

# The Federation of Ontario Naturalists

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A Statement to

THE STANDING COMMITTEE ON RESOURCES DEVELOPMENT

concerning

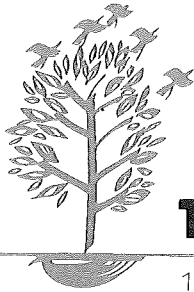
BILL 14

THE ENVIRONMENTAL ASSESSMENT ACT  
1975

Prepared on behalf of

The Federation of Ontario Naturalists

July 1975



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7th July, 1975

The Honourable Ron McNeil  
Chairman  
Standing Committee on  
Resources Development  
Legislative Chambers  
Queen's Park  
Toronto, Ontario

And to: All Honourable Members of the Committee

Dear Mr. McNeil

The following notes concerning Bill 14 were prepared for delivery to your Committee today. Since we include a number of specific recommendations, I anticipate that each Honourable Member of the Committee will wish a record copy.

As noted in the text, we would be pleased to provide you with clarification or more detailed explanation of any point if that is your wish.

Once again, thank you for the opportunity to meet with you.

Respectfully yours

Gordon MacKenzie  
President

Mr. Chairman, Mr. Minister, Honourable Members of the Committee, thank you for this opportunity to meet with you.

I represent the Federation of Ontario Naturalists, Ontario's largest natural history organization, which has approximately 13,000 adult members, together with a further 43 independent clubs located about the province.

I have also been asked to speak on behalf of the Canadian Nature Federation, our Federal affiliate, which represents a further 24,000 concerned Canadians.

It goes almost without saying that the Federation strongly endorses the principle of thorough environmental impact assessment, before a decision is made to proceed with major projects. We believe that Bill 14 represents the most important piece of environmental legislation of the decade, perhaps even of the century.

We also believe that Bill 14 represents common sense legislation. The cost of repairing damaged environments - where it is even possible - far exceeds the cost of preventative action at the outset. And the assurance that proponents are not simply externalizing costs to society which outweigh the benefits of their proposals is, in itself, eminently desirable.

Likewise, we support most of the basic principles embodied in Bill 14. Exemplary concepts include:

- the creation of an Environmental Board;
- the two step procedure: development of an accurate assessment, followed by a decision on the proposal's desirability;
- the precedence of this legislation over the issuance of other permits and licences.

All of these basic concepts are endorsed by the Federation.

We have also reviewed the amendments and additions introduced at second reading. In the vast majority, we believe that these strengthen Bill 14, and so we wish to commend the Minister on

the review which followed the Bill's introduction.

However, there are a few shortcomings and inherent weaknesses which remain in the present Bill. Some of these are microscopic and will not be commented upon here, since it appears to be your Committee's wish to receive such suggestions during clause by clause study. Others, however, are macroscopic, in that they either recur or represent basic concepts which, we believe, should be strengthened.

We are concerned specifically about the following:

- (a) Exemptions in the Act
- (b) Public Ability to Require a Hearing
- (c) Decision by Board versus Decision by Minister
- (d) Exemptions
- (e) Judicial Safeguards
- (f) Ministerial Powers, without responsibility
- (g) Board Composition.

A) Exemptions in the Act.

It seems inevitable that some industry or industries will make representation to your Committee requesting blanket exemption of their activities from the Act, and that such an exemption be provided either explicitly or implicitly in the wording of the Statute.

The Federation is directly opposed to any blanket exemption within the Act itself. We fully support the broad wording of the Bill, such that it may be made (through regulation) applicable to any proposal with potentially damaging consequences to the environment.

Representation to this Committee has already been made with respect to Housing, and it has been suggested that more than adequate control already exists on the location of Housing. We share the representative's and the Committee's concern that this Act not become one more hurdle applicable to and escalating costs for the entire industry.

But we wish to emphasize that situations do exist where Housing can have serious implications for the environment. The Minister has already cited the hypothetical situation where a developer might propose to build on a large area of solid rock. To this, we could add very real situations where developments have been proposed which require filling of wetlands, or construction on lands subject to flooding but which are not under Conservation Authority jurisdiction, or transformation of Lake Ontario shorelines. We should also note the following quotation from a Toronto Globe and Mail report: "Mr. Palmer (the OMB Chairman) has made it clear to Board Members that 'all we hear is the planning evidence in any formal hearing. As far as the OMB is concerned today, engineering and environmental issues in any application for zoning or re-zoning are the property of some other provincial department.'"

We do not wish to dwell upon Housing; it is actually one of our lesser concerns in respect of this Bill. But considering

these situations, and especially the type of requests likely to be made by other industries, the Federation respectfully, but very strongly, urges the Committee to:

- (a) retain the broad applicability of the Act, and
- (b) to provide no exemptions, either explicit or implicit to any class of proposals within the Statute itself.

#### B) Public Ability to Require Hearing.

Our second concern regards the public's ability to require a hearing of the Environmental Assessment Board. At present, there is considerable ambiguity in the Bill concerning this ability.

As the Honourable Members are aware, the Bill at first reading provided a mandatory requirement only at the request of the proponent. In this Draft, the ability of the public has also been included, but has been couched in language such that "request" and "require" are used interchangeably, and such that the Minister retains absolute discretion.

We fully share the Minister's concern regarding frivolous and vexacious demands for a hearing. And we concur that this should not become a simple delaying tactic. But by the same token, we do not believe that the ambiguity should remain in the Bill.

The Federation would respectfully urge that a hearing be made mandatory, whenever requested by any person and whenever there are reasonable grounds to believe that the proposal may be damaging to the environment. Obviously, the Minister would retain discretion by such a wording, for those aforementioned situations. But access to the Courts should also exist in the rare event where the Minister refused to direct a hearing.

C) Decision by Board versus Decision by Minister.

The third concern regards the decision making body; is it to be the Environmental Assessment Board, or is it to be the Minister, either alone or in conjunction with other Members of Cabinet?

At the outset, we must emphasize our belief that the revisions introduced at second reading strengthen the Bill considerably. And, we must also emphasize that the ultimate decision-making body must be our elected representatives.

But this is also the case with the Ontario Municipal Board, whose decisions are binding unless appealed and overruled. There are also distinct advantages to an independent Board. Without imputing motives to anyone, it is safe to say that the OMB can be more directly and exactly concerned with the actual merits of the case, and less concerned with political ramifications, than could a Government decision maker.

Moreover, many of the more significant proposals will come from Government agencies, and indeed from the Ministry of the Environment itself. Any decision maker would tend to favour recommendations which met with the approval of their colleagues. While we doubt that such pressure would intentionally be exerted, or whether Government decision-makers would consciously make decisions based on this realization, we believe it is the inevitable and unacceptable result of the structure chosen.

If our sincere intent is to protect the environment, then we believe that it is sensible to place first-order, and binding, decision-making with a body that can concern itself specifically with protecting the environment. Just as with the OMB, appeal should be retained, so that the Legislature is indeed the final court of opinion in the Province. 7?

The Federation therefore respectfully urges:

- 1) that the Environmental Assessment Board be empowered to render decisions
  - (a) which are binding (on Government)

- (b) which may be overuled by a vote of the Legislature, rather than by secret decision in Cabinet.
- 2) that a specific appeal procedure be defined.

D) Exemptions.

Our fourth concern regards exemptions. At present, the Minister, with the approval of the Lieutenant Governor in Council, can exempt any specific proposal or any class of proposals from application of the Act.

Certainly, there are some rare situations in which exemptions are or will be necessary - notably in emergencies. We fully concur that provision should exist for such situations.

But, as with our afore-discussed concern, Government must be seen to be honest, and the Minister should not be in the position of exempting his Ministry's own proposals.

For these reasons, the Federation respectfully urges:

- 1) that the power to exempt be located with the Legislature, by a majority decision.

E) Judicial Safeguards

We are concerned by the apparent proposed removal of judicial safeguards, embodied in the present Bill.

We make no pretense of having legal expertise, but we are deeply concerned by the proposed placement of the Board beyond the Courts, and by the implications which the Canadian Environmental Law Association tells us this would have.

The Federation therefore respectfully urges:

- 1) that all judicial safeguards be retained in respect of the Environmental Assessment Board.



F) Powers Without Responsibility

We are concerned that the Bill provides no responsibility to carry out the wide powers which the Legislation would bestow upon the Government. In particular, the Bill enables the Minister, with approval, to produce regulations covering a wide range of proposals. But it does not place any responsibility on the Minister to do so.

Our concern is not to impute motives to the Minister, but is a simple reflection of past experience. The Endangered Species Act, passed in 1971, is an excellent example. The Act provided for protection of species which would be designated as endangered by regulations to come. No regulations were forthcoming for two years, despite the fact that the Government had lists of species which were endangered. Indeed, some of the truly endangered species mentioned in the Minister's statement for First Reading have still not been designated, four years later!

The Environmental Protection Act is another example. Section XII was passed in 1971, providing for the appointment of an Environmental Council. Yet, that Council has still not been appointed, despite repeated requests to that effect.

Without imputing motives to anyone, there is a real and justified fear that the Legislation will not be brought into force for a great length of time. And some cynics believe that it will be brought into play only when politically opportune.

Two alternatives appear to exist. The first of these is to list all of the activities and classes of activities to which the Legislation will apply, at the outset and in the Act. This would also limit the scope of the Act, require a detailed timetable, and perhaps require repeated amendments to the Act.

The second alternative, preferred by this organization, is the addition of a section, stipulating a responsibility on the Minister to include all potentially damaging proposals under regulation by

a specified date, except for those exempted by a vote of the Legislature. Such a proposal seems awkward, but it appears to offer the real assurance that potentially damaging activities will be scrutinized.

The Federation therefore respectfully urges:

- 1) the addition of a section under Part VI, stipulating a responsibility on the Minister to include all potentially damaging proposals under regulation, by a specified date except for those exempted by a vote of the legislature, and
- 2) that the specified date be not later than 1978.

#### G) Board Composition

The final area we wish to address, at this time, is the composition of the Environmental Assessment Board. At present, there are no guidelines respecting qualifications of appointees, except that they shall not be public servants or in the employ of any Ministry.

There are no requirements as to experience or ability, despite the essentiality of such abilities to sound functioning of the Board. Nor is there any safeguard to prevent the resignation of a civil servant immediately before his appointment to the Board.

We will not delve into great detail, except to say that the Federation strongly supports the three guidelines proposed by the Canadian Environmental Law Association.

Specifically, the Federation respectfully urges:

- 1) that the legislation stipulate that appointees shall not have been employed in the public service of Ontario or have been on contract to any Ministry within two years previous to their appointment
- 2) that no person who is a sitting member of the Legislature be appointed to the Board, and

- 3) that all appointees shall be persons who are competent in matters of environmental control and conservation.

### Summary

In conclusion, the Federation strongly supports Bill 14 in Principle. Moreover we believe that the vast majority of additions and amendments introduced at second reading are considerable improvements.

We do however, have a number of serious concerns relating to the concepts embodied or likely to be suggested for the Bill.

To summarize, the following are the Federation's respectfully submitted recommendations:

- 1) That the Committee retain the broad applicability of the Act,
- 2) That the Committee provide no exemptions, either explicit or implicit, to any class of proposals within the Statute itself,
- 3) That the Environmental Assessment Board be empowered to render decisions (a) which are binding (on Government) (b) which may be overruled by a vote of the Legislature rather than by secret decision in Cabinet,
- 4) that a specific appeal procedure be defined,
- 5) that the power to exempt be located with the Legislature by a majority decision,
- 6) that all judicial safeguards be retained in respect of the Environmental Assessment Board,
- 7) that the addition of a section under Part VI, stipulating a responsibility on the Minister to include all potentially damaging proposals under regulation, by a specified date except for those exempted by a vote of the legislature,
- 8) that the specified date be not later than 1978,
- 9) that the legislation stipulate that appointees shall not have been employed in the public service of Ontario or have been on contract to any Ministry within two years previous to their appointment,

- 10) that no person who is a sitting member of the Legislature be appointed to the Board, and
- 11) that all appointees shall be persons who are competent in matters of environmental control and conservation.