

***Environmental Assessment Law in Canada*, D. Paul Emond, Toronto: Emond-Montgomery Ltd., 1978. Pp. viii, 284. \$30 (hardback).**

As Professor Emond states, "Environmental Impact Assessment as a decision-making process is emerging as the most important innovation in the environmental law field."¹ This is ample justification for a book devoted to the subject. This is the first Canadian text in the area. It provides not only an excellent overview of the process in Canada, but also a detailed, critical analysis of the (Ontario) *Environment Assessment Act*² and the Federal Environment and Review Process (EARP).

The book is divided into six chapters followed by six appendices containing useful information. It contains several flow charts which are helpful as an introduction for the reader into the somewhat complex maze of procedural steps in the different assessment processes. Also valuable is a list of acronyms which need to be mastered if one is to understand environmental impact assessment.

The introductory chapter examines the nature of environmental impact assessment (EIA). Basically, it is a decision-making model which is designed to ensure that the environmental impact of new proposals is taken into account at the earliest stage of the planning process.

The framework questions for any EIA process are:

1. What should be assessed?
2. What should the document contain?
3. Who should do it?
4. Who should determine its adequacy?
5. Who should review it?
6. What role is there for judicial review?

The Federal government, and any Provincial and Municipal governments that have introduced an EIA process have all been confronted by the above questions. Professor Emond argues that the manner in which these questions have been answered has determined the weaknesses and strengths of the different procedures.

The author's careful analysis of the decision-making model makes it clear that review of the EIA for the purpose of deciding its adequacy is a step which is technical in nature and can be determined by objective

¹Emond, at 7.

²S.O. 1975, c. 69.

criteria. On the other hand, the review for the purpose of determining the suitability of any proposed undertaking is a policy decision based on a value judgment.

He argues that technical considerations should be left in the hands of an independent expert, while the policy should be entrusted to those who are accountable to the electorate. He makes it clear that failure to differentiate between the two steps has frustrated many EIA procedures by leaving policy with independent experts and technical questions with the Cabinet. A further consequence of this mixture of technical and policy considerations has been ineffective public participation. It would seem that adjudicative style hearings are better suited to technical questions whereas policy questions require a different format. He concludes that after looking at public participation "... in the context of Canada's environmental assessment procedures, it seems clear that none of the procedures have given the question much attention."³

Chapters two and three provide an analysis of the (Ontario) *Environmental Assessment Act*,⁴ which is the only EIA procedure in Canada within a legislative framework. As the legislation is new, its full impact has not been tested. However, Professor Emond carefully and critically examines both the workings of the Act and the role of the Independent Environment Assessment Board in light of its record to date, and offers some useful precedents from the United States which could be implemented here. These two chapters offer helpful insights for those who do, or will, come in contact with the procedure or the Board.

The author identifies the shortcomings of the Ontario Act, which he attributes to a lack of clearly enunciated policy toward EIA in the statute. He is particularly critical of the Act's failure to articulate the goals of EIA, and also its failure to delineate the allocation of decision-making responsibility between the independent expert Board and the Cabinet.

Chapter four examines EIA at the municipal level, which Professor Emond suggests may be the most worthwhile forum. This chapter introduces two case studies; first the EIA process under section 653 of the *City of Winnipeg Act*⁵ and second the EIA used for the Ontario Hydro Commission's Bruce to Milton transmission line.

Both case studies illustrate what can go wrong. The Winnipeg case demonstrates that even a legal requirement to conduct assessments

³Emond, at 24.

⁴*Supra*, footnote 2.

⁵S.M. 1971, c. 105.

locally can be subverted by administrative, political and judicial processes. The Ontario case shows what can occur when decisions are imposed from above without regard for the local component.

Chapter five examines the federal process, EARP. The shortcomings of the EARP process are catalogued in four case studies; the Point Lepreau Nuclear Generating Station in New Brunswick, the Wreck Cove Hydro-Electric Project in Nova Scotia, the Alaska Highway Gas Pipeline in the Yukon and the Eldorado Nuclear Uranium Refineries in Ontario.

The application of EARP to these projects illustrates that the process has limited application, inadequate mechanism for public participation, a lack of legal force and, worst of all, is a completely internal process.

Professor Emond explains that "[a]s the case studies are developed, two themes emerge. First, EARP seems to have been as bad as its critics have suggested. Secondly, the experience of almost five years under EARP has led to substantial, even dramatic, improvements in the way in which the Process is being administered."⁶

The author concludes that because EARP is not established within a legislative framework, it has little effect where a proponent agency is not willing to co-operate.

The final chapter draws the reader to the inevitable conclusion that "[t]he costs of assessment are high. Yet the costs of a faulty or shoddy assessment process may be higher. . . ."⁷

The reader is again reminded of the consequences of not founding EIA on a pre-announced policy, of confusing the roles of experts with those of policy makers, and of frustrating attempts at public participation. The author favours legislation but throughout the text he makes it abundantly clear that he is referring to effective legislation, not any legislation.

This book is timely. It comes when EIA is young enough to be re-modeled and old enough for the policy makers to know what re-fashioning is needed. This text will provide valuable insights for those who must work within the existing framework and, hopefully, guidance for those who seek to improve it.

⁶Emond, at 236.

⁷*Ibid.*, at 278.

Modestly, the author claims that the book is "more a how-to-do-it manual..."⁸ It goes much further, and indeed by relating past experiences, it explains how not to do it and why not. Certainly the book is critical and that is one of its great assets. It is constructive. It documents what went wrong, explains why and offers suggestions for improving each step of the process. Every reader will gain insight from the author's careful critique.

The book contributes much to this complex area, and is enhanced by its clarity of style, its helpful flow charts as well as its sound critical analysis.

It will attract a wide audience from those involved in environmental decision making. If you are one of them, don't keep it in the bookcase; read it!

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⁸*Ibid.*, at vi.

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