

**COMPLIANCE WITH  
ENVIRONMENTAL LEGISLATION**

A project proposal  
submitted to the  
Donner Canadian Foundation

Canadian Environmental Law  
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Compliance with Environmental Legislation**

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## COMPLIANCE WITH ENVIRONMENTAL LEGISLATION

### THE PROBLEM:

"Environmental standards are nearly useless if there are no effective mechanisms for ensuring compliance. ... There seems to be a regrettable tendency on the part of law makers, the public and commentators to assume that laws enforce themselves. They usually do not."

Franson and Lucas, Environmental Standards,  
1982

### THE RANGE OF SOLUTIONS:

"Some penalties are now a mere slap on the wrist, especially to the big industrial polluters. I will be reviewing a new enforcement policy with my colleagues in the near future. My proposals will include the provision of jail terms for serious pollution offenders."

The Honourable James Bradley,  
Ontario Minister of the Environment,  
November 21, 1985

"Another approach might be direct subsidies to polluters in order to finance modernization and environmental protection measures."

The Honourable James Bradley,  
Ontario Minister of the Environment,  
December 10, 1985

## COMPLIANCE WITH ENVIRONMENTAL LEGISLATION

- PURPOSE:**
- To develop and present to Canadian governments cost-effective actions to increase compliance with environmental law
- NEED:**
- In many instances, present levels of compliance are low: existing compliance methods are not achieving objectives
  - Existing information respecting compliance achievement techniques and corporate behaviour is insufficient to provide basis for designing improved government compliance policy
- METHODS:**
- Research
  - Case-studies
  - Consultation
  - Presentation to governments, industry, public
- SCOPE:**
- National
- PROJECT TEAM:**
- Canadian Environmental Law Research Foundation
  - West Coast Environmental Law Research Foundation
  - Alberta Environmental Law Centre
  - New Brunswick Conservation Council
- BUDGET:**
- \$320,100
- TIME:**
- 33 months
- BENEFITS:**
- First comprehensive Canadian study of this kind
  - Recommendations developed by all stake-holders
  - Analysis and recommendations applicable to reform in other areas of administrative law
  - Broad dissemination of project findings and recommendations: targetted recommendations presented to appropriate government agencies

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## 1. INTRODUCTION

Lack of compliance with environmental legislation in Canada is a major problem which to date has not received the attention it deserves.

Although very little information is available, it appears that levels of compliance with environmental legislation are low. The continuing decline in the quality of the Canadian environment is due not so much to inadequacies in environmental law as to the fact that the law is far from fully obeyed.

To date, no comprehensive studies have been done of the effectiveness of the different ways in which governments attempt to achieve compliance. No one can say with authority what government is presently doing and how well it works. Thus, there is no basis for planning reforms to government action which will produce increased compliance in the most cost-effective manner possible.

The project proposed here is intended to fill that information void and to provide recommendations for specific, cost-effective and politically viable actions which can be taken by governments in Canada to induce increased compliance

with environmental law. It is national in scope and combines academic and case-study research with a consultative process involving all sectors - representatives of government, industry, academic and public-interest organizations - in the development of the project recommendations, thus increasing the likelihood of their ultimate acceptance and implementation.

The final stage of the project consists of presentation of those recommendations to appropriate government agencies and the general public.

Findings and recommendations of the project will be of value not only in the specific field of environmental protection, but also across the broader spectrum of administrative law. Regulatory agencies in other fields, faced with the difficult task of influencing corporate behaviour will, benefit from the project findings and recommendations.

Previous work done by the Canadian Environmental Law Research Foundation makes it well suited to the task at hand. The Foundation has hosted four conferences on different aspects of environmental regulation, undertaken a study of the use of control orders in Ontario and is completing a study of the prosecution of environmental cases. More specifically, during the past year the Foundation, in connection with contract work done for the Ontario Waste Management

Corporation, has reviewed all available Canadian literature on the subject. In the absence of comprehensive studies of the subject, the Foundation has itself developed a conceptual framework for the study of compliance with environmental law.

Thus the Foundation has, to date, made a detailed examination of some aspects of compliance, with emphasis on the Ontario experience, and has developed a conceptual approach for a broader and more comprehensive study. The project proposed here will allow the Foundation to undertake such a study on a national basis.

Such a project has not been done before in this country. It is an important and timely initiative which will produce benefits more than commensurate with the expenditure of time and money and which will advance, in a significant way, both the cause of environmental protection and administrative law reform in Canada.

## 2. THE PROBLEM OF NON-COMPLIANCE

Virtually no empirical studies have been made of the adequacy of the methods used by governments in Canada to achieve compliance with environmental law. For this reason, it is not possible to provide an accurate estimate of levels of compliance.<sup>1</sup> The limited information available, however, indicates that the levels are low. For instance:

- ° a task force established in 1981 by the British Columbia government to investigate pollution of the Fraser River found that in approximately half of the cases investigated illegal discharges were being made.<sup>2</sup>
- ° a study conducted by the Ontario and Canadian governments in 1983 found that 45 out of 100 companies investigated were not in compliance with either provincial or federal effluent discharge requirements.<sup>3</sup>
- ° a study of economic incentives as a means of achieving pollution abatement, done for the Ontario government in 1983, found that for large companies, such as pulp and paper mills, the cost of installing pollution abatement equipment to ensure compliance



with environmental legislation far exceeded the costs of legal fees and fines which might result in consequence of non-compliance. The study concluded that:

From the point of view of these and other large polluters, compliance costs usually far exceed non-compliance costs. Company managers thus have strong economic incentives to delay and procrastinate even if these tactics result in an occasional [sic] prosecution.<sup>4</sup>

- in the United States, studies by the General Accounting Office in the early 1980's indicated that 82% of companies surveyed exceeded waste water discharge limits under the Clean Water Act at least once during the previous eighteen month period and 30% were in significant non-compliance, exceeding one or more permit limits by 50% or more in at least four consecutive months.<sup>5</sup>
  
- the report on the Inquiry of Federal Water Policy, September, 1985, noted that:

Industrial pollution remains the greatest single threat to water quality in Canada but, as we observed in Chapter 5, some significant progress has been made. For example, since the federal government introduced new regulations governing liquid effluents in 1971, our largest industry, the pulp and paper industry has increased production by 20 percent (from 54,000 to about 65,000 tonnes per day) while reducing the

suspended solids discharged in pulp and paper effluents by two-thirds (from 2,648 to about 970 tonnes per day). Nevertheless, this still exceeds the compliance level of 655 tonnes per day for the 123 mills in Canada.

Efforts to reduce the amount of oxygen-demanding materials discharged have also yet to achieve compliance levels. ... [M]any mills still do not have specific schedules for complying with the regulations.<sup>6</sup>

Not surprisingly, lack of compliance with environmental regulations contributes heavily to the serious environmental problems which threaten us today. Illegal discharges to water, such as those documented by the Ontario/Canada study referenced above, are partially responsible for the increasing toxic contamination of the Great Lakes which has occurred over the past decade. This contamination has led to the increasing incidence of cancerous tumors in fish and has raised significant concerns for the safety of those who depend upon the Great Lakes as a source of drinking water.<sup>7</sup>

In recent years there has been an annual increase in the number of environmental prosecutions in Ontario. Although partially explained by increased activity by the Ministry of the Environment, this would seem to indicate an increase in incidences of illegal activity. One Ontario example of such activity is the conviction, in October, 1984, of five companies which had been charged with illegal waste disposal practices.

In the spring of 1985 an Ontario court gave an indication of its view of the gravity of such offences by imposing a three million dollar fine upon the conviction of Eagle Disposal Systems Limited for illegal disposal of hazardous wastes.<sup>8</sup>

A fine of this magnitude is, of course, very much the exception to the rule. The average fine imposed in Ontario under the Environmental Protection Act in the period 1982 to 1984 was approximately two thousand dollars. As pointed out above, this means that in many cases it is cheaper to pollute than to obey the law. A minimum objective of any compliance strategy must be to ensure that costs of non-compliance are at least equal to the costs of compliance.

Governments wishing to develop strategies to increase compliance, however, must immediately grapple with the problem of a virtually complete absence of information respecting existing compliance levels, efficacy of methods presently used to achieve compliance or the factors which lead corporate bodies to comply or not comply with environmental law.

To give one example, during the course of the past year, staff of the Canadian Environmental Law Research Foundation canvassed authorities throughout North America but were

unable to discover any studies which indicated levels of compliance with waste management legislation. A U.S. government report titled Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter, dated February 22, 1985 confirms this finding with the statement that:

...although officials in the four states reviewed [California, Illinois, Massachusetts and New Jersey] and EPA agreed that illegal disposals are a problem, they did not know their extent or cost.<sup>9</sup>

An earlier Canadian study, Environmental Standards, done by the Environment Council of Alberta had reached a similar conclusion:

...there is little critical analysis of enforcement programs and techniques ... Not only is it difficult to find reliable information concerning enforcement strategies and techniques, it is also difficult to determine how well environmental standards are being complied with.<sup>10</sup>

There is need for comprehensive examination of the ways in which governments presently attempt to achieve compliance and an evaluation of the adequacy of the different methods used. Since government action is only effective if it results in changes in the behaviour of polluting industries, such a study must inevitably encompass the subject of corporate decision-

making and the factors which influence it. To give but one example, will the threat of adverse publicity weigh more heavily in the minds of corporate officers than will the threat of a substantial fine?

Such a study must address all aspects of what is an inherently difficult and complex subject. For this reason, before outlining the detailed components of the study proposed here, it is useful to set forth the conceptual approach upon which it is based. This is done in the following section.

### 3. THE CONCEPT OF COMPLIANCE

The term most commonly applied to implementation of environmental legislation is "enforcement", with attention focused upon the imposition of penalties and sanctions upon failure to obey the law. This somewhat narrow approach tends to ignore other potentially valuable tools, such as financial subsidies and tax incentives, which are available to influence corporate behaviour. In addition, it tends to focus attention upon the actions of the regulatory agency rather than the intended result of such actions - a change in the behaviour of a polluting industry.

For these reasons the term used throughout this proposal is "compliance" which is taken to encompass all methods available to governments in their attempts to induce changes in the behaviour of regulated industries. Enforcement, which is only one such method, may be the most effective means available in some circumstances, but not in others.

Study of compliance with environmental or any other form of regulatory law is made difficult by the inherent complexity of the subject. Any such study must take into account factors such as the following:

- the use of law to influence and control corporate behaviour is a very different and more difficult task than the use of law to influence the behaviour of the individual citizen
  
- environmental law is intended to curb a number of different kinds of pollution which can be characterized by medium (air, water, land) and by type of activity (ongoing emissions during industrial activity, spills and large quantity discharges, any of which may be accidental or deliberate)
  
- environmental legislation is intended to influence firms which vary greatly in terms of size and type of manufacturing activity
  
- jurisdiction is divided between three levels of government and a large number of administrative agencies; even within a given regulatory agency there is likely to be a division between the branch responsible for prosecutions and other branches pursuing other compliance methods - implementing a co-ordinated compliance policy is a complex and difficult process.

In seeking compliance, regulators attempt to do three things:

- prevent illegal activity before it takes place
- detect illegal activity once it occurs
- act upon that detection in such a way as to achieve compliance in the particular instance and to deter future non-compliance by the firm in question and others.

Environmental legislation, like any other type of law, is dependant primarily upon voluntary compliance. Thus in the first instance government attempts to prevent non-compliance simply by providing industry with information respecting applicable legislation and its requirements. Going one step further, government might provide assistance by such means as subsidies for pollution abatement equipment. Other measures such as environmental assessment during the planning stages of industrial projects and licensing procedures to ensure that pollution control equipment is installed are also available.

Illegal activity becomes known to the regulatory agency in three ways:

- as a result of inspection by agency staff, including such methods as aerial photography



- ° as a result of a complaint by a member of the public or employee of the polluting firm
- ° through reporting requirements such as the manifest system used to monitor transportation of hazardous waste.

The regulatory agency has available to it a number of potential actions intended to abate existing pollution and deter future pollution. These include negotiation and various forms of financial incentive intended to produce voluntary compliance and various punishments such as the imposition of administrative penalties, withdrawing or altering licensing approvals, imposition of Administrative Orders which require abatement actions to be taken and, finally, prosecution in court for infraction of the applicable legislation.

A listing of all compliance achievement techniques currently used in Canada and other jurisdictions is as follows:

- ° provision of information to achieve voluntary compliance
- ° licensing and environmental assessment procedures
- ° reporting requirements
- ° negotiation to achieve voluntary compliance

- altering or withdrawing licensing approvals
- various forms of financial subsidy
- market mechanisms, such as the sale of "pollution rights"
- administrative penalties, such as the automatic imposition of financial charges without referral to the courts, and ticketing systems for minor infractions
- administrative orders
- prosecutions

In practice, regulatory agencies use a mix of the methods outlined above, usually commencing with negotiation and proceeding through to prosecution. It should be noted as well that individual citizens may attempt to induce compliance through private legal action or prosecution.

The project outlined in the following pages includes an examination of all of the elements outlined above and the ways in which they can be used in a co-ordinated manner to maximize compliance levels.

4. WHAT IS REQUIRED?

Because significant non-compliance exists, it is clear that governments are not acting as effectively as possible to implement environmental law. If governments wish to achieve increased compliance, however, they must not only apply increased resources to the task but must also determine the way in which those resources can most productively be used. The fact of the matter is, however, that information sufficient to support planning and implementation of comprehensive changes in compliance achievement policy is simply not available.

Studies done to date in Canada, as reviewed below, have been either theoretical in nature or have been limited to specific pieces of legislation or types of industrial activity. There has been no comprehensive, direct examination of what government is presently doing to achieve compliance and how it might do it better.

In 1981, the Law Reform Commission of Canada published a paper titled Sanctions, Compliance Policy and Administrative Law by Howard Eddy.<sup>11</sup> This paper is significant to the extent that it marked a broadening of the conceptual approach to compliance with administrative law by setting forth the full range of techniques available to regulatory agencies,

listed above, and by pointing to the need for application of a mixture of these techniques to fit the particular and individual circumstances at hand. Other work such as the paper titled The Enforcement of Environmental Law by Rankin and Finkle, 1981 and the report titled Environmental Standards, published by the Environment Council of Alberta in 1982, has repeated this call for consideration of the broadest possible range of techniques available to achieve compliance.<sup>12</sup> The recent work by John Swaigen and Gail Blunt, titled Sentencing in Environmental Cases examined one aspect of compliance.<sup>13</sup>

Another form of sanction, bringing some environmental offences under the Criminal Code, has in recent years been examined by the Law Reform Commission of Canada.<sup>14</sup> These works did not, however, include a direct examination of the behaviour of regulatory agencies or polluting industries.

In certain specific areas such examinations have been made. Victor and Burrell have examined regulation of the pulp and paper industry in Ontario,<sup>15</sup> Felske has studied sulphur dioxide regulation<sup>16</sup> and Heustis and Webb, in separate studies, have studied enforcement of the federal Fisheries Act.<sup>17</sup> Other pivotal pieces of environmental legislation such as the Ontario Environmental Protection Act and other areas of activity such as hazardous waste management, remained unexamined.

Attention has also been paid to the potential use of market mechanisms such as trading in "pollution rights", used in some U.S. jurisdictions, in which an over-all pollution limit is imposed for a particular geographic area and companies operating in that area are then allowed to bid on the right to contribute a proportion of that total pollution limit, or "effluent fees", in which the firm is charged a fixed amount for each unit of pollution above the allowable standard.<sup>18</sup> The point has been made by Dewees, Victor and Burrell and others that such mechanisms are attractive because they ensure, at a minimal cost to the regulatory agency, that costs of non-compliance will at least equal costs of compliance. For whatever reason, however, such an approach to date has found no favour with governments in Canada.

The other side of the regulatory coin - the ways in which polluting industries decide whether and to what extent they will comply with environmental law - remains virtually unexamined in this country. The seminal work in this area was done by an American authority, Christopher Stone, who in 1975 published Where the Law Ends. Stone highlighted the inadequacies of criminal prosecutions as a means of controlling corporate behaviour in this manner:

Even the highest-level legal threat imaginable is apt to be far less of an item than other things that concern his [the corporate executive] business. Ford lost an estimated \$250 million on the Edsel; sales of the Mustang, in the first 27 months

alone may have netted Ford \$350 million. When considered against those figures, a \$7 million fine for EPA violations is significant, but no more so than a lot of other things management has to worry about and indeed far less so than many others.<sup>19</sup>

Stone went on to examine innovative means of influencing corporate behaviour such as the social audit, mandatory public interest representation on corporate boards of directors and mandatory changes to internal reporting systems to ensure that information respecting potential activity is brought to the attention of corporate boards of directors.

In 1978 the Royal Commission on Corporate Concentration called attention to the need for examination of this problem in Canada:

We want to close with some observations on the application of law to corporate organizations, because we believe that this is a question that has been neglected too long by legal scholars and social activists alike. It is apparent that the traditional legal weapons are often inadequate to deal with corporate social conduct or misconduct, and that as social responsibility is legislated the law will also have to fashion new enforcement techniques. . . . there is a need to give the law more of a preventive task, as opposed to a merely punitive or remedial one. This is a particularly necessary reorientation in areas such as pollution and product and work place safety . . .<sup>20</sup>

In 1984 the federal Department of Justice initiated the Federal Statutes Compliance Project in order to undertake

a "coordinated and comprehensive examination of the offence-creating, sanction and enforcement provisions found in federal statutes." <sup>21</sup> It is interesting to note that one of the first studies commissioned under the Project was an examination of factors influencing compliance behaviour. <sup>22</sup> The Project Director, Mr. Nicholas Gwynn, has stated that in his opinion the subject of corporate behaviour is one of the most important areas for future study. <sup>23</sup>

In addition to the studies referred to above, there have been other initiatives indicative of a growing recognition of the need for action to achieve increased compliance. In 1981 the Ontario Ministry of the Environment created the Special Investigations Unit to assist in assembling evidence used during prosecutions. In June of 1985 the Ontario Ministry of the Environment created the Investigations and Enforcement Branch and significantly increased the number of inspectors available to detect illegal activity. This change has resulted in a clear organizational distinction between Ministry staff responsible for compliance by means of pollution abatement - achieved through discussion intended to produce voluntary compliance - and those in the Enforcement Branch responsible for detecting infractions of the law and taking subsequent action. Such steps have not yet been taken, however, by other Canadian provinces.

In 1984, the Alberta Environmental Law Centre hosted a one-day conference entitled Environmental Enforcement at which papers were presented on a number of aspects of compliance achievement.

The situation today, therefore, can be summarized as follows. Both theoretical and specific studies of compliance in Canada have been carried out but there has been no comprehensive national examination of the effectiveness of methods presently used to achieve compliance. Nor has there been an examination of practice in other jurisdictions or other areas of law in order to see what lessons might be learned which are applicable to environmental protection.

Such things as the Alberta conference, the Department of Justice compliance project or the Ontario MOE re-organizations indicate a growing awareness of the importance of the subject. The time is opportune for a project such as that proposed here which will result in concrete and specific recommendations for ways in which compliance levels can be increased.

Research alone, however, is not enough. Adequate research information is essential for charting a course of government action but that action will only be successful if it is



supported both by the general public and by the directly affected parties. For this reason the project proposed here has been designed to produce both the necessary research findings and to elicit, at least in some portion, this essential public and sectoral support.

The following sections set forth the project objectives and steps required to meet those objectives.

5. PROJECT OBJECTIVES

1. To provide governments with recommendations for specific, cost-effective actions to induce increased compliance which are supported, to the extent possible, by all sectors.
2. To undertake academic and case-study research necessary to allow the formulation of such recommendations.
3. To initiate a consultative process for the development of such recommendations in a manner which will draw upon the experience and expertise of those directly involved with environmental compliance and which will maximize support by all sectors.
4. To publicize the problem of non-compliance and identified solutions to generate public support for government action.

6. THE PROPOSED PROJECT

(a) Project Design

A number of criteria were applied during the development of the project design. The major ones are as follows:

- ° research should build upon, and not duplicate, previous work done by others
- ° the project should be national in scope, with primary emphasis upon the provincial role, since that level of government has the primary constitutional responsibility for environmental protection; attention must be paid to the federal level with respect to such things as securing compliance with the Fisheries Act and the municipal role respecting regulation of industrial waste disposal in sewers and land-fills
- ° it is not possible or necessary to examine every aspect of environmental regulation; areas chosen for detailed case-study, however, must be representative of the larger topic

- the project design must address one of the major potential problems which must be overcome in such a study - confidentiality of information held by government and industry
- the outcome of the project, recommendations for reform, must be realistic and, to the extent possible, be acceptable to all those involved - thus all the actors, in particular government and industry, must play a part in the development of the recommendations
- project impact must be maximized by forceful and effective presentation of findings and recommendations to both appropriate government officials and the general public

(b) Components

The project consists of four distinct components, each of which builds upon the one preceding. The first component consists of comprehensive research in all relevant areas. The next uses representative case-studies for direct examination and evaluation of methods presently used to achieve compliance. Findings and options for reform identified during the first two stages will, during the third stage, be developed through consultation with all sectors into recommendations for government

action. Finally, the project findings and recommendations will be presented to the general public and government agencies, using a variety of techniques.

A detailed description of each component is provided below.

(i) Research

By means of literature review and interviews with relevant authorities a comprehensive review will be made of research which has been done in Canada and other countries in the following areas:

- ° the general subject of compliance with the law
- ° more specifically, compliance with administrative law in the context of the regulatory process
- ° factors influencing corporate decision-making with respect to the regulatory process
- ° methods used outside Canada to achieve compliance with environmental law
- ° compliance with environmental law in Canada

The result of this general research will be a thorough understanding of the subject of compliance, both in the environmental and other areas and understanding of methods used outside Canada. The knowledge thus gained will be used to design and focus the more specific case-studies which follow.

(ii) Case-studies

During this stage of the project, detailed study will be made of the following two areas of environmental regulation:

- hazardous waste management
- air pollution regulation

Hazardous waste management is worthy of study because deliberate non-compliance is believed to be prevalent. Air pollution, consisting primarily of on-going emissions, presents a different set of regulatory problems. Together, these two areas represent the two major forms of pollution - accidental or deliberate "spills" and "emissions" - and are representative of the broader field of environmental regulation. They have been chosen for study because of their representative nature and because the Research Foundation, during previous projects, has gained understanding of the Ontario regulatory practice in each.

Because of the similarity between provinces with respect to their approaches to environmental regulation it is not necessary to do detailed case-studies in each. For that reason the scope has been limited to four provinces, including the federal and municipal role in each - British Columbia, Alberta, Ontario and New Brunswick. These four provinces provide a representative range in terms of geography, state of industrial development and environmental practices.

Case-studies will be undertaken by researchers with direct experience and knowledge in each of the four provinces. The Research Foundation will itself carry out the Ontario case-study and co-ordinate the other studies which will be done as follows:

- ° British Columbia - West Coast Environmental Law  
Research Foundation
- ° Alberta - Alberta Environmental Law Centre
- ° New Brunswick - Conservation Council of New  
Brunswick

The case-studies will consist primarily of interviews with government and industry officials and will include a

review of all relevant documentation. The following will be done:

- ° all applicable legislation and regulations will be reviewed to determine the extent to which they specify compliance techniques and the extent to which this is left to the discretion of administrative agencies
- ° an examination will be made of financial and staff resources made available for compliance achievement in each province
- ° staff of regulatory agencies will be interviewed to determine how they presently attempt to prevent non-compliance,, detect illegal activity and, after detection, what steps are taken to achieve compliance
- ° particular attention will be paid to the ways in which agencies decide upon the appropriate compliance technique used in each instance
- ° examination will be made of the adequacy of the arrangements for co-ordination of compliance efforts, between branches within environmental departments, between government departments and between levels of government



- statistics will be compiled to reveal trends with respect to use of techniques such as control orders and prosecutions and levels of fines imposed upon conviction
- interviews will be conducted with officials of regulated industries to determine which compliance techniques have the greatest impact on their decision-making process
- examination will be made of the existing and potential role of the public with respect to the compliance process
- an estimate will be made of the costs, borne by both the regulating agency and regulated industry, associated with each compliance technique
- an assessment will be made of the effectiveness of each technique

The case-studies will allow a determination to be made of the most promising avenues of reform. After completion of the general research and case-study stages of the project, draft recommendations will be formulated which can then be developed and finalized during the consultation process which follows.

(iii) Consultation and development of recommendations

A group of approximately thirty people, consisting of representatives from industry, government and environmental organizations in the four provinces listed above and, in addition, a number of academic authorities versed in the field will be assembled to review research findings and work towards consensus respecting recommendations for reforms to the compliance system.

Development of recommendations by means of this type of consultative process will provide a number of benefits which could not otherwise be obtained. These include the following:

- ° access to additional experience and expertise
- ° access to information - it is intended to draw the government and industry members of the group from agencies and business corporations examined during the case-studies to solicit their support in gaining access to information
- ° commitment to the project recommendations - because they have been involved in the process, it is believed that the different sectors will be accepting of the project recommendations which have been developed through this consensual approach

This process has been explicitly modeled on two recent initiatives, each of which has brought together all "stake-holders" to explore a common problem and search for mutually acceptable solutions. These are the Environment Canada "Consultation on the Environment and the Economy", carried out under the auspices of the Niagara Institute and the "Workplace Hazardous Materials Information" process, initiated by Labour Canada to develop a process for providing access to information on hazardous substances, while preserving confidentiality of trade secrets.

This type of consultation process is something new in Canada. It stands partway between traditional consultation, as practiced by Royal Commissions or government agencies holding public hearings on a particular subject, and mediation in which all parties agree at the outset to accept the eventual outcome of the process.

For the process to be successful, those involved must engage in a number of discussions spread over a period of time. This allows time for an understanding and appreciation on the part of all parties of the different perspectives of the other participants in the process. Further time and discussion are required to allow identification of common ground

and achievement of whatever consensus is possible.

At the present time, Environment Canada is engaged in such a consultative process in order to develop amendments to the Environmental Contaminants Act.

There are major benefits to be achieved from this approach. Where agreement is reached, implementation of recommendations will be easier. Where disagreements remain and consensus cannot be reached, the identification of clear differences and understanding of different perspectives will assist in future work toward resolving outstanding issues.

Enclosed as Appendix C. are descriptions of the two consultative processes upon which this component of the proposed project is modeled.

(iv) Presentation

The presentation component is critical to ensuring that the project findings and recommendations are translated into action by appropriate government agencies. Such action is most likely to occur if the recommendations are supported by the directly affected sectors and the general public.

For this reason, the presentation phase has been designed in a manner which will address these different audiences.

The presentation component includes a number of aspects, as listed below:

Publication: A comprehensive report will be written setting forth the relevant findings of both the general research and provincial case-studies, the outcomes of the consultation process, and the further recommendations advanced by the Research Foundation. Publication in book form is believed to be the manner most suitable for reaching the widest possible audience. Based on previous experience, it is anticipated that a publisher could readily be found for such a document.

After publication, every effort will be made in conjunction with the publisher's own marketing initiatives, to publicize the book among interested parties and the general public.

Government brief: A separate document intended specifically for the prime project audience - environmental regulatory agencies at the provincial level - will be prepared. This brief to governments will set forth, in clear and concise

terms, the project recommendations and supporting arguments.

Copies of this brief will be provided to all relevant agencies in Canada and follow-up discussions and verbal presentations will then be held.

Workshop: As another avenue for presentation, a workshop will be held to which will be invited key decision-makers from all sectors for detailed discussion of the project findings, while still in draft form, and their implementation. Such a discussion, as the last stage before finalizing the project recommendations, will provide the benefit of additional expert comment and increase the likelihood of implementation. This will be modeled upon the successful experience of the Research Foundation with its recently completed series of workshops titled "Roundtable Discussions of Toxic Chemicals Law and Policy".

Conference: To bring the project findings to a broader audience, a national conference will be held on the subject of compliance with environmental law. It is expected that such a conference would generate sufficient media coverage to make a significant contribution to public understanding of the issue and support for subsequent government action.

Other means of disseminating the project findings, such as preparation of articles for publication in both popular and learned periodicals and presentation at conferences and workshops, will be undertaken.

## 7. PROJECT BENEFITS

The project will provide benefits to the general public in terms of increased environmental protection, to government by providing recommendations for a means to bring about increased compliance with legislation in a cost-effective manner and to industry by allowing an opportunity to further its own goal of operating in a regulatory environment which recognizes and allows for the pressures and needs of the marketplace.

More specific benefits resulting from each component of the project are listed below.

### (i) Research

Research done during this stage will provide the opportunity to build upon the successful experience of other, primarily American, jurisdictions and other areas of administrative law. The review and synthesis of literature on approaches to influencing corporate behaviour will be of

value both for environmental protection and other areas of administrative law.

(ii) Case-studies

The case-studies will provide, for the first time, an understanding of what government is presently doing to achieve compliance with environmental law and how it might be done better. As mentioned earlier, this direct study, combined with the research which precedes it, is essential for the successful design of a compliance policy.

(iii) Consultation

A consultative process such as this will produce recommendations for changes in law and policy which, because they are based on consensus and have received support from all sectors, are politically viable. Where consensus is not possible further recommendations will be advanced by the Research Foundation. These recommendations will benefit as a result of the consultative process, since they will be based on a clear understanding of the perspectives and priorities of all parties.



(iv) Presentation

The presentation stage will benefit all those to whom it is addressed. The general public will receive a concise summary of all available information on the subject in convenient book form. Government will be presented with a more specific and technical document, coupled with opportunities for full discussion of the project recommendations. Both the presentation workshop and conference will stimulate much-needed discussion and dialogue of this important issue.

8. WORKPLAN

(a) Start-up

- . assemble consultation working group
- . make preliminary contacts with research sources as required
- . develop detailed workplan
- . convene meeting of advisory committee to discuss committee rôle, review workplan
- . convene meeting of full research team to develop methods of co-ordination during the project, review and finalize workplan

(b) Research

- . identify research sources and individual expertise
- . carry out comprehensive literature review and interviews
- . draft preliminary document setting forth research findings; provide to other members of the project team, advisory committee and consultation working group

(c) Case-studies

- . with members of the project team, decide upon government agencies and industries which will be subject of study in each province
- . with assistance from members of the consultation working group, make arrangements for as complete access to information as possible
- . carry out empirical research in four provinces, with co-ordination supplied by CELRF
- . each organization drafts report setting forth research findings and opportunities for reform
- . provide summaries of research findings to all members of the project team, advisory committee and consultation group

(d) Consultation

- . prepare and distribute to the consultation working group a document setting forth the

working method to be followed during consultation, a listing of the potential options to be considered and objectives of the consultative process

- . assemble full meeting of consultation working group for general discussion of the project; present and discuss with the group research and case-study findings; with the group, decide upon working method of the four regional sub-committees, which are made up of representatives from each province studied
- . each project organization will then assemble a meeting of the sub-committee in its province
- . further meetings with sub-committees will be held in each of the four provinces as required to develop recommendations for specific action to be taken in each province
- . draft sub-committee reports
- . distribute sub-committee reports to all members of the consultation group
- . assemble full meeting of the consultation working group to discuss sub-committee recommendations for

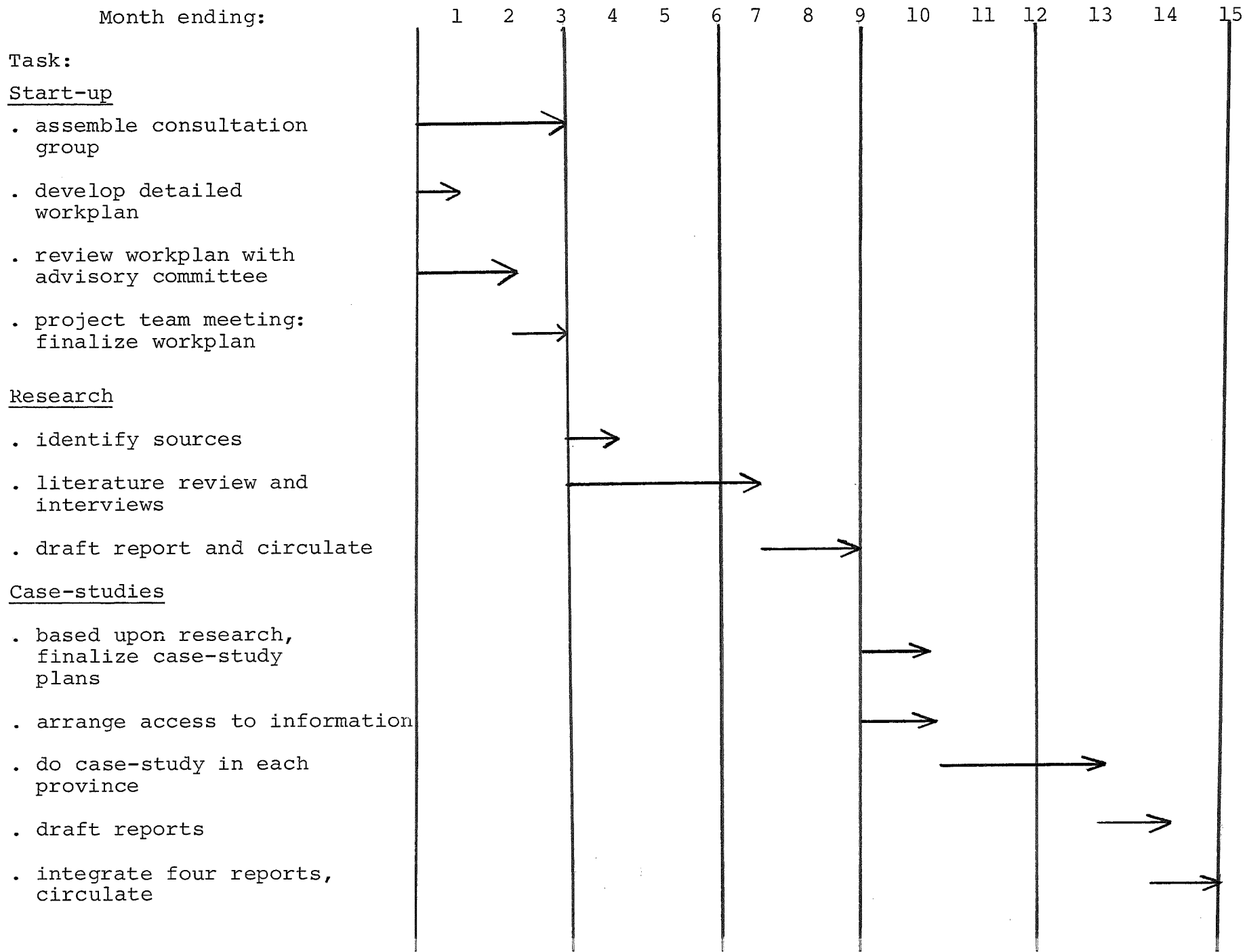
each province and more general recommendations

- . continue discussions at this full meeting to reach the highest level of consensus possible
- . prepare report setting forth conclusions and recommendations of the consultation working group

(e) Presentation

- . make initial contact and reach agreement with publisher
- . draft manuscript
- . review with advisory committee, revise as necessary, edit and finalize
- . publish
- . prepare and distribute briefs to provincial governments
- . follow-up discussions with government officials
- . convene workshop
- . convene conference
- . explore other presentation opportunities as they arise

## 9. TIMELINE



Month ending:

16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33

Task

Consultation

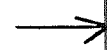
- . prepare and distribute base document to consultation group →
- . convene full consultation meeting →
- . regional meetings →
- . draft regional reports →
- . convene full consultation meeting →

Presentation

(a) manuscript and brief

- . prepare initial drafts →
- . review with project team and advisory committee →
- . finalize drafts →
- . book publication →
- . presentation of government brief →

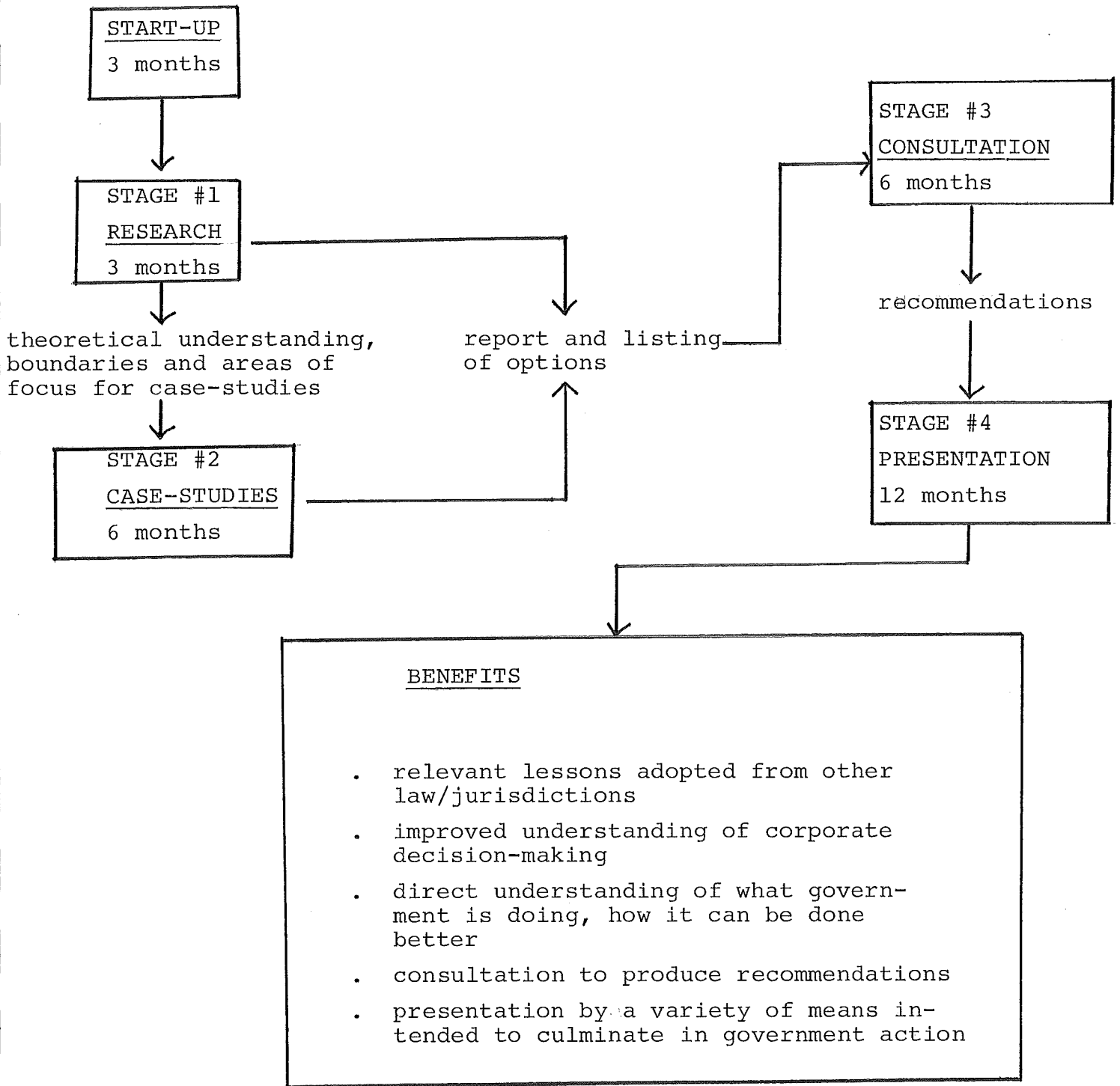
(b) workshop



(c) conference

- . presentation by other means →

10. PROJECT SUMMARY FLOWCHART





11. BUDGET

1. Start-up - 3 months

Salaries:

Project Director (half-time)	\$ 4,000
Secretarial	1,000
Telephone	1,000
Copying	100
Postage and courier delivery	500
Travel - meeting of project team	<u>2,000</u>
	8,600

2. Research - 6 months

Salaries:

Project Director (three-quarter time)	12,000
Contract research (full-time) 3 x \$12,000 each	36,000
Secretarial	3,000
Telephone	2,000
Copying	1,500
Postage and courier delivery	1,500
Purchase of documents	<u>2,000</u>
	58,000

3. Case-studies - 6 months

(a) Ontario

Salaries:

Project Director (full-time): includes coordination of other provincial studies	15,000
Contract research (full-time) 1 researcher	12,000
Secretarial	3,000

Telephone	1,000
Copying	500
Postage and courier delivery	500
Travel	<u>1,000</u>
	33,000

(b) each other province

Salaries:

Research	15,000
Secretarial	2,000
Telephone	500
Copying	500
Travel	1,000
Administration	3,000

TOTAL FOR THREE PROVINCES 66,000

Travel - meeting of project team 2,000

102,000

4. Consultation - 6 months

Salaries:

Project Director (2 months full-time)	5,000
Secretarial	2,000
Staff support for each sub-committee	8,000
Accommodation and meals (two meetings)	4,000
Travel, 2 meetings	15,000
Telephone	1,000
Copying	1,000
Postage and courier delivery	<u>2,000</u>

38,000

5. Presentation - 12 months

(a) Manuscript and brief to government

Salaries:

Project Director (6 months full-time)	15,000
Editor and copy-editor	8,000
Secretarial	4,000
Telephone	500
Copying	2,000
Postage and courier delivery	<u>1,000</u>
	30,500

(b) National workshop (includes subsidized travel) 15,000

(c) Conference (partially self-funded) 15,000

60,500

6. Advisory Committee

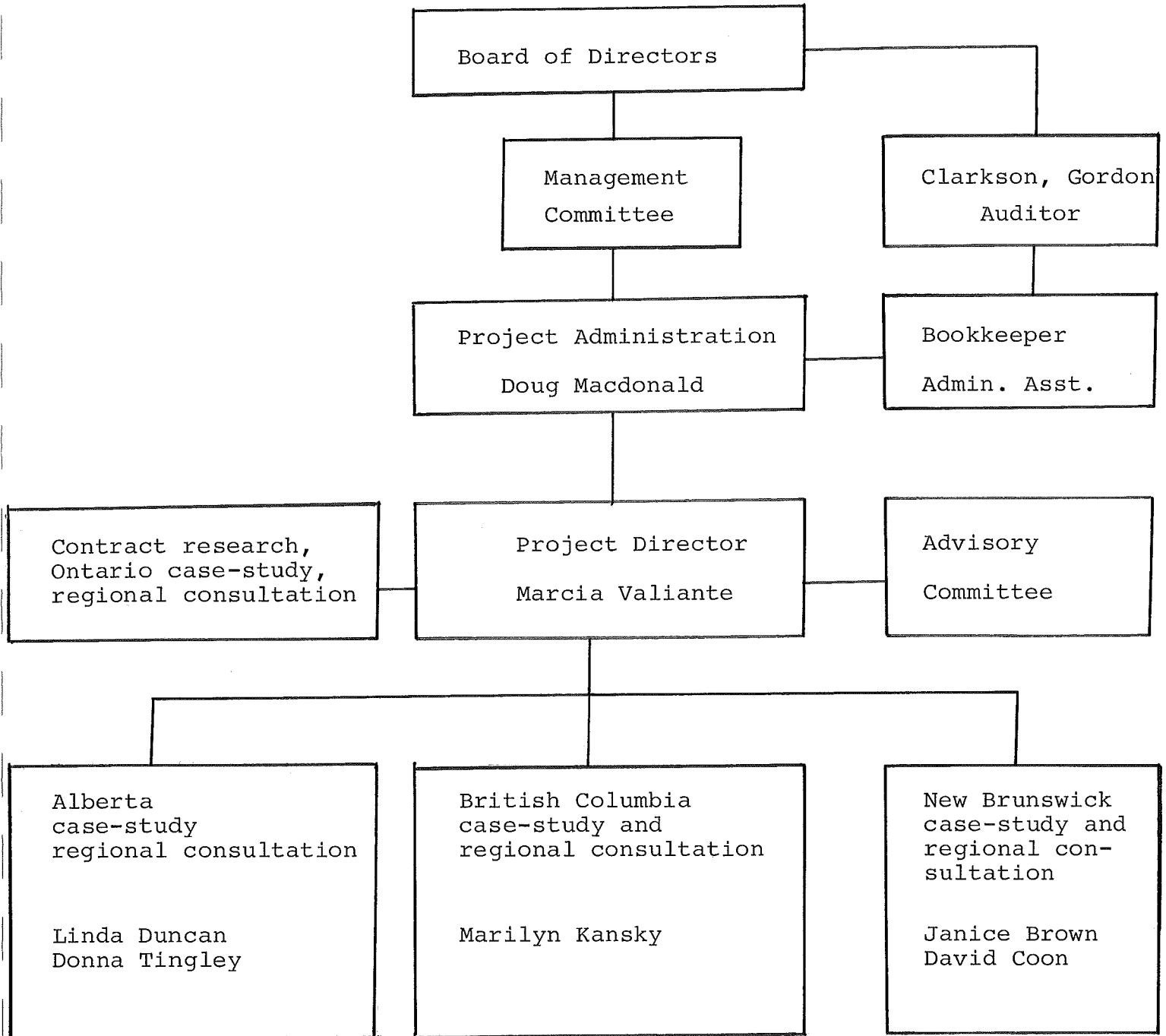
Honouraria \$1,000 x 8 8,000

7. Administrative overhead  
(includes Executive Director salary) \$49,000

TOTAL \$320,100

12. PROJECT MANAGEMENT AND STAFFING

(a) Management



(b) Project Staffing

Mr. Doug Macdonald has a background in the government and non-profit sectors and since joining the Canadian Environmental Law Research Foundation in 1982 has successfully carried a number of environmental research projects through successive stages from initial planning to completion, publication and presentation.

Ms. Marcia Valiante, Director of Research of the Canadian Environmental Law Research Foundation, has an academic background which combines science and environmental law. She has recently participated in the Research Foundation study of regulation of toxic and oxidant air pollution and in addition has planned and co-ordinated research studies in a number of different environmental areas.

Ms. Marilyn Kansky has served with the West Coast Environmental Law Research Foundation since 1981, with duties including litigation, administration and the planning and implementation of a variety of environmental research projects.

Ms. Linda Duncan, Executive Director of the Alberta Environmental Law Centre since 1981, has managed a number of environmental research projects and co-ordinated planning for the conference on Environmental Enforcement, held in Edmonton in May, 1984.

Ms. Donna Tingley has extensive experience in the public sector and has undertaken research studies pertaining to different aspects of environmental regulation. Since March, 1984, she has acted as staff counsel to the Alberta Environmental Law Centre.

Ms. Janice Brown Harvey, Executive Director of the Conservation Council of New Brunswick, has co-ordinated environmental projects covering such fields as energy conservation, hazardous waste management and ground-water contamination.

Mr. David Coon, a graduate in biology from McGill University, has served with the Pollution Probe Foundation as manager of the Ecology House project, written a column on energy conservation for the Toronto Globe and Mail and, since February, 1985, has undertaken research and management duties with the Conservation Council of New Brunswick.

13. ADVISORY COMMITTEE

An advisory committee of eight members has been created, consisting of a balanced mix of representatives of industry, government, environmental organizations and research organizations.

The responsibilities of the advisory committee will be as follows:

- ° to review and comment upon detailed workplans for each of the research components before research is commenced
- ° to provide advice on specific points, as requested, during the course of the research and case-studies
- ° to review and comment upon draft recommendations
- ° to review and comment upon the final manuscript before it is submitted for publication

The tasks outlined above represent a significant commitment of time and effort on the part of Advisory Committee members. For this reason, funds sufficient to provide an honourarium of \$1,000 each have been included in the project budget.

Members of the advisory committee are:

- ° Mr. Ken Bungay  
Assistant Counsel  
General Motors
  
- ° Mr. Walter Giles  
Associate Deputy-Minister  
Ontario Ministry of the Environment
  
- ° Mr. Nicholas Gwynn  
Project Leader  
Federal Statutes Compliance Project  
Department of Justice, Canada
  
- ° Mr. Colin Isaacs  
Executive Director  
Pollution Probe Foundation
  
- ° Mr. Michael Nassichuk  
Chief, Water Quality Unit  
Department of Fisheries and Oceans  
Vancouver
  
- ° Mr. Michael Perley  
Executive Co-ordinator  
Canadian Coalition on Acid Rain
  
- ° Mr. Philip Stenning  
Centre of Criminology  
University of Toronto
  
- ° Canadian Chemical Producers' Association representative  
(to be confirmed)



14. THE CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION

The Canadian Environmental Law Research Foundation is a registered charitable organization, founded in 1970. The Foundation shares office space and works in close partnership with its sister organization, the Canadian Environmental Law Association.

The primary substantive focus of the Foundation's research activities is toxic chemical contamination of the environment. With respect to procedural matters, attention is centred upon such things as the interface between science and environmental law, the problem posed by political and administrative jurisdictional diversity for integrated, holistic environmental protection and the environmental assessment process. The Foundation carries out research in environmental law and policy areas related to these and other issues and disseminates the products of that research by means of its publishing and conference programs.

The Foundation's best known publication is Environment on Trial (C.E.L.R.F., 1978) a comprehensive guide to Ontario environmental law. Others include Poisons in Public (Lorimer, 1980), Acid Rain: The North American Forecast (Anansi, 1980), Environmental Rights in Canada (Butterworths, 1981), and,

most recently, Canadian Occupational Health and Safety Law Handbook (CCH, 1983). The Foundation is also publisher of the Canadian Environmental Law Reports, the only environmental law reporter in Canada.

In April, 1984, the Foundation published jointly with the Pollution Probe Foundation Breaking the Barriers which is a study of select action which might be taken by governments at all levels to facilitate increased recycling and reduction of industrial waste.

In June of that year, the Foundation, working under contract for Environment Canada, completed an analysis of potential elements which might be included in an environmental bill of rights to be introduced at the federal level.

Since April of 1984, the Foundation has carried out a study of legal reforms required to facilitate citizen intervention across the U.S. - Canada border in transboundary pollution cases. The study, carried out with financial assistance from the Joyce Foundation of Chicago, will be completed and published by Carswell Legal Publications in March, 1986. The Foundation intends to do further work in the transboundary area by initiating in 1986 a study of potential application of the concept of uniformity of law in the Great Lakes basin.

In October of 1983, working with the Environmental Law Institute of Washington, D.C., with financial assistance provided by the Donner Canadian Foundation and American sources, the Research Foundation initiated a study of legal reforms required to better regulate local and long-range transport of toxic and oxidant air pollutants. That study will be published in February, 1986 by CCH Canadian Ltd. and distributed in both Canada and the United States.

Other current research includes:

- . an examination of the environmental assessment process in Ontario
- . a study of news media reporting of toxic contamination cases
- . a study of waste management legislation in Ontario, done under contract to the Ontario Waste Management Corporation

Recent conferences and seminars hosted by the Foundation include:

- . October 9, 1984: a one-day conference on the regulation of biotechnology
- . October 31, 1984: a one-day workshop on toxic and oxidant air pollution
- . February 27, 1985: a roundtable discussion of pesticides law and policy, hosted jointly with the Law Reform Commission of Canada
- . February 28, 1985: a one-day workshop on the Ontario Environmental Assessment Act
- . May 6, 1985: a one-day workshop on jurisdictional barriers to environmental protection in the Great Lakes basin
- . November 1, 1985: with staff of Dartmouth College, New Hampshire, discussion of a proposed bilateral network for transboundary pollution issues

In terms of work done by the Research Foundation specifically centred on compliance with environmental legislation, mention should be made of the following two conferences hosted by the Foundation:

One-day conference - The future of environmental regulation  
in Canada, January 1980

One-day conference - The Economic Impact of Environmental  
Regulation, February, 1981

In 1983 the Foundation published the report titled Control Orders and Industrial Pollution Abatement in Ontario, by Dr. Robert Gibson.

Two current research projects of the Foundation centre upon the subject of compliance. One, done under contract for the Great Lakes Institute, includes an examination of the presentation of evidence in toxic law cases and the other, done for the Ontario Waste Management Corporation, includes consideration of potential future changes in waste management legislation and attempts to achieve compliance in that area.

The previous experience and proven ability to successfully undertake projects combining research and consultation pro-

cedures, such as are proposed here, demonstrate the ability of the Research Foundation to carry the proposed project through to a successful conclusion.

15. FOOTNOTES

- 1 It should be noted that some estimates of compliance levels for particular industries have been made. Estimated compliance levels for Chlor-alkali manufacturing plants, 1970 - 1983; Pulp and Paper Industry Discharge, 1969 - 1982; and Canadian Petroleum Refining Industry Discharges, 1972 - 1980 are contained in the Final Report of the Inquiry on Federal Water Policy, Currents of Change, September 1985, pp. 56, 57, and 58.
- 2 Ackerman, A. and B. Clapp, Fraser River Task Force Report, July 30, 1980
- 3 Environment Canada and Ontario Ministry of the Environment, Canada-Ontario Agreement on Great Lakes Water Quality; Inventory of Major Industrial Point Source Discharges in the Great Lakes Basin, Canada, 1982, January 1984.
- 4 Peat, Marwick and Partners, Economic Incentive Policy Instruments to Implement Pollution Control Objectives in Ontario, July, 1983, p. II-11.
- 5 U.S. General Accounting Office, Report to the Administrator, Environmental Protection Agency, Wastewater Dischargers are not Complying with EPA Pollution Control Permits, GAO/RCED-84-53, December 2, 1983, ii.
- 6 Inquiry on Federal Water Policy, supra note 1, pp. 106-107.
- 7 See, for example, International Joint Commission, Great Lakes Water Quality Board, 1985 Report on Great Lakes Water Quality, June 1985, c.2; International Joint Commission, Great Lakes Water Quality Board and Science Advisory Board, Committee on the Assessment of Human Health Effects of Great Lakes Water Quality, 1983 Annual Report, November 1983.
- 8 "Dump penalty of \$3 million called example," Toronto Globe and Mail, February 6, 1985, p. M1.

- 9 U.S. General Accounting Office, Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter, GAO/RCED-85-2, February 22, 1985, p. ii.
- 10 Environment Council of Alberta, Environmental Standards, September, 1982, p. 181.
- 11 Howard Eddy, Sanctions, Compliance Policy and Administrative Law, Law Reform Commission of Canada, 1981.
- 12 Murray Rankin and Peter Finkle, "The Enforcement of Environmental Law: Taking the Environment Seriously" in Environmental Law in the 1980s: A New Beginning The Canadian Institute of Resources Law, pp. 169-196; Environmental Standards supra note 9.
- 13 John Swaigen and Gail Bunt, Sentencing in Environmental Cases, Law Reform Commission of Canada, 1985.
- 14 Law Reform Commission of Canada, Crimes Against the Environment, Working Paper 44, 1985.
- 15 Peter Victor, Terry Burrell, Environmental Protection Regulation: Water Pollution and the Pulp and Paper Industry, Technical Report #14, Economic Council of Canada, August, 1981.
- 16 Brian Felske, Sulphur Dioxide Regulation and the Canadian Non-Ferrous Metals Industry, Economic Council of Canada, Technical Report No. 3, Regulation Reference, February 1981.
- 17 Lynne Heustis, Policing Pollution: The Prosecution of Environmental Offences, Law Reform Commission of Canada, Working Paper, September, 1984; Kernaghan Webb, Industrial Water Pollution Control and the Environmental Protection Service, Law Reform Commission of Canada, Draft, May, 1983.
- 18 Donald Dewees, Evaluation of Policies for Regulating Environmental Pollution, Economic Council of Canada, Working Paper No. 4, Regulation Reference, Sept. 1980, pp. 36-7.



- 19 Christopher Stone, Where the Law Ends, 1975, p. 40.
- 20 Canada, Royal Commission on Corporate Concentration, Report, March, 1978, pp. 391, 392.
- 21 Department of Justice, Compliance with Federal Statutes, Draft Information, February, 1984, p. 1.
- 22 Dale Miller, Psychological Factors Influencing Compliance, Federal Statutes Compliance Project, February 7, 1985.
- 23 Personal Communication, Mr. Nicholas Gwynn, Director, Federal Statutes Compliance Project, Department of Justice, April, 1985.

APPENDIX A.

Cuurricula Vitae:

Canadian Environmental Law Research Foundation

Doug Macdonald  
Marcia Valiante

West Coast Environmental Law Research Foundation

Marilyn Kansky

Alberta Environmental Centre

Linda Duncan  
Donna Tingley

New Brunswick Conservation Council

Janice Brown  
David Coon

DOUGLAS CHARLES MACDONALD

Born: June 23, 1947

Office: 977-2410

Home: 465-1231

100 Bain Ave.,  
#8 The Lindens  
Toronto, Ontario

WORK EXPERIENCE

Oct. 1982 - present:	Executive Director Canadian Environmental Law Research Foundation
Sept. 1980 - Oct. 1982:	Special Assistant to Mayor Lastman Mayor of the City of North York
Oct. 1978 - Oct. 1980:	Secretary The Agora Foundation
July 1976 - July 1977:	Executive Assistant to Mayor Lastman
May 1974 - June 1976:	Research Assistant to Mayor Lastman

EDUCATION

M.A., Canadian History, University of Toronto

Completed first year of Phd. program, Canadian History, U. of T.

VOLUNTEER ACTIVITIES

- . three terms a member of the Board of Directors of the Bain Apartments Co-operative, a 260 unit housing co-operative
- . member Board of Directors and Board of Governors, Canadian Coalition on Acid Rain
- . member Board of Directors, Canadian Environmental Law Association

## PUBLICATIONS

- . AGORA, the newsletter of the Agora Foundation: No. I, Vols. I - IV
  
- . "Shutdowns"; Perception Magazine, periodical of the Canadian Council on Social Development, Jan./Feb., 1981
  
- . "Where Does the Buck Stop?" Policy Options, periodical of the Institute for Research on Public Policy, Nov./Dec., 1981
  
- . "Out from Under"; Quest Magazine, November, 1982
  
- . "Toronto Drinking Water: Is it Safe?": radio program broadcast on CJRT-FM, October 7, 1984
  
- . "The Ethos of Environmental Protection", with Marcia Valiante: a paper submitted to the symposium on environmental regulation, Ontario Ministry of the Environment, November 1 - 2, 1984
  
- . Managing Editor, Canadian Environmental Law Reports

MARCIA ANNE VALIANTE

Address: 103 Dewson Street  
Toronto, Ontario  
M6H 1H4

Telephone: (416) 537-3046

Status: Canadian Landed Immigrant  
United States Citizen

EXPERIENCE

October 1983 to  
date CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION,  
Toronto. Director of Research

Primary responsibilities include scientific and  
legal research and writing for the project entitled  
"Transboundary Toxic and Oxidant Air Pollution",  
done jointly with the Environmental Law Institute,  
Washington, D.C.; supervision of a number of other  
research initiatives of the Foundation.

August 1982 to  
August 1983 CANADIAN ENVIRONMENTAL LAW ASSOCIATION, Toronto.  
Articling student. Duties included legal research,  
preparation of legal memoranda, preparation for  
and attendance at administrative hearings.

EDUCATION

September 1979  
to June 1982 OSGOODE HALL LAW SCHOOL, Toronto, Ontario

Degree: LL.B.

Honours: Kenneth Gibson Morden Memorial Prize

February 1973  
to December 1977 UNIVERSITY OF NEW HAMPSHIRE, Durham, New Hampshire.

Degrees: B.S.C. (Environmental Conservation)  
B.A. (Political Science)

Honours: Magna Cum Laude  
Member, National Social Science Honour  
Society; Member, National Political  
Science Honour Society; Dean's List  
(every semester)

## PUBLICATIONS

- . Editor, Canadian Environmental Law Reports
- . "Energy in Canadian-American Relations" and
- . "Of Oil and Gas: A Primer on the Role of Oil and Gas in Canadian-American Relations"  
  
both in Journal of Natural Resource Management and Interdisciplinary Studies (University of Manitoba) Vol. III, No. 1 (March, 1978).
- . Brief submitted on behalf of the Canadian Environmental Law Research Foundation and Canadian Environmental Law Association to the Royal Commission on the Economic Union and Development Prospects for Canada
- . Brief, entitled "Nitrogen Oxides Emissions from Motor Vehicles as a contributor of Oxidant Air Pollution", submitted to the Sub-committee on Acid Rain of the House of Commons Standing Committee on Fisheries and Forestry on behalf of the Canadian Environmental Law Research Foundation.
- . "Biotechnology and the Environment: A Regulatory Proposal", with Paul Muldoon: presented at a one-day conference, October 9, 1984
- . joint submissions by the Canadian Environmental Law Association and Canadian Environmental Law Research Foundation on amendments to the Environmental Contaminants Act, with Frank Giorno, July, 1985
- . "Water Quality and Air-borne toxics: Symbol of the next Generation of Environmental Problems"; submission to the Inquiry on Federal Water Policy, November 1984
- . "The Ethos of Environmental Protection", with Doug Macdonald: submission to the Ontario Ministry of the Environment symposium on environmental regulation, November 1 - 2, 1984

CURRICULUM VITAE

MARILYN J. KANSKY

Residence: #23-1507 E. 2nd Ave.  
Vancouver, B.C.  
V5N 1C8

Phone: 253-9419

Office: #1001-207 W. Hastings  
Vancouver, B.C.  
V6B 1H7

Phone: 684-7378

PROFESSIONAL EXPERIENCE

WEST COAST ENVIRONMENTAL LAW ASSOCIATION

Position: Executive Director      Date: 1984 to present

Description: Responsibilities include:  
Policy formulation, development and coordination  
of research projects, legal work, administration  
and supervision of staff. Also, writing and  
editing legal materials and law reform briefs.

Position: Staff Counsel      Date: 1981 to 1984

Description: Responsibilities included:  
Providing legal advice to citizens concerning  
environmental issues, representing citizens and  
organizations in legal suits, preparation of briefs  
concerning law reform, appearances before  
administrative tribunals, lobbying government  
concerning law reform and providing television  
and radio interviews. Legal suits included the  
conduct of several private prosecutions in the  
criminal courts.

RHODES, MCSHANE (Barristers & Solicitors)

Position: Articled Law Student      Date: 1980-1981

Description: Gained considerable experience concerning criminal  
litigation. In particular, worked in the area of  
environmental criminal litigation as a legal  
representative and researcher. Advised a major  
Indian organization concerning environmental  
policy.

Marilyn J. Kansky

UNION OF B.C. INDIAN CHIEFS

Position: Legal Researcher      Date: 1980

Description: Conducted research concerning uranium mining in British Columbia. Represented Indian Bands at the hearings into uranium mining and prepared a final report and draft legislation regulating exploration and mining.

ROYAL COMMISSION INTO URANIUM MINING

Position: Researcher      Date: 1979-1980

Description: Research concerning transcripts and statements of evidence for compilation of an index to the hearings.

EDUCATION

Simon Fraser University      Bachelor of Arts, Communications,  
1976, Honours Awarded

University of British Columbia  
Bachelor of Laws, 1979

AWARDS

Royal Canadian Engineers' Scholarships, 1970 and 1971

PUBLICATIONS

Marilyn Kansky, "Private Prosecutions from the Public's Perspective", Environmental Enforcement, Editor Linda Duncan, 1985

Marilyn Kansky, "Pesticide Regulation and the IBT Controversy", Pesticide Use in Urban Environments, Simon Fraser University, 1982

Susan Gilbert and Marilyn Kansky, editors, West Coast Environmental Law Reporter, Volume 1, West Coast Environmental Law Research Foundation, 1984

Susan Gilbert and Marilyn Kansky, editors, West Coast Environmental Law Reporter, Volume 2, Fisheries and Oceans Canada



LINDA FRANCIS DUNCAN

Curriculum Vitae

EDUCATION

Bachelor of Arts, University of Alberta, 1970.  
Bachelor of Laws, University of Alberta, 1973.  
Admitted to Alberta Bar, 1974.

EXPERIENCE

Articles, Duncan & Craig, Edmonton, 1973-74.

Legal draftsman, Legislative Council, Attorney General's Department, Government of Alberta, 1974-75.

Social planner, Edmonton Social Planning Council, 1975-79.

Part-time law practice, 1975 to 1981.

Legal advisor to Legal Reform and Community Action projects of Student Legal Services, University of Alberta from September 1978 to April 1981.

Private consultant in environmental and social planning 1979 to 1981.

Executive Director, Environmental Law Centre, December 1981 to present.

MEMBERSHIP AND PROFESSIONAL AFFILIATIONS

Active member, Alberta Law Society since 1974.

Active member, Canadian Bar Association, 1975 to present.

Chairperson, Northern Alberta Environmental Law Subsection of the Canadian Bar Association, 1978 to 1980, 1982-83.

Program Chairman, Alberta Environmental Law Subsection, Canadian Bar Association, 1983-1984.

Member, Public Legal Education Association of Alberta.

Member of Legal Advisory Committee, Save Tomorrow, Oppose Pollution, 1975 to 1980.

Member of Canadian Environmental Advisory Committee (non-government representative), 1979-1980.

Member, Canadian Petroleum Law Foundation

Membership and Professional Affiliations continued

Founding member of Alberta Environmental Law Association, 1979.

Member of Board of Directors, Alberta Wilderness Association, 1980 to 1981.

Honorary member, Preserve Agricultural Land Association (PAL) since 1981.

Appointed member of Science Advisory Committee, Environmental Council of Alberta, 1983 to present.

Editor, Environmental Law Centre quarterly newsletter on Western Canadian environmental law and policy, 1983 to present.

WRITING AND PUBLISHING EXPERIENCE

Law editor, Branching Out magazine, 1976 to 1980.

Editor and contributing writer, People First, a community self-help planning manual, published by the Edmonton Social Planning Council, 1977.

Co-author, Environmental Bill of Rights, prepared for the Northern Alberta Environmental Law Subsection of the Canadian Bar Association, 1977.

Co-author, Hazardous Waste Tabloid, for Save Tomorrow, Oppose Pollution, commissioned by the federal Department of the Environment, 1979.

Editing and advice to law students in the preparation of the Student Legal Services pamphlets entitled: Air Pollution: A Citizen's Guide to Alberta Legislation; The Environmental Cope Kit: A Citizen's Guide to Public Participation; The Environmental Legal Action Handbook: A Citizen's Guide to Legal Action, 1979-81.

Author, May the Best Lion Win: Current State of Resources for Public Intervenors in the Alberta Environmental Review Process and Recommendations for Change, prepared for the Environmental Assessment Division of Alberta Environment, 1980, 130 pages. (unreleased)

Author, Legal Mechanics Chapter, Rosssdale Living Heritage Park: An Historical Interpretative Community Plan, for Rosssdale Community League and the Alberta Historical Resources Foundation, 1981.

Author, The Minister May...or Environmental Law in Alberta: A Prognosis, address to the Symposium on Environmental Management Strategies: Past, Present and Future, co-sponsored by the Alberta Society of Professional Biologists and Alberta Environment, Edmonton, 1980.

Writing & Publishing Experience continued:

Author, Not Every Cloud Has a Silver Lining: Acid Rain in the Prairies, legal aspects, sponsored by federal Department of the Environment, 1981.

Author, Equal Pay for Work of Equal Value: A Public Interest Perspective on Intervenor Costs, a paper presented to the Banff Conference on Natural Resources Law sponsored by the Canadian Institute of Resources Law, April 1983, Banff.

Author, Western Canadian Water Law: Issues of the Decade, a paper presented to the Water Survival Gathering for Prairie and Northern Environmentalists, Edmonton, March 1983.

Author, Planning for the Environment, a presentation to a seminar series entitled Environmental Law, Making It Work for You, Edmonton, March 1983.

Editor, Environmental Law Centre quarterly newsletter on Western Canadian environmental law and policy, 1983 to present.

Address to the Canadian Water Resources Association (Alberta) Annual Conference, The Quality of Alberta's Drinking Water, on Legislating Safe Drinking Water, October 1984, Red Deer.

Author, Enforcement of the Federal Fisheries Act, a paper presented to the Inquiry on Federal Water Policy, September 1984, Edmonton.

Address to Annual Conference of Fish and Wildlife Officers, Alberta Fish and Wildlife Division, Alberta Government Enforcement Policy and Practices, April 1984.

OTHER RELATED EXPERIENCE

Canadian delegate to Canada-United States Environmental Coalition (CUSEC) Meeting, Washington, D.C., March 1981.

Alberta delegate to Roundtable Discussions on Toxic Chemicals: Law and Policy in Canada, organized by the Canadian Environmental Law Research Foundation, Toronto, June, 1981.

Participant, Environmental Law in the 1980's: A New Beginning, A Colloquium at the Banff Centre, convened by the Canadian Institute of Resources Law, November, 1981.

Delegate, Water Policy for Western Canada: The Issues of the Eighties, Banff School of Management, Banff, September 1982 and April 1983.

Legal Counsel for public intervenors before the Energy Resources Conservation Board.

Other Related Experience continued:

Chairman, Roundtable Discussion on Law and Policy Related to the Management of Hazardous Waste in Alberta, October 1983, Edmonton.

Conference Coordinator, National Conference on the Enforcement of Environmental Laws, May 1984, Edmonton.

Delegate, Second National Conference on Environmental Dispute Resolution, October 1984, Washington, D.C.

Participant, Environmental Protection and Resource Development: Convergence for Today, September 6 - 9, 1984, Banff.

## Curriculum Vitae

**DONNA TINGLEY**

Environmental Law Centre  
202, 10110 - 124 Street  
Edmonton, Alberta, T5N 1P6  
Phone: (403) 482-4891

### PROFESSIONAL EXPERIENCE

- |                           |   |                            |
|---------------------------|---|----------------------------|
| <u>Staff Counsel</u>      | Environmental Law Centre  | March 1984<br>to present   |
| <u>Policy Coordinator</u> | Native Secretariat<br>Government of Alberta   | July 1981 to<br>Feb. 1984  |
|                           | <ul style="list-style-type: none"><li>* coordinated and developed policy concerning Native land claims and other Native land related issues.</li><li>* provided legal support to the Native Secretariat including the negotiation and drafting of contracts.</li><li>* provided advice on Native legal issues such as the "aboriginal rights sections" in the new Constitution.</li></ul> |                            |
| <u>Student-at-Law</u>     | Attorney General's Dept.<br>Government of Alberta   | July 1980 to<br>June 1981  |
|                           | <ul style="list-style-type: none"><li>* articulated to the Civil Law Section; in particular, the litigation group.</li><li>* admitted to the Alberta bar, July, 1981.</li></ul>   |                            |
| <u>Research Assistant</u> | Canadian Institute of<br>Resources Law<br>University of Calgary   | May 1979 to<br>August 1979 |
|                           | <ul style="list-style-type: none"><li>* undertook research for Professor A.R. Lucas on the effect of environmental regulation on oil and gas development in frontier areas.</li></ul>   |                            |
| <u>Research Assistant</u> | Canadian Arctic Resources<br>Committee  | May 1979 to<br>August 1979 |
|                           | <ul style="list-style-type: none"><li>* provided legal research on a contract basis in the areas of international environmental law and administrative law.</li></ul>   |                            |
| <u>Research Assistant</u> | Canadian Arctic Resources<br>Committee  | May 1978 to<br>August 1978 |
|                           | <ul style="list-style-type: none"><li>* performed legal research under Professor Constance Hunt on the legal mechanisms for establishing a wilderness park in the northern Yukon.</li></ul>   |                            |

<u>Research Officer</u>	Leader of the Opposition Alberta Legislature	Sept. 1975 August 1977
<u>Legislative Intern</u>	Speaker of the Assembly Alberta Legislature	Sept. 1974 June 1975

EDUCATION

University of Calgary

- \* 1977 - 1980  
LL.B. with emphasis on courses in resource law.  
Scholarships: University of Calgary Bursary in Law 1978  
Gill Cook Scholarship 1979.
- \* 1970 - 1974  
B.A. in political science, specializing in Canadian and  
Alberta studies, with related work in history, French  
and sociology.
- \* 1970 - 1972  
Studied education, majoring in music.

PUBLICATIONS

- \* Constance D. Hunt, Rusty Miller and Donna Tingley,  
Wilderness Area, Northern Yukon Series, Monography  
#2, Canadian Arctic Resources Committee, Ottawa, 1979.
- \* Donna Tingley, "Affirmative Action: Some Legal Problems",  
The Writs, Vol. 1, No. 4, 1980, pp.4-6.
- \* Donna Tingley, "Interjurisdictional Environmental Aspects of  
the Proposed Slave River Dam", Environmental Law Centre,  
September, 1984.
- \* Donna Tingley, "Underground Storage Tanks: A Legal Review",  
Environmental Protection Service, Environment Canada,  
August, 1985.

Janice\_Brown\_Harvey

Janice Brown Harvey has been the Executive Director of the Conservation Council of New Brunswick since August 1983. In an administrative capacity, she has been in charge of fundraising, budgeting and management of financial operations of CCNB. She has hired and managed a staff of up to nine, and has secured and overseen annual budgets of \$150,000.

Besides the administration responsibilities, she collaborates on the design and implementation of research project development, sets priorities for issue identification, and has sole responsibility for certain priority issues. She also works closely with media and is responsible for publication of the newsletter and other materials.

Her participation in the Niagara Institute/Environment Canada multi-stakeholder consultations has established the Conservation Council as a major player on the national environmental scene. She is the current chair of the National Steering Committee of the Canadian Environmental Network, a body which allows over 800 environmental groups across the country to communicate and share information and strategies with each other.

Janice Brown Harvey began her involvement in environmental concerns as a volunteer with the Maritime Energy Coalition, a group which promoted environmentally and economically sound energy strategies. She holds a Bachelor of Education in history and English from the University of New Brunswick.

### David\_Coon

David Coon has been a researcher at the Conservation Council since February 1985. His responsibilities include developing and managing most of the educational and advocacy activities surrounding the Conservation Council's priority issues, as well as responding to other environmental concerns raised by government, the public, or the media. He is currently managing a campaign to focus attention on the need for groundwater protection and safe drinking water legislation in New Brunswick.

Prior to joining the Conservation Council, David Coon worked with the Pollution Probe Foundation for five years. While with Probe he managed the Ecology House project and worked as Probe's conservation and renewables researcher.

He has written and spoken widely on environmental and resource issues, with a number of reports and publications to his credit. He has also written a regular feature for the Probe Post, and an "energy consumer" column for the Globe and Mail.

David Coon first got involved with environmental issues as an organizer of a campus environmental group at McGill University in 1976. He holds a Bachelor of Science in Biology from McGill.



APPENDIX B.

Other Research Team Organizations

# WCELRF

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## WEST COAST ENVIRONMENTAL LAW RESEARCH FOUNDATION

### OBJECTIVES

To support and conduct legal research to develop standards and objectives that will ensure the maintenance of environmental quality.

To provide the public, industry and government with information on environmental legal issues.

### ACTIVITIES

#### Publications

- . West Coast Environmental Law Reporter, Volume 1
- . new edition of the Environmental Law Handbook
- . new edition of the Land Use Law Handbook
- . Bibliography of Hazardous Wastes Legal Materials (unpublished)
- . Recreational Access to Crown Land in British Columbia
- . Pesticide Use in Urban Environments: Conference Proceedings
- . Making the News, a Guide to Using the Media
- . Municipal Energy Conservation and the Law

#### Newsletter

The Research Foundation publishes a newsletter on a quarterly basis. The newsletter offers comprehensive information on environmental legal issues in British Columbia. For example, it has articles

regarding recent environmental legislation, case comments, newsbriefs, and descriptions of current activities of the Foundation and Law Association and other environmental organizations.

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**Litigation**

Several test cases were initiated or continued in 1985 to either clarify existing environmental legislation or expand the scope of environmental protection through the courts.

**Lawyers for the Association:**

- . represented citizens concerned about the environmental impact of a condominium development on Saltspring Island: Makaroff and the Queen, B.C.S.C. March, 1985
- . provided research and legal assistance for the Meares Island court case: MacMillan Bloedel Limited and Mullin et al, B.C.S.C., January, 1985, B.C.C.A., March, 1985

- . commenced prosecution of a company for violation of its Waste Management Permit; R. v. MacMillan Bloedel Ltd., Nanaimo Provincial Court, January, 1985
- . represented a citizen in a judicial review of a decision of the Environmental Appeal Board; Lawson v. Environmental Appeal Board, B.C.S.C., November, 1984
- . continued court action against a mining company for damages resulting from destruction of fish populations in a major steelhead river: The Steelhead Society of B.C. et al v. Carolin Mines Ltd., B.C.S.C., Vancouver

**Law Reform**

This past year the Law Association continued an active role regarding law reform. Its major efforts concentrated on recycling of solid and hazardous wastes and pesticide law and regulation. Positive government response included:

- . Recommendation by Agriculture Canada's Task Force to appoint a Pesticide Advisory Board to hold public hearings
- . A Draft Waste Management Plan which has waste reduction as a major objective

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**Library**

The Foundation operates an extensive environmental legal resource library. It includes holdings on major environmental projects in the province such as the Kemano, Quinsam Coal, Lower Mainland Refuse and Site C Projects. It also includes a major collection of material

regarding pesticides, toxic chemicals, hazardous wastes, and environmental education. Newspaper clipping files are also maintained.

The library is open to the public.

**Education**

Education has always been a Research Foundation priority. Educational activities this past year included:

- . presentation of a paper to the 37th Annual Conference; Canadian Water Resources Association, Vancouver
- . lecture on Private Prosecutions at the National Conference on the Enforcement of Environmental laws; Environmental Law Centre, Edmonton, Alberta
- . organization of Regional Conference for Environmental Non-Governmental Organizations, Vancouver
- . presentation on Legal Liabilities and Responsibilities, to the Living with Hazardous Commodities Conference; Fraser Valley College, Vancouver

- . presentation on The Public Hearing Process and An Overview of Environmental Law, to the Environmental Non-Governmental Organizations Regional Conference, Vancouver
- . presentation as part of an Advisory Process Concerning the Legal Aspects of Alternatives to Pesticide Use, Environment Canada, Ottawa
- . presentation on Environmental Decision-Making; The Public Voice, to the Across the Border: Transboundary Environmental Issues in the Pacific Northwest Conference; Pacific Northwest Environmental Institute, Victoria

- . lecture on Public Nuisance Actions and the Role of the Attorney General to Environmental Law Course, Faculty of Law, University of Victoria, Victoria
- . workshop on Environmental Law in B.C. to visiting Indonesian lawyers, Vancouver
- . presentation on Hazardous Wastes in B.C. to the Environmental Law Section, B.C. Branch, Canadian Bar Association, Vancouver
- . presentation on Hazardous Wastes and the Role of the Public to the 6th National Conference on Waste Management in Canada, Environment Canada, Vancouver
- . lecture on The Pesticide Regulatory Process to the centre for Pest Management, Simon Fraser University, Burnaby
- . seminar on Judicial Review of the Environmental Appeal Board, Faculty of Law, University of British Columbia, Vancouver
- . paper on Public Inquiries to the Conference on the Proposed Kemano Completion Project; Department of Fisheries and Oceans, Vancouver
- . presentation on Public Involvement in Siting Landfills to the Governmental Refuse Collection and Disposal Association, Burnaby
- . paper on a Critique of the Pesticide Regulatory Process to the People's Commission, Vancouver

#### Summer Projects

Employment and Immigration Canada funding allowed the Research Foundation to hire two law students and a librarianship student in the summer of 1984. The law students' efforts were concentrated on collecting and compiling legal materials on hazardous wastes from jurisdictions throughout North America and Europe,

and on research on reduction, reuse, recycling and recovery of solid and hazardous wastes. They also provided general research assistance to staff counsel. The librarianship student compiled a cross-referenced bibliography of the Research Foundation's special collection of hazardous wastes legal materials.

## Our Resources and Activities

### The Environmental Law Centre

The Centre is operated by an Alberta based non-profit society founded in 1981 in response to an expressed need for public information and assistance on environmental and natural resources law.

Centre resources and activities are managed by a volunteer Board of Directors composed of practising lawyers, academics, educators and concerned citizens and is staffed by lawyers providing a public consultation and referral service.

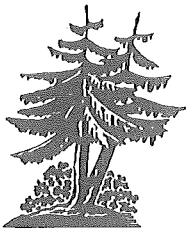
Centre funding is provided by an operating grant from the Alberta Law Foundation and special project monies from government, industry and public sources.

### Our Objectives

- to *research* environmental and natural resources law and policy
- to sponsor *public legal education* workshops, seminars, and forums
- to *monitor* government policy, practice and law and to respond to proposed reforms
- to provide the public with *legal information and referrals* in environmental and natural resources legal matters

#### The Environmental Law Centre:

- publishes a *quarterly newsletter* providing information on existing and proposed environmental law and policy, legal action and public hearings in Alberta and western Canada.
- conducts *legal research* on areas such as hazardous waste, water diversion, transportation of dangerous goods, transboundary pollution, enforcement of environmental laws, access to information, preservation of agricultural land, Indian water rights, safe drinking water, and waste recycling
- maintains a public *resource library* on environmental and natural resource law and policy
- provides *assistance to public intervenors* before the ERCB, local planning authorities and other agencies
- provides *information and direction* to relevant government departments and agencies
- provides *information* on rights and remedies relating to environmental protection and resource management, e.g., air and water pollution, wildlands, wildlife and watershed protection, pesticides and environmental health
- provides *lawyer referral and research assistance to public interest environmental litigants*
- *organizes and sponsors conferences and seminars* on environmental legal issues
  - Roundtable on Law and Policy Related to Hazardous Waste Management in Alberta
  - National Conference on the Enforcement of Environmental Laws and
  - Seminars on environmental legal issues of interest to Albertans



Conseil de la  
conservation  
du Nouveau-Brunswick

Conservation  
Council  
of New Brunswick

180 rue St. John Street  
Fredericton, N.B.  
E3B 4A9

(506) 454 6062

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The Conservation Council of New Brunswick Inc.  
*"people for environmental responsibility"*

### The Organization

The Conservation Council of New Brunswick was founded in 1969 by a group of concerned citizens who believed that New Brunswick's natural resources were not being developed in a responsible manner, and that basic ecological principles were being ignored. From that beginning, CCNB has become a broad-based organization with a grassroots membership ranging across the province.

CCNB is a registered charitable organization. It is governed by a Board of Directors elected by the membership at an annual general meeting. An Executive Committee is elected from the Board. There are currently three full-time staff positions -- Executive Director, Researcher, Office Manager -- with contract staff added when required.

In 1980 CCNB retrofitted a 100-year old, 4000 square foot building in downtown Fredericton and created Conserver House, a community resource and information center for conservation and renewable energy. CCNB operates and has its offices in Conserver House.

The objectives of the Conservation Council are:

- \* to generate awareness about the ecological foundations of our quality of life;
- \* to promote public policies that involve the knowledgeable, respectful, and restrained use of nature;
- \* to act as an environmental watchdog regarding political, bureaucratic and commercial decision-making;
- \* to advocate rational solutions to our most pressing environmental problems - groundwater contamination, hazardous waste disposal, pesticide abuse, acid rain and air pollution,

energy mega-projects, and more.

### Publications

Producing environmental resource material is an important part of CCNB's work. Some of the most noteworthy include:

Handbook on Environmental Law for New Brunswick (CCNB, 1983);

The Dump Dilemma: Waste Management Alternatives for New Brunswick (CCNB, 1985);

Heritage for Tomorrow: Canada's National Parks and Protected Areas in the Second Century, An Atlantic Overview (CCNB, 1985),

A Soft Energy Path for New Brunswick (Friends of the Earth Canada, 1983);

The Spruce Budworm Spray Programme and the Perception of Risk in New Brunswick (Friends of the Earth Canada, 1984);

Opportunities for Municipal Waste Recycling in Saint John (CCNB, 1984).

As well, CCNB publishes its newsletter, Conservation, on a quarterly basis and distributes it to politicians, libraries and schools, and its members.

### Activities & Projects

Some recent contracts and research projects undertaken by CCNB include:

\* A 4-year, \$350,000 contract to establish and operate Conserver House as a conservation and renewable energy demonstration and community resource center;

\* A 1-year, \$112,000 contract to undertake a residential conservation and renewable energy technology transfer program;



\* An 18-month, \$27,000 contract to prepare an Atlantic paper on heritage protection issues through a process of public consultation throughout the four Atlantic provinces;

\* An 8-month, \$19,000 project to undertake research in public policy issues regarding groundwater protection and contamination in New Brunswick;

Other areas of current activity include acid rain in the Maritimes, hazardous waste management, the abuse of pesticides in agriculture and forestry, and issues surrounding the large-scale adoption of aluminum cans in the brewing and soft drink industries in New Brunswick.

### Working for Solutions

The Conservation Council is involved in two precedent - setting consultation activities which are directed towards developing consensus among several interest groups (stakeholders) in issues of national and regional importance.

For the past eight months, CCNB Executive Director Janice Brown Harvey has been active as an environmental interest representative in the Environment Canada/Niagara Institute "Consultation on the Economy and the Environment". Specifically, Ms. Harvey was a member of the spin-off task force which designed and wrote the multi-stakeholder consultation etiquette and protocol document which was approved by the consultation participants in June 1985.

She is currently active in the follow-up "Consultation on the Management of Chemicals", sponsored by the Niagara Institute and Environment Canada, which will apply the principles and protocol adopted by the former task force.

On the provincial level, several members of the Conservation Council are participants in a similar consultation on forestry practices and pest management in New Brunswick. This again involves striving towards understanding and a consensus position among industry, government and environmental groups.

The range of experience and expertise to which the Conservation Council has access, through staff and volunteer resource people, has repeatedly shown that CCNB is able to become actively involved and take a leadership role in many issues and concerns.

APPENDIX C.

- (i) Principles and protocol of consultation - developed by the Niagara Institute and Environment Canada, August, 1985
  
- (ii) Extract from Workplace Hazardous Materials Information System - Report of the Project Steering Committee, April, 1985

- (i) Principles and protocol of consultation - developed by the Niagara Institute and Environment Canada, August, 1985

"THE ENVIRONMENT, JOBS, AND THE ECONOMY-  
BUILDING A PARTNERSHIP"

A Consultation Process Developed  
by the Niagara Institute  
in Cooperation with  
Environment Canada

FINAL PROJECT REPORT

AUGUST 1985

Questions About This Project May Be Addressed To:

Terry Mactaggart, President, or  
Ken Shepard, Program Director  
The Niagara Institute, Box 1041  
Niagara-on-the-Lake,  
Ontario, L0S 1J0  
Tel. 416-468-4271

PRINCIPLES AND PROTOCOL OF MEANINGFUL CONSULTATION  
ON ENVIRONMENT - ECONOMY ISSUES

The purpose of this document is to set forth the principles and protocol which should be adhered to by all participants in consultation if it is to be meaningful and effective with respect to environmental issues, especially where there are important linkages with the economy. They are proposed as a guide for all stakeholders - governments, business, labour, non-governmental organizations and others.

While they have been developed specifically in the context of environmental policies, we believe they recommend themselves for wider application. They should be recognized as a model to be adapted; all principles are not equally applicable to all consultation processes.

The principles deal with how the process of consultation should be structured; the manner in which stakeholder interests should participate; questions of resources, access to data and timing; consensus-building; and implementation.

These principles are intended primarily for problem-solving and policy development applications rather than environmental aspects of project siting for which other processes may be more appropriate. They are intended to complement - not replace - public consultation processes such as public hearings.

### DEFINITIONS

Meaningful consultation is an ongoing dialogue among affected stakeholders, including government, aimed at obtaining all the relevant information, evaluating the available options and their related consequences, and providing an objectively balanced perspective to each stakeholder's decision making. A prime objective is to obtain consensus at each stage of the process.

Stakeholders are those groups who have a vital interest in the issue, will be directly affected by the outcome, and/or make an important contribution to its resolution.

Meaningful consultation is not a simple matter of bringing a diverse group of interested parties together and expecting them to immediately and automatically develop solutions to complex issues. There has to be time for the participants to get to know each other, to listen and understand respective positions, and to develop respect which can grow into trust in that particular environment. Finding the common ground of consensus and building on that commonality to reach a solution requires time.

It can be demonstrated that programs for which appropriate time was not allowed for in the developmental stage to seek consensus and test solutions, have suffered inordinately in the implementation stage. It is our contention that the time spent on a project in the developmental stage will materially reduce the time, costs, hassles, delays and disagreements at the implementation stages.

Good consultation relationships built up over time also support more rapid and effective co-operative responses to urgent situations such as environmental accidents.

Consultation may arise from or be an alternative to confrontation among stakeholders. In either case, the right kind of consultation can help ensure that the issues are appropriately defined, that constructive conflict-resolution techniques are adopted, and that solutions are developed which are relevant to the interests of all stakeholders.

### PRINCIPLES OF CONSULTATION

Based on these considerations, the following 25 principles are recommended for the process, participants, etiquette, resources, data, timing and consensus-building dimensions.

#### a. Process and Participants

1. Consultation may be initiated by any stakeholder or group or stakeholders, and need not necessarily be initiated by governments.
2. The decision to consult must be motivated by a genuine desire to obtain input and a sincere commitment to objectively consider the views received. Forthrightness and clarity in stating the purpose of the consultation is imperative to avoid time wasting debate. The absence of predetermined non-negotiable solutions is essential.
3. Policy development/problem solving consultation should only take place on things where there is room to move. There must at the outset be a clear statement of the issue to be addressed; of the objective(s) of the consultation; and of the constraints, if any. If it is necessary for prior constraints to be identified or policy guidance to be given, this should be clearly set forth and recognized by all participants in advance.
4. Consultation should, as a general rule, take place under the auspices of, and at all stages be chaired by, an independent facilitator who does not represent major stakeholder interests and is perceived by all as a neutral third party. In some circumstances, it may be appropriate for a government agency to play the facilitator role. The purpose of the independent facilitator is to build trust and ensure focus on the specific problem. This would include meeting with possible participants to understand positions and shape an agenda; making contacts and enquiries to assure appropriate stakeholder representation; promoting the building of consensus; and ensuring appropriate monitoring and feedback.
5. Consultative groups should be kept as small as possible while at the same time involving those who have a contribution to make.

#### b. Etiquette

6. Stakeholders should be consulted early in the process while all options are still open.
7. There should be prior consultation on the process itself, the venue, the framing of appropriate questions, and on the first agenda.

8. The consultation must be focussed at a meaningful level - industry (or issue) specific - dealing with real things the stakeholders understand. Consultation should justify itself by concrete results and real value to each stakeholder from their participants.
9. The stakeholders must be convinced that the consultation process recognizes and accommodates their interests, and so improves decisions affecting them.
10. The process should be tailored to the specific policy objective and the stakeholders directly concerned. Each stakeholder's participation should be commensurate with the nature of the issue, its direct impact on the stakeholder and/or their ability to contribute to its resolution.
11. The process must be consistent with the mandate and roles of the various stakeholders. Sometimes adjustments will be required to ensure that stakeholders can participate on a basis which is compatible with their institutional status.
12. Each participant must be committed to seeking constructive integration of the "whole", not simply the advocacy of narrow interests. Governments, and different government departments and agencies, should recognize that they are stakeholders as well as decision makers; and that other stakeholders are decision makers too. It is recognized that government has special status as a decision-maker. This need not conflict with governments working co-operatively with other stakeholders, which is a fundamental tenet of consultation.
13. Participants must clearly understand the positions of stakeholder interests they are drawn from and make sure those views are effectively presented in the course of the consultation process. In turn, there must be mutual respect for the legitimacy and point of view of all participants.
14. The consultation process should be viewed as ongoing, as tangible evidence of the mutuality and interdependence of stakeholder interests.

c. Resources, Data and Timing

15. A genuine consultation effort demands a commitment of resources from all sides. Adequate resources must be found to support a meaningful consultation effort. Appropriate arrangements must be put in place from the beginning of the consultation process.
16. All parties must have reasonable access to all relevant information. A decision by any party to withhold relevant information would have a negative impact on the outcome of the consultation process. Where confidential information is at issue, mechanisms must be found which both protect confidentiality and ensure the consultation process is not prejudiced by missing critical information. The use of an independent third party in the Workplace Hazardous Materials Information System (WHMIS) illustrates one such mechanism.
17. A consultation process must be given an adequate period of time to work, without arbitrary and unrealistic deadlines. There should be time for the stakeholders to get to know each other, listen to and understand respective positions, to develop respect which can grow into trust, and to test that trust.

18. The time frame for consultation must seek a balance between the time constraints on all parties. Everyone's need for an early answer must take into account each stakeholder's need for time to consult constituents and/or the public, and to respond. There should be enough time for the stakeholders to secure and maintain their respective constituent group's support; to verify either facts or statements; to test potential solutions against a broader audience; and to report out, as the process evolves.
19. Emergency situations lack the luxury of time, but it should be recognized that a strong consultation process will ensure a co-operative base for multiple stakeholder responses when emergency situations do arise.

d. Consensus-building

20. Solutions should be developed through consensus and not through the democratic voting process. All stakeholders should have an equal opportunity to present their views and to be heard in the context of the consensus building process.
21. The approach should be to seek common ground and build on it. The process should start by identifying those items everyone can agree on, and setting aside for the time being those on which agreement may be more difficult.
22. The process must encourage the building of trust among stakeholders, including clarifying values, building a common data base that various stakeholders agree is accurate, developing norms for co-operation, and applying these to specific problems.
23. It must be recognized that any consensus reached by this process involves compromise and flexibility from all participants and thereby interlinks the issues to form an overall consensus. The overall consensus, therefore, must be regarded as an entity. Any unilateral change to the implementation of the consensus would require a re-evaluation by all the affected stakeholders.
24. When the results of consultation require legislative implementation, the stakeholders should clearly understand how their decisions will fit into any existing legislative framework.
25. In all cases, stakeholders expect feedback from other stakeholders, particularly government, clearly explaining the basis for decisions which are taken.

- (ii) Extract from Workplace Hazardous Materials Information System - Report of the Project Steering Committee, April, 1985

APPENDIX 3

THE WHMIS CONSULTATION PROCESS

The WHMIS consultation process was found to be an invaluable process by all parties involved, federal and provincial governments, industry and labour. The WHMIS Steering Committee suggests that this type of consultation process be considered by governments for future projects in the labour field: particularly occupational safety and health when federal and provincial governments are considering new legislation or regulations.

The WHMIS project was unique in many aspects:

- (a) The project's objective was to develop a national standard in the occupational safety and health field where previous practice was for governments to legislate within their own jurisdictions. Industry and labour have encouraged the development of national standards and the harmonization of labour legislation and regulations. Industry has indicated that this would reduce costs and assist the education and mobility of the workforce.
- (b) The consultation process was multidimensional. It included policy development, implementation and legislative and regulatory changes. This provided a very broad focus to the project. The development of the policy and implementation elements of the project by all three parties is expected to reduce substantially the number and complexity of problems often faced when implementing new policies and systems. It is also expected to reduce substantially the time needed for implementation.
- (c) The WHMIS consultation process was the first time that federal and provincial governments, labour and industry have worked together to develop a national policy and standard in the occupational health and safety field. Each sector of the economy that will be affected by the new system has been included from the beginning and has had the opportunity to raise concerns with the developing system. This has resulted in sensitive and critical agreements being reached between the parties co-operatively. On some fundamental issues, agreement was very difficult to reach, as has been explained in other parts of the report. However, this consultation process seemed to encourage resolution of problems by the parties involved.
- (d) The time required for this type of consultation is somewhat longer than for other consultation mechanisms. It would be most effective for developing longer term policies and legislative and regulatory changes. In the case of WHMIS, labour and industry found that, contrary to normal patterns, governments did not have an established plan for an information system. The multipartite Steering Committee had the opportunity to develop the policy and the national standard from basic principles.



Even with the shift in the consultation process, a certain level of confidence had to be established among all parties, if the process was to work. The Steering Committee has estimated that it took about a year before the WHMIS group tackled the truly difficult policy issues. Had this confidence level not been established it is doubtful whether much progress would have been made. Some time, hopefully less than one year, will always be needed to establish this essential confidence level. In setting the deadlines for the consultation process, consideration must also be given to the complexity of the subject and the degree of expertise available. In the case of WHMIS, availability of expertise was a major factor in extending the deadline for the final report. Although the timeframe was considered lengthy, future federal/provincial consultations and the final implementation phase are expected to take less time and be more harmonious.

The first experience with this process produced useful lessons for the future. The Steering Committee would like to make a number of recommendations that they hope will improve the consultation process.

- (1) There must be clearer terms of reference and the identification of any government constraints for the Steering Committee and for the project at the outset of the consultation process.

Terms of reference were drafted for the Steering Committee, but they had to be clarified during the first phase of its meetings. In an open consultation process where the policy or legislation is in the developmental stage, although it is more difficult to provide precise terms of reference, it is essential that they be as clear as possible to ensure that the parties understand the objective of the consultation. In addition, it is essential to identify any perceived constraints, whether policy, legislative or regulatory.

- (2) The project Steering Committee should be established with its terms of reference and any policy guidance required prior to the establishment of any working groups.

The Steering Committee is the guiding policy body for the project and should be in place to direct technical working groups and establish their terms of reference. As there was a delay in the establishment of the Steering Committee, the multipartite working groups had already begun working on various aspects of the information system. When the Steering Committee altered their direction, time was lost on the whole project and members felt a certain dissatisfaction with wasted effort.

- (3) Governments should establish clear legal implementation guidelines for the project in the terms of reference.

The development of national standards requires the resolution of certain federal-provincial jurisdictional issues. The terms of reference for the project should provide a clear understanding of

the range of legal/legislative alternatives available. This would ensure that no proposals would create implementation difficulties for governments and jeopardize the consensus being developed.

- (4) All participants in the project should be members of the Steering Committee.

Implementation of the WHMIS system requires the co-operation of federal and provincial governments. Although the provinces opted for observer status and fully participated in the discussions of the Steering Committee, it would have been a better reflection of reality if the provinces had been full members of the Steering Committee. This is suggested for future consultations.

- (5) The chairperson of the Steering Committee and of the Working Groups should be, and should be perceived to be, a neutral third party.

The Chairpersons of the Steering Committee and of some of the Working Groups were placed in situations where they had dual roles representing key federal departments and acting as chairpersons. This made their task as chairpersons more difficult. In future consultations, the process would be assisted if the functions of departmental representation and chairpersons were separated.

- (6) This type of consultative process depends on solutions developed through consensus and not through the democratic voting process.

To make the process work it is important to have all the vitally affected parties and their representatives, along with the proper mix of technical and policy skills, constructively involved in solving the problem at hand. They should not be constrained by concerns about developing voting blocks, nor should any one party feel that it may be subjected to the power of a voting block. Although there was a provision in the Terms of Reference of the Steering Committee to allow a vote, voting procedures were never used by the Steering Committee and are not recommended for other consultative projects of this kind. There is, however, no reason why such provisions could not be implemented if necessary.

- (7) Enough resources need to be available so that all parties can participate equally in the consultation process.

It is important that all phases of the consultation process have full participation from all parties. This was found to be a question of financial capability and availability of expertise in very technical areas. Governments could usefully examine alternative means of ensuring that all parties, i.e. governments, industry and labour, have sufficient resources to participate in the consultation process. All three parties may wish to consider the secondment of individuals on a special project basis for future consultations of this nature.

- (8) Each sector needs to recognize that consensus in that sector is a key to reaching consensus on the whole project.

Within each sector, industry, labour and government there is a divergence of opinions, requirements and problems. It is important that each sector establish at the onset a mechanism for consultation. This allows for the resolution of problems on a sector basis and reduces the time and the number of issues that need to be resolved by the Steering Committee.

- (9) A cost/benefit analysis of a project of this size and complexity is essential if governments are to have the tools necessary to make decisions on its implementation.

The development of an appropriate cost/benefit assessment on a project of this size and complexity needs the same commitment of time, resources and expertise that all other parts of the process require. Only with resources can it be a useful tool to analyze options and examine alternatives, as well as balance realistically the costs and benefits on the finished product.

- (10) It is important to understand that any consensus reached by this process involves compromise and flexibility from all participants. The issues are inextricably linked to form consensus. The consensus must therefore be regarded as an entity.

Industry and labour have clearly stated that in reaching consensus on each issue, the various elements taken as a whole formed a total package acceptable to both parties. They emphasized that it is not possible to pick and choose elements from within the consensus for implementation. Because of this inter-relationship, any change to the consensus would require a re-evaluation by the affected parties.

In summary, the Steering Committee recommends the use of this consultative model for longer term policy and legislative issues. All participants found value in the process and believe that a truly multipartite WHMIS system has been developed for consideration by federal and provincial governments. The Steering Committee also hopes that its suggestions for the improvement of the consultation process will provide future participants with some useful guide posts.