

I N F O R M A T I O N B R I E F

ON THE

OPERATION AND ACTIVITIES

OF THE CANADIAN ENVIRONMENTAL LAW
RESEARCH FOUNDATION

AND THE

ENVIRONMENTAL LAW ASSOCIATION

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CANADIAN ENVIRONMENTAL LAW RESEARCH FOUNDATION

A BEGINNING

A coalition of scientists, lawyers and citizens, dedicated to the protection of environmental quality through implementation of existing legal remedies and through development of legal reforms, established the Canadian Environmental Law Research Foundation (CELRF).

The Foundation is a non-profit corporation formed solely to serve the public in pursuing environmental quality. It is registered as a charitable organization under The Canadian Income Tax Act.

RATIONALE FOR BEGINNING

Citizens' groups have sprung up across Canada to work against the degradation of our environment. These action groups have often been hindered in pursuing their objectives by a seemingly expensive, inaccessible legal system and by their unfamiliarity with existing legal remedies.

CELRF assists citizens' groups and private citizens by dealing directly with the legal impediments forestalling the attainment of environmental quality objectives. Through research, education and development of the law, the Foundation will implement and supplement the work of existing environmental groups - (e.g. Federation of Ontario Naturalists, Pollution Probe).

CELRF is the first and only citizens' group in Canada that provides legal services in the fight for environmental quality.

The remedial potential of legal action has not been fully realized in solving Canadian environmental problems. The tools of the lawyer can provide invaluable assistance to all citizens for all environmental problems. (The role of the lawyer in the United States already has illustrated the effectiveness of legal action in solving environmental problems.)

PHILOSOPHY OF CELRF

There are two fundamental beliefs that summarize the philosophy of CELRF and underlie all the efforts of the Foundation.

- (a) The belief that government functions most effectively when constantly challenged by an informed and active public.
- (b) The belief that the private citizen must be afforded a direct and meaningful role in governmental decision making. Part of the solution to any problem is the private citizen's feeling of participation in the process of problem solving.

AIMS AND OBJECTIVES OF CELRF

1. To promote through legal channels, standards and objectives that will ensure the maintenance of environmental quality in Canada.
2. To develop an awareness within the legal community of how the law may be employed to attack the problems of pollution.
3. To inform the general public of legal remedies available to secure their rights to a healthy environment.
4. To assure the maximum involvement of all affected interests in the decision making process of administrative agencies regulating the environment.
5. To assess and challenge all actions affecting environmental quality.
6. To assist in the development of environmental policy by non-governmental groups for submission to government.
7. To study existing remedies, examine legal solutions in other jurisdictions and evaluate the effectiveness of government agencies, in order to propose feasible legislative reforms for the protection of our environment.

8. To stimulate the vital co-operation required among the various disciplines in order to foster reforms that reflect all aspects of environmental problems.
9. To establish a reference library of environmental law to serve both litigant and researcher.

THE OPERATION AND ACTIVITIES OF CELRF

THE PEOPLE

CELRF is governed by a Board of Directors consisting of scientists, lawyers, and citizens from the community at large. From this Board of Directors an Executive Committee has been selected to administer the Foundation's activities and to establish policy guidelines. All Directors are volunteers.

Presently the Board of Directors is comprised of the following members:

Prof. H. W. Arthurs	Dr. James Lorimer
Anthony Barrett	Arthur Maloney, Q.C.
Andrew Brewin, M.P., Q.C.	Peter Middleton
Dr. Ralph Brinkhurst	Harvin Pitch
Dr. D. A. Chant	Walter Pitman, M.P.P.
David Estrin	Dr. Vivian Rakoff
E. A. Goodman, Q.C.	John Sewell
Maurice Green	Prof. Barry Stuart
Ron Haggart	Dr. Colin Woolf
Clayton Hudson	Stanley Stein
	Alan Levy

EXECUTIVE COMMITTEE 1970-71

<u>President</u>	Barry Stuart
<u>Secretary-Treasurer</u>	Clayton Hudson
<u>Members</u> - Alan Levy	Anthony Barrett
Peter Middleton	David Estrin
Harvin Pitch	Maurice Green
Stanley Stein	

EVOLUTION OF CELRF

HISTORY OF DEVELOPMENT

Summer 1970 - The concept of the Foundation was discussed among several people. A complaint office was opened and staffed with volunteers. Research of legal remedies was commenced and a compilation of all Ontario Statutes dealing with environmental problems was completed.

Fall 1970 - A working group of lawyers, scientists and others began to work out the policy and objectives and organizational structure of CELRF. The Foundation was incorporated as a non-profit charitable corporation. The Board of Directors was appointed and the administrative framework established.

Winter 1970 - The Foundation continued research work commenced in the summer and began work on various projects with other environmental groups.

Spring and Summer 1971 - With the assistance of private donations, volunteers and a grant from Federal Governments Opportunities for Youth Programs, fifteen people, primarily law students, were engaged on a full time basis in the many facets of work carried on by the Foundation.

1. The environmental Law Advisory Office was opened and operated on a full time basis. An average of ten calls per day were serviced by the Office. Several calls resulted in extensive field work and research in properly servicing the request for assistance or advice.
2. A sixty-page brief on Ontario Bill 94, the proposed Environmental Protection Legislation was written and presented to leaders of the provincial political parties and other interested persons. This brief was responsible for major amendments in the final draft of the Legislation.
3. Briefs on several other pieces of legislation dealing with the environment were prepared.
4. Legal assistance was provided to several projects carried out by Pollution Probe and other citizens' groups throughout the Province of Ontario.

5. Speakers were provided for various citizens' groups.
6. A kit for teachers in public schools was prepared.
7. Research Projects involving the following topics have been initiated:
 - (a) Preparation of a Private Members Bill on Noise Pollution.
 - (b) Preparation of a Private Members Bill on Air Pollution.
 - (c) Examination of the various means of drafting and implementing legislative recognition of an Environmental Bill of Rights.
 - (d) Detailed analysis of Federal and Provincial legislation dealing with environmental issues.
 - (e) Examination of Municipal by-laws respecting environmental matters.
 - (f) Analysis of the potential of private prosecutions for environmental abuse.
 - (g) Research of the common law remedies and defences involved in possible environmental litigation.
 - (1) Private Nuisance
 - (2) Public Nuisance
 - (3) Negligence
 - (4) Riparian Rights
 - (5) Prescription
 - (6) Easements
 - (7) Statutory Authority
 - (8) Public Trust Doctrine
 - (9) Class Actions
 - (10) Standing to Sue

PROJECTED DEVELOPMENT OF CELRF

There are three distinct stages of development planned for CELRF. Each stage is distinguished by the size of the staff required and the focus of the work undertaken by CELRF.

Stage One

In the initial stage of development the work of CELRF concentrated on local problems and on acquiring a working knowledge of the fundamental legal remedies peculiar to environmental problems. This stage of development involved primarily volunteer staffing and was directed to gaining a familiarity with local problems, effecting a working co-operation with associated citizens' groups, introducing ourselves to the public and gaining a sense of the practicality of the theoretical conception of the Foundation through experience with real problems. At the completion of this stage we had developed a wealth of information about administrative agencies charged with environmental problems; we had made invaluable contacts in all segments of the community; we had gained awareness of the major environmental concerns of the public and we had empirical evidence of the impact we might have in improving environmental quality.

In all respects Stage One was a most enlightening period of learning and development.

Stage Two

Stage two of the Foundation's development began in August of 1971. Based on past experience the Foundation solidified and redesigned its local operations to produce effective results on all local problems. Many of the projects will be completed during this stage and new ones with more involved objects commenced.

At this stage the Foundation will assist in establishing several branch offices in various centres across Canada to deal with the local environmental problems of that area.

The Foundation will commence involvement in questions of national environmental planning and resource use. The Foundation will scrutinize governmental decisions and research policy alternatives.

The staff of the Foundation office should consist of two lawyers, one scientist, one executive administrator and three secretaries.

Stage Three

The final evolution of CELRF envisages a local office in every province dealing with all local problems and assisting the head office ultimately in Ottawa, or Toronto, in dealing with questions of national policy of environmental planning and resource use.

The staffing of the main office will remain essentially the same, except experts might be consulted on a part time basis to help with special projects.

Throughout all stages of development an enormous portion of the work will be undertaken by volunteers from various fields. The work of volunteers is an essential part of the success of a citizens' group working for environmental quality.

THE ORGANIZATION

The operation of the Foundation is basically divided into two divisions: Legal Research Office and Environmental Law Advisory Office.

LEGAL RESEARCH OFFICE

OPERATION

The research activities of the Foundation are coordinated and directed from the office of the Executive Coordinator of the Foundation. Projects for research will emanate from a "Think Tank" consortium of experts from different fields meeting to assess the nature of various pollution problems.

For each problem area, a team of experts representing various disciplines will be established to serve as consultants and to provide a basis for concurrent input of ideas for research in that particular area. For example, a lawyer, an ecologist, a biologist and a chemist all specializing in problems of water pollution form a team engaged in water pollution research. Through their interaction the different aspects of a problem emerge, provoking the integrated and comprehensive problem solving required in environmental planning.

Each area: water, noise, air, soil and aesthetic pollution, is served by a similar inter-disciplinary team of experts.

ACTIVITIES

The activities of the Legal Research Office include the following projects:

1. Compilation of all legal materials relevant to environmental issues.
2. Publication of pamphlets dealing with specific questions of procedural and substantive law relating to pollution.
3. Establishment of a reference library of materials crucial to legal remedies for environmental abuse.

4. Research of legal problems of particular concern to environmental actions, e.g. -
 - Standing to sue
 - Sufficiency of evidence
 - Class Actions
 - Private Prosecutions
 - Administrative Review
 - Public Trust Doctrine.
5. Examination of existing remedies and of the remedies available in other jurisdictions in order to prepare proposals for effective legislative reform.
6. Encouragement and provision for closer working co-operation among various disciplines in order to generate legislative reforms that reflect all interests and all aspects of environmental problems.
7. Preparation and presentation of submissions to the Government regarding areas of environmental concern, such as the following:
 - (a) The preservation of our parklands and sites of natural beauty and historic significance.
 - (b) The environmental protective measures governing the exploitation of our natural resources.
 - (c) The basis, duration and scope of approvals for the disposal of effluents granted to industry and municipalities by government agencies.
 - (d) Procedures for appeal and methods of compensation available to persons adversely affected by pollution.
 - (e) The use of supersonic transport in light of the resultant atmospheric pollution and threatened sonic boom.
 - (f) The protection of valuable wildlife and plantlife from the irrational use of pesticides and herbicides.
 - (g) The role of the private citizen in planning for environmental protection and the development of natural resources.

ENVIRONMENTAL LAW ADVISORY OFFICE

OPERATION

The Environmental Law Advisory Office under the direction of the Executive Director of CELRF operates as the centre for most of the projects and work of CELRF. Through this office all volunteers and staff are supervised. The concept of this office is to provide a focal centre for all persons engaged in different aspects of environmental work so that through interaction they might be stimulated by the work of others while keeping abreast of new ideas or new problems.

ACTIVITIES

1. Environmental Law Advisory Office provides assistance to the projects of citizens' groups dedicated to environmental quality.
2. Speakers or resource people are provided by the Office for conferences, courses or public meetings on environmental quality.
3. Conferences or seminars are organized to discuss specific environmental issues or to generally inform various sections of the public of environmental remedies.
4. Actions groups with representation from all disciplines are formed to provide an inter-disciplinary reference source for all projects and problems of CELRF.
5. Under the supervision of the Executive Co-ordinator the Environmental Law Advisory Office is open week days to deal with environmental complaints.

Complainants are assisted in attaining available relief from the appropriate government agency. If satisfactory relief is not provided by the government agency, a team of "fact-finders" is assigned by the Executive Co-ordinator to research the problem and prepare a report. A representative of the Law Advisory Office will then discuss the report with the polluter and government agency involved. If negotiations prove fruitless, the problem may then be referred to the Environmental Law Association for possible legal action.

A detailed file is kept on all steps taken regarding each problem to be employed in research projects of the Foundation.

GENERAL ADMINISTRATIVE & OPERATIONAL COSTS OF CELRF OFFICES

The two offices of CELRF, the Environmental Law Advisory Office and the Law Research Office will operate out of the same building.

The staff and space requirements of these offices are described in the special budget notes. The activities of both these offices has been previously mentioned and the various projects supervised by these offices are described in the succeeding pages.

OFFICE OPERATING COSTS

1. AMALGAMATION

The budgets of the two offices, Legal Research Office and Environmental Law Advisory Office have been amalgamated as one budget. As the diagram of office requirements illustrates both offices can function from the same office complex.

2. GOOD TIMES AND HARD TIMES

Two different budgets reflecting operation with a skeleton staff and a full staff are also presented.

3. START-UP COSTS

A large portion of the 1971-72 budget for both offices is directed to Start-Up Costs. This portion of the budget will not be carried over to the 1972-73 budget requirements.

4. SECOND HAND OFFICE EQUIPMENT

All office equipment is budgeted at second hand prices. It is assumed that many of the essential office supplies and equipment will be obtained from second hand stores or from institutions which have no further need for it.

5. RESEARCH COSTS

Initially a greater part of the research work will be done by the full time staff members. Some will be done by volunteers who will be paid minimal remuneration. Specialized research work and laboratory research will often be required and is included in the budget figure. Costs in acquiring copies of reports, briefs or other documents required for research is also included. The research costs specified here do not contemplate the research required by specialized projects outlined in succeeding pages.

6. LIBRARY

Initially the cost of a library for CELRF will be quite high. Once the basic reference books are acquired the maintenance of a current library will decline considerably in cost.

This budget figure does not include the cost of the operational libraries required by the permanent staff of CELRF. An overall budget figure for all library needs is set out in the budget for the ENVIRONMENTAL LAW LIBRARY.

7. PERMANENT PERSONNEL

A complete full time staff will require two lawyers, one executive co-ordinator, one scientist and three secretaries. The secretaries would also serve as administrative assistants for the operation of the research library, the Environmental Law Advisory Office and the general public relations work required.

In the initial stages if funding is unduly restricted then the responsibilities of the scientist and executive co-ordinator could be amalgamated and one lawyer could attempt to deal with all legal aspects of CELRF. During such hard times the secretarial staff could be reduced to one full time secretary and one part time secretary.

However, the work load already experienced by CELRF could not properly be handled for very long by such a skeleton staff. In order to lend some flexibility to our requests for financial assistance two budgets have been prepared. One budget "Hard Times" reflects minimal operating expenses, the other budget "Good Times" reflects adequate operating expenses to cope with the work of CELRF.

To maintain a viable organization providing effective remedies for environmental abuse the team of CELRF must eventually attain the capacity to function at a level reflected by the "Good Times" budget.

The general responsibilities of the permanent staff will be:

(a) EXECUTIVE CO-ORDINATOR

1. Organize and control of the spending and raising of all the Foundation's funds.
2. Supervision of all public relations work of the Foundation.

3. Organization and supervision of all volunteer workers.
4. Organization of all Conferences, symposiums, seminars, and speaking engagements of the Foundation.
5. Co-ordination of all the projects of the Foundation.
6. Supervising the operations of the Fact-Finding teams responsible to the Law Advisory Office.
7. Responsible for maintaining communication lines among all projects, staff of CELRF and the resource panels of experts.

(b) LAWYERS

The responsibility of the two lawyers will be largely shared except that one will be primarily responsible for the research work of the Foundation, while the other will be primarily involved with the work of the Advisory Office and working in co-operation with the Environmental Law Association.

(c) SCIENTIST

1. Establishment and operation of all interdisciplinary panels.
2. Organization of all scientific research or laboratory analysis required by the projects of the Foundation or required by the Environmental Law Advisory Office.
3. Operation of the Environmental Laboratory.
4. Resource person for all CELRF activities.
5. Supervisor of all scientific evidence gathered for projects or legal actions.

(d) SECRETARIES

One secretary will work with both lawyers and assist in the running of the Environmental Law Advisory Office. One secretary will work with the executive co-ordinator and assist in handling all public relations work of the Foundation. One secretary will work with the scientist,

assist in the operations of the environmental law research library, act as receptionist and do general typing tasks for volunteer workers of the Foundation.

SALARIES FOR PERMANENT PERSONNEL

GOOD TIMES

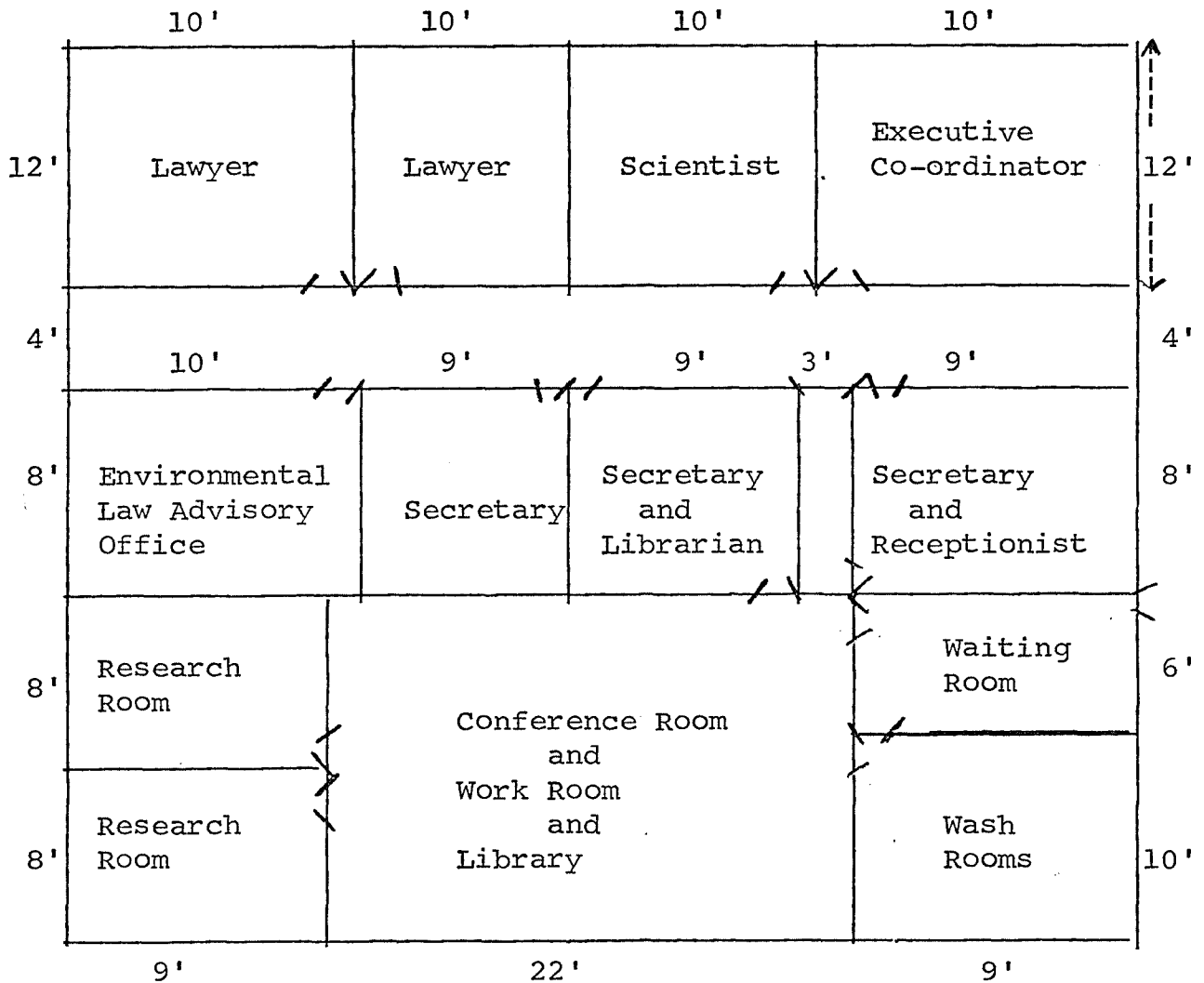
Lawyers (2) x \$10,000	\$20,000
Scientist (1)	10,000
Executive Co-ordinator (1)	10,000
Secretaries (3) x \$6,000	18,000
Canada Pension Plan	<u>1,000</u>
Total	\$59,000

HARD TIMES

Lawyer (1)	\$10,000
Scientist-Executive Co-ordinator (1)	10,000
Full time secretary (1)	6,000
Part time secretary (1)	3,000
Canada Pension Plan	<u>500</u>
Total	\$29,500

8. OFFICE EQUIPMENTGOOD TIMES - OFFICE SPACE REQUIREMENT

Reflecting amalgamation of the offices of
Environmental Law Advisory Office and
Legal Research Office.



Total - 40x40 - 1,600 sq. ft.

HARD TIMES - OFFICE SPACE REQUIREMENT

Reflecting amalgamation of the office of
Environmental Law Advisory Office and
Legal Research Office.

	12'	12'	8'	
8'	Lawyer	Scientist - Executive Co- ordinator	Secretary and Receptionist	8'
				3'
9'	Conference Room and Work Room and Library		Environmental Law Advisory Office	6'
				8'

Total - 17x30 - 510 sq. ft.

GOOD TIMES - ENVIRONMENTAL LAW ADVISORY OFFICE
AND LEGAL RESEARCH OFFICE

BUDGET 1971-72

1. Office Facilities

8 Desks	\$ 400
6 Tables	150
30 Chairs	250
7 Filing cabinets	175
8 Telephones	800
Book shelves	150
Misc. office equipment (lamps-fixtures)	400
5 Typewriters	750
Photo copy machine (paper supplies based on Xerox 914 at 10,000 copies per year @ 5¢ copy)	500
1 Dictaphone	350

2. Operating Expenses

Rent (1,600 sq. ft.) with renovations	4,000
Travel expenses	1,000
Postage	400
Office paper supplies	250
Laboratory analysis (assuming no environ- mental laboratory)	2,000
Advertising & Fund raising	1,500
Misc.	250
Hydro	180
Long distance telephone calls	400

3. Salaries

Fieldworkers Honorarium Fund	<u>2,000</u>
Total	<u>\$15,900</u>

HARD TIMES - ENVIRONMENTAL LAW ADVISORY OFFICE
AND LEGAL RESEARCH OFFICE

BUDGET 1971-72

1. Office Facilities

4 Desks .	\$ 160
2 Tables	40
15 Chairs	100
4 Filing cabinets	80
4 Telephones	400
Book shelves	75
Misc. office equipment (lamps-fixtures)	150
2 Typewriters	200
Photo copy machine (paper supplies Xerox 914 at 5,000 copies per year @ 5¢ copy)	250
1 Dictaphone	300

2. Operating Expenses

Rent (510 sq. ft.) with renovations	1,200
Travel expenses	500
Postage	200
Office paper supplies	150
Laboratory analysis (assuming no environ- mental laboratory)	1,200
Advertising & Fund raising	500
Misc.	150
Hydro	100
Long distance telephone calls	200

3. Salaries

Fieldworkers Honorarium Fund	<u>1,000</u>
Total	<u>\$6,955</u>

PROJECTS OF CELRF

The projects are treated individually to enable these institutions whose budgets or terms of reference do not permit donations of general "need money" or "start up funding" for CELRF to participate in the sponsorship of individual projects that are within their means and scope of interest.

All projects will be supervised and operate out of either the Legal Research Office or the Environmental Law Advisory Office. The budgeting for each project does not contemplate any costs incurred by either of these offices in administering projects.

Several of these projects have already begun and require financing to continue.

The environmental complaint or advisory office has been previously described and its operating financial requirements incorporated into the budget for the general offices of CELRF.

PRIVATE MEMBERS BILLS

CELRF plans to draft with supportive briefs various pieces of legislation to be introduced as Private Members Bills. Each of the Bills will set out the administrative technique, standards of quality, offences, penalties and all other aspects of regulation required to govern the problem. Each Bill will be accompanied by an extensive brief explaining the basis of each section of the Bill and explaining the economic, ecological and medical reasons underlying the recommendations of the Bill.

The Bill will represent the collective interdisciplinary analysis of experts from every field of study.

A study of the legislative procedures adopted by other countries will be undertaken in order to incorporate the experiences of other jurisdictions in the recommendations of the Bills.

The role of non-governmental groups in stimulating reform or in the drafting of legislation has not been fully realized in the past. CELRF hopes to draw on the collective energies and knowledge of the community to provide a meaningful role to members of the public in the process of legislative reform.

An important ramification of private citizens participating in the development of draft legislation is the provocation of public debate on feasible policy alternatives.

SPECIAL NOTES ON BUDGET FOR PRIVATE MEMBERS BILLS

1. SUPPORTIVE RESEARCH BRIEFS

The low figures budgeted for all the major papers underlying the final submission are based on the premise that most researchers will do a lot of the work on a volunteer basis. A second reason for the low budget is based on the assumption that the writing of the supportive briefs will involve only an analysis of the latest existing work that pertains to the problem. The expert will not be required to personally carry out extensive original research work, but will synthesize relevant research.

In order to ensure a fruitful interdisciplinary exchange, all researchers engaged in a specific Bill will meet several times to develop the final draft of the recommended legislation. The honorarium fee for all researchers would include provision for their time spent in working together on the provisions of the legislation as well as the writing of their specialized supportive brief.

Due to the extensive known variety of pollutants in air and water, the research costs in these areas are higher, contemplating an analysis of the several causes and effects of pollution.

2. TRANSLATION

Several foreign countries have very effective statutes regulating the various areas to be covered by the legislative proposals. Most statutes contain an average of at least 10,000 words. The price of a certified translation is 5-6¢ a word. Thus the approximate cost of translating any foreign statute is at least \$500 per statute. The budget figure for translation assumes most foreign statutes will be available in English and those that are not available might be adequately translated on a partly volunteer basis by various members of the university community.

3. TRANSPORTATION

In respect of some Bills it may become extremely advisable to visit a foreign jurisdiction or bring a person from such jurisdiction here in order to obtain on a first hand basis empirical data on the effectiveness of solutions in that jurisdiction.

4. PRINTING & DISTRIBUTION

The Bill and supportive briefs explaining their various provisions ("White Paper") will be printed and distributed as one submission. Distribution to all political parties, various organizations, interested citizens and members of the media will require at least 500 copies. The final submission in the form of a white paper will be approximately 400 pages.

ENVIRONMENTAL BILL OF RIGHTS

The philosophy of contemporary Canadian legislation governing the environment is not presently geared to encourage public participation in all aspects of decision making. Virtually all rights to a hearing, access to information or rights to appeal that are granted apply almost exclusively to the polluter. The rights of the private citizen are severely curtailed by existing environmental legislation.

CELRF, encouraged by experiences in other jurisdictions and guided by the democratic ideas of maximizing citizen participation in the governmental process, believes that an equitable balancing of all conflicting interests in the environment is achieved only through the meaningful involvement of all interested persons in the problem solving process.

To this end an Environmental Bill of Rights guaranteeing to the public the basic individual rights of a democratic process is required.

The private citizen must have access to all information collected by government agencies and employed in government decisions affecting the environment. Without such information, the public cannot properly evaluate the prudence of government action, nor be aware of future alteration to the environment, nor can the citizen be aware of the exact source of injury to public or private property occasioned by various industrial operations.

Without the assistance of government resources in gathering information about various sources of pollution, the citizen is unable to ascertain the causes of pollution causing injury to public or private property. The citizen can either not afford the high costs of scientific analysis often required to ascertain sources of pollution or he has not the ability in law to enter the premises of industry to investigate the sources of pollution.

The private citizen must have the right to present his interests at a hearing whenever government action will affect his property or alter public property to the detriment of the environment.

Too often administrative decisions become matters of daily routine for an over-worked administrative agency.

Thus an appeal to a court able to impartially consider all competing claims must be afforded to all members of the public adversely affected by any governmental action affecting the natural environment.

These basic rights of citizen participation will undoubtedly cause some delay in environmental planning. This is a small price to pay for a little extra insurance that all interests might be represented in environmental planning. The past costs of expediency can be seen, smelt, heard and felt all around us.

Ostracized from the inner sanctums of decision making, the private citizen is denied knowledge and stripped of power to effectively participate in the social process.

The provision of means of public involvement and the resultant sensitizing of the decision making process serves not only to assist in solving problems but as well narrows the growing schism between the governed and the governing.

An Environmental Bill of Rights is a critical necessity for the health of the social process as well as the health of the environment.

PRIVATE MEMBERS - ENVIRONMENTAL BILL OF RIGHTS - BUDGET1. Supportive Briefs

Survey of remedies in other jurisdictions	\$ 100
Policy Paper on the need for Private Initiatives	1,000
Research of legal problems relevant to Proposals	1,000
Honorarium for Project Editors & drafting of Bill	500

2. Administrative Costs

Printing & distribution of White Paper & Bill	1,500
Part time secretary	500
Operating Expenses (Xeroxing-paper supplies postage-telephone calls)	300
Transportation (if required)	<u>300</u>
Total	<u>\$6,100</u>

PRIVATE MEMBERS BILL ON NOISE POLLUTION

In the regulation of noise, Canada is far behind many other jurisdictions. Much research presently being done in several fields attests to the extensive physiological and psychological damage caused by daily noise levels of an industrial city.

A brief specifying the nature of the problems besetting city life as a consequence of noise pollution and a feasible regulatory system governing the problem is urgently required in Canada.

NOISE POLLUTION BILL - BUDGET1. Supportive Research Briefs

Physiological Effects of Noise	\$1,000
Psychological Effects of Noise	1,000
Economics of Regulation	1,000
Sources & Causes of Severe Noise Pollution	1,000
Technology of Noise Abatement Methods	1,000
Survey of Control Procedures in other Jurisdictions	1,000
Research of legal problems relevant to proposals	1,000

2. Administrative Costs

Translation of foreign statutes	200
Printing & distribution of White Paper & Bill	1,500
Part time secretary	1,000
Honorarium for Project Editors drafting and editing proposed legislation	500
Misc. (Xeroxing-paper supplies-postage-telephone)	300
Transportation (if required)	300
Total	<u>\$10,800</u>

AIR POLLUTION BILL - BUDGET1. Supportive Research Briefs

Health hazards of various pollutants	\$1,000
Effects on animal & marine life of various pollutants	1,000
Effects on plant life of various pollutants	1,000
Social costs of various pollutants (Recreational-repairs to house, car, clothes, etc)	1,000
Economics of regulations	1,000
Sources & causes of severest air pollutants	1,000
Technology of various air abatement methods	1,000
Survey of control procedures in other jurisdictions	1,000
Research of legal problems relevant to Proposals	1,000

2. Administrative Expenses

Translation of foreign statutes	200
Printing & distribution of White Paper & Bill	1,500
Part time secretary	1,000
Honorarium for project editors & drafting of legislation	1,500
Operating expenses (Xeroxing-paper supplies- postage-telephone)	300
Transportation (if required)	<u>300</u>
Total	<u>\$12,800</u>

WATER POLLUTION BILL - BUDGET1. Supportive Research Briefs

Health hazards of various pollutants	\$1,000
Effects on animals & marine life of various pollutants	1,000
Effects on plant life of various pollutants	1,000
Social costs of various pollutants (Recreational-repairs to house, car, clothes, etc)	1,000
Economics of regulation	1,000
Sources & causes of severest water pollution	1,000
Technology of various water abatement methods	1,000
Survey of control procedures in other jurisdictions	1,000
Research of legal problems relevant to Proposals	1,000

2. Administrative Expenses

Translation of foreign statutes	200
Printing & distribution of White Paper & Bill	1,500
Part time secretary	1,000
Honorarium for project editors & drafting of legislations	500
Operating expenses (Xeroxing-paper supplies- postage-telephone)	300
Transportation (if required)	<u>300</u>
Total	<u>\$12,800</u>

PRIVATE MEMBERS BILL - REGULATION OF PITS AND QUARRIES

The latest legislative attempt to regulate the operations of pits and quarries in Ontario was evoked without the comprehensive participation of citizens directly affected by the problems. The Mineral Resources Committee that drafted the "white paper" preceding the new legislative was entirely composed of civil servants and representatives of industry. No private citizens or representatives of afflicted municipalities were members of this vital committee.

The legislative^{on} is not surprisingly severely inadequate. Wide powers of discretion reside with the Department of Mines, no effective recourse is granted to private citizens, essentially the past totally unacceptable status of pits and quarry operations is permitted to continue.

A thorough analysis of the problem, with views from all sides of the conflict and an attempt to provide long term solutions to the dire problems of increasing gravel and sand operations is urgently required.

BUDGET

1. Background Papers

History of existing problems	\$1,000
Analysis of existing legal remedies	1,000
Remedies provided by other jurisdictions	1,000
Economics of pits and quarry operations - the hidden costs	1,000
Industries view	1,000
Municipalities and private citizens view	1,000

2. Administrative Expenses

Publication - printing 500 copies	2,000
Editing and writing of final report and drafting legislation	1,000
Travel expenses	<u>500</u>
Total	<u>\$9,500</u>

CELRF LIBRARY

In all aspects of the Foundation's activities, a comprehensive reference library is required. Hopefully much of the requirement for library work will be accommodated by the resources of University libraries in the area. However, there are several reference sources that are in such constant demand in CELRF's work that it is essential to have these sources readily available. Furthermore, there are particular environmental reference works that are not available at other libraries.

The budget of the Foundation's Office Library includes the cost of a working library for a lawyer, a working library for the executive co-ordinator, a working library for the scientist, the cost of subscriptions to periodicals that are primarily devoted to environmental problems, the cost of acquiring specialized government reports, the cost of acquiring environmental reference works that are in high demand and the cost of xeroxing materials required from other libraries for various research projects undertaken by the Foundation.

A good library is an invaluable part of the arsenal of an environmental law action group dedicated to environmental quality.

CELRF LIBRARY - BUDGET

Working Library for Lawyer	
Start-Up Costs	\$4,000
Yearly Subscriptions	1,000
Working Library for Scientist & Environmental Laboratory	2,500
Yearly Subscriptions	500
Environmental Reference Works	
Key Books	500
Journals & Periodicals Specializing on Environmental Questions	360
Xeroxing of Reference Materials	500
Misc. supplies and library equipment	<u>300</u>
Total	<u>\$9,600</u>

ENVIRONMENTAL LAW HANDBOOK

NATURE OF HANDBOOK

The handbook will be designed for laymen. In the style of "HOW TO DO IT" text, it will cover all the various remedies in law dealing with environmental problems.

USE OF THE TEXT

1. LAYMAN

The handbook may be employed as a reference work for educational purposes or it may be employed as a reference work for initiating measures for environmental protection.

Understanding the law is all too often a frustrating and impossible task for the layman. Faced with disturbing environmental problems, the layman seldom appreciates his legal position. Failing to know what can be done or failing to understand why nothing is done, the layman, often embittered and dissatisfied, eventually succumbs to accept environmental disturbance. Only a very few affected by environmental problems can afford to engage a lawyer to explain the nature of available remedies.

The text will illustrate how the layman can play an effective part in the decision making process of environmental planning. It is assumed that the active participation of all sections of the public in environmental planning will ensure the equitable representation of various conflicting interests.

Whether or not the text indicates a remedy to the layman for his particular grievance, the handbook will be a valuable reference merely by indicating how decisions that affect the layman are made and how the layman might represent his interests in the process.

2. CITIZENS' GROUPS

Often the actions taken by citizens' conservation groups do not take advantage of the legal recourses available. The text in explaining the nature of legal remedies and describing the administrative process governing environmental matters will assist citizens' groups in designing their plans for effective action.

The text indicates where the law has yet to afford adequate measures of redress and thereby illustrates areas that citizen groups may bring their energies to bear in arguing for reform.

3. LAWYERS

Environmental Law is not new. Litigation on behalf of environmental problems is as old as many of our environmental problems. However, the plethora of environmental legislation and consequent extensive administrative regulatory schemes take a lot of environmental law beyond the pale of the working knowledge of most lawyers. Many effective measures for relief involve extensive research and an imaginative bending of old laws to fit new problems.

Contemporary environmental law is not beyond the ability of most lawyers, it is simply outside their usual expertise or store of knowledge and involves more expensive time of the lawyer than most clients can afford. The handbook will offer lawyers a good annotated bibliography of references and ideas that save him time (and therefore the client's money) and provokes several alternative ideas for dealing with his client's problem.

4. EDUCATION

The handbook can be used as supplementary reading for environmental law courses, or as a reference work for other university courses, high school courses and special courses for various professional groups.

As the Environmental Law Handbook in the United States has aptly proven, such a handbook serves the entire community in tackling the problems of environmental abuse.

DEVELOPMENT OF THE HANDBOOK

Under the direction of CELRF, a group of lawyers and professors of law have been assembled to research and write the text. Each person will be responsible for a specific area. Two members of CELRF will edit all submissions and tailor the work to meet the requirements of a text for comprehension by the general public.

The text will cover all common law remedies, all major Provincial legislation and all Federal legislation pertaining to environmental questions.

BUDGET.

1. Publication.

In order to guarantee that the selling price of the book is within the means of most, a figure for subsidizing the selling price is included in the budget.

2. Research Fees.

Research and writing will be contributed by lawyers and professors at law, assisted by law students.

3. Transportation.

Meetings of all the writers are planned for the planning of the handbook. There will be numerous meetings to discuss the allocation of research work and to tailor finished research work into a cohesive chapter by chapter treatment of the subject matter.

Budget

Cost of printing (100 pp, 25,000 copies, @ 20¢ per copy)	\$ 10,000
Research Fees	3,500
Transportation & Expenses	1,000
Typing draft & final manuscripts	<u>1,000</u>
Total	\$ <u>15,500</u>

ENVIRONMENTAL LAW PUBLIC SCHOOL TEACHERS' KIT.

Introducing the legal facts of environmental control to High School students plays an important role in developing an awareness of environmental problems among the youth who must now play an important role in preserving our heritage for future generations.

The Teachers' Kit will be prepared to give High School teachers all the basic information and reference materials required to teach an enlightening course on the environment and the law.

The Kit will be amended each year to provide contemporary material and to give legal commentary on each of the new environmental problems that is exposed by the media.

BUDGET.

Preparation of materials	\$ 1,000
Printing (2,000 copies of 150 pp.)	4,000
Amending each year	<u>350</u>
Total	\$ 5,350

INTERDISCIPLINARY ACTION GROUPS

In dealing with environmental problems, experience has indicated that extensive interdisciplinary inter-action is essential. Lawyers cannot play an effective role unless they are familiar with the ecological or scientific implications underlying the problem.

The Interdisciplinary Action Groups (IAG) will be organized around specific problems. Thus for example on the question of water pollution the IAG would be comprised of: a lawyer versed on the various regulatory schemes and laws pertaining to water problems; a biologist familiar with water pollution problems; an ecologist; an engineer familiar with water pollution abatement techniques; and a medical doctor aware of the consequent health hazards from water pollution. The IAG would meet at least once a month to exchange information, to answer specific questions addressed to them from CELRF, to act as reference for all projects, and to generally co-ordinate their research work.

Eventually all of the various experts assembled around specialized problems of the environment will become conversant and knowledgeable of the language, import and problems of each of the related disciplines. The value and importance of this interdisciplinary co-ordination cannot be over-estimated. An established panel of experts meeting regularly will provide an invaluable source of information and ideas. In time such panels will become the backbone of all effective work undertaken by CELRF.

BUDGET

It is hoped that beyond travel or other miscellaneous expenses, the budget for all groups will not require any remuneration.

Budget 1971-72 for all IAG (Soil, Water, Air, Noise,
Northern Development)

Travel Expenses	\$ 300
Paper Expenses (Xeroxing-interchange of information)	<u>250</u>
Total (for one group)	<u>\$ 550</u>
Total for all groups \$550 x 5	\$2,750

PUBLIC LECTURES ON ENVIRONMENTAL PROBLEMS.

Requests for speakers on various aspects of environmental problems are constantly made from Universities, Public Schools, municipalities, citizens' action groups, churches and various social clubs.

In order to inform the public of problems and solutions to environmental concerns it is considered extremely important to meet requests from the public for speakers, panel members or resource persons.

It is as well extremely important to give a highly informative, stimulating and entertaining presentation of the complex and multifarious problems of environmental planning.

In this regard presentation on various topics will be organized employing media equipment and other aids in order to maximize the communication of information and retain the interest of the audience.

The budget for the Public Lectures does not include a stipend for the speaker. The practice of not charging public groups for speakers' fees will be continued so as not to deter any chance of furthering the dissemination of knowledge on environmental problems. Since many of the engagements are out of town a budget for transportation and expenses has been included.

BUDGET 1971-72

Preparation of Lectures	
Media aids (slides tapes-photographs-films)	\$ 500
Handouts	500
Misc. (graphs-diagrams-models)	100
Transportations costs	500
Total	<u>\$ 1,600</u>

ENVIRONMENTAL LAW RESEARCH PAMPHLETS

Research must be carried out on all common law remedies in order to ascertain their relevance to environmental problems. There are several difficult legal hurdles to effective environmental litigation that must be carefully and exhaustively researched. (e.g. - Class Actions, Standing to Sue.)

Procedural, evidentiary, statutory and substantive questions of law relating to environmental problems will be researched and published in pamphlets available to all members of the legal community.

This service will assist lawyers in providing a ready reference of various means of dealing with the clients' environmental problems. Consequently remedies that might have been overlooked will be employed. Furthermore the exorbitant costs to the client of a lawyer's time will be reduced, rendering the legal process a more feasible option for environmental problem solving.

BUDGET

1. Research Fee

Lawyers contracted to research and write a paper on specific legal questions will be based on the nature of the topic and the experience of the researcher. However, in all cases remuneration will be minimal since the researcher's time will be largely on a volunteer basis.

2. Publication

Since the research pamphlet will be principally designed for use in the legal community, the pamphlet will include comprehensive footnotes and detailed coverage of the legal questions. Thus each pamphlet will run an average of 25 pages. In light of the size of the legal community a minimum of 1,000 copies of each pamphlet should be published.

The Budget is based on the publication cost of one pamphlet. Within the next year it is hoped to publish at least ten pamphlets covering the following topics: (1) Class Actions; (2) Standing to Sue; (3) Public Nuisance; (4) Private nuisance and Pollution; (5) Private Prosecutions; (6) Riparian

Rights: (7) Negligence and Water Pollution
(8) Statutory Authority; (9) Public Trust
Doctrine; (10) Private Remedies under the
Environmental Protection Act.

Budget

For one pamphlet	
Research Fee (average)	\$ 1,000
Typing	50
Publication (1,000 copies)	<u>700</u>
Total	\$ <u>1,750</u>
Pamphlets for 1971-2, 5 x 1750	8,750

ENVIRONMENTAL LABORATORY

In light of CELRF's experience and arising from the experience of other environmental groups in Canada and the United States it is patently clear that a laboratory equipped to deal with various problems of the environment is essential. This laboratory will provide analysis of air, water, soil and noise for the legal and research work of CELRF. The facilities of the laboratory will be available to all environmental citizens' groups to provide critical data in their work for environmental improvements.

An independent private laboratory is required to provide data to challenge often over-worked and reluctant government agencies to provide effective results. In the preparation of all prosecutions or civil litigations, careful laboratory analysis is a fundamental necessity.

The majority of projects undertaken by CELRF require research data based on laboratory analysis. For instance to properly state the case for new standards of air quality, tests of existing potential or actual harm from existing conditions is pertinent to an argument recommending change.

The laboratory will often serve as the catalyst to set off a chain of events that will eventually culminate in actions to cease the degradation of the air, water or soil in question.

BUDGET

1. General

The costs of going to outside sources for testing soon makes it economically more realistic to set up a private laboratory for most testing requirements.

2. Staff

The laboratory like CELRF will draw extensively on volunteers from all disciplines to operate and perform much of the laboratory work. The Science Advisor of CELRF will be responsible for the overall supervision and administration of all laboratory facilities.

3. Equipment

It is hoped that highly specialized work will be performed in University laboratories.

The laboratory will be dependent on donations or loans of some equipment required for testing such as photographic equipment, boats, scuba gear, planes, trucks and other specialized equipment.

Budget

Bruce & Kaer Noise meter	\$ 2,000
General laboratory equipment start-up costs	5,000
Laboratory operating costs - supplies, rent, laboratory technician	<u>8,000</u>
Total	<u>\$15,000</u>

BRIEFS ON POLICY ALTERNATIVES

The role of CELRF in challenging government is not to embarrass but rather to stimulate government agencies to exhaustively evaluate all decisions having an environmental impact. By presenting well researched briefs challenging the merits of government plans and proposing reasoned alternatives, CELRF aspires to serve the environment, not to destroy any particular political party.

CELRF's experience in the past has illustrated that carefully researched and well reasoned briefs will be favourably received by government, resulting in extensive alterations in government planning or legislation.

In order that the briefs comprise viable alternatives, extensive and specialized research is required. Thus the services of professional personnel intimately familiar with the problems involved is often a prerequisite to the success of any submission.

Participation from public sources in the policy planning counsels of government is essential to the health of a democratic process and affords a fresh perspective for the government agency charged with the daily routine of administering and planning.

As in the past CELRF Policy Briefs would range from analysis of all proposed legislation dealing with the Environment, to submissions on all questions of governmental planning relating to the environment (e.g. Urban Expressways; Development of Toronto Harbour; Use of Quetico Provincial Park; Certificates of Approval for Industrial use of Water resources; Environmental Quality Standards; James Bay Hydro Power Development; Development of the Canadian Arctic and the Rights of Natives; Regulations of Pits and Quarries).

BUDGET 1971-72

The budget represents the average cost of one brief. It is impossible to accurately represent an average cost due to the enormous variation in costs arising from the different topics covered by briefs. Based on past experience at least eight briefs a year would be required at the Provincial or local level.

Budget

Research Fees (travel-gathering reports, materials, scientific analysis)	\$ 2000.00
Typing & Xeroxing (20 copies)	200.00
Estimated average cost per brief	2200.00
Total for one year \$2,200 x 5	<u>11000.00</u>
	<u>\$15400.00</u>

ENVIRONMENTAL LAW VOLUNTEER WORKSHOPS

A Workshop for volunteers serves several purposes: it enables volunteers to competently take over much of the initial work of complaints within the office; prepares citizens to act as key resource persons for environmental action within their community; gives private citizens a sense of familiarity with the laws and administrative agencies governing the environment.

Many of the complaints serviced by the Law Advisory Office require substantial field research and negotiation that are vitally necessary and inordinantly time consuming. Past experience has proven that a trained and supervised lay volunteer can deal with a great deal of the initial work on a complaint, thereby freeing volunteer and permanent professional staff to work on the more complicated aspects of various complaints.

In order to train volunteers to provide a high level of service and deal competently with the intricacies of various problems, it is necessary to give an extensive two day training session with a follow-up one day session a few weeks later. The volunteer will then be assigned to work under a supervisor.

It is advisable to recruit and train a new group of volunteers three different times throughout the year. Training sessions should be held in May, September and January.

NOTES ON BUDGET

WORKSHOP LEADERS

The budget does not include remuneration for the persons involved in teaching or running the workshops. The workshop will be run and organized by the permanent staff of CELRF.

BUDGET FOR ONE TRAINING SESSION BASED ON 25 VOLUNTEERS

Advertising (newspapers-posters)	\$200
Postage	100
Handouts & other printed matter	200
Refreshments	<u>50</u>
Total	<u>\$550</u>
Per Year - Three sessions x \$550	\$1,650

CITY IN DISTRESS - GENERAL PROPOSAL

The Problem

Sudbury is perhaps the most glaring example of a Canadian city that has been almost oblivious to pollution and the destruction that it has caused to the natural environment of the Sudbury area. The city lies 250 miles north of Toronto in the middle of some of Ontario's most beautiful recreation land. However, since mining and smelting operations began around the turn of the century, smoke fumigations have systematically destroyed much of the surrounding area.

The destruction occurs on a multi level process. First, sulphur dioxide fumes begin killing the principle vegetation, red and white pine. With the death of these trees, the soil begins to erode, and soon the very thin soil cover on the precambrian rock is eliminated. This process is often accentuated by the numerous forest fires in the Sudbury area. The fact that Sudbury has the highest forest fire rate in Ontario is no coincidence. As the pine begins to die, the forests become extremely dry and very susceptible to such fires.

One may argue, as company officials do, that this damage was caused fifty years ago when open hearth roasting was used and that present technology has virtually eliminated the problem. But statistics compiled by the Department of Lands and Forests, and the Department of Energy and Resources indicate that considerable damage is still being done. For example, as recently as 1968, record fumigations were being recorded by the Air Management Branch beyond the periphery of areas previously severely damaged by environmental abuse.

The largest of the two mining companies in the area has recently constructed a 1,250 foot stack, the tallest in the world. When the stack becomes operational in the summer of 1972, the company claims that future damage will be minimal. Granted, the air in the immediate Sudbury vicinity will be improved but there are studies to indicate that damage from sulphur dioxide fumigations will become prevalent further away from the stack, thus destroying an even larger area of recreational land. Concern about the stack has been expressed by the City of North Bay, almost sixty miles from Sudbury.

Damage has not been confined to the destruction of the local vegetation. Sulphur dioxide deposited in the water directly from the stack and indirectly from the rain and snow run off has increased the acidity of not only many of the local lakes but also lakes in the LaCloche Mountain district some 50 miles away. Industrial sewage from the mining and smelting operations has not been properly treated and is presently being dumped into the Vermillion River above the intake pipe for the water supply to the town of Lively.

Sudbury, with a population of over 90,000, is the largest city in Ontario that does not provide any treatment for its sanitary sewage. The city's water supply comes from Ramsay Lake, a small heavily built up lake within the city limits. Many of the cottages on the lake are serviced by septic tanks of questionable utility.

Although every type of pollution imaginable exists in Sudbury, until recently, little or no attempt was made to expose, let alone solve this problem. Thus, Sudbury provides CELRF with a unique opportunity to set vital precedents in the fight against pollution. If a strategy can be developed that will mitigate the pollution problem in Sudbury, a working model for fighting pollution that can be used successfully in almost any city in Canada will be available.

Potential Solutions

There are basically three ways to remedy the pollution problem in Sudbury. The first is to work within the administrative framework set up by the government to regulate pollution. Depending on the aggressiveness and the commitment of the government regulatory agency, this approach may involve action ranging from merely informing the appropriate agency of the problem, to pressuring the agency to take a stronger stand vis a vis polluters, to letting the courts resolve such issues as administrative negligence and failure to perform a statutory duty.

The second way to remedy the problem is to adopt the common law and statutory remedies available to the aggrieved property owner or outraged citizen. Here taking such actions as private prosecutions against those persons who are committing offences under anti-pollution legislation is envisaged.

Assistance would be rendered to local residents whose property has been seriously damaged or whose health has been impaired to sue the polluter for damages.

The third way to fight pollution successfully is to develop a strong sense of awareness and concern for the pollution problems among the local residents. As the citizens become a strong anti-pollution force, they can exert considerable pressure on the polluter to clean up his operations. This "grass roots" movement can be encouraged through the CELRF sponsored citizen oriented complaint and advisory bureau. The bureau, staffed by legal and scientific experts, would advise a complainant whether a pollution problem did exist, the most effective way to remedy that problem and would assist him generally in reaching satisfactory solutions.

A more detailed discussion of each approach is essential to illustrate some of the practical problems that must be resolved in Sudbury.

1. Government Regulatory Agencies

The provincial government has assumed the responsibility of regulating individuals, industries and municipalities whose discharge contaminants into the natural environment. The regulatory mechanism has recently been brought under one Act, the Environmental Protection Act and under one government department, the Department of the Environment. Generally, anyone who wishes to discharge contaminants into the natural environment must receive a certificate of approval. Before approval is granted, that person must meet the standards established by the Department for that particular contaminant. However, sources of pollution that existed before these regulatory standards came into effect may exceed the maximum emission and discharge levels.

To regulate those industries or persons who cannot or have not met the standards set for certificates of approval, the Department may put the offender under a ministerial order. The imposition of these orders is regarded by the Department as a fairly drastic step and in the past only used in exceptional circumstances. Usually they are the result of a negotiated settlement between the regulator and regulated. The offending person makes a commitment to meet certain emission objectives within a specific time period in

return for a guarantee that more drastic action such as court action will not be taken against him.

Unfortunately, such negotiated settlements do not always produce the most satisfactory results from an environmental point of view. Numerous studies of administrative agencies have illustrated the tendency of the regulating agency to be co-opted by the regulated into an implicit acceptance of their problems and difficulties. Such a tendency is quite natural and does not necessarily indicate a lack of diligence on the part of the regulator. However, if the government regulatory agency is to adopt an independent, objective approach in dealing with those who are to be regulated, there must be a countervailing force to strengthen the environmental protection input and thereby offset such excessive influence. Who is better able to mount this lobby than a well informed, concerned citizenry?

The above discussion assumes that the present regulatory mechanism will be improved once a protectionist counter lobby is developed. This may not be true. There are a number of different approaches to government regulation of the environment and it is essential that each alternative be studied seriously before one approach is adopted. It may be that certificates of approval, granted on the basis of uniform provincial standards, permit pollution that could easily be eliminated. For example, certain technological advances may enable industries to operate at levels far below the provincial maximum, but there will be no incentive to install such machinery because less expensive devices can still meet the regulatory standards. Because there is no direct investigation of each applicant to discover precisely what pollution can be avoided, the government may be permitting unnecessary pollution. Similarly, there seems to be little regard to the cumulative effect of pollution. Several industries may locate in a particular area and although the emission from any one industry is within the regulatory maximum and may not impair the environment, the cumulative pollution may be ecologically disastrous. A whole myriad of questions exist about pollution control that must be answered before the best regulatory system can be instituted. An analysis of the effectiveness of the present system and the potential effectiveness of alternate systems will be an important contribution to understanding how we can best solve pollution problems.

2. The Courts as a Regulatory Mechanism

A court of law rightly strives to do justice between the parties; the decision as to what is justice in a particular case is not necessarily one that will be in the best long term interests of the environment. For instance, a farmer suffering sulphur dioxide damage to his property may decide to sue the nickel company and may even be awarded an astronomical award in damages which may represent "justice" as between him and the company, but which in no way solves the environmental problem.

All this is not to say, however, that the courts cannot play an important role in combatting environmental pollution; they can. The individual must and can have the opportunity to ensure that his "rights" are being recognized. Presently the courts appear as the most effective way to pursue private rights since many polluters operate in direct contravention to the well intentioned and often effective regulatory mechanisms established by government.

Court actions serve to focus public attention on sources of pollution and provoke both the polluter and government agency to be more diligent in their efforts to achieve appropriate levels of environmental quality.

(a) Private Prosecutions

Several statutes make pollution, however defined, a statutory offence.

When one commits an offence he is usually prosecuted by the Crown Attorney. However, it is also possible for an individual to prosecute that offence. If the Crown takes the case, there is no need for individual initiative. However, in particularly controversial areas of the law, the Crown is often reluctant to prosecute offenders and thus it becomes necessary for private individuals to assume the role of prosecutor.

Private prosecutions must be taken to ascertain their remedial effect for the needs of the Sudbury area.

(b) Smoke Easements

For over sixty years Inco has been purchasing

easements from land owners in the surrounding areas. These easements protect the company against any action that might be brought by property owners subject to these easements. Since about 1947 the Patent issued by the provincial government on the granting of crown land to a private individual has contained a similar smoke easement. The legality of these apparently blatant attempts to deprive individual property owners of their property and personal rights to a healthy environment must be carefully scrutinized. The relevance and effect of the Ontario Damage by Fumes Arbitration Act must also be considered in this context.

(c) Common Law Actions

Once the precise nature of the air and water pollution has been determined, the practical application of the traditional tort concepts should be tested in the courts. The evidentiary problems of Environmental Litigation must be examined. This part of the study should make it clear exactly how and at what cost these actions may possibly be brought by an aggrieved individual in the Sudbury area.

(d) Certificate of Approval

Another potentially serious problem facing private legal action in the Sudbury area are certificates of approval which may be raised as a statutory defence to environmental litigation. Arguments can be made for and against the proposition that certificates of approval are a defence to private action. Any certificates issued to polluters in the Sudbury area should be examined and their precise legal significance determined.

3. Pollution Control by Citizen Participation

Generating enthusiasm and concern among Sudburians for their environment is an essential aspect of this project. If people aren't prepared to participate there will be no plaintiffs. With regard to the regulatory agencies, a concerned public has a very important role to play. This is especially true when one realizes how much discretionary power the Legislature has given the Minister, the Director and his staff of the Department of the Environment.

The whole tenor of the new Environmental Protection Act suggests that the government will take a strong, pro-

environmental approach, but, except for a few isolated sections, the Act does not impose any statutory obligations on the new Department. In an attempt to guarantee flexibility, the Act has left the government with the option of almost complete inaction. Or, with wide discretionary powers, the legislation gives the government the alternative of forcing polluters to adopt all reasonable anti-pollution measures. The course the government follows will depend on a number of factors, but probably the most important will be the interest and involvement of citizens.

The government may have been negligent in its general statutory duty to protect the environment by failing to consider all the environmental ramifications of their decisions in evoking ministerial orders or certificates of approval. Thus the whole question of these orders and reasonable alternatives will have to be examined very closely. If the orders unduly favour the mining companies or the city, this fact must be publicized to ensure that it won't happen again. Secondly, there is a tendency, especially when the order covers a fairly long period of time, that those under the order with either fail to abide by it or make representations to the Department for extensions or less onerous terms. At this point, citizen groups can apply public pressure on those under the order to comply with it or they can make representations to the government outlining the reason for adopting a strong stand against those under the order.

The above discussion presupposes that an active, concerned citizenry exists. The government, as a politically responsible body, will not act unless pressured by an insistent public.

4. Existing Citizens' Groups

There is one notable exception to the general lack of citizens^{groups} in abating pollution in Sudbury, the Sudbury and District Committee on Pollution. This Committee is made up of representatives from almost eighty different groups and organizations within the Sudbury area.

The Committee has had some success in its efforts to generate concern and respect for Sudbury's natural environment, but it is operating without sufficient funds or manpower, and therefore is unable to reach its full potential as a strong, viable environmental protectionist

lobby. Neither deficiency can be remedied satisfactorily by the Committee itself.

With the assistance of a team of legal and scientific experts to act as a catalyst for existing organizations much of the needed momentum for environmental quality can be mounted. Under our grant CELRF would provide this catalyst and provide a complaint bureau-advisory office, styled after the successful one operated by CELRF in Toronto.

The complaint, advisory bureau would be the unifying force behind the Sudbury project. It would work with the existing anti-pollution groups and individual citizens. The bureau would disseminate information and expertise to enable citizens and groups to fight major polluters. Also, as an action oriented group, it would assist citizens in prosecuting the most flagrant pollution offenders.

Again, an important aspect of this approach to pollution control would be an evaluation of its effectiveness. With an evaluation it would then become possible for other groups and communities, who wished to mount a citizen oriented attack on pollution, to draw from our experience in Sudbury. Presumably, certain aspects of our bureau will be more successful than others and this must be well documented if others are to institute similar programmes.

To publicize the effectiveness of the project and the lessons learned during the project, a major report will be published. The report would include an in depth description of the legal, scientific and administrative problems we faced, an analysis of the effectiveness of the courts as a forum for fighting pollution, and an assessment of the relationship between Project Sudbury, the citizens' groups, the city council, industry and the provincial government.

Project Sudbury affords an opportunity to test the effectiveness of existing legal tools to enable the private citizen to secure an acceptable standard of environmental quality. The experiences of Project Sudbury will provide invaluable insights for other community groups and government regulatory agencies.

Initial groundwork for Project Sudbury was completed last summer by four law students working in co-operation with

local interested citizens and various scientific personnel from the University of Toronto. It is planned to take two full time summers and one winter working part time to complete the goals of Project Sudbury. The first full summer work is slated for May, 1972.

PROJECT SUDBURY - CITY IN DISTRESS - BUDGET

Four law students working under the supervision of a lawyer from CELRF for ~~a year of full time~~ work over two summers and part time work over one winter would be required to cope with the legal problems involved.

Four graduate science students working under the supervision of university professors and the science advisor of CELRF would be required for a similar period of time.

One secretary to manage the office located in Sudbury and provide local secretarial support services for the team would be required. The secretary, with the assistance of one of the law students, would administer the operations of the advisory environmental law office in Sudbury.

Two teams of two undergraduate researches would be required to do general fact finding research for the advisory office and the task force operating in Sudbury.

In order to establish the Sudbury Environmental Advisory Office, staff the task force for a year study of two full time summers and one part time winter, provide proper laboratory analysis and publish the final report, a budget of \$25,000 is required.

ENVIRONMENTAL LAW ASSOCIATION

RATIONALE FOR BEGINNING

The employment of legal remedies is a vital and indispensable weapon in the fight for environmental quality.

Private actions through the courts, either against the acts of government agencies or in pursuit of private redress, have been the hallmark of our political system. Enlightened legislation is often preceded by a long history of litigation.

Even the most comprehensive legislation cannot anticipate every potential public or private interest. Furthermore, administrative agencies vested with the power to protect the environment often become too single-minded or too sensitive to particular political pressures and generally become too overworked to deal adequately with individual complaints.

Private litigation provides a check on government activities as well as a stimulus for enlightened legislation and government decisions. The availability of private litigation is a long standing traditional safeguard of individual rights.

THE PEOPLE

The Environmental Law Association (ELA) is composed of volunteers mainly from the legal community interested in developing Environmental Law. The governing body of ELA consists of representatives from the Bar, law faculties, the student community and members of the general public.

OPERATION

ELA is an independent organization providing legal assistance in the community and servicing complaints from CELRF that could not be remedied without legal action.

PROCEDURES IN INITIATING LEGAL ACTION

Private Prosecutions

All private prosecutions for violation of any statute or by-law regulating the Environment will be handled by a member of ELA.

Civil Litigation

If the complainant has adequate financial resources or is able to qualify for legal aid then he will be referred to a list of lawyers who have indicated an interest in environmental law. The panel of lawyers does not represent a list of experts, rather only those lawyers with an expressed interest in environmental law. The research resources of CELRF will be available to any lawyer should assistance be required.

Where financial sources are inadequate, and a lawyer cannot be found to do pro bono work, then ELA will take the case.

OBJECTIVES

The general objectives underlining any decision of ELA to initiate legal action are:

1. To generate and establish legal precedents which will make legal sanctions concerning the environment more meaningful and easier to employ.
2. To highlight the implications of certain government decisions pertaining to the environment.
3. To stimulate government agencies inundated with routine work to scrutinize with greater care the effects of their activities.
4. To provide specific remedies for private and public wrongs in circumstances where such relief is otherwise unavailable.

PARTICIPATION

ELA needs the help of individuals and groups to

make it effective. Any citizen may support the Association by becoming a member. The effectiveness of the Association's role in attacking environmental problems in court or before administrative agencies is directly related to the size of its membership.

NOTES ON BUDGET

It is anticipated that the plaintiffs seeking redress for strictly private proprietary rights will pay the lawyer for his time. However, the experience of ELA to date has found that the majority of complaints requiring legal action involve questions of public rights or public interest. In such cases there is no plaintiff willing to assume legal costs. The work must be assumed by lawyers on a pro bono basis. The budget covers court expenses, and costs involved in preparing litigation. The figure for counsel fees comprises a reserve fund to assist some complainants in meeting legal costs of litigation and to offer minimal remuneration to counsel assuming lengthy pro bono cases.

OFFICE

The office will be operated and maintained for the use of any lawyer during pro bono work.

ENVIRONMENTAL LAW ASSOCIATION

BUDGET - SEPT. 1, 1971-72

1. Office Facilities

Rent	\$1,400
2 desks	100
1 typewriter	250
telephone	100
1 filing cabinet	50
6 chairs	50
supplies (mics. and general office)	200
tables and shelves	200

2. Operating Expenses

Legal disbursements	9,000
Counsel fees	7,000
Investigation fees	3,000
Fund raising	1,000
Printing	800
Postage	700
Transportation	900
Long distance calls	600

3. Salaries

Secretary	6,000
Canada Pension	<u>100</u>
Total	<u>\$31,550</u>