

December 2nd, 1974.

Mr. David Miles,
Environmental Advisory Office,
548 Ellice Avenue,
WINNIPEG, Manitoba
R3B 1Z4.

Dear David:

Thanks for your October letter, responding to our draft on environmental impact assessment. If I could for a moment, I'd like to respond to and perhaps dispell the concerns raised in your letter about the powers of the Board, in our draft.

Our inclusion of Section 59 was made precisely to note that we had no wish to remove the decision making function from the ultimate constitutional source, namely the legislative assembly. Our view is quite similar to Burns and Franson in their recent Alberta Law Review article where they cite the K.V.P. Act which overturned a court decision as the proper process to follow. We cite it too at pp. 36 and 43.

In the last resort the legislature responding to pressures from its constituents will still debate and perhaps pass on specific matters of particular importance - but publicly, not secretly a la cabinet decision-making.

Moreover, because one could not expect every Board decision, or as you suggest, recommendation, initially to go to the legislature, we felt the logical mechanism was the court system. P.C. Federal Environmental Critic, John Fraser, in an address recently at CELA's annual meeting saw no real problem with this. I quote him... "There should be an appeal from the Board's decision, and I would prefer that such appeal go to a court with power to the court to decide matters of fact and law, give directions to the board, or exercise the powers of the board and substitute its opinion for that of the board." Respecting final ultimate decision-making authority he added basically our view (which is his view) "one ought to ask what happens if that board should approve a project that the cabinet feels is wrong environmentally. If that proposition causes some restrained smiles, it is nonetheless a possibility. Governments concern themselves with power, but the best also concern themselves with responsibility. For myself, I feel that this problem can be overcome by an appeal of last resort to Parliament, which is after all the highest court and the ultimate custodian of the public interest."

cont'd/.....

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Sorry for the long quotes, but I thought they would help. Again that is what our Section 59 would require. Our suggested board, or for that matter, the courts, most assuredly have an ultimate check via a legislative assembly or parliamentary overrule.

I'd certainly welcome further discussion on this if you'd like.
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Regarding Lloyd Axworthy and Ken Arenson. We've not heard from them and would very much like their views on our great compost heap. If you could contact them or at least provide us with their present addresses so we could directly bother them, it would be much appreciated at this end. If they share your concerns re the Board perhaps you could pass a copy of this letter on to them.

Finally, and this is really an oversight on my part, could you give us the chronology of events leading up to the submission of proposals to the Manitoba Government regarding an environmental bill of rights and environmental impact assessment? Could you also tell me who made the proposal - representing whom? and to whom? I should have asked for this earlier, I guess. Also could we have another copy of the recommendations. (We've got misplaceobia). Perhaps you might wish to put it together as a guest article for a future issues of CELN? In any event, should you not have the time to do an article yourself, we'd appreciate the essentials so that we can put together some kind of article on it.

How's your turtle case going? Take care. Hope to hear from you soon.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Joe F. Castrilli.