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ENVIRONMENTAL LAW ISSUES FOR BUSINESS

NOTES FOR BRANT CHAMBER OF COMMERCE BUSINESS WOMEN MAY 1, 1996

A. What is "Environmental Law"?

The reason that I am posing this question first, is that I am frequently asked what my field is all about. Unlike other fields of law which may have been around longer, the term "environmental law" does not always bring a clear picture with it.

Environmental Law covers all of the following, and more:

- Advice to businesses about whether they are in compliance with environmental laws and regulations
- Advice to businesses and property owners about their obligations under environmental laws and regulations
- Advice about "due diligence" - ensuring that preventive measures are taken to avoid any government or common law liabilities
- Environmental operations legal "audits" and/or environmental management systems
- Advice to officers, directors and even investors about their possible liabilities under environmental laws
- Land use planning advice, particularly with respect to the many environmental laws
- Advice to financial institutions, local governments (townships, towns, cities), and insurance companies, among others, about their potential for "indirect" liability through their customers or rate payers
- Advice regarding contaminated lands clean up and reuse
- Litigation regarding contaminated lands (e.g. by a neighbouring industry)

- Advice regarding spills, hazardous materials transportation, packaging and labelling
- Litigation for nuisance, trespass, negligence, personal injury, and other causes of action due to environmental contaminants and hazardous substances
- Constitutional law - for example in challenging legislation that threatens public safety and the environment
- Public health and safety issues arising from contaminants and hazardous substances
- Environmental Assessment Act and Environmental Protection Act hearings
- Waste management advice
- Actions and legal remedies to protect endangered habitats such as wetlands or forests, whether on a locally significant or provincially significant level
- Public education
- Public policy advocacy

B. SOME CURRENT ISSUES IN ENVIRONMENTAL LAW

In addition to the liability and compliance concerns that are reflected in the above list, and that I have discussed, there are some interesting issues that are current in environmental law.

1. What is the "right" kind of environmental regulation? How far should regulatory control go versus voluntary action?
2. What are your expectations of government in terms of health and safety regulation? Do you expect setting of minimum standards, enforcement, and scrutiny as to safe practices? Do you expect government to be familiar with current findings in the health and safety arena?
3. Are your expectations the same regarding environmental regulation?
4. What kind of planning should be done, and at what level of government? For example, should there be provincial policy regarding endangered species, threatened habitats, and other such environmental concerns? If so, how should these policies be implemented?
5. How should we view the planning process in our local communities? Should we have overall official plans and five to ten year or longer visions? Who should participate in

these plans?

6. Are environmental issues segregated from economic issues? Most firms espouse commitment to environmental concerns; many firms are directly based on environmental protection. The environmental consulting, planning, engineering & remediation industry has exploded in the last 8 years, and is now a significant sector of the provincial economy, with a major volume of business in Ontario and large quantities of exports from Ontario.

7. Do women have a particular role to play in environmental issues? What is that role in Ontario? How does it compare to the larger global role for women in this area?

8. What about the approach that we take to solving environmental and planning issues? Are we thinking small and modular or "megaproject"? Why do those differences matter?

9. What are the opportunities for our children in the fields of environmental endeavour? Are we making sure that they are well prepared to take advantage of the opportunities in science, technology, education, urban planning, policy, medicine, engineering and many other fields that are available from the environmental protection, remediation and planning activities?

10. Have we "internalized" environmental considerations in all of our economic and planning decisions, both locally and in broader scale? Why should we internalize these considerations?

11. What are some of the approaches that we can take to these issues? How do incentives matter? How do we do our risk assessment? Are we interested in innovations like "tradeable emissions" and other market incentives?

12. What are some of the local issues that need to be addressed in provincial policy? For example, what can we do with abandoned, contaminated properties? What are our local "hot spots" that we want to return to productive use?

I hope that this rapid overview of some of the concerns of environmental law has been of interest and assistance. I will be happy to answer any questions, or discuss any of these issues further.