



S P E E C H G I V E N

B Y

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AT THE

A N N U A L M E E T I N G

OF THE

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I wish to speak with you this evening for a few minutes on the subject of environmental impact assessment procedures. And I wish to try and do two things. Firstly, I want to show why the environmental impact assessment procedure is necessary. And, secondly, I want to discuss some of the criteria essential if an environmental impact assessment procedure is to be effective and, what is very important, if it is to enjoy the confidence of the public.

Perhaps it is proper to define what I mean by environmental impact assessment procedures. I mean a procedure whereby there is maximum probability that the effect on the environment of any particular action by man is determined in advance of the initiation of such action.

There is nothing astounding in the concept - in fact, I suggest, that it is the obvious extension of common sense. It is because the concept is so essentially sensible, that the wonder ought to be that its proponents have had to fight so hard to gain acceptance for the proposition. Put in simple language, it is a procedure which ensures that environmental considerations be put in at, what I like to call, the front end of the decision making process.

One may ask if this is not what has been taking place in most jurisdictions, especially during recent years as a result of increased environmental awareness. My answer would be: only partially, often without consistency, and most assuredly, more by ad hoc actions than as a result of any mandatory procedure or even carefully thought out discretionary guidelines. I think this this is generally admitted by thoughtful people in government. But certainly it has been recognized in the Ontario Government Green Paper on Environmental Assessment published in September 1973 and I quote from page 3 of that publication.

"Historically, the major orientation of the activities of the Minister of the Environment, its ^{predecessor} organizations, other ministries, the progressive municipalities, has been the reduction and elimination of pollution from existing sources. This abatement process is basically an "after-the-fact" strategy, prompted by an increased awareness of ecological relationships, and a growing recognition that contaminants and effluents which were once acceptable could no longer be tolerated".

The Green Paper is remarkably candid. Dealing with the problem it states on P.4:

"At present, most private sector projects come under the purview of existing environmental approvals, permit or review procedures. This scrutiny, however, tends to deal only with the particular problems which the permit or approval procedure was

intended to control. Frequently, cumulative, secondary and "off-site" environmental effects have not been identified. Moreover, many major undertakings in the public sector have been promoted with insufficient attention to the environmental and social problems that might result".

"A procedure should be developed to bring about an integrated consideration at an early stage of the entire complex of environmental effects which might be generated by a project".

Several years ago the Federal Government established a Task Force "to develop and recommend the policy and mechanisms by which the federal government would anticipate and assess the probably impact on the environment of major actions prior to final decisions being made to initiate them".

The Task Force completed its report in August of 1972.

The Task Force met the question as to whether existing statutes and procedures were adequate. Among other things the Task Force studied thirty-seven Federal Statutes. The Task Force observed that:

"Most of the statutes do not expressly confront the problems of environmental contamination which may result from the activities they compass. In many, cases, however, the regulatory

powers of the act are sufficiently broad to allow the making of regulations requiring thorough environmental impact statements from those seeking federal consent to undertake an activity".

Now it is my contention that even if such regulations were promulgated the result would fall far short of an overall, comprehensive environmental impact assessment procedure in keeping with criteria that I shall discuss further. But it is significant that this seems to have been recognized by the Task Force. The authors of the Task Force pointed out:

"However, the mechanisms outlined here are inadequate to provide for more stringent controls for environmental impact assessments, should increased controls be desired. This is because:

1. The statutes requiring such assessments often limit their scope to take account only of certain very specific activities which fall within the sphere of each individual enactment. This piecemeal approach results in a very narrow assessment of environmental impact.

2. There is usually no specific procedure provided for the carrying out of an environmental impact assessment under the statutes surveyed. In these cases, the effectiveness of an "impact statement" requirement may be substantially reduced. A one page report concerned merely with generalities and submitted only to satisfy the formalities of an "impact statement" require-

ment would be of no benefit whatsoever.

3. If a policy of environmental impact assessment is within the discretion of the administrative agency or board it cannot be guaranteed that environmental control measures are being carried out uniformly under federal legislation.

4. Because the requirement is often discretionary it appears that no administrative or judicial review would be possible to ensure effectiveness".

From all of the foregoing, I think there is, obviously, authoritative opinion to the effect that present laws, procedures and practises leave much to be desired. But it is one thing to read task force reports. These are, however, when written, a summary of the conclusions arrived at after the evidence is examined. Unfortunately, the evidence is seldom recorded and something of the problem is lost in the result. I think that in any argument, examples are helpful to illustrate in specific terms the every day realities and I wish to deal with several which, I think, illustrate the point.

In April 1972 a debate took place in the House of Commons concerning the then proposed James Bay hydro-electric project. The then Minister of the Environment emphasized the concern that existed regarding the environmental impact of such an immense undertaking. The following extracts of Mr. Davis' speech are taken from Hansard on April 28, 1972. Mr. Davis said:

"I think the essence of the concern in respect of the environment relates to timing, to ecological studies, and to environmental investigations which must be carried out before the final decision to undertake large scale development and construction is made.

This principle applies to large projects as well as small ones".

Mr. Davis went on to say:

"In the United States, and increasingly in Canada, we are insisting on the preparation of what I might call environmental impact statements"

"We are in the process of obtaining this kind of information in respect of James Bay. "We" certainly includes the Province of Quebec and it includes the Federal Department of the Environment."

Mr. Davis concluded by stating:

"Mr. Speaker, environmental engineering must be completed before construction starts on a large scale. This is the principle which I believe the province of Quebec endorses, or certainly appears to endorse, in respect to the James Bay development. It is certainly one in which this government believes wholeheartedly."

Now remember that was in April of 1972.

On August 23, 1973, the emptiness of such assurances was shown by an admission made by Mr. J.C. Tremblay, the James Bay Development Corporation official in charge of federal-provincial relations. Quoting Mr. Tremblay, the Globe and Mail of Thursday, August 23, 1973 - just a little more than one year later, reported:

"Results of the first environmental impact studies on the James Bay hydro-electric project will not be made public until after three airports and a 450 mile road are finished and a start made on the first and largest dam complex".

"Mr. Tremblay said: in fact, very few, if any environmental impact studies have been started by either the federal or provincial ^{scientists} --- the true environmental impact studies the ones that attempt to uncover problem areas and recommend changes in plans to prevent environmental damage will not start until next year --- this would mean any results and recommendations based on the results could not be made public until late in 1975 or 1976 at the earliest."

With respect to the James Bay case governments can, if using figures in a misleading way, argue that a great deal of money has been and is being spent on environmental impact studies. But these studies, while no doubt of scientific value, if not prepared in advance of the planning, design and construction of the project, will have little if anything to do with the decision making process. They are studies yes - and they

will enlighten us as to the environmental impact - but in no way do they form a part of a meaningful environmental assessment procedure.

On April 28, 1972 the Federal Government announced the decision to build and complete the Mackenzie Highway. Presumably, this decision was made a day or so earlier on the strength of a document dated April 24, 1972 put before the Cabinet, which stated:

"Much of the environmental data required to provide guidance for the design of the balance of the Mackenzie Highway is available from the studies currently carried out in connection with the pipeline. It is necessary only to relate these studies to the specific needs of the Mackenzie Highway."

Now it would be, I suppose, unkind to suggest that this announcement had some relationship to the federal election of that year that was then imminent. While this cannot be proved beyond a reasonable doubt, I am inclined to think the balance of probabilities favour that conclusion.

Work began. By January 26, 1973, a governmental Mackenzie Highway Committee met and the minutes record that one of the members inquired:

"--- whether the information we require concerning wildlife and fisheries resources was being gathered as part of the pipeline project, but no one knew".

As most of you know, and in fairness to the Minister, the project was stopped shortly thereafter, ostensibly because they did not have sufficient environmental data. One might observe that it was not the first road in Canada commenced just before an election and discontinued shortly afterwards.

Another example was the decision made some years ago to build another runway at Vancouver Airport which would not only intrude into the estuary of the Fraser River but be half again as close to the long established residential housing on the south slope of Vancouver City. There was, and is, serious concern over the effect on salmon and increased noise. When the matter was first raised in the House of Commons the Minister of Transport assured us environmental studies had been done, but somehow no-one ever seemed to be able to find them. Finally, the Minister of the Environment promised full studies to be completed by December 1973. It is interesting to note that those studies have shown the matter is indeed complex, because they are only now reaching completion.

All these examples happen to involve the Federal Government, but no doubt similar situations can and do occur within provincial jurisdictions. But it is ^{my} belief that proper environmental impact assessment procedures would put an end to such discouraging examples of bad decision making.

I want to emphasize the words "proper environmental impact assessment procedures". It is not my intention tonight to try and set out an all inclusive list of every conceivable

element that might advantageously be incorporated into an effective environmental impact assessment procedure. But is is important as I said at the beginning, that any procedure contain at least certain features if it is, firstly, to be effective, and, secondly, to command public confidence.

The following are put forward for your consideration.

The first essential, in my view, is that the procedure be mandatory and established by statute. The definition of what must be subject to assessment ought to include something more than just proposed specific projects because actions taken, while having no immediate effect, may have ultimate or secondary effects on the environment. The screening process which determines what actions or projects should be considered must be available to public scrutiny with provision for review by the environmental assessment board. The onus should be on the proponent to prepare the initial environmental impact statement. The assessment board that makes the decision should be, and appear to be, independent from the governmental or other influence. The environmental impact statements should be available to the public and the public should have the right to appear before the board. Provision must be made to enable the public to participate in a meaningful way in hearings and, where reasonable, public funds should be available to make this possible. The board should have the power to subpoena witnesses and documents at the request of any party. In addition to environmental impact statements the proponent should file a statement of alternatives to the actual proposal and the board should have the power to reject the

proposal. There should be an appeal from the board's decision, and I would prefer that such appeal go to a court with power to the court to decide matters of fact or law, give directions to the board, or exercise the powers of the board and substitute its opinion for that of the board. Finally, I would grant legal standing to any person to apply to the court for enforcement of the provisions to the legislation.

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Praser on Standing
Federal
comparative
position

Against that background of suggested criteria let us look for a moment at the Environmental Impact Assessment procedure announced by the Federal Government on March 14, 1974. It is not established by legislation. It amounts to merely guidelines within which federal government projects will be "screened to ensure that they do the least possible damage to our natural environment." Federal departments, crown agencies and private companies with government contracts, grants and loans will have to prepare environmental impact statements. Quoting from the Minister's statement he said:

"These statements will be screened by a panel of experts in my department. Recommendations for action, that is for approval, for modification or denial, will be made to the Minister of the Environment. Final disposition will be worked out in consultation with other ministers of the Crown".

According to the Minister's statement, it is only after his in house panel of experts have written their own assessment of the impact statements will anything be made public. But the

original impact statements do not apparently become public - only the written assessment of the impact statements. In other words the only facts the public gets are after the panel of experts - members of the Department - have written their own version of the facts. It is quite incredible to me that the Minister had the effrontery to introduce this aspect of the procedure with the words "Public disclosure is important".

The Minister also announced that "Public participation is also vital". But that public participation is not automatic. Hear what comfortable words the Minister said: "Public participation is also vital. In cases of broad public interest, the Minister of the Environment, in consultation with the minister of the initiating department, may, therefore, appoint an environmental review board, the membership of which may be drawn from outside the public service. This review board will be able to hold public hearings and make recommendations which will be published".

It should at once be apparent that the entire discretion as to whether there will be public involvement rests with the Minister of the Environment and at least one other minister, witness the words: "in consultation with the minister of the initiating department". Therefore there is no right given to the public for participation, and equally, no guarantee, even in the governments statement of good intentions that public input will in fact take place. The further question is raised: what happens if the minister of the initiating department refuses

to abide by the Minister of the Environment's desire to have a public hearing.

You may ask why, after the task force report on environmental impact assessment procedures the government has chosen to implement a system so limited in meeting the basic fundamentals of an effective assessment procedure. For instance the Task Force Report said on Page 52:

"Public hearings are considered to be the most effective technique for ensuring wide publicity and therefore re-enforced agency accountability and incentive to follow procedural rules. For this reason, some type of public hearing must be a favoured technique".

In the summary of recommendations the Task Force said:

"The Federal Government shall offer leadership in the area of environmental impact assessment in respect of significant effects on the environment through the pronouncement and implementation of a policy and procedure to be based ultimately on legislation".

Again quoting from the Summary:

"The policy shall provide for appropriate public information and participation in hearings and in review of statements".

That, incidentally, I take to mean impact statements. As I have pointed out the public will not see the impact

statements, only the authorized version published by the departmental panel of experts.

I submit that what has happened here is a governmental decision to reject a mandatory environmental assessment procedure established by legislation in favour of an ad hoc arrangement where the control of events lies completely in the hands of the Cabinet. It is, I suppose, hardly to be wondered at when one examines the current philosophy regarding the governmental process. The following exchange between myself and the Minister of the Environment is instructive. The reference is the minutes of the House of Commons Standing Committee on Fisheries & Forestry, April 10, 1973. I was asking the Minister what opportunity actually exists for the Department of the Environment to review another department's actions:

Mr. Fraser: Let me ask this, then. I take it that what the Minister is saying is that there is a certain amount of discussion between departments on these matters and, hopefully, the Department of the Environment somehow finds out about things in time to have some input. But is there any legislation at all that makes it a requirement of another department, working within its own sphere of influence and authority, to have each project approved by Environment before it goes ahead and announces it, and gets it under way?

Mr. Davis: There is a requirement that projects of any scale certainly projects that would come to Cabinet or to the higher levels of government, be checked out, not only from a financial point of view but from an environmental point of view, but this is not a requirement in law, it is an administrative requirement within the government.

Mr. Fraser: In other words, it is a function of government to try to ensure that this happens.

Mr. Davis: It is administrative and not legal.

Mr. Fraser: Has there been any serious consideration by the government to secure this procedure by enacting legislation which would require the Department of the Environment to peruse and approve of any project done by another department from an environmental point of view before it goes ahead?

Mr. Davis: I do not think legislation along those lines would be considered very rational, at least in a parliamentary type of government. You are talking about relationships between departments; you are not talking about relationships between private individuals or other governments with the federal governments with the federal government. You are talking about relationships between agencies and departments within a single government, and this typically is covered in all parliamentary systems by the administrative arrangements and not by a legal requirement. Surely the government can sort out its own

differences internally without requiring a law of Parliament to require it to do so.

Another example illustrates the philosophy, and in fact the practise. On April 1, 1974 I asked the Minister of Northern Affairs whether his decision to allow a winter seismic programme by Panartic Oil on Bathurst Island was made after approval by the Department of the Environment and subject to the environmental impact procedures announced by the Minister of the Environment, Mr. Chrétien replied:

"Mr. Speaker, as Minister of Indian Affairs and Northern Development, I make the decisions. Naturally, when problems come up, we have consultations with the Department of the Environment and in this case that department had no major objection to the work under progress".

This I think reveals the concept of departmental sovereignty that can effectively block the function of the Department of the Environment. In other words, Environment gets into the act only by invitation.

In another case we found that over \$100,000.00 had already been spent doing "feasibility studies" toward the construction of power dams on the Great Bear River. I asked on April 4, 1974:

"Can the Minister (of Northern Affairs) advise who will make the decision whether this great Canadian Lake is to

be spoiled by flooding of its shoreline, and will the project be subject to the environmental impact assessment policy set out by the Minister of the Environment on March 14, or is this to be another case of the Minister of Northern Affairs making the decision on his own? Mr. Chrétien: "I think the Honourable Member is not very well informed. It is possible to harness the Great Bear River without raising its level in any considerable way. Before any decision is taken on this matter by the government, environmental impact studies will be made. Besides, as I have always said in this House, there is excellent co-operation between my department and the Department of the Environment".

Needless to say the "action" leading to the dams had already been set in motion by the \$100,000.00 expenditure - only afterward would there be environmental studies. And, I suspect, that the hundred thousand was spent without any reference to the Department of the Environment.

All of which prompted Miss Sandra McCallum in a recent study of environmental impact statements to comment as follows:

"The proposal - (the federal government guidelines of March 14, 1974) falls far short of the ideal ---. At worst the proposal is not new at all and merely formalizes what one hoped was already happening within the department. At best it is a first, very faltering step toward a later more comprehensive proposal which will reflect clearer objectives and provide the

necessary institutional arrangements to ensure that the procedures do become a part of government decision making processes-----Experience in the United States has suggested that departments change processes slowly and unwillingly --- ----there is no reason to believe Canadian departments will act differently from their U.S. counterparts. It would therefore seem essential that if impact assessment is to become part of the decision making processes then legislation will be required to assure its adoption".

There is, I think a lesson to be taken from this. Despite the words of the politicians regarding their concern for the environment, the test will be whether governments are prepared to translate good intentions into action. They will certainly not do it without public pressure, and what is more important, informed public pressure. I am of course, cognizant that the Government of Ontario is seriously considering the implementation of an environmental assessment system. I have read with great interest your own Association's critique of the Ontario Green Paper, and, while this may be treading a little out of my jurisdiction, I commend it to every government in Canada for consideration and guidance.

I recognize how difficult it is for a government to embark on a new concept that in many respects counters some of the traditional practises. There is the very real concern - and an honest one - about how for a government can place decision making - for that is what it amounts to - in the hands of an

environmental assessment board. One ought to ask what happens if that board should approve a project that the Cabinet feels is wrong environmentally. If that proposition causes some restrained smiles, it is nonetheless a possibility. Governments concern themselves with power, but the best also concern themselves with responsibility. For myself, I feel that this problem can be overcome by an appeal of last resort to Parliament, which is after all the highest court and the ultimate custodian of the public interest.

You may forgive me if I end on a mildly partisan note. The federal Progressive Conservative Party, at the March 1974 Annual Meeting in Ottawa, approved the following positions in its position paper on Environment.

14. "The Progressive Conservative Party believes that the most effective way to prevent unnecessary environmental damage is to ensure that the consequences to the environment be considered in all projects having significant environmental impact before a final decision to proceed is made." Therefore we will introduce legislation requiring mandatory environmental impact statements for all such projects within federal jurisdiction. We will end the present and past practice of conducting environmental studies after a project is under way and often as a result of angry demands. We are determined to examine environmental consideration at the front end of the decision making process.

15. The Progressive Conservative Party will introduce legislation requiring that mandatory alternative statements to

any project within federal jurisdiction having significant environmental impact shall be prepared and considered before a final decision to proceed is made.

16. The Progressive Conservative Party believes that public involvement in the decision making process is an effective aid to sound environmental planning. Therefore we will introduce legislation providing for mandatory public hearings prior to the approval of any project within federal jurisdiction having significant environmental impact.

With respect to those of other political parties, and to those in other jurisdictions, these are policies that my Party will be only too pleased to see stolen and adopted by other parties, everywhere in Canada.

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