

Improving Environmental Assessment in Ontario

by Alan D. Levy*

CELA and the Resource Library for the Environment and the Law have commenced a review of environmental assessment (EA) in Ontario, as practiced under the revised *Environmental Assessment Act* (EAA). There are serious concerns among many involved in the Ontario EA process, including independent professional consultants and lawyers, that it is inadequate in several respects and that environmental protection is being undermined as a result. For example, terms of reference are being approved with many significant environmental issues being permanently deleted from the EA study.

Projects are being approved without a public hearing, despite serious concerns which have been registered about current pollution levels and environmental risk. Only two undertakings have been referred to a public hearing by the provincial government in more than five years, one of them the notorious garbage dump proposed for the Adams Mine site in Kirkland Lake. Most large projects with environmental risks do not even come within the purview of the EAA because they involve the private sector, which for the most part is not regulated under Ontario EA legislation.

The objective of the review is to develop a consensus among stakeholders on how to make EA in Ontario both effective and practical. The EAA was substantially revised in late 1996 and an independent examination of the current law and how it is being applied is urgently necessary. The project has three separate and consecutive components which will be funded separately: Phase 1 - research, Advisory Committee & report; Phase 2 - stakeholder consultation; and Phase 3 - implementation.

Phase 1 will involve the preparation of a short report on environmental assessment (EA), its origins, its importance in environmental protection, a description and critique of the current EA regime in Ontario, and an explanation of where and why changes may be appropriate. The report will be researched and written by me with assistance from CELA staff. An advisory committee is being selected, and will include some CELA lawyers and directors, and others familiar with EA matters.

Phase 1 of the project began this Fall. It is hoped that the report will be completed in early 2001 to coincide with the fourth anniversary of the revised Act, which came into effect in January 1997. It will be published widely to government departments and agencies, business, industry, institutions, community and environmental groups and individuals who are interested and involved in EA in this province. It will also be summarized for distribution to media outlets and organizations for publication in news reports, newsletters, etc.

As part of Phase 2, Stakeholder Consultation, the publication of the Report will be used to solicit feedback from across the province on the efficacy of EA in Ontario. A roundtable discussion format will be developed, involving representatives of stakeholders from important sectors. The consultation program will strive to develop a consensus on supportable, sustainable and affordable recommendations for improvement to Ontario EA. The third and final component, Phase 3, will involve efforts to educate the public and gain support at all levels for implementation of these recommendations.

If you are interested in contributing your ideas and experience to the work of this project, please contact Fe de Leon at CELA (416) 960-2284 or fdeleon@cela.ca) or Alan Levy (416) 929-8282 or aldb@interlog.com) as soon as possible. Your assistance will be kept entirely confidential if you would prefer. ■

** This article was prepared for publication in "Intervenor," CELA's newsletter. Alan D. Levy is a CELA board member whose Toronto practice includes environmental law, mediation and arbitration. He was a full-time Vice-Chair of the Ontario Environmental Assessment Board (EAB) from 1990 to 1998. Among other things, he was directly involved in a stakeholder roundtable process sponsored by the EAB in 1990-1991, which led to a series of recommendations and changes to the EA process.*