

International and National Governance

Environment on Trial

[Comment 1] INTRODUCTION

Environment on Trial was originally intended to help ordinary people, with little understanding of our legal system, to understand how that system works and to enable them to use the existing laws and administrative structures to protect the environment. The purpose was both to explain the existing laws and how ordinary citizens could use them, and to explain how and why our laws and administrative arrangements were failing to protect the environment and to suggest what changes were needed to make them more effective.

Although EOT was aimed at the ordinary citizen, it became a standard textbook, used in university and community college courses on environmental law and policy and other areas of environmental studies. To our surprise, it also became an important reference book for lawyers, planners, consultants, and government officials. Today, dog-eared copies of the first two editions can still be found in many law libraries, government offices, and on the bookshelves of corporate executives, engineers, and others involved in the growing environmental protection industry.

There have been continuing requests for a new edition to reflect the extensive changes in environmental law and policy since the 1978 edition of EOT.

In this third edition, we have made some significant changes. There is more of a balance between "global" and "local" environmental issues. For example, there is much more emphasis on international law, an aspect of the legal framework for environmental protection largely ignored in the first two editions. Moreover, as the new subtitle indicates, there is more emphasis on government policies than in previous editions. EOT is now a book about environmental law and policy, not just law.

In addition, as a result of my experience teaching environmental law at the Institute for Environmental Studies of the University of Toronto, I have reorganized the book to make it a more useful teaching tool.

Recognizing that EOT has a much wider audience than the general public for whom it was originally intended, we have also structured it to be more useful to lawyers, environmental protection practitioners, and academics. We have tried to keep the text

clear and simple; but it is heavily footnoted with information needed to make the book a useful reference book for the environmentally sophisticated reader.

We hope that this edition of EOT will be as successful in meeting these more ambitious goals as earlier editions were in meeting the needs of their time.

A glance at the table of contents will show that EOT has also been expanded to cover many more topics than past editions. New chapters include Biotechnology, Wildlife, and Wetlands. The scope of chapters that were in previous editions has been expanded to cover many additional topics. For example, the Noise chapter has been expanded to include vibration; the chapter on Air Pollution now includes a discussion of indoor air quality; the Evidence chapter now also discusses hearing procedures.

Nevertheless, limited resources did not permit us to cover every significant topic. There is no chapter on forest preservation, soil conservation, preservation of agricultural lands, energy conservation and the regulation of energy, emergency response, or environmental law enforcement. The regulation of toxic substances, and in particular the role of the Canadian Environmental Protection Act and the Transportation of Dangerous Goods Act, are not extensively discussed, except in the context of specific issues such as air pollution, water pollution, and noise.

However, there is a growing body of literature on individual issues in environmental law and policy. For some of these topics, other books and studies are available, some of them published by the Canadian Institute for Environmental Law and Policy.

Given limited resources, the emphasis in this book is necessarily idiosyncratic, reflecting the interests and knowledge of the editor and the contributors. Despite the omissions, we can say without fear of contradiction that *Environment on Trial* is still by far the most comprehensive text on environmental law and policy in Canada.

Although this edition of *Environment on Trial* is intended to be as much a teaching tool and a useful reference book for environmental practitioners as a handbook and a call to arms for ordinary citizens, it is important that we not forget the legal, policy, and institutional failures that made this book necessary in the first place.

Helping people to understand and apply their democratic rights and encouraging reform of our laws and institutions remain fundamental purposes of this book. Although there are now many more policies, laws, and institutions devoted to regulation of activities that impair environmental quality than in 1974, many of the concerns and criticisms expressed in the foreword and introduction to the first edition are just as valid and pressing today as they were almost two decades ago. Our institutional arrangements for protecting the environment, public health, and the rights of ordinary people to enjoy their homes and surroundings have improved, but these improvements have not kept pace with the destruction of the environment. Planning processes still largely reflect short-term concerns at the expense of long-range considerations. Regulatory institutions still mirror political boundaries rather than ecosystems, making an "ecosystem" approach to planning and regulation difficult, if not impossible.

Nor has the attitude of government agencies towards citizens trying to obtain information and to enlist their help in protecting the environment fundamentally changed. A letter to the editor in the *New York Times* once tried to explain the difference between Canadians' and Americans' relationships with their respective governments: "In the United States, people hate the government. In Canada, the government hates the people." Unfortunately, our institutional arrangements and the behaviour of our public servants all too often suggest that there is a grain of truth in this pronouncement.

There may be many reasons why public servants and politicians have not become more open and responsive to the concerns of ordinary people. The "capture" of regulatory agencies by the industries they are supposed to regulate may be one. A natural reaction to the distrust in them that citizens often exhibit is another. However, one of the most important reasons for government agencies and government officials locking their doors against involvement by concerned citizens is simply their lack of resources. When the agencies charged with environmental protection have insufficient resources to collect baseline data, carry out needed research, inspect facilities, or enforce the laws, the last thing they may want to do is spend any of their budget or their time

listening to the public.

Most of the changes in our laws, policies, and governmental institutions over the past two decades have been designed to enhance the discretionary powers of government officials to take action - if and when they want to. Few of these changes have imposed duties on government or empowered citizens. The effectiveness of freedom of information laws is often thwarted by the civil servants who administer the legislation. Lack of resources is in large part responsible for the frustration and siege mentality of some of our public servants, which fosters their resistance to cooperation with the citizenry.

At the time of writing, Ontario is considering passing an Environmental Bill of Rights - an initiative advocated in the first edition of this book, back in 1974. However, many of the "rights" in this Act will still be discretionary, and the only right citizens will have to ensure that the Environmental Bill of Rights is implemented is a right to complain to yet another bureaucrat - the Environmental Commissioner. This approach is understandable. In the end, in a democracy, the elected officials must have the last word on many matters. Moreover, the government intends to apply this Bill of Rights initially only to a few of its Ministries. Once again, government urges us to trust that the Bill will eventually be extended to other government agencies. Again, gradual implementation is understandable, given the natural tendency of people and organizations to resist dramatic change in the way they operate and the limited resources available to the government.

However, it is important the public monitor closely the implementation of the Environmental Bill of Rights. Experience with broken government promises to extend the Environmental Assessment Act to more than a small fraction of the environmentally significant undertakings in Ontario raises questions about whether there will be more than token implementation of the Environmental Bill of Rights.

As the plethora of environmental laws, policies, and environmental protection agencies discussed in this book demonstrates, we have come a long way since 1974. But we still have a long, long way to go before our governments are as responsive to environmental concerns as they are to economic concerns and proponents of development. Therefore, helping ordinary people fight for their rights and encouraging reform of our laws and institutions remain fundamental goals of this book.

John Swaigen

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[COMMENT1]

Incorporating Kathy Coopers and Ted Manzig's comments Oct 18/92, and also Al Potters' comments Nov 4/92. EOTINTRO.4 is a page-numbered version of EOTINTRO.3 (no other changes).