

PUBLIC RIGHTS AND ENVIRONMENTAL PLANNING.

A PRELIMINARY REPORT

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The Canadian Environmental Law Research Foundation is a non-profit 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.

PUBLIC RIGHTS AND ENVIRONMENTAL PLANNING

1. The Canadian Environmental Law Research Foundation (CELRF) maintains that every person has the right to a healthy and attractive natural environment.
2. CELRF further recognizes that every interested person has the right to take meaningful action for the protection, preservation and enhancement of the natural environment.
3. CELRF recognizes that most actions of regulatory, advisory, and decision-making bodies at all three levels of government have a direct effect on these environmental rights.

CELRF believes that government functions most effectively when constantly challenged by an informed and active public.

The direct inclusion of the public in the decision-making process offers some insurance that all competing interests are thoroughly canvassed.

4. CELRF advocates the creation of federal and provincial Environmental Councils to act as permanent advisory bodies to their respective governments in matters of policy formulation and to guard against possible violations of the public's environmental rights.

Such Councils should have the further duty of periodically reporting to the public on the state of the environment in their respective jurisdictions.

5. CELRF believes that at the level of environmental policy formulation, the public, either individually or through the medium of public interest groups, should be accorded the opportunity and the right to present policy position papers to both the Minister concerned and to the relevant Environmental Council.

2.

CELRF counsels increased public participation at this stage of the political process on the premise that the present electoral system fails to provide the necessary intensity of public discussions and exchange of informed ideas which are required to positively aid legislators in their formulation of decisions.

6. CELRF asserts that when any government department or agency proposes a work, undertaking or project which may detrimentally affect environmental rights, it be required to publish an Environmental Impact Statement. The Environmental Impact Statement must contain full disclosure of the probable environmental transitions likely to occur as a result of proceeding with the work, undertaking or project and must be published a reasonable period of time prior to its commencement.
7. CELRF proposes that if an Environmental Impact Statement is not forthcoming, or is deficient in detail, then any ten members of the public shall be at liberty to maintain an action for mandamus compelling the issuance of an adequate Environmental Impact Statement, in addition to injunctive relief, preventing the commencement of any work thereupon.

Applicants for such relief should not be fettered with the existing burdens of providing any bonds or other security for costs. However, costs may be awarded where it is established that the application was entirely without merit.

8. CELRF believes that the public has the right to challenge effluent standards which fail to adequately protect, preserve and enhance the natural environment.

Upon the receipt of a petition from 10 persons, the relevant Environmental Council shall hold a public hearing to review the standards unless the petition fails to raise a prima facie case justifying such a review.

9. CELRF maintains that every person be required to receive a permit to discharge effluents into the natural environment prior to the commencement of construction of any new work, undertaking or project, or the modification of an existing work, undertaking or project which may detrimentally affect environmental rights.

Upon the application for such a permit CELRF maintains there exists the unfettered right of every person to participate in a public hearing in order to voice his objections to the grant of such a permit.

Such rights ought not to be confined to those persons immediately affected, but must be extended to the public at large, for every citizen shall enjoy environmental rights not limited by arbitrary boundaries.

PUBLIC POLICY AND PUBLIC HEARINGS.

The objectives of Administrative Agencies, and the interests of the general public are best served through the institution of public hearings.

Administrative Agencies through public hearings can establish the wisdom of government objectives thereby placing the onus on critics to establish their claims, not by emotional platitudes or leverage of political power, but rather by the merits of their arguments in face of articulated government proposals.

The emotional harangues of misinformed citizens are replaced by constructive criticism of an informed public able to make enlightened evaluations.

The persuasions of influential special interest groups must be exercised publicly, consequently alleviating some of the subtle pressure for compromise experienced by Administrative Agencies.

Studies of Administrative Agencies establish that even the most competent, well-intentioned agencies make mistakes.

Public hearings can often assist in discovering over-looked probable cost factors of recognizing feasible alternatives not previously fully appreciated. Administrative Agencies being neither omniscient nor omniscient, can benefit from the collective input of the general public fostered by public hearings.

The purpose of public hearings is not to subvert or impair effective environmental control by government. Public hearings work to ensure that government planning considers all competing interests and considers the most equitable resolution of conflicting claims.

The larger political questions of our society focus on the increasing isolation of the private citizen from the decision-making process. The mere involvement of the private citizen through public hearings retards the demise of participatory democracy.

In environmental planning, public hearings afford an opportunity to reflect on all environmental costs before launching further assaults against the precarious balance of nature.

Whatever the price of such reflections, if repaid, through some conservation of resources or some increased public participation in governing, the costs are fully accounted for.