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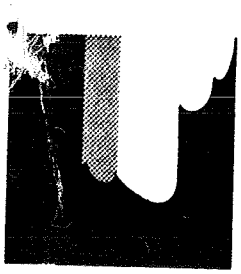

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SUBMISSIONS BY

THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION

TO THE ATTORNEY GENERAL OF ONTARIO

ON THE INTERVENOR FUNDING PROJECT ACT, 1988

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EXECUTIVE SUMMARY

As a long-time advocate of improved intervenor funding, CELA welcomes the Attorney General's timely and important initiative with respect to intervenor funding, and CELA supports the proposed Intervenor Funding Project Act, 1988. In our view, the Act will significantly reduce the difficulties associated with the present ad hoc process, and will greatly enhance the quality and quantity of public interest interventions in Ontario. However, there are several specific provisions of the Act which require amendment or repeal in order to better facilitate increased public participation in the decision-making process. In particular, CELA submits that the following changes are warranted:

- expand the definition of "Board" to include the OMB;
- more clearly define the purpose of the Act;
- clarify the Act with respect to "funding proponents";
- increase the number of issues eligible for funding;
- eliminate the legal aid rate limitation on counsel fees and extend the list of "eligible disbursements";
- include a presumption that intervenors are entitled to funding payable by the proponent;
- recognize that intervenors have the sole discretion to make decisions regarding funding expenditures;
- expand the regulatory powers of the Lieutenant-Governor;
- allow supplementary funding applications during the course of proceedings; and
- empower the Boards to award costs to intervenors who have received funding.

I INTRODUCTION

The Canadian Environmental Law Association (CELA), founded in 1970, is a public interest law group committed to the enforcement and improvement of existing environmental laws. Funded by the Ontario Legal Aid Plan, CELA also serves as a free legal advisory clinic for the public, and will act at hearings or in the courts on behalf of citizens and citizens' groups who are otherwise unable to afford legal assistance.

Since its inception, CELA has often advocated the expansion of opportunities for public participation in the environmental planning, management and decision-making process (1). A constant theme of our activities in this regard has focussed on the need to establish intervenor funding programs to allow citizens and public interest groups a meaningful opportunity to take part in the various public hearings that in law are available to them (2).

The need to provide intervenor funding has been extensively examined and widely acknowledged by writers within Ontario and across Canada (3). In recent years, the Ontario government has implicitly recognized the value of public interest interventions by making pre-hearing funding available to intervenors on an ad hoc basis. However, the ad hoc process is inherently limited, and the need for a legislative commitment to intervenor funding has been apparent for some time.

Accordingly, CELA was pleased that the Attorney General has intro-

duced the Intervenor Funding Project Act, 1988 ("the Act"), and has solicited public comment on this important legislation. In the past, CELA has received intervenor funding awards on behalf of clients in numerous cases (4), and we while we have not appeared before the Ontario Energy Board (OEB), we have frequently appeared before the two other tribunals affected by the Act -- the Environmental Assessment Board (EAB), and the Joint Board (JB). As a result, we trust that our comments may be of some assistance to the Attorney General.

II RATIONALE FOR INTERVENOR FUNDING

The policy reasons for providing intervenor funding to public interest groups and citizens have been canvassed elsewhere (5), and need not be addressed in detail here. Put succinctly, public interest interventions are important and valuable because:

- intervenors can present evidence and opinions not otherwise available to the tribunal;
- intervenors can provide an effective mechanism to test the evidence of proponents; and
- interventions can enhance the accountability of the tribunal and the credibility of its decisions.

However, the ability of many public interest intervenors to effectively participate in administrative hearings is often hampered by limited resources. This is particularly true in the environmental context, as proceedings before the OEB, EAB and JB are becoming increasingly complex, technical and lengthy.

Although desirable, cost awards made at the conclusion of the hearing only address part of this problem, since intervenors often require substantial funds before the hearing even commences. Because the courts have held that tribunals cannot, in the absence of statutory authority, award advance or interim costs (6), public interest intervenors may be unable to retain experienced counsel, hire expert witnesses or pay other necessary disbursements prior to and during the hearing. Therefore, CELA submits that the provision of intervenor funding on a systematic basis is absolutely necessary to ensure full, fair and effective public participation in the decision-making process.

III PROBLEMS WITH THE AD HOC PROCESS

Presently, the initial decision to provide intervenor funding rests within the discretion of the Ontario Cabinet, and is made on a case-by-case basis. Similarly, the quantum of the funding available in a particular case is within Cabinet's discretion, although the actual allocation is generally administered by a funding panel consisting of members of the tribunal in question.

While the current system contains a certain degree of flexibility, it has also given rise to considerable uncertainty about the process. For example, potential intervenors do not generally know at the outset of a proposed undertaking whether intervenor funding will be made available or not; as well, the quantum of funding committed to a particular case is not frequently known until shortly before the

hearing. For example, in waste disposal matters, there has generally been a limit of $30,000 of intervenor funding per hearing, regardless of the expected hearing length, the number of intervenors, or the nature of the issues to be examined. As well, the funding panel often does not actually allocate the funds until well into the process. Finally, since this $30,000 is generally divided among the intervenors seeking funding, an intervenor's actual share of the funding remains uncertain until late in the day. This lack of predictability clearly undermines the ability of public interest intervenors to adequately prepare and present their case in an effective manner.

In addition, the ad hoc process has given rise to concern about inconsistent funding decisions. Recently, intervenor funding has been made available for most major proceedings before the JB (7); on the other hand, intervenor funding has not always been provided for matters heard by the EAB (8). With respect to the OEB, intervenor funding has been made available within the last two years in relation to various project approval hearings (9), but has not been provided in relation to "generic" hearings (10). This lack of a consistent approach seems difficult to justify and creates further uncertainty about the process and its application.

An additional problem associated with the ad hoc process is the lack of clearly defined objectives and prescribed procedures relating to intervenor funding. For example, Cabinet lacks a written policy or guideline to assist it in determining if intervenor funding should

be made available in a particular case; similarly, there is nothing to assist the Cabinet in determining the quantum of intervenor funding. Presently, when intervenor funding is to be provided in an JB or EAB matter, an Order-in-Council is normally issued which, inter alia, identifies the maximum amount available and contains the eligibility criteria to be applied by the funding panel. Often, the panel may then place public advertisements to solicit funding applications from interested persons, but otherwise no meaningful guidance or direction is provided to the public about the process. As a result, the panel may receive many applications from parties and organizations which are clearly ineligible for intervenor funding, and the oral funding hearing may be unnecessarily bogged down by such applications.

Moreover, the lack of a uniform application and allocation process may result in the development of different and possibly contradictory rules regarding the distribution of the funding. For example, in the Halton landfill hearing, the JB funding panel directed that neither intervening citizens' groups could apply any of the intervenor funding towards counsel fees. This direction appears to conflict with the majority of JB and EAB cases where legal fees have been payable out of intervenor funding.

The final criticism of the ad hoc process is that it has become too politicized, and that considerable time and effort must be spent in lobbying politicians to ensure that intervenor funding is made available in a particular case. This is also true where public

interest intervenors, such as the West Burlington Citizens' Group in the Halton JB case, have had to return to Cabinet to secure supplementary funding (12). This politicization of the process has also led to criticism that Cabinet members are playing favourites in making their funding decisions, and that the whole process should therefore be removed from the political arena into the jurisdiction of the administrative tribunals in question.

In light of these serious concerns about the present ad hoc process, CELA submits that is necessary to entrench intervenor funding on a firmer legislative basis. In our view, not only would a strong statutory funding program resolve some of the problems oulined above, but it would also serve to enhance the quantity and quality of public interest interventions in Ontario.

IV CRITIQUE OF THE PROPOSED ACT

A. Definitions: s.1

The definition of "Board" is presently limited to the OEB, EAB and the JB. While CELA appreciates that the Act is intended to establish only a three-year pilot project, it is unclear why other environmental tribunals such as the Environmental Appeal Board have been excluded from the ambit of the Act. Another tribunal to which the Act could be extended is the Ontario Municipal Board (OMB) because of the important role it plays in shaping the province's urban and rural environment. If the OMB is not included, then one is

left with the somewhat anamolous situation wherein an OMB member sitting on a JB could be part of funding panel distributing money to a public interest intervenor, whereas the same member sitting with respect to a similar matter but as an OMB panel member would be unable to award intervenor funding.

It may be argued that adding the OMB may prove to be too unwieldy in light of the numerous minor cases heard by the Board. However, it should be pointed out that under s.7(1) of the Act, a funding panel has a discretion to refuse to award intervenor funding where the issues to be raised do not affect a significant segment of the public and do not affect the public interest as opposed to private interests. In addition, under s.8(3) of the Act, the funding panel may refuse to make an award or may reduce the size of an award if the award will result in significant financial hardship to the proponent. Finally, the potential OMB intervenor must also satisfy all the criteria set out in s.7(2) before being eligible for funding. Taken together, these procedural safeguards will undoubtedly serve to limit intervenor funding to the more serious OMB proceedings.

CELA also notes that "proponent" has been defined by s.1 as either the party whose undertaking is the subject-matter of the hearing, or another party or individual or corporation that may be a major financial beneficiary of the Board's decision. With respect to the latter branch of the definition, CELA is concerned that the requirement that the person be a major beneficiary may be unduly restrictive, as it is conceivable that numerous smaller beneficiaries

could stand to gain under a decision, and should therefore be required to pay a proportionate share of the funding award. In addition, the latter branch may be problematic in that it appears to catch non-party individuals and corporations who may be major financial beneficiaries, but who do not wish to participate in the hearing; this issue will be addressed further in the discussion of s.6, infra.

B. Purpose of the Act: s.2

The stated purpose of the Act is to simply provide for the establishment of a pilot funding project; significantly, the underlying rationale for the project has been omitted from s.2. CELA believes that it is important to provide funding panels with a general statement of principle to guide them in interpreting the Act. Accordingly, CELA submits that s.2 should be amended to include a clear statement that the Act is intended to promote increased public interest intervention because of the numerous benefits associated with such public participation. In the alternative, this statement could be set out in a short preamble or a separate Declaration of Principle.

C. Applications for Status and Funding: ss.3 - 4

Sections 3 and 4 of the Act appears to engender a two-stage application process: firstly, persons or groups apply for intervenor status; and secondly, any persons or groups granted intervenor status then apply for funding. CELA approves of this general approach, but submits that prescribed forms and procedures may be necessary for the

efficient implementation of these sections.

In addition, CELA notes that the Boards are given no direction under the Act with respect to the determination if a person should be granted intervenor status or not. While it is beyond the scope of this brief to comment on the law regarding intervention in administrative proceedings, a number of other authors have identified problems with standing in the administrative context (12). It is our understanding that the Ontario Law Reform Commission is currently examining Rule 13 and interventions in judicial proceedings, and we suggest that it may be appropriate for the Attorney General to expand this study to include administrative interventions.

D. Funding Proponents: s.6

While CELA supports the principle that the proponent should normally underwrite all of the intervenor funding award, there are some minor "housekeeping" amendments that could tighten up s.6 of the Act. Firstly, the chronology of events is not readily apparent from the section; for example, it is unclear whether the panel holds an initial hearing and then, after receiving submissions, sends out notices to proposed funding proponents, or whether the notices are sent by the panel ex mero motu and then a hearing is held to determine which persons are funding proponents. To dispel this uncertainty, CELA submits that the timing of these events should be expressly set out in the Act or in regulations passed thereunder. Similarly, it may be desirable to establish a precise limitation

period (eg. 30 or 45 days) for proponents to file objections to the notices.

Secondly, s.6(4) may be problematic in that a non-party beneficiary of the Board's decision may be named or deemed to be a funding proponent notwithstanding his or her intention not to participate in the proceedings. If, for example, an unwilling beneficiary does not respond to the notice within the prescribed time, then he or she shall be deemed to be a funding proponent pursuant to subs. (4). However, it is unclear from the Act if the panel has the statutory authority to enforce a funding order against a non-participating proponent, and it is likely that this situation would result in judicial review proceedings. Therefore, CELA recommends that the Act should be amended to clearly stipulate that a funding order is valid and enforceable even if the funding proponent chooses not to participate in the hearing.

Finally, CELA is concerned about the s.6(5) power of the panel to find that there is no funding proponent. It is difficult to conceive of proceedings before the OEB, EAB and JB where there is not a proponent of the undertaking, or where there is not a party, individual or corporation that will benefit from the Board's decision. In our view, the "financial hardship" discretion in s.8(3) is sufficient to empower the Board to reduce or refuse the funding award in problematic circumstances. Therefore, CELA submits that subs. (5) should be omitted from the Act.

E. Eligibility: s.7

CELA is concerned about s.7(1)'s attempt to restrict intervenor funding to issues which "affect a significant segment of the public", and which "affect the public interest and not just private interests." Firstly, this double-barrelled test may prove to be exceptionally difficult to apply in practice, largely because of the vagueness of the language in this subsection. Secondly, CELA submits that s.7(1) is somewhat redundant in that once intervenor status has been granted (eg. once the Board has found that there is an interest that should be separately represented), it is immaterial if numerous members of the public are directly affected by a particular issue. Undoubtedly, there are many environmental issues which do not involve or directly affect "significant segments of the public", and therefore do not satisfy both branches of the test and cannot be funded pursuant to s.7(1). However, CELA submits that environmental issues per se are worthy of funding, and we therefore recommend that s.7(1) be omitted or amended to ensure that such issues are not excluded from funding consideration. Moreover, CELA submits that it may inequitable to exclude funding in situations where only a few individuals or families may be directly affected by a proposed undertaking (eg. a rural landfill site), particularly if those persons require financial assistance to fully participate in the decision-making process. Accordingly, CELA recommends that this subsection should be reworded to ensure that funding can be made available to intervenors who may be few in number and who may repre-

sent personal interests.

With respect to the list of eligibility criteria in s.7(2), CELA is in general agreement with paragraphs (a) to (h), but we would modify paragraph (e) by eliminating the requirement of an "established record". Otherwise, newly formed or ad hoc citizens' groups with a bona fide and serious concern for a particular matter may be excluded from intervenor funding. In addition, CELA submits that it may be advisable to expressly provide that these paragraphs are only guidelines, and that a funding panel has a discretion to award funding to intervenors who do not fully satisfy each criterion. Finally, CELA recommends that the subsection should be amended to prohibit awards to intervenors representing commercial interests or organizations.

CELA's greatest concern with s.7 lies with subs. (3), which purports to limit the quantum of funding that may be awarded. In particular, CELA cannot understand the rationale for subs. (3)(a)'s attempt to limit legal fees to the legal aid rate in effect at the time of the award. If enacted, this subsection, in conjunction with s.12(3)'s prohibition of costs to funded intervenors, will clearly have a serious negative impact on intervenors' ability to retain their counsel of choice. Put shortly, this subsection will undoubtedly result in at least two undesirable consequences: firstly, fewer senior counsel will be able to afford to take on lengthy public interest interventions before the Boards. Secondly, the resources of public interest groups will be further strained if they attempt to retain experi-

enced counsel by "topping off" the legal aid rate with their own funds.

If the object of the Act is to ensure that intervenors are able to fully and effectively prepare and present their case, then it is clear that subs. (3) must be omitted because it unnecessarily hampers the intervenors' ability to retain counsel with experience in this specialized area of practice. In our view, the Attorney General has properly endorsed the principle that "the proponent pays"; if this phrase is to have any substance, it must be taken to mean that the proponent must pay the full freight. Accordingly, CELA submits that the legal aid tariff must not be used to limit legal fees in public interest interventions. In the alternative, if the Attorney General believes that the legal aid rate is a necessary benchmark for counsel fees, it may be advisable to empower the panel to increase the tariff by a certain percentage (eg. 30 to 50%) so as to bump up the hourly and per diem rates.

CELA is also concerned about the panel's power in s.7(3)(c) to deduct from the award any funds that are "reasonably available" to the applicant from other sources. At best, this will call for considerable speculation on the part of the panel, and in any event, the availability of other funds is a factor already taken into account under s.7(2)(d). Therefore, CELA submits that subs. (3)(c) should be either omitted or amended to empower the panel to only deduct those funds which have been actually made available to the intervenor.

Finally, CELA recommends that the Attorney General should expand the list of "eligible disbursements" set out in s.7(5). For example, CELA submits that the following items should be included as eligible disbursements:

1. Fees for consultants other than expert witnesses.
2. Honoraria at a per diem or pro rata rate for individuals preparing and appearing on their own behalf or on behalf of a group.
3. Staff research, preparation and presentation.
4. Travel and accomodation for counsel, witnesses and other necessary persons.
5. Telephone, postage and stationary.
6. Translation services.

While the Lieutenant-Governor is empowered under s.11 to make regulations regarding eligible disbursements, the passage of a regulation can often be a time-consuming process, and there is no reason why these additional disbursements cannot be incorporated into the Act before it is enacted. Further, CELA submits that the panel should be given a broad discretion to fund reasonable and necessary disbursements that cannot be easily assigned to one of the above-noted categories. At the same time, CELA submits that it may be inadvisable for the panel to attempt to set ceilings for disbursements pursuant to s.7(3)(b); at most, the Board's directions in this matter should only take the form of guidelines, as disbursement allocations must remain flexible to accomodate unforeseen changes in circum-

stances. If there is a well-founded suspicion that disbursement funds have been improperly expended, then the Board has adequate authority under s.9 to inspect the intervenor's records and to take appropriate action if there has been any impropriety.

F. The Proponent Pays: s.8

CELA wholeheartedly supports the "proponent pays" principle which underlies both s.8 in particular and the Act in general. In our view, it is proper to require the proponent to finance intervenor funding awards because:

- this practice will generally reduce the imbalance in resources between proponents and intervenors;
- proponents stand to gain financially by the licences and approvals granted by the Boards;
- proponents can generally pass hearing costs on to users of services provided by the undertaking; and
- proponents can generally write off hearing costs as business expenses for tax purposes (13).

CELA agrees that where there is more than one funding proponent, the panel should determine the proportion of the award to be paid by each proponent pursuant to s.8(2). However, CELA remains concerned about the panel's discretion to reduce or refuse the award where "significant financial hardship" may result to the funding proponent. In our view, this discretion should only be exercised very rarely, and CELA therefore submits that s.8(3) be followed by an additional provision

that states, in effect, that in the exercise of its discretion under subs. (3), the panel shall have regard to a presumption that an intervenor is entitled to funding payable by the proponent(s). In the alternative, it may be desirable to include such a presumption in s.7 in order to guide the panel when it is determining an intervenor's eligibility for funding in, particularly in borderline cases.

G. Enforcement: s.9

CELA submits that it is necessary and desirable to have certain safeguards in place to ensure that intervenors remain accountable for their expenditure of the funding award. This supervision is the *quid pro quo* of making intervenor funding available at the outset of a hearing. The Boards, however, should be reluctant to exercise their supervisory powers to second-guess the appropriateness of the expenditures in the absence of clearly improper or irresponsible expenses. Since intervenors must have full authority over the carriage and conduct of their case, they must remain the masters of their allocation decisions unless impropriety is clearly evident. Therefore, CELA submits that it may be advisable to amend s.9 to recognize that notwithstanding the Board's supervisory powers, intervenors have financial autonomy where they have acted reasonably and *bona fide*.

H. Regulations: s.11

CELA is concerned that the Lieutenant-Governor's regulation-making

authority has been unduly limited to the sole matter of "eligible disbursements". The implementation and administration of this Act will undoubtedly give rise to unforeseen difficulties; therefore, s.11 should be flexible enough to allow for the passage of regulations which can address these difficulties as they arise. Thus, CELA recommends that the Lieutenant-Governor be empowered to make regulations, inter alia, for:

- prescribing forms and providing for their use in proceedings under the Act;
- governing the conduct of funding panel proceedings and prescribing procedures therefor; and
- respecting any matter necessary or advisable to carry out effectively the intent and purpose of the Act.

I. Supplementary Funding and Costs: s.12

In light of the length and complexity of most proceedings before the Boards in question, CELA agrees that it is necessary to empower the Boards to award supplementary funding to cover unanticipated shortfalls in the original award. However, s.12 presently provides that an intervenor must wait until the end of proceedings before an application for supplementary funding can be brought. The rationale for this requirement is puzzling; in our view, it is necessary to allow an intervenor to bring a supplementary funding application during the course of proceedings. It is now commonplace for proceedings to last longer than originally anticipated; in addition, a proponent's case often changes over the course of proceedings, meaning

that an intervenor's witnesses may have to review new material, or that new witnesses may have to be called. If the purpose of the Act is to remove financial barriers to public interest interventions, then these barriers should be removed as they arise, regardless if they occur at the beginning, middle or end of a hearing.

The rationale behind s.12(3)'s prohibition of costs to intervenors is equalling perplexing, in that intervenors are, under the current ad hoc process, eligible to receive costs at the conclusion of JB and OEB proceedings. Presently, intervenors who receive costs are required to pay back their funding award to the government, and there is no compelling reason why this principle cannot be applied where the funding has been provided by the proponent. If, for example, a Board decides to award costs to an intervenor, then the funding previously paid to the intervenor would be "set off" against the assessed costs; in this sense, the proponent will receive a "credit" from the assessment officer for money previously advanced to the intervenor. Such a mechanism will act as a safeguard against double recovery, but will also ensure that intervenors will be reimbursed for any money spent above and beyond the funding award. Otherwise, public interest groups may face the difficult choice of either applying for intervenor funding at the outset (and running the risk of not recovering all of their expenses), or foregoing such funding and holding out hope for a cost award at the conclusion at the hearing. In our view, this is an unacceptable gamble to force upon public interest groups, and should be eliminated from the

Act, particularly if the legal aid limitation on counsel fees is retained in s.7(3).

In our submission, not only is s.12(3) unsupportable in principle, but it may also be unworkable in practice. Under subs. (3), intervenors cannot receive costs in relation to "issues" for which they received funding; however, it may be exceptionally difficult, especially within the environmental context, to identify and segregate "issues" for which funding was or was not received by the intervenor. Accordingly, CELA strongly recommends that s.12(3) be replaced by a provision which expressly recognizes an intervenor's eligibility for costs, subject to the "set off" described above.

J. General Cost Powers: ss.16 - 20

CELA is pleased to learn that pursuant to s.17 of the Act, the EAB has finally been given long-overdue cost powers with respect to matters under the Environmental Assessment Act. Similarly, CELA supports the provisions of the Act which stipulate that all three Boards are no longer constrained by considerations that govern cost awards in the courts. Accordingly, these Boards are now empowered to make cost awards for the sole purpose of assuring public participation, which, in CELA's view, is an important reform that will greatly improve public access to the decision-making process.

However, as previously discussed, CELA believes that it is necessary for the Act to provide that persons receiving intervenor funding are also eligible to receive costs. In our view, cost awards are an

important and necessary adjunct to any comprehensive intervenor funding system, as cost awards will ensure that intervenors are able to recover all reasonable expenses incurred during the intervention. This is particularly true where there is a deficiency in the original funding award, but the shortfall is not sufficiently large to warrant a supplementary funding application by the intervenor.

In fact, because of the value of cost awards, it may be advisable to amend ss. 16, 17 and 19 to provide that there is a presumption that public interest intervenors are entitled to costs payable by the proponent. At the same time, these sections should also provide that the Boards should not award costs against an intervenor unless it can be demonstrated that the intervention was, in the Boards' opinion, frivolous and vexatious, or that the intervenor otherwise acted unreasonably or irresponsibly.

VI. CONCLUSIONS

CELA welcomes this opportunity to comment on the proposed Act, and as long-time advocates of improved intervenor funding, we fully support the Attorney General's efforts to establish a formalized intervenor funding program in Ontario. In our view, increasing public participation in the decision-making process is an objective of fundamental importance, but it can only be achieved through comprehensive intervenor funding and liberal cost practices by the Boards in question. We are confident that if the Act is modified to address

the concerns raised in this brief, the pilot funding project will prove to be a successful experiment, thus paving the way for an expanded and permanent intervenor funding program in Ontario.

VII. END NOTES

1. Rick Lindgren, Submissions to the Ontario Municipal Board regarding Guidelines for Awarding Costs (June 10, 1987); Toby Vigod, Submissions to the Ontario Energy Board regarding the Awarding of Costs and Related Matters (October 26, 1984).

2. Frank Giorno, A Brief to Ontario's Minister of the Environment on Intervenor Funding (July 17, 1984); Toby Vigod, Submissions on Environmental Reform (November 1, 1984).

3. R. Gibson and B. Savan, Environmental Assessment in Ontario (1986, CELRF) pp.240 - 44; D. Estrin and J. Swaigen, Environment on Trial (1978, CELRF); R. Gibson, "The Value of Participation" and P. Elder, "An Overview of the Participatory Environment in Canada" in Environmental Management and Public Participation (1975,CELRF).

4. Most recently, CELA has applied for and received intervenor funding with respect to the Timber Management Class Environmental Assessment currently being heard by the EAB in Thunder Bay, and with respect to the Regional Municipality of Halton Landfill Hearing currently being heard by the JB in Oakville.

5. Supra, notes 2 and 3.

6. Re Reg. Mun. of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Community Inc. et al. (1985), 51 O.R. (2d) 23 (Div. Ct.). See also Bell Canada v. CAC (1986), 26 D.L.R. (4th) 573 (S.C.C.).

7. For example, the OWMC hazardous waste disposal case, the Victoria Hospital EFW case, and the Halton landfill case.

8. Generally, intervenor funding has not been provided with respect to waste disposal site hearings before the EAB under Part V of the Environmental Protection Act.

9. For example, the Consumer's Gas Northumberland storage facility case in 1986.

10. Pers. comm., August 31, 1988, David Poch, Counsel, Energy Probe.

11. In the Halton case, the two intervening citizens' groups equally divided the original $30,000 funding award, but were forced by the unexpected length of the hearing to approach the government for additional funding.

12. A. Roman, "Standing Before Administrative Tribunals and the Courts", in Emerging Issues for an Administrative Lawyer (1983, LSUC); A. Roman, "Locus Standi: A Cure in Search of a Disease",

in Environmental Rights in Canada (1981, CELRF); P. Muldoon, Cross-Border Litigation (1986, CELRF).

13. Economic Council of Canada, Public Participation in the Regulatory Process: The Issue of Funding (1981, Working Paper #17).