THE NATURE AND ORIGIN OF THE ENVIRONMENTAL IMPACT REVIEW PROCESS AN URBAN APPLICATION: WINNIPEG

by

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A Thesis

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ABSTRACT

During the past twenty years, we have become increasingly aware, that overpopulation, man's rapidly increasing ability to change the environment and man's attitude towards nature pose a serious threat to the environment and to the survival of man and other life forms. Based on the premise that a change in man's attitude towards the environment is a key to human survival, this thesis explores to what extent environmental laws and practices reflect man's new-found concern for the environment.

An examination of environmental protection legislation and the practice of environmental impact reviews on the federal and state level in the United States and on the federal and provincial level in Canada, provides the basis for assessing the underlying environmental consciousness as a factor in the viability of the laws and practices. A more detailed investigation of the short history of environmental impact assessment in the City of Winnipeg provides insight into problems peculiar to the urban environment and further illuminates problems encountered on the federal and provincial level.

The National Environmental Policy Act of the United States - the first and still foremost legislative expression of a nation's environmental awareness and conscience - provides an example for similar legislation on the state and local level.

The Act firmly establishes the environmental impact review process as government policy. Canada does not have comprehensive federal environmental protection legislation, the Environmental Assessment Review Process is established by a cabinet directive.

The findings point to several conclusions: The environmental impact review process is equally suitable to an urban setting as it is to regional and global application. It is unlikely that urban environmental impact reviews will be carried out unless required by law. Provinces without comprehensive provincial environmental acts are unlikely to enact urban environmental impact legislation. Federal legislative initiative on environmental matters will greatly enhance public awareness and assure a uniform approach to environmental protection across the country.

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PREFACE

In writing this thesis, I pursued several purposes: to share with others my working experience with urban environmental impact reviews in Winnipeg, and to bring back into focus the fundamental purpose of environmental impact reviews, which for many people has become obscured by a preoccupation with legalism and detailed mechanics of the process, or was never grasped by others.

The reader may detect throughout this thesis a bias towards more government leadership and stronger environmental laws. For this, I make no apologies. It is my conviction that society requires laws pertaining to the relationship of man and nature, in the same way as it has laws pertaining to the relationship of man and society.

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INTRODUCTION

There is growing awareness of the threat to the environment, posed by human overpopulation, by man's unalterable requirement for land and food, by industrialized nation's improportionate demand for raw materials and energy and by their enormous waste production. We are compelled to action by a frightening picture of accumulating evidence of subtle but irreversible changes to the biosphere and by a multitude of highly visible man-made impacts on the environment, combining to yet unknown consequences.

Out of these concerns a number of international and national initiatives have arisen. Amongst them are attempts to reduce or eliminate avoidable damage to the environment through a process of systematic, inter-disciplinary investigation and prediction of impacts on the environment of proposed actions or projects; - the Environmental Impact Review Process. In the last decade, a number of countries have adopted the process by policy or legislation.

This thesis explores the nature and benefit of the environmental impact review process and examines its track record in the United States of America and in Canada. The essence and useability of environmental legislation in the two countries is compared and the underlying environmental

consciousness assessed as a factor in the viability of the legislation. The thesis then examines the relevance of an urban application of the Environmental Impact Review Process in general and provides a detailed account of the experience with environmental impact legislation in the City of Winnipeg.

CHAPTER I

The Concern for our Environment

I. THE CONCERN FOR OUR ENVIRONMENT

> "Man has lost the capacity to forsee and to forestall. We will end by destroying the earth."[1]
>
> Albert Schweitzer

The potential and even the probability exists for this gloomy prediction to become reality.

The enormous increase in human world-population requiring food and land; and to a far greater extent the industrialized nations insatiable appetite for energy and raw materials, and their inability to effectively dispose of waste products has already lead to a continuing degradation of the environment and a visible breakdown of natural systems.

Human overpopulation alone will destroy mankind and countless other life forms in our world, if the present rate of human population growth continues.[2]

But this is only one part of the problem. Another is man's new-found and rapidly increasing ability to manipulate nature and change the environment by technological and scientific means.

As science and technology are providing evermore sophisticated and powerful tools to manipulate nature, the

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1. Albert Schweitzer, as quoted by Rachael Carson in "Silent Spring".

2. Club of Rome, Limits to Growth. This widely acknowledged publication demonstrates on hand of several population-and resource-dynamics models the probability of human decline in the near future.

thin life-supporting surface of our planet is being damaged by the actions of man. As alarming as these changes are, even more alarming is the rapidly accellerating rate of change which has surpassed man's ability to understand or predict their consequences and by far outstripped nature's ability to adjust to them. Rachel Carson reflects on this in the following:

> "The rapidity of change and speed with which new situations are created follow the impeduous and heedless pace of man rather than the deliberate pace of nature."[1]

Before proceeding to document the numerous catastrophic threats posed by man's actions to all living things, she puts man's new-found power into the perspective of nature's time on earth.

> "The history of life on earth has been a history of interaction between living things and their surroundings. To a large extent, the physical form and the habits of the earth's vegetation and its animal life have been molded by the environment. Considering the whole span of earthly time, the opposite effect, in which life actually modifies its surroundings, has been relatively slight. Only within the moment of time represented by the present century has one species - man- acquired significant power to alter the nature of his world."

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1. Rachel Carson, Silent Spring, Fawcet Publications, Grenwich, Conn., 1964, p. 17.

S. Chandrasekhar points to a third component of man's threat to nature and to himself - man's attitude:

> "Because man in his arrogance, especially in Western society, thinks and behaves as if he is superior to all other forms of life, he may well pursue a course that will end in his own extinction. Or will he reflect and reason and transform radically his ethics and morals, his predatory course and reproductive behaviour, evolving a better and nobler order based on co-operation and good will, equality and justice, devoting himself to higher intellectual and spiritual tasks undreamt of before? And thus endure on this planet."[1]

Chandrasekhar sees human attitude as the centre of the problem, but he also points to possible solution of the problem through a radical change of human attitudes.

Of the three components of this global dilemma - overpopulation, man's ability to effect radical changes to the environment and man's attitude towards nature - the most urgent to be altered and the most likely to be changed is attitude. If attitudes are changing - and there is evidence that they are - we may buy sufficient time to adjust to nature and nature to adjust to us.

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1. S. Chandrasekhar: Population, Poverty and Pollution (Proceedings of the Second International Banff Conference on Man and his Environment, 1974, Pergamon Press, 1976), p. 56.

If man's unparalleled ability to alter the environment is not counter-balanced by understanding of the consequences and by a sense of responsibility and accountability- it will result in irreversible damage and destruction.

Responsibility may have moral roots or it may be based on purely rational considerations. Moral arguments may include such concepts as the right of other species to exist, the rights of mankind versus the profit of a few, the rights of future generations and the concept of the environment as an inheritance to be held in trust for future generations. The rational consideration may include the recognition that many actions intended to bring certain benefits may have undesirable side effects which outweigh the benefits or that certain actions taken now may permanently close future options.

Regardless whether the newly emerging sense of accountability has rational or moral roots, it can be assumed that its emergence is a necessary evolutionary step in the development and continuation of man as a species. A step, which - in order to be effective - must coincide with the emergence of man's ability to effect significant changes to the environment.

Probably somewhere in man's distant past a similar process must have taken place in relation to man's interaction with man - the formation of a "Social Conscience". Without it man could not live in community with other men. This social conscience is the base for all codes of social behavior, writ-

ten or unwritten, which governed human society through the ages. It is expressed and perpetuated by religion, tradition and laws.

As we are developing a better understanding of the inter-relatedness and finiteness of nature's systems we are enabled to act more wisely. At the same time, we seem to be compelled to act more responsibly by a newly emerging morality, which has at its base the notion that we do not own the environment we inherited, but only hold it in trust for future generations.

The imponderable question remains, whether our new-found concern for and understanding of our environment will flourish in time to prove Schweitzer's prophecy wrong.

As Western industrialized society is changing its attitude towards the environment in a positive way, the traditional perception of man as the crown of creation, the master over nature is gradually giving way to a new perception of man as one life form in a complex and changeable biosystem. Man, now sees himself subjected to the laws of nature, playing one part in an intricately balanced, continuously changing evolutionary process. This new attitude towards the environment may appropriately be termed "Environmental Conscience."

When and how this significant change in man's attitude to his environment came about and to what extent it prevails merits far more detailed investigation than is possible within the intended scope of this thesis. Instead this thesis

intends to examine in greater detail one of the positive actions man is taking as a result of this new attitude: the systematic investigation of the many primary and secondary effects on the environment of proposed actions or development for the purpose of reducing or eliminating avoidable damage to or destruction of the environment - in other words - the preparation of Environmental Impact Reviews.

CHAPTER II

The Nature of Environmental Impact Reviews

II. THE NATURE OF ENVIRONMENTAL IMPACT REVIEWS

Man's new attitude towards the environment - his Environmental Conscience - is finding expression in many laws and policies by which industrialized nations regulate their activities.

Many environmental laws are single purpose laws, i.e. they pertain to specific components of the environment or regulate specific activities. For example, a ban on whaling is intended to prevent the extinction of whales. Of course, the passing of such laws requires first of all the knowledge that whales are threatened with extinction, it must be motivated by a desire to prevent the extermination of whales and hopefully the law is passed and enforced before it is too late.

While these kinds of single purpose regulations aimed at specific environmental problems are necessary they have one common shortcoming: they presuppose the knowledge that a certain action will have certain undesired consequences. Such knowledge is normally acquired by experience. In many cases, the experience is too high a price to pay and in some cases, once the experience is obtained it is too late. There is no point in passing laws to save the forest, after all trees have been cut down.

As these laws only exist in areas of human activity, where past experience has pointed to the need for laws, they provide no guidance for development in new areas. Clearly a

new approach is required which would substitute prediction for past experience. An approach capable of exploring the likely effects on the environment of new development or contemplated actions for which no prior experience applies.

The process to achieve this goal is the environmental impact review process. It uses the combined expertise and knowledge of many disciplines to analyze all aspects of a given environment and to predict the effects of proposed actions or their various alternatives on all aspects of this environment. In essence the process is a tool to investigate alternate future options in environmental matters, using different design alternatives of a proposed development as variables.

Thus the environmental impact review process is a systematic and co-ordinated interdisciplinary approach to planning and decision-making in environmental matters, utilizing the recently developed techniques of future prediction.[1]

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1. Various prediction methods, developed mainly during World War II and in the subsequent "Cold War" period for military strategy purposes, have found application in civilian decision-making in government and industry during the 1960ies and 1970ies.

Suggested references:

1. Robert U. Ayres, Technological Forecasting and Long-Range Planning, McGraw-Hill, 1969.
2. David Bell, The Coming of Post-Industrial Society, Basic Books, 1973.
3. Peter Drucker, The Age of Discontinuity, Harper & Row, 1968.
4. Dennis Gabor, Innovations: Scientific, Technological and Social, Oxford University Press, 1972.
5. Herman Kahn and Anthony Wiener, The Year 2000, Macmillan, 1967.
6. John Kettle, Footnotes on the Future, Methuen , 1970.
7. Alvin Toffler, The Futurist, Random House, 1972.
   Future Shock, Random House, 1970.

If used properly and consistently, the process is one of the most sophisticated and advanced decision-making tools for public policy use.

Obviously the preparation of Environmental Impact Reviews is not a universal cure-all for the numerous threats to the environment posed by man, but it is a small important step in the right direction. First of all, it acknowledges accountability of the originator of an action for all direct and indirect consequences of such action. Secondly, it illuminates many of the secondary effects of an action, which otherwise would not be considered beforehand and it will expose information about the "external costs" of development.[1] Thirdly, it provides a starting point for quantification of impacts and for the keeping of records. Fourthly, it will improve general understanding of all aspects of our environment, thus enabling us to lessen or eliminate adverse impacts on the environment by modifying or abandoning intended actions.

In those jurisdictions, where public disclosure and public participation are encouraged or required by law, the review process may be significantly enriched by including

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1. "External costs" are all costs-regardless whether they can be expressed in monetary terms-which directly or indirectly result from a project, but are not part of the official project cost. They may include the cost of remedial actions, devaluation or destruction of land effected by the project, lost or diminished opportunities, etc. Previously these external costs were usually ignored by the developer, with the result that these costs were shifted to the general public.

the voices and views of the general public who usually have no vested interest in the project but often are directly or indirectly affected by the environmental impacts resulting from the project.

The first and foremost example of this new approach to environmental protection is the National Environmental Policy Act of the United States. It has had a profound influence on many similar laws and regulations in other jurisdictions throughout North America. The Act is significant for several reasons. It was the first comprehensive environmental policy act in North American and it establishes the environmental impact review process as government policy.[1]

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1. Environmental Impact Review (EIR) throughout this thesis refers generally to the deliberate and systematic interdisciplinary investigation of likely impacts on the existing environment of proposed development or action.

In several environmental acts the terms Environmental Impact Assessment (EIA) and Environmental Impact Statement (EIS) are being used to differentiate between preliminary (EIA) and more complete (EIS) Environmental Impact Reviews. In other acts the terms Environmental Assessment (EA) and Environmental Assessment Statement (EAS) are used.

In some chapters any of these terms have been used to conform with their usage in the particular act under discussion. To avoid confusion the reader is advised to assume these terms to be fully interchangeable, except where specifically stated otherwise.

CHAPTER III

Environmental Protection Legislation and Practice in the United States of America

III. ENVIRONMENTAL PROTECTION LEGISLATION AND PRACTICE IN THE UNITED STATES OF AMERICA

During the 1970's, which were heralded as The Decade of Environmental Concern, the United States of America played a pioneering role in North America and the industrialized world in enacting comprehensive environmental legislation on the federal and state level.

A. Federal Legislation

1. The National Environmental Policy Act

> "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality".

This declaration is the "statement of purpose" of the National Environmental Policy Act (NEPA) of the United States of America.[1]

The Act is one of the most significant actions by a national government in response to man's new-found environ-

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1. National Environmental Policy Act of 1969, (Pl. 91, 190; 83 Statute 852).

mental conscience. NEPA was enacted on January 1st, 1970. Since that time, it has become a model for similar legislation in several states.

In view of the profound influence of NEPA on a wide range of federal, state, urban, and private activities in the United States and considering the similarity of Environmental legislation in other countries, it is important to look at least at some of the key sections of the act.

There are two titles under this Act: Title I, Declaration of National Environmental Policy and, Title II Council on Environmental Quality.

Under Title I, Declaration of National Environmental Policy, Section 101(a) reads:

a) "The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

b) "... to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may - (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations."

In these beginning sections, the Act not only spells out the newly found concern to protect the requirements of present and future generations, but holds each generation responsible as trustee of the environment for succeeding generations. Not just a desire or an intent, but the obligation is expressed.

These are strong words expressing new thoughts, on the role of man vis a vis the environment, giving rise to legal interpretations as we shall see later.

Section 102 of the Act lays down the procedural requirements. Throughout this section, the thoroughness of thought in prescribing the procedures to accomplish the stated objectives and the precision of language used, are exemplary. Section 102 directs that all federal agencies shall follow a series of steps to ensure that the goals of the Act are met. The steps to be followed are then listed and include:

102(2)(A) "Utilize a systematic, interdisciplinary approach which will insure the integrated use of natural and social sciences and the environmental design arts in planning and decision-making ...".

(B) "Identify and develop procedures ... which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration ...".

(C) "Include in every recommendation and report ... a detailed statement by the responsible official on -

i) the environmental impact of the proposed action,
ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
iii) alternatives to the proposed action,
iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

(E) "Study, develop, and describe appropriate alternatives ...".

(F) "Recognize the world-wide and long-range character of environmental problems ... lend appropriate support to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment."

(G) "Make available to states, counties, municipalities, institutions, and individuals, advice and information ...".

The requirements are quite straight forward: The environmental consequences of a proposed action must be evaluated in a systematic way using inter-disciplinary approach. Environmental amenities and qualities which are not quantifiable must be given adequate consideration. The results of this investigation must be incorporated into the decision-making process. Once the probable environmental consequences of a proposed action are known and fully disclosed, they may be weighed against other factors.

Thus, a project which will have adverse environmental impacts can legally be proceeded with as long as its effects have been determined beforehand and publicly and deemed justifiable in light of other considerations. This negates the argument that EIS inherently are anti-progressive and inevitably kill needed projects and developments. Conversely, it demonstrates the vulnerability of enviornmental concerns.

2. Council on Environmental Quality

Under Title II of the Act, Council on Environmental Quality, Section 201 directs that the President shall transmit to the Congress annually an Environmental Quality Report.

The basic components of the report are then described. They include the status and condition of the major natural, manmade, or altered environmental classes such as air, water, and terrestrial environment, rural, urban and suburban environments, etc. Current and foreseeable future trends in quality, management and utilization of such environments, effects on social and economic and other requirements of the nation; review of programs and activities of federal, state and local governments and private entities and indivi-

duals and their effect on the environment, programs for remedying deficiencies of existing programs and activities and recommendations.

Section 202 establishes in the Executive Office of the President, a Council of Environment Quality (CEQ). The role of CEQ is detailed in Section 204 of the Act and includes: to act in advisory capacity to the President in preparing Environmental Quality Reports, in formulating national policy, to gather information and prepare studies on Environmental matters and to act as a review agency and coordinator of various programs from an environmental point-of-view.

Since its formation CEQ has issued various guidelines for the preparation of environmental impact statements. The guidelines are intended to assure that all requirements of the Act are given adequate consideration in the EIS and that all federal departments and agencies comply with the requirements in a uniform way.

3. Environmental Impact Assessment and Environmental Impact Statements

CEQ guidelines, which are revised from time to time, spell out when, how and by whom Environmental Impact Statements shall be prepared. As these guidelines invariably are a model for all state and local agency guidelines in the United States, they merit closer examination.

The guidelines differentiate between Environmental Impact Assessments (EIA) and Environmental Impact Statements (EIS). Both documents are intended to ensure that environmental considerations are made part of the decision-making process of federal, state or local agencies.

The purpose of the EIA is to identify, interpret predict and quantify impacts on the environment caused by a proposed action and to provide an information base for judging whether an EIS should be prepared. CEQ advises that EIA should be prepared as early as possible in the planning process and in all cases, prior to an agency decision.

An EIS is a far more complete and in-depth investigation of possible Environmental Impacts of a proposal. The essence of how and by whom an EIS is to be prepared and its scope and contents are spelled out in Section 102(2) of NEPA and is expanded upon and clarified in subsequent CEQ guidelines.

CEQ guidelines identify eight major points to be covered by EIS. They can be summarized as follows:

1. A description of the proposed action, a statement of its purpose, and a description of the environmental setting of the project;
2. the relationship of the proposed action to land use plans, policies, and controls for the affected area;
3. the probable impact of the proposed action on the environment;
4. alternatives to the proposed action;
5. any probable adverse environmental effects that cannot be avoided and stating how each will be mitigated;
6. the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
7. any irreversible and irretrievable commitments of resources (including natural and cultural as well as labor and materials); and
8. an indication of what other interests and considerations of federal policy are thought to offset the adverse environmental effects identified.

B. State Legislation

1. State Environmental Policy Acts

NEPA applies to all programs of federal agencies and such programs and activities of individual states or cities, which are supported by federal funds either entirely or on a cost-sharing basis. However, many programs entirely funded by states or carried out under a county-state cost-sharing agreement, were not covered by the requirements of NEPA. As many of such programs are seen to have substantial impact on the environment, many states passed their own environmental policy acts. By 1975, almost half of the states had State Environmental Policy Acts (SEPA).[1] Most SEPA's are patterned after NEPA, in addition many incorporate particular concerns of the state.

2. Michigan's "Anderson-Rockwell, Environmental Protection Act, 1970"

One of the most significant state laws inspired by NEPA is Michigan's "Anderson-Rockwell Environmental Protection Act, 1970". It was the first law of its kind in the United States and one of the most successful in application, as it opened many more possibilities of legal action in the

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1. R.K. Jain, L. V. Urban, and G.S. Stacey, Environmental Impact Analysis (Van Nostrand Reinhold Company, N.Y. 1977), p. 15.

pursuit of environmental protection, than is common in most environmental protection legislation.[1]

The Michigan Environmental Protection Act authorizes any person to bring suit in the courts against any defendant, private or public, who is alleged to be carrying on an activity likely to result in pollution, impairment or destruction of the environment held in public trust. If such cases could be proven, a court injunction could be obtained to stop the activity or project.

Under the Act, it is incumbent upon the defendant to provide proof that all environmental precautions were being taken and that there was no feasible and prudent alternative to the proposed action or that the project, if carried out, was consistent with public health, safety and welfare and the enjoyment of the environment by future generations.

This legislation was significant for several reasons: Ordinary members of the general public were given broad rights and opportunity to sue. Public agencies could be sued easily. The courts were assumed to be competent to deal with the complexities of environmental concerns. The burden of proof was put upon the defendant. This was done to shift a large part of the financial burden of litigation from the

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1. Joseph L. Sax, American Experience with Citizen-Initiated Environmental Lawsuits (Proceedings of the Second International Banff Conference on Man and his Environment, 1974, Pergamon Press 1976), p. 146.

plaintiff - often private citizens, - to the defendants - usually well-financed private or public agencies.

3. The First Ten Years of Experience with the Michigan Environmental Protection Law

The enactment of this law was greeted with fear and apprehension and results were carefully watched by legal experts, citizen groups, developers and industries, private and public agencies in the state of Michigan and across the U.S.A.

Obviously, it was feared that the courts might be flooded with cases - many frivolous, - and that federal and state programs would be halted or caused many costly delays and that consequently, private development and industry would give up on proposed projects, which would then be lost to the state. The Michigan experience has shown that these fears were unfounded. Perhaps the mere threat of possible citizen lawsuits prompted developing agencies to pay more attention in their plans to environmental concerns and perhaps regulatory agencies were more watchful and were given the mandate to enforce compliance with environmental laws.

Of those cases which went through the courts, the majority did not end as unyielding confrontations but rather, as workable compromises. Once the plaintiff's challenge was presented, the defendant usually proposed a variety of protec-

tive measures during construction which would eliminate any risk to the environment or lessen it to acceptable levels.

J. L. Sax, in his analysis of environmental court actions concludes that the often expressed fear, that environmental litigation tends to turn a flexible planning process into a set battle between unyielding adversaries, is almost totally unfounded. Instead of an all-or-nothing battle between plaintiff and defendant, the process becomes a negotiation in which private plaintiffs serve to supplement the formal regulatory process of administrative agencies.[1]

Some other important and astonishing findings were made by Sax in his exhaustive study of the Michigan experience in the first seven years of existence of the Environmental Protection Act: The Michigan Department of National Resources - a frequent defendant in suits initiated by citizens, was amongst the most active opponents of an amendment to the Act, which would have emasculated it. The Department contended that citizens must not be denied the recourse this act now provides. An opinion survey of citizens and agencies involved in environmental litigation, on the ability of judges to understand and handle environmental, scientific or technical issues, yielded the following results:

> 60% of all plaintiffs surveyed and over 90% of all defendants assumed judges to be competent in adjudicating complex environmental cases.

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1. Ibid., p. 149.

It can be said that Michigan's "Anderson-Rockwell Environmental Protection Act" has worked extremely well to the surprise of many who thought it would curtail development, flood courts with countless irrelevant actions and become an administrative and political nightmare. Instead it proved to be a valuable tool in promoting better planning and more responsible development.

C. Discussion

The significance of the National Environmental Policy Act cannot be overemphasized. The Act is the first legislative expression of a nation's environmental conscience. It expresses a basic philosophy: the responsibility of each generation as trustee of the environment for succeeding generations.

This philosophy is new. Traditionally, western civilizations seemed convinced that man being "the crown of creation" is apart from and above the rest of nature and is free to shape and exploit it at will and to his benefit.[1] The expression of this new attitude and confirmation of philosophy, in the beginning of the Act, is important, as it sets the tone for all subsequent environmental legislation and puts all environmental laws, regulations, directives, etc. into a clear perspective, never to be lost sight of. No future amendments to the Act, no legal arguments, no technical considerations, will be able to change or distort this fundamental philosophy. It stands to be considered in all government actions affecting the environment, to give direction to courts in precedent-setting decisions, to establish goals for citizens and to guide developers and industry.

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1. Forsight not being man's better developed virtues, the benefit often only was short-term, to be followed by long-term or permanent loss.

Like the "Bill of Rights" and "Declaration of Independence" - expressing a philosophy on the rights of man and the individual, which had evolved during the 17th and 18th century - set down ideals long before they were attained to act as a guiding beacon throughout the years of struggle; so the National Environmental Policy Act establishes ideological goals in the relationship between man and his environment to be pursued by present and future generations. The statement of philosophy will assure that the Act's purpose will not be obscured by time. The Act as a Declaration of Congress is not merely a statement of ideals by an obscure group of wellmeaning people, but has the weight and prestige of a declaration by the highest authority in the land. It has the force of law for all projects with federal funding and sets the tone for state and county legislation.

The description of the review process and the establishment of the Council on Environmental Quality are intended to assure that all federal agencies can comply with the requirements of the Act in a uniform way, using the same review-process and methods and the same criteria for quantification and evaluation of impacts. This uniform approach will greatly facilitate the keeping of records of actions and impacts and assist in the building up of a universally usable experience. The Act also provides for continuous monitoring of its application and for revisions and updating of the Guidelines issued by CEQ,

In the first 10 years of NEPA over 6,000 Environ-

mental Impact Reviews were carried out on projects with federal involvement, over 3,000 by the Army Corps of Engineers alone. While these figures are impressive, they do not give an indication of the quality of all reviews. However, even skeptical critics should be impressed by the amount of experience which was obviously accumulated case by case and the expertise which was obviously developed in the process.

State legislation patterned after NEPA varies considerably in quality, effectiveness, and frequency of use from state to state, ranging from excellent, such as in Michigan, to poor, such as Florida, to non-existent.[1]

The particular strength of Michigan's Environmental Protection Act is that it not only allows ordinary citizens to use the courts as a means to halt environmentally unjustifiable projects but also gives them the practical means to do so: firstly, by putting on the defendant the onus of proof that environmental concerns are being considered to the fullest extent possible, and secondly, by limiting the liability of the plaintiff to five-hundred dollars maximum in case of lost suits.

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1. While there are about a dozen states without their own Environmental Protection Acts, it must be remembered that all projects having some federal participation (cost-sharing) fall under the jurisdiction of NEPA and therefore require Environmental Impact Statements in any case.

On the other hand, Florida's environmental legislation holds the plaintiff responsible for all court cost in lost legal actions. In many cases, court cost which could run into many thousands of dollars are clearly beyond the means of ordinary citizens. This effectively prevents private citizens in Florida from using the courts to defend the environment from damage by commercial interests or poorly planned government projects.

D. Conclusions

The enactment of the National Environmental Policy Act in the United States was a monumental step in a new direction of government activity and responsibility.

The Act provides legal means to environmental concerns, it provides a process by which to predict, evaluate and minimize adverse environmental impacts of proposed action, and it sets an example for other states in the union and other industrialized nations to emulate.

From the varied experiences gained over the last 10 years with Federal and State Environmental Policy Acts, some exemplary principles have evolved and are anchored in federal or state legislation:

.Courts are deemed competent to adjudicate complex environmental matters.

.Private citizens can challenge proposed actions by government, big industry or business.

.The burden or proof is placed on the defendant in environmental actions.

.Plaintiffs (often private citizens) are not liable for court cost beyond a predetermined amount, in most cases, $500.

.Courts may impose interim injunctions to stop, what may be damaging to the environment.

Experience in the United States generally has also shown that the process established for the protection of the environment is a workable one, that court actions seldom become dead-end confrontations, but instead lead to mutually acceptable and workable compromises. The threat of court action has tended to lead to better planning with greater awareness of and avoidance of possible environmental damages.

The Federal Environmental Policy Act today is still one of the best examples of legislation reflecting the emerging Environmental Conscience and demonstrates admirably the leadership role federal governments must take in new fields of human endeavour. Obviously, this legislation alone is no guarantee that environmental matters will in all cases receive adequate consideration, but its application and enforcement together with an active role by a central authority in gathering and disseminating information will increase public awareness of the problems, their causes and possible solutions. It is the best means available in a democracy - short of emergency measures - and it has the potential for increasing in effectiveness, as general awareness increases and it serves as a model for similar legislation on the state and local level.

CHAPTER IV

Environmental Impact Assessment in Canada

IV. ENVIRONMENTAL IMPACT ASSESSMENT IN CANADA

This chapter will examine environmental impact assessment practice and laws on the federal and provincial level in Canada and make comparisons with corresponding legislation in the United States.

A. The Federal Environmental Assessment Review Process

To date, Canada does not have a comprehensive federal environmental protection law or policy act comparable to NEPA in the United States of America.

While several federal acts, such as The Canada Water Act, The Clean Air Act, The Atomic Energy Control Act, The Fisheries Act, The Government Organizations Act, The National Energy Board Act, contain sections on environmentally protective requirements, none of these acts expresses a comprehensive environmental policy, nor are they intended to. As these acts govern the activities and responsibilities of many different federal departments, agencies and crown corporations, they contain little, if any, guidance for interdepartmental co-ordination or collaboration in environmental matters.

The first acknowledgment of the need for some action on part of the Federal Government to lessen avoidable adverse environmental effects of government projects came in 1972.

A Cabinet directive of June 8, 1972, required that all proposed federal projects be screened to identify pollution effects. Its stated intent was to minimize adverse environmental effects through improved project design. The directive recommended that all federal departments use the Codes of Good Practice and Project Design Guidelines issued by Environment Canada as guidance to achieve best practicable design. This Cabinet directive contained nothing to insure the quality and uniformity of the screening process or that any findings were adequately taken into consideration in the ultimate project design.

Nearly four years after the enactment of the National Environmental Policy Act in the United States, Canada, through a Cabinet decision on December 20, 1973, instituted its Federal Environmental Assessment Review Process (EARP). In its decision, on December 20th, 1979, Cabinet directed the Minister of the Environment to establish, in co-operation with other Ministers, a process to ensure that federal departments and agencies:

> take environmental matters into account throughout the planning and implementation of new projects, programs and activities;
>
> carry out an environmental assessment for all projects which may have adverse effect on the environment before commitments or irrevocable decisions are made; projects which may have significant effects have to be submitted to the Federal Environmental Assessment Review Office for formal review;

> use the results of these assessments in planning, decision-making and implementation.[1]

The process thus established by the Minister of the Environment - through an Interdepartmental Committee on the Environment - makes the initiating departments and agencies responsible for assessing the environmental consequences of their own projects and activities and lets them decide whether or not any anticipated effects on the environment are significant.

The process is intended for federal projects, those that are initiated by federal departments or agencies and those which require federal funding or involve federal property. While the directive applies to federal departments only, others such as regulatory agencies or crown corporations are invited to participate.

To administer the process on behalf of the Minister, the Federal Environmental Assessment Review Office (FEARO) was established. FAERO suggests in its "Guide for Environmental Screening" that the initiating department should screen all projects for potential adverse environmental effects, as early as possible in the planning phase. This screening may lead to one of the following four decisions:

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1. Federal Activities Branch, Environmental Protection Service and Federal Environmental Assessment Review Office. "Federal Environmental Review Process", Minister of Supply & Services Canada, 1978. p. 1.

a) No adverse environmental effects, no action needed;

b) Environmental effects are known and not considered significant. Effects identified can be mitigated through environmental design and conformance to legislation/regulations. The initiator is responsible for taking the appropriate action but no further reference to the procedures of the Environmental Assessment and Review Process is required.

c) The nature and scope of potential adverse environmental effects are not fully known. A more detailed assessment is required to identify environmental consequences and to assess their significance. The initiator therefore prepares or procures an Initial Environmental Evaluation (IEE). A review of the IEE will indicate to the initiator whether alternative (b) above or (d) below should be followed.

d) The Initiator recognizes the significant environmental effects are involved and requests the Executive Chairman, Federal Environmental Assessment Review Office, to establish a Panel to review the project.[1]

As can be seen from the above, FEARO only gets involved, or receives knowledge of a project if the initiating department recognizes that significant environmental effect may result. Only if the initiator decides to submit a project for panel review, the project is halted until the review is completed and recommendations are made to the Minister of the Environment.

Clearly this leaves too much discretion on environ-

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1. Ibid., p. 2.

mental matters to an initiating department, which by lack of knowledge and expertise in these matters, may underestimate the magnitude of environmental effects or choose to ignore them for expediency in their own field of expertise.

In response to this obvious shortcoming, Cabinet on February 15th, 1977, decided to incorporate the following adjustments into the Process:

a) Strengthen the review mechanism to provide the Minister of the Environment with information on that stage of the Process conducted by federal departments and agencies themselves.

b) Ensure that the public response to significant federal projects is obtained early in the planning stage and before vital decisions are made.

c) Permit the Minister of the Environment to appoint individuals outside the federal public service to Panels.

d) Adopt a financial policy for the sharing of environmental assessment costs between the Federal Government and non-federal government proponents of projects covered by EARP. The Federal Government accepts the financial responsibility for environmental baseline studies, while the cost of preparing environmental evaluation reports is the responsibility of the proponent. The Federal Government and the proponent share the cost of accellerated baseline studies, the incremental cost resulting from accelleration being charged to the proponent.[1]

These adjustments not only ensure that the Minisiterof the Environment and FEARO receive early knowledge of all federal projects, but also for the first time mention a requirement for early public involvement and response.

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1. Ibid., p. 2.3.

1. Critique of the Federal Environmental Assessment Review Process

When the Federal Government in 1973 instituted EARP through a cabinet decision rather than through introducing a bill for full parliamentary debate and eventual passage into law one of the stated reasons was a desire to maintain flexibility in the process. Certainly flexibility is an asset as it permits continuous updating and improvement of the process based on experience. A process firmly entrenched in law cannot as easily be changed and adjusted to new situations and requirements. The question arises how long this "formative" stage can and should be maintained. One analyst of EARP and its performance to date writes:

> "The time seems to be ripe to make the final reforms necessary to make it (EARP) a really effective impact assessment process by giving it Parliament's, rather than merely Cabinet's endorsement."

The major criticism of EARP pertains to its non-legislative status. As a "cabinet directive" it does not have the status of a law, consequently, it is not binding on successive governments. It can be amended, weakened, strengthened or abandoned by further cabinet decisions without parliamentary debate or scrutiny. Furthermore, there is no guarantee that adequate environmental assessments will be carried out. Without legislation there is no way of forcing various government departments to abide by rules or guidelines

issued by the government. Even if reviews are carried out, the assessment panel can act only in an advisory capacity and has no legal tool to deal with an inco-operative proponent of a project.

Where there is no law - no law can be broken, therefore the public has no recourse to the courts in environmental matters as is the case in the United States.

Above all, since the government has not accepted legal responsibility for the Process, it lacks credibility. Doubtlessly, this must affect the quality of the reviews carried out and the decisions based on those reviews. Furthermore, due to the failure of the government to make the Process a legal requirement for federal projects, this requirement can hardly be extended to private projects.

A further criticism of EARP is aimed at the provision that the initiating departments or proponents of projects are responsible for assessing the environmental consequences of their own projects and deciding whether any anticipated environmental consequences are significant. This principle of self-assessment as opposed to environmental assessment by an independent body has many inherent dangers and disadvantages. The initiating department does not have at its disposal the expertise in the many different disciplines required to make a valid judgment on the range of potential environmental impacts, or, in cases where the initiating department does not wish to carry out a thorough assessment, it may simply decide that it is not required. In any case,

this practice practically precludes a uniform approach to environmental assessment.

Other criticisms of the principles of EARP and its use to date are numerous and include its limited application, the role - or lack of role - of the public in the process and the make-up and performance of Environmental Assessment Panels. All these criticisms, however, are secondary to the fact that the Federal Environmental Review Process has no legal status!

B. Provincial Environmental Impact Assessment

1. The Ontario Environmental Assessment Act

Unlike the Federal Government of Canada, several of the Provinces do have Acts requiring the preparation of Environmental Impact Assessments for certain projects. Such Acts of the provincial legislature carry the force of law and are generally also binding on the federal government within that province.

One of the most important and direction-giving provincial acts regarding Environmental Impact Assessments is the Environmental Assessment Act, 1975 of Ontario. It has been termed the most important piece of environmental legislation ever enacted in Canada.

> "If used to its full potential, almost all new development in the Province will have an environmental protection component built into the decision-making process that will parallel traditional concerns of engineering design and economic viability."[1]

In view of the Act's importance, being the first Environmental Assessment Act in Canada, it is worthwhile to

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1. D. Paul Emond, Environmental Assessment Law in Canada (Toronto, Canada, Emond - Montgomery Ltd., 1978), P. 31.

examine the origin and evolution of its content and to analyze the strong and the weak points of this piece of legislation and to follow its application in practice since its enactment.

The Environmental Assessment Act, 1975, in its totality, was proclaimed in force on January 16, 1977, after two years of changes and debate in the legislature.

The beginning of the Act can be traced back to 1973. In the Throne Speech of March 20, 1973, and in statements by Premier Davis the same year, the Government of Ontario gave notice of its intention of studying the means and methods for a co-ordinated approach to environmental impact assessment at an early stage of project planning and decision-making.

In September of 1973, the Minister of Environment published the "Green Paper on Environmental Assessment". The "Green Paper" by the Ministry's own definition is a discussion document designed to describe a policy issue, to outline alternative proposals, and to solicit public response prior to any action. [1]

In response to the "Green Paper", literally hundreds of submissions were received from individuals, from groups, private and public institutions and organizations.

This exceptionally active participation by the public certainly helped to shape the Act - firstly, by providing

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1. Ministry of the Environment, Green Paper on Environmental Assessment, Ontario, 1973.

the input of ideas and concerns and secondly, by giving an indication to the government of the importance of the Act in the public eye.

Considering the great public interest in the matter and the proposed act's intention to effect sweeping changes of the traditional public and private decision-making process, it is not surprising that it took two years of lively debate in the legislature before the act's passage was assured.

Generally, the Act requires environmental assessments to be prepared for all undertakings carried out by a public body, unless the project or its public proponent agency are specifically exempt from the Act.

Conversely, private enterprises are exempt from the provisions of the Act unless and until designated by a proclamation of the Lieutenant Governor. Crown Corporations are not deemed to be a public body under the Act, unless they are specifically so defined.

In its final form, the Act comprises seven parts:

Part One of the Act is devoted to definitions of terms, statement of purpose and to whom the Act applies.

Part Two prescribes that a proponent of an undertaking to which the Act applies shall submit to the Minister an environmental assessment and shall not proceed with the undertaking until the Minister has accepted the assessment and approved the undertaking (Sec. 5(1)). The required content of an environmental assessment is described in Section 5(3). Section 7(2) provides that any person may inspect an environ-

mental assessment and its ministerial review; and by written notice to the Minister, require a public hearing by the Board with respect to the undertaking, the environmental assessment and its review.

With this provision in Section 7(2) the principle of public access to and scrutiny of the environmental assessment and review process and the right for public hearings is firmly entrenched in the legislation.

The following sections describe the powers and responsibilities of the Minister in reviewing the assessment, the holding of public hearings and approving or rejecting a project. Section 14(2) states in part:

> "in determining whether to give approval, give approval subject to terms and conditions or refuse to give approval to proceed with an undertaking ... the Minister shall consider,
>
> a) the purpose of the Act,
>
> b) the environmental assessment of the undertaking as accepted by the Minister,
>
> c) the submissions, if any, made to the Minister with respect to the environmental assessment."

Part Three of the Act establishes the Environmental Assessment Board and prescribes its composition, duties and powers. The Act authorizes the Minister to designate Provincial officers and grant them specific powers for the purpose of the administration of the Act. Other parts of the Act deal

with the administration of the Act and prescribe duties and powers of the Minister for the purpose of administration and enforcement and list specific regulations pertaining to the Act which may be made by the Lieutenant-Governor-in-Council. Part Seven states the dates of commencement and the short title: "The Environmental Assessment Act."

2. Critique of the Ontario Environmental Assessment Act

The Environmental Assessment Act (Ontario) was the first Act of its kind in Canada. As such, it established a benchmark against which similar Acts of other Provinces - or the Federal Government - will be evaluated.

Despite the many criticisms of the Act and its application to date, the Ontario Legislature must be commended for taking this long overdue step of enacting comprehensive environmental legislation - the first in Canada. It was a bold step indeed, one which is yet to be taken by the Federal Government and several other Provinces.

An act of the legislature, which has been passed after years of public and parliamentary debate, constitutes an expression of a commitment by the government. Quite different from a "cabinet directive" or other non-legislative procedures regarding environmental assessment as adopted by the Federal Government and several Provinces, an Act of the legislature has the force of law and is binding on succeeding governments until it is revoked by another Act. Cabinet dir-

ectives can easily be changed by new ones, without public or parliamentary debate and they are not binding on succeeding governments.

It is also noteworthy that the Ontario Government carried out a long and elaborate public consultation process on the proposed Act. The process started in 1973 with the Ministry of the Environment's publication of the Green Paper on Environmental Assessment and was sustained through lectures, public discussions and information meetings till the Act was proclaimed in 1977. This process not only provided that the legislation could be enriched from the multitude of submissions received, but it also assured public awareness of the Act and its importance.

Naturally, the Act and its application to date have been scrutinized, by politicians, administrators, lawyers, planners and other concerned groups and individuals.

Of the many criticisms of the Act the examples discussed below are illustrative of a range of complaints:

Purpose.

Part One, Section 2 reads:

> "The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment."

This very brief statement of purpose has met with applause from some and criticism from many others. The criticism ranges from ambiguity to arrogance and eliticism.

The notion of ... "betterment of the people ... of Ontario" is termed ambiguous by the milder critics. Paul Emond in his Book "Environmental Assessment Law in Canada" states:

> "Does this mean that only those environmentally protective measures that enhance or have a direct impact on some person are included within the Act? According to this view of purpose, it could be argued that wilderness preservation would only be a legitimate concern of the Act if it had some clearly identifiable aesthetic, recreational or scientific value to Ontarions."[1]

In the eyes of many others, the wording of the purpose - "the betterment of the people -- of Ontario" is arrogant, elitist and environmentally irresponsible. It certainly lends itself to the interpretation "what is good for the people of Ontario is good for the world," or even worse: "what is good for some people of Ontario is good for the world".

Do they assume the environment to be a resource to be used for the betterment of people of Ontario?

Obviously the authors of the Act did not anticipate or intend such interpretation. Perhaps their concern

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1. Ibid., p. 35.

for and understanding of environment was overshadowed by an equal concern for but better understanding of commerce, industry, development, etc.

The furore over this brief - four line statement of purpose illustrates almost humourously the pitfalls which can be encountered in the drafting of legislation concerning such complex matters as environmental protection.

While many acts of legislative bodies in Canada do not devote a section to the formal expression of "purpose" or "intent", in cases of environmental legislation, this is desirable and necessary as this whole field is very new and not commonly understood. The statement of purpose should provide clear guidance to the Minister and others, who administer the Act, and those agencies, department and business enterprises, who are required to prepare environmental assessments.

Section 8 of the Act states:

> "The Minister, in determining whether to accept or to amend and accept an environmental assessment shall consider the purpose of the Act, ..."
>
> and further, Section 14(2) states in part:
>
> "In determining whether to give approval, ... the Minister shall consider, the purpose of this Act, ...".

Environmental legislation in the United States (NEPA) clearly states its purpose and sets goals and further gives an unobstructed vision of the underlying philosophy

pertaining to man and his environment, to guide those responsible for the preparation of environmental assessments and to provide a benchmark against which the performance of the administrators of NEPA may be judged.

Discretionary Powers

The above criticism leads to another, which focusses on the large degree of discretionary powers given under the Act to the Minister, Cabinet and the Environmental Assessment Board. The Minister or Cabinet at their discretion may decide, which projects are subject to environmental assessment. Part V, Section 30 of the Act states in part:

> "Where the Minister is of the opinion that it is in the public interest, ... may by order,
>
> a) exempt the undertaking or the proponent of the undertaking from the application of this Act ... ".

The sceptics who fear that such discretionary powers may lead to exemptions for some large-scale, potentially harmful undertaking, have indeed been proven right in several instances.

The most controversial of these exemptions probably was that of Ontario Hydro's 3400 megawatt Nuclear Generating Station at Darlington.

In 1976, the Ontario Ministry of the Environment in its publication, EA Update No. 1, announced: "Although Ontario Hydro's planning for the proposed Darlington Nuclear Generating Station is well advanced, the Government is not exempting this project from the provisions of the Act at this time."[1]

However, in July 1977, the Minister of the Environment exempted the undertaking from the provisions of the Act. He offered the following reasons in EA Update No. 3:

> "1. Environmental Assessment should be carried out as an integral part of the decision-making process for an undertaking, but, in the case of the Darlington project the Provincial Government and Ontario Hydro had made significant decisions regarding the provincial requirement for electrical capacity, the mode of generation and location prior to proclamation of the Environmental Assessment Act in accordance with procedures followed prior to proclamation.
>
> 2. Parts of the undertaking are subject to review and approval under The Environmental Protection Act, 1971, and The Ontario Water Resources Act.
>
> 3. Ontario Hydro has submitted a report on the Environmental analysis for the undertaking including documentation of the public participation and review by Ontario government ministeries as well as a Community Impact Report to the Provincial Government."[2]

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1. Ministry of the Environment, EA Update - A Digest for People Interested in Environmental Assessment, Vol. 1, October 1976, Ontario.

2. Ministry, EA Update No. 3, July 3, 1977.

These explanations for the decision invite more criticism than the decision itself might have.

Surely the Act should apply first of all to a public undertaking of such magnitude, with its potential for enormous environmental impact.

Surely the Provincial Government and Ontario Hydro were fully aware of the requirements of the Act prior to its proclamation and could have prepared a complete Environmental Assessment. Unless, of course, a proper assessment would have put in question all previous decisions in the first place, regarding the use of nuclear power to supplement the Province's electrical requirements and further regarding the location of the proposed generating plant.

The second part of the explanation, that parts of the undertaking are subject to review and approval under <u>other</u> Acts, is a direct contradiction of the government's own explanation of the rationale for the Environmental Assessment Act. To quote from the Green Paper on Environmental Assessment:

> "The Ontario Government's past concern with the protection of the environment is evidenced by The Game and Fish Act, The Ontario Water Resources Act, The Planning Act, The Lakes and Rivers Improvement Act, The Beds of Navigable Waters Act, The Pesticides Act, and The Environmental Protection Act. However, this legislation has not provided the means of ensuring that all environmental factors are considered in a comprehensive and co-ordinated fashion, including public input, before major projects and techno-

logical developments proceed."[1]

and

"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."[2]

The third reason given for exempting the project from the Act is put in question by the Ministries of the Environment comments on the report submitted by Ontario Hydro. These comments contained in a letter from the Director of the Environmental Approvals Branch identify major deficiencies in the report:

(1) "The assessment does not consider and include the environmental implications of retiring the facility; nor does it deal with the related problem of the long-term disposal of waste produced from the facility, nor does it address the environmental implications for the proposed method of storing such wastes in the short term;

(2) the "technical" assessment proceeds on the assumption that only the proposed facility of 3400 megawatts will be constructed, while the environmental assessment implies that the potential capacity of the site is 98,000 megawatts."[3]

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1. Ministry, Green Paper, p. 1.

2. Ibid., p. 5.

3. Letter from Mr. D.P. Caplice, Director Environmental Approval Branch, Ministry of the Environment, to Mr. W.G. Morrison of Ontario Hydro, dated April 30, 1976, cited by D. Paul Emond, Environmental Assessment Law in Canada.

3. The Quebec Environmental Quality Act

Following the example of Ontario and spurred on by an increasing public awareness of the need for better management of resources and the protection of the environment, several Provinces have enacted Environmental Impact Assessment legislation. The Province of Quebec introduced Environmental Impact Assessment legislation through "Bill 69 - an Act to amend the Environmental Quality Act."[1] Bill 69 was assented to in December of 1978. The "explanatory notes," which form part of the Bill and may be considered equal to a "statement of purpose" in other legislation, state in part:

> "The main objects of the amendments to the Environment Quality Act are:
>
> a) to recognize every person's right to a healthy environment and to its protection, and to the protection of the living species inhabiting it, and to provide a civil recourse of injunction in order to ensure the respect of that right;
>
> b) to create a Bureau d'audiences publiques sur l'environment entrusted with holding public hearings where a project is subject to the environmental impact assessment and review procedure, and in any other case where the Minister requires it;
>
> c) to remodel the administrative procedures pertaining to the preparation of environmental impact assessment state-

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1. The Environmental Quality Act (1972) Quebec.

> ments, and to the issue of certificates of authorization in the case of projects subject to that procedure."

The list of objectives continues to cover a wide range of administrative powers and responsibilities in environmental management matters.

The following sections of the Act provide the means to achieve the objectives. For example, the right of private citizens to apply for a court injunction in environmental matters is enhanced by the provision that the plaintiff's liability shall not exceed $500.

In setting a limit of $500 as security in applications for an interlocutory court injunction, the Act assures that this legal avenue is open to concerned citizens with limited finances. Such provision is lacking in several other environmental laws in Canada and the United States, thereby effectively preventing citizens from using the courts to restrain potentially disasterous development. Bill 69 also takes care of another common impediment to sound environmental planning by providing for special loans to municipalities for expenditures to comply with an order of the Minister of the Environment.

On the subject of Environmental Impact Assessment and Review, the revised Act states:

> "31a. No person may undertake any construction, work, activity, or operation, or carry

> out work according to a plan or programme, in the cases provided for by regulation of the Lieutenant-Governor in Council without following the environmental impact assessment and review procedure and obtaining an authorization certificate from the Lieutenant-Governor in Council."

The wording "no person ..." appears to indicate that in Quebec, unlike Ontario, private development and activity is not exempt from the environmental impact assessment and review process. However, a subsequent section provides the Lieutenant-Governor with discretionary powers in determining the classes of projects subject to the provision.

Bill 69 certainly creates the impression that the Province of Quebec is serious about environmental matters. The Environmental Quality Act, as it now stands, constitutes a powerful tool for encouraging sound environmental planning and management in Quebec. Probably the most noteworthy innovation of the Act is the provision permitting private citizens to apply for court injunctions and setting the limit of the plaintiff's financial liability at $500. It will be interesting to follow the application of the Act over the next few years.

4. The Saskatchewan Environmental Assessment Act

The Province of Saskatchewan in 1980, passed into law "An Act Respecting the Assessment of the Impact on the Environment of New Developments".[1]

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1. Introduced as Bill 107 of the 1979-1980 Session of the Saskatchewan Legislature, the Act was passed in May of 1980. Short title: The Environmental Assessment Act.

To appreciate similarities of and subtle differences between environmental assessment acts of various provinces, it is necessary to carefully examine the wording. In some instances, what is expressed very clearly in one Province's act has to be pieced together from obscure subsections, definitions, etc. in another.

For example, on the question as to whom the Act applies, the Ontario legislation is specific in Part I, Section 3(a)(b) and Section 4.

The Saskatchewan Environmental Assessment Act, in its section 3, simply states: "This Act binds the Crown". However, Section 9(1) states: "The proponent of a development shall ...". Under Section 2(m) "proponent" is defined as a person who proposes or desires to undertake a development. Section 2(j) defines "person" as follows:

> "person - includes a body corporate or other legal entity, an unincorporated association, partnership or other organization, a municipality and the Crown, a Crown Corporation or an agency of the Crown."

From the foregoing, it should be deduced that the Act applies to all development, private or public. Proponents must obtain ministerial approval to proceed with any development, regardless of any other approvals or permits, which may have been granted. (Sec. 8) A proponent of a development must at his own expense, conduct an environmental impact assessment of the development and prepare and submit to the minister,

an environmental impact statement relating to the development (Sec. 9).

As is the case in Ontario and Quebec, the EIS and the ministerial review thereof must be made available for public inspection. However, public information meetings are not required except at the minister's discretion (Sec. 13). Ontario provides that

> "any person ... by written notice ... require a hearing by the Board."[1]

On the same question, the Quebec Act follows the Ontario Example.[2]

On content of an environmental impact assessment, the Act announces future regulations to be made by the Lieutenant-Governor "respecting any requirement relating to an assessment or statement" (Sec. 27(a)).

5. The Newfoundland Environmental Assessment Act

The Environmental Assessment Act of Newfoundland became law on May 28, 1980.[3]

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1. Ontario, The Environmental Assessment Act, 1975, Part II, Section 7(2), 7(2)(b).

2. Quebec, Environmental Quality Act, 1978, Division IV A, Section 31c.

3. Province of Newfoundland, An Act to Protect the Environment of the Province by Providing for Environmental Assessment, (1980).

The Act is more complex than its Saskatchewan counterpart and prescribes procedures somewhat different from Ontario and Quebec.

One of the differences is the requirement of project registration:

> "Every proponent shall, before proceeding with the final design ... notify the Minister in writing, on a prescribed form, concerning the proposed undertaking." (Chapter 3, Sec. 6(1)).

The Minister, after examining the registration will decide in accordance with prescribed criteria whether an environmental impact statement is, may be, - or is not - required (Sec. 7).

One would assume that the provision of project registration is intended to allow for impact assessment at an early planning stage, however, the wording "before proceeding with the final design" negates this.

As in other Acts, the proponent is responsible for the preparation of Environmental Assessments. This Act in addition provides that the proponent is to meet with the public. In cases of strong public interest, the Lieutenant-Governor may appoint an environmental assessment board for the purpose of conducting public hearings (Chapter 3, Section 24). No person appointed to the board shall be a public servant (Sec. 25 (2)).

In several sections, reference is made to guidelines

for the preparation of environmental preview reports and environmental impact statements to be issued by the minister to the proponent. In addition, the Act contains a quite complex outline for draft terms of reference for the purpose of an environmental assessment (Sec. 13). The outline for the draft terms of reference are remarkably similar to CEQ Guidelines in the United States.

6. The Manitoba Environmental Review Process

The Province of Manitoba does not have general legislation requiring the preparation of environmental impact assessments for projects in which provincial agencies are involved. However, like the federal government and most other provinces, the Government of Manitoba is committed by internal policy to carrying out environmental impact assessments for major developments involving provincial departments and crown corporations. For this purpose, an Environmental Assessment and Review Process has been established.

The Minister of Consumer and Corporate Affairs and Environment is charged with the primary responsibility for the preservation of environmental quality.[1] In this responsibility, the Minister is supported by four administrative bodies: the Environmental Management Division, the Clean Environment

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1. Until 1979, ... these functions were under the former Ministry of Mines, Resources & Environmental Management.

Commission, the Manitoba Environmental Assessment and Review Agency and the Environmental Council. The Environmental Management Division provides the administrative and technical base for the ministry.

The Clean Environment Commission, established by the Clean Environment Act, 1972, is a quasi-judicial body with an investigatory and standard-setting function. It administers the Clean Environment Act which is primarily concerned with prescribing the limits of permissible pollution by industrial and other activities, monitoring performance and enforcing adherence to prescribed limits.

The Manitoba Assessment and Review Agency is chaired by the Deputy Minister of the Department of Consumer and Corporate Affairs and Environment and has as members senior administrators of the Environmental Management Division, Departments of Health, Finance and representatives of the proponent departments. Its function is to screen Provincial Government projects for their potential environmental impact, prepare environmental impact reviews and formulate for the Minister recommendations to cabinet on whether or not a project should be allowed to proceed or should proceed only in revised form. Generally, the Agency has similar functions and responsibilities on the provincial level as FEARO has on the federal.

The Environmental Council is a volunteer citizen body. It has currently 96 appointed members. The Council acts in a volunteer-advising capacity to the Minister on

environmental matters. There is one salaried position - the executive secretary. The Council occupies an office, supplied by the Government.

Since Manitoba has no legislation requiring the preparation of Environmental Impact Statements, there can be no court actions compelling provincial departments to carry out environmental impact investigations or to stop project with proven or suspected adverse impacts.[1]

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1. One exception of course is Section 653 of the City of Winnipeg Act which prior to its revision in 1977, required the preparation of environmental impact reviews by the City of Winnipeg.

C. Discussion

Ideally, environmental matters should be considered on a global level first, on a continent-wide basis next and then on a regional and local level. Translating this into political realities, this would mean that environmental laws of different countries should be similar, complementary and mutually reinforcing. This should apply particularly to adjoining nations. For instance, Canada and the United States share a common border, across the continent, they share several distinct geographic regions, rivers and lakes. Their economies - both industrial and agrarian are tightly linked. Environmental problems, resulting from development on one side of the border are often felt strongest on the other side. Thus, prevention and remedial action often require bi-national co-operation and agreement.[1] The above considerations point to the need for similar and compatible environmental laws on both sides of the border. However, this need will only be fulfilled if there exist an equal commitment to environmental protection on both sides of the border.

The existence in the United States of the National Environmental Policy Act (NEPA) and the absence of comparable

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1. e.g. "Industrial pollution on the Great Lakes, Acid Rain in Eastern Canada, Columbia River Hydro development, the Garrison River Diversion Project to name but a few.

federal legislation in Canada exemplifies the difference in commitment to environmental protection matters on part of the two national governments.

NEPA clearly states the underlying philosophy on which the entire act is based: To encourage productive and enjoyable harmony between man and his environment, to fulfill the responsibilities of each generation as trustee of the environment for succeeding generations. Such expression of a commitment to a philosophy about man's relation with his environment is sadly lacking in Canada. This is unwittingly expressed by Emond when he explains the sudden emergence of public concern in environmental matters as not "a passing fad":

> "The public interest seems to have extended into most facets of our modern society and environmental assessment is simply one of the most recent and most pervasive aspects of this phenomenon. It is clear that environmental assessment is not a passing fad; it is here to stay."[1]

He further qualifies this in a footnote:

> "I think that I can safely say this even though environmental assessment does not go far enough for the environmentalist and far too far for industry."

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1. Emond, Page 4.

Surely the interest in environmental assessment is not just a fad - passing or not, but rather is evidences of the public's awakening to the fact that man's unchecked exploitation of nature may not be in man's best interest. The fact that there is widespread public interest in Canada is surprising in the face of the Federal Government's lack of commitment to public participation in environmental matters. It is surprising too that the Federal Government appears to be lagging behind the public and the Provinces in acknowledging the many threats to the environment posed by man and the threat which is thereby posed to man's future well-being or existence. Even the Environmental Assessment Act of Ontario, which is the first and probably the best environmental legislation in force in Canada, falls far short of United States legislation in expression of purpose and commitment.

For lack of a clear stand by the Federal Government in Canada on environmental issues, a polarization of opinions appears to take place. On one side of the issue are those who symbolize progress - developers, industry and big business- on the other side are the "environmentalists", who consequently are often seen as being anti-progress. This polarization creates a poor climate for Environmental Conscience to take root.

It appears that the Government of Canada has not yet quite made up its mind whether to yield to the pressure of those who consider the environment an exploitable resource or whether it should reflect more the concerns of those whose view of the environment is not overshadowed by profit considerations.

Recognizing that the style of government is different in the two countries - Canada and the United States - and further that their legal systems, although related and both derived from British law, function differently. It could be argued that Canada could achieve the same results with a cabinet directive as does the United States with an elaborate environmental protection act.

However, such argument immediately looses credibility when one considers the fact that Canada does have a number of Federal acts pertaining to specific aspects of the environment; such as The Fisheries Act, Canada Water Act, Migratory Birds Act, Clear Air Act, Atomic Energy Act, and The Transport of Dangerous Goods Act, etc. The existence of these Acts demonstrates the need for laws to enforce an intent; these Acts, however, are of limited usefulness due to their narrowness of purpose.

The Province of Ontario too has a number of environment-related acts, but instituted its Environmental Assessment Act on grounds that the other legislation had not provided the means of ensuring that all environmental factors are considered in a comprehensive and co-ordinated fashion.[1]

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1. The reader is referred to a quote from the Ontario Ministry of the Environment, Green Paper on Environmental Assessment. See p. 50 above.

For discussion of the relative merit of single purpose - versus comprehensive environmental laws see also Chapter II p. 9 above.

D. Conclusions

It is clear that Canada is lagging behind the United States in instituting environmental impact review laws, but it is not clear why. The existence of a cabinet directive instituting the Environmental Assessment Review Process and the establishment of the Federal Environmental Assessment Review Office indicate that the Federal Government accepts the benefit and desirability of the Environmental Assessment Review Process. That the government has failed so far to make the Process a legal requirement through legislation is difficult to explain. While EARP is used quite frequently to evaluate projects with federal involvement, the absence of a law making it compulsory to do so has a number of disadvantages.

In the absence of a legal requirement, there is no guarantee that the Process will be used, that it will be used on all projects and that it will be used in a consistent and uniform way. At present, the extent to which the process is applied depends to what extent the initiating departments or proponents are prepared to hand over control over important decisions on proposed projects to another department, the relatively junior Department of Fisheries and Environment. Projects for which insufficient or no environmental impact assessments were prepared may cause environmental damages which could have been prevented. The cost of such damages, in the form of remedial action or in the form of lost future opportunities, will be borne by the general public.

In the absence of compulsory legislation, there is no legal requirement for public disclosure of proposed projects. Although there is the provision for public participation, it is up to Ministerial discretion whether and to what extent the public is invited to participate in the process. As a result, there can be no citizen-initiated court action to stop projects with unknown but potentially disasterous environmental consequences, although environmental matters affect all citizens - present and yet unborn. Through the EIR process, society should be able to participate in the making of environment-related decisions, which in one way or other, sooner or later will inevitably affect all of society.

While some of the Provinces do have comprehensive environmental assessment legislation, there appears to be a lack of fit between the Acts of several Provinces. This points again to a need for a federal initiative and example. Furthermore, the fact that many environmental matters transcend provincial and national borders underlines the importance of a strong national Act.

Inevitably one is tempted to make comparisons between Canada and the United States and a number of questions arise: Why did the United States go so far in enacting comprehensive environmental legislation and Canada did not? Do academics, scientists and others with special expertise on environmental matters have more access to government in the United States than is the case in Canada? What other forces

are at work, what other preoccupations dominate? What is the relative level of environmental awareness - the precursor of environmental conscience.

These questions and their answers are beyond the purpose and scope of this thesis, but perhaps we can come closer to some answers by looking at a smaller scale - the urban environment.

CHAPTER V

The Man-Made Urban Environment

V. THE MAN-MADE URBAN ENVIRONMENT

The emerging sense of responsibility for the future of mankind and an increasingly better understanding of the vulnerability of nature's systems found expression in many laws and regulations designed to assure a wiser use of natural resources and to promote a more harmonious relationship with our natural environment. Environmental Assessment laws, which require proponents of development to investigate beforehand the many primary and secondary consequences, the initial and cumulative effects on the environment of the proposed development and which prescribe a process by which this is to be achieved, have been enacted by an ever-increasing number of provinces in Canada and states and the federal government in the United States. There is a widespread recognition that the environmental impact review process improves the planning and decision-making process by providing a broader base of information and knowledge, and leads to better projects, causing less unnecessary environmental damage. It appears logical that the same process applied in an urban setting would provide the same benefits. One would therefore assume that urban decision-makers would strive to adopt the process. However, experience has shown that contrary to the growing acceptance of the environmental impact assessment process on the federal, state or provincial level, municipal governments display a surprising reluctance to move in this direction. For example, Winnipeg, the only city in Canada ever to be compelled

by legislation to carry out environmental impact reviews on its public works, was relieved of this obligation after several years of reluctant compliance. Before proceeding further some basic concepts should be clarified: Are the concepts of "Environment" and "Ecology" valid in an urban context? "Environment" is a synonym of "surroundings" and refers to any surroundings, urban or other. "Ecology" is defined as: a) the branch of biology dealing with relations between living organisms and their environment; b) study of the relationship and adjustment of humans to their environment. Therefore, the term "urban ecology" pertains to the relationship of humans to their urban environment and it becomes self-evident that the concept of Urban Environmental Impact Reviews is valid.

Why are urban decision-makers, municipal councils and administrators resisting the use of environmental impact assessment as a planning and decision-making tool in cities? Perhaps the answer to this question can be found by exploring our perception of and attitude towards the urban environment. To further this exploration the following questions may be posed:

The first question to be posed is: Do we perceive the urban environment, being mostly man-made, as vulnerable to adverse impacts by man's actions?

This question appears to be answered by the wording of environmental assessment laws as adopted by several provinces:

> "Environment is defined as including:
>
> ...the social, economic and cultural conditions that influence the life of man or a community."[1]

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1. Saskatchewan, Environmental Assessment Act.

> "...the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community."[1]

While none of the acts express it directly, these components of the environment listed as requiring protection from adverse impacts by proposed development are primarily components of an urban environment.

Hans Blumenfeld expresses his conviction on the effects of human action on the urban environment in the following:

> "Metropolitan planning creates the indispensable framework for the environment in which its citizens will live. But the quality of that environment will still depend on the manner in which a multitude of public and private agents plan and build their share of it."[1]

It is so evident that the urban environment is shaped to a large degree by human action and to some degree by natural forces, that it is unlikely anyone - giving the matter some thought - could assume it to be impervious to further human manipulation. In any case, the actions, which might require environmental impact assessment are usually intended to modify some aspect of the urban environment. It is the unknown, unintended side-effects and consequences, which an environmental assessment is supposed to predict before the action is taken.

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1. Newfoundland, Environmental Assessment Act.

2. Blumenfeld "Metropolitan Area Planning", Journal of the Toronto Board of Trade, March 1956.

The second question to be addressed is: are our insights into nature's systems and emerging environmental conscience matched by an equal understanding of and concern for the man-made urban environment".

A statement in the Annual Report (1977-1978) of the Ministry of State for Urban Affairs provides part of the answer:

> "Problems of air, water, land and noise pollution are most pronounced in urban areas, but both data and feasible corrective measures are highly underdeveloped ... urban environmental considerations are little understood or taken into account in urban plan preparation or private development plan review. Economic advancement considerations generally supercede concerns for the protection and enhancement of the physical environment".[1]

It appears that our highly urbanized society may be more advanced in its understanding of man-made threats to the global ecology and less advanced i.e. understanding and less willing to acknowledge similar problems pertaining to cities.

Hans Blumenfeld, the eminent Canadian planner and thinker, focuses on this paradox in the following statement:

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1. Ministry of State for Urban Affairs, Annual Report 1977-1978, Ottawa, Minister of Supply and Services Canada 1978, Catalogue No. SU1-1978, p. 30.

> "... and the city as a whole became more and more chaotic. Men found themselves living in a new environment that they themselves had created without ever knowing or wanting it. Thus the modern metropolis reflects in the sharpest form the basic contradiction of western society - the contradiction between our success in applying science to the relations of man to nature and our failure to apply science to the relations of man to man."[1]

Lastly another question may be posed in the attempt to find an explanation for the aversion towards environmental impact assessments displayed by urban decision-makers: is the mechanism, developed for regional or national applications, suitable for the urban environment; or are attempts to follow examples of federal and regional environmental impact assessment legislation and applying them to the urban environment doomed to failure due to a dissimilarity of problems?

Looking at existing federal, state or provincial legislation, nothing can be found, which would preclude its application to the urban field. For example, the wording of NEPA could, for the most part, be used for urban environmental impact assessment. The principles are the same, so is the intent.

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1. Hans Blumenfeld, The Modern Metropolis, "Science and Planning" previously unpublished essay, 1956, published in: Selected Essays by Hans Blumenfeld, Paul D. Spreireglu ed., Harvest House Montreal, 1967 (M.I.P.)

> "Utilize a systematic, interdisciplinary approach, which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment."[1]

These words could form the introduction or statement of purpose of any urban environmental legislation. The following paragraph in the same section, by offering advice and information from federal experience to local level, clearly anticipates a similarity of problems.

> "... make available to states, countries, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the environment."[2]

When the City of Winnipeg drafted its Guidelines for the Preparation of Environmental Impact Reviews, it used the American National Environmental Policy Act and CEQ Guidelines as model, without encountering any difficulties in applying the wording and intent of this federal-regional legislation to an urban setting.

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1. NEPA, Sect. 102 (A).
2. NEPA, Sect. 102 (G).

Above considerations clearly demonstrate the validity of the environmental impact review process in an urban setting. While there are indications that our understanding of the urban environment may not be advanced to the same extent as our understanding of ecology in nature, a similarity or problems can be recognized. It appears quite evident that the review process would provide at least the same level of improvement to urban planning and decision-making as it can provide on a regional or national level.

An examination of the experiment with environmental legislation in the City of Winnipeg, may expose some of the reasons for the failure of this experiment and thereby provide an answer to the question why on environmental issues, municipal governments tend to move in the opposite direction from their provincial and regional counterparts.

CHAPTER VI

Environmental Impact Legislation and Practice in Winnipeg

VI. ENVIRONMENTAL IMPACT LEGISLATION AND PRACTICE IN WINNIPEG

> "Local government has increasingly become more important in our lives. There was a time when it performed limited tasks. It was really not much more than a caretaker; providing basic services and maintenance. That is no longer true. Now the role of local government reaches into virtually every phase of life, and the decisions made by local government can drastically alter the way we live."[1]
>
> Lloyd Axworthy

A. The Significance of the Winnipeg Experience

Several cities and municipalities in Canada carry out environmental assessments on certain projects at their own volition as decided by internal policy. However, totally unique in Canada, the City of Winnipeg was the only city ever to be required by an act of the Provincial legislature to carry out environmental impact assessments on public projects.

Aside from this uniqueness, the Winnipeg experience is significant because this experiment in municipal environmental impact assessment completed a full circle. Beginning with compelling legislation, to citizen-initiated court actions, the development and adoption of a process, its implementation and ultimately, it ended with the repeal of the legislation.

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1. Lloyd Axworthy, Decisions on a Future City article in "The Future City", Institute of Urban Studies, University of Winnipeg, 1971.

An examination of the short history of urban environmental impact assessment in Winnipeg should lead to insights into problems peculiar to the urban environment generally and may lead to conclusions regarding the applicability of the customary environmental review process to the urban setting. It can safely be said that the short experiment with environmental impact legislation in the City of Winnipeg was watched by many planners, administrators, and politicians across the country and the United States. An analysis of this experiment and its eventual abandonment should be of interest not only from an historic point-of-view.

B. The City of Winnipeg Act

Like all cities in Canada, Winnipeg is a creature of the Province. Acts of Provincial legislatures establish cities, set the framework of their powers and responsibilities and often describe in detail, the procedures a city is to follow in exercising its powers and carrying out its responsibilities. By initiative of the Province of Manitoba, municipal reorganization of the City of Winnipeg took place in 1971. The reorganization was complex, from a metropolitan government and area municipalities to a single unit - "Unicity". The instrument of change was the City of Winnipeg Act, which came into force on July 30, 1971.[1]

Section 653(1) of the City of Winnipeg Act as it read in 1972 establishes the mandate and requirement for environmental impact reviews.[2]

> "In addition to the duties and powers delegated to the Executive Policy Committee by this Act or by Council, the committee shall review every proposal for the undertaking by the City of a public work which may significantly affect the quality of the human environment and shall report to Council before

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1. The City of Winnipeg Act, S.M. 1971, C. 105, Assented to July 27, 1971.

2. Section 653(1) came into force on January 1, 1972, and was amended by Bill 62, in Spring of 1977.

such work is recommended to council on,

a) the environmental impact of the proposed work;
b) any adverse environmental affects which cannot be avoided should the work be undertaken; and
c) alternatives to the proposed action."

The wording of this section is brief and straightforward, Executive Policy Committee (EPC) shall review every proposal for an undertaking ... and shall report to Council before such undertaking is recommended. The Section only applies to public works undertaken by the City. Section 653 does not provide guidance as to content of an environmental impact review, nor standards of evaluation, nor procedures to be followed.[1] Obviously, it was intended that guidelines would be developed to describe in detail how the provisions of this Section of the Act are to be satisfied and this is exactly what happened.

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1. It must be remembered that this is not an environmental protection act. The environmental impact review requirement is contained in one section of an elaborate Act, which establishes a new form of municipal government and all aspects of its administration and future operation.

C. Guidelines for the Preparation of Environmental Impact Reviews under Section 653 of the City of Winnipeg Act, May, 1974

Pursuant to a motion of Executive Policy Committee in February of 1974, a team of planners with the City's Environmental Planning Department was instructed to prepare guidelines for the preparation of Environmental Impact Reviews. The Guidelines were adopted by City Council on October 16, 1974.[1] In preparing the Guidelines during spring of 1974, the team could only look to NEPA for guidance as there was no similar legislation in Canada. The result was surprisingly comprehensive and workable. The Guidelines identify seven stages in the review process and prescribe who is responsible for the various steps in each stage. The first stage is the identification of projects with potential significant effect on the environment. To carry out this screening process, a committee constituted of specific members of several departments is proposed. (The "Review Committee") The Committee, after screening all proposals contained in the current and capital estimates, is to report through the Board of Commissioners to the Executive Policy Committee and recommend which should require environmental impact assessments. To prepare the actual Environmental Impact Reviews, the Guidelines

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1. Guidelines, see Appendix C.

suggest a Task Force for each project consisting of a permanent "Core Committee" constituted of specific positions in the Environmental Planning Department and in addition members from other civic departments and consultants contributing the expertise relevant for each specific review.

D. How It Worked on Practice

1. The Review Process

Several Environmental Impact Assessments were prepared before the "Guidelines" were adopted and in fact, the experience gained in preparing the assessments gave direction to the Guidelines. After adoption of the Guidelines, the quality of the Environmental Impact Reviews improved. Probably as interesting as the reviews themselves in the process by which projects were selected for review and which projects were selected.

The Guidelines are very specific as to the criteria to be used in screening proposed projects and in selecting those which may have significant impact. The Review Committee was constituted of specific members of the following departments - Environmental Planning, Works and Operations, Law, and Health and Welfare. This committee screened the annual capital and current budgets for potentially significant projects and forwarded its recommendations to the Board of Commissioners, the Board in turn prepared its own report and recommendations to Executive Policy Committee for their decision.

Every year, there was a significant difference in the number of projects recommended for Environmental Impact Review by the Review Committee and those recommended by the Board. For example, in 1977, the Committee recommended the

following seven projects for review, the Board only accepted two of the recommendations:

1. Project B 101 - 1, Route 165 Extension (Fort Garry, St. Vital Corridor from St. Anne's Road to Lagimodiere Boulevard.)

2. Project B 104 - 1, Arlington Street pavement reconstruction and widening to 42 feet from 36 feet from Portage Avenue to Notre Dame Avenue.

3. Project F 501 - 1, Land acquisition for New 3-Bay Fire Station in the vicinity of Jubilee, Pembina, Stafford, to replace existing No. 13 Fire Station, 1350 Pembina Highway.

4. Project 1 817 - 1, Public Works Building and District offices for District #4.

5. Project B 122 - 2 Land acquisition for snow disposal site for future use in District #6 to replace site no longer available at Pembina Highway and Hydro transmission line.

6. Project B 101 - 1 Fort Garry, St. Vital Transportation Corridor (Authorized 1976).

7. Project W 198 - 1 Additional Bus Storage for 156 Buses at

Fort Rouge Transmit Base.[1]

The Board of Commissioners only agreed with two of the Committee's recommendations and in their report to Executive Policy Committee, recommended that Environmental Impact Reviews be requested for:

> "Project F 501 - 1 - Land acquisition for a new 3-Bay Fire Station, in the vicinity of Jubilee,Pembina,Stafford;
>
> and
>
> Project B 122 - 2 - Land acquisition for a snow disposal site for future use in District #6.[2]

It must be pointed out here that the locations for both these projects were not determined at the time and therefor Environmental Impact Reviews could not be prepared. The location for the snow disposal sites is still not finalized. A site for the fire station was found after the amendment of Section 653 of the City of Winnipeg Act and the station built in a residential area without an Environmental Impact Review.

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1. Review Committee, Capital Estimates 1977 - Environmental Impact Reviews, February 17th, 1977.

2. Board of Commissioners, Capital Estimates 1977-Environmental Impact Reviews, February 23rd, 1977.

In discussing its recommendations, the Review Committee stated pertaining to recommendation one (Project B 101 - 1 - Route 165 extension (Fort Garry, St. Vital Corridor) from St. Anne's Road to Lagimodiere Boulevard):

> "The construction of this major arterial road will introduce substantial volumes of vehicular traffic adjacent to existing residential development (Southdale) and will assist in spawning new residential, commercial and industrial development in the southeastern sector of the City. This is seen as having significant impact on the existing environment.
>
> The proposed re-channelization of the Seine River at the location of the new highway bridge may arouse public controversy."

The Board did not concur and the project was approved without an Environmental Impact Review.

Regarding recommendation two - Project B 104 - 1 - Arlington Street reconstruction and widening - the Committee explained the need for an Environmental Impact Review as follows:[1]

> "At present, Arlington Street is characterized by a narrower-than-usual Right-of-Way for arterial streets (62+ feet instead of 66 feet or desirable 80 to 120 feet Right-of-Way for arterial streets) and shallow front yards. As a result, the distance between street curb and house front on

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1. Arlington Street is considered an arterial street by traffic planners, but a residential street by local residents.

> both sides of the street is considerably less than desirable and less than found on most residential streets.
>
> The Committee is concerned that widening of the pavement and consequent reduction of the boulevard - sidewalk area may arouse controversy. However, it is felt that design modifications and certain beautification measures (such as tree planting, etc., in the manner as was undertaken on Academy Road) would substantially reduce any adverse impact and reduce the grounds for controversy."

Again, the Board did not concur and construction was started without an impact review or public hearings. In this case, the residents on both sides of the street were infuriated by the construction and the prospect of having traffic move even closer to their homes. They created such furore that the City eventually had to stop construction and abandon the project.

The substantial cost incurred by the City in starting and subsequently abandoning construction, the embarrassment and loss of good-will could easily have been avoided by a proper environmental impact review process, including public hearings.

Pertaining to recommendation three (land acquisition for a fire station) the Committee pointed out that Executive Policy Committee had already requested an environmental impact review - if the project were to be located in a residential area - but that the review has not been prepared because the site location was not determined.

In agreeing with the Review Committee in this case as stated earlier, the Board of Commissioners only re-stated a decision already made.

The explanation for recommendation four - Project 1 817 - 1 - Public Works Building and District offices for District #4 - was as follows:

> "Although the magnitude of the project is not fully determined at this time, the potential for major impact on the existing residential development east of Plessis Road can be anticipated. Further any future development adjoining the site north of the C.N.R. line will be affected by the project.
>
> The fact that the site is presently used by private enterprise (BACM) for purposes similar in nature to the proposed Public Works building and yard, does not, in the opinion of the Environmental Impact Review Committee, relieve the City from its obligation under provisions of the City of Winnipeg Act to prepare an Environmental Impact Review."

Recommendation five pertained to the land acquisition for a snow disposal site was accepted by the Board.

Regarding recommendation six - Project B 101 - 1 - Route 165 Fort Garry - St. Vital Transportation Corridor - the Committee reasoned as follows:

> "The original "Environmental Impact Consideration" prepared in 1974 by the Department of Environmental Planning dealt with a significantly different project design, than is being proceeded with now.

The design discussed in 1974 called for a highway bridge crossing the Red River, an inter-change at Pembina Highway, and an overpass over the C.N. Railway. The western terminus of the highway was at Waverley Street.

In 1974, the City retained the U.M.A. Group to assist in an investigation of alternative alignments. The ensuing study addressed itself not only to cost and engineering considerations, but also to community impacts such as noise levels in adjoining areas. Several alternative road alignments and interchange configurations were explored in public meetings with local residents and interested citizens (June 27, 1974, October 17, 1974, January 9, 1975). One design alternative showing an at-grade intersection at Pembina Highway was rejected by residents and the Community Committee. Finally design alternative #9 was recommended, which called for an overpass and interchange at Pembina Highway, a railway grade separation over the C.N.R. line and an at-grade intersection at Waverley Street.

This alternative was presented at public meetings on August 27th, 1975, for Fort Garry, Fort Rouge and Assiniboine Park residents, on September 4th, 1975, for St. Vital and St. Boniface residents and Community Committees and was subsequently adopted by City Council.

In March 1976, the Provincial Minister of Urban Affairs informed the City that the Province would not share in the cost of this project, but would contribute 50% of the cost of a "simple" bridge across the Red River and a grade level "T" intersection at Pembina Highway.

The Committee's concern is two-fold. Firstly: That the public, after having been involved in the selection of a design alternative may feel misled when an entirely different design is proceeded with.

Secondly: That the present design (for

which no environmental impact review was undertaken, nor public meetings held) may have a number of adverse effects. For example: The termination of the route at Pembina Highway will force all traffic coming from or heading for the river crossing to use the already congested Pembina Highway.

The "T" intersection itself may add considerably to the congestion, noise, and air pollution caused by decelleration, waiting, idling and accelleration of vehicles, as is commonly the case where two major arterials intersect in this manner. At this location, the problem may be further aggravated by the close proximity of the Pembina-University Crescent intersection.

The Committee realizes that in view of the Province's stand, the City may have little choice in the matter, but feels obligated to point out its concern."

Recommendation seven - (pertaining to Project W 198 - 1 Additional Bus Storage for 156 buses at the Fort Rouge Transit Base) - was substantiated as follows:

"When the Fort Rouge Transit base was designed and built in the late 1960's, it was anticipated that it would be served by two new major arterial streets. (i.e. the Grant Avenue's extension across the Red River and the "South-West Freeway" leading from downtown along the C.N.R. Right-of-Way to south and south-west Winnipeg.

Plans for both these major street projects have since either been abandoned or postponed. Access to the entire section of Fort Rouge, east of the C.N.R. and to the Transit Base, is limited to three points; namely, the Osborne Street, C.N.R. Underpass, the Osborne Street - St. Vital Bridge and Jubilee Avenue at

Pembina Highway.

> The Osborne Street C.N.R. Underpass, being the only direct access from and to downtown, is already congested during extended periods centering around the morning and afternoon rush-hour traffic peaks. Both other access routes lead through residential areas.
>
> At present, 244 buses are stored at the Transit Base. The number of trips through the three aforementioned access points, by buses on their way to and from their routes, is increased by the fact that many return to the base between the morning and the afternoon rush-hours. The Committee feels that the increase by over 60% of the number of Transit vehicles stored at the base may cause significant impact on the residential environment on two of the access routes (Osborne Street and Jubilee Avenue) and may significantly add to the congestion at and around the third access point - the C.N.R. Underpass and the Pembina, Osborne, Donald intersection."

It is astounding that the Board of Commissioners was able to ignore the irrefutable arguments forwarded by the Review Committee and at the same time, in their own recommendation to Executive Policy Committee, quote Section 653(1) of the City of Winnipeg Act:

> "... the Committee shall review every proposal for the undertaking by the City of a public work which may significantly affect the quality of the human environment ...".

It is true that the Board's report to Executive

Policy Committee included the Review Committee's report as an appendix, however, it is unlikely that Executive Policy Committee ever read the appendix to an uncontroversial report containing two recommendations which could be adopted routinely without much discussion. In any event, the attitude of the Commissioners with respect to environmental impact reviews reflects fairly closely the attitude of most members of City Council.

The 1977 Budget Estimates were the last annual estimate to be reviewed for projects with potentially significant environmental impact.

In spring of 1977, Section 653 of the City of Winnipeg Act was amended removing the obligation on part of the City to evaluate projects in terms of their potential environmental impact.

2. Court Cases

During the entire life of Section 653(1) of the City of Winnipeg Act in its original form - as it read from 1972 till its amendment in 1977 - there were only three citizen-initiated court cases pertaining to the City's obligation

to review every proposal for a public work, which may significantly affect the human environment. This should be surprising in light of the City's obvious reluctance to live up to the requirements of Section 653. However, when considering the attitude of the judiciary as expressed in the judgments handed down in these cases, it is not so surprising. The first case was Stein versus the City of Winnipeg (1974).

In this case, the plaintiff, Mrs. Stein, applied to the court for an interim injunction restraining the City from proceeding with an insecticide-spraying program. She contended that an order issued by the Clean Environment Commission under provisions of the Clean Environment Act was irrelevant in view of the City's failure to prepare an Environmental Impact Review, as required under Section 653 of the City of Winnipeg Act. The application was dismissed by the Court in the first instance and the plaintiff appealed this decision.

In the Court of Appeal, two important principles were established. First, it was held that in view of the Act's express intention to involve citizen participation in municipal government, a resident had the right to bring before

the court a class action for statutory non-compliance on the part of the City. Second, it was held that Section 653 has created an obligation to review the environmental impact on a proposal for a public work which may significantly affect the quality of the human environment.

> "... Section 653 has created an obligation to review the environmental impact of any proposal for a public work that may significantly affect the quality of the human environment. If that section is not to be considered as a mere pious declaration, there must be inferred a correlative right, on part of a resident, in a proper case, to have a question arising out of the section adjudicated by the Court."[1]

So far, the court appears to be sympathetic towards citizen-initiated court actions against governments in environmental matters where the authority attempts to bypass legal requirements. Chief Justice Freedman expresses an even clearer view of the rights of citizens and the obligation of the city arising from the Act.

> "... it is worth noting that Section 653(1) comes into play even if a proposal <u>may</u> have the effect in question. It is not incumbent on a plaintiff to show that the proposal will have that effect ...

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1. <u>Irene Stein v. Winnipeg</u>. In the Court of Appeal, Justice Matas (Freedman C.J.M. and Monnin J. A. concurring), June 10, 1974. (1974) 5 W.W.R. 484, 48 D.L.R. (3rd), 233 (Man. C.A.)

> ...Without the requisite environmental impact review, the spraying project stands unauthorized in law."[1]

If this opinion had prevailed, it would have had profound influence on similar cases in the future. By removing the burden of proof from the plaintiff (citizen) to the defendant (City) the Chief Justice not only acknowledged the right of the citizen but removed the major obstacle preventing him from exercising his right. However, this was a minority opinion. The Court took an almost opposite view in its majority decision: the spraying was allowed on grounds that a comparison of the inconvenience suffered by Mrs. Stein and others, if the spraying proceeded and the aesthetic and general environmental effect of loss of trees, if the spraying did not proceed, it indicates that greater inconvenience would be with the City. Mr. Justice Matas concluded that

> "the plaintiff has not discharged the onus of proof under the balance of convenience test."[2]

One analyst of Canadian planning law terms this decision "astounding" and goes on:

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1. Irene Stein v. Winnipeg. In the Court of Appeal, Chief Justice Samuel Freedman, dissenting opinion, June 10, 1974 (1974) 5 W.W.R. 484, D.L.R. (3rd) 223 (Man. C.A.)

2. Supra (1974) 5 W.W.R. 500.

> "The clear ramifications of this decision are that while a citizen may have standing to question the compliance or non-compliance with Section 653, unless he is able to show that on a balance of convenience, the City should be enjoined from proceeding with a project, the Court won't even decide whether that project is authorized by law.
>
> ...unless the plaintiff comes forward with the very information that she is trying to compel the City to obtain before commending the project, the Court will not entertain the question of whether the City has the legal authority to carry on that work without first obtaining that information."[1]

The second case involving the City in environmental litigation was heard in 1975.

Miller et al versus City of Winnipeg (1975)

In February of 1975, the City's Executive Policy Committee decided that the re-alignment and reconstruction of Wellington Crescent, a residential street, may have significant impact on the human environment and recommended that an environmental impact review be prepared. Later, on March 5th, 1975, only hours before a Council meeting the Committee reversed its earlier decision. City Council resolved to ap-

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1. D. Paul Emond, Unpublished discussion paper preperatory to Environmental Assessment Law.

prove the capital project.

The plaintiff contended that in accordance with Section 653, when Executive Policy Committee had decided that an environmental impact review was required, no further action could be taken until the review is completed.

Justice Solomon found:

> "...Section 653 of the Act places certain responsibilities on the Executive Policy Committee and imposes on it a duty that it must first report on its findings what effect the public work in question will have on the quality of the human environment before it can recommend the construction of such public work.
>
> There is nothing in the Act which imposes similar limitations on the Council, nor does it require the Council not to act until it receives the report of the Executive Policy Committee. This Section does not attempt to impose any limitations on the legislative powers of the Council itself. It merely imposes on the Executive Policy Committee a duty that it cannot recommend the constructions of the public work without first recommending the impact of the work on the human environment. In this case, there is no evidence that the Executive Policy Committee recommended the re-alignment and reconstruction of Wellington Crescent."[1]

Justice Solomon laid the matter finally to rest by finding that the subject road realignment and reconstruction constituted "maintenance" and therefore does not fall

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1. Harry Garrison Miller et al versus Winnipeg in the Queen's Bench, Justice Solomon, June 30, 1975, (1975) 4 E.L.N. 167. (Man. Q.B.)

within the provision of Section 653(1).

Emond writes about the courts' interpretation of meaning of Section 653:

> "By interpreting the Section to mean that the City Council may proceed on environmentally sensitive projects prior to receiving the EPC report, the Court again betrays its lack of understanding of the assessment process. According to Mr. Justice Solomon's interpretation of the section, the City may completely circumvent the process by proceeding before they receive any recommendation from the EPC, or by simply ignoring a recommendation that they find unacceptable. If this is true, the section accomplishes very little."[1]

The third case was heard in 1976, Easton et al versus Executive Policy Committee of the City of Winnipeg and the City of Winnipeg (1976). At the base of the case was the fund allocation and tender call by City Council for the construction of a bridge across the Seine River without having first received an Environmental Impact Review. The case was first heard in a lower court and dismissed and subsequently was heard in Court of Appeal.

Justice Hall in his judgment stated:

> "... In my opinion, a negative decision by EPC not to make a review and report is, in every case, open to judicial

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1. D. Paul Emond, Environmental Assessment Law in Canada, P. 174.

> review. If it were not so, EPC could completely ignore the legislative mandate in any particular case."[1]

However, the Justice dismissed the appeal on the basis that Section 653 of the City of Winnipeg Act is worded so weakly and that it does not prescribe specific requirements of a review process for the City to follow and therefor, it could be argued that the City did comply with the provisions of the Section.

He further found that the Guidelines, which do precisely prescribe a review process and its timing do not have the force of law.

The lack of precision of Section 653 is expressed also in the judgment of Mr. Justice O'Sullivan in the following words:

> "I would think that if it is desired to require the City of Winnipeg to have an environmental impact study before proceeding with a work, the legislature should say so plainly."[2]

If anything can be learned from the record of the three environmental court cases in Winnipeg, it is that environmental legislation should leave as little as possible to

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1. William Easton v. Executive Policy Committee of Winnipeg and the City of Winnipeg. In the Court of Appeal, Justice Hall, July 9, 1976, (1976), 69 D.L.R. (3rd), at P. 139 (C.A.)

2. Ibid., at p. 144.

judicial interpretation. There appears to be little sympathy for and little understanding of environmental concern in our courts.

3. The Phase-Out

In July of 1977, Section 653 of the City of Winnipeg Act was repealed by the Manitoba Legislature and the following section substituted therefore:

> "653(1) The Council may require a report on the environmental impact of a proposed public work.
>
> 653(2) Where the Council requires a report on the environmental impact of a proposed public work,
>
> a) it shall be the sole determining authority of the adequacy of the report or any part of it; and
>
> b) it may establish such procedures as it may deem necessary."

This amendment constitutes a complete turnaround from the meaning and intent of the Section as it was originally worded:

> "...shall review every proposal ...
>
> ... which may significantly affect ... the human environment and shall report --- on,
>
> a) the environmental impact ...
> b) any adverse environmental affects ...
> c) alternatives to the proposed action."

If the original Section 653 was termed weak and non-specific by the Courts, what was put in its place can only be termed totally meaningless.

The wording: "Council may require ..." (of course, Council may do or require to be done, anything, which is not explicitly against the law.) removes completely any legal compulsion to conduct environmental impact reviews. Citizens no longer have recourse to the Courts in challenging Council decisions on the need for, or the adequacy of, environmental impact reviews. While the old Act, in the opinion of the Courts, was not explicit enough on the requirement for public hearings, the revised Act clearly puts everything at the sole discretion of Council.

In view of the amendments to the Act, the question arose whether or not the City should continue to prepare environmental impact reviews. When consulted on this matter by the Board of Commissioners, the Environmental Impact Review Committee wrote:

> "The Committee is unanimous in its recommendation that the City should continue to evaluate proposed capital projects as to their potential impact on the urban environment and prepare E.I.R. in accordance with the guidelines on all projects which are deemed to have significant effect on the environment or may arouse public controversy."[1]

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1. Inter-Office Memorandum (December 14, 1977) from Chairman, Environmental Impact Review Committee to Commissioner of Environment.

The Committee elaborated on this recommendation in a detailed report to the Board of Commissioners:

> "The workability of the process and its potential benefits to the City have been shown during the few years the City undertook to scrutinize proposed public works for their potential impact and to prepare Environmental Impact Reviews on certain projects.
>
> In light of the City's own experience in the matter and in view of the general recognition across Canada and the United States of the need for, and benefits of, Environmental Impact Studies, the City should not interpret the recent amendments to the City of Winnipeg Act (which substituted Council discretion for compulsion in regards to Environmental Impact Reviews) as a reason for abandoning the process."[1]

The report included a review of the Guidelines and a thorough examination of the relative merits of the review process prepared by Mr. M. Kiernan of the Department of Environmental Planning, on behalf of the Committee. Mr. Kiernan summarizes his findings as follows:

> "Although Bill 62 removes the legal compulsion to conduct environmental impact reviews, two powerful reasons remain and militate for the retention of this process.

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1. Report from Environmental Review Committee to Board of Commissioners, Winnipeg, December 14, 1977.

> -EIR can improve the "objective" quality of civic decision-making by giving Council a more complete indication of the various implications of a proposed decision in advance, and
>
> -EIR can help assure that whatever decision is taken will be more acceptable to the general public. Conversely, failure to conduct EIR's of even-borderline projects may in itself, provoke strident public opposition, regardless of the merits of the project itself."[1]

The report points to specific examples where the EIR process has greatly improved the decision-making process in Winnipeg and concludes:

> "...The point is, then, that not only <u>has</u> EIR improved decision-making in planning, but that it <u>could</u>, if allowed to, improve it even further ...
>
> ... It is only now ... that the process is becoming fully familiar to civic administrators and politicians. To amend the procedures now ... would be unnecessary and counter-productive."

The well argued and expertly documented report and the unanimous recommendation of the EIR Committee to continue the review process despite the removal from the Act of the legal requirement, were answered by the Board of Commissioners swiftly and in the negative:

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1. M. Kiernan, "Review of Guidelines for the Preparation of Environmental Impact Reviews", Report to EIR Committee, City of Winnipeg, December, 1977.

> "At its special meeting held on January 6th, 1978, the Board of Commissioners considered the report prepared by the Chairman of the Environmental Impact Review Committee with respect to a review of the Guidelines for the Preparation of Environmental Impact Reviews.
>
> The Board did not concur in the Chairman's recommendation that the City continue its practice of evaluating proposed capital projects in accordance with the Guidelines adopted by Council ...".[1]

In order to appreciate the finality of this decision, one must understand the powerful position of the Board of Commissioners in the City. (see diagram Table 1) The Board constitutes the top level of administration in the City. All civic departments report to Council through the Board of Commissioners and all decisions of Council are channeled through the Board to the administration. Thus, the program of preparing environmental impact reviews on public projects was quickly abandoned by the City. A program which was seen by many as the foundation of an improved decision-making process and perceived by others as an unnecessary impediment to decision-making.

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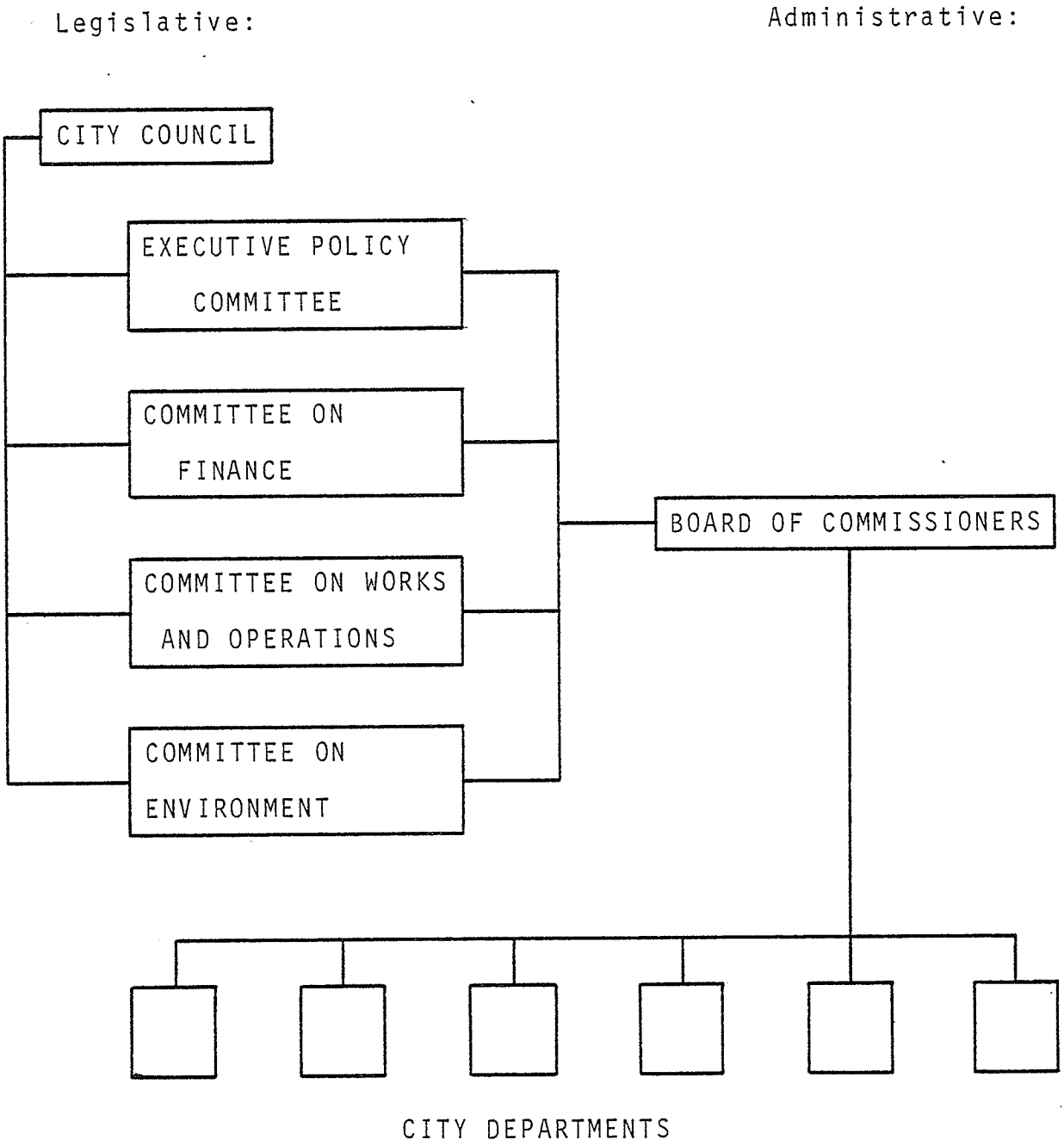
1. Board of Commissioners, Minutes of Meeting of January 6th, 1978.

TABLE I

CITY'S REPORTING PROCEDURE



E. Discussion

Winnipeg's brief experiment with urban environmental impact assessment was followed with interest across the country and the continent. To the surprise of many, the sudden and anticlimactic end of the experiment came at the time when the experience gained in the first few years should have been used to strengthen and improve the process. The question is often asked, what momentous event or persuasive power convinced the same Provincial Government, who instituted the process through legislation, to suddenly abandon this experiment a few years later. In fact, there was no particular event and no single force responsible for this turnabout, but a number of small factors which are all part of the nature of man and his institutions.

The Provincial Government - swept into power on a platform of social and urban reform - was seen as champion of the environment amongst other causes. It did institute several important social and urban reforms, including the creation of the new City of Winnipeg, but environmental concerns in general were not amongst its highest priorities. This is evidenced by the fact that it did not enact comprehensive provincial environmental legislation. Some years later, in its lobby for amendments to the City of Winnipeg Act, the City successfully argued that in the absence of a requirement for EIR on the provincial level, such requirement should not be imposed on the City.

The aversion to the EIR requirement on part of the City's Board of Commissioners is well documented. The Board's sentiment was shared by most senior administrators of departments whose proposed projects were subject to environmental impact review. These officials see in the review process a threat to their accustomed control and decision-making power because it introduces other decision - criteria. They mistrust what they perceive to be interference and intrusion by experts of extraneous disciplines. This attitude is natural and typical in administrative structures throughout the public service on the municipal, provincial and federal level and is widespread in the internal hierarchial structure of private industry and business and is seen as the major single obstacle to the general acceptance of the EIR process. Yet experience has shown that in those jurisdictions where stringent environmental laws and the threat of law suits in case of non-compliance made the preparation of EIR an inescapable necessity the attitudes of the responsible officials and administrators soon changed. Through practical experience with the process, most officials soon recognized its benefits and became its staunch supporters.[1] The same would have taken place in Winnipeg, had the legal requirement been strengthened rather than removed.

In total, the City only prepared five Environmental Impact Reviews after the adoption of the "Guidelines." Only

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1. See: State of Michigan, Chapter III, B, 2 and 3.

one of these went through the full public hearing process. In addition, one EIR was prepared by a consulting consortium as part of a design contract for a major transportation facility.

CHAPTER VII

SUMMARY AND CONCLUSIONS

VII. SUMMARY AND CONCLUSIONS

A. The Nature and Benefit of Environmental Impact Reviews

The increase in human world population, the continuous urbanization of society, the heightened expectations of man combine to exert tremendous pressure on the environment. This pressure takes the form of unprecedented demands for natural resources, food production, energy, living space and the accumulation of waste-products and refuse.

While industrialized society appears unwilling or unable to reduce its demands, there are at least stronger efforts being made to avoid or minimize unnecessary damage to the environment.

Unnecessary environmental damage is mainly caused by ignorance or by irresponsibility. The environmental impact review process is designed to eliminate the element of ignorance by incorporating into the planning and implementation process a broader base of knowledge and expertise from many different disciplines.

By illuminating beforehand the potential impacts on the environment of a project, the question of responsibility is also being addressed - at least to the extent that cause and effect are linked, and the environmental cost of a project is known.

In predicting and analyzing the potential environmental impact of various design-alternatives of a project, the

process facilitates the selection of the alternative with the least adverse impact or it may lead to a decision to abandon the project.

In essence, the environmental impact review process is a systematic inter-disciplinary approach to planning and decision-making, using various methods of analysis, quantification and future prediction in a co-ordinated effort to eliminate or minimize environmental damage resulting from human action.

The benefits of the environmental impact review process are numerous:

a) Predictions can be made about the many unknown potential impacts of a proposed project before the project is commenced and before the impacts have occurred.

b) The process will expose information about the "external costs" of development which previously were often ignored by developers, with the result that these costs were shifted to the general public.

c) It monitors and records the actual impacts of a project for posterity. This will create an inventory of factual knowledge of cause and consequences and of the effectiveness and cost of remedial action. This will sharpen the judgment of future decision-makers.

d) In jurisdictions, where the environmental impact review process is required by law, it lead to noticeable improvement in project planning and a marked reduction of avoidable environmental damage.

A particularly impressive improvement in project planning and development was experienced in those states where ordinary members of the general public were given the rights and the opportunity to stop environmentally unacceptable projects through court action.

B. The Need for Federal Initiative

It is desirable to have a federal law requiring environmental impact investigation on all projects and activities with potential for environmental impacts. First of all, an act of the legislature is an expression of commitment to the principles involved and secondly, it guarantees enforceability of the intent. Strong laws compelling the many government agencies to explore environmental ramifications of their actions, are a prerequisite, before this requirement can effectively be imposed on private development. While these arguments for government laws apply equally on the provincial level, other considerations point clearly to the need for federal initiative:

Environmental matters affect all citizens of a country, therefore there should be federal laws. Environmental problems often transcent political boundaries and frequently require international co-operation and agreements which are the sole responsibility of the federal government. The advantage of a co-ordinated uniform approach to impact investigation across the country and the benefit of a central agency for information-gathering and storing and the dissemination of accumulated knowledge can best be assured by an agency of the federal government.

The enactment of a National Environmental Policy Act (NEPA) and the creation through the Act of the Council on Environmental Quality (CEQ) in the United States has worked very

well in providing uniformity and assuring continuity. The continuous experience over a decade has provided valuable information on the environmental impact of various developments, the effect and cost of remedial action and has helped to sharpen the investigative process.

The National Environmental Policy Act in the United States and its application is a good example to follow and many states instituted similar laws. Such leadership on part of the Federal Government is sadly lacking in Canada.

In most parts of the United States, ordinary citizens can apply for court injunctions to stop projects which are deemed to have adverse environmental impacts. This allows hearings to be held and impact reviews to be prepared before the project goes ahead and the damage is done.

One of the obvious shortcomings of the Canadian system is that due to the absence of any universal legal requirement for full EIR, the public has no way to take obvious or potential offenders to courts in order to prevent environmental disasters.

C. The Urban Environment

The often-posed question whether the environmental impact review process can and should be used in connection with the urban environment can be answered in the affirmative. Clearly, the process improves the planning and decision-making by providing a broader base of information and knowledge. It will lead to better projects with less unnecessary environmental damage and cost. The provision in the process for early public disclosure and consultation has proven politically sound as it avoids misunderstanding and mistrust and because it indicates public reaction to a proposed project before it is finally and irrevocably proceeded with. Therefore, the process is well suited to application in the urban context and it appears that the wording of the legislation as enacted in most provinces and states could, with little or no change, be used in cities.

In fact, it could be argued that the environmental review process has even more validity in the urban environment, where man-made changes are taking place at a much faster pace and where more people are exposed to these changes.

D. The Failure of the Environmental Impact Review Process in Winnipeg

The rejection of urban environmental impact reviews- as experienced in Winnipeg - is difficult to console with the evidence of appropriateness and benefit of the process. Obviously, urban decision-makers have not yet perceived the advantages of the process. The Winnipeg experience viewed in retrospect, points to several facts, which can be assumed to apply equally to other North American cities. First of all, it can be assumed that there will be no environmental impact investigations on the municipal level unless it is required by legislation. Winnipeg's senior administrators and Councillors are not different from their counterparts in other Canadian cities. They have shown a strong resistance to the principle of environmental impact assessment, even when it was required by legislation. Their lobby with the Provincial legislature certainly was influential in having the section of the City of Winnipeg Act amended.

The second conclusion is that if there is compelling legislation, it must be explicit and clearly worded to leave as little as possible to judicial interpretation. Such legislation should declare precisely its purpose and objective, prescribe in detail a process by which the objective is to be achieved and state the duties and rights of the City and the citizen.

Thirdly, it may be deduced that Provinces are unlikely to enact and maintain effective environmental legis-

lation on the municipal level if such legislation does not exist on the provincial level.

The Province of Manitoba's apparent willingness to comply with the City's request to repeal Section 653 of the City of Winnipeg Act and replace it with a meaningless section, surely is related to the fact that the Province has no legislation compelling the preparation of environmental impact reviews for its own public works.

Fourthly, the argument by some senior city administrators and council that Environmental Impact Reviews are unduly time-consuming and costly, has been proven false. In no case in Winnipeg, has the preparation of an Environmental Impact Review delayed the construction of a project. Preliminary planning and budgeting for a project is usually done well in advance of detailed design. The review process can start when preliminary plans and budgets are prepared, it can therefore run concurrently with or in advance of the detailed design phase.

Certainly, there are costs involved in the EIR process, such as staff time, consultants' fees, public hearings, etc., however, on several projects reviewed in Winnipeg these costs were totally offset by savings achieved through improved design and avoidance of duplications as a direct result of the environmental impact reviews. In addition, there are the benefits for which the EIR process is intended generally: to avoid or minimize environmental costs, to avoid the need for costly remedial action, to show and account for the hidden costs of

a project, and to improve the planning, design and decision-making process generally.

In retrospect, perhaps the most important conclusion to be drawn from the Winnipeg experience is that there prevails a general lack of understanding of the nature and purpose of environmental impact assessment. It appears that legislators, the judiciary, administrators and the general public on the whole have not yet perceived the need for or the benefit of this process.

Considering this general lack of understanding and knowing that inherent in human nature, there is always resistance to change, that there will be suspicion of new procedures and regulations imposed by government, the demise of the experiment in Winnipeg is not surprising.

A good example by senior governments could improve the general understanding.

APPENDICES

APPENDIX A

APPENDIX A

THE NATIONAL ENVIRONMENTAL POLICY ACT—PUBLIC LAW 91-190
(As Amended by PL 94-83)

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I
DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administrated in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment.

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation.

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepared a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II
COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 205. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

APPENDIX B

APPENDIX B

BILL 14

5TH SESSION, 29TH LEGISLATURE, ONTARIO
24 ELIZABETH II, 1975

The Environmental Assessment Act, 1975

THE HON. W. NEWMAN
Minister of the Environment

TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 14 1975

The Environmental Assessment Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

INTERPRETATION AND APPLICATION

Interpretation

1. In this Act,

(*a*) "air" includes enclosed air;

(*b*) "Board" means the Environmental Assessment Board established under Part III;

(*c*) "environment" means,

(i) air, land or water,

(ii) plant and animal life, including man,

(iii) the social, economic and cultural conditions that influence the life of man or a community,

(iv) any building, structure, machine or other device or thing made by man,

(v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or

(vi) any part or combination of the foregoing and the interrelationships between any two or more of them

in or of Ontario;

(*d*) "environmental assessment", when used in relation to an undertaking, means an environmental assessment submitted pursuant to subsection 1 of section 5;

(*e*) "land" includes enclosed land, land covered by water and subsoil;

(*f*) "Minister" means the Minister of the Environment;

(*g*) "Ministry" means the Ministry of the Environment;

(*h*) "municipality" means the corporation of a county, metropolitan area, regional area, district area, city, town, village, township or improvement district and includes a local board as defined in *The Municipal Affairs Act* and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

R.S.O. 1970, c. 118

(*i*) "person" includes a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a public body, a partnership, an unincorporated joint venture and an unincorporated association;

R.S.O. 1970, c. 103

(*j*) "proceed" includes "carry on";

(*k*) "proponent" means a person who,

(i) carries out or proposes to carry out an undertaking, or

(ii) is the owner or person having charge, management or control of an undertaking;

(*l*) "provincial officer" means a person designated by the Minister as a provincial officer under Part IV;

(*m*) "public body" means a body other than a municipality that is defined as a public body by the regulations;

(*n*) "regulations" means the regulations made under this Act;

(*o*) "undertaking" means,

(i) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities, or

(ii) a major commercial or business enterprise or activity or a proposal, plan or program in respect of a major commercial or business enterprise or activity of a person or persons other than a person or persons referred to in subclause i that is designated by the regulations;

(*p*) "water" means surface water and ground water, or either of them.

Purpose of Act

2. The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.

Application of Act

3. This Act applies to,

(*a*) enterprises or activities or proposals, plans or programs in respect of enterprises or activities by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities on and after the day this Act comes into force;

(*b*) only on and after a day to be named in a proclamation of the Lieutenant Governor, major commercial or business enterprises or activities or proposals, plans or programs in respect of major commercial or business enterprises or activities of a person or persons other than a person referred to in clause *a*, designated by the regulations.

The Crown

4. This Act binds the Crown.

PART II

ACCEPTANCE, AMENDMENT, APPROVAL

Submission of environmental assessment

5.—(1) The proponent of an undertaking to which this Act applies shall submit to the Minister an environmental assessment of the undertaking and shall not proceed with the undertaking until,

(*a*) the environmental assessment has been accepted by the Minister; and

(*b*) the Minister has given his approval to proceed with the undertaking.

Exception

(2) Subsection 1 does not prohibit a feasibility study, including research, or any action necessary to comply with this Act before the approval of the Minister is given to proceed with an undertaking.

Content of environmental assessment

(3) An environmental assessment submitted to the Minister pursuant to subsection 1 shall consist of,

(*a*) a description of the purpose of the undertaking;

(*b*) a description of and a statement of the rationale for,

(i) the undertaking,

(ii) the alternative methods of carrying out the undertaking, and

(iii) the alternatives to the undertaking;

(*c*) a description of,

(i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,

(ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and

(iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

(*d*) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking.

Where licences, etc., not to be issued

6.—(1) Where a proponent is required under this Act to submit to the Minister an environmental assessment of an undertaking,

(*a*) a licence, permit, approval, permission or consent that is required under any statute, regulation, by-law or other requirement of the Province of Ontario, an agency thereof, a municipality or a regulatory authority, in order to proceed with the undertaking shall not be issued or granted; and

(*b*) if it is intended that the Province of Ontario or any agency thereof will provide a loan, a guarantee of repayment of a loan, a grant or a subsidy with respect to the undertaking, the loan, guarantee, grant or subsidy shall not be approved, made or given,

unless,

(*c*) the environmental assessment has been submitted to and accepted by the Minister; and

(*d*) the Minister has given approval to proceed with the undertaking.

Exception

(2) Subsection 1 does not apply to,

(*a*) a licence, permit, approval, permission or consent;

(*b*) a loan, guarantee, grant or subsidy,

in relation to a feasibility study, including research, or for any action necessary to comply with this Act before the approval of the Minister is given to proceed with the undertaking.

Preparation of review and notice

7.—(1) Where an environmental assessment of an undertaking is submitted by a proponent to the Minister, the Minister,

(*a*) shall cause a review of the assessment to be prepared; and

(*b*) shall give notice of,

(i) the receipt of the assessment,

(ii) the completion of the preparation of the review,

(iii) the place or places where the assessment and review may be inspected, and

(iv) such other matters as the Minister considers necessary or advisable,

to the proponent, the clerk of each municipality in which the undertaking is being or will be carried out and, in such manner as the Minister considers suitable, to the public and to such other persons as the Minister considers necessary or advisable.

Inspection of environmental assessment

(2) Any person may inspect an environmental assessment of an undertaking and the review thereof in accordance with the terms of the notice referred to in subsection 1 and may, within thirty days of the giving of the notice or within such longer period as may be stated in the notice,

(*a*) make written submissions to the Minister with respect to the undertaking, the environmental assessment and the review thereof; and

(*b*) by written notice to the Minister, require a hearing by the Board with respect to the undertaking, the environmental assessment and the review thereof.

Withdrawal of environmental assessment

(3) A proponent may withdraw or amend an environmental assessment at any time prior to the day on which notice is given under subsection 1 and thereafter may withdraw or amend an environmental assessment subject to such terms and conditions as the Minister may by order impose.

Matters to be considered by the Minister

8. The Minister, in determining whether to accept or to amend and accept an environmental assessment shall consider the purpose of this Act, the environmental assessment submitted to him, the review thereof, the written submissions, if any, made with respect thereto, any reports required by and submitted to him, and any further review that the Minister has caused to be prepared.

Notice of acceptance of environmental assessment

9. Where a hearing is not required,

(*a*) pursuant to clause *a* of subsection 2 of section 12; or

(*b*) pursuant to clause *b* of subsection 2 of section 12 after receipt of a notice pursuant to clause *b* of subsection 2 of section 7,

and the Minister, after considering the matters set out in section 8, is of the opinion that the environmental assessment is satisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall accept the assessment and give notice thereof to the proponent and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7.

Notice of proposal to amend environmental assessment

10.—(1) Where a hearing is not required,

(*a*) pursuant to clause *a* of subsection 2 of section 12; or

(*b*) pursuant to clause *b* of subsection 2 of section 12 after receipt of a notice pursuant to clause *b* of subsection 2 of section 7,

and the Minister, after considering the matters set out in section 8, is of the opinion that the environmental assessment does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall give notice to the proponent and in such manner as the Minister considers suitable, to any person who has made a

written submission to the Minister pursuant to subsection 2 of section 7 that the Minister proposes to amend the environmental assessment, together with written reasons therefor including particulars of the amendments that the Minister proposes to make to the environmental assessment and, after considering any further written submissions of the proponent and of any such person, the Minister, where a hearing is not required pursuant to clause *a* of subsection 2 of section 12 or to clause *b* of subsection 2 of section 12 after receipt of a notice pursuant to subsection 1 of section 12, shall accept or amend and accept the environmental assessment.

Notice of amendment and acceptance of environ-

(2) The Minister shall give notice of the acceptance or the amendment and acceptance of the environmental assessment pursuant to subsection 1 to the proponent, and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7, and where the assessment is amended a copy of the assessment as amended and accepted together with written reasons therefor, to the proponent.

Minister may order research, etc., and reports

11.—(1) Where, before accepting an environmental assessment, the Minister is of the opinion that the environmental assessment as submitted does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall give notice to the proponent that he proposes, by order, to require the proponent to carry out such research, investigations, studies and monitoring programs related to the undertaking in respect of which the environmental assessment is submitted as are mentioned in the notice, together with written reasons therefor.

Written submissions

(2) The Minister, after considering any written submissions of the proponent made within fifteen days of the giving of the notice or within such longer period as may be stated in the notice, may by order require the proponent to carry out such research, investigations, studies and monitoring programs related to the undertaking in respect of which the environmental assessment is submitted and to submit such reports thereon as the Minister considers necessary.

Notice of order

(3) The Minister shall, in such manner as the Minister considers suitable, give notice of the order to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7.

Reports to be incorporated in environmental assessment

(4) Upon submission of the reports to the Minister they shall be incorporated as part of the environmental assessment and the review thereof that the Minister caused to be prepared may be revised accordingly.

Notice

12.—(1) A notice that the Minister proposes to amend an environmental assessment shall state that the proponent or any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice of proposal to amend, require a hearing by the Board and the proponent or the person may so require such a hearing.

Hearing

(2) The Minister, by notice in writing,

(a) may, where he considers it advisable; or

(b) shall, upon receipt of a notice requiring a hearing pursuant to subsection 1 or pursuant to subsection 2 of section 7, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay,

require the Board to hold a hearing with respect to,

(c) the acceptance or amendment and acceptance of the environmental assessment;

(d) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and

(e) whether the approval mentioned in clause *d* should be given subject to terms and conditions and, if so, the provisions of such terms and conditions.

Idem

(3) Upon receipt from the Minister of a notice pursuant to subsection 2, section 13 or clause *c* of subsection 1 of section 24, the Board shall appoint a time for the hearing, shall give reasonable notice thereof to the proponent and to the Minister and in such manner as the Minister may direct, notice to the public, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable, and such other notice as the Board considers proper, and shall hold the hearing and decide the matters referred to it in the notice of the Minister.

Parties

(4) The parties to any proceedings before the Board in respect of the undertaking are,

(a) the proponent;

(b) any person, other than the Minister, who has required the hearing; and

(c) such other persons as,

(i) the Board, in its opinion, specifies have an interest in the proceedings, and

(ii) the Board, having regard to the purpose of this Act, may specify.

Other hearings

13. Where an environmental assessment has been accepted or amended and accepted, and no hearing has been held pursuant to section 12, the proponent or a person who has made a written submission pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice mentioned in section 9 or the notice mentioned in subsection 2 of section 10, require a hearing by the Board with respect to,

(a) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and

(b) whether the approval mentioned in clause *a* should be given subject to terms and conditions and, if so, the provisions of such terms and conditions, and

the Minister, by notice in writing,

(c) may, where he considers it advisable; or

(d) shall, upon receipt of any such notice requiring a hearing, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay,

require the Board to hold a hearing.

Approval to proceed

14.—(1) Where the Minister has accepted an environmental assessment of an undertaking, the Minister may, with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate,

(a) give approval to proceed with the undertaking;

(b) give approval to proceed with the undertaking subject to such terms and conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,

(i) the methods and phasing of the carrying out of the undertaking,

(ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,

(iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as he considers necessary,

(iv) such changes in the undertaking as he considers necessary,

(v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,

(vi) that the proponent comply with all or any of the provisions of the environmental assessment as accepted by the Minister that may be incorporated by reference in the approval,

(vii) the period of time during which the undertaking, or any part thereof, shall be commenced or carried out; or

(c) refuse to give approval to proceed with the undertaking.

Matters to be considered by the Minister

(2) In determining whether to give approval, give approval subject to terms and conditions or refuse to give approval to proceed with an undertaking in accordance with subsection 1, the Minister shall consider,

(*a*) the purpose of this Act;

(*b*) the environmental assessment of the undertaking as accepted by the Minister;

(*c*) the submissions, if any, made to the Minister with respect to the environmental assessment.

Notice of approval

(3) The Minister shall give notice, together with written reasons therefor, of his approval, approval subject to terms and conditions or refusal to give approval to proceed with the undertaking to the proponent, and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable.

Proceedings under other Acts

15. An approval by the Minister pursuant to this Act to proceed with an undertaking does not preclude any proceeding in relation to a contravention of any provision of *The Environmental Protection Act, 1971*, *The Ontario Water Resources Act* or the regulations made under either of those Acts.

1971, c. 86
R.S.O. 1970, c. 332

Effect of approval

16.—(1) No person shall proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

Idem

(2) No person shall give, make, issue, interpret or apply any licence, permit, approval, permission, consent, loan, guarantee of repayment of a loan, grant or subsidy that is required in order to proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

Where proponent proposes to change undertaking

17. Where a proponent of an undertaking proposes to make a change in the undertaking,

(*a*) before the Minister has given approval to proceed with the undertaking, that does not conform to the environmental assessment of the undertaking as accepted by the Minister; or

(*b*) after the Minister has given approval to proceed with the undertaking, that does not conform to any term or condition imposed upon the approval to proceed with the undertaking,

this Act applies to the proposal to make the change in the undertaking as though the proposed change were itself an undertaking to which this Act applies.

PART III

ENVIRONMENTAL ASSESSMENT BOARD

Composition of Board

18.—(1) A board to be known as the Environmental Assessment Board is established and shall be composed of not fewer than five persons who shall be appointed by the Lieutenant Governor in Council and shall not be employed in the public service of Ontario in the employ of any ministry.

Chairman and vice-chairman

(2) The Lieutenant Governor in Council shall designate a chairman and one or more vice-chairmen from among the members of the Board.

Acting chairman

(3) In the case of the absence or inability to act of the chairman or of there being a vacancy in the office of the chairman, a vice-chairman shall act as and have all the powers of the chairman and, in the absence of the chairman and vice-chairman or vice-chairmen from any meeting of the Board, the members of the Board present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

Term of members

(4) The members of the Board, other than the chairman, shall be appointed for a term of one, two or three years so that as nearly as possible one-third of the members, other than the chairman, shall retire each year.

Term of chairman

(5) The chairman of the Board shall be appointed to hold office during pleasure.

Vacancies

(6) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Quorum

(7) Three members of the Board constitute a quorum.

Employees

R.S.O. 1970, c. 386

(8) Such employees as are necessary to carry out the duties of the Board shall be appointed under *The Public Service Act*.

Expert assistance

(9) The Board may appoint from time to time one or more persons having technical or special knowledge of any matter to inquire into and report to the Board and to assist the Board in any capacity in respect of any matter before it.

Remuneration

(10) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Exercise of powers

(11) The powers of the Board shall be exercised by resolution and the Board may pass resolutions governing the calling of and the proceedings at meetings and specifying the powers and duties of employees of the Board and generally dealing with the carrying out of its function.

Practice and procedure

1971, c. 47

(12) The Board may determine its own practice and procedure in relation to hearings and may, subject to section 28 of *The Statutory Powers Procedure Act, 1971* and the approval of the Lieutenant Governor in Council, make rules governing such practice and procedure and the exercise of its powers in relation thereto and prescribe such forms as are considered advisable.

Conduct of hearings by less than quorum

(13) The chairman may, in writing, authorize less than a quorum of the Board to conduct a hearing and the member or members conducting the hearing shall have all the powers of the Board for the purposes of the hearing.

Only members at hearing to participate in decision

(14) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Board may appoint class representative

(15) For the purpose of proceedings before the Board, the Board may appoint from among a class of parties to the proceedings having, in the opinion of the Board, a common interest, a person to represent that class in the proceedings, but any other member of the class for which such appointment was made may, with the consent of the Board, take part in the proceedings notwithstanding the appointment.

Minister entitled to take part in proceedings

(16) The Minister is entitled, by counsel or otherwise, to take part in proceedings before the Board.

Giving of decision

(17) The Board shall give a copy of its decision together with written reasons therefor to the Minister, to the parties, or where an appointment has been made pursuant to subsection 15, to the appointee on behalf of the class, and to such other persons as have made written submissions pursuant to subsection 2 of section 7 and to the clerk of each municipality in which the undertaking is being or will be carried out.

Decisions, etc., of Board not subject to review

(18) No decision of the Board is effective until it becomes final pursuant to section 24.

When decision is effective

(19) No decision, order, direction, resolution or ruling of the Board shall be questioned or reviewed in any court and no proceeding shall be taken in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, application for judicial review, *quo warranto*, or otherwise to question, review, prohibit or restrain the Board or any of its decisions, orders, directions, resolutions or rulings.

Application of 1971, c. 47

(20) Except as otherwise provided in this Act, *The Statutory Powers Procedure Act, 1971* applies to the proceedings of the Board.

Hearings to be public, exceptions

19. A hearing conducted by the Board or a member or members of the Board shall be open to the public except where the Board or the member or members of the Board conducting the hearing is or are of the opinion that matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case, the Board or the member or members of the Board conducting the hearing may hold the hearing concerning any such matters *in camera*.

Effect of decision of Board

20. Any decision of the Board that becomes final pursuant to section 24 shall be deemed to be the decision of the Minister or of the Minister with the approval required by section 14.

Testimony by member, employee or appointee of Board

21. No member, employee or appointee of the Board shall be required to give testimony in any proceeding with regard to information obtained by him in the discharge of his duties as a member, employee or appointee of the Board.

Hearings under R.S.O. 1970, c. 332

22. Where the Environmental Hearing Board, established under *The Ontario Water Resources Act*, proposed to hold or commenced but did not complete a public hearing or did not report thereon under *The Ontario Water Resources Act* 1971, c. 86 or *The Environmental Protection Act, 1971*, immediately before this section came into force, the hearing shall be held or continued or the report may be made by the Environmental Assessment Board or, where it is necessary or advisable in the opinion of the chairman of the Environmental Assessment Board, the Environmental Assessment Board may hold a fresh hearing and any action or notice taken or given by the Environmental Hearing Board shall be deemed to have been taken or given by the Environmental Assessment Board.

Inspection of premises

23. For purposes relevant to the subject-matter of a hearing, the Board, its employees and appointees may enter and inspect any land or premises other than a dwelling at any reasonable time.

Variation or rescission of decisions

24.—(1) Within twenty-eight days after receipt by the Minister of a decision of the Board on any matter referred to it by notice of the Minister pursuant to subsection 2 of section 12 or section 13 or made pursuant to clause *c*, or within such longer period as may be determined by the Minister within such twenty-eight day period, the Minister, with the approval of the Lieutenant Governor in Council or such Ministers of the Crown as the Lieutenant Governor in Council may designate, may,

(*a*) vary the whole or any part of the decision;

(*b*) substitute for the decision of the Board, such decision as he considers appropriate; or

(*c*) by notice to the Board require the Board to hold a new hearing of the whole or any part of the matter referred to the Board by the notice of the Minister and reconsider its decision.

Idem

(2) Subject to subsection 3, a decision of the Board is final after the expiration of the period or periods mentioned in subsection 1 unless, pursuant to subsection 1, the decision is varied or a decision is substituted for the decision of the Board or a new hearing is required.

Idem

(3) A decision of the Board that has been varied pursuant to clause *a* or a decision that has been substituted for the decision of the Board pursuant to clause *b* of subsection 1, is final.

Idem

(4) The Minister shall give notice, together with written reasons therefor, of any variation, substitution or requirement of a new hearing pursuant to subsection 1, to every person entitled to receive a copy of the decision of the Board pursuant to subsection 17 of section 18.

PART IV

PROVINCIAL OFFICERS

Designation of provincial officers

25.—(1) The Minister may designate in writing one or more employees of the Ministry or other persons as provincial officers for the purposes of any section or Part of this Act or any regulation or section of any regulation made under this Act that is referred to in the designation and in a designation may limit the authority of a provincial officer in such manner as the Minister considers necessary or advisable.

Certificate of designation

(2) The Minister shall issue to every provincial officer a certificate of his designation and every provincial officer, in the execution of his duties under this Act and the regulations, shall produce his certificate of designation upon request.

Powers of provincial officer

26.—(1) Where a provincial officer has reasonable grounds for believing that it is necessary, for the purpose of the administration of this Act and the regulations, he may, upon production of his certificate of designation, enter at any reasonable time any building, other than a dwelling, or any structure, machine, vehicle, land, water or air and make or require to be made such surveys, examinations, investigations, tests and inquiries, as he considers necessary for such purpose, including examinations of books, records and documents and may make, take and remove or may require to be made, taken or removed samples, copies or extracts.

Order authorizing

(2) Where a provincial judge is satisfied, upon an *ex parte* application by a provincial officer, that there is reasonable ground for believing that it is necessary to enter any building, including a dwelling, structure, machine, vehicle, land, water or air for the administration of this Act or the regulations, the provincial judge may issue an order authorizing a provincial officer to enter therein or thereon and to make or require to be made such surveys, examinations, investigations, tests and inquiries and to take the other actions mentioned in subsection 1 but every such entry, survey, examination, investigation, test, inquiry and other such action shall be made or taken between sunrise and sunset unless the provincial judge authorizes the provincial officer, by the order, to so act at another time.

Obstruction of provincial officer

27. No person shall hinder or obstruct a provincial officer in the lawful performance of his duties or knowingly furnish a provincial officer with false information or refuse to furnish him with information required for the purposes of this Act and the regulations.

Matters confidential

28.—(1) Every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matter to any person except,

(*a*) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;

(*b*) to his counsel; or

(*c*) with the consent of the person to whom the information relates.

Idem

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

PART V

ADMINISTRATION

Application to Divisional Court

29. The Minister, in addition to any other remedy and to any penalty imposed by law, may apply to the Divisional Court for an order,

(*a*) enjoining any act to proceed with an undertaking contrary to this Act; or

(*b*) invalidating any licence, permit, approval, permission or consent issued or granted contrary to subsection 1 of section 6,

and the court may make the order on such terms and conditions as the court considers proper.

Exemption

30. Where the Minister is of the opinion that it is in the public interest, having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act to any undertaking, the Minister, with approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate, may by order,

(a) exempt the undertaking or the proponent of the undertaking from the application of this Act or the regulations or any matter or matters provided for in this Act or the regulations subject to such terms and conditions as the Minister may impose;

(b) suspend or revoke an exemption referred to in clause *a*;

(c) alter or revoke any term or condition of an exemption referred to in clause *a*.

Disclosure

31. Notwithstanding any other provision of this Act, where the Minister is of the opinion that compliance with any provision of this Act is causing, will cause or will likely cause the disclosure of matters that are of such a nature that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of disclosing such matters to the public, the Minister may make such order for the protection of such person or the public interest as he considers necessary or advisable.

Record

32.—(1) The Minister shall cause to be maintained a record of every undertaking in respect of which an environmental assessment has been submitted under this Act that, subject to any order of the Minister pursuant to section 31, shall consist of the environmental assessment, the review of the environmental assessment that the Minister caused to be prepared, any written submissions, any decision of the Board or the Minister together with written reasons therefor, if any, made under this Act, any notice under section 9, subsection 2 of section 10, subsection 3 of section 14, subsection 4 of section 24 and section 39 and any order of the Minister pursuant to this Act together with the written reasons, if any, therefor.

Inspection

(2) The Minister shall, upon the request of any person, make available for the inspection of such person any record referred to in subsection 1 including any document forming part of the record as soon as practicable after issuance or receipt of the document.

Powers and duties of Minister

33. The Minister, for the purposes of the administration and enforcement of this Act and the regulations may,

(a) conduct research with respect to the environment or environmental assessments;

(b) conduct studies of the quality of the environment;

(c) conduct studies of environmental planning or environmental assessments designed to lead to the wise use of the environment by man;

(d) convene conferences and conduct seminars and educational and training programs with respect to the environment or environmental assessments;

(e) gather, publish and disseminate information with respect to the environment or environmental assessments;

(f) make grants and loans for research or the training of persons with respect to the environment or environmental assessments in such amounts and upon such terms and conditions as the Minister, subject to the approval of the Lieutenant Governor in Council, may determine;

(g) appoint committees to perform such advisory functions as the Minister considers advisable;

(h) make such investigations, surveys, examinations, tests and other arrangements as he considers necessary; and

(i) with the approval of the Lieutenant Governor in Council, enter into an agreement with any government or person with respect to the environment or environmental assessments.

Protection from personal liability

34.—(1) Except in the case of an application for judicial review or an action or proceeding that is specifically provided for with respect to a person referred to in this subsection in any Act or in a regulation under this or any other Act, no action or other proceeding for damages or otherwise lies or shall be instituted against an employee of the Ministry, a member of the Board or a Crown employee within the meaning of *The Public Service Act* who is a provincial officer or is acting under the direction of an employee of the Ministry, or such member or provincial officer, for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any such duty or authority.

R.S.O. 1970, c. 386

Crown not relieved of liability

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted.

R.S.O. 1970, c. 365

Hearings under other Acts

35. Where a proponent is required under this Act not to proceed with an undertaking until an environmental assessment of the undertaking has been accepted by the Minister and a public hearing is required or permitted under *The Environmental Protection Act, 1971* or *The Ontario Water Resources Act* other than by the Environmental Appeal Board or the Ontario Municipal Board with respect to the undertaking, the Minister shall order,

1971, c. 86

R.S.O. 1970, c. 332

(a) that the public hearing under such other Act may be proceeded with and that this Act or the regulations or any matter or matters provided for in this Act or the regulations that is specified in the order does not apply to the undertaking or proponent; or

(b) that this Act applies to the undertaking and proponent and the public hearing under such other Act shall be deemed not to be required or permitted.

False information

36. No person shall knowingly give false information in any application, return or statement made to the Minister, the Board, an employee or appointee of the

Board, a provincial officer or any employee of the Ministry in respect of any matter under this Act or the regulations.

Certificates, etc., as evidence

37. In any prosecution, proceeding or hearing under this Act or the regulations, the production of,

(a) a certificate or report of an analyst in the employ of the Crown in right of Ontario designated by the Minister as to the analysis, ingredients, quality, quantity or temperature of any material, whether solid, liquid or gas or any combination of them; or

(b) any document under this Act purporting to be signed by the Minister or by or for the Board, or any certified copy thereof,

is *prima facie* evidence of the facts stated therein and of the authority of the person making the document without any proof of appointment or signature.

Service

38.—(1) Any notice, order, approval or other document under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the Ministry.

Notice to clerk of municipality

(2) A notice,

(a) given by the Minister pursuant to section 9, section 10 or subsection 3 of section 14;

(b) given by the Board pursuant to subsection 3 of section 12; or

(c) of the order of the Minister pursuant to section 11,

shall be given to the clerk of each municipality in which the undertaking is being or will be carried out.

Idem

(3) Where notice is given or service is made by registered mail, the giving or service shall be deemed to be made on the seventh day after the day of mailing unless the person to whom notice is given or on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice, order, approval or other document until a later date.

Public notice

(4) Where the Minister or the Board is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous, or for any other reason it is impracticable to give the notice or document to all or any of the persons individually, the Minister or the Board, as the case may be, may instead of doing so, cause the notice or reasonable notice of the contents of the document to be given to the persons by public advertisement or otherwise as the Minister or the Board may direct, and the date on which such notice or reasonable notice of the contents of the document is first published or otherwise given as directed, shall be deemed to be the date on which the notice or document is given.

Inspection of documents

(5) The making available by the Minister of a copy or reproduction made by any means of a document is compliance with the provisions of this Act authorizing the inspection of the document.

Destruction of certain documents

(6) Notwithstanding any provision of this Act, a document may be destroyed by or under the authority of the Minister when it has been completely recorded or copied and the recording or copy is retained for the purpose of inspection under this section.

Where notice to be given to Minister

39. Where a proponent of an undertaking in respect of which an environmental assessment has been accepted by the Minister and for which approval to proceed has been given by the Minister receives notice of any fact, situation, event, order, proceeding or application the result of which or compliance with which has affected, affects of may affect the ability of the proponent to proceed with the undertaking in accordance with any term or condition to which the approval of the Minister to proceed with the undertaking is subject, the proponent shall forthwith give notice thereof to the Minister.

Offence

40. Every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this Act or the regulations or fails to comply with an order or a term or condition of an approval issued or given under this Act is guilty of an offence and on summary conviction is liable on a first conviction to a fine of not more than $5,000 and on a subsequent conviction to a fine of not more than $10,000 for every day or part thereof upon which the offence occurs or continues.

PART VI

REGULATIONS

Regulations

41. The Lieutenant Governor in Council may make regulations,

(a) defining any enterprise or activity as a major commercial or business enterprise or activity;

(b) defining enterprises or activities as classes of major commercial or business enterprises or activities;

(c) defining any body other than a municipality as a public body;

(d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(e) designating any proposal, plan or program or any class of proposals, plans or programs in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(f) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations or any section or part of a section thereof and designating any enterprise or activity or class of enterprises or activities or any proposal, plan or program or any class of proposals, plans or programs in respect of any of them by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities as an undertaking or class of undertakings to which this Act applies notwithstanding any exemption under this clause;

(g) prescribing additional information that shall be contained in environmental assessments submitted to the Minister;

(h) prescribing forms for the purposes of this Act and providing for their use.

Class of undertakings

42. A class of undertakings under this Act or the regulations may be defined with respect to any attribute, quality or characteristic or combination thereof and may be defined to include any number of undertakings under one ownership or more than one ownership and whether or not of the same type or with the same attributes, qualities or characteristics.

Scope of regulations

43. Any regulation may be general or particular in its application, may be limited as to time or place or both and may exclude any place from the application of the regulation.

Adoption of codes in regulations

44. Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with any code, standard or procedure so adopted.

Application of regulations

45.—(1) A regulation is not effective with respect to an enterprise or activity that is commenced before the regulation comes into force.

Idem

(2) Notwithstanding subsection 1, a regulation is effective with respect to,

(a) any major commercial or business enterprise or activity that is commenced after the coming into force of this Act and that is being carried on or is not completed when the regulation comes into force;

(b) a significant change made in any major commercial or business enterprise or activity after the coming into force of this Act and that is being carried on or is not completed before the regulation comes into force; or

(c) any proposal, plan or program in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities proposed or made before the coming into force of the regulation whether the proposal, plan or program is proposed or made before or after the coming into force of this Act.

Idem

(3) Notwithstanding subsection 1, a regulation made under clause *f* of section 41 is effective whether the enterprise or activity, or class of enterprises or activities, or proposal, plan or program or class of proposals, plans or programs in respect of any of them is commenced, carried on, made or proposed before or after the coming into force of this Act.

PART VII

MISCELLANEOUS

Commencement

46. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

47. This Act may be cited as *The Environmental Assessment Act, 1975*.

APPENDIX C

APPENDIX C

GUIDELINES FOR

THE PREPARATION OF ENVIRONMENTAL

IMPACT REVIEWS UNDER SECTION 653

OF THE CITY OF WINNIPEG ACT

****

May, 1974

At its meeting held on February 14th, 1974, the Executive Policy Committee passed the motion:

> "That the Board of Commissioners be instructed to prepare guidelines for the timing, content, methodology and resources relative to the preparation of future Environmental Impact Reviews required under Section 653 of the City of Winnipeg Act."

Section 653 requires that an Environmental Impact Review be prepared to assess the potential effects of certain public works proposed by the City. This legislative requirement reflects the growing concern of our society to anticipate, and prevent or minimize, deleterious changes in the environment. Any guidelines adopted for the fulfillment of this requirement should be directed towards ensuring that the decision of Council with respect to a public work is based on the most complete assessment of potential effects that the administration can reasonably provide.

In addition to a concern for a comprehensive assessment of potential effects, the need for anticipation of change establishes as a major concern the institution of the Environmental Impact Review at the earliest possible stage of project development. An attempt to ensure that the chosen alternative will be the least expensive in terms of the human environment may, indeed, ensure that it is the least expensive in several contexts, since:

.....

> "Experience in existing programs has clearly demonstrated that it is more economic to incorporate environmental objectives at the conceptual stage of a project than to provide abatement equipment and restorative efforts as an afterthought."
>
> – Green Paper on Environmental Assessment, Ontario Ministry of the Environment, September, 1973.

and, since it is likely that a clear demonstration of the consideration of such environmental objectives would prevent the City from becoming involved in litigation with respect to certain works.

An extensive review of literature on the subjects of the philosophy and methodology of such Environmental Impact Reviews has provided practical criteria by which to incorporate an effective and efficient Review Process into the existing administrative and political structure of theCity of Winnipeg.

.....

INTRODUCTION

Section 653(1) of the City of Winnipeg Act states:

> "In addition to the duties and powers delegated to the Executive Policy Committee by this Act or by council, the Committee shall review every proposal for the undertaking by the city of a public work which may significantly affect the quality of the human environment and shall report to the council before such work is recommended to council on,
>
> a) the environmental impact of the proposed work;
> b) any adverse environmental effects which cannot be avoided should the work be undertaken; and
> c) alternatives to the proposed action."

The implementation of this section must be based on certain key phrases:

"proposal for the undertaking by the city of a public work"

It would seem logical that a concept only becomes a formal proposal when it is included in the Estimates, and that undertaking includes the committment of monies to any phase of implementation of a public work, such as design or land acquisition.

"a public work which may significantly affect the quality of the human environment"

The decision on potential significance rests solely with the Executive Policy Committee since only this Committee can commission an Environmental Impact Review. Thus, every proposal for a public work must be reviewed by the Committee to decide the issuance of significance.

.....

"and shall report to the council before such work is recommended"

Since the completed Environmental Impact Review is required by the Executive Policy Committee before the Estimates can proceed to Council, it would seem necessary that the decision on significance be made at the earliest opportunity in order to guarantee that adequate Reviews are prepared.

"the environmental impact of the proposed work"

The scope of an Environmental Impact Review must include, in addition to obvious physical impact, impacts on the cultural, social, or economic components of the environment. Positive and negative, direct and indirect, short-term and long-term, qualitative and quantitative effects must be considered. In order that all Reviews be adequately comprehensive it is necessary that GUIDELINES be adopted by the Executive Policy Committee establishing a standard requirement for content.

Based on these parameters, the following report will discuss:

1) the timing of stages in a recommended Review Process,

2) the allocation of resources necessary to prepare consistently adequate Reviews,

3) recommended Guidelines for the methodology and content of all Environmental Impact Reviews.

.....

GUIDELINES: REVIEW PROCESS

The timing of the stages in any Review Process must necessarily depend on the reference in Section 653(1) to "proposal for the undertaking ... of a public work", with the implications that:

a) a FORMAL proposal must have been made, and

b) the commitment of monies to any phase of implementation of a proposal MAY require an Environmental Impact Review.

Although, in practice, the assessment of potential effects of a project may begin well before it is formally proposed, in cases with obvious significant effects, the Review Process will be considered to encompass only those proposals which have been submitted for some degree of funding, i.e. as a part of either the Current or Capital Estimates.

Further, since the issue of significance may be decided only by the Executive Policy Committee,it would be necessary to include all such proposals in the Review Process.

Thus, the FIRST STAGE of the Process constitutes the identification of all proposals for the undertaking of a public work, for submission to the Executive Policy Committee. It is suggested that a recommendation would accompany the submission, indicating which proposals might be deemed to be significant and the reasons for such recommendation, to facilitate the necessary review by the Committee.

.....

Extracting the GENERAL definition of "works" from the City of Winnipeg Act, we have:

> "... fabrics made, built, constructed, erected, extended, enlarged, repaired, improved, formed or excavated by means of, or with the aid of, human skill and human, animal, or mechanical labour."

Thus, virtually every physical undertaking of the City, whether development, redevelopment, or rehabilitation, must be submitted to the Executive Policy Committee for a ruling on significance before consideration is given to its funding.

The administration of such a correlation of proposals from so many departments of the City would logically fall under the aegis of the Board of Commissioners. However, because of the necessary scope of this procedure, it is suggested that the Board delegate the task of identification and recommendation to an inter-departmental committee, and further that this Review Committee be constituted of:

a member of the Law Department,

> in order that proposals which might in the absence of a Review, involve the City in litigation, be recommended to be deemed significant and have Environmental Impact Reviews prepared;

the Director of Operations, Department of Works and Operations,

> since it may be expected that the great majority of public works proposed would be generated by this Division of the administration;

.....

the Chief Planner, Environmental Planning Division,

since it may be expected that a substantial portion of any potential significant effects would occur in areas currently the responsibility of this Division;

the Assistant Director of Public Welfare, Welfare Department

since it may be expected that major public works might have significant effects on the social component of the environment.

With the founding of the Review Committee, the various civic departments could be directed to submit all formal proposals for sufficient review before such proposals proceed to the Standing Committees of Council as part of the Current or Capital Estimates. The proposals could then be presented to the Executive Policy Committee with recommendations on significance, concurrently with the presentation of the Estimates in the other Committees of Council.

It is suggested that the CRITERIA be adopted for the use of the Review Committee in making its recommendations on significance to the Board of Commissioners and Executive Policy Committee:

1) A proposal should be recommended as significant if it is likely to produce any major deleterious change in the existing human environment.

2) A proposal should be recommended as significant if it is likely to produce both major positive and major negative changes in the existing environment, but the balance of such changes appears to be positive, or is not readily evident.

3) A proposal should be recommended as significant if it is likely to be controversial.

.....

4) A proposal, or group of proposals, should be recommended as significant if the overall or cumulative effects of the proposal or proposals, in conjunction with existing works, or with each other, is likely to produce any major deleterious change in the existing human environment.

Each department should review the typical class of proposals that it makes and with the Review Committee should develop methods to identify proposals which are likely to be recommended as significant.

Although the City of Winnipeg Act does not exclude proposals with significant positive effects from the Review Process, it is suggested that the expense of preparing extensive Environmental Impact Reviews for such proposals cannot be justified. However, if a proposal appears to include negative effects, whether or not these effects are outweighed by positive effects, it should be recommended as significant, in order to prevent a delay at a later stage of the Process.

If it appears to be obvious that a proposal will be recommended as significant, but the proposal is not sufficiently developed to be submitted formally, the generating Department should submit an evaluation to the Review Committee if it appears that the preparation of an Environmental Impact Review were best begun at an informal stage of the Process.

The SECOND STAGE of the Review Process constitutes the decision of the Executive Policy Committee on which proposals are significant, and its subsequent directive that an Environmental Impact Review be prepared for each such proposal.

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The decisions made by the Committee must necessarily be public, in order that citizens may make representation to the Committee to forward additional proposals to the Environmental Impact Review stage, if these appear to be significant only to the public. By this means, the City may ensure that proposals of marginal significance are included in the Review Process, rather than face litigation at a later stage. It must be noted that proposals as contained in the Estimates will be tabled in the Standing Committees of Council concurrently with their review by the Executive Policy Committee. Certain proposals may become controversial for no other reason than that public reaction was not taken into consideration at this stage of the Review Process.

The THIRD STAGE of the Review Process constitutes the actual preparation of the necessary Environmental Impact Reviews.

The resources necessary to this end, and the content and methodology of the Reviews themselves, are treated in subsequent sections of this report.

The FOURTH STAGE of the Review Process constitutes the submission of the completed Environmental Impact Review to the Review Committee in order that its adequacy under the Act may be determined. It is hoped that the communication between the Review Committee and the Task Force preparing the actual Review would obviate the need to redraft a report but cases may arise in which legislative requirements have not been fulfilled. The Review Committee would ensure, at this stage, that completed reports submitted to the Board of Commissioners and the Executive Policy Committee were, indeed, sufficient to permit a proposal to proceed if this be the decision of the Executive Policy Committee.

.....

The FIFTH STAGE of the Review Process constitutes the tabling of the Environmental Impact Review in the Executive Policy Committee, and that Committee's discussion of both the report and a recommendation in terms of the Current or Capital Estimates of which the significant proposal forms a part.

Again, such discussion must necessarily be public in order that citizens may later make representation to the Committee or Council with respect to the report or recommendation. In fact, the publication in draft form of the Environmental Impact Review would be necessary to allow meaningful public reaction. Failure to consider public reaction to the proposal, or to the Environmental Impact Review, may result in considerable delay in budget approval, if this public reaction were considered at the Municipal Board level, or in the Courts.

The SIXTH STAGE of the Review Process constitutes the report to the Council by the Executive Policy Committee on the Environmental Impact of the proposed work and Council approval or disapproval of the proposal.

If it is approved, the FINAL STAGE of the Review Process is ongoing Review through the final stages of design in order to provide for all possible mitigation of adverse effects. The Process ends with the completion of the project.

.....

GUIDELINES: RESOURCES

The Task Force to prepare the Environmental Impact Review itself, should satisfy the following requirements:

1) It must be so constituted that it does not jeopardize confidentiality in those cases where this is essential to the expeditious evolution of the proposal.

2) It must both be, and appear to be, unbiased and objective.

3) It should comprise, or have at its disposal, the necessary expertise in all appropriate fields.

4) It should be able to develop consistency with respect to methodologies employed and impacts evaluated.

5) It should be so constituted that it facilitates the establishment of environmental objectives as an integral part of the conceptual stage of development of a public work.

It is suggested that the Task Force be established within the administration in order to meet the requirement of confidentiality (1), drawing upon the various civic departments in accordance with the kinds of expertise judged to be relevant to the issue under review (3). When the expertise required is not available within the administration, provision should be made to engage appropriate consultants.

Thus, the composition of the Task Force will vary with each particular proposal under review. However, it is necessary to ensure consistency in approach and methodology (4), and to consolidate the experience gained in the preparation of a series of Environmental Impact Reviews, since both consistency and experience will determine the future efficiency of the process.

.....

It is, therefore, suggested that a permanent Core Committee be established around which each Task Force can be built.

In order to maintain consistency and efficiency, the Core Committee would assemble the appropriate Task Force in response to a directive to prepare a Review. It would co-ordinate the inputs from the various Task Force members and initiate further research which may be required as a response to these inputs. It would seem logical that the Core Committee also compile the actual Environmental Impact Review.

These responsibilities of the Core Committee would necessitate that it remain small in the interests of efficiency, and that its members be drawn from areas of the administration which maintain a general overview of City development in order to facilitate both the placement in a general context of a specific proposal and the co-ordination of inter-disciplinary effort. It is suggested that in order for this Core Committee not to be obviously biased, it should include members of the agency which initiates the proposal or members of the Review Committee which screens all public works proposals (2).

Since the required general overview is presently available within the Department of Environmental Planning already engaged in functions which require the co-ordination of inputs from other civic departments; and since the various departments of Works and Operations will each, from time to time,be the proponent of a public work; it would seem appropriate that the Core Committee be drawn from the staff of the Department of Environmental Planning.

.....

Specifically, it is suggested that the members of this Committee be the four incumbents in the positions of Head of Research, General Development Plan Co-ordinator, District Plan Co-ordinator, and Urban Development and Special Projects Officer. These positions afford both the required general overview and the interdepartmental contacts, at the operational level, necessary to the expeditious establishment of a Task Force possessed of the requisite expertise.

It is further suggested that, in order to consolidate experience and ensure consistency of approach and methodology, the Head of Research be directed to maintain and update a library of materials relevant to the North American, and particularly Winnipeg, experience with Environmental Impact Reviews.

It is to be expected that the interdepartmental communications established through the Core Committee within the Task Force structure, will further the aim of making environmental objectives an integral part of the conceptual, as well as subsequent, stages of development of the public work.

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GUIDELINES: METHODOLOGY AND CONTENT

Guidelines for the preparation of Environmental Impact Reviews should be sufficiently comprehensive to ensure adequate consideration of the various components of the human environment yet, at the same time, sufficiently general and flexible to apply to ANY proposal for a public work. Thus, rather than developing a specific set of guidelines to be directed towards each particular class of public works, the following Guidelines are intended to apply to ALL Reviews concerning any type of public work.

The Guidelines are intended to give direction to the Task Force preparing the Environmental Impact Review, the Review Committee, the Board of Commissioners and the Executive Policy Committee, in order that the Council be provided with a sound and comprehensive basis for a decision regarding the proposed public work.

In addition, the Guidelines are intended to ensure that each Environmental Impact Review fulfills the legal requirements of the City of Winnipeg Act. Although the question of Environmental Impact Reviews is without exact Canadian judicial precedent (see Appendix "B") it is noteworthy that Section 653 is derived from the American National Environmental Policy Act of 1970. Therefore in formulating Guidelines to ensure the preparation of an ADEQUATE Review reference has been made to the American experience in administering this Act, including over 250 court cases.

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While the Winnipeg legislation is somewhat less comprehensive than its American counterpart, the question IS judicially untested in Canada and the American experience dictates that caution be exercised in the formulation of Guidelines, to ensure that Reviews are not subsequently deemed to be inadequate by the Courts. Thus, it would be preferable for the Reviews to be overly, rather than insufficiently, comprehensive in order to meet anticipated requirements of a judicial interpretation of Section 653.

The Guidelines recommended for adoption by way of resolution are:

1. INTELLIGIBILITY

THE ENVIRONMENTAL IMPACT REVIEW SHALL BE PREPARED IN SUCH A WAY THAT IT MAY BE FULLY UNDERSTOOD BY THE LAYMAN.

Highly technical terminology and analyses should be recast in layman's terms in the body of the draft Review, but could be attached verbatim as appendices. This provision should apply to maps and diagrams as well as text.

2. ASSUMPTIONS

THE ENVIRONMENTAL IMPACT REVIEW SHALL EXPLICITLY STATE ANY MAJOR QUALITATIVE OR QUANTATIVE ASSUMPTIONS CENTRAL TO THE JUSTIFICATION AND ASSESSMENT OF THE PROPOSED PUBLIC WORK.

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At the outset, assumptions utilized to delimit the scope and extent of the 'project environment' (see Guidelines 4 and 5) should be clearly stated. In addition, the Review should identify and evaluate any major, ancillary assumptions, such as trends in public policy, population growth or change, land use patterns, technology, finance and economics, or consumer attitudes.

3. PRECISION

THE ENVIRONMENTAL IMPACT REVIEW SHALL, WHEREVER APPROPRIATE, SUBSTANTIATE CONCLUSORY STATEMENTS BY REFERENCE TO ANY UNDERLYING REPORTS, STUDIES, OR OTHER INFORMATION USED IN THEIR PREPARATION.

The Review should avoid vague terminology, such as 'slightly', 'somewhat', 'marginal', or 'greatly', utilizing, wherever possible precise, quantitative descriptions. Conclusory statements should be substantiated by references, not only to underlying data but also to methodologies utilized in their derivation and analysis. The American experience suggests that failure to substantiate conclusions could result in a judicial determination that the Review were inadequate.

4. PROJECT DESCRIPTION

THE ENVIRONMENTAL IMPACT REVIEW SHALL CONTAIN A COMPLETE DESCRIPTION OF THE PROPOSED ACTION, INCLUDING ITS PURPOSES, LOCATION, EXTENT, SCOPE, STAGING AND THE METHODS AND MATERIALS TO BE USED IN ITS CONSTRUCTION OR ALTERATION.

The exact amount of detail provided in such descriptions should be commensurate with the scope and projected impact of the proposed public work, and with the amount of information required or available at the time of Review. It is to be expected that as the proposal progresses through phases such as feasibility, planning and design, additional information would become available to the ongoing Review Process.

5. ENVIRONMENTAL INVENTORY

THE ENVIRONMENTAL IMPACT REVIEW SHALL CONTAIN A COMPREHENSIVE DESCRIPTION OF THE PROJECT ENVIRONMENT AS IT CURRENTLY EXISTS, INCLUDING PHYSICAL (BUILT AND NON-BUILT), SOCIAL AND DEMOGRAPHIC, ECONOMIC, AND CULTURAL COMPONENTS.

Again, the extent of the 'project environment', and the exact amount of detail provided in its description should be commensurate with the scope and projected impact of the proposed public work, and with the amount of information required or available at the time of Review. It is to be expected that as the proposal develops, the project environment may be redefined, and additional research undertaken as necessary.

.....

6. EXISTING PUBLIC POLICY

THE ENVIRONMENTAL IMPACT REVIEW SHALL MAKE EXPLICIT THE RELATIONSHIP OF THE PROPOSED PUBLIC WORK TO EXISTING PUBLIC POLICIES AND PROGRAMS AFFECTING THE PROJECT ENVIRONMENT.

The Review should describe the extent to which the proposal can be altered, if this is necessary, to accommodate itself to existing or intended policies and programs. If it cannot be altered sufficiently to achieve a full reconciliation with such policies and programs, the proponents of the public work must provide reasons for their decision to proceed nonetheless.

7. ALTERNATIVES

THE ENVIRONMENTAL IMPACT REVIEW SHALL INCLUDE AN EVALUATION OF ALTERNATIVES TO THE PROPOSED ACTION, INCLUDING BOTH CONCEPTUAL AND DESIGN ALTERNATIVES.

Section 653 requires that the report to Council include "alternatives to the proposed action". This particular use of the word 'action' implies that no consideration of alternatives can be regarded as adequate unless it includes alternatives at the conceptual level, as well as design alterations. The Review should include an evaluation of the effects of:

a) the postponement, or rejection, of the proposed action,
b) employing fundamentally different means of accomplishing the end to be served by the proposed public work, and
c) design variations of the same means.

.....

These various kinds of alternatives should be examined in sufficient detail to allow comparative evaluation of the environmental costs and benefits of each alternative.

8. IMPACTS

THE ENVIRONMENTAL IMPACT REVIEW SHALL INCLUDE A DISCUSSION OF THE POTENTIAL EFFECTS OF THE PROPOSED PUBLIC WORK ON THE QUALITY OF THE HUMAN ENVIRONMENT INCLUDING BENEFICIAL AND DELETERIOUS, DIRECT AND INDIRECT, INDIVIDUAL AND CUMULATIVE, QUALITATIVE AND QUANTITATIVE, TEMPORARY AND PERMANENT, AVOIDABLE AND UNAVOIDABLE EFFECTS.

It must be emphasized that the indirect effects of a proposed public work, such as alterations in patterns of land use and social or economic activity, may prove to be far more significant to the quality of the human environment than direct effects, such as changes in topography or hydrology.

Section 653 requires that the report to Council include "any adverse environmental effects which cannot be avoided should the work be undertaken". This particular use of the word 'any' implies that if an impact study is deemed both adverse and unavoidable it must receive consideration whether or not this impact is deemed major. In making a distinction between avoidable and unavoidable adverse effects, the Review should demonstrate why the latter are deemed to <u>be</u> unavoidable, and also how adverse effects which <u>are</u> avoidable will be mitigated.

.....

9. LIMITATIONS OF FUTURE OPTIONS

THE ENVIRONMENTAL IMPACT REVIEW SHALL MAKE EXPLICIT ANY IRREVERSIBLE OR IRRETRIEVABLE COMMITMENT OF RESOURCES, OR IRREVOCABLE PUBLIC POLICY COMMITMENT, ENTAILED IN THE IMPLEMENTATION OF THE PROPOSED PUBLIC WORK.

> The Review should include consideration of the extent to which the proposed public work involves trade-offs between short-term gains at the expense of long-term losses, or vice-versa.
>
> The Review should make explicit the extent to which the proposed work is likely to foreclose on future alternatives, such as subsequent use of the same site for other purposes, or, the eventual necessary extension or reduction of a public works system because of the establishment of one particular component.

It is not necessary that each of the foregoing Guidelines be dealt with under a separate heading, provided that the requirements of all Guidelines are met within the report.

It should be noted that American judicial experience has shown that Reviews deemed "adequate" by the courts have ranged from six to three hundred pages, depending on the scope and projected impact of the proposed public work.

The previous Guidelines will determine the content of the DRAFT form of the Environmental Impact Review. This draft would be made public as an integral part of the Review Process, for comment from concerned parties. The final Guideline then becomes:

.....

10. RESPONSIVENESS

THE FINAL ENVIRONMENTAL IMPACT REVIEW SHALL CONTAIN SOME CONCRETE INDICATION THAT SUBSTANTIVE SUBMISSIONS IN RESPONSE TO THE DRAFT FORM HAVE BEEN CONSIDERED.

The provisions to the Council of both the draft Environmental Impact Review and responses to it, developed according to these Guidelines, would ensure that the decisions of Council were based on the most complete assessment of potential effects that the administration can reasonably provide.

* * *

EXISTING BUDGET PROCESS

PROBLEM DEFINED

alternative solutions considered

SOLUTION SELECTED

alternative designs considered

embodied in Estimates

Board of Commissioners

Committee on Environment | Committee on Works & Ops. | Committee on Finance

EXECUTIVE POLICY COMMITTEE

1 receives recommendations on Estimates from three Standing Committees

2 receives Environmental Impact Review

3 reports to Council on Environmental Impact

4 recommendation to Council on proposed public work

COUNCIL

RECOMMENDED REVIEW PROCESS

All formal proposals to undertake public works are compiled into a list.

Review Committee forwards list with recommendations on significance.

Board of Commissioners

Executive Policy Committee makes decision on significance.

significant proposals | not significant

Environmental Impact Review prepared.

Review Committee determines adequacy of report.

Board of Commissioners

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