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ZIP ZAPPING AWAY: HYDRO LINES AND HEALTH

by Richard W. Woodley

[The Bridlewood community has drawn international interest by taking Ontario Hydro to court over the link between hydro lines and cancer.]

Concern about the effects of electromagnetic radiation on their children has provoked residents of the community of Bridlewood in Kanata, Ontario to oppose 500 KV hydro lines being constructed through their community by Ontario Hydro.

Bridlewood residents have resisted the lines for 5 years. Currently, the Bridlewood Residents Hydro Line Committee (BRHLC) is waiting for the Joint Board (Ontario Municipal Board and Ontario Environmental Assessment Board) to decide whether to re-open hearings on the Bridlewood routing decision. If that decision is negative the BRHLC will take its case to the Supreme Court of Ontario.

The dispute began with public information meetings held in the spring and fall of 1984 where Ontario Hydro told the community that the corridor that was eventually chosen for the new 500 KV lines was not under consideration because it was not technically suitable for the lines. The Joint Board held hearings starting in November 1984 and ending with a November 4, 1985 decision to use the existing corridor that went through the middle of the community. The City of Kanata appealed that decision to the Ontario Cabinet and that appeal was denied on May 9, 1986. At that time it was generally accepted that the battle had been lost.

But an article in the September 26, 1986 Ottawa Citizen by April Lindgren on the New York Power Lines Project and the health effects of electromagnetic radiation (EMR) changed that. The article raised the concerns of two Bridlewood mothers, Judy Hunter and Lynn Barrett. Because the line was to go through or adjacent to two parks and the site of the new Bridlewood school they had serious concerns for the health of their children. Meetings were held and the BRHLC was formed. The BRHLC's first task was to research the health issue and the results of that research confirmed the committee's original concerns. That led to the determination that the community must do every-

In This Issue

Editorial

DAMBUSTERS: COURTS FORCE FEDERAL GOVERNMENT TO OBEY OWN LAWS AS RAFFERTY/ALAMEDA DAMS LICENCE QUASHED

by Toby Vigod

On April 10, 1989, the Federal Court of Canada quashed a licence issued by the Federal Minister of Environment for the construction of the Rafferty/Alameda dams on the Souris River Basin, Saskatchewan. This decision was the result of a lawsuit brought by the Canadian Wildlife Federation (CWF) which successfully argued that the Minister of the Environment had not complied with the Environmental Assessment and Review Process (EARP) Guidelines.

The Rafferty/Alameda dams project has been a controversial undertaking since its inception. In 1986, the Premier of Saskatchewan announced his intention to proceed with the construction of the Rafferty and Alameda dams on the Souris River. A provincial Crown corporation was established to develop the project. Approval was granted by the province in February 1988 after an environmental impact assessment was filed in compliance with Saskatchewan law. In January 1988 an application was filed with Tom McMillan, then Minister of Environment, pursuant to the International River Improvements Act, for a licence to build the dams. The licence was issued on June 17, 1988. No review was done under the EARP Guidelines Order. This occurred despite the fact that there could be substantial and adverse impacts on wildlife, water quality and quantity in North Dakota and Manitoba.

Later that year, Elizabeth May, former policy advisor to Tom McMillan, quit her position after alleging that approvals of the dams was part of a three-part deal involving Grasslands National Park and French translation of Saskatchewan laws.

The CWF's position before the federal court was that the federal Minister had exceeded his jurisdiction by not complying with the provisions of the EARP Guidelines Order prior to issuing the licence under the International River Improvements Act. Mr. Justice Cullen found that this had occurred and in addition to quashing the licence, ordered the Minister to comply with the EARP Guidelines Order. He disagreed with the argument made by the federal government that the EARP Guidelines Order did not apply in this case. Instead he agreed with CWF that the Order "must be applied as the project clearly has an environmental effect on a number of areas of federal responsibility, including about 4,000 acres of land 'owned' or at the very least held in trust and administered, by the federal government." He noted that s.6 of the EARP Guidelines Order specifically provides that these guidelines shall apply to any proposal that may have an environmental effect on an area of federal responsibility. In the case of the Rafferty/Alameda dams, Mr. Justice Cullen found that the project would have an environmental impact on a number of areas of federal responsibility: international relations, the Boundary Waters Treaty (transboundary water flows), migratory birds, interprovincial affairs and fisheries. The Court rejected the federal Crown's position that the EARP process would be an unwarranted duplication of the Saskatchewan process.

The implications of this decision are far-reaching. Federal megaprojects announced during the election may now have to undergo federal environmental assessment. For example, EARP has not been used to assess the $1 billion federal commitment to the OSLO tar sands project in Alberta. Instead, the federal government had an arrangement with the Alberta government that the provincial environmental assessment process would be used to address federal concerns. The CWF case may change all this.

The throne speech on April 4, 1989 promised that the government would introduce legislation to "ensure an appropriate environmental assessment review process." The Federal Court decision will ensure that this legislation is speeded up. While the case breathed some needed life into the existing process, the time is long overdue for comprehensive environmental assessment legislation at the federal level to ensure that federal undertakings are assessed early on in the planning process for potential environmental effects.

Toby Vigod is the Director of the Canadian Environmental Law Association.

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EDITORIAL STAFF
EDITOR/CIRCULATION Anne Champagne
MANAGING EDITOR Sarah Miller
ASSOCIATE EDITOR Toby Vigod

Illustrations by Doug Guildford

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HYDRO (CONT'D FROM PG. 1)

thing possible, including political lobbying, demonstrating and taking legal action, to have the lines moved to a suitable alternative route.

Ionizing radiation, such as nuclear radiation and X-rays, has long been known to be harmful. However, the question of the health effects of electromagnetic (nonionizing) radiation is controversial.

Although concerns had been raised earlier, one of the first epidemiological studies to indicate a health risk was a 1979 University of Colorado study by Dr. Nancy Wertheimer and Ed Leeper which reported a two- to three-fold increase in cancer deaths among children living near high current power lines in Denver, Colorado. In November 1986 Dr. David Savitz of the University of North Carolina reported the results of a study done as part of the New York Power Lines Project which confirmed those findings. Dr. Savitz's final report to the New York State Health Department stated: "The degree of confidence placed in these findings is open to varying interpretation, but the tentative conclusion that the study is supportive of an association of electromagnetic fields and cancer risk is warranted." Although perhaps the most dramatic, these are not the only epidemiological studies showing the health effects of electromagnetic radiation.

Laboratory studies have also shown health effects from electromagnetic radiation. Cass Peterson, writing in The Washington Post, states: "...Numerous animal studies have demonstrated neurological or reproductive effects from low-frequency electromagnetic fields. Chick embryos show a higher rate of abnormalities when exposed to low-frequency fields; mice suffer a higher rate of abortion and abnormal fetuses when exposed to slightly higher frequencies, approximating those emitted by video display terminals." Peterson further stated: "In separate experiments, scientists at the Cancer Therapy and Research Centre in San Antonio discovered human cancer cells exposed to 60 Hz fields (the frequency of a high-voltage line) grew as much as 24 times as fast as unexposed cells and showed 'greatly increased resistance to destruction by the cells of the body's defence system.'"

Pioneer EMR researcher Dr. Robert Becker points out that electromagnetic fields vibrating at about 30 to 100 Hz interfere with the human body's own electrical system. He suggests that changing our hydro electrical system from 60 Hz to a different frequency such as 400 Hz might be safer. In his book The Body Electric Dr. Becker tells a fascinating story of his research into electromagnetic radiation and his struggle to do that research in light of the opposition from the industrial, medical, political and scientific establishments.

The BRHLC has compiled a comprehensive review of the scientific research, which is available in CELA's library.

Farmers in the area have also experienced health problems, animal stillbirths and behavioural abnormalities.

The extent to which Bridlewood parents are concerned about the health effects of the lines on their children is shown by a BRHLC survey conducted in March of 1988, which showed that if the lines were built as planned 40% of parents would definitely not send their children to the new school (located beside the lines) while 30% probably would not. When the new lines are energized to full power many Bridlewood parents will have some difficult decisions to make as the Carleton Board of Education has made it clear that they will not allow those parents who are concerned about their children's health to send them to another public school. Many who have the option have already switched their children to the separate school system.

This is in contrast to the school board in the community of Klein Oaks in Houston, Texas which took Houston Lighting and Power to court and won a decision based on "callous disregard" of the children's health, forcing the power company to move a 345 KV power line that was located beside their local school.

The electric utilities' (Ontario Hydro in particular) standard response to the health concerns is to state that there is no conclusive proof of a cause and effect relationship. But even Ontario Hydro is unable to state that there is no risk. Ontario Hydro spokesperson John Grady, quoted by the Ottawa Citizen September 26, 1986 article, stated "Now that's not to say there is no risk--but it hasn't been established to date."

Canadian electric utilities and the federal government have finally begun to recognize that electromagnetic radiation may pose health risks. On January 15, 1988 it was reported that a $3 million, three-year joint study of the health effects of electromagnetic radiation was being undertaken by Ontario Hydro, Hydro Quebec and Electricite de France. Then on January 20, 1988 it was reported that a federal working group, chaired by Dr. Maria Stuchly of the National Health and Welfare Department, had concluded that evidence from large-scale studies in the United States and Europe suggests that electromagnetic radiation may be associated with an increased incidence of cancer. The group recommends more research and the establishment of a permanent advisory committee on health risks from electromagnetic fields.

Bridlewood residents and parents cannot wait for the results of these studies. We have to fight our battle now. To enable us to take our case to court we have just embarked on a $100,000 fundraising campaign. Anyone wishing to contribute can send their donations to P.O. Box 13398, Kanata, Ontario. Tax receipts will be issued for cheques made out to the "City of Kanata."

Richard Woodley is with the Bridlewood Residents Hydro Line Committee

CONSTITUTIONAL CHALLENGE TO NUCLEAR LIABILITY ACT TO PROCEED

by Irving Marks

On April 12, 1989, the Ontario Court of Appeal released its decision in the case of Energy Probe et al. v. Attorney General of Canada, Ontario Hydro and The New Brunswick Power Corporation, Intervenors. The Court held that the Applicants, Energy Probe, the Corporation of the City of Toronto and other interested citizens, had "public interest standing" to challenge the constitutionality of the Federal Nuclear Liability Act and that the grounds of challenge were all, on a preliminary basis, "reasonably arguable."

The Nuclear Liability Act came into force in 1976. The purpose of the Act is to shield the nuclear industry from public liability in the event of a nuclear accident, which the Act terms a "Nuclear Incident." This goal was extremely important to the public utilities and suppliers of components for nuclear power plants because, whatever the probability of an accident at a nuclear power plant, the consequences of an accident could be catastrophic. The reduction of the nuclear industry's financial responsibility for an accident artificially reduces the cost of nuclear power, thereby encouraging development of the nuclear industry. Indeed, evidence filed in the case by Ontario Hydro states that the nuclear industry would not have developed as it did in Canada without the Nuclear Liability Act.

The Act seeks to achieve its purpose essentially in three ways:

1. $75 Million Limit on Liability - The liability for an accident of a nuclear power plant operator, such as Ontario Hydro, is limited to $75 Million for all claims. When one considers the huge losses to life, health and property occasioned by Chernobyl, estimated at over $3 Billion (U.S.), the limit is patently inadequate. In the U.S.,the liability limit contained in similar legislation was recently raised to $7 Billion (U.S.).
2. Suppliers Not Liable - No one, other than a nuclear operator, can be held liable for damages resulting from a nuclear accident. Consequently, the suppliers of components to nuclear power plants are not held financially accountable for the quality of their products.
3. Short Limitation Period - The Act imposes a short limitation period for commencing legal actions to recover damages against the nuclear operator. Ordinarily a lawsuit against a polluter for damages caused by negligence or nuisance can be commenced within 6 years of the time when the injured person knew, or ought to have known, of the injury or damages giving rise to the claim. The Act, however, reduces the limitation period to 3 years, with an absolute limit of 10 years from the date of the accident. The effect of this provision is to eliminate the claims of most radiation cancer victims. Since the latency period for such cancers almost always exceeds 10 years, the right of such victims to obtain any compensation would expire before they became aware that they had suffered any injury.

The combined effect of these provisions is that the victims of an accident would be inadequately compensated for their losses, while the nuclear industry obtains the benefit of a subsidy in the form of reduced insurance costs. The Act shifts the financial risk of a nuclear accident from the nuclear industry and power consumers to the innocent victims of an accident.

Energy Probe's legal action challenges the constitutionality of the Act on three basic grounds:

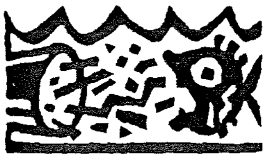
1. No Federal Jurisdiction - The Act deals primarily with civil liability, a matter of property and civil rights within the provinces and therefore the federal government had no jurisdiction to enact the law under ss. 91 and 92 of the British North America Act.
2. Interferes with the Charter Right to Life, Liberty and Security of the Person - The limit of liability artificially reduces the cost of nuclear power and the ordinary incentive for safety resulting from financial responsibility. Consequently, the number of nuclear power plants is increased and along with them the risk to "life, liberty and security of the person," contrary to s. 7 of the Charter of Rights.
3. Interferes with Charter Rights Against Discrimination - Those suffering disabilities resulting from a nuclear accident are denied the full right of access to the Courts for recovery of damages and are discriminated against when compared with victims of similar non-nuclear accidents, such as Bhopal. This is contrary to s. 15 of the Charter of Rights.

Ontario Hydro argued successfully before Mr. Justice Montgomery on a preliminary motion in the Supreme Court of Ontario, that the case should not go to trial on its merits. Hydro argued that the Applicants had no legal status to challenge the Act because a nuclear accident had not yet occurred in Canada. In other words, the public had to "wait for the melt down" and leave it to the ultimate victims to challenge the constitutionality of the Act. Mr. Justice Montgomery agreed and dismissed Energy Probe's action. However, Chief Justice Mr. Justice Tarnopolsky and Mr. Justice Carthy of the Ontario Court of Appeal unanimously overruled Mr. Justice Montgomery's decision and have allowed the case to proceed to trial. Mr. Justice Carthy, speaking for the Court, said: "When I see serious individuals such as the appellants in this case, presenting concerns that are of fundamental significance to all citizens, I have no hesitation in concluding that this is not an abuse of the public interest exception, but rather tends to serve it very well. If the action should succeed and the Act be declared in part inoperative, that declaration would serve the immediate benefit of forcing both the industry and Parliament to re-evaluate the risks, benefits, and policy alternatives related to nuclear energy in the context of rights that have been established through a ruling by the court."

NUCLEAR ACT (CONT'D FROM PG. 4)

Ontario Hydro is now seeking leave to appeal the decision of the Court of Appeal to the Supreme Court of Canada.

Irving Marks is a lawyer representing Energy Probe et al., and a partner in the Toronto law firm of Robins, Appleby & Taub.



ENVIRONMENTALLY "SAFE" PRODUCTS: THE ENVIRONMENTAL CHOICE PROGRAM

by Joyce McLean

Each year, Canadians spend enormous sums of money to purchase a massive array of products for use at home or work. Many of these goods are known to cause damage to the environment during the manufacture, use or disposal phase. In response to growing environmental awareness among consumers, both retailers and governments are beginning to seek out alternatives.

Environment Canada's Environmental Choice Program, formerly known as the Environmentally Friendly Products Program, is the federal government's attempt to provide guidelines for products designed to minimize pollution.

While still in the design phase according to Charles Dixon, an Environment Canada spokesperson, the Environmental Choice Program will likely announce guidelines for three product areas by the fall. These are re-refined oil products, products from recycled plastics, and insulating materials from recycled wood fibres. Following these products would be guidelines for recycled paper goods and solar products, such as solar batteries.

Companies who wish to have their product labelled with the Environmental Choice logo would either pay a fee of between $1500 and $5000 or a percentage of sales to the government. This is yet to be determined. Any company that wishes to have their product assessed to see whether it complies with government guidelines will have to allow the verification body, the Canadian Standards Association, access to relevant quality control and production records, as well as access to production facilities on an unannounced basis.

While buying re-refined automobile lubricating oil is a better choice than oil that isn't re-refined, the automobile has been assessed as the largest single source of air pollution in North America; and while recycling plastics keeps these substances from being burned in incinerators or dumped in landfills, plastic production creates a long-term toxic legacy. One only has to consider the wastes generated and dumped by Hooker Chemical and Plastic Corp., now Occidental Chemical, at Love Canal, Hyde Park and other sites along the Niagara River. Recycling plastics depends on a constant source of raw plastic material, and thus perpetuates the continued generation of toxic wastes.

Consumers can play an enormous role in determining marketplace standards and alternative product availability, as is evident from the introduction of Loblaws Green Line products. There's money to be made in retailers' positioning themselves as having environmental solutions. But it is important not to forget the source of the pollution problems, that is: corporations that view the environment as a dumping ground.

An educated person, who accepts responsibility for solving our global pollution problems, is a powerful consumer. Environmental Choice guidelines, while commendable, are only a first step in reversing the flow of toxins into our land, air and water. Regulations demanding industrial process changes and setting timetables to reduce the amount of waste produced are the next steps.

Joyce McLean is Greenpeace's Great Lakes Coordinator.

AMNESTY NEEDS LAWYERS

Amnesty International Canadian Section is looking for legal, medical and political experts to help in their work for the release of prisoners of conscience. If you would like to help, contact Amnesty International, 130 Slater St., Suite 900, Ottawa, Ontario K1P 6E2.

UPDATE
CANADA CEMENT LAFARGE DENIED LEAVE TO APPEAL

by Graham Rempe

This prosecution under the Metro sewer use by-law was reported in Vol. 14 (1) of the Intervenor. Canada Cement had appealed to the Provincial Court, and lost. They sought leave to appeal to the Court of Appeal. After a lengthy hearing, Mr. Justice Goodman denied leave. His Lordship concluded that the company had failed to raise any substantial legal issues. Canada Cement is currently fighting another prosecution under the by-law.

Graham Rempe is a Toronto lawyer, and a CELA board member.

In Brief

DOWNED IN A RAIN OF APPLES: ALAR TAKEN OFF CANADIAN AND U.S. MARKETS

The manufacturer of Alar, Uniroyal Chemical Co., took the chemical off the U.S. and Canadian markets on June 2nd and 9th respectively. The U.S. withdrawal stands until the U.S. Environmental Protection Agency rules on whether to ban the chemical (probably in early 1990), and in Canada Uniroyal will decide after the 1989 growing season whether to keep up the voluntary ban. Alar will however still be sold in about 70 other markets outside North America.

Alar ripens fruit evenly, for example making apples redder and crisper, and increases the risk of getting cancer en route.

EXXON SUED TO THE TEETH

31 lawsuits and 1,300 claims have been launched against Exxon Corp. for its massive oil spill off the coast of Alaska on March 24th. They range from $500 to $4 million.

Exxon spent $2 million in the first 10 days of the spill to counter bad PR, and plans to make up its losses via tax write-offs, insurance, and higher prices to consumers. Their insurance covers over $400 million, including cases caused by company negligence. So how much financial pain will they feel for the illimitable pain they've caused to one of the richest wildlife areas in North America?

Perhaps continuing the boycott started in May. The list of Exxon companies and products to boycott is:
* Vapofilm (polyethylene film); Alert (gas); Aquaglide (lubricant); Oilex (motor oil); Uniflo (petroleum products); Enco (petroleum products); Flit (insecticide); Imperial (gas); Pate (gas and oil); Perbunan (rubber); Perma-Guard (antifreeze); Varsol (solvent).

LANDMARK DECISION ON FLIGHTS OVER INNU LAND

The not-guilty verdict of a Newfoundland provincial court judge against 4 Innu protestors could be used as a precedent in other Indian land claims throughout the country involving similar protests, according to University of Ottawa law professor Brad Morse. The 4 Innu were charged with public mischief in attempting to block low-level flights over their Labrador hunting grounds by several NATO countries. On April 18th, Judge Igloliorte, an Inuk who was the first native to be named to the Newfoundland bench, found that the protestors believed the land was Innu and had demonstrated that rights to it had never been surrendered to Canada.

9,500 Innu are trying to protect their 259,000 sq. km. homeland in Quebec and Labrador from international military training flights that they feel have turned their home and that of resident wildlife into a war zone.

The defence claimed the elders represented "living title" to the land. The judge accepted the defence of "colour of right," "an honest belief in a state of facts, which if it existed, would be a legal justification or excuse." NDP MP Bob Skelly said the ruling "shakes to the foundation" some of the rigid views courts have applied to property rights with regard to native claims. The Innu are now seeking an injunction to stop the flights.

UNBLEACHED MILK

Milk cartons may soon be a little safer to drink from. Ontario and B.C. are forcing pulp and paper mills to reduce their discharge of chlorinated organic compounds including dioxins and furans. Shock at finding dioxins produced by the bleaching of everything from paper to milk cartons is the undoubted origin of this sudden concern by the various provincial ministries.

The trouble is that their trumpeted "new" standards are in fact close to what the industry already produces. They are just legitimating the status quo, according to Joyce McLean of Greenpeace. "They're using the right terminology, which makes it sound like they're moving forward, but we don't believe they are. What we really need are the tougher standards set by Sweden."

Fully half of the country's water pollution comes from the pulp and paper industry.

WETLANDS POLICY: FEEDBACK NEEDED NOW

After years of wrangling by environmental groups for a provincial wetlands policy, a proposed policy statement and implementation guidelines have come out. True to form however, a few scant weeks were given for public feedback. Under public pressure, the deadline for responses has been extended to July 14th--so sharpen up the pencils or warm up the VDT.

This policy has been a very long time coming, and is critically important to Ontario wetlands. Over 50% of Ontario's birds and most of the province's endangered species nest, breed, feed and rear their young in wetlands. Wetlands are staging areas for many other migrating birds. Please send away for copies of the documents from the Public Information Centre, MNR, 99 Wellesley St. W., Toronto, Ont. M7A 1W3 (or use ours in the CELA library), and fire off letters to:

Hon. John Eakins, Minister of Municipal Affairs, 777 Bay St., 17th Fl., Toronto, Ont. M5G 2E5, and

Hon. Vince Kerrio, Minister of Natural Resources, 99 Wellesley St. W., 6th Fl., Toronto, Ont. M7A 1W3.

To help draft a response, a few highlights of the Federation of Ontario Naturalists' (FON) response follow. (They are the lead group on wetlands.)

o The policy applies primarily to wetlands in municipal planning jurisdictions, not to agricultural land use, but 80% of recent wetland losses are from agriculture so the policy in fact only protects about 20% of remaining wetlands.

o The policy statement and implementation guidelines are too weak to protect wetlands adequately.

o Class 3 wetlands should have comparable provincial protection to the highest classes (1 and 2); MNR's own studies show they have similar diversity and species richness.

o The policy does not cover northern Ontario wetlands. It is not sufficient to deal with northern wetlands on a case by case basis. Ask how the government plans to deal with this issue.

A 6-page version of FON's response may be copied from CELA's files, or from FON (444-8419).

OUT OF THE OZONE - LEGISLATING CFCs AND HALONS

by Graham Rempe

"Holes" in the ozone layer were first reported in 1985. Four years later, we are just beginning to see substantive legislation that addresses this very serious environmental problem. The stratospheric ozone layer filters out lethal ultra-violet radiation. CFCs and halons such as those used in refrigerators break down the layer.

Some CFCs are covered under the Canadian Environmental Protection Act. The Montreal Accord of 1987 is a trigger for the current round of legislative action.

Bill 218 of 1989, An Act to Amend the Environmental Protection Act, received its first reading in the Ontario legislature this February. The Act would regulate "ozone depleting substances," or ODS, which are defined as materials having the potential to destroy ozone in the stratosphere. The key provisions apply to certain named ODS as well as those that may be designated by regulation. The Act will prohibit all aspects of use of these ODS as propellants (except in prescription drugs) and in packaging. These prohibitions would come into effect on proclamation. There is also a provision that would allow for the designation by regulation of other prohibited uses as well as exceptions to the prohibitions. Presumably, refrigeration systems would be brought under the Act at some point in the future. The Act will also amend the regulation-making provisions of the EPA to allow for these designations.

Considerably more ambitious, although much more controversial, is the City of Toronto's CFC/halon by-law.

The compounds regulated by the by-law are the same as those specifically named in Bill 218. The by-law goes on to provide sweeping prohibitions of manufacture, disposal, repair etc., of these materials. It is clearly wider in application than the provincial provisions, and arguably in conflict with them. For example, the by-law contains provisions that apply to refrigeration systems while the Bill does not. The by-law also provides for a mandatory waste audit, the results of which are to be reported to the Medical Officer of Health. The extent to which the MOH has the resources that would be required to deal with this program was the subject of a report before Council.

The Toronto by-law was passed April 6, 1989.

Graham Rempe is a Toronto lawyer, and a CELA board member.

ALBERTA FORESTS UNDER THE GUILLOTINE

This winter, Alberta set over half its northern forests out to slaughter for pulp production. The Alberta government doled out enormous public grants and loans to private industries over the past year, and recently capped off this spree with an announced series of huge pulp mill developments.

Neither public hearings nor independent environmental assessment were done. There was no commitment to protecting environmentally significant areas, and no consideration for the recommendations of the 1979 Public Hearings on the Environmental Effects of Forestry Operations in Alberta.

Even more pulp and large timber operations may be announced in future. Not only that, the pulp mills approved will have the old kraft bleach process that produces dioxins in milk cartons, coffee filters and other paper products, even as these mills are being banned elsewhere. This decision ignores the fact that closed-system mills can now be economically built with no water effluent.

No public meetings have been held on major timber allocations since 1979. Neither has the Fish and Wildlife Division been permitted to give their concerns and recommendations about allocations to the public. In fact the Forestry, Lands and Wildlife Ministry has made sure that no government agencies have been allowed to assess the implications of forestry projects since 1979.

Books

Pollution Control in Canada: The Regulatory Approach in the 1980s. by Kernaghan Webb. Ottawa: Law Reform Commission of Canada, 1988; 91 pp. (study paper)

by Lynne B. Huestis, LL.B.

Of the numerous issues associated with the protection of the environment, few are more complex and contentious than deciding upon the appropriate philosophy or approach to such protection. Scholars have suggested that two major systems or strategies can be identified in the enforcement of regulations -- the first is termed a "compliance" strategy, characterized by a conciliatory style of enforcement, while the second has been called a "sanctioning" strategy, characterized by a penal enforcement style. Although few involved in this vigorous debate would argue solely for one or another approach, this dichotomy is a strong theme in most of the existing literature on the subject.

Pollution Control in Canada: The Regulatory Approach in the 1980s is the latest addition to the growing volume of literature presenting arguments and research on the use of compliance strategies and a conciliatory style in enforcing environmental regulations. Frankly, the paper is disappointing, relying on standard arguments and a somewhat limited analysis in an attempt to defend the status quo. Few would argue that prosecutions have figured prominently in the control of industrial emissions, particularly in the pulp and paper sector. However to extrapolate, from this limited

BOOKS (CONT'D FROM PG. 7)

analysis, general conclusions about the merit of command-penalty mechanisms ignores current trends in Canada in this area. By the author's own admission the control of toxic and hazardous substances has lead to different legislative frameworks and enforcement strategies. Moreover, government agencies have recently come under increasing pressure to change their enforcement strategy towards the pulp and paper sector in light of confirmed reports of dioxin residues in mill effluents.

Webb begins by dealing with two so-called misconceptions about pollution control. He contends that the first "misconception" is that the administration of pollution control laws is similar to the enforcement of criminal laws. I really have to wonder who still labours under this misconception. The traditional philosophy and practice of environmental regulation in Canada has been described by a whole host of eminent scholars as a closed, consensual and consultative approach characterized by a small number of prosecutions. The second "misconception" refers to the idea that if pollution legislation is not being used, then there must be something wrong either with the legislation or with the people administering the legislation. It is difficult to know how to respond to an observation of this kind. The number of prosecutions is hardly an indication of the use of a particular pollution law. Most people are aware of the plethora of licences, permits, voluntary compliance programs, orders, and financial incentives that characterize the regulation of activities that pollute. Reliance on these administrative mechanisms surely constitutes "use" of legislation. What people quite rightly question is the failure of agencies to enforce the terms of these various administrative mechanisms.

Webb goes on to argue that the criminal law model of law is not appropriate for pollution offences, contending that controlling pollution involves difficult technological, economic and social issues which require negotiation. This argument is based on a misunderstanding about how environmental laws work. Prohibitory sections, even those in the federal Fisheries Act, are qualified by numerous exemptions and restrictions. Officials have the choice to pursue administrative mechanisms or to sanction unacceptable behaviour. Prohibitions can and should be enforced through prosecution where they are violated through carelessness, greed, or a refusal to give priority to environmental protection requirements.

Another recurring argument throughout the paper is that prosecutions are too costly and time-consuming and harden adversarial attitudes, interfering with negotiations and working relationships. However, the argument with respect to costs is only applicable where the company is willing and able to comply with regulatory requirements. Once it becomes necessary to invoke any formal response, such as a control order, prosecutions are rarely more costly or time-consuming. Agencies must do the same groundwork to justify administrative demands as they must in preparation of a prosecution. Moreover, prosecutions are often completed in less than six months; with two-thirds of persons charged under environmental statutes pleading guilty, lengthy trials are rare. By contrast, administrative procedures may involve an elaborate hearing process and/or lengthy appeals.

I found myself growing impatient with the lack of novelty in the arguments presented throughout the paper. Many fine points of research and sound recommendations were lost in the determination of the author to argue the status quo. Only passing reference is made to recent legislative developments such as the Canadian Environmental Protection Act, to changes in the enforcement strategies of environmental agencies, and to shifts in public attitudes and political will. In my view these recent trends are compelling evidence of a contemporary shift in approach towards achieving compliance with environmental regulations by the use of prosecution in preference to less threatening procedures. Administrative mechanisms may still be the main tool to achieve abatement and compliance. Nonetheless, efficient and timely prosecution of certain offenders is necessary to secure compliance, particularly where every effort has been made to accommodate the sector in question.

Lynne B. Huestis is a Vancouver-based consultant specializing in natural resource/environmental law and policy.

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THE CANADIAN ENVIRONMENTAL
LAW ASSOCIATION
243 Queen St. West, 4th floor
Toronto, Ontario, M5V 1Z4