

ENVIRONMENTAL APPROVALS IN CANADA: PRACTICE AND PROCEDURE. By Michael I. Jeffery. Butterworths, 1989. Pp. n/a. (\$125.00).

In a volume that reached this reviewer's desk somewhat hesitantly identified as "Issue 0", Michael Jeffery has embarked upon an ambitious and important project. ENVIRONMENTAL APPROVALS IN CANADA is impressive in its initial form and clearly has the potential to become a most valuable sourcebook on environmental decision-making across Canada.

Perhaps it is worth recalling that the past year has been a remarkable one in the environmental assessment field. Court judgments have enhanced the authority of the federal environmental assessment and review process.¹ A provincial premier and the federal Minister of the Environment have presented their views on environmental assessment to the public and to each other in the form of affidavits. Federal and Quebec officials have clashed in a vigorous interjurisdictional contest to determine which government should have authority not to disapprove of the James Bay II hydro-electric power development proposal. Review panel members have resigned in protest against the apparent disregard of their efforts by public and private developers.

Several insightful recommendations about the environmental assessment process have also emerged in recent months. The Ontario Law Reform Commission (OLRC), for example, examined the issue of damages for environmental harm and endorsed the creation of a new civil remedy, "an award of damages payable to compensate the public for harm done to the environment, entirely independent of any damages payable for injury caused to individuals or corporations".² In the course of its work the OLRC analyzed several methods for evaluating environmental harm, reaching the conclusion that the courts' traditional reliance on market valuation has been unfortunate for "market valuation is usually inappropriate" in the environmental context and incapable of ensuring the ultimate goal of guaranteeing "the continued existence of our ecosystems."³

In a similar vein, the report of the Review Board on the Alberta-Pacific Pulp Mill proposal emphasized certain fundamental features of the approvals process, including impact assessment: "An important principle of environmental impact assessment is that the results of the environmental review must be able to influence the decision about the proposal".⁴ The essential corollary, of course, is that "[a]ny preliminary

¹ *Canadian Wildlife Federation Inc. v. Canada (Minister of the Environment)* (1989), [1989] 4 W.W.R. 526, 3 C.E.L.R. (N.S.) 287 (F.C.T.D.), *aff'd* (1989), 4 C.E.L.R. (N.S.) 1 (C.A.).

² Ontario Law Reform Commission, *Report On Damages for Environmental Harm* (Toronto: Queen's Printer, 1990) at 65.

³ *Ibid.* at 56.

⁴ Alberta-Pacific Environmental Impact Assessment Review Board, *The Proposed Alberta-Pacific Pulp Mill: Report of the EIA Review Board* by G. DeSorcy et al. (March 1990) at 75.

government approval must be understood to be approval only to proceed to regulatory review.”⁵

ENVIRONMENTAL APPROVALS provides an excellent survey of the regulatory review processes that might be applicable to a variety of proposed development initiatives. The volume begins with a survey of federal and provincial environmental regimes. The emphasis is on environmental assessment legislation, but other related regulatory requirements are also identified. In Chapter 1 each jurisdiction is treated in a basically descriptive fashion. However in several cases, Jeffery provides a historical account of the development of the present approvals regime accompanied by brief analytical observations of the perceived strengths or weaknesses of particular approaches. Footnotes direct readers to a range of additional sources of information including background studies, policy papers and academic commentary.

The second and third chapters address in detail the operations of Ontario's Environmental Assessment Board (EAB) and the procedures applicable to other regulatory approval hearings in the province. These chapters provide interesting information and insights into the evolution of Ontario's environmental decision-making processes over the past two decades. In addition, though, they introduce the conceptual and practical questions which have arisen under relevant legislation.

On the conceptual side, for example, the issues of what constitutes the “public interest” or what is envisaged by an “alternative to the undertaking” are introduced. These and related matters such as “need” are more fully considered later in the materials in a chapter entitled “Environmental Management Principles”. This discussion, grounded in decisions of Ontario's EAB and the Joint Board,⁶ brings together some of the theoretical considerations that have arisen in specific approval applications with the actual determinations of the tribunals.

On the practical side, the author makes observations about the problems of complex evidence, the function of cross-examination, and the technical question of what actually constitutes an environmental assessment document. The scheduling challenges associated with major hearings such as the Class Environmental Assessment of the Ontario Ministry of Natural Resources proposals for timber management are considered, and the “scoping procedures” developed by the Ontario EAB for its Timber Management hearings are included in one of the volume's valuable appendices.

A chapter on various approaches to intervenor funding traces the history and rationale of this initiative in several jurisdictions. Legislative and regulatory developments are discussed alongside *ad hoc* executive action and the reaction of courts to costs awards by tribunals under several different statutory regimes. Environmental management princi-

⁵ *Ibid.*

⁶ Joint Board meetings are held by mixed panels whose membership is drawn from both the Ontario EAB and the Ontario Municipal Board under the *Consolidated Hearings Act*, S.O. 1981, c. 20, s. 3.

ples are the subject of Chapter 5 where Jeffery revisits some of the underlying dilemmas of environmental assessment and offers his own views on the integration of many considerations in the approvals process:

The decision-making process is not based solely upon the technical components of a particular application presented by knowledgeable expert witnesses in an adversarial arena, but also involves the assessment by the panel of views expressed by the public as well as a myriad of other concerns, culminating with an overall conclusion by way of a decision as to whether the proposed undertaking is or is not environmentally suitable and in the public interest.⁷

A final chapter entitled "Future Directions" identifies a series of recent and proposed initiatives from several jurisdictions. Procedural experiments are described here together with the use of criminal law, mediation and economic incentives as alternative approaches to environmental protection.

As this brief survey of the chapters will have indicated, the comprehensiveness of coverage makes the volume far more useful than its title alone might suggest. The challenge then facing readers is to find relevant materials most effectively in a growing body of potentially relevant information. Basic assistance is readily available in detailed tables of contents, of statutes and of cases, as well as in the index. It would be difficult, however, using the existing index to locate the discussions of scoping, of the federal environmental assessment and review process, or of EAPIP, Ontario's Environmental Assessment Program Improvement Project. With continuing refinement such minor limitations can easily be remedied. Let us hope that updates and additions do indeed take advantage of the solid foundations laid in "Issue 0".

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⁷ P. 5.28.

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