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ENVIRONMENTAL IMPACT ASSESSMENT:

THE LAW AS IT IS AND AS IT SHOULD BE

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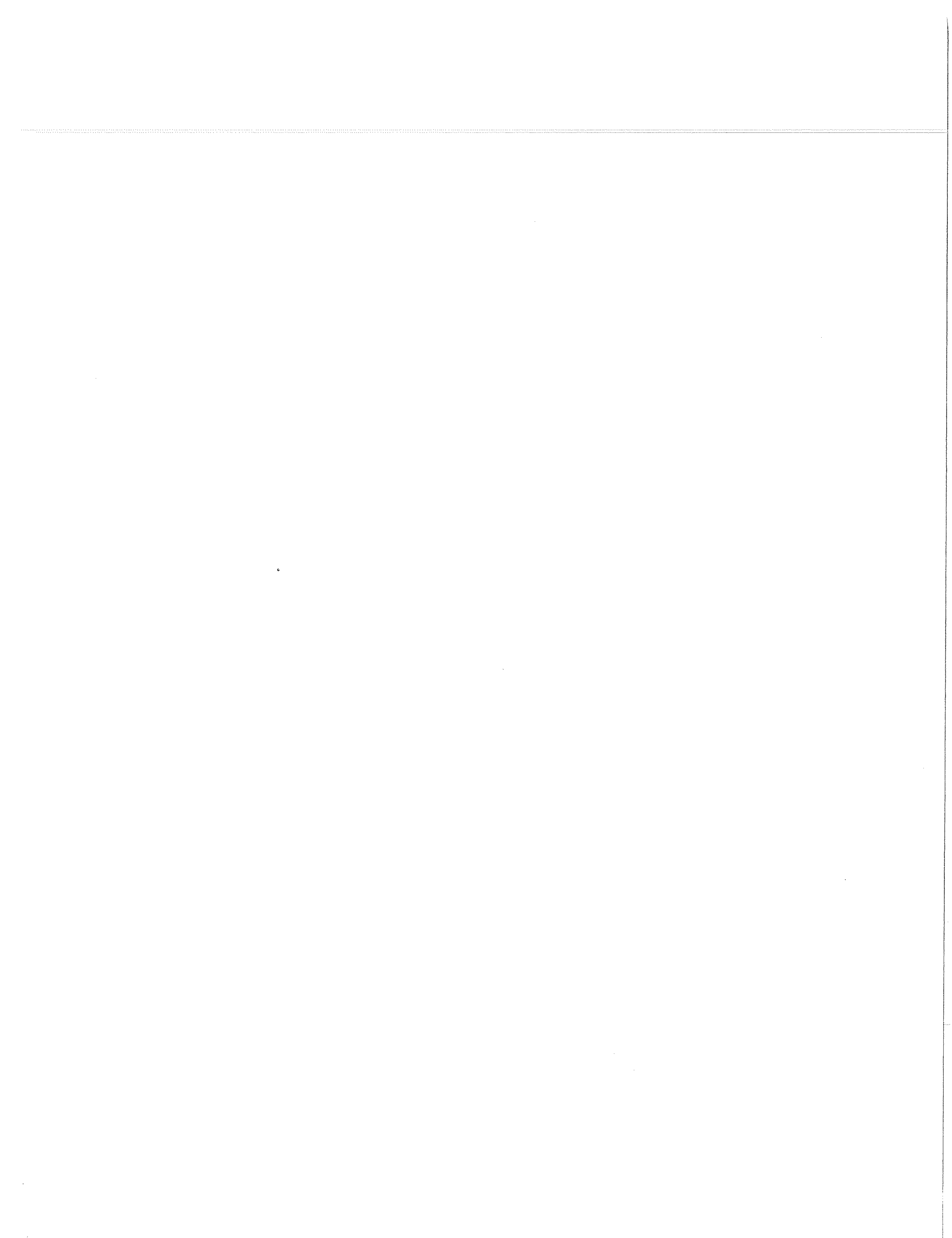

Our federal and provincial governments are only now coming to realize that we must assess the damage that will be done to the environment by any proposed action before we commit ourselves to that action.

The slowness with which this realization has dawned on them is due, in part, to the fact that all of us have, until recently, been ignorant of how much pressure our technology, numbers and affluence have been putting on the natural and social environment, and have assumed that the environment could tolerate a great deal more than in fact it can. And our ignorance has been slow in dispelling.

But it is also due to the fact that the governments which are now responsible for protecting the environment have been in the past - and still are - accessory, and sometimes party, to the abuse and destruction of the environment. And old habits die hard - if at all.

Governments tend to deal with the conflict between old habits and new responsibilities by acknowledging that there will probably be adverse environmental and social results of any given project, but denying that they are important enough to provide grounds for thinking seriously about not going ahead with the project.

An example of this attitude in action is the recent National Energy Board decision approving an Ontario Hydro application to increase electricity exports to the United States during 1974 and 1975. Despite arguments and documentation by environmental and consumer groups that the province would lose more, through the social and environmental costs of the pollution that would be created by burning coal to generate electricity, than it would gain through the sale of energy, the Board held that:

> It is one thing to use an approximate estimate to verify that social costs would not affect the economy of the project, as was done in the Board's New Brunswick (Lorneville) decision. It would be quite another matter, and in my view entirely improper, to rely on such an approximate estimate as the sole grounds for denying a major application.

This statement may be taken to mean that environmental and social costs will be considered only when to do so supports the case for granting an application, not when they tend to make a case for denying one. It should be noted that Ontario Hydro submitted no evidence on social costs and no environmental impact statement. The National Energy Board has discretion to demand an impact statement, but is not required to do so.

The point here is not that the environmental evidence was weighed in the balance and found wanting. The point is that it wasn't really weighed at all. The Board, like most public institutions in such a position, while theoretically committed to the protection of the environment, discounted environmental damage and social dislocation, considering it, when the time came to make the decision, as not be be taken seriously as an argument against economic empire-building.

One is reminded of someone who is overweight, who talks all the time about the diet he is on, but whenever he is offered a tempting dish, somehow manages to make an exception for it. He winds up feeling guilty about every slice of chocolate cream pie, but staying fat all the same.

Another way governments have been dealing with their dilemma is to do environmental impact assessments, but only after the commitment has been made to go ahead with the project, and with construction already begun, if not completed. The James Bay project is the most obvious example of this. Governments have found, however, that a carefully documented study of an already completed environmental catastrophe is worse than useless; in fact it is downright embarrassing.

Thus, the present interest in assessment before the fact, rather than post-mortems: that is to say, governments are beginning to supplement

their attempts to appear to be protecting the environment with some steps toward making it a reality.

While governments seem to be moving at last toward genuine consideration of environmental factors, there appears to be a divergence of opinion on whether, or how much, the procedures for doing so should be written into law. A number of provincial governments appear to be committed to new legislation in this area, while the federal government has announced "in-house" procedures, to be implemented by departmental guidelines. With regard to judicial review of, and public input into, either of these two processes, there are serious questions which must be answered by both levels of government before we can place any confidence in either of these initiatives.

Before discussing these questions as they affect legislation which is now being framed, I want to talk about the laws that we already have.

<u>What is missing from existing law regarding environmental assessment?</u>

The following are conclusions reached on existing law by a 1972 federal Department of the Environment Task Force on Environmental Impact Policy and Procedure:

(1) The statutes requiring environmental assessments often limit their scope to take account only of certain very specific activities. This piecemeal approach results in a very narrow assessment of environmental impact.

(2) There is usually no specific procedure laid down for the carrying out of an environmental impact assessment. This substantially reduces the effectiveness of an "impact statement" requirement. A one-page report, full of generalities and submitted only to satisfy the formalities of an "impact statement" requirement is of no benefit whatever.

(3) If a policy of environmental impact assessment is within the discretion of the administrative agency or board, it cannot be guaranteed that environmental control measures are being carried out uniformly, or at all.

(4) Because the requirement is often discretionary, no administrative or judicial review is possible.

Thus, the problems of existing legislation are four-fold: narrowness of scope, lack of specificity, unmitigated ministerial discretion, and non-enforceability through judicial review.

For example, under the Arctic Waters Pollution Prevention Act, the Minister may - not must - require the production of plans and specifications before approving the construction of any works on the mainland, islands or waters of the Arctic. Assessment, however, is confined to the possible deposit of waste into such waters. Similar provisions in the Fisheries Act and Clean Air Act are limited to potential impact from proposed works on fish or fish habitat and effects of contaminants on air quality respectively.

This is also true at the provincial level. The Ontario Environmental Protection Act, for example, is primarily concerned with "emissions and discharges of contaminants" as a basis for awarding or denying certificates of approval for proposed projects, works or undertakings.

No requirements in these Acts or regulations address themselves to the possible effects such works will have through the encouragement they might provide to further development, growth, industrial expansion, and the concomitant pollution and other environmental and social disruption.

The Beaufort Sea offshore-drilling environmental assessment, for example, will study the effects of oil spills on Arctic fish, marine mammals and wild life, including meteorology, physical and chemical oceanography and oil clean-up, but will apparently not examine these other, equally significant, effects. Moreover, like some earlier major undertakings, such as Churchill River, Lornevilleand James Bay, there is reason to believe that the Beaufort Sea studies will be done after the commitment has been made to go ahead. In such circumstances, environmental impact assessment will be too little and too late; or, as Professor A.R. Lucas, of the Law

Faculty of the University of British Columbia put it, "limited largely to technical considerations designed to minimize adverse effects. This may be true even if the studies disclose compelling reasons either for not proceeding at all, not proceeding at that time, or proceeding with better alternatives."

Another problem with existing law is the matter of standing, i.e. who has status to sue to enforce the law. The principle of standing is that only those persons who have a special interest, in the sense of having received or being likely to receive damage, in both kind and degree, beyond that of the community at large, may invoke judicial processes against the source or likely source of that damage. This is a grave obstacle to groups and individuals who wish to use the law to protect the environment, for environmental damage, of its nature, generally hits everyone equally hard, and such people often do not have any claim or interest that sets them apart from the general public.

What types of actions need environmental assessment?

While much attention in Canada has been drawn to massive projects like James Bay, Mackenzie Valley, Lorneville, Churchill River and Pickering, it is not enough that environmental assessments be required only for big projects. The cumulative and growth-inducing impact of smaller activities can be equally significant.

Impact assessments should be required at the initiation of any new programs, even when the impact will be minor, if the action proposed has the effect of opening new areas to developments that may have a significant impact. For example, an impact assessment should be required when the first subdivision is proposed for an area, even though the impact of that subdivision may be very small. A small first concession at point A might be referred to as a precedent for the right to undertake other similar actions around point A later on. Better to assess the implications of that now, rather than later.

The social and physical environment can be just as irrevocably "nickeled and dimed to death" as it can be "Mack trucked to death".

In its Green Paper on Environmental Assessment, the Ontario Government says that large projects will need an assessment small ones will not, and there will be a large "gray area" where regulations, guidelines, and administrative discretion will hold sway in determining whether projects need an assessment. Such a discretionary screening mechanism, with no procedure for appeal, will tend to eliminate assessment of large numbers of small developments which, in the long term, could have an overall impact on the environment exceeding that of the "top ten".

Such a scheme violates the first principle of environmental law and impact assessment - "Thou shalt not nibble" - at least without first assessing the implications of that nibble.

Professor Joseph Sax of the University of Michigan Law School has described the so-called "nibbling phenomenon" as the process in which large resource values are gradually eroded, case by case, as one development after another is allowed.

> The danger is that in each little dispute - when the pressure is on - the balance of judgement will move ever so slightly to resolve doubts in favor of those with a big economic stake in development and with powerful allies.... Thus, all the political and economic pressures which serve to tip the scale in favor of a specific project, though producing a seemingly rational result when considered in isolation, may serve cumulatively to produce exactly the opposite of the overall policy that the administrators want to achieve, that they are mandated to achieve by law and policy statements, and that they may think they are achieving. The greatest problems are often the outcome of the smallest-scale decisions precisely because the ultimate, aggregate impacts are so difficult to see....

Professor Sax concludes by suggesting that it is much easier to tell a developer that he cannot dam up the Grand Canyon than to tell one real estate investor after another that he cannot fill an acre or two of marshy "waste" land.

The Green Paper's screening mechanism must be looked at very closely in this regard. Any screening guidelines will have to take into account the

cumulative effects of "gray area" projects. They must be flexible enough to acknowledge the fact that where special public concern is demonstrated over a proposal, assessments and hearings should be held before approval is given, despite guidelines or regulations to the contrary. In fact, this principle should be written into the regulations.

This specific recommendation has been written into the U.S. Council on Environmental Quality guidelines. It takes as its rationale the view that the public is an acceptable judge in the first instance of what constitutes unacceptable environmental degradation. This position was also independently adopted recently in Winnipeg, by participants in a workshop on the philosophy of environmental impact assessments in Canada, sponsored by the Environment Protection Board.

Secondary effects and consequences must also be considered in making the decision as to whether an impact assessment is necessary. Not only does the construction of a highway or an airport cause certain environmental disruptions, and not only do the automobiles or aircraft which use it produce air and noise pollution, but the facility itself fosters population growth and resulting land use changes. We have only to look at the strip development along highways to realize that these secondary consequences may be the most profound ones.

No impact legislation is complete without an explicit requirement that these impacts be evaluated. We expect to see this in forthcoming legislation in Ontario. Environment Canada remains an enigma on this, as on other related matters.

It should also go without saying that, if long-term governmental decision-making is to make environmental sense, then not only should single projects - whether public or private - be assessed, but whole programs and policy-oriented actions. It is vital to ferret out, at an early, more flexible planning stage, environmental and social implications of a proposal. To wait until specific projects, locations and victims have been chosen before assessing basic principles, needs and alternatives from an environ-

mental perspective is to squander valuable resources and energy, and strain political and moral capital.

The Environment Canada Task Force Report on Environmental Impact Policy and Perspective, referred to earlier, and the Canadian Environmental Advisory Council both affirm this point. The Task Force Report states that "the project-by-project approach is not adequate to solve the problems of environmental impact. There is also a need to assess other types of actions, which the Task Force has identified as policies, programs, legislative proposals and operational practices."

Particular projects merely implement policies formulated much earlier in the governmental decision-making process. Therefore, even strict implementation of environmental impact procedures on eminently "visible" projects lacks the leverage which assessment at a much earlier stage could exert to promote sound environmental planning.

For example, in June, 1973, the United States Court of Appeals rejected the Atomic Energy Commission's contention that an environmental impact statement was not required for its liquid metal fast breeder reactor program. The A.E.C. had asserted that environmental assessment was necessary only for specific sites for its plants and facilities. The court held in part:

> Waiting until technology is translated into commercial projects before considering the possible adverse environmental effects attendant upon ultimate application of the technology will undoubtedly frustrate meaningful consideration and balancing of environment costs against economic and other benefits.

It is essential, therefore, that government ministries and agencies be required to submit their planning assumptions, as well as their individual, piecemeal plans, to the environmental assessment process.

One author has suggested a multiple-tier approch to impact assessment and statement preparation. Later project impact statements would refer back to wider, policy-oriented impact statements for their treatment of far-ranging alternatives and basic government policy. This would relieve

planners of the necessity of reassessing basic principles each time a specific action is contemplated. They would recycle impact statements, as it were.

However, if the policy and planning assumption impact statements did not sufficiently involve the public at an early stage, then it would be a grave error to foreclose re-assessment of basic policy alternatives at later project impact assessment stages, when segments of the public might first realize the project's far-reaching implications and the relation of those implications to their own interests. It often happens that planners, let alone the public, do not fully understand the implications of their planning assumptions, in practical terms, until the time comes when those assumptions are translated into specific projects. The policy planning process must be a continuous one if it is to make any sense.

The Policy Field and Jurisdictional Problems

Most of our public agencies are organized in keeping with the traditional assumption that issues of resource management can be dealt with most effectively by specialized agencies of fairly narrow competence. As our knowledge has grown of the complexity of the effects that different projects and activities have on each other and on the environment, it has become clear that the matter with which these specialized agencies have to deal often refuse to stay neatly within the lines dividing one agency's jurisdiction from another.

Thus, agencies with no knowledge of environmental matters find themselves making decisions which - though not labelled 'environmental' have profound effects upon the environment. For example, the National Energy Board will soon decide whether a natural gas pipeline should be built from Prudhoe Bay up the Mackenzie Valley;yet the Energy Board has no expertise with which to judge the environmental effects of such a pipeline.

Similarly, at the provincial level, the Ontario Energy Board is presently inquiring into the Ontario Hydro application for expansion of facilities

for the period 1977-1982. The Minister of Energy, perhaps anticipating the creation by pending legislation of an Environmental Review Board, stated that"environmental matters, including the siting of power stations and transmission corridors which are or will be subject to review or regulation through other processes, are also to be excluded" from the Energy Board's terms of reference. In other words, Mr. McKeough is leaving environmental assessment to be done by environmentalists.

But at a closer look, one must ask "What has he left?" First, the Hydro application was approved in principle in June, 1973. Second, the Energy Board will soon rule on the demand calculations of Hydro's load forecasters. What will be left for an Environmental Review Board to assess, when the demand forecast has been confirmed and contracting and procurement firmed up? Nothing except which parts of the Ontario environment shall be sacrificed to power stations, corridors and related development. It is the Band-aid approach to environmental assessment. The environmental assessment people become the field medic of the policy field, picking up the pieces of decisions made by other agencies.

The point is that the broad policy matters now being considered by the Energy Board <u>are</u> environmental matters. The decisions which it makes as a result of the present hearings will leave very little for the Environmental Review Board, when and if it is established, to decide. In effect, the Energy Board has the most profound of effects on environmental matters, because its decisions foreclose environmental policy options. In other words, it may be impossible, or pointless, for the Environmental Review Board to look at alternatives.

Clearly, environmental impact assessment will have to be moved up in time, so that it addresses itself to, and has an effect on, policies in the earliest stages of their formation. Public agencies will all have to develop environmental expertise, or else certain boards will have to merge their activities so that energy and environmental policy matters, for example, can be examined and decided at the same time.

As for questions of jurisdiction as between the provinces and the federal government, they are affected by the usual confusions associated with constitutional matters. One legal scholar has suggested that the development of environmental impact assessment requirements at both federal and provincial levels will probably go the safe route initially. That is, they are likely to begin with actions on or involving public property vested in the particular government. "Therefore," states Professor Lucas, "vastly greater potential lies in provincial assessment requirements, since public lands within provincial boundaries are vested in each province.... Federal actions are likely to be largely limited to actions involving Federal public land and other property, although there is a substantial range of actions subject to federal financial control."

It has been suggested, however - by, among others, the authors of the Federal Task Force report - that the "peace, order and good government" clause of the BNA Act could logically, and successfully, be invoked by the federal government to require that assessments be made before actions are taken,in order to prevent unacceptable environmental impacts which have national or extra-provincial dimensions. For those actions which would take place wholly in one province, federal-provincial cooperation will likely be required. In the northern territories, federal jurisdiction is exclusive, though divided between Environment and Northern Affairs.

Governmental initiatives and outside views

In September 1973, and again in March 1974, we watched federal Environment Minister Jack Davis announce the "trust me" approach to environmental assessment. A new four-stage administrative "in-house" procedure is to be created, which will be independent of any legislation and will therefore, said he, be easier to implement. The four steps in the procedure are to be: (1) a preliminary environmental assessment, before there is any decision to go ahead; (2) a more detailed study, including the possibility of alternatives, if the first study indicated problems to be encountered; (3) a continuing assessment during the construction phase, and finally (4) an over-all analysis which would evaluate the experience for future applica-

tion. The process took effect, perhaps not inappropriately, on April 1, 1974.

These procedures have been regarded with chagrin by many people. Professor Lucas has said that the two fundamental weaknesses in the proposals are invisibility and the lack of legislative backbone. States Professor Lucas:

> Without mandatory statutory requirements that environmental assessment be carried out, and statutory guidelines, the question of whether or not assessment is done in any particular case, and its adequacy, remains in the discretion of the responsible administrators and politicians. The whole matter becomes in every case a political decision that is subject neither to public scrutiny nor to judicial review in the courts.

The deficiencies noted in the department's Task Force report remain unremedied. The new procedures are not amenable to outside prodding and questioning. In our Association's estimation, such an initiative on the part of the government could actually retard the movement in Canada to establish environmentally sound planning as a right maintainable in law. Administrative procedures, by themselves, are nothing more than non-enforceable directives, which agencies cannot be legally compelled to carry out. Moreover, under such a system the government is free to apply them in a hit-and-miss, haphazard, politically expedient fashion, and I am sorry to say that we have no reason to believe that it would not make liberal use of this freedom.

It should be added that if environmental assessments are, in fact, now being produced in the manner outlined by Mr. Davis, then statutory recognition of the practice would cause no inconvenience, and would assure that the fundamental tenet of administrative law is observed: justice must not only be done, it must be seen to be done. But, Mr. Davis says, there is an inconvenience to be weighed - there will be a "natural resistance in the bureaucracy to another set of checks and balances." This would lead one to the conclusion that the agencies need to be overviewed by the public they serve, not because they are evil but because they are human.

Mr. Davis's proposals, however, would subject every step of the public input process to an expert's or a politician's decision as to the quality or necessity of such input. The proponent's original assessment, for example, will be screened by a panel of experts from Environment Canada. Only the written assessments of the panel will be made available to the public, not the proponent's impact statement, which might make more interesting reading. Then the Minister, in his discretion, will determine whether, in that instance, an environmental review board should hold public hearings. Mr. Davis, on at least two occasions, has said in the House of Commons that "legislation requiring other federal departments to submit to Department of the Environment impact assessments would not be considered rational."

The federal government, it seems has fears about active participation by citizens in the process of environmental management. Mr. Davis's proposals are of the "leave it to the experts" or "Daddy knows best" model.

An article by Harold Laski, written in 1932, suggests the difficulties with the application of expertise in the environmental field on the part of some of our Federal agencies. Mr. Laski wrote:

> The day of the plain man has passed. No criticism is more fashionable in our time than that which lays emphasis upon his incompetence. This is, we are told, a big and complex world about which we have to find our way at our peril. The plain man is too ignorant and too uninterested to be able to judge the adequacy of the answers suggested to our problems. Either we must trust the making of fundamental decisions to the experts, or there will be a breakdown in the machinery of government.
>
> No one, I think, could seriously deny today that in fact none of our social problems is capable of wise resolution without formulation of its contents by an expert mind. But it is one thing to urge the need for expert consultation at every stage in policy making; it is another thing, and a very different thing, to insist that the expert's judgement must be final. For special knowledge and the highly trained mind produce their own limitations. Expertise, it may be argued, sacrifices the insight of common sense to intensity of experience. It breeds an inability to accept new views from the very depth of its preoccupa-

> tion with its own conclusions. It too often fails to see round its subject. Too often, also, it lacks humility; and this breeds in its possessors a failure in proportion which makes them fail to see the obvious which is before their very noses. It has, also, a certain caste-spirit about it, so that experts tend to neglect all evidence which does not come from those who belong to their ranks. Above all, perhaps, and this most urgently where human problems are concerned, the expert fails to see that every judgement he makes not purely factual in nature brings with it a scheme of values which has no special validity about it. He tends to confuse the importance of his facts with the importance of what he proposes to do about them.

What the federal government has so completely failed to recognize is that the public needs some way - some institutional format - by which it can protect itself from the inevitable deficiencies, or perhaps I should say excesses, of the professional point of view. It must be able, through public hearings, or court proceedings, or both, to supervise the working of government agencies: to counter-balance the pressures which, as we all know, are brought to bear from time to time on politicians and civil servants, and to liberate the experts from the limitations to which they find themselves subject because of the very nature of the process of which they are a part.

Mr. Davis's procedures are such as to increase, not lessen, the dangerous insulation of the government from public view and public participation. Besides running counter to the recommendations of the Canadian Bar Association regarding mandatory public hearings and access to information, they ignore his own Task Force's recommendations on legislation, access to information, and a permanent, independent environmental review board.

As the Globe and Mail concluded in an editorial in September, 1973 on Mr. Davis's new procedures:

> The weakness of the purely bureaucratic approach is that the weight given the various factors in any decision is not known to the public.... Unless the government is prepared to publish all its studies as they are prepared, the public can never be sure in the end what criteria and their interpretation tipped the balance of decision one way or the other. It would be much better to have provision for effective public participation where questions can be asked and answers demanded.

In our estimation, it is a far cry from the occasional hearing or review board, graciously conceded by the government out of the goodness of its heart (or the uneasiness of its political seismograph) to the establishment of proper assessment procedures as rights enshrined in legislation.

Several provinces, over the past few months, have been discussing the possibility of implementing environmental impact assessment procedures. Alberta has said it will introduce legislation in the 1974 fall session to require environmental impact statements and public hearings before projects are approved. And a few months ago, Ontario introduced its "Green Paper on Environmental Assessment", outlining several systems but expressing no preference among them.

The former Minister, James Auld, when unveiling the Green Paper, stated that the Ontario government "wants the people of Ontario involved in environmental assessment from its very beginnings." The Green Paper itself confirms this, stating:

> Before proceeding with this policy initiative, and before selecting any particular method of implementation, the Government wishes to seek out the views of interested persons and organizations. This Green Paper is intended to provide a basis for public discussion and to solicit public response.

However, attempts have been fruitless, to this point, to find out from the Ministry of the Environment what submissions other ministries have made, or indeed what anyone has said on the subject. As a process of public education, as a stimulant for public discussion, the Ministry of the Environment's methods of soliciting public input have been somewhat lacking. They have been, in fact, a one-way street. The government is the sole repository of all submissions, and while it no doubt talks to itself a great deal about them, it doesn't talk to anyone else. There has been, as they say, little cross-fertilization.

It is impossible to know, therefore, what weight, if any, public input has had into what the government is likely to produce as legislation. It is submitted that the government's refusal even to provide a list of

the briefs submitted, let alone to make them available for public examination, is a sad beginning for legislation which is supposed to bring the government into constant contact with public views. At best, it reveals an attitude which is only slightly better than that of the federal government, and gives cause for apprehension as to what the legislation will look like when it finally appears.

Now, whatever may be the best way to frame laws so as to let the public in, there is no doubt about the power of certain types of legislation to keep the public out. For example, Professor Philip Elder, Associate Professor of Law at the University of Calgary's Faculty of Environmental Design, in discussing Alberta's present laws - and his discussion is equally applicable to Ontario - states that they rely heavily, if not entirely, on ministerial discretion. That is, the laws say "the minister may" rather than "the minister shall".

"No citizen", Professor Elder remarks, "can force the minister to do things. So the Minister has the right to be wrong as long as his discretion is honest." [Or, one might add, as long as no one can prove that his discretion is not honest.] It is the same problem that, as the federal Task Force noted, made judicial review of government action unlikely. If the forthcoming legislation in Ontario says "may" rather than "shall", the government's attitude and intentions will be only too clear.

It is therefore our view that the public's right to participate in the determination and enforcement of environmental impact assessment must be codified as a strict duty on government. As Professor Elder says, "threats and cajolery are important", and only the legal right of the public to threaten and cajole will ensure that the planning and assessment processes will be carried out properly and carefully, and with due regard for environmental and social values.

For those who feel that effective environmental planning can be done without public scrutiny, we would direct your attention to the Cross-Florida Barge Canal case in the U.S. This took place in a country where public access to information and to the courts is available on a much

wider basis than in Canada. The Cross-Florida Barge Canal scheme was designed during World War II, to allow allied shipping safe access to the Gulf of Mexico, avoiding U-Boat cruising grounds. Without ever having seriously reviewed its priorities, the Army Corps of Engineers was still, in 1970, proceeding with this anachronistic undertaking.

It was only after several court battles that this ludicrously outdated and ecologically disastrous project was finally stopped. $50 million had already been spent on the project, and it would have cost $130 million more to complete. Again I remind you that this took place in a country that <u>does</u> allow public access to the courts in environmental matters without, for the most part, the obstacle of standing that I mentioned earlier. It is easy to imagine some of the planning that might - and does - occur here, where such legal safeguards are not available. Maple Mountain is perhaps only the most recent in this line.

These are some of the recommendations which our Association has made, and which a number of groups in Ontario and elsewhere have supported:

- An independent, powerful Environmental Review Board is a prerequisite to public confidence in the new procedures.
- Early notice of a proposed project must reach all those interested and likely to be affected.
- Any citizen must be able to require the Board to consider whether a project needs an assessment or (if one has been done) whether it is adequate.
- Public access to all information on proposed projects must be guaranteed.
- Public or private funds must be made available to objectors acting in the public interest.
- The assessment document must contain all responsible contentions of interested or affected persons, outside experts, organizations and governmental agencies on the possible environmental and social impacts of a proposed project.
- The originator of an undertaking should prepare and pay for its assessment.

- The Review Board, working with the Ministry of the Environment staff, must ensure that all stages of the assessment process follow proper procedures.

- There must be a firm timetable for implementing legislation in the public and private sectors.

Conclusion

Over the years we have too often discovered that the Queen can do no wrong, especially to the environment; or that the equities must be balanced, especially against the environment; or that nobody has standing to sue to prevent the Queen from doing no wrong to the environment.

If government, provincial or federal, is serious about its "preventive" strategy with reference to environmental asessment, then it must end its monopoly over the tools for environmental protection and control.

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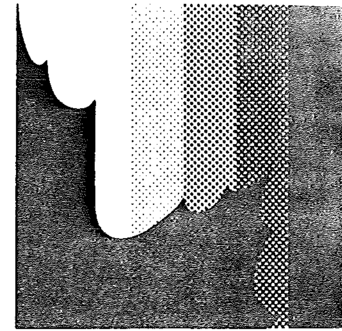

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PRESS RELEASE

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PLANNING, NOT JUST PROJECTS, MUST RECEIVE ENVIRONMENTAL ASSESSMENT, ASSOCIATION CLAIMS

A spokesman for the Canadian Environmental Law Association claimed today that environmental impact assessments of only a few major projects would not be enough to protect the environment, and that the government's planning and policy assumptions should be examined to determine their implications for the environment.

CELA researcher Joseph Castrilli, in a speech to the Pollution Control Association of Ontario's annual convention, used as an example the Ontario Energy Board, which is presently considering Ontario Hydro's plans for expansion. The Minister of Energy had specifically barred environmental matters from discussion before the Board, claiming that they would be reviewed by another agency.

"The point is," he said, "that the broad policy matters now being considered by the Energy Board <u>are</u> environmental matters. The decisions which it makes as a result of the present hearings will leave very little for the Environmental Review Board, when and if it is established, to decide. The Energy Board has the most profound effects on environmental matters, because its decisions foreclose environmental policy options."

Mr. Castrilli emphasized that environmental impact assessment must be moved up in time, so that it can address itself to policies in their earliest stages of formation.

He pointed out that hearing boards, though they now recognize the need for assessing environmental damage, will not act to stop or limit the scope of a project on environmental grounds.

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Again he used the example of Ontario Hydro, which the National Energy Board has recently decided to allow to export power to the United States without first assessing the social and environmental costs of producing that power.

Statements made by the Board in their decision, he said, indicated that environmental and social costs would be considered when to do so favours the case for granting an application, not when it tends to make a case for denying one. "The point here is not that the environmental evidence was weighed in the balance and found wanting. The point is that it really wasn't weighed at all."

The cumulative and growth-inducing impact of small projects, Mr. Castrilli claimed, are a far more serious hazard to the preservation of the environment than a few large ones. "The social and physical environment can be just as irrevocably 'nickled and dimed to death' as it can be 'Mack trucked to death,' he said.

For this reason, the screening process for determining which projects should receive environmental assessment - the "gray areas" described in the Ministry of the Environment's Green Paper on Environmental Assessment - should be carefully scrutinized to ensure that the cumulative effect of many smaller projects is taken into account.

Similarly, he said, the secondary effects - such as strip development along highways - must be very carefully looked at, since they can have, in some cases, a more severe effect on the environment than the project itself.

Mr. Castrilli concluded by attacking the federal government's proposed environmental assessment procedures for excluding the public from the procedures for ensuring environmental protection. He also outlined some of the procedures which have been recommended by the Canadian Environmental Law Association and other groups.

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