With the advent of industrialization, the developed countries of the world adopted an orientation toward resource development based on short-term material benefits without concern for long-term environmental or social effects. In the result, natural systems have been altered or modified by technologies which have failed to recognize the value, complexity and interrelatedness of such systems with the social and physical environments.  

The negative impacts of these patterns have been oftimes attributed to the nebulous evil of "big business"; in fairness, however, industry has merely represented the prevailing social goals which, until fifteen years ago, stressed economic growth as a priority.

By the 1960's the cumulative effects over one hundred years of development orientation became evident in vivid examples of environmental degradation. Coupled with changes in the economic context, a general consensus emerged that "something (was) wrong" although "there (was) no historical precedents to learn from".

The move toward an environmental protection policy was precipitated by public opinion and activism which were present before legislative means

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2. Ibid.
The subsequent legislative response began with efforts to abate pollution after-the-fact. Progressively, legislation which followed addressed environmental restoration and finally, statutes to serve a preventative function were introduced.

The initial attempts at legislative reform, although meritorious as initial forays into the environmental management field, proved inadequate as a comprehensive response to the problem. To incorporate concerns regarding the interrelatedness of the natural!social!physical systems, in order to determine the long-range effects of development, it was necessary to establish "some type of objective appraisal of proposed developments before they (were) allowed to proceed, either as proposed or in appropriately modified form". It was in response to this policy direction that the environmental impact assessment process was created.

Environmental impact assessment is defined "as the systematic description, prediction, evaluation and integrated presentation of the environmental effects of a proposed action at a stage when serious environmental damage may be avoided or minimized, using systematic, interdisciplinary analysis, and in consultation with affected interests." As a planning and information tool, environmental impact assessment (EIA) applies not only to the preferred course of action but to all possible development alternatives. Thus, in going one step beyond the mere documentation of the inevitable effects of one scenario, the decision-maker is presented with a critical, comparative assessment of each alternative in terms of impact magnitude. The resulting input is not only technical in nature, but incorporates "an interrelated set of concepts, methodologies and philosophies." The assessor must therefore expand his consideration beyond traditional analysis to examine environmental quality along with other economic and internal (in terms of the proponent's perceived goals) concerns.

Considering the nature and purpose of environmental assessment, it is understandable and indeed appropriate that mineral resource development should fall within the ambit of any policy or legislation which is set forth in this country. It is the purpose of this paper to review the legislative framework of environmental assessment at the federal and provincial levels of government and the applicability of the process to the mining resource.

3. Witness by way of example, the Spadina Freeway Expressway controversy in Toronto, the Churchill Falls project in Newfoundland or the Village of Lake Louise proposal in Alberta, all of which were halted or delayed by public opposition and action. For further information see, Dr. H. Duckworth, "Introduction," in Proceedings of the Environmental Protection Board Workshop on the Philosophy of Environmental Impact Assessment in Canada, (1973) p. 7.
7. T. Owen, supra, note 1 p. 9.
development proponent. Ultimately the, relative success (or failure) of the process in terms of environmental management objectives may be addressed.

To facilitate this end, the paper will concentrate on the Environmental Assessment Acts of Saskatchewan as a typical provincial legislative effort. This particular province has been chosen due to the relative youth of the statute and the effort by the province to incorporate and refine the policies and approaches of other provinces. As well, the Saskatchewan legislation, unlike some other jurisdictions such as British Columbia and Nova Scotia, has incorporated EIA requirements within a single piece of legislation, passed solely for the pursuit of EIA objectives. In the result, the extent of the EIA process's application to mining development as compared to other industries is readily assessible.

Direct federal involvement in the mineral resource development area has been confined in Saskatchewan to the uranium industry and to the Hudson Bay Mining and Smelting Co. mine at Flin Flon. The constitutional justification for the former has been established on the basis of the peace order and good government clause of the Constitution Act, 1867 which justifies federal activity in this, an area of concern to the nation as a whole. Furthermore, the regulation and domestic control over the industry has been further necessitated by the international participation by Canada in the civilian uses of atomic energy. Finally, through section 17 of the Atomic Energy Control Act,10 the production, use and application of atomic energy works have been designated for the general advantage of Canada; a valid declaration under s. 92(10)(c) of the Constitution Act, 1867.11

By virtue of the nature of the operation, the Flin Flon "invasion" into a primarily provincial area of jurisdiction, is justified by section 92(10)(c) as well. The works in this case are to the advantage of two or more provinces simply because the operation of the mine extends beneath both the province of Saskatchewan and Manitoba - a necessity to proper resource exploitation.12

As a direct consequence of this limited, although not insignificant jurisdiction, the federal government's role in EIA must also be considered as by definition, the Federal Environmental Assessment Review Process applies to projects initiated by federal departments or agencies, proposals which are federally funded, or projects to be located on federal property. "Proprietary Crown Corporations and regulatory agencies are invited, rather than directed to participate."13 Certainly uranium development and Flin Flon may well fall within this broad sphere of application.

8. S.S. 1980, c. 10.1. [hereinafter referred to as the Act]
9. This is not to imply that particular reference will not be made to other provinces. Indeed, such references will be made throughout the work to highlight the general thesis.
A. General Background

In 1972, when Environment Saskatchewan\(^{14}\) was created, the mandate of the Minister included the authority to demand data on the locale surrounding the project, and if the Minister so desired, outlined the possibility of a formal investigation (including public hearings) into the effects of any development on the physical and social environments\(^{15}\) from development proponents.

It was on this basis that Saskatchewan's Environmental Impact Assessment foundations were based and subsequent Draft Saskatchewan Environmental Impact Assessment Policy & Guidelines were released.

In reality then, the Environmental Assessment Act, proclaimed in force August 25, 1980 marked a third stage of environmental impact assessment implementation in the province of Saskatchewan rather than an introduction of this planning tool. Since inception of the process, mineral resource developments have been included within the scope of E.I.A.

Unfortunately as Ian Rounthwaite has outlined in his critique of the Saskatchewan Act,\(^{16}\) the provincial legislation has not included any statement of purpose. In terms of decision-making, this is unfortunate,

Legislative intent may also prove helpful to a decision-maker who is faced with the difficulty of quantifying environmental values identified by the environmental impact assessment document. If environmental assessment is a refinement of the traditional cost benefit analysis of decision-making, environmental values must be quantified to the best of the decision-maker's ability and brought into the balance.\(^{17}\)

From the perspective of the proponent and other interested parties, the failure to include a statement of purpose results in uncertainty: within what broad objectives will the project relevance be considered? The uncertainty makes the implementation of the Act much more vulnerable to Ministerial whim; leaving a proponent in the game but unsure of the rules. Some "clues" as to the objective direction of the legislation may be found within the definition section of the Act. "Environment," as defined in the statute,\(^{18}\) encompasses not only the natural or biological environment but includes as well consideration of "the social, economic and cultural conditions that influence the life of man or a community insofar as they are related to the biological environment".\(^{19}\)

Similarly "development" has been defined in the Act as any project activity or operation (or expansion thereof) likely to:

\begin{itemize}
  \item[i)] have an effect on any unique, rare or endangered feature of the environment;
  \item[ii)] substantially utilize any provincial resource and in so doing, pre-empt the use, or potential use, of that resource for any other purpose;
  \item[iii)] cause the omission of any pollutants or created by-products, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;
\end{itemize}

\(^{15}\) Ibid., s.10(h).
\(^{16}\) Ian Rounthwaite, "Legislative Notes: The Saskatchewan Environmental Assessment Act," 45 Saskatchewan Law Review 335.
\(^{17}\) Ibid., p. 338.
\(^{18}\) Act, s. 2(c)(iii).
\(^{19}\) Ibid.
iv) cause widespread public concern because of potential environmental changes;
v) involve a new technology that is concerned with resource utilization and that may induce significant environmental changes;
vi) have a significant impact on the environment or necessitate a further development which is likely to have a significant impact on the environment.20

Potentially, the scope of the definition encompasses all sizeable projects undertaken in the province and would include mining extraction and refinement, as such projects are "likely to" satisfy several of the criteria articulated in the section. However, Saskatchewan Environment recognized that "not all projects are of such magnitude that full scale assessments of environmental effects are necessary".21 Thus our proponent is once again plagued by uncertainty.

The federal Environment Assessment and Review Process (EARP) on the other hand, was instigated by a Cabinet decision on December 20, 1973, later amended on February 15, 1977.22 Although Cabinet directives do not have the force of law, "they do illustrate Cabinet support for the general principles of environmental assessment"23 insofar as federal programs, activities and projects are concerned. In reality; since the inception of the process in 1974 "EARP has become the principal means by which the federal government evaluates the ecological and to a large extent the social, economic, and technical impacts of development projects."24

Pursuant to the directive, the Minister of the Environment, with the cooperation of the other Ministers, was to establish a process whereby federal departments and agencies could ensure:

1) that environmental matters were considered at the planning stage of new activities, projects and programs.
2) an environmental assessment would be carried out and formally reviewed by FEARO (Federal Environmental Assessment Review Office) in the case of all projects with potentially adverse or adverse environmental effects before any irrevocable commitments or decisions were made.
3) environmental assessment results would be used in planning decision-making and implementation.25

"... The present EARP springs from (these) flexible guidelines provided by Cabinet and evolution through implementation for (almost) six years."26

B. Initial Requirements

EARP consists of three possible phases; the screening phase, the initial

20. Act, s: 2(d).
environmental evaluation and the formal assessment stage.

The screening phase involves determination made by the proponent department as to whether or not the project has any potential significant impacts. The determination does not necessarily involve any participation by the Federal Environmental Assessment and Review Office (FEARO), although their expertise is made available. Thus we are faced with a self-assessment approach wherein, theoretically at least, the proponent can simply choose not to submit the project to scrutiny by maintaining there are no adverse effects.

The "danger", if you will, rooted in the self-assessment approach is that a department may have "certain goals and exigencies that motivate even the best intentioned of individuals, which may conflict with the aims of e.a."27 Thus the problem may lie in that which the public may perceive as "significant" differing drastically from the interpretation of the department.

Similarly, the term "significant" has not been determined solely on the basis of environmental effects at the federal level.

In the self-assessment phase of the Process, technical and scientific experts within the department initiating the project have this responsibility and must take into account, not only technical information and data, but also the project's potential for causing public concern. In other words, what may not be significant in a purely scientific way, may be significant to those living in the area of the project for another reason . . . Public reaction is a major factor in determining significance . . .28

Unfortunately, such concerns can have a negative impact on the environmental significance of a project, in that the consideration becomes the effects on the natural environmental as compared to the social, political, economic, and cultural environments.

This is indeed placing the cart well before the horse: is not the purpose of environmental impact assessment to determine the effects on the various environments and make the necessary information available to the decision-maker, who then determines the appropriate trade-offs? It is only when the process of assessment has been completed that an informed decision can be made; not at the pre-screening stage when so many unknowns remain.

Although DOE officials do not deny that this pre-emptory situation exists they maintain that there are several factors which keep the initiating departments relatively objective in their pre-screening decisions.29

Firstly, if the initiator determines that a project has no significant effects (for whatever reason) and another department or the DOE would maintain otherwise, the decision of the initiator is subject to review. Usually this review consists of discussion at the Cabinet level between the Ministers concerned.30 Unfortunately, although this may reduce the level of departmental self-interest, there is no guarantee that tradeoffs will still not take

27. Emond, supra, note 23, p. 220.
29. Ibid.
30. Ibid.
place at the Cabinet level; once again the question of relative department strengths come to the fore.

Secondly, the DOE maintains that since federal and provincial legislation must also be addressed, any proponent who "exempts" himself from the process may later find further barriers. To paraphrase a DOE official, "We can bring in EARP and not call it EARP - the intent of the process can be reflected through other legislation." If this were so, one can only question the necessity of EARP in the first place? Although other legislation may provide standards for development, it is only the environmental impact assessment which allows the government to entertain the "no-go" option on the basis of a holistic analysis of the project. Legislation may well supplement EARP; however, the mitigation-orientation of these statutes cause them to fall short of environmental assessment.

In terms of uranium, the high profile which the development of this resource has maintained, realistically predetermines the question of potential significance. However, it is interesting to note that EIA jurisdiction has been divided between the two levels of government: the federal government has addressed the refining stage, while the province has taken primary responsibility for EIA application to primary extraction projects. With both efforts, participation by the complimentary level of government is encouraged.

Realistically then, any federally sponsored uranium refinery will move to the second state of EARP, the initial environmental evaluation (I.E.E.). The I.E.E. refines the nature of potential impacts to determine the degree and mitigability of impacts. As a result, four possible conclusions may be reached by the proponent:

1) the project has no adverse effects, if so the role within EARP ends and the project continues subject to other regulatory and legislative requirements.
2) the project has some adverse effects which the initiator feels can be mitigated without the necessity of further EARP supervision.
3) the project has adverse effects, the extent of which cannot be adequately determined at the preliminary stage.
   — an i.e.e. (initial environmental evaluation) is undertaken to provide a more comprehensive investigation and on the basis of this input course 1, 2 or 4 is followed.
4) the project effects are determined to be significant and the proponent approaches FEARO to establish an Environmental Assessment Panel (E.A.P.) to review the project.

In practical application of the process, the E.A. Panel route is most often pursued with projects of great social and/or political importance where the Panel can assume a mediatory role. The I.E.E. alternative is a more solution-oriented process for the resolution of scientific/technical problems.

The Panel, appointed by Federal Environmental Assessment and Review Office is an independent 5-7 person body chosen on the basis of their par-

31. Ibid.
32. Environmental Assessment Panel, Guidelines for IEE (October 1976), p. IV-V.
ticular expertise and objectivity associated with this specific proposal. Membership may be drawn from the public or private sectors. It is the Panel which supervises and assesses the proponent's environmental impact statement preparation and review and makes final recommendations to the Minister.

Once an assessment has been determined necessary, the federal project may not proceed until the review by the E.A.P. is completed and the Minister of the initiating department has decided on an appropriate course of action based on panel recommendations.

On the provincial level Saskatchewan officials have maintained, "project proponents should have available to them clear guidelines to indicate what is required of them" not only in the event of full E.I.A. but also during initial dealings with the department in determining whether the proposal lies within the scope of the Act.

The preliminary and overview stage in Saskatchewan, referred to as the "Screening Procedure," has articulated the steps whereby the assessment/no assessment decision should be reached. The initiator of a planned mineral resource development which "could" (in the proponent's opinion) be a development is requested to submit a proposal to Saskatchewan Environment. In turn, the proposal is examined by the department in terms of the "likely to" criteria of s. 2(d).

To facilitate this decision, the proposal is expected to provide a clear, concise and complete description of:

- the physical aspects of the project
- a justification for the project
- project location and construction timetable
- operation and maintenance of the completed project
- identity of the project proponent and contractors
- manpower, economic and other resource needs during pre/construction/post stages
- product and waste management and disposal
- associated or/and ancillary projects
- special risks or hazards and associated contingency plans
- existing or associated works in existence or pre-requisite to development
- plans for abandonment including reclamation plans

In addition, proponents are encouraged to include general information and a brief description of the alternatives which were considered and their reasons for rejection.

Obviously then, we are dealing with proposals which have advanced to some concrete plan. Nonetheless, the very essence of the E.I.A. process involves consideration of alternatives, including a no-go option, or at a

33. Supra, note 21.
34. For the moment, "project" shall be synonymous with undertaking, activity or program.
36. It is noteworthy that the Ontario Environmental Assessment act R.S.O. 1980, c. 140, s. 1 includes within its scope, "an enterprise or activity or a proposal, plan or activity", thus widening the criteria of possible E.I.A. study.
minimum, integration of modifications to any development to mitigate negative impacts. Thus, to perpetuate the metaphor, the form should be described in the proposal but the concrete should not be poured.

The realities of the proposal submission requirements differ from the scheme of the Act insofar as public participation is concerned. Within the legislation, it would seem that notice to the public is the responsibility of the Minister when he "becomes aware that an assessment is about to be conducted;" the Act makes no provision for public input at the proposal stage. This is unfortunate for two reasons: firstly, it is conceivable the public would be unaware of a proposal until after the assessment/no assessment decision had been reached - and then only if the assessment decision had been reached. This may be especially true in the case of mineral resource developments in isolated locations, wherein feasibility studies and exploration may take place, literally, beyond public view. Valuable information from interested parties, which may well have influenced the decision, may not be included in the proposal. The citizenry, presented with a fait accompli outlining that an assessment is not necessary, are left without a mechanism for review within the Act.

On the other hand, should a proposal be designated a development and thus subject to environmental assessment, the public may become aware of the project well into the process, necessitating a catch-up in existing information assimilation and possible increased time constraints on public input.

Second, and more importantly, the definition of development includes those projects which are likely to cause widespread concern with respect to potential environmental changes - without public consultation prior to the submission of the proposal it is understandable that concern is not evident. After all, what one doesn't know of can hardly be the object of concern. Surely the definition itself dictates some degree of public input prior to the development/not a development determination.

To the credit of Saskatchewan Environment, proposal guidelines state:

Proponents are urged to establish early contact with the public and with local government officials in all jurisdictions which could be affected by the proposed project, or any alternative being considered, to inform them about the planned project and seek their reaction to it. The extent and outcome of all such contacts should be reported in the project proposal. (emphasis mine).

In spite of this "urging", however, E.A.S. officials concede that they would not reject a proposal on the basis of no public input. As a matter of practise, the question is internalized by the E.A.S., i.e. "Is this (in our opinion) the type of project which would generate concern?" A functional alternative at best.

Other questions have arisen regarding the strict interpretation which has been placed on other criteria in s. 2(d). For example, does "new technology"
in s.2(d)(v) refer only to the "new" in terms of never before utilized or a new technology to the province? The restricted interpretation of these subsections may have initially been justified as a means of phasing-in the legislation and adjusting necessary manpower requirements; however, three years down the road it is necessary to give a more liberal interpretation to these sections.

Once the necessary preliminary information is submitted in the project proposal, the Environmental Assessment Secretariat\(^40\) identifies the environmental impacts of the proposal - not the proponent. Other affected agencies and departments review the proposal, and "occasionally"\(^41\) members of the public also supply input. In regard to the latter, the proponent may submit a confidential section of his proposal should it be anticipated there will be public scrutiny.

Co-existent with the individual proposal review, the Environmental Assessment Secretariat has outlined a second set of criteria employed in the assessment/no assessment process. In so doing, the E.A.S. has eliminated a degree of subjectivity inevitable in such a designation. By providing a preliminary list of projects which as a rule require assessment, the initiator and interested parties may anticipate application of the Act to their project - although the department stresses it is not a conclusive designation.

To explain, activities on the list are classified as a project "type". Type I projects are those which will most likely require an E.I.A. In this case, the proposal is not so much to determine the necessity of an E.I.A. but to determine the scope of the assessment.\(^42\) This designation includes the development of mines for metals and minerals and any processing or refining plants related to such raw materials, oil refineries or upgrading plants, coal gasification and liquefaction projects, and strip mining.\(^43\) Notably, project size is not relevant, at least in the initial designation. To date, all proposals of the Type I designation have, in the opinion of the E.A.S., required an environmental impact assessment. In fact, all variances with the type designation have involved scaling projects up (and thus requiring an E.I.A.) rather than down.

The second project Type II may require an E.I.A. - the proponent who falls within this grey area should submit a proposal to the E.A.S. In terms of resource development, this type includes major metal or industrial metal mining expansions, processing or refining operation expansions, high density oil and gas fields,\(^44\) expansion or development of gravel, sand or clay extraction areas located within ¼ mile of surface water or a shallow well, projects where dewatering is necessary or operations over 50 acres in size.\(^45\)

Type III are those projects which are not likely to require an E.I.A. and

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40. Hereinafter referred to as the E.A.S.
41. Proposal, p. 3-4.
42. Ibid., p. 7.
43. Ibid., p. B-6.
44. High density oil and gas fields being defined in the type listing as areas where spacings are less than 16ha or 40 acres.
45. See Proposal, p. B-6 for a complete list of Type II projects.
thus a proposal is not usually necessary. Feasibility studies and explorations are included in this designation, as are clay, gravel or sand extraction areas which do not meet any of the specific criteria outlined in type III.46

The type classifications have been based on "a general appreciation of kinds of environmental concerns which have been raised in the past about similar projects in Saskatchewan and in analogous situations elsewhere". 47

**General Guidelines** aside for the moment, s. 8(3) of the Act specifically provides that no Ministerial approval is necessary (subject to regulation) to conduct feasibility studies which include research and exploration. At the time of proclamation of the Act, Ian Rounthwaite questioned the potential shortcoming of this statement when a proponent has used methods in his feasibility study which may themselves have warranted assessment due to potential impact. 48 From the proponent's perspective, what constitutes a feasibility study as opposed to the commencement of development? Since the former is not defined in the Act nor regulation, the proponent is unaware of the line between the two but is nonetheless liable should a court determine he has crossed the line. 49

The regulation, contemplated in s. 9(3) is necessary to articulate the parameters of feasibility studies as well as define the limits on potential impacts which may be anticipated within such studies.

The resource development proponent should view his project in light of both the section 2(d) criteria ("could") and the type classification. Should the activity not fall within any specific "type", the general criteria are the determining factor.

Notice of the E.A.S.'s screening determination is forwarded to the proponent, generally within forty-five days of receipt of a satisfactory proposal. At this point, should an E.L.A. be recommended, the public is notified. In this regard, the proposal should include a contact person for public inquiries and general liaison. 50 If an assessment is not necessary in the opinion of the E.A.S., the proponent must of course comply with all other licensing and regulations pertaining to the project.

C. **The Environmental Impact Statement**

Once the need for an assessment has been determined pursuant to the provincial statute, in accordance with section 9 of the legislation, the proponent is to conduct an E.L.A. of the development pursuant to the regulations, and submit an environmental impact statement to the Minister. Costs of this study are borne by the proponent.

Unfortunately for both the proponent and other interested parties, the provincial Act is silent as to the required scope and content of an environmental impact statement. Once again, uncertainty and policy swings
remain distinct possibilities without some articulation of a minimum standard within the primary or subordinate legislation.

In lieu of a minimum legislative standard, the proponent is guided in his assessment by General Guidelines for the Preparation of an E.I.S. 52 Such guidelines are often supplemented by site-specifics developed by the E.A.S. in consultation with the proponent and an Interdepartmental Review Panel. This Panel consists of representatives of departments affected by the particular development and maintains an advisory role throughout the assessment process—determining as well the adequacy of the E.I.S. The fluid composition of the Panel is considered an advantage: for example, in the case of overlapping federal/provincial jurisdiction, Environment Canada may be represented on the Panel to assure the proponent will address relevant federal concerns.

Both the General Guidelines and site-specific guidelines lack the force of law. It is surprising that the General Guidelines have not been incorporated into regulation, as a minimum.

Saskatchewan Environment anticipates that preparation of the E.I.S., "depending on the type of project and the availability of existing information on the area to be affected by the development”, 53 may take from three months to two years. In the mining-related assessments, the time for E.I.S. preparation has varied greatly. Field investigations in more isolated locations, for example, may require extra time; in such cases "[p]roponents who undertake such detailed assessments should submit progress reports to Saskatchewan Environment". 54

The possibility of a two-year time-frame for preparation of an E.I.S. alone, that is, without the review, decision-making, and if approved, the implementation stages, has led to the incorporation of the section 4, exemption into the Act,

Where in the opinion of the Lt. Governor in Council there is an emergency, he may exempt any development, any class of developments or any proponent application of all or any part of this Act or the regulation.

To date, the one development which has been exempted in Saskatchewan using this emergency criteria directly related to resource development:

This project involved the temporary diversion of water to supply a lake which served as a reservoir for hydro-electric station. This hydro-electric station served as the main source of electricity for the community of Uranium City in Northern Saskatchewan as well as for the Eldorado Uranium Mine and Milling Operation in the immediate area. This area of the province is not on any other power grid; therefore, if the water diversion was not allowed to take place to ensure an adequate water supply for the power station the Eldorado mining operation would have been forced to either shut down over winter or drastically reduce their production. Such measures would have resulted in a significant lay-off of workers which in turn would have a serious economic impact on Uranium City.55

53. Ibid., p. 2.
54. Ibid.
55. Correspondence with author, R.J. Quinn, Research Officer, Saskatchewan Environment, March 21, 1981.
The section is of very limited application; granted the discretion remains with the Lt. Governor in Council in the ultimate determination of an emergency, however, the decision-maker would be hard-pressed to justify his exemption with this high standard. In juxtaposition, the Ontario Environmental Assessment Act, section 30 permits the Minister to exempt if the designation would, in his opinion, be "in the public interest". To say that the exemption section has been often used is an understatement; indeed, critics of the rampant use of this section have dubbed the Ontario legislation the Environmental "Exemption" Act. 56

Due to the standard which the first exemption "emergency" has set in Saskatchewan, potential for abuse seems very limited. As definition of the word implies, and the facts of the Uranium City case would bear out, the grounds for emergency would be "a sudden and unexpected turn of events calling for immediate action".57 It is arguable that construction expediency (often the grounds for an exemption in Ontario) will not be sufficient cause; the element of unforeseeability and the need for an immediate response to relieve the problem being a prerequisite. Although in the Uranium City case, the justifications for the exemption were economic and social in nature, and thus a prioritizing of development concern necessarily took place -- once again, it is reasonable to point out that the term "emergency" ensures that the level of non-environmental concern must be sufficiently greater than under normal circumstances.

The General Guideline requirements for a E.I.S. content are very similar to the practise in Ontario. Notably, however, Ontario has incorporated these requirements within the Act58 while Saskatchewan's content remains an administrative concern. The Ontario approach has worked quite successfully in this regard -- the general nature of the section facilitates flexibility for nuances of each development while at the same time outlines the general parameters of study for all concerned.

Examining the Saskatchewan Guidelines in specific reference to resource development statements,59 the proponent must begin with a project rationale.60

Secondly, the statement should include a project description which supplements, in scope and detail, the description included in the project proposal. In the case of a mine expansion, for example, details regarding mine size, production rates and lifetime, mining techniques, design and construction, waste management, radiation protection, manpower requirements, and other ancillary aspects such as mine access roads and aban­nonment will be demanded. In essence, the E.A.S. looks for a complete project, and pro-

58. Environmental Assessment Act R.S.O. 1980, c. 140, s. 5(3).
59. Resource development E.I.A. requirements may be established by an examination and synthesis of the General Guidelines and the Site-Specific Guidelines which have been established to date (see further for some specific references).
60. General Guidelines, p. 8.
ject alternative, analysis through the stages of pre-construction construction, operation and maintenance, and abandonment.61

In order to establish the probable impacts of the project, it is essential that the proposal be viewed within the context of the existing environment. What exactly will be affected by the development? Thus it is essential that a description of the existing environment be included in the statement. Most noteworthy to the proponent is that this environment, or more appropriately these environments, include not only the biophysical descriptors but the existing social and economic environments as well. To consider these major categories separately for the moment: the biophysical environment includes such components as air, soil, water, and of prime importance in mineral resource development - geology. Included as well are such descriptors as flora and fauna, heritage resources, land use and community environment.

Logically, the detail necessary for these various descriptors will vary from development to development. By way of example, however, in the hydrology study necessary to the Potash Corporation of Saskatchewan Bredenbury Project, site-specific guidelines outlined,

Consideration should be given to the use of modelling techniques in the ground water investigation. The regional ground water study should also consider the potential for interconnections between the ground water system and surface Hydrology. Hydrology Studies should therefore include:

a) surface waters;
b) map of existing wells, and a listing of their overall productivity and chemistry;
c) collection of additional information on ground water aquifers - distribution, thickness, transmissivity, storage capacity, pleisometry.62

The description of the socio-economic environment may include such factors as analysis of the "host-community" in terms of community social services, community works (in terms of existing capacity and projected need without the development), neighbourhood cultural and recreational facilities, needs and priorities, housing income and labour distribution and municipal economics. In the resource development field, once again due to isolated locations, specific reference to minority groups and the existing rural infrastructure is often a necessary descriptor. In this regard, and in regard to all socio-economic analysis, the proponent is "encouraged" to seek public input. All site-specific guidelines which were examined included the following paragraph:

... Therefore at a very early state in the E.I.A. process, [the proponent] should undertake a program of public involvement in order to also recognize and incorporate the various community and land use issues which local residents also feel should be addressed in the E.I.S.

... A continuing program of public involvement will also serve as a valuable aid toward the collection of baseline data and the analysis and evaluation of predicted impacts, as based upon local experience and knowledge. Moreover, public participation as a part of the environmental assessment process, should also foster good com-

61. Ibid., p. 3.
munity relations by encouraging joint community-proponent planning of mitigation
and enhancement measures to minimize only negative effects.63

Forewarned and instructed with respect to the expected extent of public
participation in E.I.S. preparation, the proponent should not anticipate
approval of the statement unless such a program is undertaken. It is worth-
while to note that site-specific and General Guidelines both request a report
of E.I.S. methodologies, thus ensuring the appropriateness of the program
format.

Armed with the three E.I.S. components articulated thus far (the pro-
ject rationale, project description and description of the existing biophysical
and socio-economic environments) the proponent has the baseline data
necessary to assess the potential impacts of the project. The interaction be-
tween the existing environment and the development, mark the points where
impacts are most likely to occur.64 It is the role of the statement to articulate
these primary, secondary and tertiary effects in terms of degree of positive
or negative impacts. In this regard, a degree of subjective judgment is in-
volved in assessing specific impacts, the basis for which should be outlined
in the statement. Overall value judgments are, of course, the responsibility
of the decision-maker.

The penultimate step in E.I.S. preparation involves the articulation of,
and proponent commitment to, alternatives and methods to mitigate negative
impacts and enhance positive project repercussions. Specific to mining
operations for example; once general risks of the likelihood and type of
process spills are evaluated at the impact stage - mitigation measures would-
logically follow-up with action plans for contingency events, and planning
for prevention measures and monitoring.

Finally, the E.I.S. should identify those impacts which are non-mitigable
and the necessary environmental tradeoffs which must follow if the pro-
ject is to go-ahead.65

Federally the contents of the E.I.S. are determined by the E.A.P., often
in consultation with the initiator and potentially following the request for
public comment and input.66 The proposal-specific Guidelines necessarily
involve core considerations similar to those outlined at the provincial level,
but tend to be more flexible in detail, reflecting the diversity in EARP ap-
lication and the project by project make-up of the Panel itself.

D. The Review

Once the provincial E.I.S. and a corresponding summary statement have
been completed, the documentation is submitted for Government review.
The summary statement satisfies several purposes by articulating the
highlights of the main document in a succinct manner, thus enabling specific

63. For example see Ibid., p. 1 or Environmental Assessment Secretariat, Project-Specific
Guidelines for Preparation of an Environmental Impact Statement for the FUn Flon
64. General Guidelines, p. 17.
65. Ibid., p. 20-21.
reference to the particulars in the E.I.S. or cursory review for interested parties, the media and senior government decision-makers. In the course of review, s. 5 of the Act outlines that the Minister may conduct research, or studies of the quality of the assessment and statement, and/or make any examinations, tests or other arrangements including the appointment of advisors which he considers necessary to aid in the administration of the Act.

Normally, within ninety days of receipt of the E.I.S., a statement of deficiency is returned to the proponent. This statement is based on technical review and comment by the Environmental Assessment Panel. Any deficiencies may be corrected by supplemental information submitted by the proponent.

Subsequently, the review statement prepared by the E.A.S., (including the statement of deficiencies) the proponent’s E.I.S. and the summary document are released for public inspection and review. This potential plethora of information may prove less than satisfactory to the public, however, in that the Minister may, if he feels it in the public interest of any person to do so, withhold or limit inspection of documentation even if relevant to the thorough analysis of the E.L.A.: the only limit to this discretion is that the Minister may not withhold any information which relates to pollutants, human safety or public health. The extent of ministerial discretion is, according to s. 7 subject to regulation, however to date no such regulations have been forthcoming.

Pursuant to s. 11 of the Act, notice of the review and location of the documents are given in a manner "prescribed in the regulations". As with the power to limit disclosure, no such regulation has been passed to date, nor do the General Guidelines offer any supplementary criteria and in fact merely echo s. 11.

As a matter of practise, the E.A.S. give notice of the E.I.S. review in Regina and Saskatoon papers as well as any newspapers in the vicinity of the development. Frequency and form of the notice may vary slightly with the location, however, a standard form notice has been adopted by the Department.

interested parties are invited to make written submissions to the Minister regarding the statement, the review, or the development in general. The

67. See the General Guidelines p. 7 for details regarding a summary purpose, content and format. Generally, however, the summary should overview the project and outline project impacts (both positive and negative, with special emphasis on the non-mitigatable effects). With respect to format, the key would seem to be simplicity in terms of style, language and presentation.
68. Act. 5(a).
69. Ibid., s. 5(b).
70. Ibid., s. 5(e).
71. Ibid., s. 5(d).
73. Ibid., s. 7.
74. Supra, note 39.
legislation sets a 30-day time limit for such submissions (from the date the Minister first gives review notice). An additional 30 days may be granted "if the Minister considers it appropriate". It would seem the restrictiveness of this time frame was recognized early in the implementation of the Act and although specific amendments have not been made to the legislation, the General Guidelines state the Minister may outline a period of submission, "within 30 days or such further period as stated in the public notice". Nonetheless, a 30-day review period is the norm in spite of the fact E.A.S. officials concede that the short time for E.I.S. review is the major complaint of the public with regard to the E.LA. process. In their own defense, the Ministry points out that 30 days should be sufficient time to respond if a public participation program has been undertaken at the E.LS. preparation stage. Secondly, the Ministry has found that an extension of the review period does not necessarily result in a better review, qualitatively. The response to E.A.S. arguments is based on a different perception of the role of the public in the E.LA. process. If E.LA. is viewed as a planning tool which facilitates decision-making based on maximum relevant input, then the review stage is most germane to that end. It is necessary, therefore, to ensure that ample opportunity is provided for public response, especially in those cases where the public participation program during E.LS. preparation stage has been less than actively pursued. In isolated communities, as well, the 30 day review period would seem grossly inadequate and may ultimately effect E.LA. and project credibility.

At the conclusion of the review period, the Environmental Assessment Secretariat considers the public submissions and formulates a recommendation (usually within 30 days) to the Minister. In the more "obvious" cases, the Minister may grant approval to proceed with the development; grant approval subject to those terms and conditions he considers necessary; or he may refuse to approve the development. In each of the three scenarios, the Minister is obliged to advise the proponent and any person who has made a submission, of his decision along with written reasons which explain his action. At this point, unless evidence can be brought forth which challenges the Minister's decision on a question of law (rather than on the determination of fact) neither the proponent nor an interested party has any avenue within the Act to force review of the decision.

By the same token, no right exists within the Act to demand a public hearing prior to the Minister reaching his decision. In Ontario, for example, any individual may request a public hearing at the review stage and provided the application is neither frivolous nor vexatious, the Minister shall hold such a hearing. Provisions for public hearing in Saskatchewan are outlined within the Act, but occur at the sole discretion of the Minister.

75. Act, s. 12(b).
76. General Guidelines, p. 3.
77. Supra, note 39.
78. Act, s. 15(2).
79. Environmental Assessment Act, R.S.O. 1980, c. 140, s. 7(2).
Two forums for proponent/public/government interchange are contemplated by the Saskatchewan Act: the information meeting and the inquiry. The government sponsored information meeting, as the name would imply, is designed primarily to impart relevant development-related data to the public. As a general rule, such meetings are informal in nature - representatives of the E.A.S. chairing the gathering while representatives of the proponent explain their proposal and exchange ideas with the public. The information meeting is also an important tool when the E.I.S. has been submitted or even approved and minor development modifications prove necessary. In these circumstances, the meeting provides the necessary forum to discuss the proposed changes without repeating the E.I.S. stage.

To date, two information meetings have been held; during the Collins Bay Expansion post-E.I.S. process, and in the course of re-examining the Poplar River II project.

Very much a public relations effort, these meetings can serve to fill the gap between public contact at the E.I.S. preparation stage and the release of the final decision. In so doing, continuing feedback and exchange is ensured while preserving the integrity of the system.

The inquiry, on the other hand, is a far more formal process wherein appointed commissioners conduct full-scale investigations of any aspect of the development as set out by the Minister in the terms of reference. Pursuant to their mandate, commissioners may engage experts, employees or assistants necessary to administer the process. Similarly, all board members are granted the powers of commissioners under The Public Inquiries Act and consequently are empowered to summon witnesses, and demand production of documents requisite to a full investigation.

Outside of the Minister's power to order an inquiry, set the terms of reference and appoint commissioners, the Environmental Assessment Act is silent. Inquiry procedure, the role of public participation, disclosure of information, and the effect of any commission recommendations are not mentioned in the Environmental Assessment Act. Unlike some other silent sections of the legislation, there exist no guidelines, policies or procedures of even a non-legal nature to guide the participants. In the seven inquiries which have been held to date, all of which dealt with a resource related development) the procedures have varied radically depending on the terms

80. Act, s. 13.
81. Act, s. 14.
82. By virtue of s. 13(b), the Minister may "direct" the proponent to make his experts available. Generally, the liaison-officer, who has been charged with public relations since the proposal stage, will represent the proponent.
83. Ibid., note 39.
85. Ibid., ss. 3-5.
86. The seven inquiries to date have been Cluff Lake, Key Lake, Rapid River, Churchill River, Poplar River I, Poplar River II, Northern Hydro Transmission Corridor. In the case of Cluff Lake & Key Lake, however, the inquiries were instigated prior to passage of the E.A. Act and thus not formally in pursuance thereof.
of reference and the conceptions of the individual commissioners.\textsuperscript{87}

By way of general observation, all inquiries have been held after the sub-
mission of the E.I.S. (although the department maintains that an inquiry
earlier in the process is conceivable). The commissioner(s) are chosen by
Cabinet (although in pursuit of the Act appointed by the Minister). It has
been the experience of the department that the one-man commission has
been the most efficient to date: in the opinion of the E.A.S. the time
necessary to seek qualified additional commissioners, while maintaining
a balance in the Board and satisfying all participants, has been seen to
negatively impact the efficacy of the process.

The lack of consistency in hearing procedure may be partially explicable
on the basis of the diversity of commissioners, developments and terms
of reference. Nonetheless, from the perspective of both the proponent and
any interveners the resulting confusion as to the rules of procedure makes
preparation and strategy difficult, at a minimum. Relevant considerations
such as the ability to call and cross examine witnesses, the admissibility
of documentary evidence, standing, and actual presentation procedures are
questions which must be determined by the individual Boards. The Ministry
maintains that such procedures have been outlined relatively early in each
of the seven inquiries to date.\textsuperscript{88} Nonetheless, a minimum of consistency
should be established.

The development proponent may expect the inquiry to take anywhere
from six months\textsuperscript{89} to twenty-four months\textsuperscript{90} to complete from the decision
of the Minister to proceed with an inquiry.\textsuperscript{91}

The report of the Board of Inquiry merely makes recommendations to
the Minister and in no way binds his decision-making powers. By way of
contrast, in Ontario the decision of the Environmental Assessment Panel
is binding if not changed by the Minister within 28 days of that initial
decision.\textsuperscript{91}

Of the seven inquiry reports to date, six have been essentially adopted
by the Minister and in the seventh, the Minister accepted the recommen-
dation not to proceed with the development but endorsed an alternative
proposal.\textsuperscript{92}

The report of the Board of Inquiry is released to the public, usually once
the Minister has reached his decision.

The federal approach to review of the E.I.S. differs quite radically in
that public review and input to the panel is viewed as a desirable and in-
deed necessary component of the process. In this regard public scrutiny
of the E.I.S. document is followed by hearings in the locale affected by

\textsuperscript{87} Ibid., note 39.
\textsuperscript{88} Ibid.
\textsuperscript{89} Rapid River Inquiry, chaired by Lyle Bergstrom.
\textsuperscript{90} Key Lake Inquiry, chaired by Robert W. Mitchell.
\textsuperscript{91} \textit{Environmental Assessment Act,} R.S.O. 1980, c. 140, s. 23.
\textsuperscript{92} Ibid., note 39. Going with the alternative proposal was the decision of the Minister
as a result of the Churchill River Inquiry.
the project. Oral and written briefs are invited and considered by the panel. In the case of the Warman Uranium Refinery proposal, reviewed pursuant to EARP, briefs were received by the E.A.P. The general negative input received and the highlighting by many presenters of the deficiency in the E.I.S. in not considering social impact were directly related to the Panel recommendation to refuse project go ahead.

Upon completion of the formal hearing process, the E.A.P. formulates recommendations for submission to the Minister of Environment. Like its provincial counterpart, the go-ahead, no-go, and proceed with modification options are considered. Similarly, as well the Panel suggestions are advisory only and the initiator need not heed the recommendations although FEARO officials have found dialogue between the Departments does not relate to "whether" the recommendation should be implemented but as to "how" they should be implemented. In part this may be attributed to the high profile which may follow a full assessment; the Minister of the proponent department may be hard pressed to explain his ignoring the recommendations.

E. Implementation and Penalty Provisions

At the provincial level, once a proponent has received ministerial approval to proceed he must do so pursuant to the terms and conditions attached to the approval (if applicable), and in accordance with the scheme of development; any changes in the development must receive ministerial approval before proceeding. Such approval; may of itself be subject to terms and conditions, be refused, or may necessitate a separate E.I.A.

It is interesting to note that the department is most often notified of changes in a development by concerned local residents. Having reviewed the E.I.S. and been involved in the statement preparation, the level of expertise is not surprising, but nonetheless an initially unforeseen bonus to the manpower restricted E.A.S.

Should a proponent proceed with a development contrary to the terms of the Act or in contravention of any terms or conditions imposed on Ministerial approval, several options are available: for example, the Minister may apply to the Court of Queen's Bench enjoining further action on the project and making an order on any terms and conditions considered appropriate. Secondly, any person who proceeds without proper approval for a development, a changed development, or contrary to the terms in an approval is guilty of an offense and liable on summary conviction to a fine of up to $5,000. If a continuing offence, an additional fine of not more than $1,000 per day may be imposed.

93. FEARO Screening Guidelines, supra, at p. 2.
94. Telephone Interview with John Herity, FEARO, June 29, 1981.
95. Act, s. 16(1)(b).
96. Act, s. 16(3).
97. Act, s. 16(2).
98. Act, s. 18.
99. Act, s. 21.
Section 23 of the Act warrants special attention:
23(1) Where any person proceeds with a development for which ministerial approval is required without:
(a) being given ministerial approval; or
(b) being exempted pursuant to section 4;
he is liable to any other person who suffers loss, damage or injury as a result of the development, and that other person is not required to prove negligence or intention to inflict loss, damage or injury.
(2) The burden of proving that any loss, damage or injury was not caused by a development is on the person who proceeds with the development.

In its most straightforward interpretation, the section is a boon to the interested party harmed by a person who proceeds with a development without approval; the party claiming damage in a civil suit would normally be saddled with the burden of proof in showing that the developer had caused his loss and with establishing the requirements of a common law tort. Section 23 establishes a strict liability offense, and shifts the burden of "non-causation" upon the unapproved developer, relieving the harmed party from establishing either negligence or intention to inflict loss.

In the more obvious cases, wherein the government and proponent accept that the project is by virtue of its likely impacts a development, and yet the proponent proceeds without ministerial approval, s. 23 is obviously applicable should any damage to a third party occur.

Questions necessarily arise, however, as to the relationship between s. 16 and s. 23; if the proponent changes his approved development to such a degree that a new approval is required in accordance with s. 16, does this make the development now unapproved and subject to the s. 23 standard of liability? It would seem so; s. 16(3) outlines that no person shall proceed with a change until he has been given ministerial approval for the particular change: in essence, a new go-ahead. Provided the damaged party can establish the change in the development does not conform with the initial approval and thus did require a separate approval, the s. 23 liability clause is applicable to any resulting damage.

The proponent who has approval but proceeds contrary to the terms and conditions imposed thereon may be in a somewhat different position; if a third party suffers injury as a result of the development he is not proceeding without approval, but in violation of approval. In the opinion of Ian Rounthwaite, "[t]he plaintiff in such a case may be required to prove that his injury was caused by the proponent's deviation from the terms of the ministerial approval". In other words, the burden of proof would rest with the party claiming loss.

In spite of the potential for both Crown and private actions pursuant to the \textit{Environmental Assessment Act}, no action has yet reached the courts. E.A.S. officials acknowledged the necessity of drawing the penalty sections to the attention of some reluctant Crown Corporation proponents when the Act was first proclaimed; however, the necessity for "highlighting"
the repurcussions of non-compliance has since given way to an improved sense of co-operation.

F. Conclusion

In spite of the outward appearance of satisfaction with the E.L.A. legislation and policy, there is potential for great upheaval in the process. This backlash will be attributable to several factors: firstly, the lack of subordinate legislation to legally flesh out the provincial Act.

Repeatedly in this short paper it has been noted that regulation in pursuance of individual section objectives has not been forthcoming. Thus, major questions remain unanswered regarding areas such as release of information, public notice, environmental impact statement content, inquiries procedure and feasibility studies.

Ministry officials maintain there has been a conscious effort not to overregulate: to rely on good faith and guidelines. This is perhaps the best possible scenario for the E.A.S. and the Minister, but for the proponent and intervenors, the uncertainty and the lack of legal backup to ensure protection of their interests is unfortunate, to say the least.

To illustrate, there is for example, no definition of, nor regulation pertaining to, feasibility studies; it is conceivable that a proponent may have passed beyond the feasibility stage to an "unapproved development" without his realizing. Would he not then find himself liable, pursuant to s. 23, for any loss, damage or injury which results to any person?

Similarly, could not an intervenor justifiably challenge the Minister's form of notice for a particular project and in so doing further lengthen the E.L.A. process for the proponent? From the intervenor's perspective, the lack of regulation regarding notice places an onerous burden upon him to show the means of notice undertaken by the Minister was unfair in terms of natural justice. It would be far simpler to rely on subordinate legislation which articulates notice requirements.

The gaps which result from this lack of regulation are of such magnitude as to call into question the overall efficacy and credibility of the primary legislation. Ad hoc methods of inquiry procedure may be acceptable during the initial policy stages for example, however when continued for some seven years after policy implementation, are no longer acceptable.

Certainly the basis for regulation is already in existence in the form of the various guidelines. Refinement and expansion of these efforts is necessary and timely - the Environmental Assessment Act has been in force for three years and a long hard look at the realities of its implementation is warranted. In this regard, public interest and proponent input could be most constructive.

In an examination of the Act itself, the E.I.S. review procedures should be modified to include greater provision for public scrutiny of the E.L.S. documents (in terms of certainty and accessibility to materials, and in terms

102. Ibid., note 39.
of time periods). Similarly, the necessity of public initiated hearings with set procedures should be immediately incorporated into the legislation. In this regard, the Ontario legislation would provide a suitable model. 103

The greatest stumbling block in the legislation lies with the initial decision as to what constitutes a development. The problem in this regard is two-fold.

The number of projects which have been determined as "developments" has been severely limited and has not expanded in any consistent manner since 1980. In fact, the number of developments have been dropping yearly. 104 In spite of the economic climate, it is surprising that such would be the case. Accepting the necessity of strict interpretation of the development definition for the first five years (from initiation of the policy) to facilitate phasing-in of the E.L.A. concept, one would have expected in 1980 that E.L.A. would encompass a much broader spectrum of proposals. Certainly a liberal interpretation of the definition would facilitate such a result. Nonetheless, primary resource development projects remain the major subject of E.L.A. purview and a dramatic, or for that matter even a moderate, expansion in the parameters of E.L.A. scrutiny does not seem imminent. Certain environmental groups have expressed concern with this scenario. 105

Once again a review of E.L.A. to date, in terms of success in achieving the initial objectives of the process is necessary.

On the provincial level, the Department of Environment maintains that the proponent is advised whether the project would "in their opinion" be a development. Although the Act defines what a development is, the legislation does not specifically outline who is empowered to make the determination that a particular project falls within definition. Logically, it would seem the Minister would be responsible for such a determination, however, the role of the Minister is commensurate only with the notice of an E.L.A. and the review of a submitted E.I.S.

In terms of strict legislative interpretation, it is left to the proponent to determine if he is subject to the Act and, if so, to proceed through the E.I.S. preparation stage.

In reality however, the Environmental Assessment Secretariat has established procedures for the submission of a project proposal to aid that same administrative body in the determination of possible impacts. The proponent, well-meshed within the process, justifiably relies on the determination and subsequent recommendation of the E.A.S. The reliance continues in the establishing of E.I.S. site specific guidelines and preparation advice. The co-operative scenario would seem to work well.

However, examine the hypothetical situation wherein a proponent has properly adhered to the administrative requirements and has been told, that in the opinion of the department, his project is not a development within

103. Environmental Assessment Act. R.S.O. 1980, c. 140, s. 7(2)(b) and s. 12.
105. Interview with Herman Boerma, former President, Saskatchewan Environmental Society, Thursday, June 9th.
the meaning of the Act. He therefore proceeds with the undertaking (in accordance with other relevant legislation) only to find six months down the road he is being sued by an individual who has suffered loss due to the proponent's proceeding with an "unapproved development". The proponent, who has in good faith relied on the advice of the E.A.S., may well be left responsible for not proceeding with an E.I.A. and face section 23's reverse onus should a court of law determine the project "a development".

In reality then, all actions by the E.A.S. prior to the submission of the environmental impact statement are administrative in nature without any legal foundation. Granted, the proponent who choses to ignore these requirements may well find himself in violation of the Act (if he does in fact undertake a development), however, neither the legislation nor the E.A.S. will offer any protection to the proponent if their determination of his project status is overruled in a court of law.

The Environmental Assessment Act requires amendment to establish Ministerial responsibility from the administrative outset.

As is the case in Newfoundland E.J.A. legislation, the proponent should be required by the Act to submit a proposal and the assessment/no assessment decision should then be made by the Minister pursuant to that Act. Saskatchewan's definition of development could set out the criteria for the Minister's decision. It is time that the Minister took responsibility for the administration of his legislation by entering the process earlier.

Similarly, the breakdown in the federal approach appears first in the determination of significance. It is the pre-screening process which ultimately provides the "out" for those proponents anxious to circumvent assessment, in any form. Fortunately, the significance of the uranium mineral resource which justifies federal involvement in the field has successfully (to date) blocked such action to detour the process.

This is not to say, however, that such a course is possible in mineral resource development on the scale of Flin Flon wherein high public consciousness is not so evident. In spite of the record of assessment to date, on the federal level the determination of what is/is not significant should be left with the Department of Environment thus eliminating the possibility of departmental self-interest as a paramount concern, and maximizing credibility of the process. To aid in this determination, the project "Type" designation, adopted in the province is a viable tool. Procedures for public hearings should be standardized if not formalized to provide ample opportunity for an informed and prepared exchange between the proponent/concerned citizenry and the E.A.P. The conscientious proponent can only gain by such action in terms of public trust and co-operation. To date, the varied nature of such hearings has negatively impacted the process. Certainly within the confines of a Cabinet Directive, standardized procedures are possible.

In essence then, a review and reform of the provincial Environmental Impact Assessment of Mining.

106. Environmental Assessment Act, S.N. 1980, c. 3, s. 6-12.
Assessment Act is necessary and the passage of meaningful regulation in pursuance of the legislation long overdue. The proponents, the intervenors and to a certain extent the Environmental Assessment Secretariat have been left in legal limbo long enough.

On the federal level, initial decision-making in the hands of the proponent should be considered. Once the E.L.A. decision has been reached, standardized public input and minimum E.I.S. preparation procedures should be established.

The resource development proponent is presently faced with E.L.A. requirements which justifiably seek to ensure mineral exploitation within certain environmentally oriented parameters. The good corporate citizen is prepared to respond to that social priority; nonetheless compliance and cooperation must be predicated on a clear understanding of the duties and expectations of all parties concerned. Until this can be achieved by clear, consistent articulation of these various roles, the efficacy and credibility of federal and provincial E.L.A. remains in question.