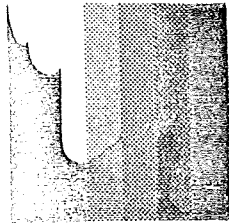


Submissions

to

The Royal Commission on the Northern Environment



by the

Canadian Environmental Law Association

November 24, 1977

BRIEF TO THE ROYAL COMMISSION
ON
THE NORTHERN ENVIRONMENT*

The major concerns of the Canadian Environmental Law Association (hereinafter referred to as "CELA") with respect to the Royal Commission on the Northern Environment are in relation to the effectiveness of the Commission and procedural rules and guidelines.

Part One of the Association's submissions deals with the independent and effective operations of the Commission; Part Two suggests procedural guidelines that will facilitate the operation of the formal hearings. All of these submissions are proposed in order to assist the Commission in carrying out its mandate in the most efficient manner possible, while assuring the opportunities for public participation are maximized.

While it is not the intention of the Canadian Environmental Law Association to discuss the substantive issues in this submission, the Association would like to submit an introductory remark regarding employment in Northern Ontario. The importance of employment for the Northern Communities is recognized. However, jobs and development should not be at any cost. Continuation of existing jobs and development of new jobs for the North should be considered in light of their benefit to and compatibility with the North. In all instances, development should not be development that will simply service southern communities, but reasonable development that will be in harmony with the northern environment and result in long term benefits to the northern community.

Part One

Submissions in Relation to the Independent and Effective Operation of the Royal Commission on the Northern Environment

A. Independent Budget

To ensure that the operations of the Commission are not fettered by financial restraints, and to ensure the Commission has authority to approve all financial expenditures necessary to implement the Commission's mandate, the Commission should be funded by an independent budget. If the Commission is to carry out its mandate properly and efficiently, it is imperative that the Commission be guaranteed enough funds for the whole project.

* Prepared by Ann Lancaster, Counsel to the Canadian Environmental Law Association, and delivered by Paul Gavrel, a Director of CELA, on November 24, 1977, at Timmins, Ontario.

Although it is appreciated that this is a time of financial restraint on all spending, the importance of the Commission in relation to all future development of northern Ontario must be recognized. Due to the monumental impact the Commission's recommendations may have, the budget should be large enough to facilitate all expenditures necessary for the Commission to carry out its objectives. The Commission should be allocated a budget to cover all internal operating expenses of maintaining the Commission's offices, all hearing costs, all travel costs, and all costs for funding special projects such as research-, as well as costs for funding effective public participation. The criteria used in establishing eligibility for funding public interest groups should be that criteria used in the Berger Inquiry.

If one or more representative environmental or public interest groups emerges, the Commission should be prepared to provide each group or groups with full-time counsel, or to make legal representatives available to them on a part-time or a duty counsel basis, depending on the need of such groups. Adequate funds must be allocated in the Commission's budget to pay for such legal representation, to ensure that environmental or public interest groups have proper preparation and representation throughout the Commission's progress.

B. Independent Staff

The major criteria in hiring staff for the Commission should be experience in and knowledge of the North. Staff appointments must demonstrate a concern for the North, particularly for its environment, social well-being and native peoples.

The Commission must take the utmost precaution to ensure that its staff not only is independent in fact, but also appears to be independent. Members of the public will deal with the Commission's staff, rather than the Commissioner and will form their impressions of the Commission from their contacts with its staff. If the Commission is to fill its proper role, its independence must be assured and must be obvious. The Commission in arriving at its recommendations must not in any way be influenced or controlled by government. There must be not sitting members of the legislature, not sitting civil servants on the Commission's staff. In other words, political appointments or representatives of powerful corporate interests are unacceptable. Similarly, consultants hired by the Commission must be above suspicion and demonstrate academic neutrality.

C. Separate Royal Commission or Part II of Hartt Commission for Northern Ontario, South of 50th and North of 46th Parallel

The Canadian Environmental Law Association submits that the Royal Commission on the Northern Environment must either make representations to the Executive Council of the Government of Ontario to approve a Part Two of the Commission's study, or, in the alternative, representations that there should be a separate Royal Commission commenced with view to study Northern Ontario, north of the

46th parallel and south of the 50th parallel. In light of native interests and in an attempt to avoid dilution of the Commission's task north of the 50th parallel, it is not recommended that the Commission, in the first part of its undertaking, broaden its geographical terms of reference to include all areas north of the 46th parallel.

It is recognized that all of Northern Ontario has an intricately related infrastructure. Major decisions made in cities such as Sudbury, North Bay, Thunder Bay, Knora, Fort Francis, Sault Ste. Marie, Cochrane, Kirkland Lake, New Liskeard, Cobalt, Haileybury, Kapuskasing or other northern communities, south of the 50th parallel, have a great impact on all of Northern Ontario. Decisions made in these centres, whether made by the private or public sector, pertaining to matters such as resources, business operations, health services, education services, transportation policies, or communication links, reflect the similarity of problems affecting all northern communities. The future of these centres will to a large extent influence the future of communities north of the 50th parallel.

For these reasons, CELA respectfully submits that the Commission must obtain a mandate, as a second part to its present mandate, to study Northern Ontario between the 46th parallel and the 50th parallel, or in the alternative, a separate Royal Commission for this purpose must be appointed.

D. Moratorium

There must be a feasible and effective moratorium on all large-scale Northern development during the length of the Commission's hearings and until implementation of the Commission's recommendations, so that development during the hearings does not negate the purpose of the Commission.

The Commission should hear submissions regarding the moratorium, in light of specific projects proposed. The Commission should then request that the provincial government negotiate with the federal government to ensure that all federally controlled projects are subject to the moratorium. The moratorium must affect all projects, except those that are substantially underway and well past the preparatory or planning stages.

E. Southern Hearings

Northern development is of interest to citizens in all parts of the province, consequently, southern residents must have equal access to the hearings without the expense and difficulties involved in presentations in northern communities. The very nature of Royal Commissions requires such equal access. The eventual implementation of the Commission's recommendations will be contingent upon broad popular support of its recommendations in southern as well as in northern Ontario. CELA supports the opinion of the Committee in Support of Native Concerns, London, Ontario, that while most of the hearings must take place in the North, and the concerns and opinions of northern people must be of utmost concern to the Commission, the Commission must hold hearings in Southern Ontario.

Part Two

Procedural Submissions

A. Efficiency of Formal Hearings

The tendency of Royal Commissions to be protracted over lengthy time periods is of serious concern. Often this is a result of inefficient procedural guidelines for formal hearings being established. The Commission should take all reasonable procedural steps to ensure the formal hearings will proceed as expeditiously as possible, without curtailing the rights of the participants or evading the issues.

Such efforts would have three major benefits:

- (1) Public expenditure on lengthy formal hearings would be minimized;
- (2) Efficiently run formal hearings would encourage participants to be disciplined in their presentation; and,
- (3) The chances of sustaining public interest, vital to the effectiveness of the Commission, would be maximized.

Numerous approaches could be adopted to minimize the length of hearings.

It is possible that the Commissioner need not personally hear all highly technical presentations; a pre-hearing inquiry (discussed subsequently) would also clarify the issues before formal hearings, ensure organized presentation and facilitate cross-examination.

While the Commission must establish procedural guidelines to ensure efficient operation of the formal hearings, at the same time, it must ensure that adequate time is allocated so that informal hearings can be held in all native communities to listen to the natives' concerns in depth. It should be noted that CELA supports the position of Treaty Nine in regard to community hearings.

B. Pre-Hearing Inquiry

A pre-hearing inquiry should be scheduled prior to the formal hearings to focus the attention of the Commission and the participants, on the relevant parties, issues, and evidence to be introduced. The pre-hearing inquiry would force the participants to prepare and organize evidence in advance. It would also highlight major issues.

The pre-hearing inquiry would consist of five stages:

- (i) Identification of parties.
- (ii) Exchange of evidence.
- (iii) Submission of written interrogatories.
- (iv) Submission of answers to written interrogatories.
- (v) Motions regarding adequacy of answers on interrogatories.

(i) Identification of Parties

Participants would succinctly outline their interests in the hearing and briefly express their views on all evidence, including rebuttal evidence, they intend to deal with at the formal hearings. This would allow participants to assess the major issues to be dealt with the other parties and the views to be taken on these issues.

The Commission should make rulings on standing at this time, however, the right to make further submissions and be given standing on the basis of new evidence should be unfettered. Standing must be given liberally.

(ii) - (v) Exchange of evidence, written interrogatories and motions of adequacy

Exchange of a written detailed outline of all oral and written evidence at a pre-hearing serves three purposes:

- (1) The participants are obliged to plan and organize their evidence well in advance of formal hearings;
- (2) Written interrogatories ensure clarification of all uncertain areas of evidence before formal hearings; and,
- (3) Advance evidence will facilitate preparation for cross-examination.

However, it must be assumed that new material may be introduced at the discretion of the Commission at any time following written submissions upon reasonable notice being given to all parties concerned.

C. Timing of Formal Hearings

The formal hearings in the North must be held at a time that would maximize the ability of all interested parties to participate. Accordingly, the hearings should not be held during months when the transportation difficulties are paramount in the North, nor during times directly in conflict with seasonal employment (such as wild rice harvesting).

D. Procedure fo Formal Hearings

(i) Adversarial Procedure

To ensure fair and proper hearings in which fellow participants have an equal opportunity to present evidence, as well as an opportunity to review and question evidence submitted by other participants, the adversarial approach should be implemented at the formal hearings. Testimony at formal hearings should be given under oath. Each participant, as well as Commission counsel, should have full powers of cross-examination with respect to any evidence submitted and there must be opportunity for re-examination by counsel for any witness presenting evidence.

It is recognized, however, that there will be occasions when the Commission will relax the rules of evidence due to the nature of certain presentations,

and to avoid intimidating certain participants.

(ii) Transcripts

To facilitate cross-examination, daily transcripts are imperative. The importance of daily transcripts cannot be over-stressed, however, they are of paramount importance if there is no pre-hearing inquiry at which all evidence would be presented in advance. Without these transcripts, subsequent cross-examination would be futile. Due to the monumental cost of purchasing transcripts, they must be available in English, French, and Cree-Objibway, free of cost or at very minimal costs to all parties who demonstrate need. Transcripts must also be readily available at Commission offices and designated depots in Red Lake, Kenora, Dryden, Sioux Lookout, Timmins, and Thunder Bay, and Toronto, as well as in several public libraries that have been chosen as being representative for the rest of the province.

(iii) Access to Information and Production of Documents

The Commission must have access to all relevant documents held by corporations, governments, or individuals, relating in any way to the development of Northern Ontario, whether such documents are held by participants or non-participants and whether or not they are intended to be used as evidence at the hearing. The Commission must continue its indexing of all relevant materials held by participants or non-participants including all corporate and government studies (federal or provincial). During the process interim lists should be distributed through Commission offices to anyone requesting such a list and participants could then request production of any materials so listed.

The Commissioner must use the power of subpoena where necessary to ensure all relevant evidence in any form is presented for consideration.

E. Libraries

Access to all evidence in documents, papers, reports, and studies by the Commission and major participants is not sufficient. All such materials as well as copies of all transcripts must be available at several public libraries or other locations in Northern and Southern Ontario, to ensure the possibility that public participation is maximized. To ensure that such material is accessible, arrangements must be possible for inexpensive photocopying and for signing any material out for several days. To minimize expense of these libraries very lengthy or extremely costly documents could be located at only three or four locations if such documents could be obtained upon request at all other centres.

F. Newsletter

It is imperative that the public not only have access to the various libraries of all materials of the Commission, but that they are also informed on a regular basis, in a very readable journalistic style, of the progress

of the inquiry. A newsletter, similar to that used in the Thompson Inquiry Into West Coast Oil Ports, should be produced. This Newsletter would contain digests of the evidence presented, comments on the progress of the inquiry, lists of witnesses who have appeared and many other matters of public interest. The Newsletter is imperative to ensure that the inquiry makes itself known to the general public, not only in Northern but also in Southern Ontario.