

CELA IN THE 80's

Introduction and Background

CELA was formed in 1970 as an organization of lawyers, scientists and laypeople seeking to use existing laws to protect the environment and, where necessary, to advocate environmental law reforms. CELA has accumulated an impressive list of accomplishments over the years in these two areas. The purpose of this memo, however, is not to commend our past but to evaluate our future and our potential in the coming decade to continue being in the forefront in these two interrelated areas.

The Increasing Complexity of the Environmental Dilemma

Since the organization's inception it has always had to face the problem of applying its special talents (i.e. knowledge of legal, institutional and policy tools) in relation to the myriad problems that define environmental pollution, impairment or destruction. Knowledge that there was or is a particular environmental problem to address has always had to precede development of a CELA institutional response to it. Quite simply if there isn't a particular environmental problem to resolve, or that can be properly articulated, there is no need for CELA's services.

While this may seem patently evident on the surface, in fact, application of this principle in practice can be quite substantially complicated if there is not agreement that a particular environmental problem exists or has certain characteristics. Increasingly, though this is not a new phenomenon, there is a tendency in government to either:

- (a) deny the existence of a particular environmental threat;
- (b) downplay its severity; or
- (c) admit that there is indeed a problem but announce that a technical solution has been found.

These three governmental responses are usually used in descending order as each position in turn becomes embarrassingly untenable.

This has most certainly been the case in, for example, the pesticides, toxic substances and hazardous wastes areas. (See Ministry of Environment or Agriculture Canada pronouncements on 2,4-D; 2,4,5-T; PCBs and industrial waste disposal). Moreover, this pattern of bureaucratic gamesmanship is not limited to these areas but is repeated across the entire spectrum of environmental problems from endangered species and habitat to soil erosion to nuclear waste disposal.

It goes without saying therefore that in most instances, to the extent CELA must first overcome the question of whether an environmental problem exists before it can turn to its more familiar institutional arsenal of arguments, it is effectively stymied from taking timely action. This can effect the cases we decide to take, our law reform efforts and our public statements on a daily basis. The result, over a prolonged period of time, can be an overall diminishment in our public visibility and effectiveness. We submit that that process has already begun.

CELA's Response to Date

In the main, CELA's response to this matter in the past has been to say that it cannot possibly be expected to become expert on the host of environmental problems that beset society. Therefore its activities traditionally have centred on being process-oriented rather than issue-oriented. In conjunction with this CELA developed at the outset in 1970 the notion of an "environmental bill of rights for Canadian jurisdictions." This, it was argued, was how we could cut across the full range of environmental problems without having to get bogged down in the nitty-gritty of any particular environmental problem. To a large extent this was and is a reasonable argument to advance, and indeed the goal of an environmental bill of rights is one that CELA must continue to advocate at every opportunity and in every available forum.

But at the same time we are becoming predictable if not complacent about our role. Moreover, we presume a knowledge of the key emerging environmental problems that simply is not borne out by an examination of where we are allocating our case time. In the past, for example, we have, by accident or design, proceeded with vigour against noisy restaurants while delaying action against companies discharging toxic substances. In our research, we have written treatises and magnum opi on trees law but denied that law even had a role to play in relation to hazardous wastes. While not denying the validity of the small environmental problem, or the concern of the person who has it, the fact remains that we have finite resources. If CELA is the only environmental law group around can we really say that we are meeting our mandate to the public by the manner in which we are proceeding in the establishment of our priorities? We could well be accused of having failed to apply our skills to the most pressing environmental problems society faces.

This problem is also reflected by our current board structure whereby matters of emerging environmental policy, case law, legislation and related matters are not discussed systematically but only from time to time. Certainly, the drain of financial matters has not helped. But, nonetheless, we have fragmented our approach to why we were created in the first place, isolated ourselves from other segments of society (e.g. scientists; "victims") and hoped that every issue that emerges in the media can be answered with a stock reference to "we need an environmental bill of rights." This approach to things has not worked for some time, if it ever did.

What Can or Should be Done

To a significant degree, the problem of the increasing complexity of the environmental dilemma and our reticence to extend, on a permanent basis, invitations of involvement in our activities to the scientific and "victim" constituencies of society go hand in hand. We neither know which critical environmental problems people are confronted with nor can we therefore speak with authority as to why law reform is needed in a particular area. To this extent we perform ourselves, as well as the public, a disservice because it becomes increasingly difficult for anyone to take credibly our assertion that an environmental bill of rights is a key component to be seriously considered.

Under these circumstances, the proposals developed by CELA staff and put before the Board on April 13, 1980 take on added significance. Essentially, the proposals are an attempt to give CELA, on a permanent basis, the lines of communication to both the scientific and victim community that can bring us back into the cutting edge of things. The proposals involve both changes, really non-legal additions, to the

board membership, as well as a restructuring of board time so that we are systematically tackling matters that currently get only our sporadic attention. These proposals are suggested as a start towards easing us into the 80's.

With respect to the former proposal, Legal Aid, as you are aware, has already hinted at the need to broaden our board beyond its current constituency in order to be more reflective of environmental perspectives. Our proposal therefore is consonant with this view.

The latter proposal could be accomplished by having the monthly Board meeting divided into two parts. Financial matters could be dealt with summarily before the dinner break. (We do this now with some of our legal committee meetings.) Following dinner the policy agenda would proceed as per the following proposed format:

1. Emerging Legislation.
2. Emerging Government Policies.
3. Emerging cases (not ours).
4. Potential cases.
5. Emerging environmental issues which need our involvement or attention.
6. Special guest speakers on any of the above.