Environmental
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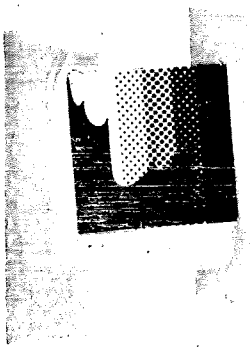
# TOKENISM AND ENVIRONMENTAL PROTECTION

## A Critical Assessment of Canadian Legislative Techniques for Environmental Control.



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Since the beginning of the 1970's, Canadians have witnessed a flurry of "new" environmental legislation.

Both provincial and federal politicians have been quick to jump on the environment bandwagon by introducing in their respective legislatures supposedly comprehensive laws that will ensure, so they say, the "protection and conservation of the natural environment". For example, Ontario and Nova Scotia received their Environmental Protection Acts in 1971 and 1972 respectively.* Other provinces obtained similar "all-encompassing legislation" and at the federal level the Canada Water Act the Clean Air Act and the Northern Inland Waters Act, among others, were passed, and other legislation, such as the Fisheries Act and the Canada Shipping Act, was amended.+

New government agencies were created: "Environment Ontario"; "Environment Canada"; the "Clean Environment Commission" of Manitoba. Where legislation had previously existed, the remodeled versions increased the fines: from $10,000 a day maximum in Ontario to $100,000 under the Canada Shipping Act. "Stop Orders", "Control Orders", "Certificates of Approval", appeared to fully arm the new bureaucracies with all the legal weapons needed in the battle for environmental quality.

These measures were part of the advent of intensive public relations as a technique of government. Such measures bring reassurance to many; indeed, it is all too easy today to delude oneself that merely because a government department is assigned a particular task, the responsibility will be discharged. Unfortunately, the responsibility is all too rarely dis-

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* S.O. 1971, c. 86 as amended; S.N.S 1972, c. 8, repealed and replaced by Bill 164, April 1973.

\+ Canada Water Act R.S.C. 1970, Chap. 5 (1st Supp.)
Clean Air Act S.C. 1970-71-72 Chap. 47
Northern Inland Waters Act R.S.C. 1970 Chap. 28 (1st Supp.) as amended.
Fisheries Act R.S.C. 1970 Chap. F-14 as amended by R.S.C. 1970 c. 17 (1st Supp.)
Canada Shipping Act R.S.C. 1970 Chap. S-9 as amended.

charged, although one continues to be told that everything is under control.

When Ontario's Environmental Protection Act was being rushed through the legislature in 1971, it was described by the Premier as an "Environmental Bill of Rights". Similar legislation in other provinces which purported to be comprehensive in nature no doubt also was described in such glowing terms by the politicians who sponsored such measures.

Yet the Ontario Environmental Protection Act, just like almost every other piece of environmental legislation introduced anywhere in Canada in the early 1970's, more than anything else, methodically denies every possible public or private right to ensure that Canadian citizens obtain a healthy and attractive environment.

It is an incredible fantasy to herald the Ontario legislation or any other present environmental law in Canada as a Bill of Rights.

Properly framed legislation would reveal the unique legal tools that are available for dealing with the environmental crises. These unique tools are:

I - Environmental planning and control mechanisms.
II Effective and independent administrative agencies.
III Judicial protection for environmental rights.

I Environmental Planning and Control Mechanisms.

Model environmental legislation can ensure that intelligent planning methods are prescribed so that activities and projects having adverse environmental impact will be scrutinised and subjected to intelligent criticism before irreversible steps are taken committing project planners to disastrous undertakings.

This tool is one which has been recognised at the municipal level for a considerable period of time across Canada. But when we look for plans dealing with the use and conservation of our natural resources, including air and water, which are legally binding on those who administer our environment, we see that such plans are virtually non-existent in Canada.

It is incredible that we have set up administrative agencies, through these so-called "comprehensive" environmental Acts, to license industries and municipalities to use and dispose of our natural resources without having adopted legal limits on the extent to which such resources should be disposed of within the context of planning for the future.

In Ontario, for example, the closest one may come to such future planning are policies developed within a branch of the Ministry of the Environment for various provincial "watersheds". But before such water studies are complete, and without having developed any such policies for the extraction of non-renewable resources or for dealing with the right to pollute the air, permits are daily granted to industries and municipalities for the removal or contamination of these resources.

The same is apparently true with regard to the establishment of waste disposal sites. There is no apparent provincial plan prescribing which parts of Ontario ought to be the receptors for our junk laden society. Instead, ad hoc, highly heated hearings of the Ontario Environmental Hearing Board are held over each and every application that a municipality or commercial waste disposal firm wants to put forward as to the merits of the individual scheme and site. If this waste disposal-application-siteing-hearing-procedure was to continue multiplying in the exponential numbers that they have been taking place in Ontario during 1972 and '73, the whole of southern Ontario will likely be ringed and covered by such sites without any comprehensive planning having

been done as to where such sites ought to be located.

Without such comprehensive and legally binding plans, these ad hoc licensings of private polluters and waste disposal site hearings are hardly one step better than unrestricted exploitation and development.

Yet what seems acceptable today might not be five years later, but without such plans there is no criteria allowing government licensing agencies to refuse developments today or event to weigh their merits against what will be necessary in the future.

Another important planning tool is the environmental impact study. Yet in only one federal statute, the Northern Inland Waters Act, and in no provincial statutes, can one find the necessity for the preparation of such studies or the need for them to be acted upon when major public or private projects are planned which may have considerable effect on the environment. The necessity for the project, the environmental impact, and the alternatives to it are examples of essential planning guideposts which are totally ignored by our current laws.

## II Effective and Independent Administrative Agencies

Environmental administrative agencies are an essential institution to regulate the myriad daily activities of those whose daily business is the devouring of natural environments for private gain and which require that standards be set, permits granted and routine rules enforced.*

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* Prof. Joseph Sax, Defending the Environment, New York, 1970.

A feature of the "new" environmental legislation in Canada in the early 1970's was to either create such Environment Departments or to give existing government agencies which had some responsibility in the area, a more comprehensive set of rules to play with. However, almost every provincial and federal law failed to adequately provide for the necessary structures and controls so that such agencies remain effective and independent bodies capable of carrying out their essential tasks.

In critizing the agencies, it should be said that there is no secret conspiracy among public officials who constitute such environmental agencies to destroy the environment. Many of them rank among the most dedicated conservationists in Canada. When given properly framed law, these officials can ensure that the public interest in environmental matters is taken into account and represented in their decision making.

But unfortunately, the common feature of all provincial and federal environmental laws in the early '70's, with rare exceptions, was to lock the public out of the agencies' decision making process and to deny them ready access to vital information. Without the right of public participation and access to such vital information, these far too often under-staffed and over-worked bureaucracies were left alone with the lobby powers of industry and the political priorities of governments - industrial growth and high employment - both of which are virtually incompatible with a healthy and attractive environment. The almost total exclusion of the private citizen from the standard-setting, decision-making and action-initiating processes within such an administrative agency makes the task of public officials extremely difficult. How can they off-set the lobby powers of industry, effect the working cooperation of industry for reasonable abatement programmes, and at the same time make equitable decisions that relate to a myriad of different problems affecting private interests in the environment?

As the Canadian Environmental Law Association and its law reform counterpart, the Canadian Environmental Law Research Foundation said in their highly regarded briefs on the 1971 Ontario Environmental Protection Act:

"Far too often an over-worked bureaucracy develops a narrow single-mindedness of purpose. It evolves into a working entente with the persons subject to their regulation that fosters a further narrowing of perspective. The probing of private citizens, through public hearings and other actions, is the only cure for the normal malaise affecting any administrative agency, regardless of its zeal, equanimity, or devotion to responsibility. It is a fact of administrative life." *

Inadvertently, the interests of private citizens are often ignored, and alternatives to environmental planning fail to be adequately canvassed when the public is denied a voice in the administrative process. And this has happened in our environmental laws virtually without exception across Canada. They are framed in broad terms, leaving important decisions or details to be made in secret by civil servants who have complete discretion and no guidelines from the legislature. There is no accountability anywhere provided except in the unrealistic sense of kicking out their political bosses every 5 years. When legislation is framed in this manner, then, as Prof. Joseph Sax, perhaps the leading American environmental legal scholar has written, "members of the public begin to see and smell and breathe the consequences of having relinquished initiative to professional regulators who, like mercenaries soldiers, tend to develop a perspective of their

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* Canadian Environmental Law Association, "Critique on Proposed Ontario Environmental Protection Act (Bill 94)", July 1971. Available at CELA, 25 Harbord Street, Room 214, Toronto 181.

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own that is frequently at odds with the interest of their employers". Legislation on these terms supposes that not the public but rather the bureaucrats are the most qualified to ascertain the "public interest". It fails to sensitize the administrative agency to the interests of the person being administered.

Can we not leave everything to the experts? Some may ask this question. Anyone who has had experience with an environmental agency can testify that this is indeed a naive question.

Here are some of the problems that such legislation framed in broad terms, leaving important details to be made in secret by civil servants with complete discretion and who have been given no guidelines by the legislature, leads to and which illustrate the urgent need for reform. These problems show that without properly defined and drafted laws, our environmental agencies will be neither independent nor effective.

(1) The passing of an Act by either a provincial legislature or the federal parliament is really only the first of several steps in the process of obtaining effective laws. The Act does not automatically become law. First, it must be proclaimed, and this is entirely at the discretion of the government. In some cases proclamation may be delayed for a considerable period of time. But perhaps most importantly, almost every piece of environmental legislation enacted in the early '70's is ineffective without regulations made under the Act. Such regulations in most cases provide the standards and stipulations which must be followed by society. They are not written by the legislature but in secret by civil servants. Some Acts provide only very general, broad standards which are unenforceable until the regulations are passed.

An example at the federal level of such meaningless legislation is the Clean Air Act. It has been on the laws of Canada since 1972 but as of the summer of 1973, no regulations were made

under it establishing maximum allowable levels for air pollutants. Without the regulations, no degree of air pollution has been made illegal by this Act.

Another example: The Ontario Environmental Protection Act, has been described as a complete, comprehensive statute; in fact, there are virtually no prohibitions under it except those made by way of regulation. Yet even in the middle of 1973, two years after this Act came into force, still no regulations exist to control noise, and the Ontario Environment Ministry cannot be forced to make them.

Returning to the federal level, the Liberal government promised in the 1973 Speech from the Throne a federal "Environmental Contaminants Act". This would be a very useful piece of legislation requiring prior scrutiny of all contaminants that may likely have an adverse environmental impact and providing a strict procedure governing their use. Nevertheless, the legislation as drafted was meaningless until specific contaminants were designated, by way of regulations to come within its purview. Yet the decision as to whether or not a contaminant will be designated under the Act is one solely to be made by some civil servants within the Federal Ministry of the Environment who have no need nor inclination to consult the public and no guidelines from Parliament against which their performance (or lack thereof) can be reviewed.

(2) When and if regulations are made, since they are formulated in secret and announced without prior notice, the public does not know whose values and interests are being protected. For example, when there is no opportunity given to the public to consider and comment on maximum effluent levels before they are made in regulation form, the public is left to wonder what values the government is protecting with the regulations. The impression is easily gained that the levels are those which industry can live with but are not levels which protect the environment.

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In Ontario, the Air Management Branch of the Ministry of the Environment has determined the maximum air pollutant limits are to be uniform across the province. Yet the industrial city of Hamilton has air which is considerably dirtier than that of the resort town of Huntsville. How are the decisions being made to allow Hamilton to be polluted and Huntsville kept pure? If the standards can keep Huntsville clean, what is happening in Hamilton, and why? And typical of such regulatory schemes, there is in Ontario no provision made for reviewing the standards once they have been set, whether they were defective ab initio or if new technology renders such standards obsolete.

Two examples of cases where there was no opportunity for the public (which includes of course industry) to examine and comment upon such proposed regulations demonstrate differing but cogent reasons as to why public participation ought to be provided for.

Perhaps the most devastating example of the hyprocrisy and disregard for the public interest to which the secret regulatory approach can lead is demonstrated by the Pulp and Paper Effluent Regulations* made under the federal Fisheries Act. These regulations purport to limit the discharges of suspended solids, organic matter and toxic wastes from such industries into our waterways. After a long period of drafting by our federal government (in close consultation with the Canadian Pulp and Paper Association - the only body with the technical information) the regulations were announced in November 1971 - but they do not apply to any existing pulp and paper mill in Canada! When and if a date is set by the Minister of the Environment for such regulations to apply to existing mills, they will be allowed to discharge more pollutants than new, expanded or altered mills. In this case the lack of expertise within the government and the secret, regulatory

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* SOR/71-578.

process worked to the advantage of industry. But another example from Ontario, shows that this secret, cosy process may not always be to industry's benefit.

In 1972, Ontario acquired a new environment Minister. For some months he remained fairly quiet in office but then in the summer of that year he emerged to mount a white horse and ride off into the polluted distance, brandishing his long sword and telling the large Dominion Dairy concern that it would have to recall from use in Ontario all non-returnable plastic milk jugs. The Minister did not give any prior warning to this company but rather, with a stroke of the pen, authorised regulations under the Environmental Protection Act under which the use of any product that may act as a contaminant of the natural environment may be banned. Environmentalists were happy, but Dominion Dairies lost $300,000, or so they said, on their capital investment and were writhing with anger at the manner in which they had been treated by the government.

It was evident that Dominion Dairies would have benefited from a legislative scheme that would have provided for prior notice of proposed regulations and an opportunity for comment by those likely to be affected.

(3) The third problem that is common to most of this legislation is found in the step in the regulatory process which follows the one in which maximum effluent levels have been set. This second step provides for a specific licensing scheme whereby projects which will pollute require "certificates of approval" from the various Environment agencies. In Ontario, under the federal Fisheries Act (where such a licensing scheme may be imposed by the Minister on industries of his choice), in Nova Scotia and in other jurisdictions, such applications are almost without exception a cosy, secret process as between the applicant and the government. No notice of the application for the certificate is given to other industries or residents in the area who will be affected by the

applicant's proposed operation.*

Under such licensing procedures, there is no duty on the government agency involved to investigate local conditions; there is no duty to take into account the cumulative effect of similar pollutants already in the environment and to which the applicant will further add. If the applicant proposes using equipment which will bring emissions within the maximum allowed limits (remember regulations set in secret and province-wide in many cases in their application) the Environment agencies feel bound to issue certificates of approval. Yet a new industry in formerly agricultural or recreational areas can severely alter the character of the neighbourhood. Much of our lands outside of our cities are unzoned. This usually means that all a new activity needs to establish itself is a building permit (virtually granted automatically under most municipal legislation) and an Environment agency certificate of approval.

Yet without a right to notice of the new industry's application, citizens and industries (yes, industries may also be opposed to competitors establishing because thay may put an extra burden on valuable natural resources such as clean air and water relied upon by the first industries in the area) opposed to the new development have no opportunity to object.

The very fact that people are living in the area, the fact that there may be no good reason for a new factory next to a cottage or farm, or a hydro line running through it, or that better sites are available - less costly environmentally speaking - are arguments that citizens and industries are not given the opportunity to present under this type of environmental legislation. New developments are considered to be strictly a matter between the

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In Ontario, the only exception is with regard to the establishment of waste disposal sites which serve over 1,500 people. A mandatory public hearing is required in this situation. See s. 33(a) E.P.A. 1971 as amended.

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applicant and the government. In Ontario this denial of opportunity is taken to the extreme such that if the government decides to impose a term on obtaining a certificate of approval that the applicant does not like, the applicant has an appeal - but still there is no right for anyone in the area to be notified about the appeal or appear to argue against the application. Also in Ontario, the same government which provides for the secret regulations and appoints the civil servants, also appoints the appeal body. And there are no legislative criteria for the appeal body to use.

This type of narrow licensing procedure, that does not provide for public involvement in the establishment of maximum effluent levels, and which does not have as part of project licensing applications a requirement for an assessment of environmental impact, can lead to problems of magnitude as demonstrated by the 1970 situation in Ontario's Madawaska Valley.

On an autumn day in 1971 area farmers and residents in this tourist region awoke to find a charcoal factory being constructed next to their farmhouses and fields. An investigation showed that the company, Adventure Charcoal Enterprises Limited, building the plant, had not even bothered to apply for a certificate of approval of its air pollution abatement plans and specifications. When the Ontario Ministry of the Environment was pressed to do something about this, their reply was to allow the factory to be erected, with a promise that nothing would happen at the plant until it had been inspected prior to going into operation. But although the government was further pressed as to why it would allow this plant to be built without prior approval (as is required under the Ontario Act and almost every other Environmental Protection Act - you don't build a building and then get the building permit) and even when it was pointed out to the Ontario government that it was allowing itself to be put in an invidious position by/having to order the company, after perhaps the plant had been built, to put in another $100,000 of air

pollution abatement equipment before it went into operation, no reply and no action to stop construction was forthcoming from the government.

A private prosecution was then commenced on behalf of the residents through the Canadian Environmental Law Association for constructing the plant without a certificate of approval. In preparation for the trial and during it, it was ascertained that initially the Environment Ministry had no knowledge that there were persons residing adjacent to the plant and they only acquired this knowledge when protests started to come in; that the Reeve of the Township was only too happy to see a building permit granted for the charcoal factory since he had sold his property to it at a profit of $10,000; that the plant was going in to a low income area and the government was anxious to see any employment opportunities established in that area; that the plant was to be encouraged by Ontario government grants as well as a grant from the Federal Department of Regional and Economic Expansion (DREE). (At least in this instance the the Ontario government had some better procedures for industrial grants than Ottawa. The Ontario Development Corporation requires the approval of the Environment Ministry's Air Management Branch before it gives money to any plants that might likely produce pollution. In this case, the company never got the grant until after the trial was over and a certificate was obtained. In Ottawa's case, DREE announced a grant of over $100,000 to the charcoal company while it was in the middle of being prosecuted by area residents for failing to get its pollution abatement plans approved. The Federal government was in fact counselling the offence of air pollution by encouraging the company to go ahead without waiting for its plans to be approved, as Ottawa required that the plant be constructed within a certain number of days of the grant application being approved or otherwise the grant would be withdrawn.)

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During the trial an Air Management Branch engineer testified that he had indeed served a violation notice on this company alleging this very violation of the Environmental Protection Act that the company was being prosecuted for by the residents of the area, the offence of failing to have their abatement plans approved prior to commencing construction. But while the engineer had served the violation notice on the company and had sent his recommendations along to the Environment Ministry's Toronto legal branch recommending prosecution for breach of the Act, no prosecution was taken. The only legal action was that forthcoming on behalf of and by the area residents. During the trial, it became clear that government engineers were happy that outside interests had intervened. Because, as they explained, this company had only been prepared to spend a certain amount of dollars on its air pollution abatement equipment and according to the government engineers, the company would have been given an approval for this limited amount of equipment but for the pressure of the prosecution. The engineers told the author that as a result of the prosecution, the company spent approximately twice as much on its pollution abatement equipment than it was planning to do.

But while this prosecution was successful and the company was then compelled to obtain certificates of approval and to spend more on pollution abatement equipment, residents of the area were still upset because they felt that this area, being rural and recreational, was incompatible with industry, particularly an industry which would encourage the clear-cutting of the last stand of hardwood trees in southern Ontario and which would result in many heavy trucks and other industrial activities taking place both near to their houses and in their recreational area.

But because this area was not zoned, the residents had no opportunity under municipal law to object to the change in land use in any recognised legal proceeding. Yet, they alleged, the

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Director of the Air Management Branch, in considering and approving the application of the charcoal company for certificates of approval, was in fact making a decision which affected them and their property; that he was in fact allowing a change in land use but without giving any opportunity for the citizens affected to meaningfully object. They demanded this opportunity through the courts, since the Act did not give it to them.

If the residents had been objecting to a re-zoning application, under Canadian common law, they would have had an opportunity for notice of the application and been required to be given a proper hearing as to their objections. But the Supreme Court of Ontario, when asked to apply the same reasoning and justice to the residents of the Madawaska Valley, held that the licensing procedure set out under the Environmental Protection Act did not require affected residents to be given an opportunity for notice or an opportunity to object at a hearing. Their environmental rights were completely denied under the Environmental Protection Act, the court in effect ruled. This was truly an unfortunate decision, one which augers poorly for the success of other objectors to projects which will have negative environmental impact in that great part of Canada which is unzoned and which have licensing procedures similar to those of Ontario.

The charcoal plant story is but one of many examples occuring daily at the federal level and in many other provinces of the disastrous results that the medieval licensing techniques employed in such jurisdictions encourage.

Changes in these jurisdictions' environmental laws to allow for public participation and an assessment of environmental impact will however strengthen their environmental agencies sufficiently that they will be able to break the political and economic strangleholds now upon them in their daily activities and ensure they become true representatives of the public interest

in a healthy and attractive environment.

As a result of the charcoal case and other such disastrous situations, even the Ontario government has admitted the need for change. That government is expected, in the autumn of 1973, to introduce amendments to its Environmental Protection Act to provide for both an assessment of environmental impact and public hearings before either private or government projects with environmental consequences are allowed to proceed beyond the stage of feasibility studies.

## III Judicial Protection for Environmental Rights

Almost all the legislation introduced in the 70's across the country fails to provide any new rights for private legal action against polluters. On the contrary, the cumulative effect of such legislation is to deny some and to restrict other pre-existing rights for private action. Establishment of approved or permissible levels of pollution in many cases denies private recourse to civil litigation for damages. It may force a citizen to face environmental problems of noise, pesticide use, litter, water and air pollution with essentially no redress except the prospect of pleading with various environmental departments for relief.

The legislation's failure to permit unfettered litigation and prosecution by aggrieved citizens denies in many situations an important role for effective citizen participation in the decision-making process. Litigation is an invaluable tool to stimulate a high public profile for otherwise routine government decisions, consequently ensuring a more comprehensive evaluation of all conflicting interests. Litigation is not antithetical to planning; it merely forces public officials to consider the full implications of major planning. It also provides a means of coping with un-anticipated or neglected matters. No administrative agency charged with the enormous responsibility of making

pate and adequately evaluate all possible interests affected by their planning.

The availability of private rights is not important merely to embarrass the government department. Private intervention in the final analysis may off-set political pressure from powerful particular interest groups thereby liberating the department to do what ought to be done. Private litigation may provide the necessary irritant to move industry towards a re-evaluation of the full costs of their activities. And, it should be remebered, private litigation either against the acts of government agencies or in pursuit of private redress has been the hallmark of our political system. Enlightened legislation is often preceded by a long history of litigation.

Most of the new legislation allows the respective governments to assert unilaterally measures to stop or restrain activities of polluters (the ministerial orders outlined above). However, these cannot be invoked by the private citizen; nor are there procedures established which allow the public to require or request that the various environment agencies take steps to restrain a person polluting to an extent that is dangerous to the health of the community. All such remedies reside exclusively in the discretion of the department.

In many American states in the '70's provisions for citizen participation in litigation have been extensively made. For example, The Environmental Protection Act of Michigan provides that any citizen may maintain an action against the state or any other person for acts of pollution. The Michigan Act permits the court to determine the validity, applicability and reasonableness of any statutory standard prescribing permissible levels of pollution. If the court finds the standard to be deficient, it may direct the adoption of a new standard set by the court.

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Such new, enlightened Environmental Protection Acts recognise the importance of ventilating important issues of policy outside the often restricted deliberations of the administrative process. Yet the overriding philosophy of the various Environmental Protection Acts in Canada has been to entrench the approach epitomised in the Ontario legislation. All powers to plan, regulate, police and prosecute are bestowed on a government agency. This approach, in theory, assumes that an administrative agency is the best vehicle for pursuing public interest. Whatever the merits of this theory on paper, in practice there are a lot of readily apparent problems.

On paper, the Ontario Environment Ministry's powers are enormous. The legislation sets out numerous offences. The fines for violators set out in the Act are harsh and fearsome ($10,000 a day for some offences). Yet in the realm of new offences there are a few innovations. The penalties are in some cases a bit higher but these new environment agencies still go to war against pollution with practically the identical offence sections as existed under former legislation. One might acquire a feeling for the anticipated force of this seemingly strong legislation by examining the litigation history of predecessor departments.

In Ontario, for example, although the Ontario Water Resources Commission was established in 1956, the first prosecution taken by the Commission was in 1964 and resulted in a fine of $25. Then the Commission proceeded to grace the courts three times in 1965, twice in 1966, ten times in 1967, five times in 1968, three times in 1969, and at least twenty-two times in 1970. Except for eight cases the fines averaged about $275.

Over the period of February 23rd 1970 to April 7th 1972, in Ontario there were a total of 51 prosecutions for air pollution offences with an incredibly low sum of $19,075 obtained in the way of fines for an average of $465 per conviction.

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This litigation record for Ontario government agencies charged with environmental protection illustrates that the apparent "get tough" attitude of the Environmental Protection Act and other such legislation is more illusory than real.

Fortunately Canadians still possess the right of private prosecution and this means our criminal courts can be used effectively by our private citizens to enforce the new environmental legislation despite government unwillingness in most cases to change out-moded concepts.* The use of the law not only can resolve disputes between the individual and the despoilers of the environment; it also encourages meaningful government activity by illustrating both to the public and to the government the gaps in enforcement of the various environmental laws, the areas where no laws exist, and thus the need for immediate change. Further, such citizen initiative in the courts or before other tribunals such as licensing bodies, allows the citizen to come forward and to have his say as a man asserting his rights, not as a supplicant coming to a patronising government official for favours - as many have been made to feel in their contacts with federal, provincial and municipal governments.

It is evident however that changes similar to those made by the Michigan legislation must be forthcoming in Canada if we wish to fully utilize our court system in the achievement of

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* For a detailed account written for the layman of the legal avenues available to the private citizen concerned with environmental matters both in Ontario and across Canada, see booksellers for ENVIRONMENT ON TRIAL - A Citizens' Guide to Ontario Environmental Law, published by the Canadian Environmental Law Association, September, 1973.

environmental quality.

CONCLUSION

Although there is a growing awareness that industry claims for products and services are subject to strict laws prohibiting false and misleading advertising, unfortunately, such laws do not apply to the political arena.

If misleading advertising laws applied to politics, no doubt many of our federal and provincial politicians would have been severely fined or even jailed by now for the way in which they have misrepresented their all-encompassing "environmental bills of rights".

However there is also a court of public concern to which these politicians must answer. Although it is much slower than even the courts of justice, slowly its jury members, the Canadian public, are becoming increasingly disturbed by the rip-off of their resources carried out by foreigners and licensed by provincial and federal tribunals lacking any long term energy and resources plans; finding their property suddenly affected by government activities such as airports, road relocations and hydro lines over which they have not been consulted and have no means of obtaining either information or alternatives or opportunities for meaningfully discussing their objections and alternatives; and at finding the new environmental agencies are generally nothing but weak "yes men" both for the industries they are regulating and the governments they are supposed to advise.

Fundamental changes in such legislation and its procedures are needed and will be demanded by the public in the long run. Unfortunately, many private and government activities, such as the Baie James Power Project in Quebec or the MacKenzie Valley pipeline, may have horrendously negative environmental impact -

projects and activities will not wait for the legislative changes, necessary as they are.

The Canadian public must work for such changes, must demand them. But in the meantime, if citizens wish to ensure rights to a healthy and attractive environment, they must be prepared to act through all political and legal means, especially in the courts, both to stop harmful activities and to highlight the weaknesses of their environmental legislation, a process that will result certainly in helping to strengthen environmental agencies, making them truly the strong protectors of our environment that our politicians have touted they are.