

Standing at the ERCB

Shaun Fluker

Faculty of Law

sfluker@ucalgary.ca

www.ablawg.ca/author/sfluker

audi alteram partem

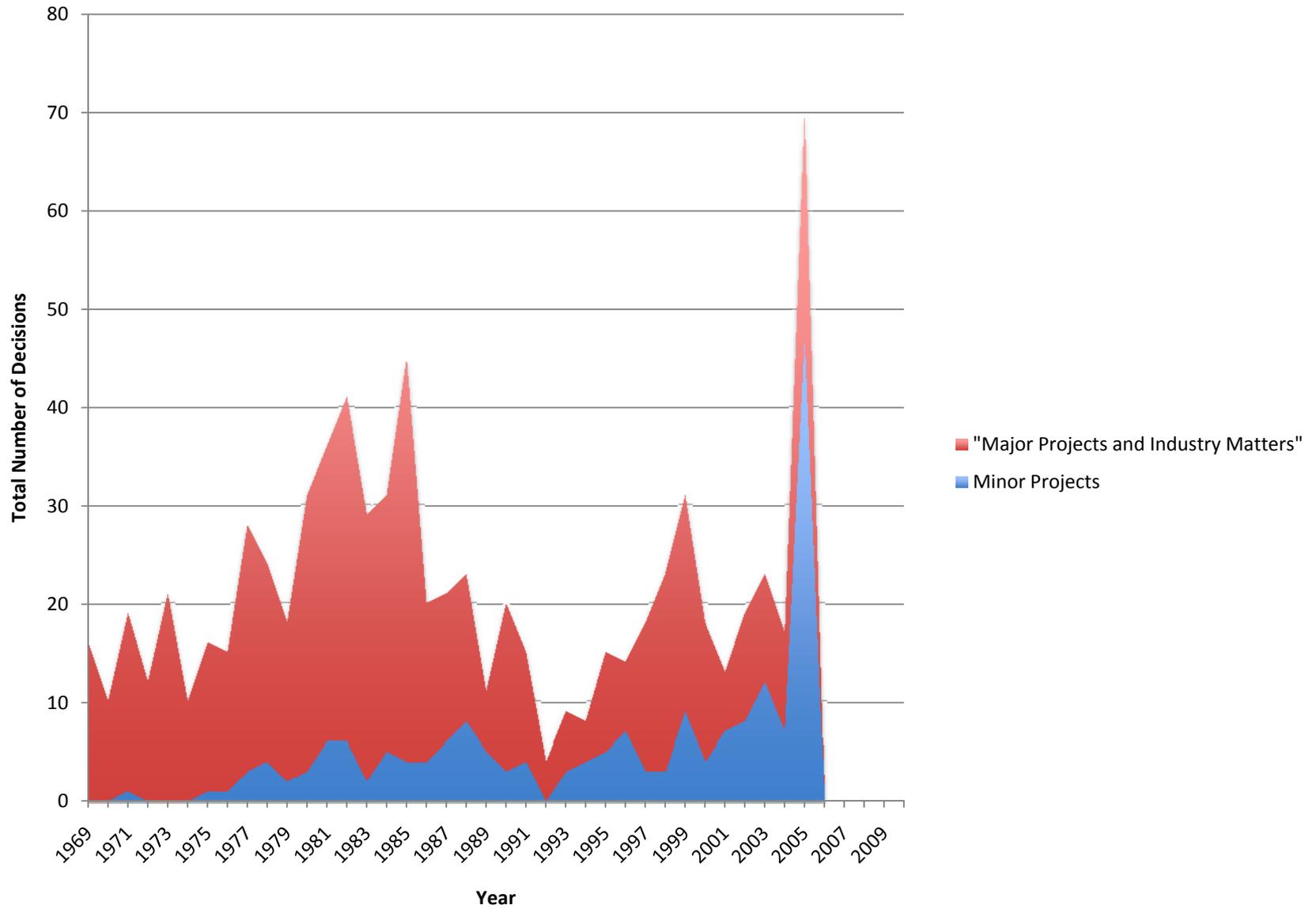
The decision-maker must “hear the other side”

26(1) Unless it is otherwise expressly provided by this Act to the contrary, any order or direction that the Board is authorized to make may be made on its own motion or initiative, and without the giving of notice, and without holding a hearing.

(2) Notwithstanding subsection (1), if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person, the Board shall give the person

- (a) notice of the application,
- (b) a reasonable opportunity of learning the facts bearing on the application and presented to the Board by the applicant and other parties to the application;
- (c) a reasonable opportunity to furnish evidence relevant to the application or in contradiction or explanation of the facts or allegations in the application;
- (d) if the person will not have a fair opportunity to contradict or explain the facts or allegations in the application without cross-examination of the person presenting the application, an opportunity of cross-examination in the presence of the Board or its examiners;
- (e) an adequate opportunity of making representations by way of argument to the Board or its examiners.

Nature of ERCB Decisions 1969-2010



May directly and adversely affect the rights of a person

- Is the claim right or interest being asserted by the person one known to law?
- Does the ERCB have information which shows the application before it may directly and adversely affect those rights or interests?

Dene Tha' First Nation (2005 ABCA 68)

Kelly v. ERCB 2009 ABCA 349

- Landowner or occupier of land within prescribed consultation, notification, EPZ/PAZ or setback radius in ERCB directives
- Directly and adversely affected does not mean in a different way or to a greater degree than the public generally