

# THE CANADIAN FORUM

THE MANAGING EDITOR / 56 ESPLANADE ST. EAST / TORONTO / ONTARIO / M5E 1A8

Dear Joe:

We've looked at the article and decided not to use it. A majority of our readers would have seen the Globe piece and be familiar enough with the issue.

Thanks for letting us see it.

Sincerely,  
Michael S.

Boo!

RECEIVED APR 3 1975

CELA/ACDE

TO BE PICKED UP

March 4, 1975,

Mr. Michael Cross,  
Managing Editor,  
Canadian Forum,  
56 Esplanade  
TORONTO, Ontario.

Dear Mr. Cross:

As discussed in our conversation of March 3, 1975, I'm enclosing of the article we wrote which appeared in the Feb. 7, 1975 Globe Mail, as well as a longer version of that same article. There are additional differences besides length in the longer version. The article (ie. the one the Globe published) contains paragraphs on environment vs. jobs; a bit more discussion of what the Ontario legislation might look like; and a different quote from John Fraser.

If you do decide to publish the longer version in Canadian Forum suggest that the above be included instead of what appears in the longer version in those respective spots.

Your interest is greatly appreciated. If you have any questions contact me.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Joe Castrilli,

JC:mm

encls.

First it was the environmental crisis. Now it is the concern for the environment seems like a fad, compared to not having enough oil for our furnaces.

But the link between these crises has been overlooked is to solve both. The best solution, in the eyes of marketing vice-presidents of oil companies, is conscientious use of energy would cut pollution, and measures to reduce pollution would have the effect of conserving energy.

For example, smaller automobiles would use less gas, saving energy and decreasing the emissions which account for all urban air pollution. The use of rapid intercity rail is a vastly more efficient use of energy than airplane travel, and noise pollution, and would prevent the massive loss of valuable farmland for new airports.

One does not have to go in for predictions of catastrophe at the way decisions are made every day which continue to the bottom of the oil well, and which also harm the environment, without any real effort to determine the best policies and projects, or, when they are known, to

We know that we must choose - we must balance the pace of urban and industrial growth against the public health and deterioration of our natural and human environment. But

such a mechanism. It has promised legislation - that in Canada to do so - requiring environmental impact posed projects expected to have a significant effect ment. As Premier Davis said in a July 1973 speech, the-fact assessment would help us to avoid environmental outset."

An environmental impact assessment is a study of a effects upon the natural and human environment, its other resources, and possible alternatives to it. which measures the direct and indirect costs of a p environmental degradation, waste of energy, and soc. These "hidden costs" are not measured in terms of m are paid by the community at large, rather than by project, and have therefore rarely received any cons the harm has been done. In the words of John Fraser South and until recently environmental critic for th they are an "insistence that we be sure that we know before we announce that we are doing it."

But if an assessment is just another formal requirement a project is approved - a piece of paper to be filed department - it will be useless. It must be part of the pros and cons of the project are fully considered the public. We do not need yet another filing cabinet recommendations. What we need is a public forum where questions to such questions as, Where and how should this as to do the least damage to the environment? Is it

it may now be unrealistic to expect to see the legislation before the Second Coming - or at any rate before the next election. It may well be that the government is composed of ministers who are afraid of anything that would open up public participation in the decision-making process. It is one thing to bring the myths about environmental impact assessments

One common myth is the myth of delay - that to require environmental assessments for major projects before they are permitted would bring economic growth to a grinding halt. This is not to mention the enormous waste of time - not to mention money - which occurs when project developers are forced to go back and do the environmental studies that they should have done at the earliest planning stages. Even worse is the waste of projects that are planned and built with no consideration of social factors, and which consequently wreak unnecessary damage to the economy and the environment. Besides, experience in the field of environmental impact assessments are required for federal projects has been that most delays are caused by attempts by project developers to deny citizens who are proposing the projects to deny citizens the right to "participate" in what they consider their private domains.

Another favourite objection is the floodgate myth - that if we allow citizens to speak about any project, there will be a flood of objections to projects in which they have

and the public no rights that they did not have before as mere window dressing - for the very good reason that it will be. And an empty political gesture that is seen to do no help to a government in an election year.

The Canadian Environmental Law Association (CELA) has made legislative proposals on environmental impact assessment to the government. These proposals have received support from a wide range of the public, including members of the bar, the Trades Union Congress and several other municipalities, labour, teachers, students, local, and citizens' organizations, as well as environmental groups.

CELA's proposals would set up procedures for environmental assessment that would give citizens an enforceable legal right to participate in and socially sound planning on the part of government. The proposals are the following:

- \* A powerful, independent, non-partisan Environmental Assessment Board Members of the Board would be appointed - as a Federal Commission on this matter recommended in 1972 - "for their expertise and public interest." Salary and tenure would be assured, and decisions conducted in such a way as to make it immune from political pressure. Otherwise it will merely be another anonymous board whose actions will follow the familiar pattern of insularity and pressure and insulation from public view.

The National Energy Board, which is to hold hearings

non-industry, non-government people who are  
effects of a pipeline - environmentalists, na  
and ordinary people who live and hunt in the

It is crucial that the Environmental Review Board  
ment for its master.

\* A wide scope for the assessment process.

All projects having a "significant environmental  
assessment. The Board would decide, on the basis  
submission, whether a project is small enough to  
from the requirement; but that decision could be  
zen. This is the only fair way to deal with the  
which are neither so large that they obviously no  
so small that they obviously do not. It is not  
the decision to the unfettered discretion of the

Assessments would be required not only for single  
programs and policies that give rise to, and prov  
for, particular projects.

\* Public participation.

Public hearings, held after a written assessment  
the project proponent, would be the heart of the  
The subsequent decision by the Board would be ba  
information made available by the proponent, but  
which had emerged in the course of the hearing.

\* Standing, or the right to appear before the Board

Under present law, you must have a special interest

\* Access to information.

Under present law, governments (let alone private) have no obligation to make public any information about their plans or even to disclose the fact that there is any project under consideration. CELA's proposal requires that notice be given to those likely to be affected by a project, early enough to allow for effective input into the planning process. It requires that relevant information (with safeguards for privileged information) be made available to civil servants to testify at hearings - which they do - without fear of repercussions, so that the special information they have acquired - which should, after all, be the property - may be taken advantage of by the public.

\* Funding for objectors acting in the public interest.

Both the federal and provincial governments are committed to public participation in environmental decision-making. This participation is meaningless so long as members of the public are unable to equip themselves with the necessary tools to participate knowledgeably and intelligently. To continue as at present, with proponents spending hundreds of thousands of dollars for hearings while citizens have virtually nothing to say, is a waste of public funds.

We cannot reasonably expect any citizens' group to bear the financial costs of opposing a powerful and wealthy corporation or government. Nor should we, when that group is using public assets that are common and valuable to us all.

Under CELA's proposals, the proponent would make



would pay his own costs, but not the other's, so that he is deterred from exercising his legal rights for fear of what he lost.

\* Regulations.

Regulations - which form the teeth of many environmental laws are usually made behind closed doors by civil servants in consultation with representatives of industry, but with no public input, or even for the public to find out what is being done. Under CELA's proposals, any regulations on environmental protection would be subject to public scrutiny before a decision is made.

\* Role of the Legislature.

Decisions of the Board could be referred to the Cabinet, and if the Cabinet wished to vary one of the Board's decisions, it could do so by a special Act in the Legislature, where the matter would be discussed in public, and the government required to give reasons for its decision.

Final determination by the Cabinet, acting in secret, is not sufficient to justify its actions publicly - the method now in use for making such decisions - is scarcely the best way to instill confidence in parliamentary democracy.

Such an environmental impact assessment process would be a step towards remedying the deficiencies of our present laws. We need stronger legal and governmental controls which are supposed to protect our natural heritage of air, water and natural and recreational resources.

comparison of the energy consumption generated by  
railway.

For another thing, too many of our laws controlling  
and resource management are discretionary. They give  
power to act, but do not oblige it to use that power  
compel the government to enforce the provisions of  
has failed to do so. In this respect, the theory  
of kings is alive and well and residing in Cabinet

For example, provincial parks are, under the Provin  
icated to the people of the Province of Ontario and  
them for their healthful enjoyment and education,"  
tained for the benefit of future generations." Yet  
government permitted a cement company to destroy un  
land slated for incorporation into a park, no one

Licensing powers bestowed by other laws can be, an  
nored with impunity. Only recently, the Ontario M  
Paper Company was convicted of a pollution offence  
The pollution came from a plant built, without a bu  
an area of residential zoning. For the zoning vio  
had been fined - \$10!

The Navigable Waters Protection Act empowers the f  
Transport to decide who may build what on navigable  
Sacred government in B.C. never received a permit  
on the Peace River. Nor did the Ministry ever call

with respect to Ontario Hydro's planned Arnprior of which came by bulldozer.

Environmental impact assessment, if it is comprehensive and mandatory, will fill many of the gaps left by make possible a rational, orderly prevention of premature, hasty, doubtful attempts at a cure. But it must be a process of consultation, rather than merely being announced as government policy.

The federal government, like the Ontario government, in response to charges of illogicality in building first, has introduced environmental assessment procedures "in-house" procedures, applying only to federal government projects and the requirement is an administrative, internal one. It rests entirely with the government as to how (and whether) these procedures are implemented.

These procedures are better than nothing, but not perfect. They suffer from what U.B.C. law professor A.R. Lucas calls "the government-talking-to-itself syndrome." Their effectiveness is considerably diminished by the fact that the government is not accountable to the public for any inadequacy, either in the procedures or in the environmental assessments themselves, or in the actions taken on the basis of their recommendations.

For example, let us suppose that no assessment is required for a project - either because the government decides that the project is too small to require one, or for some other (perhaps

ment to be done. The massive public pressure that was against the Pickering Airport did no more than bring to a hearing that was a farce - not only because the cost was nearly the amount of money they needed to present the case because vital information was not available, but also because that the decision to build the airport had already been made not going to be reversed no matter what evidence was presented. As a Globe and Mail editorial noted at the time, "The inquiry is futile."

Secondly, let us suppose that an assessment has been made that is inadequate. Perhaps its writers did not have access to information outside of government and industry, such as a public hearing might have provided. Perhaps they did not have sufficient knowledge, bound by too narrow terms of reference, to give answers to all important questions. Perhaps, being in the camp of the proponent, and knowing which side their bread was buttered, they engaged in witting or unwitting self-censorship. Perhaps the assessment, as the song says, "accentuates the positive and downplays the negative."

This is happening right now with regard to offshore oil and gas in the Arctic. Plans are underway for major drilling operations in the Beaufort Sea, Hudson Bay, Lancaster Sound, and the Arctic Ocean. We have been done stressing the positive aspects - the jobs and revenue to accrue from the oil and gas, the safety precautions being taken. The companies have promised to take - with only crude

our ignorance. We know almost nothing about how to react with the Arctic environment, let alone what has been done about it. Yet the government is apparently planning to proceed in advance of technology adequate on the basis of statements by the oil consortium that they know about. One may recall that similar assurances were given a few years ago that left the beaches of Santa Barbara

Concerned citizens cannot force the government to wait until these cursory environmental studies have been completed, and until methods have been developed to prevent and clean up oil spills.

Another case in point is the proposal for extracting energy from Alberta tar sands. The extraction process would require a great deal of energy - so much that there exists some doubt as to whether it will not in fact produce less energy than it would consume. Until this question is answered, it makes no sense to proceed.

Thirdly, let us suppose that an assessment has been made that is as good one as far as it goes. But it does not go far enough to deal with the important questions - with the overall context and the entire program of which the particular project is a part.

For example, the Ontario government has committed itself to the increasing use of nuclear power. A second nuclear power plant has been approved for Pickering, and at least nine others are planned to be built by 1990. This commitment has been made without regard to the serious risks: the danger of an accident discharging

useless for them to try to deal with the really v  
the risks inherent in nuclear power too high to b  
the commitment to go nuclear will already have be  
such questions as this are given serious consider  
in the planning process for the answers to influ  
whole process of environmental assessment will be  
consideration of - relatively speaking - trivia.

Environmental impact studies for such things as r  
drilling proposals should be able to look at alter  
sources of energy, such as solar, wind and tidal  
almost all of the research being done by both gov  
on energy is concentrated on the traditional sou  
ing increasingly difficult and expensive to obta

Finally, let us suppose that the assessment is  
hensive in its consideration of the evidence, ar  
dent in its conclusions - but that the governmen  
ceeds with the project in spite of the assessmen  
irreparable damage to the environment. There is  
force the government to heed the recommendation  
even to force it to make the report public.

This is happening with regard to current propos  
Alberta (where it is known euphemistically as s  
problem is not that the environmental effects  
all too well known. Not only do studies by D.  
Canada predict drastic erosion if surface mini

To illustrate. The Ontario Minister of Transport, John Rhodes, announced in November that the Don Valley Parkway was to be extended by a freeway going all the way to Newmarket. A Globe and Mail editorial subsequently noted, "This decision was made without debate and without seeking a broad range of views." This and other expressways are being planned in southern Ontario. They are all reached by the Ontario Task Force on the Human Environment.

Expressways as a means of solving urban traffic problems are too expensive for the amount of traffic they can handle. The cost of a six-lane urban freeway ranges from \$10 million to \$15 million per mile. In addition, there are adverse social and economic effects in the form of air pollution, displacement of families, disruptions of neighborhoods, and loss of buildings, park areas, and tax base.

The day before the decision was announced, the Canadian Environmental Law Association received a letter from Mr. Rhodes stating that the Government's position on environmental impact assessment was as follows:

Since 1971 our Ministry has been developing new methods, procedures, and staff towards the integration of environmental assessment and planning into each phase of project development from project initiation to operation. We adopted this approach in 1971 because in that there were no legislated requirements for it. In other words, this Ministry has been evolving the intent of the Ontario legislation [on environmental assessment].

Considering the nature of the decision to build the Don Valley Parkway and the way the decision was announced, Mr. Rhodes has called this 'evolution', to describe the change which in-house planning has brought about in his Ministry's decision making process. The change from business as usual is so slight that it is almost unnoticeable.

from perpetuating them by drafting the legislation appearance of a public right to environmentally so while in fact denying the substance.

We need laws which do not merely give the government the power to protect the environment - power which it may or may not use. Environmental laws must be enforceable by citizens or by another the government does not act. Otherwise, the laws on paper they are printed on.

Governments to date have tended to view environmental management as a management technique - management of the environment of natural resources, and, not least, management of environmental quality. Their provisions for public participation have accumulated in large - as Richard Soberman, transportation consultant, said in reference to the Pickering Airport Inquiry.

The crucial point about public participation is that it provides a way for critics of a project to let off steam. It gives the public the right, enforceable in the courts if necessary, to have environmental factors are given consideration from the beginning of the process - that environmental impact assessments are carried out and that their conclusions are heeded.

A final point must be made, and must be made quite clearly. If environmental impact assessments are to be a truly effective means of protecting the environment, they must not be filed away



There are biological or ecological absolutes transgressed and that must prohibit certain activities, no matter how important they may be, if ardently they are advocated. If this principle is recognized, then impact assessments can be regarded as protective devices to minimize the environmental consequences of projects whose viability remains non-negotiable in environmental terms.

That is to say that although environmental impact assessments are used primarily to make rational trade-offs among economic and other factors, there are some things that cannot be done. Just where the limits are, beyond which environmental damage is non-negotiable, the report puts it, "non-negotiable," may be argued. What is argued is that those limits exist.

This is the heart of the question of environmental quality. To have a stable environment does not mean "or, in the alternative, to certain economic benefits in return for large-scale destruction of environmental and natural resources. If we have bought, we may not assume to ourselves the right to

This is why the answer usually made by politicians is to avoid environmentally unsound decision-making - "If you don't like the decisions we make, vote us out of office at the next election and we will do. The election of enlightened government is a long process. But it cannot reverse irreversible decisions. It cannot restore unspoiled parkland, the extinct species, the dead and buried cultural land under the concrete of an airport runway, the place to hid the radioactive wastes that will be with us for 100,000 years as a result of decisions made today.