

MEMO

TO: JOHN SWAIGEN

RE: HARTT COMMISSION

DATED: April 21, 1977

I had lunch with John Laskin and Justice Patrick Hartt on Tuesday and discussed with them the outcome of the Hartt Commission. They gave me a copy of the proposed draft amendment to the act as well as a copy of the revised terms of reference.

The draft amendment to the act will be introduced to the legislature on Tuesday, April 26th, 1977 for approval. I would appreciate your comments on the revised terms of reference so that I may indicate these to John Laskin.

Justice Hartt was very interested in whether or not we would wish to present a proposal. He also seemed to indicate that <sup>the</sup> ~~a~~ matter of funding would not pose a problem. He also asked me whether or not our organization could recommend any one who would be interested in doing research and that has a proven interest and background in northern development. Would you know of any such individual that I could recommend to him?

Hartt also indicated that there would be preliminary talks within the next few months to decide on the procedure and to decide on the timing for the hearings. He asked whether or not we would be interested in getting together with other environmental groups especially those representing northern Ontario and organizing some sort of cohesive report to them.

AL:mm

Greg Pimlott  
Peter Asher

TO HER HONOUR

THE LIEUTENANT GOVERNOR IN COUNCIL

Recognising that major enterprises and related technologies in Northern Ontario for the use of natural resources could have significant beneficial and adverse effects on the environment as defined in Schedule A, for the people of Ontario and in particular, the people of Northern Ontario,

Recognising further that the purpose of The Environmental Assessment Act, 1975, is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment,

The undersigned has the honour to recommend that the Honourable Mr. Justice Patrick Hartt, a Justice of the Supreme Court of Ontario, be appointed pursuant to section 24b of Part III-A of The Environmental Assessment Act, 1975, Chapter 69, effective the day of                      , 1977:

1. to inquire into any beneficial and adverse effects on the environment as defined in Schedule A, for the people of Ontario of any enterprise which, in the opinion of the appointee, is a major enterprise in Northern Ontario, such as the proposal by Reed Ltd. for the harvesting, supply and use of timber resources in the territorial districts of Kenora, Patricia Portion, and of Thunder Bay;

2. to inquire into methods that should be used in the future to assess and evaluate the effects on the environment of major enterprises in Northern Ontario, as referred to in paragraph 1; and
3. to report and make such recommendations to the Minister of the Environment from time to time and as expeditiously as possible with respect to the subject-matter of the inquiry as the appointee deems necessary and desirable to carry out the purpose of The Environmental Assessment Act, 1975,

And the undersigned further recommends that:

4. all the ministries, boards, agencies and committees of the Government of Ontario be directed to assist the appointee to the fullest extent;
5. the appointee be authorized to engage such counsel, research and other staff and technical advisers as he deems proper for the purpose of carrying out this appointment; and
6. the appointee be authorized to distribute funds to such persons as in his discretion, having regard to the criteria in Schedule B, he deems advisable for the purpose of ensuring effective participation by the public in the inquiry.

Respectfully Submitted

George A. Kerr  
Minister of the Environment

Dated at Toronto  
this  
day of , 1977

Part III-A,  
(ss.24a-24r),  
enacted

1. The Environmental Assessment Act, 1975, being  
chapter 69, is amended by adding thereto the  
following Part:

Part III-A

Inquiries

Interpre-  
tation

24a. In this Part,

(a) "appointee" means the person or  
persons appointed to conduct an  
inquiry;

(b) "hearing" means a hearing held in  
the course of an inquiry;

(c) "inquiry" means an inquiry under  
this Part.

Appointment  
of person  
or persons to  
inquire and  
report

24b. The Lieutenant Governor in Council, on  
the recommendation of the Minister, may  
appoint one or more persons to inquire  
into such matters relating to the purpose  
of this Act as may be set out in the  
appointment and to report thereon to the  
Minister.

Purpose of  
inquiry and  
report

24c. The purpose of an inquiry and report  
under this Part is to provide information  
and advice to the Minister.

Procedure

24d.-(1) The conduct of and the procedure to be  
followed on an inquiry, including at a  
hearing, is under the control and direction  
of the appointee.

Receiving of  
views

(2) An appointee may take into account evidence,  
information and views expressed at  
hearings and otherwise.

Public  
hearings

(3) All hearings shall be open to the public  
except where the appointee is of the  
opinion that matters may be disclosed at  
a hearing that are of such a nature, having  
regard to the circumstances, that the  
desirability of avoiding disclosure thereof  
in the interest of any person affected or  
in the public interest outweighs the  
desirability of adhering to the principle  
that hearings be open to the public, in which  
case, the appointee may hold the hearing  
concerning any such matters in camera.

Rights of  
interested  
persons

24e. An appointee shall give to any person who the appointee, in his opinion, specifies has an interest in the subject-matter of the inquiry an opportunity during the inquiry to give evidence and, where the appointee holds a hearing, to call and examine or to cross-examine witnesses personally or by the person's counsel on evidence relevant to the person's interest.

Class  
representation

24f. Where the appointee holds a hearing, the appointee may designate from among a class of persons having, in the opinion of the appointee, a common interest in the subject-matter of the inquiry, a person to represent the class in the hearing, but any other member of the class for which the appointment was made, with the consent of the appointee, may take part in the inquiry notwithstanding the designation.

Privilege

24g. Nothing is admissible in evidence at a hearing that would be inadmissible in a court by reason of any privilege under the law of evidence.

Unsworn  
evidence

24h. An appointee may accept, at a hearing or otherwise, evidence, information and views not given under oath or affirmation.

Oaths  
and  
affirmations

24i. An appointee has power to administer oaths and affirmations and may require evidence to be given under oath or affirmation.

Protection  
of witnesses

24j.-(1) A witness at a hearing shall be deemed to have objected to answer any question asked him upon the ground that his answer may tend to criminate him or may tend to establish the liability of the witness to civil proceedings at the instance of the Crown or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceedings against the witness thereafter taking place, other than a prosecution for perjury in giving such evidence.

Right to  
object  
R.S.C.1970,  
c.E-10

(2) A witness shall be informed by the appointee of the witness's right to object to answer any question under section 5 of the Canada Evidence Act.

Power to  
summon  
witnesses

24k.-(1) An appointee may require any person by summons, in the form prescribed by the regulations,

- (a) to give evidence on oath or affirmation at a hearing; or
- (b) to produce in evidence at a hearing such documents and things that the appointee may specify,

relevant to the subject-matter of the inquiry and not inadmissible in evidence at a hearing under section 24g.

Form and  
service  
of summons

- (2) A summons issued under subsection 1 shall be served personally on the person summoned, and the person shall be paid at the time of service the like fees and allowances for attendance as a witness before the appointee as are paid for the attendance of a witness summoned to attend before the Supreme Court.

Stated case  
for failure  
to attend  
hearing, etc.

24l.-(1) Where any person without lawful excuse,

- (a) on being duly summoned under subsection 1 of section 24k as a witness at a hearing, makes default in attending at the hearing; or
- (b) being in attendance as a witness at a hearing refuses to take an oath or to make an affirmation legally required by the appointee to be taken or made, or to produce any document or thing in his power or control legally required by the appointee to be produced to the appointee, or to answer any question to which the appointee may legally require an answer; or
- (c) does any other thing that would, if the appointee had been a court of law having power to commit for contempt, have been in contempt of that court,

the appointee may state a case to the Divisional Court setting out the facts and that court may, on the application of the appointee or of the Minister, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if that person had been guilty of contempt of the court.

Minister  
entitled  
to be heard

24m. The Minister is entitled by counsel or otherwise to take part in a hearing.

Stated case

24n.-(1) Where the appointment of an appointee under this Part or the authority of an appointee to do any act or thing proposed to be done or done by the appointee in the course of an inquiry is called into question by a person affected, the appointee may of his own motion or upon the request of the person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the appointment or the authority of the appointee to do the act or thing are questioned.

Order  
directing  
stated case

(2) If an appointee refuses to state a case under subsection 1, the person requesting it may apply to the Divisional Court for an order directing the appointee to state such a case.

Court to  
hear and  
determine  
stated case

(3) Where a case is stated under subsection 1 or 2, the Divisional Court shall hear and determine in a summary manner the question raised.

Proceedings  
stayed

(4) Pending the decision of the Divisional Court on a case stated under subsection 1 or 2, no further proceedings shall be taken by the appointee with respect to the subject-matter of the stated case but he may continue the inquiry into matters not in issue in the stated case.

Release of  
documents

24o.-(1) Documents and things produced in evidence to an appointee shall, upon the request of the person who produced them or the person entitled thereto, be released to the person by the appointee within a reasonable time.

Copies of  
documents

(2) Where a document has been produced in evidence before an appointee, the appointee may, or the person producing it may, with the leave of the appointee, cause the document to be photocopied and the photocopy may be filed in evidence in the place of the document produced, and a document purporting to be a copy of a document produced in evidence, certified to be a true copy thereof by the appointee, is admissible in evidence in proceedings in which the document produced is admissible, as evidence of the document produced.

Powers of  
each of two  
or more  
appointees

24p. Where two or more persons are appointed to conduct an inquiry, any one of them may exercise the powers conferred by section 24i, 24k or 24o.

Effect of  
report

24q. A report under this Part is not binding with respect to any decision or determination under this Act.

Inspection  
of report

24r. On the request of any person, the Minister shall make available for inspection by the person any report made pursuant to this Part as soon as practicable after the receipt of the report.