



Canadian Environmental Law Association  
L'Association canadienne du droit de l'environnement

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SUBMISSION BY THE  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
TO THE  
CITY OF TORONTO NEIGHBOURHOODS COMMITTEE  
ON THE SITING OF NUCLEAR POWER PLANTS:  
THE ENVIRONMENTAL ASSESSMENT ACT  
AND  
THE DARLINGTON NUCLEAR GENERATING STATION

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## I INTRODUCTION: PAST CELA INVOLVEMENT IN THE DARLINGTON ISSUE

The Canadian Environmental Law Association (CELA), founded in 1970, is a public interest environmental law group committed to the enforcement and improvement of environmental laws.

CELA has always taken the position that the proposed Darlington Nuclear Generating station, as well as a number of other projects with significant environmental impact, should not be exempted from the provisions of the Environmental Assessment Act. (E.A.A.) Indeed, in July 1978, CELA celebrated the third anniversary of the passage of the Act. We noted that at that time, there had not been a single public hearing under the act and that only five assessments had been submitted to the Ministry of the Environment. In calling the act toothless, we cited the exemption of the Darlington station as one of a number of examples of how the Ontario government had abused its power to exempt projects from the Act. It appeared then, as it does now, that virtually every controversial project with any significant impact has escaped scrutiny under the Act.<sup>1</sup> (See also Globe and Mail Editorial Appendix A)

## II RECOMMENDATIONS

We would submit that there is still ample time for the Ontario government to apply the legislation that is on the books and subject the Darlington station to a full environmental assessment. We would therefore urge this committee to re-affirm its position and call on the government to immediately halt the construction of the Darlington Nuclear Generating station until a

full environmental assessment can be completed under the terms of the Environmental Assessment Act.

The Committee should also urge the government to rescind the order-in-council issued pursuant to Section 30 of the E.A.A. which exempted the project from the provisions of the Act.

In support of these recommendations, we would like to outline for the Committee the importance and main features of the Environmental Assessment Act as well as the chronology of events surrounding the decision to exempt the Darlington station from the Act.

### III THE IMPORTANCE OF THE ENVIRONMENTAL ASSESSMENT ACT

When the Act was tabled in the legislature in 1975, the Environment Minister William Newman called it "preventative medicine." He argued that: "It will allow us to anticipate environmental damage before it occurs. It will ensure environmental protection at the critical part of a proposed project--at the drawing board."<sup>2</sup> It is the emphasis on environmental planning and management that distinguishes this Act from the more traditional pollution abatement statutes--notably the Environmental Protection Act and the Ontario Water Resources Act. As Dennis Caplice, then Director of the Environmental Approvals Branch stated in 1976,

"... The Act is intended to bring about a consideration not just of the possible effects of a project on the natural environment--the air, land, water and plant and animal life--but to consider also the effects on man, the man-made environment, and on society, including economic factors. That is why the Environmental Assessment Act is more than a pollution control statute."<sup>3</sup>

Mr. Caplice's comments refer to the definition of the environment in Section 1(c) of the E.A.A. which is the widest definition found in any Ontario environmental statute. The other significant section of the Act is Section 5 which sets out the criteria which must be included in the environmental assessment document. Most importantly, the proponent must provide a rationale for the 'need' for the specific undertaking and must evaluate both alternative methods and alternatives to the proposed undertaking. As we will see, both the need and alternative sites to the proposed Darlington Nuclear station have never been fully evaluated to meet the requirements established under the Environmental Assessment Act.

#### IV CHRONOLOGY OF EVENTS SURROUNDING THE DARLINGTON EXEMPTION

On July 14, 1975, the Environmental Assessment Act was passed. However, the substantive sections of the Act were not proclaimed in force until October 1976. At that time over 200 pages of exemption orders were passed pursuant to Section 30 of the Act exempting hundreds of projects. Around this time, an exemption order drafted by the Ministry of the Environment provided for a partial assessment of the effects of the Darlington Generating station on the environment, but no consideration of alternative locations. However, this exemption order was not made public.<sup>4</sup>

Instead, the Minister of the Environment in October 1976, announced that the government was not exempting the Darlington project from the provisions of the Act "at this time," but would decide whether a formal public hearing

should be ordered after the public had an opportunity to comment on reports being prepared by Ontario Hydro.<sup>5</sup> However, on July 25, 1977, the government announced that the Darlington station would be approved without an environmental assessment.<sup>6</sup> An exemption order was issued pursuant to section 30 of the Environmental Assessment Act. The minister seems to have accepted the Ministry of Energy and Ontario Hydro's position that any delay in the Darlington Project could have "very serious consequences on Ontario Hydro's ability to meet the demand for electricity."<sup>7</sup> The major reasons given for the exemption order were that (1) Ontario Hydro had already submitted a report on the environmental analysis for the undertaking and (2) that to subject the project to the Act would unduly delay construction. We would submit that these reasons were not adequate at the time the exemption order was made and are still not persuasive.

In regard to the first reason, an "environmental analysis" was published by Hydro in April, 1975 and supplemented by two subsequent reports in August, 1975. The Community Impact Report was done and published by J.F. McLaren Ltd., in 1976.

In April, 1976, The Ministry of the Environment wrote to Ontario Hydro identifying a number of major deficiencies with Hydro's "environmental analysis." The Ministry noted that (1) the assessment did not consider and include the environmental implications of retiring the facility;

(2) it did not deal with the related problem of the long-term disposal of wastes produced from the facility;

(3) it did not address the environmental implications for the proposed method of storing such wastes in the short term.<sup>8</sup>

Other concerns, in addition to those expressed by the Ministry, include the fact that the site selection process was confined to those sites already owned by Hydro; and that questions of need and alternatives are not fully canvassed in the document.<sup>9</sup> We would submit that the environmental analysis submitted by Hydro was deficient in major areas and clearly falls short of the assessment requirements of the Act.

The second main reason for the exemption order given by the then Minister of Environment, George Kerr, was that hearings would likely delay construction to an extent that would cause energy shortages and require more costly replacement generation. However, even at that time, when the plant was to come on line in 1983, Hydro could have complied with the provisions of the Act within the period between the proclamation of the Act and the anticipated start of construction.

However, it appears that the real reason for the exemption had little to do with alleged delays and power shortages, and far more to do with political considerations. Indeed, at the time The Environmental Assessment Act was proclaimed in the fall of 1976, The Town of Newcastle, in which the proposed Darlington station is to be located, was undecided as to whether it would oppose the project. However, early in 1977, Hydro and the Town signed an agreement, in which Hydro agreed to pick up some of the costs that would be incurred by the Town in return for various Town approvals and an undertaking by the Town not to oppose any application by Hydro to the government to exempt the station under Section 30 of The Environmental Assessment Act. Thus it appears that once local opposition disappeared, the Minister could easily exempt the undertaking which he did in July, 1977.<sup>10</sup>

V THE PRESENT SITUATION

We know now, as Energy Probe has detailed, that Ontario Hydro has a large surplus of generating capacity and that demand growth has diminished to the point that it was zero in the first nine months of 1980. It is clear that even the pretense of justification for the exemption of the Darlington project from the terms of the E.A.A. for reasons of delay resulting in energy shortages no longer exists.

We would therefore again submit that it is not too late for the government to apply its own legislation to the Darlington project and not make a mockery of the law. Indeed, the government would gain added credibility if the Environmental Assessment Board decided after hearing all the evidence that there was a need and that Darlington was the best site. They would then be able to point to the Board decision for justification. Now that municipal projects have finally been brought under the provisions of the Act, it becomes even more difficult for the government to justify the continued exemption of Darlington.

VI CONCLUSION

In light of the above review, CELA would again urge the Committee to re-affirm its position and call on the government to immediately halt the construction of the Darlington Nuclear Generating Station until a full environmental assessment can be completed under the terms of The Environmental Assessment Act.

VII REFERENCE NOTES

1. See, for example "Happy Birthday to a Three Year Old with no Teeth," CELA Press Release, July 5, 1978. See, also Victor Malarek, "Environment act is Toothless at 3, Law Group Says, "The Globe and Mail," July 13, 1978.
2. Hon. William G. Newman, Ontario Minister of the Environment "Remarks on Ontario's Environmental Action Plan." See Proceedings of the Annual Conference of the Pollution Control Association et al. April 20-23, 1975. Toronto, Ontario.
3. Caplice, "Ontario's Environmental Assessment Act: What it is and how it's going to work." (Paper presented to the Professional Engineering Association, June, 1976) at 1. as found in Paul Emond. Environmental Assessment Law in Canada, Emond-Montgomery Ltd. 1978 p. 32
4. Estrin and Swaigen. Environment on Trial. CELRF, Toronto 1978, p. 46
5. "Environmental Assessment Act Proclaimed for Public Sector." 1 E.A. Update (1976) No. 1 at 2.
6. O.C. No. 1952/77
7. "Darlington G.S. Exempted." II E.A. Update (1977) No. 4 at 4.
8. Supra Note 3 Emond at p. 111. Correspondence from Mr. D.P. Caplice, Director Environmental Approvals Branch, Ministry of the Environment, to Mr. W.G. Morrison of Ontario Hydro. April 30, 1976.
9. Supra Note 3 Emond at p. 111.
10. Supra Note 3 Emond at p. 113.

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## Hollow as a promise

If the merits of a piece of legislation were to be determined solely upon the basis of how that legislation looks beside a vase of freshly cut trilliums on the mantel-piece of the Ontario Government, then we would have to admit that Ontario's three-year-old Environmental Assessment Act contributes a certain bucolic *nous ne savons quoi* to the province's statutory decor. If you don't mind the dust.

But of this law, as of all laws, more than a passing pleasantry of appearance must be asked. And this month, as we celebrate or mourn the third anniversary of the passage of the Environmental Assessment Act, there is no alternative to the conclusion that the act has withered on the vine, been subverted from the outset, is a sham, a subterfuge, a bust. All show, no go.

At the time of its passing, the act was heralded as something of a godsend for the quality of life in Ontario. In its preamble, the act dedicated itself to "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment." Then Environment Minister William Newman called it "one of the most important pieces of legislation ever introduced in Ontario." And across the Legislature, former Liberal leader Robert Nixon said the bill was "very important and very constructive" and would have "considerable impact".

The Globe and Mail was slightly more cautious in its praise. The Environmental Assessment Act, we commented in June, 1975, will "offer about as much protection as a hedgerow of pious wishes in a windstorm."

The idea was sound in theory: the establishment of an assessment board to probe the social, cultural and economic impact of proposed Government (and perhaps even private) projects. Sewage and water-treatment plants, buildings, electrical generators, highways — all these were to come under public scrutiny to ensure they served the public interest.

But it seemed clear at the outset that the Government was reserving absolute regulatory power to restrict the scope of the legislation in any way it chose and to exempt developments from scrutiny whenever it chose. More in sorrow than in smugness, we can now observe that our prognosis was, unfortunately, dead on.

Little more than a year after the act

took effect, the Government moved through order-in-council to exempt literally hundreds of projects from assessment. These included provincial highway construction, water and sewage treatment, 26 Ontario Hydro transfer and switching stations, 10 transmission lines and nine generating stations, including the huge 800-megawatt station in Atikokan. George Kerr, who had replaced Mr. Newman as Environment Minister, explained that the act "is so broad and gives the ministry so much power that we at this stage felt it necessary to exempt certain projects that had reached a certain stage in planning".

And so, the die was cast. The Canadian Environmental Law Association now reports that during the three years since the Environmental Assessment Act was passed the Ontario Environment Ministry, in its protective vigilance of all that is vernal and venerable, has received a grand total of five (5) project assessments. Four of them are still under review by the Government. No (0) public hearings have been held by the environmental assessment board under the terms of the act. The destruction of well over 100 roadside trees to make way for the widening of Highway 3 near Wainfleet is an example of the benefits that can accrue to the public even when an assessment is made, as in this case one was.

Although there appears to be no record available of requests made to the Government for the conducting of environmental impact assessments, the environmental law association has compiled a partial list of requests that have been refused. The Government refused a request to order an assessment of a proposal to construct a bridge over the Elora Gorge near Guelph; the Darlington Nuclear Generating Station was exempted; so was the construction of an amusement park in Maple; so was the burning of toxic and carcinogenic chemicals in Mississauga; expansion of the uranium mining industry in Elliot Lake has gone ahead without awaiting completion of an assessment of its environmental impact. And so on, in a similarly foul vein.

What sort of Government is this, that passes tinsel laws and makes no attempt to serve through action the causes it hollowly espouses through words? It is, quite simply, the Government we are stuck with.

For now.