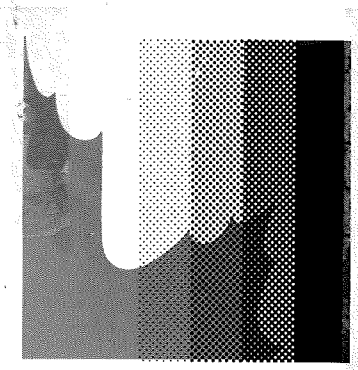

Canadian Environmental Law Association

L'Association canadienne du droit de l'environnement

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RECOMMENDATIONS

OF THE

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

TO THE

TASK FORCE ON LEGAL AID FOR THE PROVINCE OF ONTARIO

Toronto, Ontario
March 26, 1974

Delivered by

C. Clifford Lax

Written, researched and co-ordinated by

C. Clifford Lax
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I N D E X

CELA: A Word About Who We Are

The Canadian Environmental Law Association is a national non-profit organization of citizens, scientists and lawyers, dedicated to enforcement of present environmental laws and to their improvement.

The Association was founded in 1970 (along with the Canadian Environmental Law Research Foundation) in part because of the frustrations which citizens face, with reference to environmental problems, in dealing with a seemingly inaccessible legal and administrative system, and in part because of a lack of knowledge of those legal remedies that do exist to stop environmental degradation.

In order to fill this gap, the Association established a panel of about ninety lawyers in Ontario (and some in other provinces) who are willing to take cases, without charge if necessary, in environmental situations where legal assistance would otherwise not be forthcoming.

Through our Toronto office, lawyers with the Association provide advice to approximately 500 complainants per year, which in may instances result in positive action by government agencies or in the complainants obtaining further legal advice and assistance through the CELA panel of lawyers.

In order more effectively to inform the public about their environmental rights and remedies, and the legal reforms necessary for the establishment of a healthier and safer

environment, the Association and the Foundation jointly published, in February, 1974, Environment On Trial: A Citizen's Guide to Ontario Environmental Law, the first Canadian book outlining these areas in layman's terms.

Because of the work being done in this critical area by the Association, it has attracted a membership of about 500 from every segment of the public, in addition to the membership and support of many local, provincial and national organizations.

In addition to examples of our activities given in the body of this submission, relevant to the Legal Aid Task Force, the following further illustrate some of the efforts that lawyers from the Association have made in an attempt to establish better environmental rights for the general public:

- We forced the Ontario Ministry of the Environment to issue the second "stop order" ever issued, to (temporarily) close a battery-crushing machine emitting dangerous lead dust at Toronto Refiners & Smelters Ltd., and initiated action before the City of Toronto Board of Health, causing it to take legal proceedings to abate the lead nuisances at this and other lead smelters in Toronto.

- We established, in an Ontario Supreme Court decision, that a successful complainant in a private prosecution cannot be ordered to pay costs.

- After inaction by responsible government agencies, lawyers at our Sudbury office prosecuted Balfour Township for contaminating a water supply source by the faulty operation of municipal sewage systems.

- We are prosecuting (in conjunction with the City of Toronto) Teperman & Sons Ltd. under the Toronto anti-noise by-law for committing the offence of "unnecessary noise" in demolishing the old Labatt brewery at King and Beverly Streets, to show

that this old by-law can be innovatively applied so as to require that the latest technological improvements be used to reduce urban noise.

- We are assisting various ratepayers and residents' groups across the province in opposing pit and quarry licensing applications under the Pits and Quarries Control Act, and other groups opposed to development of waste disposal sites in their areas.

SUMMARY OF RECOMMENDATIONS

OF THE

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

TO THE

TASK FORCE ON LEGAL AID FOR THE PROVINCE OF ONTARIO

Toronto, Ontario
March 26, 1974

1) GROUP OR REPRESENTATIVE CERTIFICATES FOR PRIVATE PROSECUTIONS AS WELL AS CIVIL ACTIONS SHOULD BE ENSURED UNDER THE LEGAL AID ACT AND REGULATIONS.

2) LEGAL AID SHOULD BE MADE AVAILABLE TO PEOPLE IN MIDDLE INCOME GROUPS.

3) COSTS SHOULD NOT BE AWARDED IN CASES: WHERE THE PROVISIONS OF A STATUTE ARE BEING CHALLENGED; WHERE AN INJUNCTION OR DECLARATION, BUT NO DAMAGES, IS REQUESTED; AND WHERE THE INDIVIDUAL STANDS TO GAIN LITTLE OR NOTHING, EXCEPT AS A MEMBER OF THE PUBLIC. THE UNDERTAKING AS TO DAMAGES REQUIRED FOR AN ORDER IN THE NATURE OF AN INTERLOCUTORY (TEMPORARY) INJUNCTION OUGHT TO BE LIMITED TO A REASONABLE SUM IN CASES INVOLVING A PUBLICLY ASSISTED PLAINTIFF.

4) PUBLIC INTEREST LAW GROUPS SHOULD BE ALLOWED TO ADVERTISE THEIR SERVICES, AND ACCEPT LEGAL AID CERTIFICATES FOR ADVICE AND ASSISTANCE GIVEN.

INTRODUCTION

As an advanced industrial society in the twentieth century, we are fast learning to see, hear, breathe and drink the fruits of having long treated the earth as our garbage can and sewer. The ongoing nature of such a society, with an expanding population a la Malthus, that demands more cars, more highways, more developments, more consumer products that result in more industrial wastes, has dampened many an enthusiasm for the kind of progress which brings with it such unpleasant side-effects.

To those living near lead industries, in Toronto, nickel industries in Sudbury, or the proposed international airport in Pickering, such activities, actual or proposed, have come to look more like threats than promises. And they stand as warnings to the rest of us.

They also lead us to ask a number of questions.

a) Are significant segments of society, concerned about or affected by environmental abuse, presently barred financially from access to courts and other tribunals for the purpose of asserting or attempting to establish a right to environmentally sound planning and protection of the environment?
b) Is the Legal Aid Act and Plan contributing to this gap by policies which restrict who may obtain funding?
c) What changes in the Act and Regulations would aid those seeking environmental protection?
d) What concurrent changes in the Judicature Act and Rules of

Practice are necessary to achieve the above goals?

It is the submission of the Canadian Environmental Law Association that if concern for the environment and our life-support systems is not to become, indeed, "the last fad", then funding and legal services must be made available to individuals and groups pressing for environmental rights.

1) GROUP OR REPRESENTATIVE CERTIFICATES FOR PRIVATE PROSECUTIONS AS WELL AS CIVIL ACTIONS SHOULD BE ENSURED UNDER THE LEGAL AID ACT AND REGULATIONS.

Environmental issues characteristically refuse to be cast in the narrow scheme of A vs. B. The activities of polluting industries or overly enthusiastic developers, particularly in urban and near-urban areas, often affect numerous individuals in a community. Thus, in many instances, there is no one person with a sufficiently greater interest at stake than anyone else as would justify his going to the great expense of taking legal action, alone, in defense of the environment. (We leave aside, for the moment, whether he would in any event have standing to pursue the matter.)

That he and his neighbours could, collectively, better afford to take action still does not take into account the likelihood that they are collectively impecunious.

This collective impecuniosity of neighbourhoods and ratepayers' associations has been recognized on occasion by local area committees of the Legal Aid Plan. Two better-known instances

involved the South of St. James Town Tenants Association and the Grange Park Ratepayers Association. In both instances, certificates for legal aid were issued, either to the citizens' group itself or to individual members of the group, but only after considerable difficulty.

We find both these instances highly encouraging, because they indicate an awareness - albeit sporadic - of the plight of the urban environment and its inhabitants. What we would like to see is this awareness made widespread and systematized.

A number of equally compelling examples could be cited, involving citizens' groups confronted with environmentally questionable planning proposals who, because of the general stricture regarding the granting of legal aid certificates to groups of citizens - the two above exceptions notwithstanding - felt discouraged to pursue such aid. As a result, at least one ratepayers' group turned to lawyers from our organization in an eleventh-hour effort to have their environmental rights represented before irreversible planning decisions were made affecting their neighbourhood.

The Warren Park Ratepayers Association was assisted by lawyers from CELA for the purpose of opposing a re-zoning by-law which had been passed by York Council in 1969. Since no building had commenced on the site which had been re-zoned for high-density apartment buildings, and since adequate notice of the change in zoning had never been given to the area residents, we discovered that it was still possible to oppose the plans and by-law before the developer started construction.

The flaws which we found, from an environmental and social standpoint, in the developer's application included:

- The land in question was triangular, bounded on two of its sides by four heavily used tracks of the CPR and a very busy four-lane arterial road;
- The proposed development would generate even more traffic in an already traffic-congested area;
- Children who would live in the proposed apartments would have to cross the dangerously busy four-lane road to go back and forth to school;
- An increase in school population would require the eventual expansion of the schools in the area;
- The site is on top of a hill, and the three high-rise towers would shadow the people in the community in the valley to the south of the area;
- Noise would reverberate between the buildings from the heavily used railway tracks and the arterial road, creating a sonically bombarded environment for persons living in the proposed apartment complex.

The Council proved receptive to our submissions, and voted to suspend the high-rise designation until the ratepayers and developers could reach agreement on a land-use plan for the area.

That objectors to a project with significant environmental and social impact are never on an equal footing with its proponents is, unfortunately, a given fact. Without funding to help defray the costs of obtaining adequate legal and technical expertise, citizens would be ill-prepared to oppose projects that have hundreds of thousands, if not millions, of dollars worth of pre-public planning behind them. Without some means of obtaining professional advice and representation, it may well be impossible to expose flaws in project proposals.

We would not like to venture a guess as to the number of proposals presently pending in Metro Toronto, similar to the one which threatened the residents of Warren Park, where citizens are barred financially from contributing to a more rational scheme at the planning stages or, if necessary, in the courts.

Similarly, persons living near heavy metal and other such industries in urban areas are collectively afflicted by the activities of those industries, and are presently barred, individually and collectively, from seeking relief, in part because of financial and procedural prohibitions in the Legal Aid Act and in the Regulations.

Citizens living near some of the controversial lead smelting operations in Toronto deserve, at the very least, a forum where they can air their grievances without running the risk of financial ruin.

A basic premise of traditional legal theory is that the adversary system can produce results consonant with the public interest. It follows that economic barriers which prevent important interests from being considered during the decision-making process make it difficult to equate the public interest with the actual product of the system.

It would be an enlightened approach, therefore, to make available, through Legal Aid, group or representative certificates.

This would involve the amendment or repeal of section 39(a)(iv) and (b)(i) and (ii) of the Legal Aid Regulations. Section 39(a) states that a certificate for Legal Aid must be refused to the applicant where:

> the relief sought can bring no benefit to the applicant over and above the benefit that would accrue to him as a member of the public or some part thereof.

Section 39(b)(i) states that a certificate for Legal Aid may be refused the applicant where it appears that

> the applicant is one of a number of persons having the same interests under such circumstances that one or more may sue or defend on behalf of or for the benefit of all.

Section 39(b)(ii) states that a certificate for Legal Aid may be refused the applicant where it appears that

> the applicant has the right to be joined in one action as plaintiff with one or more other persons having the same right to relief by reason of there being a common question of law or fact to be determined.

Environmental problems in the twentieth century are unique in that there is, generally, no single injured or potentially injured party. A project or industry which harms the environment affects the rights of many people. But the fact that many, rather than one, may suffer from the activity, should not bar them from seeking relief.

For these reasons, group or representative certificates should also be granted for private prosecutions. This is in part because private prosecutions are often the most expedient means of upholding environmental statutes and associated rights, and in part because they are less expensive for the citizen than a civil suit.

We note in passing that the Legal Aid Plan provides that a decision denying a certificate may be appealed to the Area Com-

mittee, under Section 16(10) of the Act, or to the Provincial Director under section 14(4). Under section 16(10), however, if an applicant loses his appeal he can appeal no higher. But if an applicant wins his appeal, the Area Director can appeal this decision to the Provincial Director. It is submitted that it would be more equitable if the applicant were allowed this further appeal as well.

2) LEGAL AID SHOULD BE MADE AVAILABLE TO PEOPLE IN MIDDLE INCOME GROUPS.

It should go without saying that the adversary system works only for those who have access to it.

As we will attempt to show, legal underrepresentation in an environmental context is not limited to the poor.

It is our contention that certain policies pursued by Legal Aid officials make the restrictions on who may receive Legal Aid even narrower than the regulations demand.

For example, we have been advised that Legal Aid officials' interpretation of Note A, Schedule 3 of Regulation 557 as amended by O. Reg. 224/72 and O. Reg. 544/73 is that assistance is to be denied to one who would normally be eligible where they feel that a person of "modest means" would not be able to afford litigation. (A person of "modest means" might be a homeowner making $10,000 a year, with two children and a mortgage. Such persons are not normally eligible for Legal Aid.) In other words, a normally eligible person needing legal assistance might well be prevented from litigating, on the

grounds that Legal Aid should not put him in a better position than the man of "modest means".

This is a perfectly reasonable principle. But its application in cases where the cost of defending rights which are crucial to one's health and well-being may be far beyond the means of the ordinary member of the middle class, is not. The result of such a rule is that the person with no money, and the person of ordinary means, may both be denied access to legal remedies, in the name of equality. The segment of the population which is not rich enough to take legal action, nor poor enough to qualify for Legal Aid, suffers along with the poor.

The drawing of such an arbitrary line to determine availability of legal services prevents needed legal action, in far too many instances, in the area of environmental law. A better approach would be to provide assistance to both types of people in serious and bona fide cases.

3) COSTS SHOULD NOT BE AWARDED IN CASES: WHERE THE PROVISIONS OF A STATUTE ARE BEING CHALLENGED; WHERE AN INJUNCTION OR DECLARATION, BUT NO DAMAGES, IS REQUESTED; AND WHERE THE INDIVIDUAL STANDS TO GAIN LITTLE OR NOTHING, EXCEPT AS A MEMBER OF THE PUBLIC. THE UNDERTAKING AS TO DAMAGES REQUIRED FOR AN ORDER IN THE NATURE OF AN INTERLOCUTORY INJUNCTION OUGHT TO BE LIMITED TO A REASONABLE SUM IN CASES INVOLVING A PUBLICLY ASSISTED PLAINTIFF.

The Hon. Edson L. Haines, of the High Court of Justice in Ontario, noted in the December issue of the Canadian Bar Review:

> Our citizens must have confidence in our system of civil justice. Its availability at minimum expense is essential.... There is only one obstacle in the way, and that is our system whereby the loser pays the costs of the winner. The result is that only the poor financed by legal aid or the very rich can afford to exercise their rights by litigation. To the man of modest means, costs can be ruinous.

Because the survival of many common law and statutory remedies depends on their being used, and inadequacies in their ability to protect rights exposed and corrected, it is submitted that, at least in the areas outlined below, costs should be minimized, if not eliminated.

The Judicature Act* states that the court's discretion as to costs may be exercised, "subject to the express provisions of any statute." It is submitted that either the Legal Aid Act or the Judicature Act be amended so as to alleviate the realities of debilitating costs in the general areas outlined below.

In general, our examples of how costs, or the threat of costs, have worked against public initiatives to prevent environmental abuse will focus on two areas. The first includes cases where people's individual rights are affected, and the second, where the general public interest may be harmed.

In the Township of Uxbridge, in 1973, members of that community wished to oppose an application for an enormous gravel pit operation in their area, which would adversely affect the enjoy-

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* R.S.O. 1970 c.228 section 82(1) as amended by 1971, c.57 and 1972 c.48

ment and use of their homes and farms by the resulting noise and dust, and the safety of their children by heavy gravel truck movement on local roads.

Members of this community made representations to the Minister of Natural Resources, with the help of lawyers from CELA, stating that the pit could not qualify for approval, because, under section 6(2) of the Pits and Quarries Control Act, the Minister cannot issue a license for a pit "where the location is in contravention of an official plan or by-law of the municipality in which it is located." The gravel pit company argued, however, that the pit was a non-conforming use and that it had existed at that site before the provisions of the Pits and Quarries Control Act came into force in the township, and therefore had a right to the license.

The community members, again with the help of lawyers from CELA, sent statutory affidavits to the Minister swearing that the pit had not been in use, and pointed to the gravel industry's and this particular company's well-known policy of stockpiling lands, buying future sites and removing a truckload or two of gravel per year in order to qualify as an existing operation.

In the face of these assertions, the Minister, without public hearings, still accepted the industry argument and issued the license.

The community residents wanted to challenge, in court, the legality of the issuing of the license, but were faced with the prospect, if they lost, of sustaining costs in the area of $3000-$5000, depending on the length of the hearing. Moreover, even if the members won the initial action, the Ministry and the gravel company were sure to appeal the decision, thereby further increasing the amount of potential costs for which community members would be liable should they lose.

In the face of this, the court challenge was abandoned. Environmental rights were left, if you will, not only unvindicated but unargued. These people, while not poor, were still intimidated by the potential financial loss involved.

As Mr. Justice Haines asked, in the article referred to earlier: "Why should a taxpayer be obligated to place his home, his earnings and his resources on the line as a condition to the exercise of his rights?"

Lawyers from CELA have also worked with citizens affected by lead smelting operations in Toronto. These people, too, were prepared to take legal action against the companies, particularly Canada Metal. In the interim, they wanted some assurance that they and their children would not continue to be affected by the smelting operations, so our lawyers commenced preparations to obtain a temporary injunction. But when faced with the prospect of having to give an undertaking for damages as a condition precedent to the court's granting the temporary injunction, the citizens were compelled to give up the idea.

Such financial pre-conditions, in general, hinder all but the very rich from preventing a defendant from polluting during the course of a lawsuit which may take one or two years to complete. For the people who live around lead smelting operations in Toronto, their only alternative - and if they are poor, it is not a practicable alternative - is to move away.

Similarly, in issues where the individual stands to gain little (except as a member of the public) and the public interest may be enhanced by judicial consideration of the matter, such actions should be assisted by a limitation on costs.

The 1972 Ontario Supreme Court case of Larry Green on his own behalf and on behalf of all other people of the province and future generations thereof v. The Province of Ontario and Lake Ontario Cement Limited /1973/ 2 O.R.396, is an example, from our own experience, which may more cogently illustrate our point. Mr. Green, a Pollution Probe researcher, sought to prove, in an action brought with the assistance of lawyers from the Canadian Environmental Law Association, that the provincial government had breached trust with the people of Ontario by leasing provincial land adjacent to Sandbanks Provincial Park at $1 a year, for the private use of the Lake Ontario Cement Company.

Green contended that the provincial government had repurchased the leased lands from private persons for park purposes, and had intended to incorporate them eventually into the park. He claimed that the destruction of the unique sand dunes by the company was interfering with the enjoyment of the park by the public, and that the government was shirking its duty to main-

tain the park as apparently guaranteed by the Provincial Parks Act.

In ruling against Green in a motion brought by the Ontario Government and Lake Ontario Cement, Mr. Justice Mayer Lerner stated that the plaintiff "has no status to maintain this action" and that "the action is vexatious and frivolous". Thus, the implication is that no private person has any status in law to ask a court to stop activity which harms the public generally. If a citizen cares to attempt such action, he may be forced to pay a severe financial penalty - in the case of Larry Green, costs of about $4000, which were incurred well before the action even came on for trial. Counsel advised Green to appeal Mr. Justice Lerner's decision, but fear of additional costs dictated against this.*

In England, where costs are generally awarded to the winning party, as in Canada, the government-subsidised legal aid suit, however, denies the winning party funds he would have recovered from an ordinary private litigant. English courts, and more recently legal aid, have added a rider to that rule by construing the legal aid statutes to authorize the award of funds from the legal aid budget to winning individuals who would suffer financial hardship if no award were made. A similar policy has recently been adopted by the Legal Aid Directors in Ontario.

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* We note with interest that, in a decision handed down in February 1974 by the Supreme Court of Canada, Mr. Justice Laskin for the Court made a ruling which indicates that the decision of Lerner, J. on the question of a citizen such as Green having the status to sue would have been overruled, had the problem of costs not prevented an appeal.

In Ontario, such judicial awards against the Legal Aid fund might well tend to frustrate the legislature's purpose of providing access to the courts to the poor and those otherwise unable to vindicate public rights. The Legal Aid directors might find their funds depleted, and be unable or unwilling to handle certain kinds of cases which might result in awards of costs against them. This seems to be one aspect of Regulation 557, section 58, which mandates that even after a certificate for Legal Aid has been issued, the solicitor must advise the Area Director that it is "reasonable in all the circumstances" to proceed, and must obtain the Area Director's permission to proceed.

A private litigant who can afford to hire a lawyer need not convince the lawyer to take the case, because if costs are awarded, the litigant, not the lawyer, must pay them. If costs were to be awarded against the Legal Aid fund, impecunious litigants might have to persuade the Legal Aid directors that an action was so likely to succeed that it was worth taking the risk. The result would be that many persons' rights would go unrepresented, as they do now.

It is submitted, therefore, that costs should not be awarded in the kind of case described above, where the public good, not private gain or loss, is at issue, or where an injunction or declaration is sought, but no damages, in a suit involving a Legal Aid client, or in cases of judicial review.

The provision for no costs where injunctions and/or declarations, but no damages, are sought, is especially important in an environmental context, where industrial polluters are adversely affecting many people and the government regulatory

agency has failed to act.

As the Larry Green and Uxbridge cases amply illustrate, the cost of a civil action is often beyond the means of the average citizen. CELA has encountered a widespread fear of civil legal action. People believe, often correctly, that they cannot afford to defend their common law rights in court.

There are many reasons for this fear, including the high fees charged by some lawyers, the delaying tactics which run up court costs, and the concomitant unavailability of Legal Aid to groups and, in many environmental situations, to individuals. Moreover, as noted earlier, unless the undertaking for damages as a condition precedent to a court's granting an interlocutory injunction is kept to a reasonable amount, this avenue of relief is closed as well to the average citizen.

In the State of Michigan, for example, such an undertaking may not exceed $500 in environmental matters. Mr. Justice Albert Malouf, of the Quebec Superior Court, in granting an interlocutory injunction halting the James Bay Project, required a security or undertaking of only $10,000, a small amount in light of the multi-billion-dollar scope of the project. Both of these examples indicate directions Ontario might fruitfully pursue in this matter, as a means of making it possible for ordinary people to protect their environmental rights in court.

4) PUBLIC INTEREST LAW GROUPS SHOULD BE ALLOWED TO ADVERTISE THEIR SERVICES, AND ACCEPT LEGAL AID CERTIFICATES FOR ADVICE AND ASSISTANCE GIVEN.

It has long been recognized that low and middle income groups are denied meaningful access to the legal system because of the high cost of legal services, ignorance of legal rights and remedies, and the difficulties of finding a lawyer.

From CELA's particular perspective, it is clear that to say that people have a right to a healthy environment is a far cry from their actually being aware of, and being able to enforce, the specific environmental rights that are theirs under law.

Moreover, because of the impoverished situation in which many "ad hoc" environmental groups often find themselves, CELA's ability to assist, for example, a citizens' group opposing a development that would uproot a community will often be severely limited by the hard realities of our own financial resources. Were public interest law groups allowed to advertise their services and accept Legal Aid certificates, the viability of many such groups, and their ability to pursue the goals for which they were formed, would be greatly strengthened.

Indeed, as others have suggested, the rationale for public interest law groups' very existence is the inability or unwillingness of the private bar to meet, in a systematic fashion, the felt needs of traditionally unorganized segments of society.

Several writers* have noted the close bond and regular consultations between lawyers and clients in other areas of the law, such as insurance, labour, real property and tax, which makes "commonality of purpose" in these relationships an almost inevitable result. But, more importantly, such co-ordination and co-operation keeps a client fully aware of the factors affecting his rights.

An enlightened society and legal profession must accept the fact that traditional taboos against advertising the availability of legal services serves only to keep traditionally uninformed groups and individuals in the dark.

In an environmental law context, then, the need for an environmental public-interest law-oriented group, such as our own, stretches beyond the traditional one of merely providing legal services. It must proceed on a multi-tiered basis, which would include educating and communicating to the general public the significance of securing environmental rights which have heretofore been regarded as trivial or not needing protection.

To suggest that the traditional law firm can effectively per-

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*D. Caplovitz, The Poor Pay More (1967), chapter 12.
B. Christensen, Lawyers for People of Moderate Means: Some Problems of Availability of Legal Services (1970).
"Advertising, Solicitation and the Profession's Duty to Make Legal Counsel Available", 81 Yale Law Journal 1181 (1972).
H.W. Arthurs, Pierre Verge, "The Future of Legal Services", 51 Canadian Bar Review 15(1973).
Larry Taman, Frederick H. Zemans, "The Future of Legal Services in Canada", 51 Canadian Bar Review 32 (1973).
"Reform Legal Aid to serve poor, law professor urges task force", Globe & Mail, March 12, 1974.

form this task is to ignore the fact that in many instances, as CELA has discovered, members of that same firm could as easily represent the industry or developer.

Indeed, a number of present restrictions imposed by the Law Society of Upper Canada on CELA's activities makes our own contribution to the development of environmental law less complete than it could be. For example, Legal Aid certificates presently cannot be made out to CELA because CELA cannot practice law. Lawyers from CELA, under present standards, cannot receive certificates for Legal Aid on CELA's behalf, because such certificates could be construed as having been indirectly solicited as a result of the highly visible activities of CELA.

The result is that, because of insufficient financial resources, we are less effective than we might be in aiding members of the public. This debilitating policy, in all likelihood, affects other similarly constituted groups as well. Groups such as our own need an exemption from the general ban against advertising, as, for example, the Parkdale Community Legal Services has obtained.

It is submitted therefore that such groups or lawyers should be able to accept Legal Aid certificates, as well as to advertise.

CONCLUSION

The benefits of effectively educating people to their environmental rights, and of eliminating procedural and financial obstacles to effectuation of those rights, are self-evident.

The larger the proportion of the population which can utilize legal services with a greater degree of consciousness of the implications of environmental abuse, the greater the likelihood of more rational decision-making regarding protection of our critical natural resources and environmental rights.

CELA /ACDE

Press Release

Release Date:
March 26, 1974

LEGAL AID URGED FOR GROUPS DEFENDING ENVIRONMENT

Toronto --

"Legal Aid must be made available to individuals and groups to defend their environmental rights," was the submission of the Canadian Environmental Law Association in a brief presented Tuesday before the Ontario Task Force on Legal Aid, at its hearings in Toronto.

Clifford Lax, appearing for the Association, argued for changes in the Legal Aid Act and Regulations to allow group or representative certificates for Legal Aid to be issued to citizens opposing environmental abuse.

He noted the irony in present policies on who may receive Legal Aid. For example, Legal Aid must be refused "where the relief sought can bring no benefit to the applicant over and above the benefit that would accrue to him as a member of the public or some part thereof."

"Thus, in an environmental context," stated Mr. Lax, "where the activities of a polluting industry or overly enthusiastic developer affect the rights of many people, this policy treats environmental problems as if they affected nobody.

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"A sounder policy, Mr. Lax continued, "would be to grant assistance to individuals and groups of citizens who are similarly affected, for both civil actions and private prosecutions."

The Association brief also recommended that:

- Legal Aid be made available to people in middle income groups;
- Court costs not be awarded in cases involving a publicly assisted plaintiff seeking protection of his own or the public's rights, especially where he is seeking judicial review of administrative action (or inaction), or where he is asking for an injunction to stop harmful or potentially harmful activity, but not for damages;
- A limit be placed on the undertaking for damages, or sum to be pledged, necessary to obtain a temporary injunction;
- Public interest law groups be allowed to advertise their services, and to accept Legal Aid certificates.

Mr. Lax cited examples of instances where costs, or the threat of costs, stymied public initiatives to prevent environmental abuse. "People believe, often correctly, that they cannot afford to defend their common law rights in court," he said, adding that this was true of the not-so-poor as well as of the poor.

Another member of the Association noted that, in order for Legal Aid to become truly effective in making it possible for people to defend their environmental rights, the Legal Aid Plan would have to recognize its long-range responsibility to

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fund groups of citizens appearing before administrative and other planning tribunals, such as the presently-sitting Commission Inquiring into a Second International Airport in the Metro Toronto area at Pickering.

For more information, phone Joe Castrilli at 928-7156.