

2. The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for (their right to the) protection, conservation and wise management...

3. A full time table: add :

Within 180 days of the coming into force of this Act

5.(i) The proponent of an undertaking to which this Act applies shall submit to the Minister (written notice of an intention to carry out an environmental assessment of the undertaking prior to commencing the assessment and shall submit to the Minister) an environmental assessment...

5(3) c) (ii) ~~the alternative methods of carrying out the~~

the effects that will be caused or that might reasonably be expected to be caused ~~to~~ to the environment, and the rate and duration thereof

5(3) c (iv) NEW

the degree to which the effects on the environment may be irreversible and the extent to which energy will be consumed and non-renewable resources will be used

7(b) iii the place or places where the assessment and review may be inspected (and copied at nominal cost and where the record is more than a reasonable distance from the residence of the requestor the copies of such documents will be mailed to the requestor upon payment of a nominal fee for copying,)

and s. 13

12 (2) /<sup>a</sup>Replace "request" with "a requirement" or "application"

Delete "unnecessary"

"delete "absolute discretion"

ALTERNATIVELY, if the Minister retains the ~~right~~ discretion to refuse a right of hearing on these grounds, ~~with the~~ the Minister should have to give reasons. ~~XXXX~~ ALTERNATIVELY: THE Board should decide whether frivolous, etc.

s. 13 This section provides for a hearing as to whether an undertaking should be allowed to proceed. It assumes the adequacy, completeness and accuracy of the impact assessment. What if the assessment is inadequate? ~~Any~~ A person should also have the right to have a hearing into the adequacy of the assessment.

ADD: The acceptance by the minister of an assessment shall not preclude the Board from enquiring into the adequacy of the assessment.

13A - There should be a fund to provide financial resources to the public Xeroxed amendment will be attached.

14(1) Where the Minister has accepted an environmental assessment of an undertaking, the Minister may, with the approval of the ~~Legislative Assembly~~ Legislative Assembly ...

(a) give approval to proceed with the undertaking, =subject to compliance with all or any of the provisions of the environmental assessment as accepted by the Minister

# Environmental Law Reporter

1346 Connecticut Avenue NW, Washington, DC 20036 202/659-8037

## INSTRUCTIONS FOR FILING VOLUME III, NUMBER 4, APRIL 1973, IN RING BINDER

To place this month's issue in the ELR ring binder, remove the pages listed below in Column I. Then, insert the pages listed in Column II into their proper tab section and page sequence.

<u>ELR Tab Section</u>	<u>Column I Pages to be Removed</u>	<u>Column II New Pages in This Issue</u>
Summary and Comments		10037-10051 ✓
Litigation	20000 ✓	20000 ✓ 20195-20286 ✓
Statutory and Administrative Materials	40000-40000:3 ✓	40000-40000:3 ✓ 40329-40345 ✓ 41801-41824 ✓
Articles and Notes		50000 ✓ 50001-50012 ✓

**Environmental Law Institute:** David Sive, *Chairman*; Thomas P. Alder, *President*; Sydney Howe, Craig Mathews, James W. Moorman, *Directors*; Malcolm F. Baldwin, *Secretary-Treasurer*. **Environmental Law Reporter:** Frederick R. Anderson, *Editor-in-Chief*; Grant P. Thompson, *Associate Editor*; Durwood Zaelke, *Assistant Editor*; Linda Reybaine, *Managing Editor*; Anne Goggin, *Circulation Manager*; Anne Chacon, *Editorial Secretary*.

**Editorial Advisory Panel:** Joseph Sax, *Chairman*; John H. Adams, Richard S. Arnold, Frank J. Barry, Edward Berlin, Guido Calabresi, David F. Cavers, Bernard S. Cohen, Ogden Doremus, Marvin B. Durning, Louis L. Jaffe, James E. Krier, Michael E. Levine, Charles J. Meyers, Brian Paddock, E. F. Roberts, William H. Rodgers, Jr., Edward Lee Rogers, H. Anthony Ruckel, A. Dan Tarlock, John Vardaman, Edward Weinberg, *Members*.

14(2)d OMIT

Reason: No longer relevant since ~~government~~ Board now has the power of decision

18(1) NOR SHALL ANY PERSON WHO IS A SITTING MEMBER OF THE LEGISLATIVE ASSEMBLY BE APPOINTED TO THE BOARD. All persons who are appointed to the Board shall be persons who are competent in matters of environmental control and conservation.

NOTE: The Camp Commission on the Legislature stated that no sitting member of the legislature should be a member of any administrative tribunal or board.

18(12) DELETE: "Notwithstanding anything in the Statutory Powers Procedure Act"

18(20) DELETE: "Except as otherwise provided in this Act?"

18(15) DELETE: Gives too much power to act arbitrarily and besides, it is probably already covered by the Statutory Powers Procedure Act.

18(19) DELETE: THIS IS REPRESSIVE AND REMOVES THE MINIMAL RIGHTS DEVELOPED OVER THE CENTURES OF COMMON LAW TO PROTECT RIGHTS OF NATURAL JUSTICE, INCLUDING THE RIGHT TO CROSS EXAMINE, TO APPEAR BY COUNSEL, TO CHALLENGE FOR BIAS, ETC.

ADD

19 (2) Where the Board decides that a hearing shall be held in camera subject to subsection (1), it shall give written reasons for its decision, and shall identify such matters to be the subject of the in camera session or sessions and the need for conducting the hearings in camera in a form which will not ~~interfere~~ reveal the ~~matter that~~ ~~is~~ is not to be disclosed

29. The Minister or any person

ADD at the end "subject to prior approval of the Legislative Assembly.

Problem: Unfettered discretion to remove any project from being subject to this Act without public scrutiny.

31. Same changes as s. 19

40. Beef up amount of fines. Should be a minimum fine: and on summary conviction is liable on a first conviction to a fine of not more than \$5000 and on a subsequent conviction to a fine of not less than \$5000 or more than \$10,000 for every day

41(f) Public participation into regulation making.

41(f) Unclear language.

- a general knowledge concerning forms of integrated service delivery with a particular awareness for decisions and experiences of other neighbourhoods in determining parallel use.
- a familiarity with community development processes in assisting parallel use committees develop appropriate representative structures.
- an information source concerning Board of Education regulations and procedures governing parallel use and up to date statistics regarding the location of vacant classroom space.

(2) Parallel Use Subsidy Fund

Parallel use committees should be able to assign vacant space to groups without significant operating revenue, but whose activities are deemed appropriately related to neighbourhood needs and school space, e.g. ratepayer or resident associations, hobby or interest groups.

In this regard we propose that a parallel use subsidy fund be established, from which neighbourhood committees could draw income payable to the Board of Education, to cover the costs of groups assigned parallel use space, but who do not possess the operating revenue to cover such expenses.

D. PROJECT MANAGEMENT

The proposed project would be administered and managed by the Chairwoman's Community Planning Group. The supervision of project staff activities might be delegated to a sub-committee, which could include representatives from the Toronto Board of Education, the Social Planning Council of Metropolitan Toronto and the City of Toronto Planning Board.

POINTS FOR STANDING COMMITTEE

1. ✓ Right to a hearing 12 + 13
2. { Rules of natural justice must apply 18(12) & 18(20)  
(Statutory Powers Procedure Act)
3. { ✓ Judicial review [18(19)]
4. ✓ Private sector - firm timetable for inclusion 3 + 41
5. ✓ Public input into regulations 41
6. Sitting members of Legislature should not be members of Board 18(1)
7. Public enforcement of the Act 29
8. Earlier notice that project is going to be assessed



### Initial Concerns

1. Ambiguity as to whether crown corporations are to be included in definition of "public body", since "public body" is to be defined in the regulations. A.1(m)
2. Minister and/or Board should be compelled to give substantial reasons for withholding information or holding sessions of Board in camera. A.19 + A.31
3. The Act grants ~~no~~<sup>no</sup> rights to the public for environmentally sound planning or environmental quality. A.2
4. Minister appears not to be compelled to give reasons for exempting out even major public activities (or any public scrutiny thereof). A.3
5. No requirement for Annual Report from Board.
6. No mention of public funding - "Lions and Christians" before Board.
7. No mention of public input into regulation setting.
8. Denial of "any person" under s.29 to seek injunction for violation of Act's provisions - attempt to cut out private prosecutions?
9. Ambiguity re whether Board is a court of record and subject to Statutory Powers Procedure Act. A.18(12) + 18(20)
10. No criteria re qualifications for members of Board, & whether sitting MPPs may be on Board (contra Camp Commission). 18(1)
11. No indication in Bill as to when private sector to be included in Act's provisions. A.3 + A.41
12. No public scrutiny of non environmental political interventions by other Ministries (s.14).
13. Repressive clause re judicial review. 18(19)
14. Ambiguity as to whether public does indeed have the right to a hearing before the Board, since Minister has "absolute discretion" to deny a hearing, apparently without having to give reasons, and on such nebulous grounds as "unnecessary". A.12 + A.13
15. No public right to get copies of documents at nominal cost. A.7
16. No public notice until assessment has been filed with Ministry, and then an absurdly short period of time to make submissions.
- 17.] Seems to be no recognition that activities in different areas





may be significant or not depending on context, but simply blanket inclusion or exclusion without regard to location. D. 41

18. Does the Ministry's acceptance of an environmental assessment preclude the Board's consideration of the adequacy of the assessment? or of the merits of the undertaking? p12 & 13

19. Regulations should be ready when Act comes into force, and Act should be proclaimed within a stated time.



41 ADD

The LGIC may make regulations pertaining to an

No regulation shall be effective unless prior public notice of the proposed regulation has been given, and where the public demonstrates interest and intention to participate, a public hearing by the Board for the purposes of considering the proposed regulation has been held.

ENVIRONMENTALISTS CONVERGE ON QUEEN'S PARK  
DEMANDING ACTION FROM THE DAVIS GOVERNMENT

June 24th, 1975

PRESS CONFERENCE 11:00 a.m. Media Room

A group of environmentalists will be arriving at Queen's Park on the morning of June 24th, 1975 to meet with industry and government delegates at a conference sponsored by the Canadian Environmental Law Association. Members of this group will be holding a press conference to discuss the political and environmental implications of projects being built without any knowledge of the impact on the environment and on society.

Panelists will include:

Lorne Almack, Federation of Ontario  
Naturalists

CHAIRMAN

Philip Durand, President, Bean  
Marketing Board

- *bean crops threatened by  
nuclear power plant  
development in  
Huron County*

Adrian Vos, Huron Power Plant  
Committee, Blythe, Ontario

-

George Hendrikson, President,  
Temagami Chamber of Commerce

- *scenic village of Temagami  
being destroyed through  
governmental inertia*

Harry Graham, President, Save  
Our Sault Rapids Society

- *proposed power plant on  
beautiful and historic  
Sault Rapids*

These environmentalists will be demanding the immediate release of Bill 14, the Environmental Assessment Act, 1975, for second reading in the House.

WHAT SECRET DECISIONS CREATE ENVIRONMENTAL MESSSES LIKE THESE?

For further information contact

Sally Leppard  
Dolores Montgomery

928-7156

A further reg. suggestion  
41(3) or whatever.

good also if  
regulations include  
exemption i.e. they  
reject our suggestions.  
re regs only regin.

Any person may apply to the Bd/Min for a hearing  
as to the revision, revocation, or institution of a  
regulation under this Act. Upon such application,  
and provided that the subject matter has not been  
dealt with in the preceding twelve (2) months  
from the date of the Bd/Min's original order  
on the matter, if any, the Bd/Min shall  
give notice as provided under this Act and  
hold a <sup>public</sup> hearing, and upon the recommendation  
of the Bd/Min. the L.G. in C. shall revise,  
revoke or institute the regulation in accordance  
with the Bd/Min's recommendation.

activities. Unless the proponent is required to make an early assessment these interactions will be ignored until as in the past, they are present and irreversible. The procedure also ignores entire government planning programmes of which projects are only the eleventh hour tip of the ice berg.

It is to be expected that individual agencies will be biased in favour of their own activities and that their perspectives should be oriented toward empire-building. But an assessment process which leaves to the proponent the choice of when to consider the very questions he has failed to raise in the past is patently absurd. It is precisely because of the proponent's failure to look before he leaped in the past that the assessment process has emerged; if it is to become part of his decision making a procedure must be introduced which will require compliance. Of what value is an assessment process which the proponent may follow only when he chooses to do so?

It is submitted that the concept of review requires that an independent source will be able to determine the course of events; both the SCC and the Panel have only advisory functions. It is the proponent who determines whether to heed this advice or not. Neither body has the power to implement its recommendations. The Panel is not required to publish its recommendations so little likelihood exists that a disagreement between the proponent and the Panel will become evident to persons outside Government. There may be opportunity for outside experts to participate as members of the Panel but this will only occur when the Minister and the proponent, after consultations, deem it appropriate. As well the proponent has the right to place a member on this "arms length review panel". No similar right resides in the public. Because the Panel will be unable to either enforce its recommendations or publicize them, the procedure will be of limited value.

The only opportunity for the public to participate in the process occurs when the Minister in consultation with the proponent, considers it appropriate. This includes either the Panel holding public hearings or helping the proponent to do so. There is no other provision to encourage or tolerate the public. That is the extent of public rights in the process, other than the capacity to read the preliminary assessments and formal statements which are submitted to the SCC or the Panel. Even this limited right carries the proviso that where the Ministers are of the opinion that the usefulness of the proposed action on the environment may be jeopardized by premature disclosure, the public will get no information at all.