

Projet de Parc Éolien de Saint Valentin

Mémoire

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Principles and Operating Assumptions

Sustainable development, defined by the 1987 Brundtland Commission as, “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” is the guiding notion of this policy brief. This brief wholeheartedly embraces the principle that decisions that impact the environment are best made with the participation of all relevant stakeholders, as set forth by the *Rio Declaration*. We espouse the Aarhus Convention’s three pillars: the rights of access to information, public participation in decision-making, and access to justice in environmental matters, all of which reflect the most advanced principles of international environmental law.

The five underlying core principles that inform this policy brief are as follows:

1. Respect for ecological integrity;
2. Efficient use of natural, manufactured, and social capital;
3. Promotion of intra-generational and inter-generational equity;
4. Involvement of all relevant stakeholders in multiple levels of decision-making; and
5. Environmental stewardship by all levels of decision makers.

In addressing the above points, this brief will make the following assumptions:

1. The role of *municipalités régionale de comté* (MRCs), while impacting the process at various stages, will not be taken into consideration. The purpose of this brief is to point to the lack of participatory democracy in the Québec public hearing processes, and as such, elements of municipal representative democracy are not relevant to the broader point. However, a more rigorous analysis of all the relevant actors involved in decision-making processes would necessitate an appreciation of the role of MRCs.
2. While it may be the case that individual developers have taken the initiative to consult the public during various stages of project development, these measures are not mandated by law, and as such, are entirely discretionary. Furthermore, there is no uniformity from one consultation to another, or between developers. These measures are also not subject to any sort of guidelines, regulations, or supervision. Ultimately, any outcome of this private consultation process lacks transparency and accountability, and remains unenforceable. As a result, while an important element of the development process, the developer’s public consultations do not effect this brief’s contention that there is a serious lack of regulated public involvement at various stages of the decision-making processes in energy policy and development.

Executive Summary

Participatory decision-making is essential to translate well-meaning principles of sustainable development into concrete action. The early and meaningful involvement of all stakeholders can enhance the quality of information available to decision makers and increase the potential for support of decisions. While the *Bureau d'audiences publiques sur l'environnement* (BAPE) undoubtedly plays an essential role in Québec in representing citizens' concerns to decision-makers, there is a deficit of integration of the public into environmental decision-making.

This policy brief focuses on the shortcomings of the public hearings for the second phase of the Saint-Valentin Wind Farm project. Our contention is that the Saint-Valentin project exemplifies the public participation deficit in energy development and environmental decision-making in Québec.

The concept of sustainable development received international prominence through the Brundtland Report and has since been a reference point and inspiration for the progressive development of national and international law over the past forty years. It has served as an influential mechanism to cope with socio-economic development needs and the preservation of the environment.

Sustainable development was a guiding principle of the 1992 Earth Summit in Rio de Janeiro, and underpins the Rio Declaration that emanated from that summit. It has also informed international human rights law; the *Aarhus Convention* identified the right to information, the right to participate and the right to effective remedies as the three pillars of the right to a healthy environment.

In the Québec context, the BAPE was founded as result of the *Environment Quality Act* in 1978, when public concern regarding the impact of development on the environment was newly emerging. Since the creation of the BAPE, Québec has adopted the *Sustainable Development Act* and amended the *Québec Charter of Human Rights and Freedoms* in 2006 to guarantee the right to live in a healthy environment.

Thus, the vision behind the public participation promoted through the BAPE predates the emergence of sustainable development as a legal theory as well as public participation as a guiding principle of international law and Québec legislation. As such, there is neither a role for the public to participate in the choice of energy development scenarios nor in a more wide-reaching strategic environmental impact assessment. The BAPE itself has been critical of its limited mandate and the mere advisory role of the public, rather than a process that genuinely involves society in decision-making.

The Saint-Valentin wind farm project is presently before the BAPE. We contend that the current consultation process exemplifies the shortcomings highlighted above. In particular, the process inadequately addresses public concerns regarding the visual impact of the project as well as its effects on agriculture. Furthermore, the inability of the public to make a significant impact on project development through real participation has probably aggravated the lack of support for the project.

Introduction

Wind energy is a booming industry in many countries, and the province of Québec is part of this trend. The development of this ‘green energy’ has been increasing since 2003 as a result of Québec’s recent energy strategy.

Through the year 2015, the Québec government, through Hydro Québec, will develop wind energy potential by calling for bids for the production of 4,000 MW, including 500 MW reserved for projects promoted by local or aboriginal communities. In addition, as stated in the Québec Energy Strategy 2006-2015, the Québec government will also try to attempt to develop 100 MW of wind power for each additional 1000 MW of hydropower.

The framework within which renewable energy is being advanced in Québec is based on a traditional, heavily industrial and centralized model of resource exploitation. Uninformed by public debate, it focuses more on the traditional economic potential of Québec’s regions, as opposed to a more holistic approach towards development.

Furthermore, despite the fact the majority of the population claims to be in favour of green energy, the advancement of these projects in Québec has been faced with increasing public opposition.

This policy brief contends that these public concerns may be only tangentially related to the wind energy projects themselves, and instead, are rooted in concerns regarding the nature of the public hearings conducted by the BAPE and their outcomes.

This document seeks to answer the following questions:

1. Is the BAPE’s mandate effective in allowing its public hearing process to fulfil the principles of sustainable development?
2. How has the BAPE’s role evolved since it was established?
3. What does the BAPE public hearing process accomplish and how can it be improved?
4. Would public attitudes towards wind energy development be more positive if public consultation had taken place regarding the development of green energy policy?
5. Would the opposition to the Saint-Valentin wind farm project be different if the BAPE process had been engaged at an earlier stage of project development?

In order to answer these questions and present a process that would allow an improvement in the nature of public participation in Québec, this paper will be presented in four parts.

Part one will give the reader an overview of the theory of sustainable development and how it takes into account not only public engagement but also the need for society-wide changes in energy development scenarios. In addition, the legislation governing public participation in Québec will be analysed, with a particular focus on the role of the BAPE and its evolution.

Part two will present the role of the BAPE in the regulatory process and the shortcomings of public involvement in its operations.

Part three will demonstrate how the shortcomings of public involvement have affected the proposed Saint-Valentin wind project and illuminate the BAPE's calls for modifications of its own mandate in order to better reflect and act upon public opinion.

Part four will make policy recommendations in order to promote progress in the sphere of public participation, not only regarding green energy development but also more broadly in terms of other economic development initiatives.

Our conclusion is that far more meaningful public participation is necessary in an age of renewable energy, furthering the goals of sustainable development by balancing environmental, social and economic dimensions. These changes would help to restore the credibility and legitimacy of the BAPE in the modern era.

II. Sustainable Development in International Law

The struggle for a ‘sustainable’ future is one of the most daunting challenges facing humanity. The 1987 United Nations Brundtland Commission Report, which laid out the tenets of sustainable development, had a significant impact upon international policymaking.¹

The Brundtland Commission defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”² The definition contained in the Brundtland Report is based on two opposing concepts: that of “needs” and that of “limits”. Development can be sustainable only if “limits” are imposed upon it, that is, if it does not pose an excessive burden on the capacity of the environment to sustain human life, in order to permit fair and equitable satisfaction of the needs of present and future generations.³

There are four constitutive elements of the principle of sustainable development:

1. ...Natural resources must be utilized in a prudent and rational manner.
2. ...States are compelled to make prudent and rational use of the natural resources available without depleting them to allow the next generation to meet their own needs.
3. ...Intra-generational equity, promoting fair and equitable distribution of world resources.
4. ...Environmental considerations must be integrated into economic development projects, plans and programmes so as to promote an environmentally friendly approach to economic development.⁴

In its prescient chapter entitled “*Energy: Choices for Environment and Development*”, the Brundtland Commission addressed the double challenge of, on one hand, meeting the need for much more energy for economic development in developing countries and, on the other hand, avoiding climate change. In that light, the Brundtland Report recommended a transfer to renewable energy, increased energy efficiency, and energy conservation as the necessary paths to a sustainable energy future.

The final chapter of the Brundtland Report, “*Towards Common Action: Proposals for Institutional and Legal Change*” proposed sweeping institutional and legal changes to address the core of the issues discussed in its report.⁵ The proposals that relate to public participation, environmental protection and sustainable development can be summarized as:

1. Environmental protection and sustainable development must be an integral part of the mandates of all agencies of governments, international organisations, and major private-sector institutions. In particular, it is necessary to move beyond fragmented institutions

¹ *Our Common Future*, World Commission on Environment and Development, UN WCEDOR [Brundtland Commission] 1987, UN Doc. A/42/427, at para.3.

² *Ibid* at 51.

³ Philippe Sands, *Principles of International Environmental Law*, (Cambridge: Cambridge University Press, 2003) at 198.

⁴ Massimiliano Monotiono, “Sustainable Development within the Climate Change Regime” in Hans Christian Bugge and Christina Voigt, eds, *Sustainable Development in International and National Law* (Amsterdam: Europa Law Publishing, 2008) at 523-524.

⁵ *Brundtland Commission*, *supra* note 1 at 308 et seq.

with narrow mandates, towards the creation of institutions where economic and ecological policies are better integrated.⁶

2. Sustainable development objectives should be incorporated into the terms of reference of cabinet and legislative committees dealing with national economic policy and planning, as well as those regulating and doing business with the private sector. All such agencies should be made “directly responsible and fully accountable for ensuring that their policies, programmes, and budgets support development that is ecologically as well as economically sustainable”.⁷
3. The role and capacity of existing environmental protection and resource management agencies should be strengthened.⁸
4. Scientific groups and NGOs should play a stronger role. They should have better access to information, a right to be consulted and participate in decisions, and a right to legal remedies and redress when their health or environment has been or may be seriously affected.⁹
5. Governments should recognise reciprocal rights and responsibilities pertaining to the environment. These include the responsibility of states toward citizens and other states to mainstream early-stage assessment of policies, projects and technologies according to adequate environmental protection standards. This could be accomplished through such techniques as constitutional amendments; environmental charters of rights and responsibilities; or the establishment of an environmental ombudsman. New forms of environmental dispute resolution should be developed.¹⁰
6. Although the notion of sustainable development is not a defined legal principle it has been influential as a reference point and inspirational instrument for the development of international law, including international energy law.¹¹ Indeed, the United Nation of Educational, Scientific and Cultural Organization (UNESCO) World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) Subcommission on the Ethics of Energy acknowledged that:
7. Sustainable development, meaning the use of our planetary resources for the well-being of all its present and future inhabitants, has become the concept which must guide both individual and collective action at every level and national and international policies.¹²

Bosselmann has identified the three key ethical challenges for the law of energy for sustainable

⁶ *Ibid* at 310-312.

⁷ *Ibid* at 314-319.

⁸ *Ibid* at 319-323.

⁹ *Ibid* at 326-330.

¹⁰ *Ibid* at 330-334.

¹¹ Monotonio, *supra* note 4 at 526.

¹² World Commission on the Ethics of Scientific Knowledge and Technology, *Report of the Subcommission on 'The Ethics of Energy'*, COMEST, 2000 at 1.

development as:

1. Energy is no longer a matter of maximizing supplies for more and more people; it is also a matter of social, environmental and future equity.
2. Sustainable development is concerned with the well-being of all, not just human inhabitants of the planet. The inclusion of nonhuman beings poses important ethical challenges to the concept of sustainable development.
3. The guidance of sustainable development is seen as a must, not a mere consideration for our actions.¹³

Accordingly, the concept of sustainable development has played a role in both integrating public participation into decision-making and in the development of the world's energy policy planning.

II. a) Public Participation and Environmental Law

Following the 1987 Brundtland Report, the 1992 Earth Summit in Rio de Janeiro shifted environment concerns from the periphery closer to the centre of economic development. The Rio Summit sharpened the definition of sustainable development and its three pillars: environmental protection, social progress and economic development. Sustainable development was promoted as a fundamental concept in integrating various facets of economic social development with that of the environment.¹⁴

The 178 governments that signed the Rio Declaration on Environment and Development, including Canada, affirmed the principle that environmental decisions are best made with the participation of all relevant stakeholders.¹⁵ Principle 10 of the Rio Declaration states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.¹⁶

As such it laid the foundation for these three pillars of good environmental governance: transparency, inclusiveness, and accountability.

¹³ Klaus Bosselmann, "Ethical Implications" in Adrian Bradbrook, et al., eds, *The Law of Energy of Sustainable Development* (Cambridge University Press, Cambridge 2005) 74.

¹⁴ Jean Baril, *Le BAPE devant les citoyen: pour une évaluation environnementale au service du développement durable*, (Quebec: University of Laval Press ,2006) at 5.

¹⁵ *Rio Declaration on Environment and Development*, Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (vol.1)(1992), 31 I.L.M. 874, (1992) [Rio Declaration].

¹⁶ *Ibid.*

Since that time, numerous instruments have affirmed the principle of public participation in the process of environmental assessment as being an essential element of sustainable development.¹⁷

In 1998, the parties to the *Aarhus Convention*, which includes all European nations, signed the first binding treaty devoted entirely to public participation.¹⁸ The objective of the *Aarhus Convention* was "to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being."

The *Aarhus Convention* sought to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment through three broad pillars:

1. The right of 'access to information' from the developer, the government, and other knowledgeable parties;
2. The right of 'participation in decision-making' in the legislative and administrative proceedings about the development and whether it should proceed; and
3. The right of 'access to justice' or the ability to bring questions about the project before an independent judiciary.¹⁹

The *Aarhus Convention* stressed the importance of creating mechanisms to ensure transparency and disclosure around activities that may significantly affect the environment. Thus, the Convention was not aimed at activities impacting the environment, but rather towards information pertaining to these activities.

Although Canada belongs to the UN Economic Commission for Europe, it has not ratified the *Aarhus Convention*.²⁰ In fact, during the negotiation phase of the *Aarhus Convention*, Canada argued against the explicit recognition of a right to a healthy environment.²¹

While Canada is not a party to the *Aarhus Convention*, the legislature of Québec has recognized the right to a healthy environment in the *Québec Charter*. Adoption of the *Aarhus Convention's*

¹⁷ Action 21, UN Doc. A/CONF.151/26/ (vol. 1)(1992); *Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, 25 June 1998, UN Doc. ECE/CEP/43 (1998) (entered into force 30 October 2001) [Aarhus Convention].

¹⁸ Article 1 of the Aarhus Convention stated its sweeping objective as: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each [state] Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."

¹⁹George (Rock) Pring, G. & Susan Y. Noé, "The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development" in D.Zillman et al., eds, *Human Rights in Natural Resources Development: Public Participation in the Sustainable Development of Mining and Energy Resources* (Oxford: Oxford University Press, 2002) at 49. Philippe Sands, *Principles of International Law* (Cambridge: Cambridge University Press, 2003) at 119-120.

²⁰ See Status of Ratification, Online: Aarhus Convention on Public Participation <www.unece.org

²¹ ECO. 1996. Report from 2nd negotiating session. Proposed UN ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-making.

novel approach to environmental justice, which acknowledges the value of public information for human rights and environmental protection, is only a logical extension of this recognition.

II. b) Legislative basis for environmental impact assessments and public hearings

The *Québec Environment Quality Act* (EQA) was adopted almost three decades before the *Aarhus Convention* in 1972, at a time when the public had just begun to become aware of the gravity of environmental problems.²² The EQA put in place a regime with two fundamental mechanisms: a general prohibition against pollution²³ and an obligation to obtain a certificate of authorization.²⁴

One of the many shortcomings of the EQA is the lack of space provided for the involvement of citizens, foreseeing a passive role for the general public.²⁵ Initially, public participation was at the whim of the administration, which could, by virtue of s.123 of the Act, consult the citizens using its investigative powers.

In 1978, six years after its adoption, the EQA was significantly modified with the introduction of a procedure for environmental assessment and review.²⁶ The objective of this modification was to permit the public to actively participate and to provide better access to information regarding the environment.²⁷ To this end, the BAPE was established with the adoption of the *Act to amend the Environment Quality Act*.²⁸ The Québec government, by instituting a public hearing process, acknowledged the public's right to information, consultation and participation in decisions having an impact on the environment.

The role and mandate of the BAPE was defined early in the development of environmental law and environmental assessment. During that era, environmental assessment was seen as a preventative instrument. The principles of the right to information and public participation occupied a limited space.

The BAPE's first mandate within the environmental assessment procedure was to hold public information and consultation sessions on various types of projects. These types of projects were subject to the environmental impact assessment and review procedure under section 2 of the *Regulation respecting environmental impact assessment and review (RREIAR)*.²⁹

The BAPE's second mandate, also at the Minister's request, was to institute commissions to conduct general inquiries and mediation or inquiries and public hearings.³⁰

²² *Environment Quality Act*, R.S.Q. c. Q-2 [EQA].

²³ *Ibid* art.20.

²⁴ *Ibid* art.22.

²⁵ Pierre Lemieux, "L'enquête publique préalable à la décision comme modèle alternatif" (1983) 24 *Les Cahiers de Droit* 927 at 930.

²⁶ *EQA*, *supra* note 22, section IV.1.

²⁷ Lemieux, *supra* note 25 at 930.

²⁸ *Act to amend the Environment Quality Act*, S.Q. 1978, c.64.

²⁹ *Regulation respecting environmental impact assessment and review*, R.S.Q. C. Q-2 [RREIAR].

³⁰ *EQA*, *supra* note 22 arts. 6.3&31.1.

II. c) Assessment and examination of impacts on the environment

Québec's environmental impact assessment procedure is limited to individual projects, and does not provide the benefits that a strategic environmental impact assessment would for any new form of energy development. Not only does it suffer from this isolationist approach to project development, but its narrow spatial and temporal scope also reduces its credibility.

The environmental impact assessment and review procedure in Québec is limited to a handful of projects. The procedure is set in motion by subsection 31.1 of the EQA. Accordingly, anyone who wishes to erect or alter a structure, undertake to operate an industry, or carry on an activity susceptible to change the quality of the environment need only obtain a certificate of authorization from the Minister. In contrast, in the cases provided for by regulation involving projects that are likely to have an impact on the environment, it is mandatory to go through an environmental impact assessment and review procedure and obtain an authorization certificate from the Government.³¹

The purpose of an environmental impact assessment is to evaluate the impact on the environment of certain projects and to avoid irreversible decisions.³² This process requires the political will to institutionalize public participation and integrate it into the decision-making process. The law merely provides an outline of the procedure and leaves it to the government to take the initiative through its regulatory power. Any implementation of this process requires the adoption of regulations providing for a list of categories of projects as well as modes of public consultation.³³

The projects subject to impact assessment and review are enumerated in section 2 of the *RREIAR*.³⁴ The list comprises 24 categories of examples.³⁵ The impact assessment and review is obligatory for wind turbines in virtue of art. 2(1) of the *RREIAR* that applies to all construction, reconstruction and subsequent operation of an electric power generating station with a capacity that exceeds 10 MW.³⁶

Article 3 of the *RREIAR* indicates the parameters that an environmental impact assessment may operate within, and no mention is made of the principles of sustainable development.³⁷ The impact assessment has to justify the site selected by weighing its environmental, technical and economic advantages and disadvantages.

The impact assessment study must also contain a listing and description of the measures taken to prevent, reduce or mitigate the deterioration of the environment, including impacts associated with the preparatory phase, construction phase and operational phase of the project.

³¹ *Ibid.*

³² Lemieux, *supra* note 25 at p.931.

³³ *Ibid.*

³⁴ *RREIAR*, *supra* note 29 at art.9.

³⁵ *Ibid* art.2.

³⁶ *Ibid* art.2(1).

³⁷ *Ibid* art.3.

III. The Public as Mere Informants not Decision-Makers

III.a) The BAPE, regulatory measures and the shortcomings of public involvement

Environmental assessment has significantly evolved in the last 40 years on the international stage with the adoption of international conventions and numerous laws around the world. The management and protection of our environment is no longer left exclusively to elected representatives.³⁸ Consequently, environmental law transformed this domain by changing citizens from passive beneficiaries to active decision-makers, responsible for managing the assets of the entire community.

Most recently, the Québec legislature adopted the *Sustainable Development Act* (SDA), expressing the government's desire "to establish a new management framework within the Administration to ensure that powers and responsibilities are exercised in the pursuit of sustainable development."³⁹

One of the principles of the SDA is "access to knowledge," defined as measures favourable to education, and access to information and research. All of these must be encouraged in order to stimulate innovation, raise awareness and ensure effective participation of the public in the implementation of sustainable development.⁴⁰

Section 8 of the SDA commits the government of Québec to incorporating public participation in the implementation of sustainable development:

The Minister of Sustainable Development, Environment and Parks, in collaboration with the other ministers concerned, is to ensure that the strategy is developed in a way that reflects the range of concerns of citizens and communities and all living conditions in Québec, so that the differences between the rural and urban areas and the situation of Native communities are taken into account.

In collaboration with the other ministers concerned, the Minister may take any measure to consult the public and bring the public to take part in the development of any project or any review of the strategy, in order to promote discussion and enrich the content of the strategy, make it known and promote its implementation. In addition, the strategy and any review of the strategy must be submitted to public consultation in the form of parliamentary committee hearings."

However, the BAPE's mandate, which predates the emergence of the notion of sustainable development (or the Ministry for that matter), has remained unchanged since its inception.⁴¹

³⁸ Baril, *supra* note 14 at 4.

³⁹ *Sustainable Development Act*, R.S.Q. 2006, c. D-8.1.1 [SDA]

⁴⁰ *Ibid* at Appendix.

⁴¹ Interview of Jean Baril, author of *Le BAPE devant les citoyens* (March 23 2011) via telephone.

The environmental assessment procedure in Québec, as practiced by the BAPE, is still limited to the analysis of individual projects on a rolling basis, not providing a forum for a discussion of renewable energy policy, nor of the framework within which energy development is advanced.

Renewable energy has been developed in a framework that resembles that of more traditional forms of energy. Energy policymakers “have assimilated renewable energy development within a traditional approach of large-scale, centralized electricity supply infrastructure”; this approach was designed for the exploitation of fossil fuels and nuclear energy, prioritizing economic and technical efficiencies, rather than the adoption of a people- or community-centred approach.⁴²

In an era of environmental awareness and new forms of energy, traditional approaches to decision-making regarding resource exploitation cannot guide renewable energy development. These approaches, which exclude the public from meaningful involvement in decision-making processes, are inconsistent with Québec’s commitment to sustainable development and recognition of the need for public participation in decision-making processes.

Proponents of a wind farm project have to participate in public hearings held by the BAPE only at the third step of the assessment and review procedure, thus involving the public after they have conducted the environmental impact assessment overseen by the Ministry of Sustainable Development, Environment and Parks. This impact assessment has to conform to the parameters specified in the *RREI*.⁴³

During the public hearings, the public is only consulted on the basis of an already complete environmental impact assessment that they had no input in. This affects the quality and social acceptance of the assessment and the project itself.⁴⁴

This legal framework provides for a very brief public hearing process, giving the public little opportunity to comment on many issues regarding their environment. To the degree that local communities are involved, the inclusion of these affected groups is too little too late, not truly allowing them to influence the project’s development.⁴⁵

Commentators, including the BAPE itself, have criticized public involvement in the process for its lack of information and transparency.⁴⁶

⁴² Patrick Devine-Wright, “Beyond NIMBYism: towards an Integrated Framework for Understanding Public Perceptions of Wind Energy” (September 8, 2005) *Wind Energy*. 2005; 8 in Wiley Interscience (www.interscience.wiley.com) at 127.

⁴³ *RREIAR*, *supra* note 29, art.3.

⁴⁴ See Baril, *supra* note 14.

⁴⁵ Marie-José Fortin, Anne-Sophie Devanne & Sophie Le Floch, “L’acceptabilité sociale de l’éolien au Québec: apprendre dans la turbulence” in *Énergie et évaluation environnementale, Liaison Énergie-Francophonie*, No. 83 at 92.

⁴⁶ See Quebec, Bureau d’audiences publiques sur l’environnement, *Rapport d’enquête et d’audience publique, Développement durable de l’industrie des gaz de schiste au Québec* (Quebec Février, 2011) at 223, online: BAPE <<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape273.pdf>> “In this report, the BAPE is claiming/asking the conduction of a strategic environmental assessment for the development of the shale gas industry in Quebec. It emphasized the goal that can be achieve through this new that are not accomplish by the environmental impact assesment « Une étude environnementale stratégique doit se réaliser avec les meilleures

The significance of the public hearings is greatly reduced by the nature of the outcomes of the process. By law, the Ministry is only obliged to consider the promoter's impact study, not the BAPE reports. If the Minister finds the impact assessment satisfactory, he submits it to the board of ministers for approval of the project. The process, thus, departs from the negotiated decision-making processes that public inquiries should aim for.

The government is aware of the need for public participation regarding the development of energy projects, and recommendations have been made by the Ministry of Municipal Affairs and Regions addressing the nature of authentic public participation in decision-making processes. The Minister recommends that when a call for tenders is announced, the bidding process must demand a work plan outlining the stages of the project and specifying how each stage will involve informing and consulting the local community as well as how information will be transmitted. The principle of transparency should be borne in mind throughout this process.⁴⁷

To ensure that this community involvement is genuine, it is important to identify the interlocutors that should be involved in the population of the region or municipality, such as local organizations, companies, institutions, the tourism industry, and local experts amongst other parties.⁴⁸

Various commentators have generated detailed methods for increasing community involvement in wind farm development, including early consultation and discussion, the active provision of full and detailed information, the setting up of contact points and local committees, interactive environmental impact assessments, mediation and negotiated impact management agreements and voluntary or cooperative siting.⁴⁹ This information cannot be ignored by decision-makers in Québec, who must take this new vision of public involvement in energy development into consideration in light of the out-of-date process the BAPE is working with.

III. b) Mechanisms for Public Ownership of Projects

Authentic public participation cannot be limited to a solely political role in decision-making processes. The nature of renewable energy development is not simply a series of hearings; it is, inherently, socio-economic development.

Sustainable development principles mean that the trickle-down effect on local communities cannot be awaited passively. The public must be actively implicated in the economic benefits of

données scientifiques et s'appuyer sur des sources vérifiables d'information. Cette étude est réalisée d'une façon transparente et selon les règles de l'art. Une évaluation environnementale stratégique comporte habituellement une revue de la littérature scientifique sur le sujet traité, un portrait biophysique, humain et économique des régions concernées, des diagnostics et des constats si l'activité est existante. Elle comporte également des études de terrain ou des projets pilotes. ”

⁴⁷ Ministère des Affaires municipales et des Régions, *Guide d'Intégration des Éoliennes au territoire : Vers de Nouveaux Paysages* (2007) from www.mamr.gouv.qc.ca at 31.

⁴⁸ *Ibid* at 32.

⁴⁹ Gordon Walker, *Renewable Energy and the Public* (1995) in *Land Use Policy* 12 at 57.

renewable energy projects such as wind farms, as well as put in direct control of natural resources. They should *not* be relegated to passive beneficiaries of improvements in infrastructure and tax bases.

Furthermore, it has consistently been demonstrated that economic involvement in wind farm development increases support for such projects. A study conducted in Denmark, for example, showed that the attitudes of people who owned shares in a turbine were significantly more positive towards wind energy.⁵⁰

This correlation between economic involvement and positive attitudes is in line with studies that show that negative attitudes towards wind farms tend to emerge from a sense of lack of control over development or land use, both politically and economically.⁵¹ Communities who feel that they are not implicated in the decision-making process and that they are not directly benefiting from the economic development of wind farm projects are more likely to perceive wind energy development negatively.

Though there are various diffuse economic benefits that may emerge from the siting of a wind farm in a community, such as an increased tax base, improved infrastructure, and cheaper energy, it is important that there also be direct economic ties formed between wind farm projects and local residents. Only in this way will these communities feel the direct sense of ownership in a local wind farm that generates a sense of pride through ownership, as opposed to the sense of disconnect other communities may feel.⁵²

There are various models of this type of community ownership of wind farm projects, the most full-fledged being community ownership of a wind farm where the project is funded and controlled by local actors.⁵³ A more limited form of local ownership, which can still serve as a link between the local community and the project, is to create shareholder options for local residents.⁵⁴

The idea of compensation schemes for local populations has also been posited as a method of economic involvement for such communities.⁵⁵ This can be particularly appropriate when economic benefit to the community as a result of the wind farm is foreseen to be limited. It must, however, be recognized that a system of compensation can create challenges because of “the danger of reacting badly to perceived bribery.”⁵⁶ Furthermore, when the compensation is linked to property ownership, it can lead to the neglect of local members of the population who are not property owners, and can also vary from one property owner to the next based on various criteria. However, a careful approach can mean that a well-planned-out compensation scheme

⁵⁰ Devine-Wright *supra* note 42 at 133.

⁵¹ *Ibid* at 134.

⁵² Charles R. Warren and Malcolm McFadyen, *Does community ownership affect public attitudes to wind energy? A case study from south-west Scotland*, in ElSevier (2010) in *Land Use Policy* 27 at 209.

⁵³ *Ibid*.

⁵⁴ Devine-Wright *supra* note 42 at 133.

⁵⁵ Fortin, Devanne & Le Floch, *supra* note 45 at 93.

⁵⁶ Walker, *supra* note 49 at 57.

may serve to give local residents some sort of sense of economic implication in a wind farm project.⁵⁷

IV. Saint-Valentin: an example of the shortcomings of public involvement

Though concerns of local communities regarding wind-farms are generally expressed in terms of visual impact and sometimes noise, at the heart of these concerns lies a sentiment of distance from and lack of control over decisions regarding wind farm development and its impact on the environment. These concerns reflect dissatisfaction with land use planning processes and procedures.

Development contexts featuring high and authentic levels of public participation are much more likely to be associated with higher levels of planning success and lower levels of social conflict.⁵⁸

A lack of requisite public involvement in wind farm development can be seen in the proposed Saint-Valentin project. Based on the contentions made previously in this brief, it follows that a significant amount of the opposition to this project may result from the lack of public involvement at earlier stages in the project's development.

The concerns of the public pertaining to the Saint-Valentin project, which include visual impacts and effects on agriculture, would have been addressed in a more satisfactory manner if communication between the developer and the affected citizens had occurred at a much earlier stage of the project, and not now, when the impact assessment has already been completed and submitted to the Ministry of Sustainable Development, Environment and Parks.

IV. a) Opposition to the project: Visual impacts and effects on agriculture

The proposed Saint-Valentin wind project is located in the municipalities of Saint-Valentin and Saint-Paul-de-l'Île-aux-Noix in the RMC of Haut-Richelieu in Montérégie.⁵⁹

This wind farm project involves the installation and operation of a fleet of 25 wind turbines with a capacity of 51.8 MW, made up of 19 turbines of 2.0 MW and 6 wind turbines of 2.3 MW.⁶⁰ It is being developed by Venterre NRG.

⁵⁷ *Ibid.*

⁵⁸ Devine-Wright *supra* note 42 at 134.

⁵⁹ Transalta *Saint-Valentin Project*, online: <<http://www.transalta.com/saint-valentin-project>>

⁶⁰ Québec, Bureau d'audiences publiques sur l'environnement, *Compte rendu de la période d'information et de consultation du dossier par le public du 18 novembre 2010 au 3 janvier 2011* (Janvier, 2011) at 1, online: BAPE <http://www.bape.gouv.qc.ca/sections/mandats/eole_saint-valentin/documents/AV3.pdf> [BAPE, "Compte rendu"]

The population affected by the project is currently divided, as is evidenced by the lively controversy that is ongoing in various public forums, including the first stage of the BAPE's public hearings for the project, as well as on several relevant websites.⁶¹

The opposition to the project, led in large part by a group called "*Comité Don Quichotte*," stems largely from the aesthetic and agricultural impacts that will be produced by the wind turbines.

It is also notable that seven municipalities of the Haut-Richelieu opposed the Saint-Valentin project, including the mayor of Saint-Paul-de-l'Île-aux-Noix.

The feelings of some residents who are against the development of the project are reflected by Michel Sénécal, who has lived in Saint-Valentin for 55 years, when he said, "Can you imagine the sight! From my kitchen window, I'll see 8 wind mills!"⁶²

In terms of agricultural impacts, there are two main complaints: that the transmission line will affect "the best farmland in the province;" and that the development of such wind farms in Québec would be more appropriate in economically disadvantaged regions which Saint-Valentin, a thriving farming community, is not.

The farmers in question made their displeasure public in February when they drove industrial tractors through the centre of town, blaring their horns and protesting loudly.⁶³

These farmers have made their apprehensions known to the developer, who, in a document submitted to the BAPE in January 2011, listed the public concerns regarding the visual impact and the landscape as follows:

- the criteria used by the proponent to establish the degree of the visual impact of the project;
- the impact of the project on the landscape of Saint-Cyprien;
- the request of a visual simulation from the Vineyard Morou Saint-Cyprien;
- the request for nocturnal visual simulations;
- the phenomenon of moving shadows;
- the siting of wind measurement towers;
- the creation of a 3-dimensional model representing the project;
- the ability to obtain 3D images instead of static images to facilitate comprehension of various concerns about the project.⁶⁴

⁶¹ See Ingrid Peritz, "Saint-Valentin, Que., has its heart set on becoming the capital of love", *The Globe and Mail* (11 February 2011) online: The Globe and Mail <<http://m.theglobeandmail.com/life/valentines-day/saint-valentin-que-has-its-heart-set-on-becoming-the-capital-of-love/article1904420?service=mobile>>; "Vent de colère contre un projet de parc éolien en Montérégie" *Radio Canada* (7 March 2011) online: Radio-Canada.ca <<http://www.radio-canada.ca/regions/Montreal/2011/03/05/003-parc-eolien-manif-st-valentin.shtml>>

⁶² "Première audience publique du Bape pour le projet de parc éolien", *Radio Canada* (9 March 2011) online: Radio-Canada.ca <<http://www.radio-canada.ca/regions/Montreal/2011/03/09/002-eoliennes-st-valentin-bape.shtml>>

In the same document, the developer has outlined the public concerns regarding land use as follows:

- the rationale of the implementation of the proposed wind farm project in an area where agricultural land quality is very good;
- the total area of agricultural land included in contracts of option grants;
- the loss of land for cultivation during the operation of the wind farm;
- the amount of land available after the decommissioning phase;
- the need to conduct a study on agriculture in Saint-Blaise before making decision about the project in order to later compare the results;
- the potential drying of agricultural land caused by the presence of wind turbines;
- the impact of the project as regards the restriction of residential development in Saint-Valentin;⁶⁵

The fact that some of the opposition to the Saint-Valentin project results from its visual impacts is unsurprising. A strong reaction by the public to the aesthetics of wind farms has been well documented internationally, and been proven to have a negative influence on the public's perception of wind farms. Indeed, Wolsink has stated that, "the strongest impact on the attitudes concerned the aesthetic value of wind turbines".⁶⁶

In the case of Québec, the visual impacts of proposed wind farms projects are particularly problematic because most of the proposed locations are in the most densely populated regions of the Gaspé Peninsula, where the landscape is greatly valued.⁶⁷

Concerns about the visual impacts of wind turbines have been addressed in most BAPE reports on wind farms. An examination of BAPE reports on wind farm projects from 1997 to the present demonstrate, however, that the visual impact argument has never been strong enough to lead to a recommendation that a project not proceed. This is probably so in part because the recommendations of the BAPE reports are not binding to the Minister of Sustainable Development, Environment and Parks.

On the other hand, the BAPE has on occasion taken into account the heritage value of a site, as is evidenced by its recommendation regarding the Projet d'aménagement d'un parc éolien dans la MRC de Rivière-du-Loup, where it stated:

⁶³ David Johnston, "Opposition to wind farms is in the air Communities south of Montreal say turbines are a form of visual pollution", *The Gazette* (9 February 2011) online: Google News <<http://webcache.googleusercontent.com/search?q=cache:KFgREmL0O98J:www.montrealgazette.com/technology/Opposition%2Bwind%2Bfarms/4246842/story.html+Opposition+in+air+for+wind+farms&cd=1&hl=es&ct=clnk&gl=cl&source=www.google.cl>>

⁶⁴ BAPE, "Compte rendu", *supra* note 60.

⁶⁵ *Ibid.*

⁶⁶ Maarten Wolsink, "Wind power and the NIMBY-myth: institutional capacity and the limited significance of public support" (2000) *Renewable Energy*; 21, 49-64 in Wiley Interscience at 51.

⁶⁷ Fortin, Devanne & Le Floch, *supra* note 45 at 92.

“Compte tenu de la valeur touristique, de la valeur patrimoniale reconnue et de la valeur emblématique et identitaire du paysage du corridor littoral de Cacouna, la commission est d’avis qu’aucune éolienne ne devrait y être implantée, tout particulièrement entre le fleuve et les routes 20 et 132”.⁶⁸

This demonstrates the willingness of the BAPE to recommend that a project not proceed. However, concerns from a community regarding visual impact do not seem to be taken as seriously as the heritage value of a site. It is unclear why visual impacts cannot serve as grounds for refusing a project.

When facing concerns about visual impacts, the overall recommendation made by the BAPE often involves a request that the proponent reassess, in greater depth, the visual impact of wind turbines on both the landscape and tourism in relation to siting.

Generally, these BAPE reports often contain a recommendation such as the following: “the developer must find a means of integrating the wind towers into the surrounding environment that minimizes the visual impacts on humans, or obtain the agreement of all residents.”⁶⁹

Similarly, in respect of the process for expanding existing wind farms, the BAPE has requested that visual impact studies be conducted on the entirety of the wind farm, and not solely on the expansion.

For instance, the BAPE report on the *Projet d’aménagement d’un parc éolien à Murdochville*, stated,

*“ Au terme de son mandat, la commission conclut que le projet est acceptable dans la mesure où certaines conditions seraient respectées par Énergie Éolienne Murdochville inc. En raison d’une reconfiguration importante du parc éolien après le dépôt de l’étude d’impact, la commission est d’avis que le promoteur doit mettre à jour son évaluation de l’effet visuel du projet, en considérant l’impact cumulatif des parcs éoliens des monts Copper et Miller ainsi que du projet à l’étude”*⁷⁰.

This insistence by the BAPE that wind farms, as well as turbine expansion, be evaluated in terms of their visual impact holistically, as opposed to in isolation, demonstrates an awareness of the impact that these projects have on the community. However, the fact that serious concerns about visual impact lead to a request for reassessment at most, and never a refusal of the expansion of the project, is evidence that the public and its concerns is not sufficiently integrated into the decision-making process. The BAPE’s reports, while useful, do not, at base, faithfully reflect the true concerns of surrounding communities.

⁶⁸ Quebec, Bureau d’audiences publiques sur l’environnement, *Projet d’aménagement d’un parc éolien dans la MRC de Rivière-du-Loup* (Septembre, 2006) at 2, online:

<<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape232.pdf>> [BAPE, “Rivière-du-Loup”]

⁶⁹ Quebec, Bureau d’audiences publiques sur l’environnement, *Rapport d’enquête et d’audience publique, Parc éolien de la Gaspésie* (Février, 1997) at 125, online: BAPE

<<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape109.pdf>>

⁷⁰ Quebec, Bureau d’audiences publiques sur l’environnement, *Rapport d’enquête et d’audience publique, Projet d’aménagement d’un parc éolien à Murdochville* (Septembre, 2005) at 2, online: BAPE

<<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape216.pdf>>

On the subject of the impact on farmers, wind turbines are likely to cause two types of impact on agriculture: on the one hand, the loss of agricultural resources, and on the other, a negative effect on farming practices.⁷¹

An analysis of BAPE reports concerning impacts on agriculture makes clear that the majority of the time the developer in question has proposed mechanisms to provide for compensation of affected landowners. For example, in the case of the Saint-Bellarmin wind farm project, the BAPE called for mediation between the developer, Saint-Laurent Énergies inc., and L'Association provinciale des acériculteurs.

The outcome of this process was successful. The conclusion of the BAPE's report stated,

*“L'Association provinciale des acériculteurs sur les terres publiques et le promoteur ont consenti à participer à la médiation confiée au Bureau d'audiences publiques sur l'environnement par le ministre du Développement durable, de l'Environnement et des Parcs. Bien que les préoccupations du requérant ne remettaient pas en question le projet, celui-ci a discuté avec le promoteur de mesures d'atténuation et de compensation durant la construction et l'exploitation du parc éolien projeté en vue de préserver ses activités acéricoles”.*⁷²

This example demonstrates the role that compensation can play as a means of linking the local community, the proponent, the project, and the government. However, these sorts of measures must be carefully instituted, as they can also be perceived as insufficient. Compensation, when not negotiated openly and fairly with the relevant actors, can be perceived by local actors as a sort of 'pay-off,' meant to hold them at arms length and pacify any concerns they may have. Concerns on the part of farmers that they are not receiving equal or fair compensation can lead to very vocal opposition to wind energy projects. A commitment to transparency and community involvement can, however, ensure that these concerns are addressed and compensation is instituted and calculated in a way that is perceived as fair by all the parties involved.

A further example demonstrates the problem that negotiations regarding compensation can lead to uneven treatment of local farmers. The example of the Projet d'aménagement d'un parc éolien dans la MRC de Rivière-du-Loup reveals a closed negotiation process between the developer and individual farmers, a process which was called for and supported by the BAPE. The BAPE's report on this project states that :

⁷¹ Quebec, Ministère du Développement durable, de l'Environnement et des Parcs, *Rapport d'analyse environnementale pour le projet d'aménagement du parc éolien Des Moulins sur le territoire de la ville de Thetford Mines ainsi que des municipalités de Saint-Jean-de-Brébeuf et de Kinnear's Mills par Énergie Éolienne Des Moulins S.E.C* (Octobre, 2010) at 24, online: MDDEP <<http://www.mddep.gouv.qc.ca/evaluations/decret/2010/857-2010.pdf>>

⁷² Quebec, Bureau d'audiences publiques sur l'environnement, *Rapport d'enquête et d'audience publique, Projet de parc éolien à Saint-Robert-Bellarmin* (Decembre, 2010) at 13, online: BAPE <<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape272.pdf>>

*“ La commission est d’avis que le promoteur devrait prendre des engagements fermés avec chaque producteur agricole quant aux procédures d’excavation et de remblai afin de préserver la productivité des sols. La commission estime que le Cadre de référence relatif à l’aménagement de parcs éoliens en milieux agricole et forestier d’Hydro-Québec constitue pour ce faire un outil de référence”.*⁷³

Closed negotiation processes not only suffer from a lack of transparency, but also cannot adequately distribute the costs and benefits of wind farm projects across populations in affected regions. The BAPE, rather than encouraging this type of negotiation, is well-placed to encourage the regulation of such negotiation processes, as well as recommend the creation of an independent group that could represent the interests of local parties, and landowners in particular. This sort of representation on the part of civil society would allow for the negotiation processes to be more balanced, representing the interests of all the parties involved.

These examples confirm that public concerns regarding wind farms are treated on a case-by-case, project-by-project basis, and are thus addressed in a vacuum with minor measures such as reassessment and individualized compensation. This demonstrates a lack of willingness to address this issue in the long-term by making significant changes to the decision-making process that precedes the BAPE’s public hearings. The province of Québec is not viewed as a whole, but rather is addressed as a series of municipalities. This type of view of public consultation may be viewed as short-sighted and narrow, as well as not in line with sustainable development principles. Ultimately, these shortcomings lead to increased opposition to wind energy development.

IV. b) The weaknesses of the BAPE in the evaluation of wind farm projects

As is evidenced by the examples above, the BAPE suffers from an intrinsic limitation in its assessments of wind farms. Because it is asked to perform evaluations on a case-by-case basis, it is never given the opportunity to use its expertise to conduct an evaluation of the overall development of wind energy in the province. As a result, the general public’s opinion or concerns about wind energy development are not given a forum in which they can be expressed, leading to the alienation of communities from the energy development surrounding them. This top-down approach is in opposition to sustainable development principles.

The BAPE itself has consistently expressed concern around this lack of public consultation on wind energy policy:

*“La commission conclut en outre qu’il importe de mieux encadrer le développement de la filière éolienne au Québec. À cet effet, elle propose différentes mesures afin que le développement éolien se fasse dans le respect de la volonté de la population et de la capacité d’accueil du milieu, favorisant ainsi l’acceptabilité sociale”*⁷⁴.

⁷³ BAPE, “Rivière-du-Loup”, *supra* note 68 at 61.

⁷⁴ Quebec, Bureau d’audiences publiques sur l’environnement, *Rapport d’enquête et d’audience publique, Projet d’aménagement d’un parc éolien à Saint-Ulric, Saint-Léandre et Saint-Damase par Northland Power Inc.* (Août, 2006) at 3, online: BAPE <<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape231.pdf>>

It is clear that the BAPE recognizes the need for a more macro scale assessment of wind energy development in order to address the issue of public acceptance of wind energy development.

“L'évaluation des effets cumulatifs des projets de parcs éoliens dans une région devrait être prise en charge par le gouvernement du Québec avant leur autorisation respective afin d'assurer l'acceptabilité environnementale et sociale de cet ensemble structurant.”⁷⁵

Furthermore, an overall assessment of decision-making processes about wind farm development would allow the BAPE to ensure the uniformity of negotiation processes and methods of community engagement, such as evaluation of visual impact concerns or compensation measures. These sorts of issues should not be treated on a case-by-case basis, leading to uneven and unpredictable outcomes. Public opinion should be integrated more firmly into the overall process in order to allow for the equal treatment of affected communities. As the BAPE has stated:

“Par ailleurs, avant d'aller de l'avant avec l'évaluation environnementale de futurs projets de parcs éoliens, il y aurait lieu de fixer un cadre de négociation qui s'appliquerait uniformément aux propriétaires fonciers dont le terrain est convoité pour l'implantation d'éoliennes et de déterminer les formes de redevances ou de compensations que les municipalités pourraient obtenir de ce développement. Il y aurait lieu également de préciser le rôle de la nation Mi'gmaq dans la mise en valeur du potentiel d'énergie éolienne en Gaspésie.”⁷⁶

In one of its reports, the BAPE highlighted the need to frame wind energy in the principles of sustainable development by ensuring their environmental and social acceptability. Reaching this goal, however, means including citizens on decisions concerning how and where wind energy will be developed. In other words, it seems that the BAPE is identifying the need to perform a general strategic environmental assessment prior to evaluating individual projects. In other words, it is communities who should be choosing wind farms, not wind farm developers choosing communities.

“Enfin, la commission est d'avis que le gouvernement du Québec devrait, dans les meilleurs délais, encadrer le développement de l'éolien au Québec sur les terres privées et définir, de concert avec la population, des plans régionaux de développement de l'éolien. Il en va du développement harmonieux des régions ressources dans une perspective de développement durable.”⁷⁷

The BAPE itself has proposed methods of addressing this lack of community engagement and transparency. In one report, it was stated that a referendum could be an effective way to reach the goal of real public engagement in the environmental assessment process:

“Compte tenu de l'état d'avancement du projet et de la division qui prévaut dans la communauté, laquelle inclut des municipalités des MRC de L'Érable, des Appalaches et

⁷⁵ Quebec, Bureau d'audiences publiques sur l'environnement, *Rapport d'enquête et d'audience publique, Projet de développement d'un parc éolien dans la MRC de Matane par le Groupe Axor inc.* (Septembre, 2006) at 63, online: BAPE <<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape233.pdf>> [BAPE, “la MRC de Matane”]

⁷⁶ Quebec, Bureau d'audiences publiques sur l'environnement, *Rapport d'enquête et d'audience publique, Projets de parcs éoliens à Baie-des-Sables et à L'Anse-à-Valleau* (Septembre, 2005) at 2, online: BAPE <http://www.bape.gouv.qc.ca/sections/rapports/publications/bape217.pdf>

⁷⁷ BAPE, “la MRC de Matane”, *supra* note 75 at 63.

*d'Arthabaska, un référendum constitue une option à considérer pour un conseil municipal qui veut communiquer au décideur gouvernemental la position réelle de sa population sur le projet*⁷⁸.

However, despite the BAPE's acknowledgements of its limited process and its calls for new mechanisms of public involvement, no changes have been made, and with every report it issues, the BAPE must once again assert the inadequacy of the environmental assessments it conducts.

The BAPE itself has, on various occasions, provided evidence of the weaknesses of its public hearings, and also demonstrated a willingness to create space for improved mechanisms of public engagement to address the social acceptability of wind farms. However, its reports continue to insufficiently reflect and address public concerns, and as a result, are not in line with the principles of sustainable development.

The situation is worsened by the fact that early decisions about the features of the project, such as siting, are left to the developer, and ultimately to the Minister, who decides on the final location of the turbines, as well as any mitigation measures that will be taken. Again, this demonstrates what amounts to a serious lack of public engagement in the most important decisions about wind farm projects.

The risks caused by not taking these allegations seriously are not merely theoretical. There is a possibility that the public, feeling distanced from the BAPE's assessments, will take their concerns to the judicial realm, using civil or administrative legal instruments to relieve their frustrations. An evaluation of recent jurisprudence reveals multiple instances of disaffected community members taking developers to civil and administrative tribunals to have their concerns more fully addressed than they would be by the BAPE.⁷⁹

In conclusion, public participation in wind farm development in Québec is weak on various levels. It is conducted on too narrow a basis, restricting community concerns to evaluations of individual projects, and not overall energy policy. It is also conducted far too late in the process, after the developer has already performed the impact assessment study. Finally, BAPE reports, to the degree that they reflect community concerns, are not even binding on the Minister and its cabinet.

V. Policy Suggestions and Conclusion:

It is clear that we must find more effective and comprehensive methods to create more harmonious relationships between energy, the economy and territory.

⁷⁸ Québec, Bureau d'audiences publiques sur l'environnement, *Rapport d'enquête et d'audience publique, Projet d'aménagement d'un parc éolien dans la MRC de L'Érable* (Mars, 2010) at 110, online: BAPE <<http://www.bape.gouv.qc.ca/sections/rapports/publications/bape267.pdf>>

⁷⁹ See *Québec (Procureur général) c. Germain Blanchard ltée* [2005] R.J.Q. 1881 (QC C.A.), *Bellefleur c. Québec (Procureur général)* [1993] R.J.Q. 1427 (QC C.A.), *Hydro-Québec c. M.B.* [2008] QCCS 5901, *Roy c. Commission de protection du territoire agricole du Québec* [2010] QCTAQ 07206.

As has been highlighted throughout this document, only a concerted effort to involve local communities both politically and economically would fulfil the principles of sustainable development, simultaneously increasing public support for renewable energy development and actively preserving natural resources. Although, some of the recommendations below call for legislative reform, this brief sees the public hearing process as the appropriate venue to voice these demands to the Québec government.

To achieve this goal several amendments to the EQA must be made in order to change the nature of the public participation process:

- (A) The *EQA* should be brought in line with the Aarhus Convention, which sets out the most progressive public involvement standards in the world.
- (B) The *EQA* should also be informed by the Québec *Sustainable Development Act*, internalizing the principles set out for the Québec government by the *SDA*.
- (C) The public should be engaged at the earliest stages of energy policy-making, allowing the public to be genuinely informed about the various options available, permitting them to weigh the advantages against their repercussions on the environment.
- (D) Public participation has to be engaged at all stages of the democratic decision making process: while establishing guidelines, as well as during the decision-making process and the application of these decisions.⁸⁰
- (E) The public has to be associated with the preparation of the directives issued by the Ministry of Sustainable Development, Parks and Environment on the content and the magnitude of impact assessment studies to avoid the appearance of a conflict of interests.
- (F) To be credible, the consultation has to retain its independence from the promoter and decision-making during the whole procedure. It should not be delegated to the promoter or to the ministry in charge of the elaboration of the directive. This process should be undertaken by the BAPE.
- (G) The involvement of the public should be not only political, engaging them in public hearings about decision-making, but also economic, making the public direct beneficiaries of these projects.
- (H) While Québec's processes of public consultation in terms energy development may be progressive in the North American context, international standards must be taken into consideration, bringing Québec's processes as close to international best practices as possible. Along those lines, an examination of European policies, as exemplified by Denmark and Germany, would be valuable in the Québec context. Québec, as a culturally unique province with a mixed legal jurisdiction, is well-placed to look to European norms.
- (I) While this brief has focused on the impacts of energy projects on the environment, the principles that inform these ideas are equally relevant and applicable to all development projects that have an impact on the environment.

⁸⁰Pierre Lemieux, "L'enquête publique préalable à la décision comme modèle alternative" (1983) 24 Le Cahiers de Droit 927.

Such changes would involve a fundamental change in the nature of public involvement in the elaboration of wind farm projects by bringing the public in at an earlier stage of the process and making that participation more meaningful.