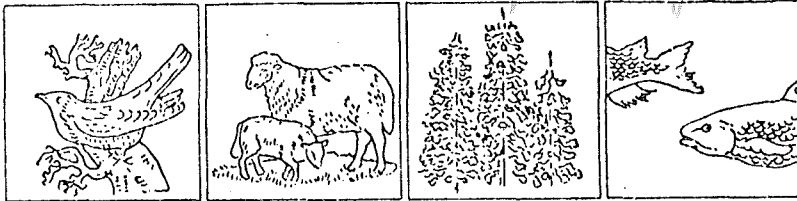


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**THE CONSERVATION COUNCIL OF ONTARIO**

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Proposed Brief On the Green Paper on Environmental Assessment

This Council has long advocated an orderly approach to environmental assessment, and hence we welcome an opportunity to comment upon the form this assessment will take. The Green Paper on Environmental Assessment offers a number of possible approaches to this, and we believe that a combination of the structures offered would be the best alternative for the Province.

1. Preliminary Considerations

Before discussing the detail of possible procedures we wish to emphasize most strongly that two elements are perhaps equally as vital as this structure in assuring an effective programme. These are:

- 1) The need to assure that statements are comprehensive and accurate.
- 2) The need to assure that all significant projects are assessed.

Neither of these points are easy to define for all cases, and some of the difficulty that environmental assessment appears to have encountered in the United States probably stems from this difficulty in covering in legislation and regulations the full range of conditions that may be encountered in practice. Words such as "comprehensive" and "significant" are vague at best, and yet it is virtually impossible to define the needs more precisely in broad terms.

We certainly have no words to offer that could neatly resolve this situation. Rather we would suggest that it is inevitable, and that the solution be sought in developing a sensitive structure that could respond to the variety of conditions that will inevitably be encountered. We offer the following general points which we believe would aid the development of a responsive vehicle:

- 1) That the terms of reference of the agency responsible for review and approval of assessment (we will propose below that these be the same agency) provide a clear direction for it to become the "environmental conscience" of the Province, requiring it to demand full and comprehensive assessment in all cases.
- 2) That, within this broad directive, the agency be given freedom to build its requirements in the framework of its experience.
- 3) That the full resources of society be used in developing criteria for impact statements. This recognizes that there are no final answers to environmental assessment at present, and that the expertise that could contribute to refining this process exists in many areas of society, and not only within government.

We will now proceed to discuss the crucial elements in a structure for environmental assessment.

## 2. Organization of Assessments

In general, programmes that impact on the environment will be originated by an identifiable class of agencies and enterprises. Further, many if not all of the schemes originated by such groups will have environmental impact. This impact should be a consideration from the earliest stages of conceptual planning, long before even broad outline proposals are committed to paper. Therefore, it is essential that these groups develop their own expertise in this area, which will be particular to their kind of enterprise; and that preparation of the assessment statement must be the responsibility of the originating agency.

Presumably a small group, or one not customarily in this field, could still have the option of hiring a consultant to do the necessary work for them, as could a larger agency under conditions of heavy load and the like.

## 3. Review and Approval of Assessments

It is important that the assessment review and approval be performed by the same agency. A review by an agency not empowered to approve or reject could become an exercise if the originator was insensitive to public opinion, or felt strongly committed to his scheme. At the same time some democratically-constituted appeal should be provided.

In considering the location of the review agency within government we are influenced by three considerations:

- 1) Any existing Ministry has other forces within it which at times could be in conflict with the assessment review group. The Green Paper itself offers a cogent example of the kind of ambivalence that could develop in such a situation (p.27)

" A disadvantage associated with this option is the belief that the Ministry of the Environment may be in an ambiguous position in reviewing water supply and sewage treatment projects originated by its utility division. However, it should be emphasized that these projects are used by the Ministry and were used by the former O.W.R.C. as a pollution abatement device. Any ambiguity in the Ministry's position may be offset by the distinct divisional missions existing within the Ministry, and by the scrutiny of other ministries and agencies as well as members of the public. "

Clearly, the fact that sewage treatment plants are pollution abatement devices is no guarantee that a given installation might not be environmentally damaging in other respects, but it does illustrate a rationale that could be used to justify such a plant. On the one hand, the Department would face a danger of just such an event occurring; on the other, a well located but controversial plant could lead to unfounded accusations of special pleading from outsiders, and the credibility of the entire process would be jeopardised in either case.

- 2) Some environmentally damaging schemes are originated outside the Provincial government, and we regard it as vital that the procedures should ultimately apply to these as well. A current case in point would be the Elora Gorge bridge where Province has taken the position that its grant to bridge construction does not empower it to interfere in the site selection for that bridge. Without arguing the merits of either this particular issue or the Province's position upon it, it is vital that the new procedures provide for the kind of independent scrutiny that Elora did not receive, and could overrule a faulty decision without the appearance of provincial interference in local autonomy. Private enterprise should also be covered by the system.
- 3) Although the two previous points argue for a high degree of independence for the review agency, we feel that it should remain responsible through the political process.

Putting these points together, we would favour an independent environmental review board, operating no lower than through the office of the Secretary for Resources Development, with full authority to approve or reject; but with a vehicle for appeal to the Cabinet. The board should have the statutory authority to decide on all relevant projects, not simply those originated by provincial government agencies. (We appreciate that a phasing-in period may be necessary during which only Provincially-originated projects would be considered, and in such a case would propose that a specific time limit be imposed for this period).

The Board should have an expert staff whose main function would be to review statements technically, although it should have the resources to perform field work for any areas which it felt were inadequate in an assessment received.

#### 4. Public Information and Participation

We endorse the principle that all relevant information should be publicly available, and agree with the proposals that have been made by others that the onus should be on the originator to show good reason why an item should be withheld.

We see three levels of public involvement:

- 1) During the planning process of the originating agency. Such involvement could vary with the character of the project, and could be informal as well as formal. The fuller participation the originator can assure the less susceptible he would be to attacks at the formal statement stage. Hence effective programmes would be in the originators' best interests.
- 2) To respond to Impact Statement. This stage should be well-publicised, with opportunity provided for formal submissions to the board, and public hearings held by it at its discretion. Such proceedings should be quasi-judicial, allowing for cross-examination of witnesses.
- 3) Formal appeal to the Cabinet.

In effect we are proposing three levels with three different kinds of involvement; first informal and cooperative during planning, second formal and quasi-judicial at the Board level, and finally an appeal procedure.

Expanding on the hearing procedures, we regard adequate notice and time to respond as most important. The kind of situation we feel should be avoided occurred on the Green Paper itself: in spite of our known and often asserted interest in these matters, not only did we not receive a copy, but we had no direct news of its release and when we went looking for one they were temporarily/unavailable! Another point here is that whilst hearings should be at the Board's discretion this should be responsive to public concern.

In conclusion we offer some comments on the matter of timing and cost.

We hope that the processes of environmental assessment can be parallel to other planning and approval activities. Some delay seems inevitable, as the review procedure must precede implementation but also presupposes fairly final planning information, and the review will take time. The incentive here, however, would be for the originator to make his submission so unambiguously competent that this process would be expedited. An incomplete review, requiring further lengthy biological field work, would be the originator's full responsibility for time lost.

At the Council's Seminar on the Green Paper the matter was raised of the time loss implied by major projects where a full assessment might take 10 years. It is perhaps improbable that assessments would need this time, although they might demand commensurably great resources over shorter periods, and hence be very costly. Assessments of this scale imply projects of similar magnitude, and dangers might lie more in the utter inability of Society to predict the consequences at all. The authority to proceed in such cases would depend on Cabinet-level decisions in any event, and the procedures being discussed here would probably serve more to alert Society to possible dangers ahead rather than turn aside such a proposal. The troubling issue of how to curb executive power irresponsibly applied is not likely to be resolved by any legislation resulting from the Green Paper.

Concern has been expressed at times about evaluation processes of this kind being costly and time-consuming out of proportion to their social benefit. Such matters are impossible to weigh, and sometimes it may be possible this view is correct. In general we feel it represents a gross failure to recognize the complexity of social decision-making today, and often a kind of negative reflex reaction to a new and rather challenging procedure. We are currently in a phase where public and agencies are learning how to talk to one another, and the agencies at least have a legacy of distrust to overcome. Hence there will be mistakes and delays, but we see no reason why these should continue for long, given fair and open process. We are aware of the adversary climate in the United States and long delays there but we are not convinced this has much relevance to Ontario.

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At the same time it would be naive to expect that conflicts will disappear; they may even become more apparent, for those who once were simply imposed upon will now have a vehicle to make themselves heard. Conflict is inherent in the resource decision - making process: we see this procedure as one which will allow such conflict to be openly assessed and reasonably balanced, to produce better decisions for society as a whole.

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