



November 12, 1981

Mr. Alan Levy
Barrister and Solicitor
40 Hayden Street
Toronto, Ontario

Dear Mr. Levy:

I am writing to inform you about a Commission research project which got underway recently and which is dealing with issues and concerns which may be of interest to you. The Project in question, and which I direct, is known as, "Protection of Life, Health and the Environment". I hope to elicit your interest and support as we begin to formulate our analyses and proposals.

While our major interest is that of the legal response to environmental pollution, we are also considering the legal response to the two related areas of hazardous products and occupational health/safety. At this initial stage we are attempting to identify and choose the particular issues we will address within the three areas indicated, and to establish workable parameters for the subjects chosen.

Because this is a federal (though largely independent) Commission, its mandate is to make recommendations to Parliament on matters specifically within federal, or at least partially federal, jurisdiction. But given the mixed and overlapping federal/provincial involvement in these pollution related matters, we must of necessity examine as well various provincial powers and statutes. We will not of course do so for purposes of making explicit proposals about provincial matters but mainly because many pollutants and hazards obviously have little respect for geographical boundaries or jurisdictional divisions. Nor are existing jurisdictional divisions written in stone for all time.

It might be useful for you to know something about our general orientation and focus, as well as the sort of questions we are pursuing. Given that we have not been underway very long, I must of necessity at this stage be somewhat general.

First of all, we intend to deal as directly and explicitly as possible with the risk to human health aspects of the various pollution, hazardous product and occupational safety issues and offences we decide to address. Not only is human health and life the primary interest traditionally (though not always effectively) protected by law. But we also recognize that any eventual and credible law reform proposals in our areas of interest must be based upon accurate findings that there are serious present or future health risks not being adequately controlled by existing legal mechanisms and sanctions. We are fully aware that the issue of evaluating medical and scientific evidence is of crucial importance to such a venture. For these reasons there is a strong public health and science emphasis and personnel component in this Project.

A second aspect of the orientation is our intent to subject some of the old and new "conventional wisdoms" to critical analysis. For example, it is assumed or argued in some quarters that criminal law and criminal sanctions may not be particularly useful in practice in dealing with pollution related offences. But we would like to determine with more rigour and in greater detail than is sometimes the case, whether and/or why this might be so.

An issue of particular and fundamental interest to us in this regard is the very topical and urgent one of private prosecutions. Our questions are about both the deterrence/compliance effects this legal tool might have on pollution offences, and its relationship to and impact upon the discretionary policies and powers of regulatory agencies.

This in turn leads to a third project concern. We hope to fill in some of the gaps in the empirical data needed to make accurate evaluations of competing legal mechanisms or sanctions, and to formulate practical reform proposals. Our inquiry is seeking answers to very specific empirical questions. One of them involves the prosecution policies and practices of particular Ministries or agencies responsible for the enforcement of

pollution related and hazardous products related Acts. Another empirical question concerns the attitudes of our Judges when faced with pollution and hazards cases. And a third has to do with the mechanics of corporate decision-making and information disclosure. No doubt the resulting empirical data concerning practices and attitudes about those and other matters will support some present assumptions and stances. But equally likely is that some of them will be found to be based more on conjecture than fact.

It would seem arguable and even obvious that there are at least six parties affected by and/or potentially involved in the societal and legal response to pollution related offences: the public, industry, regulatory agencies, science/medicine, Legislatures and courts. And this leads to a fourth concern we have. It is expressed in the hunch or hypothesis that the debate about appropriate legal responses may be too limited to only the (regulatory) agencies and the ("client") industry. It may be that the health effects upon, and input by, the affected public (whether as ordinary citizens, consumers or workers) are not consciously enough in mind or frequently enough adverted to when standards, remedies and reforms are discussed and applied.

A fifth emphasis is manifested in the multidisciplinary nature of our Project staff and consultants. We decided very early in the planning stages, that the eventual proposals would be practical and realistic only if we gave considerable attention, not just to the strictly legal aspects of pollution hazards problems, but also to the wider political, economic, ethical and health contexts. To explore our issues in a vacuum and apart from these wider contexts, would be to risk law reform proposals which are intellectually satisfying but unrealistic, unworkable and utopian.

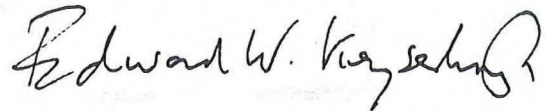
I recognize that many individuals and groups have produced and/or are preparing excellent and important work on these issues, and that this Project is a late and new arrival in a very impressive field. It is our intention to avoid duplication, and equally our intention to use, incorporate and build upon existing expertise, analyses, studies and position papers. I am therefore requesting that you send me or notify me about any such material prepared by you or groups you may have worked with which you feel we should know of. Please be

assured that any such material will be given careful and early attention by us. Though a similar letter is being sent to a number of other people and associations in the fields of interest to us, we are still in the early stages of establishing our mailing and consultation lists. I would therefore be most grateful for any suggestions as to other associations or individuals you feel we should contact. I would also appreciate receiving notices of any forthcoming Conferences you may be involved with which will be dealing with our issues.

Lastly, please let me know if you would like to be kept informed about our evolving work, and whether you would be interested in receiving copies of our papers for reaction at a later stage.

Thank you in advance for your interest and support. I look forward to meeting you in the not too distant future.

Sincerely,

A handwritten signature in dark ink, reading "Edward W. Keyserlingk". The signature is fluid and cursive, with a large, stylized initial "E" and a long, sweeping underline.

Edward W. Keyserlingk
Project Coordinator,
Protection of Life, Health
and Environment Project