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Canadian
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L'Association
canadienne
du droit
de l'environnement

suite 303
one Spadina Crescent
Toronto Ontario
M5S 2J5

telephone (416) 928-7156

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Mr. Clive Goodwin,
Executive Director,
Conservation Council of Ontario,
45 Charles Street East,
Toronto, Ontario M4Y 1S2

Dear Mr. Goodwin:

We have recently read the draft of the Conservation Council's proposed brief in response to the Green Paper on Environmental Assessment, and were very pleased to see that the Council is recommending most of the procedures in our own White Paper on environmental assessment.

As you know, our own brief recommends an appeal to the legislature as an alternative to cabinet appeal. This avenue, admittedly a new approach in Ontario, would provide a complement to what one member of the American Council on Environmental Quality called the "goldfish bowl" treatment for environmental issues. The purpose of our recommendation of remands to the legislature, if an environmental court system is not acceptable, is to provide maximum public visibility for all decisions that affect the environment.

CELA feels that what is important at this most crucial stage (since it will be only the most important issues that will be discussed in the legislative forum) is that the tradeoffs made in the name of the environment be clearly apparent to all. Perhaps you will agree that this would not be possible if the decisions were made in a government caucus room, where only the final decision will be announced, not the factors involved.

The present government's decision on the Spadina expressway, while a laudable one for environmentalists, should not be expected to be a model of the kind of decision-making process that can be depended upon to open up to public view the gamut of criteria which go into the eventual decision.

A serious question raised by many is that the legislature would be swamped with appeals from the Review Board. It would be up to the Legislature itself to determine whether an appeal would

be heard, and certainly if the governing party did not wish the appeal to be aired, they could instruct their members how to vote on the issue.

Again, the purpose of including this point is to ensure maximum public visibility, throughout the decision-making process, for all decisions on environmental issues.

CELA believes there is little point in preparing an open process for environmental assessment, and then locking the public out at the final and most important stage. This is all the more important since the cases that will go to review will be, in effect, not isolated cases but the resolution of substantive policy conflicts or the clarification of gaps in existing legislation.

The relationship between the courts and the legislature on these substantive policy issues has already been decided in at least one very important case in this province. In McKie vs. KVP(1948), the Supreme Court of Ontario ruled against a northern Ontario pulp and paper company, ordering it to cease polluting the Spanish River and ordering an injunction against the company. The only available response to this decision was a legislative one, and so the provincial government passed the KVP Act, specifically exempting the company from requirements for pollution abatement. While this is not a decision that environmentalists would be likely to applaud, it did force the legislature, in a public forum, to determine the weight of economic versus environmental interests. It is this kind of open discussion of social values that should be stimulated, and is in fact the legislature's primary function, not the cabinet's.

With respect to the discretionary power enjoyed by the screening board as mentioned on page 4 of your brief, CELA agrees that the Board must be invested with this power, but there are guidelines available which could preclude arbitrary decisions by the Board in determining whether hearings should be held. The Board should have the authority to demand impact statements and hearings where special public concern is demonstrated, regardless of whether or not the particular action falls within its guidelines.

We hope, too, that in your final submission to the Ministry you will include some comment about standing before the Board. This problem has always been a major stumbling block in environmental cases, and will continue to be so as long as legislation is not passed specifically broadening the powers of the public to defend environmental interests before the Review Board and in the courts.

The issue of standing is one which must be resolved as soon as possible, if environmental interests are to be given their proper hearing.

Naturally, we would be pleased to discuss these or other points further with you or with any member of the Council at your convenience. Perhaps circulation of this letter to the member organizations of the Council would facilitate a broader understanding of these issues. We would be pleased to do this if you should so wish.

We look forward to receiving a copy of your final brief and your own comments on our brief, "Principles for Environmental Impact Assessment".

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

John E. Low
Environmental Impact Study Group