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Democratizing Public Consultation Processes: Some Critical Insights

Abstract

Critical analysis of the Ontario government's Lands for Life public consultation process uncovers the myriad ways in which the government put forward an economic construct of Crown land, privileging industrial interests over all others. By reflecting on how this process went awry, future consultation processes might be further democratized, such that they would stand up to ethical scrutiny. This paper details several prescriptive suggestions and reflections as constructive input towards democratizing future land use planning processes. Specifically, it addresses a number of considerations that might be taken into account when posing the following questions: Who should consult the public? Who should be consulted? What should they be asked? And how should they be asked? Moving along the continuum towards greater inclusivity of marginalized social actors, representing a broader range interests, and mitigating power differentials ensures at the very least a more robust and deliberative democracy. This analysis challenges the entrenched government-industry collusion that has now become so prevalent, and explores how practices of ecological citizenship can be either promoted or constrained by the state.

Keywords

deliberative democracy, public consultations, ecological citizenship

DEMOCRATIZING PUBLIC CONSULTATION PROCESSES: SOME CRITICAL INSIGHTS

From September of 1997 through until June of 1998, the Ontario Conservative government carried out Canada's largest public consultation process to date, to plan for the protection and use of 46 million hectares of the province's central and northern Crown lands. Coined *Lands for Life*, this hotly contested process sought to reconcile the views of First Nations peoples, industrial representatives from the forestry and mining sectors, conservationists and tourism advocates. The process resulted in the creation of a network of parks and protected areas totaling 12 percent of the planning region, known as *Ontario's Living Legacy*, while securing industry long-term leases to the remaining Crown land. Although key government, industry and environmental leaders unanimously endorsed the announcement, critics described the outcome as "pseudo-protectionism" (Weis and Krajnc, 1999: 36) – ultimately insufficient to ensure long-term ecological integrity. Moreover, social justice advocates expressed outrage at the injustice perpetrated on First Nation peoples in the region, and many charged that the *Lands for Life* process sought merely to give the illusion of consultation, while reaching a predetermined outcome (see Krajnc et al., 2000).

This essay will critically review the myriad ways in which the Ontario provincial government put forward a discourse of Crown land that ultimately privileged industrial interests over all others (see Ballamingie, 2009). In this sense, struggles over access to land and resources are understood not simply as material struggles, but rather, as symbolic and discursive struggles over what are inherently socially constructed concepts. Analysis of the ways in which the government orchestrated the *Lands for Life* process generated significant insights into how future consultation processes, particularly around resource use, might be further democratized. To this end, this essay suggests a number of considerations that might be taken into account when posing the following questions: *Who* should consult the public? *Who* should be consulted? *What* should they be asked? And *how* should they be asked? Moving along the continuum towards greater inclusivity of marginalized social actors (such as First Nation peoples), representing a broader range of previously silenced voices, and mitigating power differentials ensures at the very least a more robust and deliberative democracy¹.

¹ Deliberative democracy (see Bessette, 1980, 1994; Cohen 1989) seeks to reconcile issues of representation with principles of consensus decision-making through the active dialogue of an informed citizenry. Deliberation by all parties, including marginalized social actors, and the detailed recording of any dissent, confers legitimacy to the outcome. Johnson (2007) posits that while a public consultation process may not always result in agreement (or consensus)... "deliberative dialogues play other important roles such as identifying or clarifying areas of serious moral disagreement." (95) Outcomes must be justified and reasoned, and when consensus remains unattainable, the majority rules. This form of democracy is advocated by those typically on the

This analysis challenges the entrenched government-industry collusion (through which government disproportionately privileges industrial interests over all others) that has now become so prevalent as well as the narrow, economic lens through which governmental decision-makers operate, and explores how practices of ecological citizenship can be either promoted or constrained by the state.

Who should consult the public?

In any public consultation process, one of the first critical decisions the government faces lies in determining *who* will consult the public on a given issue. In the case of the Great Lakes-St. Lawrence Round Table (the southernmost *Lands for Life* planning region and springboard for this analysis), the group was composed predominantly of men, from the planning region, who possessed close ties to, or, in at least one case, directly represented industry. This selection implicitly privileged the interests of individuals both local to the planning area and with industrial sector affiliations. It also entailed a significant gender bias. However, when the government selects individuals to sit on consultative bodies, they ought to consciously strive for broader representation – attempting to strike a reasonable balance between constituencies, interests, origins, and aspects of social identity (e.g., gender, race, ethnicity, age, etc.). Of course, the determination of what constitutes “a reasonable balance” will always remain both contentious and contested, but the principle of striving in good faith towards diversity is a laudable one. Had these considerations been incorporated into this particular selection process, First Nation peoples, women, scientists, academics and southerners might have been better represented.

Only by attempting to achieve this end, will the government be responsive to the diverse demands of its citizens, and not simply to the demands of large industrial interests. Ideally, the government would recruit consultative members who do not directly represent special interests (i.e., neither industrial nor conservation), and who would at least attempt, to the extent possible, to listen actively and openly and weigh competing perspectives. While every individual brings to the table their own biases, values and life experiences, some have the capacity to be more impartial than others. Certainly, a close, direct tie to a particular sector or interest group should preclude participation on a committee that is by design intended to solicit and evaluate feedback from a variety of social actors. In particular, the ability to recognize contentious issues as inherently nuanced and complex (and potentially problematic) would prove critical. Moreover, in order to ensure transparency and public accountability, the background and affiliations of members of consultative bodies ought to be published, and thus open to public scrutiny.

left of the political spectrum, since by design it includes alternative perspectives often marginalized by the state.

In addition to the suggestions, above, there are other, alternate ways in which public deliberation around contentious environmental decisions could take place. A first possibility would be to hire an independent, third party to solicit public input. Johnson (2007) details a three-year consultation process for the Nuclear Waste Management Organization that entailed hiring third party firms that specialized in deliberative approaches to public consultation, citizen engagement and participatory decision-making processes, with a stress on procedural and informational equality. However, in spite of such laudable goals, Johnson cites several instances where views were dismissed and/or excluded even with facilitation by professional mediators. Moreover, any firm willing to bid on a lucrative consulting contract would likely also be savvy to the desires of the government in power, and may well orchestrate results accordingly, either consciously or otherwise.

A second possibility would be to adopt an approach similar to the jury selection process to determine the composition of a consultative body. Although members would not necessarily be drawn from a random pool, perhaps major stakeholders (the identification of whom is itself an exercise in the operation of power) could question potential members for inherent (or extreme) bias, and retain the power to object to a certain predetermined number of appointments. Although this process might prove somewhat adversarial, it also has the potential to produce an outcome in which all parties have greater confidence – greater faith that the democratic process was served. Moreover, an independent ombudsperson could be established to oversee the selection process and ethical conduct of consultative bodies.

Who should be consulted?

When determining the terms of reference for *who* should be consulted, this critical question ought to be posed: Who should *first* be consulted? In the context of Ontario's Crown lands, First Nation proponents invoked various legal precedents, reports and decisions, ranging from global to local in scale – from international to national to provincial and territorial, that they argued ought to have informed the Ontario government in their dealings with First Nations². In light these moral and legal precedents, the legitimate concerns of First Nation peoples around outstanding land claims and unresolved treaty rights ought to have first been addressed since they supersede other interests. Instead, the government effectively erased First Nation peoples in the region. They did so by deeming their concerns to lie beyond the scope of the process, by failing to include their

² Specifically, First Nation proponents invoked the *Draft Declaration on the Rights of Indigenous Peoples*, the *Report of the Royal Commission on Aboriginal Peoples*, three relevant Supreme Court decisions (Sundown, Delgamuukw and Sparrow), the *Environmental Bill of Rights*, and, finally, aboriginal treaty rights, in an attempt to have their interests privileged, but to no avail.

presence on the various land-use planning maps, and by appointing a token First Nations representative on the Great Lakes-St. Lawrence Round Table.

Legal scholars have recently advanced a case in favor of the Crown's duty to consult aboriginal peoples prior to making decisions that might adversely impact their interests, particularly with regards to land use and resources (see Isaac and Knox, 2003; Devlin and Murphy, 2003; Lawrence and Macklem, 2000). However, as Fitz-James (2003) points out, further clarification is needed to determine the nature and scope of that responsibility.

A separate though related issue lies in consulting non-aboriginal populations living within (or adjacent to) the planning area. In the *Lands for Life* struggle, the concerns of northern residents, many of whom derive their livelihood either directly or indirectly from Crown lands, and who would be most immediately impacted by any policy decisions, might reasonably have been privileged over those of southern residents. However, it is the *extent* to which this privilege took place that proved to be problematic. Clearly, a process that dedicates more than 90 percent of its time to soliciting feedback from northerners is disproportionately biased. A more spatially extensive, and thus inclusive, consultation would have been more appropriate in the context of publicly owned provincial lands, thus ensuring a more democratic outcome.

If social justice is to be served, it will be critical to bring what Foucault refers to as popular, previously subjugated knowledge (Foucault, 1980: 81-82) to the fore. In the *Lands for Life* struggles, these discourses of resistance would have been posited not just by First Nation peoples, but also by anyone who rejected a wholly productivist, industrial construct of both nature and Crown land. Otherwise, land-use decisions will continue to be based on values that lie within the narrow domain of economic rationality. However, a very real obstacle to thinking beyond continued resource exploitation lies in the resistance posed by those benefiting from the status quo – not just industry, but also the government (by virtue of the revenues it collects through taxation of the primary resource sector) and the public at large. Asking powerful interests (namely, the government and industrial stakeholders) to self-discipline represents a significant paradox and limitation to deliberative democracy.

Ultimately, shortsighted industrialist discourses have significant material implications: they limit the future of human communities in the North to a paradigm of continued resource exploitation. They thwart the protection of the very ecosystems whose long-term ecological integrity will determine our own survival. And they compromise the viability of countless non-human species. These discourses serve to define, and limit, the scope of the possible. Or, as Adkin posits: "...through close industry-state collaboration: *industry will determine the limits of sustainability*" (Adkin, 1992: 138). In the context of *Lands for Life*, that limit was most likely pre-determined to be 12 percent of

Ontario's Crown lands – the amount that was ultimately allocated to protected status.

Fortunately, both environmentalists and concerned citizens within civil society – an independent social realm distinct from both state and corporate structures (Esteva and Prakash, 1998: 12-13; Carroll, 1992: 9) – played a crucial role in helping to legitimize discourses of resistance. It is worth noting that environmental non-governmental organizations (ENGOS) participated in a myriad of strategic and mutually supportive ways. Many engaged within the terms of reference provided – most notably, members of the Partnership for Public Lands (a coalition including representatives from the World Wildlife Fund, the Federation of Ontario Naturalists, and the Wildlands League), and the Sierra Club of Canada. However, Earthroots (a group whose self-proclaimed mandate is to achieve wilderness protection without compromise) staged silent protests by holding placards at the back of the room in which consultations took place (Earthroots, 2008). The Ontario Public Interest Research Group (OPIRG) opted out of what they considered to be a process flawed from the outset. All of these actors attempted to broaden the knowledge base from which the government would make its land use decisions. More specifically, they challenged economic constructions of Crown land. They also played a critical role in holding the government more accountable to its diverse citizens, and making quasi-democratic consultation processes such as *Lands for Life* more transparent. Each of these functions ultimately undermined the power juggernaut of government-industry collusion, limiting unfettered capitalist exploitation of nature, and providing a fundamentally more democratic state. Whether these efforts will be adequate to ensure the long-term ecological integrity of Ontario's Crown lands remains to be seen.

Interestingly, these actors within civil society have emerged as a direct response to perceived government-industry collusion, and to the general sense that the state can no longer be trusted to protect the environment. Escobar cites “loss of confidence in the government and political parties” as one impetus behind the emergence of new social actors. (Escobar, 1995: 219) Others felt excluded from an obviously important process, and wished to ensure that public interests (broadly defined) were served. Others, such as First Nations, no doubt reacted to what Escobar describes as “the exclusionary character of development.” (Ibid.) And some engaged for seemingly altruistic reasons – for example, to represent an ecocentric perspective (i.e., a nature-centered system of values), or to advocate for the interests of non-human species and/or future generations.

What should they be asked?

The government narrowed the terms of reference for the *Lands for Life* consultations to a discussion of the percentage of land to be protected, thus

missing a critical opportunity to solicit meaningful feedback about how Ontarians currently use, and relate to, Crown land. In particular, numerous participants, from ENGO representatives to concerned citizens, questioned the sustainability of current forestry practices in Ontario. However, the government deemed their concerns to lie beyond the narrow terms of reference established in this process, and, in so doing, effectively silenced them. But if current, mainstream, industrial logging practices *are* unsustainable – then perhaps new leases on public lands should not be issued until industry has established a proven track record of sustainable practices over time. Moreover, given the ecologically sensitive nature of dwindling old growth stands, some have argued it would be prudent to adopt a precautionary approach³, and impose a moratorium on logging in these areas.

But the government dismissed discussions about the broader normative and ethical principles that ought to inform our land-use decisions. During the consultations, Great Lakes-St. Lawrence Round Table members discussed the need for continued research, recognizing there is insufficient knowledge of Crown land⁴. Some members also viewed remaining old growth white pine forests as important benchmarks (providing baseline data) for assessing sustainability⁵. However, in spite of these uncertainties, the Ontario government failed to address: How can we best implement the precautionary principle in planning for the use of Crown lands? Although the precautionary approach is admittedly difficult to put into practice, how to accomplish this is a subject worthy of public consultation and debate in and of itself.

The government also failed to heed of the various calls for greater inter-generational responsibility (a lens through which our actions do not adversely limit options available to future generations), in spite of rhetoric to the contrary. To this end, *Ontario's Living Legacy* (the culminating announcement from the *Lands for Life* process) can be re-framed by simply focusing on what is *not* emphasized in the promotional literature. Instead of lauding the 12 percent protected areas, the Ontario public ought to take serious issue with the 88 percent of Crown lands that have now been formally opened to the resource extraction industry under new, long-term leases. Such leases, especially when coupled with an increased reliance on industry self-monitoring and voluntary compliance to environmental regulations, amount to de facto privatization of Ontario's Crown lands.

Finally, in transforming Ontario's northern economy towards greater ecological sustainability, the needs of those most directly impacted must be given

³ [The precautionary principle states that when faced with uncertainty/ risk \(in this case, in the context of environmental decision-making\), it is better to 'err on the side of caution' and take preemptive measures to avoid any adverse outcomes.](#)

⁴ [See GLSL Round Table minutes of October 14, 1997.](#)

⁵ [See GLSL Round Table minutes of October 28, 1997.](#)

special consideration. In this sense, the vision posited by the Partnership for Public Lands – elaborated in their 1998 report, *Planning for Prosperity* – offered a beacon of hope. Specifically, they envisioned an alternative development path that aimed to protect 15-20 percent of Crown land while maintaining wood flows to mills and creating 8,000 new jobs. They sought to accomplish this through more labor-intensive forestry operations, increased local manufacture of value-added secondary products, the creation of more roadless areas, and the diversification of northern economies (where communities would actively market their high quality of life and beautiful environs to attract businesses). However, Ric Symmes, Partnership Chair, identified several obstacles to implementation. Specifically, he stated: “Inertia, fear and short-term self-interest are substantial barriers to beneficial change.” (Symmes, 1998: A28) He further argued: “Implementing this vision requires strong leadership from the government, northern communities, and the forest industry. Failure to do so will sentence the North to a future with fewer jobs and a severely degraded wilderness heritage.” (ibid.)

Adkin (1992) describes the desire to achieve both environmental protection and economic security as *ecosocialist*. Although the proposal put forward by the Partnership is both progressive and pragmatic, it does not represent a counter-discourse and entails inherent limitations. According to Adkin: “...the ecosocialist perspective insists that the interdependency of economic and environmental issues necessitates an alliance to counter the logic of capitalism.” (Ibid. 146) But does the Partnership proposal – wherein the interests of workers and the environment supposedly converge – truly counter the logic of capitalism? Although alluring – it is possible to create jobs *and* save the environment – those drawing on ecosocialist discourses still fail to address the fundamentally unsustainable, consumptive lifestyles of Western, industrialized societies. Unless we dramatically reduce (and/or transform)⁶ our consumption of resources from Crown lands, future generations will be forced to confront an increased scarcity of material resources (given the timeline along which renewable resources replenish themselves, and the finite nature of non-renewable resources). Then, the government’s construction of Crown land as a “living legacy” to Ontario’s future generations will surely seem an absurdity (Ontario Government, 2000).

Ultimately, the government took a complex moral, political and ecological problem, and reduced it to a discussion of the percentage of Crown land to be protected. Certain basic premises were never broadly challenged, because they have become so entrenched as to become uncritically accepted. Few acknowledged the outstanding legal claims of First Nation peoples to Crown

⁶ Of course, certain modes of consumption such as harvesting nuts, mushrooms and/or medicinal herbs from an otherwise intact forest are far more sustainable than industrial clear cut logging.

lands. Few questioned the inevitability of industrial logging and mining operations on Crown lands. And few attempted to address what Braun describes as the “central question of our time” – “how are we to live?” (Braun, 2002: 258)

How should they be asked?

Once a relatively impartial and diverse consultative body has been convened, they ought to be charged with a clear task – based on terms of reference that are rigorously and publicly debated. In this context, one Great Lakes-St. Lawrence Round Table member lamented that the government failed to give them “clear marching orders.” He further argued that the imposed timeline was unrealistic (2001, personal interview) – a sentiment echoed by most other Round Table members and various members of civil society. Clearly, consultations of this scope and magnitude (especially with the fate of 46 million hectares of land in question) require sufficient time to carry out. Moreover, the constrained timeline impacts greatly the abilities of various parties to generate awareness and organize engagement. A shorter timeline privileges industrial actors who can draw on existing public relations capacities to respond on short notice. It similarly disadvantages smaller groups and social actors who lack the requisite funds and organizational abilities to engage in such public consultations. Thus, an insufficient timeline reinforces what Foucault describes as differentiations in the ability to act (Foucault, 1983, 223), making engagement by members of civil society problematic.

Johnson (2007) identifies a central tenet of the deliberative ideal – equality. In this sense, the government ought to consciously address and attempt to mitigate differential abilities to engage. Freeman (2000) argues that material equality is necessary for un-coerced dialogue. Adkin, in reflecting on the democratization of decision-making processes, summarizes the need to provide financial support for members of civil society to participate. Specifically, she refers to funding to travel to events, to hire technical or legal experts, or to engage in public awareness activities (Adkin, 1998: 315). This type of funding would help to address disparities in access to resources, and the differentiations (Foucault, 1983, 223) that result from (and are reinforced by) those disparities. It would also offer otherwise marginalized groups the chance to present their case, potentially bringing a greater breadth of voices to the fore. Regardless, it would help to make such processes inherently more democratic, since consultative bodies would be forced to reconcile a multiplicity of discourses rather than continue to operate within a narrow discursive realm.

Smith (2001) cites the significant reductions in government spending allocated to advocacy groups within civil society, first brought about in Canada by the federal Conservatives in the 1980s, and continued by the federal Liberals in 1993. According to Smith (2001) this change corresponds to a shift in the

government's perception of Canadians – no longer as democratic citizens who ought to have the opportunity to influence policy, but rather, as “self-interested, atomistic [tending towards individualism] consumers of government services.” (121)

Given that the Great Lakes-St. Lawrence Round Table placed such a heavy emphasis on land-use scenario maps (indeed, the maps literally and symbolically framed the periphery of most meetings), financial resources specifically targeted to geographic information systems (GIS) should have been made available to other groups who lacked the requisite technical expertise. In the absence of such funding, only the Partnership – a group of large, well funded but relatively conservative environmental organizations – was able to use mapping as a lever of resistance, and put forward an alternate cartographic scenario.

Notwithstanding some reasonable efforts to alert the public to this momentous undertaking, additional resources really ought to have been allocated to educating and involving *all* Ontarians at every stage of the consultation process. However, the poor level of public awareness around the *Lands for Life* consultations can probably be blamed in part on political apathy. One environmentalist suggested making the process as accessible as possible through the use of: “1 800 numbers, e-mail, evening and weekend forums, [more convenient] geographic access.” (2001, personal interview) Although a rudimentary website was established by the Ministry of Natural Resources to help disseminate information, Internet access remained significantly more limited in the late-1990s than it is today (notwithstanding ongoing disparities in access). Moreover, as Smith (2001) notes, information and communication technologies have greatly facilitated political coordination amongst diverse actors, opening new public spaces and opportunities for civic engagement that are not explicitly constrained by the state or ruling elites (117).

Finally, at minimum, consultative bodies, as quasi- research entities, ought to engage in an ethical review of their proposed projects. For such a review to prove effective, the Medical Research Council et al. suggest the involvement of “...academic or community members from representative groups, or advisory committees drawn from relevant communities” (Medical Research Council et al., 1998: 6.1). In particular, when consulting aboriginal peoples, special consideration must be given to their unique “rights and interests” (ibid.), and special care taken when securing informed consent, addressing cultural difference(s), and acknowledging historical context.

Conclusion

Based on an analysis of the *Lands for Life* process in Ontario, this paper posits a myriad of considerations that might help future consultations to become more

inherently democratic. Appendix 1 summarizes key considerations (around principles of representation, transparency, public awareness, social justice, bias, accountability and logistics) that ought to be taken into account in any public consultation process. As such, it is aimed at governmental representatives charged with the task of consulting the public, in the hope that they will design consultation processes that will stand up to greater ethical scrutiny. For political bodies to retain their relevance, and not simply act as proxies of corporate interests, they must actively promote ecological citizenship by members from civil society. Ultimately, any consultation process that seeks to be inclusive and representative, and above all, democratic, is doomed to a degree of imperfection (or, more likely, failure). However, moving along the continuum towards greater inclusivity of diverse social actors, representing a broader range of previously silenced voices, and mitigating power differentials ensures at the very least a more robust and deliberative democracy.

Appendix 1: Incorporating Deliberative Ideals in Public Consultations

	Principles
Who should consult the public?	<p>Plurality: Strive for consultative bodies that represent diverse constituencies, interests, origins and social identities (e.g., gender, race, ethnicity, age, etc.).</p> <p>Bias: Ensure consultative members do not directly or disproportionately represent special interests. If certain groups are deemed to have a more legitimate say, this privilege ought to be publicly stated, and open to contestation.</p> <p>Transparency: Ensure openness by publishing the background and affiliations of members of consultative bodies, thus making them open to public scrutiny.</p> <p>Critical capacity: Ensure members have the capacity to deliberate, to question unchallenged assumptions, and to view issues as complex and nuanced.</p> <p>Authority: Assign consultative members a clear task, and charge them with the power to make recommendations commensurate to their responsibilities.</p> <p>Accountability: Identify discrepancies between recommendations and government actions to ensure public accountability.</p> <p>Selection: Adopt discrete aspects of the juridical model for jury selection.</p> <p>Oversight: Establish an independent ombudsperson to oversee the selection process and ethical conduct of consultative bodies.</p>
Who should be consulted?	<p>Privilege: Identify social actors that ought to be consulted first, e.g., the interests of aboriginal peoples might legitimately be privileged due to moral and legal precedents, international treaties, and the Crown’s duty to consult.</p> <p>Proximity: Identify groups that are closest to the issue (both materially and/or discursively), from those with the most geographic proximity to a more spatially-extensive community. It is the relative extent to which these different groups are consulted that will prove most contentious.</p> <p>Public awareness: Establish specific targets (e.g., at least 30 percent of the population, if polled, ought to have some idea of the significance of the undertaking).</p> <p>Inclusivity: Actively seek out actors who posit critical perspectives that challenge mainstream thinking, for they are key to imagining a post-industrial world.</p>
What should they be asked?	<p>Social justice: Identify issues that supersede all others (e.g., aboriginal rights and the resolution of outstanding land claims and treaty rights prior to public consultations).</p> <p>Breadth: Ensure that narrow terms of reference do not preclude meaningful discussion around important normative (values-based) and ethical issues: What constitutes ecological and social sustainability? How might the <i>precautionary principle</i> be operationalized? What are our responsibilities to future generations? Non-human species? In other words, what Braun describes as the “central question of our time” – “how are we to live?” (Braun, 2002: 258)</p>
How should they be asked?	<p>Transparency: Subject initial terms of reference to public debate; publish backgrounds and affiliations of members of the consultative body.</p> <p>Logistics: Ensure time allocated is sufficient to the scope and magnitude of the task.</p> <p>Access: Ensure that consultations take place in urban and rural areas (during the day and evening, weekdays and weekends) to optimize participation.</p> <p>Equality: Provide the requisite funding and expertise for effective participation by all interested parties in order to mitigate differential abilities to engage.</p> <p>Communications: Seek input and publicize results through a variety of communication channels (e.g., via the web, through a 1-800 telephone number, by e-mail, in the popular press, etc.)</p>

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