

# CANADIAN ENVIRONMENTAL LAW NEWS

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CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
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## EDITORIAL

We are pleased to publish our current Board of Editors. Efforts are continuing to establish editors in the Maritimes and Saskatchewan.

The following have agreed to act as contributing editors:-

|      |   |                                                                                                                          |      |   |                                                                                                                                |
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The month of November saw the inaugural meeting of the Canadian Environmental Law Association, which takes the place of the Environmental Law Association. Hopefully, through the efforts of our Provincial Editors and others across the country who are moving to set up branches, the Canadian Environmental Law Association will become a strong organization with a true Canadian representation.

We apologize for production difficulties which prevented this issue from reaching readers on schedule.

Our next issue will be published in January, 1973.

Maurice A. Green,  
National and Ontario Editor.

ENVIRONMENT ON TRIAL - CURRENT CANADIAN DECISIONS  
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INDIVIDUAL HELD RESPONSIBLE FOR COMPANY'S POLLUTION  
ALTHOUGH NOT A DIRECTOR OR SHAREHOLDER - DETERRENT  
ELEMENT EMPHASIZED IN POLLUTION SENTENCE.

[Algoma District Court]

REGINA EX REL DUNGEY v. JOHN PATRICK SHERIDAN  
REGINA EX REL DUNGEY v. NORTH CANADIAN ENTERPRISES LTD.

Sault Ste. Marie, Ontario.  
Vannini, D.Ct. J.

November 1, 1972.

This was an appeal by a private citizen of the dismissal of informations (criminal complaints) sworn by him that the two above accused each did "unlawfully discharge or deposit or cause or permit the discharge or deposit of material in Silver Creek and in Lake Superior which may impair the quality of the said lake and said creek, contrary to the Ontario Water Resources Commission Act, R.S.O. 1970c332".

The original trial, centering on allegations of iron-laden solids being discharged into the waters indicated, was before Judge C.E. Boyd, District of Algoma Provincial Court (Criminal Division) during February and March 1972.

In his judgement at the trial, Judge Boyd said "On or about August 30, 1971, a private citizen of Sault Ste. Marie, one Clarence Dungey took his family on an outing to one of their favourite beaches on Lake Superior and on their arrival, Mr. Dungey detected what he thought was someone polluting the waters there. As a result, Mr. Dungey, whom I am satisfied was genuinely concerned, took samples of the water to the local office of the Ontario Water Resources Commission, situated at Sault Ste. Marie. Mr. Dungey was advised that the samples he had taken [in coffee cups] would not do and was given the necessary equipment and instructions by members of the Ontario Water Resources Commission....and armed with the equipment and advice went with a witness and took the samples exactly as he had been instructed to do and returned these samples to the O.W.R.C. Subsequently, as a result of these samples being tested, Mr. Dungey, as a private complainant or informant, laid the informations....I am satisfied that Mr. Dungey acted throughout as a genuinely interested private citizen concerned about our natural resources and for that I congratulate Mr. Dungey, citizen."

The alleged pollution originated from a mine which was owned on the day in question by Coppercorp Mines Limited.

The evidence adduced at trial showed that this mine was operated under lease by North Canadian Enterprises Ltd. His Honour Judge Boyd dismissed the charges against the accused and stated that "to convict Sheridan and North Canadian I must be satisfied beyond all reasonable doubt as follows:

- (1) that Sheridan and North Canadian controlled Coppercorp Mines Limited on August 30, 1971...."

The Judge held there was insufficient evidence to satisfy a court beyond a reasonable doubt that either Sheridan or North Canadian controlled Coppercorp Mines on August 30, 1971. His Honour Judge Boyd stated that:

"Because without sufficient proof of control the charges must fail, it is unnecessary for the matter to go further and decide whether there was or was not pollution...."

An appeal by way of trial de novo (a completely new trial) took place in Sault Ste. Marie before His Honour Judge I.A. Vannini during the months of October and November, 1972. His Honour found that North Canadian Enterprises mined the mine under a lease from Coppercorp Limited and that the President and owner was a Marjorie Anne Sheridan, the wife of John Patrick Sheridan, the defendant.

His Honour held that the samples taken contained an amount of suspended solids which included concentrations of iron. His Honour stated that having regard to the total evidence, the discolouration of Silver Creek and Hibbard Bay was caused by the iron contained in the effluent discharged from North Canadian. His Honour found that effluent discharged from the mining operations contained material which may impair the quality of the water of the receiving watercourses.

His Honour held that Mr. Sheridan acted as general manager (administration, technical and finance) of North Canadian Enterprises and that he was in full charge and assumed all responsibility on behalf of the Company with regard to the sewage works. The Court found that Mr. Sheridan had control over the mine manager and could exercise influence over him. The Crown, in its case, introduced correspondence between the Ontario Water Resources Commission and Mr. Sheridan showing Mr. Sheridan's association with the mining operations. An Ontario Water Resources Commission Minute, dated April 15th, 1971, showed that Mr. Sheridan represented the Company as general manager

at a hearing before the Commission concerning the adequacy of the treatment facilities at the mine. Subsequent to this hearing, Mr. Sheridan submitted an engineering report to the Commission concerning alternative methods to rectify the problem; he stated in the report that the alternative measures were only a temporary solution.

However, his Honour Judge Vannini held that Mr. Sheridan had the authority to prevent the pollution that had taken place and therefore he did suffer or permit the mine to discharge effluent into Silver Creek and Hibbard Bay. **His**

**Honour Judge Vannini said:**

"On the evidence I find that North Canadian Enterprise Limited, through its agent Mr. Sheridan, who had the power and was in a position to do so, failed to operate the sewage works in the manner it was required to maintain and operate it (sic) by condition 5 of the order in question" [that the company operate the sewage works in a manner such that the discharge from the decant works contain a clarified effluent which (1) contains no more than 15 parts per million by weight of suspended solids; and (2) is sufficiently free of colour that it will not in the opinion of the Commission impair the aesthetic qualities of any receiving water or waters"].

"In the final result I find the defendant Sheridan guilty as charged.

" The object of the O.W.R.C. Act is to prevent the pollution of our natural waters.

"The tremendous growth of our population and of our industrial expansion are threatening to destroy this basic element of nature and of life itself in all of its forms and in the process it threatens to deny man the many pleasures that he derives from the creeks, streams, rivers, lakes and the oceans of our universe.

" The fight against such pollution is not confined to this province. It is national and international as well. It is probably one of mankind's greatest enemies and man has declared war against it by such a prohibitory and regulatory statute as the Ontario Water Resources Commission Act."

"Because of this the deterrent aspect must be taken into consideration in determining an appropriate penalty to impose upon one who offends against a prohibitory provision of that Act, not only to deter the particular offender from committing this offence against man again, but to deter others as well.

" True this defendant's conduct in doing what he did was not a deliberate act of commission but of negligent omission to take the necessary precautions to avoid the pollution of the creek and bay in question from its operation.

" The company for which this defendant acted did make a sincere effort to prevent such pollution\*and an impasse was reached in attempting to find a solution when he disagreed with the proposals of the Commission in April of 1971 and made counterproposals because he genuinely felt that the proposals made by the Commission might destroy the quality of the water for human consumption and use and also because the cost was more than his company was either prepared to could afford to make.

" Because this is this defendant's first conviction under the Act he is liable to a fine of not more than \$5,000 and on each subsequent conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year or to such fine and imprisonment.

" Because the protection of society and the deterrent aspect far outweigh any other consideration and because the offence of the defendant was one of negligent omission rather than one of deliberate commission and having regard also to whatever efforts he through his company may have made to find a solution and to this defendant's concern about pollution and his own determination to combat it, I order the defendant to pay a fine of \$1,000.

" It is obvious that the Crown must have been put to considerable expense in the prosecution of this appeal. This expense should not be borne by the public which is already put to great expense to fight and to combat pollution. It is only fair and just that such costs should be paid by the one who offends that public by committing a breach of a prohibitory provision of the Act in question."

\*It is interesting to note that by midnight August 30th, 1971, a third dam had been completed and as a result additional settling time for the effluent was created. It was conceded by the Crown that the quality of the effluent had improved since the installation of a third settling pond.

"Pursuant to sec. 758 of the Code which is made applicable to appeals such as this I do order the defendant to pay the costs of this appeal, which I fix at \$300, said fine and costs to be paid forthwith and in default of payment thereof the defendant is to be imprisoned for three months."

(The company, North Canadian Enterprise Limited, was also convicted but was only fined \$1.00 since His Honour held Sheridan had been the agent of the company and had borne the brunt of the prosecution.)

During the trial the Court made a ruling that there was no onus on the Crown to show that the quality of the water of Silver Creek and Hibbard Bay was unimpaired on the date in question. One of the theories of the defence was that the suspended iron solids may have come from natural iron or other causes. The Crown, in reply evidence showed that on other days the upstream water was crystal clear and that the waters of Silver Creek and Hibbard Bay were **asceptically unimpaired prior to the** operations of this mine.

The Crown Attorney's office in Sault Ste. Marie, in consultation with staff of the Ministry of the Environment, conducted the prosecution in both the provincial and **district court trials.**

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| FIRST PITFALLS SHOWN IN ONTARIO'S NEW PITS & QUARRIES ACT<br>COURT UPHOLDS SANCTITY OF NON-CONFORMING LAND USE OVER<br>DESIRABILITY OF CONTROLLING QUARRYING |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|

CORPORATION OF THE TOWNSHIP OF CALEDON, Applicant, v.  
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO  
and FRANCESCHINI BROTHERS CONSTRUCTION LIMITED, Respondents

[Ontario Court of Appeal]

Gale, C.J.O.  
Arnup, J.A.  
McGillivray, J.A.

October 25, 26, 1972

Traditional notions of the sanctity of private property and business interests together with Ontario judges well used to upholding these principles above almost any other have combined to deal a major blow to Ontario's new legislation designed to control the unrelentless march of quarrying operations in this province.

On June 1, 1972 the Ontario Minister of Natural Resources issued a licence under the Pits and Quarries Control Act, 1971, S.O. c.96 to the respondent Franceschini Brothers authorizing that company to "open, establish or operate a pit" in the Township of Caledon.

The Township then launched a motion for Judicial Review in the Ontario Divisional Court for an order declaring that the license was null and void.

The Township replied upon sections 4(1) and 6(2) of the Pits and Quarries Control Act which provide:

- 4(1) No person shall open, establish or  
or operate a pit or quarry except  
under the authority of a licence  
issued by the Minister to the operator.
- 6(2) No licence shall be issued in respect  
of a pit or quarry where the location  
is in contravention of an official plan  
or by-law of the municipality in which  
it is located.

The Township had, in 1964, passed a comprehensive zoning by-law (1330). In 1969 the Township adopted an Official Plan which came into force in 1970. The Official Plan provided that part of the area concerned in the application for the licence should be restricted to residential use. But prior to the adoption of both the Official Plan and the By-law, the respondent company had been making use of the area affected as a gravel pit.

Replying on section 6(2) of the Pits and Quarries Act, the Township argued that the new legislation overrode the concept of "non-conforming use" recognized in section 35(7) of the Planning Act (which provides that no by-law shall prohibit the continued operation of a business that constituted a non-conforming use at the time of the plan).

In the Divisional Court, Osler J., (speaking on behalf of himself and Wells, C.J.H.C. and Parker J.) held that "while we heard very able argument on the effect of The Pits and Quarries Control Act, we are not persuaded that section 6(2) thereof overcomes the effect of section 35(7) of the Planning Act....Because of the overriding effect of that section of the Planning Act, we are all of the opinion that the licence should properly issue and the application should be dismissed with costs."

The Township appealed to the Court of Appeal, but here too it was unsuccessful. However, the Court of Appeal expressly chose not to deal with the reason for upholding the licence relied on by the Divisional Court -- that is the overriding effect of the Planning Act.

Rather, the Court of Appeal looked closely at the Official Plan, and while finding that indeed it classified the property as residential, it nevertheless provided for, in the Court of Appeal's reading of the Plan, non-conforming uses such as gravel pits. Thus reasoned the Court of Appeal, "the use authorized by the licence is not in contravention of the Official Plan."

The Township argued that the Official Plan nowhere states in so many words that existing non-conforming uses may be continued.

Arnup, J.A. for the Court of Appeal however ruled that the "plan was prepared and adopted at a time when it was well known that there were uses not in conformity with by-law 1330, but which their users had a right to continue for the reasons I have stated. The Official Plan, in our view, clearly contemplated that such uses would continue. Paragraph 12 of the Official Plan is headed "Non-Conforming Uses." It then proceeds for some five and one-half pages to deal specifically, and in detail, with various aspects of such uses, including future by-laws respecting extensions of those uses, the examination of the characteristics of the existing non-conforming use, and the extent to which it affects others, the gradual improvement of its compatibility, and so on.

In three places paragraph 12 speaks of "the established non-conforming use and in several places it speaks of "existing non-conforming uses"... a perusal of paragraph 12 of the Plan makes it crystal clear that the continuance of existing non-conforming uses was in the contemplation of the Plan and that the legality of such use was so clearly understood that it was not necessary to set out what was already the law. The continuance of such uses would therefore not be said to be in contravention of the Official Plan, but on the contrary it was contemplated by, and is compatible with the Official Plan. It follows therefore that s.6(2) of the Pits and Quarries Control Act did not prohibit the issue by the Minister of the licence in question and the motion was therefore properly dismissed by the Divisional Court."

Copies of both judgements are available from the Environmental Law Association (\$1.00).

OFFICE WORKERS NOT COVERED BY MUNICIPAL ANTI-NOISE  
BY-LAWS IN ONTARIO

[Provincial Court (Criminal Division), Judicial  
District of York]

A.E. Newell, Prov. Ct. J.            November 16, 1972.

A charge laid by the Environmental Law Association against Teperman and Sons Ltd., a large building wreckers operating in Metropolitan Toronto, of causing unnecessary noise with a diesel compressor last January during the demolition of the old Labatts Building at King and Ontario Streets was dismissed in Toronto Provincial Criminal Court.

The charge was laid under s.1 of the Toronto Noise By-law enacted in 1938 which makes illegal "unnecessary noise which disturbs the inhabitants".

The charge was laid by the Environmental Law Association following a complaint by Robin Rowat, an interior designer who had his office opposite the demolition site. Mr. Rowat had called the Environmental Law Association after he had complained to Teperman Ltd. without results.

Patricia Reed, staff noise expert for the Environmental Law Association, measured the noise in Mr. Rowat's office 200 feet from the demolition site. She measured the compressor's noise at 72 dB(A) (decibels on the A scale roughly the range of human hearing) with the windows open and at 60dB(A) with the windows shut.

Roger Hooker, an engineering consultant with Cowl Industries Ltd., stated that the noise as measured by Mrs. Reed in Mr. Rowat's office would be the same level if those office workers were to move their desks to the sidewalk at Yonge and King Streets. Mr. Hooker said that at 72 dB(A) working conditions would be "very uncomfortable".

The compressor was operated on the site from January to March, 1972. "The steady, constant noise, which the staff and I felt was irritating, was hard to work with," Mr. Rowat testified. "We had to stay longer to catch up work we had slowed down on."

The charge was dismissed on a defence motion hinging on the word "inhabitants". The defence argued that an office worker was not an inhabitant. That word appears in the City of Toronto by-law (as it does in all other Ontario municipal by-laws that are not derived from special legislation) because the word is found in the Ontario Municipal Act the legislation giving municipalities authority to enact noise by-laws.

Judge Newell ruled that office workers are not inhabitants of their offices.

The Defence also brought a motion that a charge was not laid under the proper by-law in that there was another Toronto by-law dealing with stationery internal combustion engines which emit noise and which specifies a maximum number of decibels that can be emitted from such equipment. The Prosecution argued that it had the option of laying a charge under the general section dealing with "unnecessary noise". Judge Newell did not deal with that aspect of the Defence submission.

The decision places in jeopardy all Ontario municipal by-laws, and it is understood that the City of Toronto, who agreed to prosecute the charge upon the urging of the Environmental Law Association, is considering an appeal.

After the hearing, a company spokesman said the firm is "looking into all aspects" of quieter machines, and was doing so before the charge was laid.

#### APPEAL TAKEN IN IMPORTANT MANITOBA WATER POLLUTION CASE

[Manitoba Queen's Bench]

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA v.  
INTERPROVINCIAL CO-OPERATIVES LIMITED and DRYDEN CHEMICALS  
LIMITED

The decision by Matas J. in June, 1972 holding the Manitoba Fishermen's Assistance and Polluters' Liability Act ultra vires (reported [1972] 1 E.L.N. No. 3 p.2) has been appealed to the Manitoba Court of Appeal. No decision was available as at December 5.

#### | NEWS & VIEWS |

#### PROVINCE REFUSES TO PRODUCE KEY WITNESS - WATER POLLUTION CHARGES DISMISSED

##### **Sudbury --**

Charges of water pollution against Balfour Township near Sudbury were dismissed recently in Sudbury Provincial (Criminal) Court when the Ontario Environment Ministry refused to make available at the trial a former Ministry engineer who had taken samples of the polluted waters.

The charges centered on impairment of the quality of the Whitson River 10 miles north of Sudbury by the discharge of raw sewage from the Chelmsford area of the township, an area of more than 5,000 people. The sewage was diverted from a treatment lagoon after two pumps were stopped for maintenance work July 7, 1972. The work lasted more than a week and auxiliary pumps were not brought in.

On July 8 the Sudbury and District Health Unit had banned swimming along a beach popular with children 300 yards below the sewer outlet. The sewage flow represented up to a tenth of the flow of the small river.

The Environment Ministry, informed by local environmental groups, investigated and gave the township until August 31 to submit plans for new pumps with extra capacity for maintenance periods.

The polluting charge, under the Ontario Water Resources Act, plus another of failing to inform the Environment Ministry, was laid by Lloyd Greenspoon, an articling law student in the office of Sudbury lawyer Elmer Sopha, Q.C.

According to a spokesman for the Sudbury branch of the Environmental Law Association and the Sudbury District Committee on Pollution, the Ministry's water resources branch showed no sign of laying charges, "so we went ahead ourselves". Mr. Sopha had offered to prosecute the case **unless the Crown would do so.**

**Trial date had been set for August, but when Mr. Greenspoon, who acted as private prosecutor, was informed by the** Ministry engineer that he would be in Vancouver on the August date, the trial was adjourned until November. But when the November trial date arrived, the engineer had permanently left the Ministry's employ and had relocated in Vancouver. In fact, the engineer had returned to Sudbury in August and was present in that City on the August trial date, but had not so informed Mr. Greenspoon. Neither did the engineer nor the Ministry inform Mr. Greenspoon that the engineer would be in Vancouver in November. "I was mislead," Mr. Greenspoon said.

Nevertheless, a request was made by the Environmental Law Association to the Ontario Environment Ministry to provide the necessary travelling expenses to have the engineer return to Sudbury for the November trial date. This request was refused however by Environment Minister James Auld.

Because Mr. Greenspoon felt the Ministry had purposely mislead the Environmental Law Association about the engineer's availability, the charges were proceeded with so that the greatest amount of publicity would be focussed on the Ministry's position in this matter. And of course without the engineer's evidence -- as to where and when and what time the samples were obtained -- the Judge was forced to rule there was no evidence upon which to base a conviction.

## SANDBANKS PROVINCIAL PARK -- ALL IS QUIET -- TEMPORARILY

### Toronto --

Two different court judgements are pending in litigation commenced by the Environmental Law Association over the destruction by Lake Ontario Cement Ltd. of unique sand dunes adjacent to Sandbanks Provincial Park, near Picton, Ontario.

No excavation of sand has taken place since charges were laid in July, 1972 by a private citizen alleging impairment of the park and surrounding private resorts by noise emanating from trucks carrying the dunes to the cement company plant in Picton. The charges are under the Ontario Environmental Protection Act and the Criminal Code.

The other legal action, commenced August 8th, is a civil suit in the Ontario Supreme Court alleging breach of public trust by the Ontario Government and the cement company for failing to maintain Sandbanks for "healthful enjoyment and education" of the citizens of Ontario as required by the Provincial Parks Act.

The criminal charges were heard in Picton in October [see E.L. News, Vol. 1, No. 3, p. 14]. Aubrey E. Golden acted as prosecutor on behalf of the informant and as counsel for the Environmental Law Association. Defending the cement company was Charles Dubin, Q.C. and Joe Pomerantz, Q.C. appeared on behalf of the co-accused trucking company. Morris Manning, of the Ministry of the Attorney General represented the Crown, pursuant to the Crown Attorney's Act.

No evidence was heard however. Rather, the cement company and its co-accused, Triad Truckways Limited, argued that the charges under the provincial legislation, the Environmental Protection Act, were invalid for the following principle reasons:

- 1) the provincial legislation was "unconstitutional" in that prohibition of air and noise pollution was a matter for federal legislation, and only that government could validly prohibit these types of pollution.
- 2) Noise is not a "contaminant" within the definition of the Environmental Protection Act, in that it leaves no residue in the natural environment -- it leaves nothing behind to impair the environment.
- 3) The section under which the charge was laid [14(1)(a) of the E.P.A. as amended] is so vague as to not establish an offence.

Morris Manning argued for the constitutional validity of the provincial legislation while Aubrey Golden argued against the other branches of the defence motion.

Provincial Judge Clendenning adjourned until January 12, 1973 his decision on the defence motions. If he upholds the defence arguments, the charges under the E.P.A. would be dismissed, subject to any appeal. Charges laid regarding the same activity under the Criminal Code, however, could proceed. If the objections are overruled, a date for witnesses to commence giving evidence over the noise disturbance alleged will be set.

Whatever Judge Clendenning's decision, it will be an important one, as there are no reported decisions regarding the constitutional validity of provincial legislation dealing with air or noise pollution.

In the civil action, the two defendants, the Government of Ontario and Lake Ontario Cement Limited, moved before Mr. Justice Lerner of the Ontario Supreme Court on October 4 and 5 1972 to have the plaintiff's statement of claim struck out on the grounds that the cause of action -- breach of public trust -- was not known to law.

D. Roger Timms acted as special counsel for the Environmental Law Association in opposing the defence motion, together with David Estrin, E.L.A. general counsel.

Argument on the motion took the better part of two days. Charles Dubin, Q.C. appeared on behalf of the cement company, and J.D. Hilton, Q.C. on behalf of Her Majesty.

Mr. Justice Lerner said his decision would be given within a few weeks, and it is now anticipated at any time.

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The Environmental Law Association, Toronto Office has available the counter-report to the Ontario Government- sponsored study (Tovell Report) on the Sandbanks of Prince Edward County.

This counter-report, produced by CELRF and Pollution Probe at the University of Toronto, details the history of this situation, the activities of the company, impairment and effects on the area, financial details on the company's viability, alternative sand sources, company links with the Ontario government, company convictions for price-fixing, and other information necessary to a complete understanding of the controversy.

First copies of the CELRF Sandbanks Report are available free, with additional copies 50¢ each.

COURT ASKED TO FORCE FEDERAL MINISTER OF TRANSPORT TO PREVENT AIRCRAFT FROM CREATING NUISANCE BY NOISE AND DANGER BY LOW FLIGHTS OVER RESIDENTIAL PROPERTY

Toronto -- In a Statement of Claim filed in Toronto on October 16, 1972, two residents of the town of Markham have commenced somewhat unique legal proceedings to prevent alleged invasions of privacy and threats to their safety by low-flying private aircraft operating out of a nearby airfield.

The residents, Harold and Jeanne Harcourt, own a small farm a short distance from the Markham Airport.

Their claim is that the Federal Minister of Transport failed in his duty under the Aeronautics Act to properly supervise the activities of aircraft flying from the Markham Airport so as to prevent nuisance by noise and trespass over their property.

They also claim that the Minister "failed in his duty to the Plaintiffs and the public when he allowed [another] defendant, Jan Lewandowski [ who holds the operator's licence for the Markham Airport] to sell off lots at the end of his property next to Runway 270, which action led directly to the Plaintiff's present loss of their enjoyment of their property and the noise and nuisance which they suffer almost constantly from flight of aircraft over or near their home and property, commencing in the early hours of the morning and terminating in the late evening. The plaintiffs state that the said aircraft deliberately avoid flying over the houses erected on the lots sold off by the Defendant, Jan Lewandowski, and instead fly over the Plaintiff's property. "

The Harcourts have asked the Federal Court of Canada for a mandamus, or mandatory order, requiring the Minister of Transport, to "carry out his duties, and in particular enforce the provision of the Aeronautics Act so that planes taking off and landing at the Markham Airport are no longer flying over the Harcourt residence and barn, and directing pilots taking off and landing at the Toronto-Markham Airport to fly a correct circuit which will take them sufficiently north of the Plaintiff's farm and residence so as not to cause any nuisance or damage."

The Statement of Claim also asks for damages of \$100,000 from each of the Minister of Transport, Jan Lewandowski and Lewmar Air Toronto Limited (a company of which Lewandowski and his wife were officers at the material time and which owned and operated aircraft at the Markham Airport, according to the Statement of Claim).

Further, the Harcourts have asked for injunctions against the defendants Lewandowski and Lewmar Air enjoining them from directing or operating aircraft or pilots over or near the Harcourt residence.

The Statement of Claim was filed by the Toronto law firm of Carrick, O'Connor, Courts and Crane.

The Canadian Environmental Law Association has received complaints from several residents north of Toronto about low-flying light aircraft, and such complaints have been passed on to the Ministry of Transport without result.

Possibilities for litigation brought by CELA on behalf of such other residents is currently being studied.

#### NAVIGABLE WATERS PROTECTION ACT MOOTED AS INEFFECTIVE TO PREVENT CONSTRUCTION OF UNAUTHORIZED WORKS IN NAVIGABLE WATERS

Espanola, Ontario -- A private prosecution under the federal Navigable Waters Prosecution Act against a company alleged to have commenced construction of a causeway in the "Rainbow Country" area of northern Georgian Bay in Ontario was recently withdrawn in Gore Bay Provincial Court (Criminal Division).

The charge was laid against Alexander Centre Industries Limited when the firm in May and June 1972 constructed a causeway between Great Cloche and Little Cloche Islands north of Little Current, near Espanola.

The causeway is part of new industrial activity in a formerly isolated and peaceful vacation and resort area near McGregor Bay. A harbour is being built by the company. In addition a \$3 million deep-water cement storage and shipping terminal is under construction by Canada Cement Lafarge Ltd. at nearby Birch Island.

Residents in the area formed the "Save Rainbow Country Committee" to protest against the two unrelated projects. They claim that the two projects violate the spirit if not the strict terms of the 1963 legislation that created the North Georgian Bay Recreational Reserve. The terms were outlined again by a provincial Lands and Forests Department report in May, 1971.

Steven Marshall, an Espanola lawyer, together with the Sudbury branch of the Environmental Law Association, asked the Federal Minister of Transport to order construction halted on the causeway until a permit required by the Navigable Waters Protection Act was issued to Alexandre Centre Industries. They also asked that before any such permit was issued, that full opportunity be given by residents opposed to the causeway construction **to be heard**.

Both the federal Ministry of Transport and Environment Canada refused to interfere in the situation, and a private **charge** under section 5(1) of the act followed.

The charge however was withdrawn on November 22 after Mr. Marshall reluctantly agreed with the local Crown Attorney's opinion that the act does not create an offence by constructing a work in navigable water without a permit. To find an offence, the Crown Attorney suggested the Minister of Transport must first issue an order (e.g. prohibiting the construction of a causeway) and it is only a violation of the Minister's order that will give rise to an offence.

Another difficulty with the Act is that no penalties for violation of this section are set out. (The Criminal Code does provide in Section 115 that a conviction for the breach of any federal statute is an indictable offence punishable by two years imprisonment, **however**).

David Estrin, the Canadian Environmental Law Association's General Counsel, said he felt the Act was sufficiently clear to establish an offence of construction without a permit and that violation of a Minister's order was not necessary to found a good charge. And while it would have been beneficial to clarify the Act by carrying on the trial, Mr. Estrin said he fully sympathized with Mr. Marshall's reasons **for not wishing** to proceed with the trial at this late date, when in fact the causeway was already completed.

The fight against the industrial activity in the area is continuing, however. The McGregor Bay Residents Association have hired a Toronto law firm to take civil action against the industrialists.

#### QUEBEC'S PROPOSED ENVIRONMENTAL QUALITY ACT - A CONSULTATIVE PROCESS IN NAME ONLY?

##### Comment

Montreal -- Although Quebec's Bill 34, the Environmental Quality Act, is now in second reading, it has become apparent that the bill will have little **effect** until the attendant regulations have been passed and emission standards established.

The main operative sections prohibit emissions, deposits or noise if they are (a) over the quantity (not quality) set by regulation or (b) likely to affect personal health or property. This last proviso is the most general and when combined with the penal provisions, will hopefully lead to summary conviction proceedings.

In conjunction with (b) an individual or group can demand an inquiry into such effects but there is no follow up procedure to inform the public of the findings of such an inquiry. This and other factors are indicative of the lack of means for public scrutiny which are seen by critics to be the major weakness of Bill 34.

One of the most serious faults of the bill appears to be in the means by which certificates of approval are issued and the appeal procedures.

There is nothing in the bill which requires the Director of Environment Services to make public the criteria used for issuance of the certificates, nor are vehicles established whereby the public can object to any proposed project. It is felt that this lack of public participation would give corporate and municipal interests more power than the average citizens' groups. There are no means, such as hearings, whereby the public can make their objections known.

There are very serious discrepancies in the treatment between people and corporations on one hand and municipalities on the other. The government has powers to regulate corporations in matters affecting the environment, however this does not apply to municipalities.

With respect to the appeal procedure, again companies have a special advantage not available to citizens. The means of appeal is open to the company which has been refused a certificate of approval, but not to the public at large. Many feel that the right of appeal should be extended to citizens who might oppose a particular project.

The proposed Advisory Council on the Environment could potentially permit more public involvement in the new department if it was allowed to be not only an advisory council to the cabinet, but also a public watchdog. However this purpose does not seem to have been contemplated in the legislation.

Nothing in the Act allows for the individual or group to institute civil proceedings and it is hoped that the act may be amended to allow this right.

In summary, the lack of means for public participation seem to be the most serious shortcoming of Bill 34.

#### REALISTIC LAWS FOR CONTROLLING SNOWMOBILES PROPOSED

The Canadian Environmental Law Research Foundation (CELRF) presented a 23 page brief recently to the Select Committee of the Legislative Assembly of Ontario on the topic of realistic laws for the control of motorized snow and all-terrain vehicles.

Written by Patricia F. Reed, CELRF Noise Consultant, and Peter D. Wooley, LL.B., a CELRF staff lawyer, the brief detailed the noise and trespass problems and dangers created by such machines and exactly how laws could be changed to effectively deal with such problems.

Topics covered include:

Noise - its sources, measurement, human responses, effects,  
dangers, control measures  
Other Physical Dangers  
Ecological Effects  
Economic Effects  
Hovercraft -- The Coming Scourge?  
Trespass and Harassment -- Common Law Right to  
Freedom from NOISE AND Trespass;  
The Petty Trespass Act  
Legal Reforms Needed  
General Recommendations

Copies of the Brief are available from CELRF at a cost of  
\$2.50.

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EVENING CREDIT COURSE IN ENVIRONMENTAL LAW TO COMMENCE  
JANUARY 16 IN TORONTO

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Humber College of Applied Arts and Technology and the  
Canadian Environmental Law Association are jointly sponsoring  
a 12 week evening credit course in environmental law.

The Tuesday evening sessions will commence January 16 and  
run for 11 further Tuesday evenings. Classes will be from  
7.30 p.m. to 10.00 p.m. and will be held at the Humber Col-  
lege Campus in Rexdale.

The course is open to anyone, and is expected to attract  
civil servants, educators and general members of the public.  
Registration fee is \$35. Some material will be supplied  
free of charge.

The course is headed by David Estrin, General Counsel,  
Canadian Environmental Law Association. Experts in land  
use planning, water quality administration, noise and bio-  
logy will also instruct.

Amongst topics to be discussed are:

The Environment and the Law  
Jurisdiction Over the Canadian Environment  
An Overview of Ontario and Federal Environmental  
Planning and Anti-Pollution Laws  
Administration of Ontario Water Resources  
Air Quality in Ontario  
Land Pollution  
Noise and the Law  
Land Use Planning  
Conservation and Controls on Unrestricted Exploi-  
tation of Natural Resources  
Introduction to the Judicial System, Court Struc-  
ture, and Rules of Evidence  
Private Legal Remedies and Opportunities for Citi-  
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New and Necessary Legal Tools for  
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For further information contact: Richard Hook at  
Humber College, (416) 677-6810, or write to the  
Environmental Law Association.

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