

NOTES FOR AN ADDRESS TO
THE P.C. WOMEN'S POLICY CONFERENCE

INTRODUCTION

I want to thank you very much for inviting me to speak at your policy conference today. It is indeed an honour to address 400 women on a topic which concerns us all: "Our Health and the Environment".

It is almost trite to say that we live in a chemical society and that the increase in production and use of chemicals since the end of World War II has led to severe impacts on our health and the environment. For example, organic chemical production increased 800 per cent in the western world between 1950 and 1970 (7 million tons to 63 million tons). By 1985, production volume was expected to increase approximately 300 per cent more to 250 million tons.

Mercury, asbestos, and lead emerged as major health concerns in the 1970's and still continue as problems today. The uncontrolled disposal of synthetic chemicals such as PCBs and dioxins have led to the contamination of important groundwater and surface water resources.

In 1980, the Canadian Environmental Law Association came to the conclusion that the use and disposal of man-made chemicals and their waste products occupied the premier position on any list of environmental problems needing solution in the 1980's.

We, therefore, decided to concentrate both our casework and law reform efforts in the area of toxic chemicals, hazardous wastes and pesticides.

Recent public opinion polls and surveys show that environmental issues continue to rank near the top of the non-economic agenda. Further, environmental concerns have shifted to health problems from the more traditional conservation issues.

It is significant that Canadians remain willing to pay for cleaner air and water. Further, the so-called conflict between jobs and the environment long advocated by industry has been seriously questioned by all sectors. Studies now point to the fact that environmental clean-up creates jobs and that environmental safety and economic growth can co-exist.

The cost of not cleaning up the environment must be seriously considered. Indeed, a Toronto Star editorial

commenting on the recent \$250 million settlement to the Vietnam veterans who were exposed to agent orange and the compensation paid to eight cancer victims of the fallout from the nuclear testing in the 1950's noted that the lesson to be learned is that "ignoring the environmental effects of our actions can come back to haunt us. Sooner or later we have to pay for the damage".

What I want to focus on today is the question: Are governments adequately protecting the environment? What laws and policies are necessary to ensure that our environment is protected for future generations.

I would like to examine briefly the governments' record in relation to hazardous waste law and policy, the related issue of drinking water quality and pesticides.

HAZARDOUS WASTES

The improper management of hazardous waste poses serious environmental and human health threats to Canadians.

Recent federal estimates conclude that of the approximately one million tonnes generated nationally each year, about 85% are improperly dealt with. While everyone has heard of Love Canal, Ontario has not been immune from serious threats from leaky landfills.

Notably highly toxic chemicals have migrated from:

- . the Upper Ottawa Street Dump in Hamilton;
- . the Uniroyal dump in Elmira where 2,4,5-T wastes are buried;
- . a shut-down mining and smelting site near Belleville, Ontario; and
- . a dump in Perkinsfield, Ontario

What are governments doing? At the federal level, we have no national hazardous waste law, even though arguably the feds could take action under the 'peace, order and good government' clause of our constitution. We only have federal legislation dealing with one aspect of hazardous waste management - i.e. transportation. Regulations governing the transportation of dangerous goods which include hazardous wastes have not yet been promulgated four years after the statute was passed.

Provincially, where legislative authority and responsibility chiefly lie in relation to hazardous waste management - we have seen some progress - but at a snail's pace.

In August, 1982, 12 environmental and citizen groups concerned with hazardous waste issues delivered an

environmental report card to the then Minister of the Environment, Keith Norton. It is interesting to note that many of the concerns raised at that time have still not been resolved today. For example:

1. The spills bill, designed to ensure clean up of hazardous waste spills and to provide partial compensation to victims of pollution was passed in December, 1979. However, as of this date, the bill has never been proclaimed. Yet if one has looked at a newspaper during the past two weeks, one can read about:

- . a spill of corrosive ferrous chloride during a collision between a transport truck and a car on the Gardiner Expressway
- . a spill of thousands of litres of sulphuric acid into a swamp draining into a river which empties into Lake Nipissing.

This bill was thoroughly debated 4 1/2 years ago before the Resources Development Committee and should be proclaimed immediately.

2. Perpetual Care Fund. One of the greatest threats to the environment is the migration of chemicals from abandoned and inactive landfill sites. A perpetual care fund is needed to provide funds for the clean up of these sites. While first promised in October, 1978, and an interim report issued in

August, 1979, no legislation has yet been introduced 6 years later. The only step taken has been to set out proposals for discussion in the Ministry's Blueprint for Waste Management.

3. Funding of Intervenors. Presently, environmental hearings often turn into David vs. Goliath battles, where citizens with limited resources must deal with highly technical, hazardous waste site or other proposals put forward by proponents. The principle of redressing the imbalance in resources has been supported by various government agencies and commissions during the past decade. Legislation in other provinces includes provisions for intervenor funding. It is well recognized that better decisions are made when all the evidence is placed before a tribunal. In order to ensure that this takes place, citizens must be given funds to retain their own experts. Yet the Ontario government has made it clear that its policy is not to fund intervenors.

WATER QUALITY

In the area of drinking water, which has been identified by the public as the number one environmental issue, we again see little progress.

Presently, we have no standards in place in regard to drinking water or indeed water quality generally. We have

only unenforceable guidelines governing a limited number of substances. Many of the organic chemicals found in our drinking water are not even subject to guidelines. The federal guidelines cover only 42 substances and the Provincial guidelines are set for less than 30 substances. The International Joint Commission has estimated that there are approximately 800 chemicals in the Great Lakes. While the U.S. has had safe drinking water legislation since 1974, the Canadian government has only recently said they will "consider" such legislation. The provincial government also has the authority to pass drinking water legislation, but has chosen not to. There is, therefore, no simple way of getting a supply of drinking water cleaned up quickly.

As far as industrial dischargers into the Great Lakes, we know that 45/101 industries in 1982 were not in compliance with either federal or provincial effluent requirements. While these figures are somewhat better today, there are still serious concerns about the enforcement practices of the provincial government. A recent study has found that in many cases, companies find it less expensive to continue polluting than to comply with government requirements for pollution abatement. The study done for the provincial government found that a polluting company has a relatively small chance of getting caught, being prosecuted, being convicted and if convicted, sentenced with a large fine.

Clearly, until industries are regularly taken to court for polluting our water supplies, they will continue business as usual.

PESTICIDES

Finally, I'd like to touch on the issue of pesticides. Since the 1940's when synthetic pesticides became commercially available, there has been a dramatic increase in pesticide sales and use in Canada. For example, between 1970 and 1975 there was a six-fold increase in the annual sales of agricultural herbicides in Canada from 21 million to 130 million.

Recent examples across Canada demonstrate a wide range of human health and environmental problems caused by pesticides.

Examples include:

- . in New Brunswick during 1975 at least 3 million birds were killed from the aerial spraying of approximately 7 million acres of forest to combat the spruce budworm.
- . in Ontario in 1979 following the roadside spraying of the herbicides 2,4-D and 2,4-DP along a ditch to control brush and weeds, 70,000 trout were

killed when chemicals reached a nearby body of water.

- . a recent study was shown that even wearing masks and protective clothing will not prevent pesticides from getting into the bodies of agricultural workers and gardeners. The pesticides pass right through even rubberized clothing and through the skin and enter the blood stream.

Pesticides are regulated by both the federal and provincial governments. Federally, Agriculture Canada registers pesticides under the Pest Control Products Act. No pesticide can be sold or imported unless it is registered. However, there is no public input into the registration process and no mechanism whereby a member of the public can trigger a re-evaluation of a pesticide when new evidence comes to light about adverse health effects. Thus in the case where 113 pesticides registered in Canada were found to have been registered on the basis of fraudulent tests by Industrial Bio-test Laboratories (a U.S. testing lab), the government let the pesticides remain on the market while retesting took place. There was no statutory process for the public to challenge this decision.

Provincially, the Ministry of the Environment in Ontario administers the Pesticides Act. This Act governs the use of pesticides and provides for classification, permit and

licensing scheme. As is the case under federal legislation, there is no opportunity for public input into decision-making. Enforcement is often haphazard.

For example, in 1982, an Ontario farmer's cattle pasture was aerially sprayed by Hostess Foods in the course of their own spray activities. Tests performed by the Ministry of the Environment confirmed the presence of Monitor, an insecticide and Bravo, a fungicide. It also turned out that Du-ter, a fungicide, not registered in Canada was also sprayed by Hostess. However, the Ministry did not test for Du-ter because of the "cost and difficult analysis procedure". In other words, important evidence was not obtained.

Indeed, for whatever reasons, the MOE had the samples destroyed before any analyses were performed.

In regard to the other samples, the Ministry informed the farmer that no prosecution would be launched as the residue levels were evidence of "only spray drift and not misapplication". However, case law clearly shows that you can successfully sue or prosecute for spray drift.

What lessons can be learned from the government's track record in the control of toxic chemicals affecting our health and the environment?

1. First, environment ministries may not be adequately fulfilling their mandate of protecting the environment while other ministers in cabinet are advocates for their constituencies. Surely the ministers of environment should be advocating environmental protection and the benefits of clean-up.
2. Existing legislation and enforcement practices must be brought into the 20th century. In the area of hazardous waste, drinking water and pesticides, deficiencies in the law have been known for some time, yet law reforms have been delayed and delayed again. This is despite, for example, the Economic Council of Canada's finding that while de-regulation may be appropriate in certain areas, in relation to health and safety and environment, regulation was appropriate and necessary.
3. Access to information. Getting information on environmental issues, including finding out about chemicals migrating from a landfill, obtaining spray permits and health and environmental impacts of toxics has often proved to be a difficult task. The federal Access to Information Act has a mandatory exemption for trade secrets,

which industry can hide behind. The new Bill introduced in Ontario also appears to indicate that the government intends to enshrine the principle of "Freedom from Information". Under that bill, there will not even be recourse to the courts and disclosure is severely limited by numerous exemptions.

One solution is to amend the environmental statutes to clearly provide for access to health and safety information.

4. Citizens must be given adequate tools to protect the environment themselves. To this end, CELA has advocated the need for an Environmental Bill of Rights since 1970.

In the past few years, all three major political parties in Canada have proposed environmental Bills of Right while in opposition, e.g. The Liberals and NDP in Ontario, ^{and} the Conservatives in Saskatchewan. Most recently, the federal Minister of the Environment has advocated such legislation. However, a number of matters would have to be dealt with in a provincial bill. Key elements would include:

- . right to a clean environment
- . citizen access to the courts
- . intervenor funding
- . access to information
- . mechanisms for public input into environmental regulation-making
- . class action reform
- . change in onus of proof rules

In conclusion, as you can tell from my review of three critical environmental problems, law reforms are past due. Toxic chemicals continue to have a large impact on our health and environment and must be strictly regulated. It is up to our governments to meet this challenge and for the public, including important groups like yours to make it clear that health is a Number one concern and a priority for governments to address.

Toby Vigod

June 22, 1984