities. Because of their grassroots involvement, particularly in service delivery, voluntary sector organizations may become aware of trends or emerging issues before the federal government. Strengthening the sector's participation in governmental or departmental policy development processes and mechanisms – such as policy scanning and planning exercises, advisory mechanisms and international delegations – can help in the process of issue identification. Through advocacy initiatives, voluntary sector organizations can also play a key role in drawing public attention to emerging issues.

## **Agenda-Setting**

Issues come onto the public policy agenda from various sources, including: political platforms, research and analysis, academe, the private sector and voluntary sector organizations. Based on its in-depth knowledge and understanding of emerging and important issues, the voluntary sector can bring key information to the development of public policy priorities. Dialogue between the Government of Canada and the voluntary sector during the agenda-setting stage serves to inform the sector of how it can participate most effectively in the public policy process.

## **Policy Design**

The voluntary sector can contribute its ideas, knowledge, expertise and experience to the various steps in public policy design, including research, analysis, drafting and testing models, and developing design options.

## **Implementation**

The voluntary sector can play a role in proposing appropriate policy implementation approaches and mechanisms that reflect and enhance policy goals. The voluntary sector's experience in the delivery of various programs and services, as well as its long-standing connections to communities, are vital to the success of this work.

## **Monitoring**

The voluntary sector can play an important role in the ongoing monitoring of policy delivery and operation initiatives and in identifying the need for changes in policy direction.

## **Impact Assessment**

Based on its experience, expertise and knowledge in the delivery of programs and services, the voluntary sector can play a valuable role in assessing the impact of policy at both the national and local levels, and in making recommendations for change.

## **4. GOOD PRACTICES: THE CODE IN ACTION**



This Code is intended to encourage good practices at the various stages of the public policy process, throughout the Government of Canada and the voluntary sector at both the national and local levels. These good practices are founded on shared principles and are aimed at effecting changes in behaviour that will result in better policy. The following list is not exhaustive nor is it ranked in order of importance. Both sectors will be expected to look for new ways to continuously enrich the dialogue and the Code will evolve to reflect these new good practices.

#### **4.1 Good Practices for Both Sectors**

The Government of Canada and the voluntary sector commit to:

- engage in an open, inclusive and ongoing dialogue through the various stages of the public policy process, including issue identification, agenda-setting, policy design, implementation, monitoring and impact assessment;
- identify and allocate resources and time to policy activities;
- ensure appropriate and significant representation from across the voluntary sector;
- develop and strengthen knowledge and policy capacity to promote more effective dialogue during the policy process and deepen understanding of their respective issues and processes;
- be aware of the policy implications of their experiences and activities, and inform one another of important conclusions; and
- ensure that assessment takes into account the differing regional impacts of policies.

#### **4.2 Good Practices for the Government of Canada**

The Government of Canada commits to:

- develop ways (e.g., a voluntary sector lens) to ensure that all departments and agencies recognize and consider the impacts and implications for the voluntary sector and voluntary sector organizations of new or modified legislation, regulations, policies and programs;
- develop ways to engage in regular dialogue to listen to concerns and issues identified by voluntary sector organizations, and to make these methods of dialogue known; more specifically, find mechanisms to encourage dialogue with the voluntary sector in all its diversity, including those at the grassroots level and those representing women, visible minorities, persons with disabilities, Aboriginal people, linguistic minorities, remote, rural and northern communities and other hard-to-reach subsectors;
- draw on the full range of methods to engage in a dialogue with the voluntary sector at the various stages of the public policy process, including methods such as written consultations, opinion surveys, focus groups, user panels, meetings and various Internet-based approaches;
- to the fullest extent possible, make appropriate statistical and analytical information – such as survey data, research studies and policy papers – readily available in accessible and useable formats to enhance the voluntary sector’s capacity for analyzing and developing informed policy positions;
- respect and seek out the expertise and input of the voluntary sector and include it in the analysis and design of policy initiatives;
- make every effort to plan and co-ordinate policy dialogue with the voluntary sector on related topics, avoiding overlapping requests for participation in the same time period;

- ensure that policy initiatives capture the fullest spectrum of views and give due consideration to all input received, paying particular attention to those likely to be most affected by policy proposals;
- include opportunities for the voluntary sector to discuss the rationale for and implications of decisions, thereby building understanding and trust; and
- use appropriate means to ensure that information about the results of dialogue and consultations (e.g., final reports, approved policies) is made available to those engaged in the policy process, so they know how their input was used, including its impact on federal government proposals or decisions.

### **4.3 Good Practices for the Voluntary Sector**

The voluntary sector and its organizations commit to:

- develop and strengthen knowledge and policy capacity in their areas of expertise;
- develop a better understanding of the Government of Canada’s formal and informal policy development process;
- take specific steps to ensure that diverse groups within the sector are given an opportunity to consider issues and provide input;
- represent the views of their constituents and articulate their position clearly on particular issues that they consider important;
- identify whose views are represented when intermediary bodies express opinions on behalf of parts of the sector regarding issues of major importance to its members, supporters and users;
- where appropriate and where possible, build consensus by improving co-ordination within the sector;
- perform an intermediary role on behalf of sector organizations by: using a range of methods to extend the dialogue’s reach; canvassing an organization’s members/users/volunteers before presenting views on its behalf; and including a summary of the views of the groups consulted and the methods of consultation used;
- identify and maintain contact with policy-makers and actively seek opportunities to share policy ideas with them; and
- pursue opportunities to identify and raise emerging issues to the attention of the Government of Canada, including issues of local concern.

## **5. MOVING THE CODE FORWARD**

The Government of Canada and the voluntary sector are committed to broad outreach and communication of the Code of Good Practice on Policy Dialogue. The Code is intended to help representatives of both sectors improve their approach to dialogue at the various stages of the public policy process. The policies and practices in this Code are designed to help strengthen the policy dialogue between the Government of Canada and the voluntary sector.

To achieve these results, both the Government of Canada and the voluntary sector must commit to using the Code on an ongoing basis. As the guidelines established in the Code are

incorporated into daily and weekly practice, voluntary sector and federal government representatives will, over time:

- discuss the Code and learn from one another;
- adapt their policy practices and approaches; and
- propose reforms to make the Code more effective.

This Code describes an environment characterized by continuous learning and improvement in which both sectors work together to enhance their relationship with respect to policy dialogue.

Results will flow from the increased use of the array of good practices already in place, including those proposed in this Code and those that will evolve with time and experience.

In *An Accord Between the Government of Canada and the Voluntary Sector*, both sectors agreed on the need to report to Canadians on the status of the relationship and the results that have been achieved under the Accord. Assessing the Code's use and effectiveness as a tool in meeting the Accord's goals will require periodic review, discussion, analysis and reporting on the status of the relationship across the Government of Canada and the voluntary sector. This may result in modifications to the Code and the establishment of new priorities.

## Appendix 1

### **Description of the Voluntary Sector, Values, Principles and Commitments to Action**

#### **DESCRIPTION OF THE VOLUNTARY SECTOR**

The *Accord Between the Government of Canada and the Voluntary Sector* describes the voluntary sector as follows:

*This sector consists of organizations that exist to serve a public benefit, are self-governing, do not distribute any profits to members, and depend to a meaningful degree on volunteers. Membership or involvement in these organizations is not compulsory, and they are independent of, and institutionally distinct from the formal structures of government and the private sector. Although many voluntary sector organizations rely on paid staff to carry out their work, all depend on volunteers, at least on their boards of directors.*

*The voluntary sector is large, consisting of an estimated 180,000 non-profit organizations (of which 80,000 are registered as charities) and hundreds of thousands more volunteer groups that are not incorporated. In 2000, 6.5 million people volunteered their time to a voluntary sector organization and the sector employed a further 1.3 million people. This diverse multitude of organizations ranges from small community-based groups to large, national umbrella organizations and includes such organizations as neighbourhood associations, service clubs, advocacy coalitions, food banks, shelters, transition houses, symphonies and local sports clubs.*

The Accord contains a number of references relating to policy dialogue during the various stages of the public policy process:

## VALUES

The Accord identifies six values that are most relevant to the relationship between the Government of Canada and the voluntary sector:

**Democracy** – *upholding the right to associate freely, to express views freely and to engage in advocacy.*

**Active Citizenship** – *welcoming the active involvement or engagement of individuals and communities in shaping society whether through political or voluntary activity or both.*

**Equality** – *respecting the rights of Canadians under the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act, and the rights of individuals worldwide as defined by the United Nations Universal Declaration of Human Rights.*

**Diversity** – *respecting the rich variety of cultures, languages, identities, interests, views, abilities, and communities in Canada.*

**Inclusion** – *welcoming the expression and representation of diversity and upholding the right of each to speak and be heard.*

**Social Justice** – *ensuring the full participation in the social, economic and political life of communities.*

## PRINCIPLES

The Accord highlights the principles of independence, interdependence and dialogue, which are relevant to this Code:

### Independence:

- *The Government of Canada is accountable to all Canadians for its actions and has a responsibility to identify issues of national concern and mobilize resources to address them, establish policies and make decisions in the best interest of all Canadians;*
- *Voluntary sector organizations are accountable to their supporters and to those they serve in providing services, organizing activities and giving collective voice at the local, national and international level;*
- *The independence of voluntary sector organizations includes their right within the law to challenge public policies, programs and legislation and to advocate for change; and*

- *Advocacy is inherent to debate and change in a democratic society and, subject to the above principles, it should not affect any funding relationship that might exist.*

### **Interdependence:**

*The voluntary sector and the Government of Canada recognize that:*

- *The actions of one can directly or indirectly affect the other, since both often share the same objective of common good, operate in the same areas of Canadian life, and serve the same clients; and*
- *Each has complex and important relationships with others (business, labour, provincial, territorial and local governments, etc.) and the Accord is not meant to affect these other relationships.*

### **Dialogue:**

*The voluntary sector and the Government of Canada, recognizing that sharing of ideas, perspectives, and experiences contributes to better understanding, improved identification of priorities, and sound public policy, agree that dialogue should be open, respectful, informed, sustained, and welcome a range of viewpoints.*

## **COMMITMENTS TO ACTION**

The Accord includes the following commitments:

### **Government of Canada Commitments:**

- *Recognize and consider the implications of its legislation, regulations, policies and programs on voluntary sector organizations including the importance of funding policies and practices for the further development of the relationship and the strengthening of the voluntary sector's capacity; and*
- *Recognize its need to engage the voluntary sector in open, informed and sustained dialogue in order that the sector may contribute its experience, expertise, knowledge, and ideas in developing better public policies and in the design and delivery of programs.*

### **Voluntary Sector Commitments:**

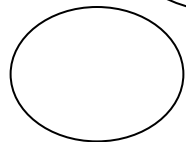
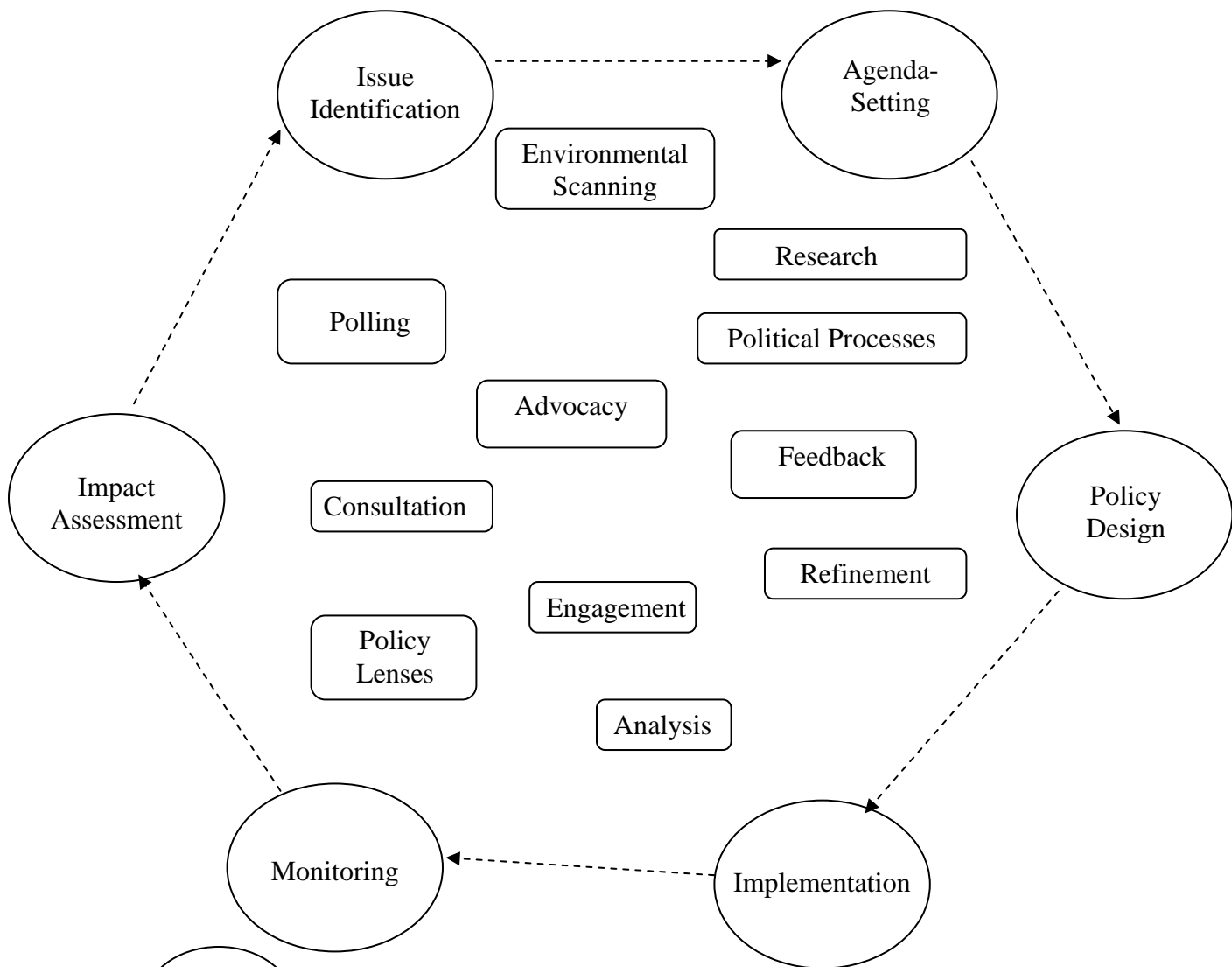
- *Continue to identify important or emerging issues and trends in communities, and act on them or bring them to the attention of the Government of Canada; and*
- *Serve as a means for the voices and views of all parts of the voluntary sector to be represented to and heard by the Government of Canada, ensuring that the full depth and diversity of the sector is reached and engaged.*

**Commitments by Both Sectors:**

*The voluntary sector and the Government of Canada agree to develop in a timely fashion:*

- *Codes or standards of good practice to help guide interactions between government departments and voluntary sector organizations on aspects of the relationship such as policy dialogue, funding, and other issues as identified.*

**Diagram of the Public Policy Process**



Elements in the public policy process

Methods of involvement in the process (Note: While all methods of involvement may happen at any element in the public policy process, some methods are more prominent than others during certain elements in the process.)

## ***Appendix B: Additional Features in Collaborative Processes***

Negotiation, policy dialogues, mediation, and facilitation are broad concepts with many different features. Many practitioners have developed customized models that build on one or more of these approaches to collaborative decision-making. Other practitioners have defined various components of traditional decision-making processes in ways that are helpful when designing a process. The section below explores a few of these more customized approaches.

Theories such as *Constructive Confrontation* emphasize the problem solving nature of collaborative discussions by looking at how problems are framed, where communication breaks down, what information is lacking, and where misjudgments may have occurred. The practical framework is intended to provide non-destructive steps to resolving or addressing ongoing conflict through the steps of diagnosis followed by identifying and implementing real, but small, steps toward the solution(s). The main difference of this model and the classic decision-making models already explored is the focus on making progress in resolving specific, limited areas of conflict one by one, rather than expecting a resolution of all issues (Burgess and Burgess, 1996). The steps in a constructive confrontation process include:

- Diagnosis via development of a conflict map: conflict maps show both the active and potential interest groups, their positions, and their relationships to one another;
- Continued diagnosis by looking for conflict overlays: these overlays are added to the conflict map and are such things as misunderstandings, misinformation or lack of information, problems of process, and the escalation of conflicts.
- Addressing the problem: Once the diagnosis is complete, this highly medical model moves into the treatment of the problem. Small steps are identified to address each of the conflict overlays and they are implemented and monitored.

*Negotiation Support Systems* are a tool, rather than an approach, for a collaborative process. However, use of this technology will also change the process. Through computer-aided models, participants in a collaborative decision-making process can simulate different water management scenarios to help stakeholders identify the preferred management solution. The models may be developed in a participatory way, becoming a tool for information sharing and dialogue generation. Variants of these models include status quo diagrams that use an iterative process to explore changes and interactive models that can be adapted through incorporation of stakeholders' preferences are designed to support real time negotiation activities. All of these computer-aided approaches are clearly value laden, depending on human choices of variables to include, but through a participatory process, the stakeholders can set those values (Barreteau et al., 2003).

*Principled negotiation* is the model developed in the popular book, *Getting to Yes* (Fischer, Ury, and Patton, 1991). It is based on four principles:

- 1) separate the people from the problem;
- 2) focus on interests, not positions;
- 3) invent options for mutual gain; and
- 4) insist on objective criteria.

This respected approach to negotiation emphasizes the need to deal with interpersonal issues separate from the negotiation of interests. It also looks at how issues are framed and reframes them to be interest based instead of position based. Principled negotiation has a couple important features that other approaches have adopted since the authors first proposed it in 1981. It includes a focus on: 1) communication breakdowns and how to avoid making them the issue under negotiation; 2) finding a way to develop objective criteria to judge the outcome, including criteria for such things as fairness; 3) being creative, innovative, and adaptable to find solutions that really are wins for at least some of the interests of all the participants.



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