

## **OAIA's 2009 ANNUAL CONFERENCE**

### **ENVIRONMENTAL ASSESSMENT AT A CROSSROADS**

#### **CONFERENCE SUMMARY**

##### **INTRODUCTORY NOTE BY PHIL BRENNAN, PRESIDENT, OAIA**

*Following the 2008 conference, Simon Miles had prepared some summary observations. They are posted on our web site. They were well received and Simon has kindly agreed to prepare a similar summary of the 2009 conference. This is posted below. Although Simon is the Secretary to the Board, he is offering his personal perspective on the some of the key messages of the conference. On behalf of OAIA, I should like to thank him for this added effort in preparing this summary.*

##### **SUMMARY OBSERVATIONS**

**BY**

**SIMON MILES**

**Consultant on Public Policy and International Development, and Secretary to the Board of the OAIA**

This summation is an overview. It does not pretend to provide a systematic coverage of all we heard, nor does it cover each presentation. Instead, I am offering you my thoughts on some of the key points that registered with me.

##### **The Theme**

The title of this conference, “Environmental Assessment at a Crossroads”, is designed to convey that environmental assessment professionals currently find themselves in an operating environment of extreme uncertainty. As Tom Wlodarczyk outlined in his summary portrayal of the shifting landscape for both strategic environmental assessment (SEA) and environmental assessment (EA), some uncertainty has always been present. (See his Day 1 presentation on the web site.) However, it appears to be getting more extreme. This message was also conveyed by Phil Brennan in his opening remarks as OAIA’s President. Phil conveyed the diverse range of current pressures on both SEA and EA. As a result, the conference had been planned to give attention to: the implications, for the design of SEAs and EAs, of both fundamental and technical questions that have to be addressed if and when considerations of climate change are incorporated; the pressure to speed up EA processes in Ontario; anticipated Federal Government reforms to EA that will emerge from the review in 2010; the duty to consult Aboriginal Peoples and their interest in extended consultation processes; the push for more attention to the social environment and especially to health impacts; and, the understandable desire of

professionals to retain what they view to be the essential integrity of best practices in EA and SEA, as manifested in the emerging dimensions of EA/SEA practices (such as Regional EA, Sustainability Assessments, Cumulative Effects Assessments, and SEA).

The positive side of this changing operating environment is that there are opportunities to modify the path forward for SEA and EA.

For professionals in such an operating environment, shaping the new direction and mode of operation requires that one has to:

1. have a **clear vision** of what one is trying to achieve, i.e., what we mean by “betterment”, and what see as the contribution of SEA and EA to the betterment of our society’s quality of life.
2. be open to the idea that there may well be a **better alternative** to realizing this better quality of life than that being put forward by the latest proponent to come forward.
3. be prepared to say **NO** to some proposals.
4. push for a **restoration of integrity** of SEA and EA.
5. mobilize the **capacities** needed: whether we are talking of **human capacities; tools; or powers and processes.**
6. recognize that one cannot just continue stumbling blindly forward and **hope** that one is on the right road.

These six basic messages kept surfacing in the conference. They provide the framework for my observations below.

### **1. Vision: Lost in Translation**

Several speakers reminded us that policy makers and professional practitioners had lost sight of what SEA and EA are meant to be about; namely, improving quality of life. (I am assuming that they intend this term to embrace, inter alia, the bringing about of a better condition of our natural environment.) We heard it most forcibly from Gord Miller, the Environmental Commissioner of Ontario, and Scott Vaughan, the Federal Commissioner of the Environment and Sustainable Development. Perhaps this is not surprising, given their watchdog roles as civil servants. Gord Miller kept reminding us that the stated purpose of the Ontario EA Act is to have EA lead to a betterment of society. Scott Vaughan suggested that the Federal Government needs to develop a coherent vision of sustainable development as well as spell out how it intends realize that vision. On this point, however, he also struck a note of optimism. He observed that something is in the works now, led by Environment Canada, that could produce a framework for sustainable development, based on a recent act of Parliament, which calls for integrating economic, social and environmental considerations.

Seemingly, we have lost our ability to focus on the bigger picture. Why? We get bogged down in the minutiae of procedure. The challenge for the civil servants and their professional consultants becomes one of getting through the steps in the process: as fast as possible; to get an approval for the proposed project. Take a look at Tim Smith’s presentation....there is a beautiful quote from Riki Therivel that says it all.

Looking ahead, as Hugh MacLeod observed, means that one has to address fundamental problems with society: to move us away from constant search for the quick fix; and, to move us towards addressing our values that shape our way of life. This way of life, until now, MacLeod suggested, has been one of riotous consumption, generating plenty of externalities, that we euphemistically refer to as “unanticipated side-effects”. For those in the SEA and EA business, these have been “off-book”. They should not be. For me, this was good to hear, in that it came from the man heading Ontario’s Climate Change Secretariat.

Indeed, we shall have to internalize the costs of that behaviour that has, until now, led to those externalities if we are to reverse the erosion of our natural capital and improve the functioning of our natural ecosystems on which society is so dependent. In short, betterment will call for behavioural change. This was a message that MacLeod had left us with when he spoke to us in Ottawa last year. This year, he found another way of saying it. And, as Marcia Valiante said from her perspective as a professor of law, we had best be very clear as to what we mean by betterment and how we want the rule of law to be interpreted; “betterment”, by itself, is not enough of a guide. And, beyond that need to spell out what we want, we must pay more attention as to how this is communicated. As MacLeod suggested, if we really want to be clear as professionals, we had best talk the language of those with whom we wish to communicate. And talking their language includes offering them incentives to listen.

Bob Gibson also made a major contribution to the task of spelling out what society (and thus SEA and EA professionals) should be considering when articulating a vision of a desirable future. His presentation is well worth reading.

In a nutshell, what I took from Gibson is that every society should be striving for a sustainable process of continuing betterment of quality of life of all on this planet (not just of those immediately affected by the proposed policy, plan, programme or project --- PPPP). Thus every PPPP should be considered in the context of a framework that captures the relevant features of the global reality.

In keeping with this, SEA and EA professionals should:

- . ensure that every decision made relative to a PPPP should be aimed at reversing the non-sustainability of our current way of life and of current development proposals;
- . recognize that they can be key players in bringing about behavioural change;
- . recognize that the process of change will be incremental;
- . develop, for the assessment of each PPPP, a framework that identifies relevant sustainability criteria (again, see Gibson’s presentation for examples of this).

## **2. Articulating Alternatives**

The consideration of alternatives is given short shrift in SEAs and EAs. The standard explanation is that it takes time and money. However, it doubtless goes deeper than that - to the degree of commitment to getting the best solution to meet a need as opposed to simply processing the proponent’s proposal. Gibson told an illuminating story of how he

had managed to get funding and time to develop a Business-As-Usual scenario for the next 20 years of development for the Capital Region District of Victoria. This scenario had the salutary effect of alarming everyone enough to lead to a demand for an alternative scenario. Whether it was his commitment, or that of his client, or of both of them, that made this possible, it is an object lesson worth remembering. Again, see his presentation for more on this.

### **3. Saying NO**

The option to say no to some proposals is itself seemingly under threat. That this has come to pass is probably in part the result of a history of SEA and EA professionals being unwilling to say no to proposals that really do not deserve to proceed. We heard of exceptions to this pattern. Henry Lickers left us with the clear impression that First Nations groups were quite prepared to say no on a good number of occasions, but that they were not given due consideration in the decision processes. John Jackson, described a case in which he was involved and on which he would have liked to have said no, but ended up with an alternative proposal that got the go ahead.

What was most disconcerting was Gord Miller's observation that modifications to the scoping of some EAs have led to the exclusion of some key questions and thus made it possible for proponents and professionals to avoid even considering the "no project" option. And Jim O'Mara illustrated this with his enlightening case study analysis of "a wicked problem".

### **4. Restoring Integrity**

The session titled "Maintaining the Integrity of the EA Process", with John Jackson and Adam Chamberlain as the lead speakers, in combination with other sessions, made it clear that the challenge is one of restoring integrity to the EA process as opposed to simply maintaining it. All of the above three themes bear heavily on this task. The lack of a vision of what the system is meant to be striving for, the infrequency with which serious attention is given to alternatives, and the rarity of a "no project decision" are all contributory to the erosion of the system's integrity. But there is much more too.

What needs to be built back into the system? We already have three components identified:

- articulate a clear vision;
- encourage the serious consideration of alternatives;
- make it easy to choose the "no project" option.

In addition:

recognize that, although it had some flaws, the more robust EA process with public hearings did work. Among other things, this means ensuring that adequate time and other resources are available. Provision for hearings, time and other resources are now being cut, and quite drastically. But, as Gord Miller put it: some things take time. The Halton land-fill site EA was a very lengthy process. But, as Miller observed, Halton is one municipality that has no land-fill problems now, and was the first municipality to achieve a more than 50% recycling rate. He, Bob Gibson and

John Jackson gave several other examples of EAs that produced lasting benefit that would unlikely have been realized if the hearings had not taken place and had been rushed (e.g., the Timber Management Class EA, the Ontario Hydro Demand Supply Plan EA, and the Ontario Waste Management Corporation hearing that resulted in a very expensive proposal being turned down);  
ensure citizens get the information they need and get to be heard;  
make the rules clear and easy to understand for all, including both proponents and affected citizens;  
encourage collaborative as opposed to combative approaches;  
don't stop at mitigation, go for improvement;  
don't be misled by talk of balance. The environment always loses out in such discussions;  
recognize the challenge of walking the line between the very differing demands on the EA process (as Agatha Garcia-Wright observed, based on her experience as Director of the Environmental Assessment and Approvals Branch, in the Ministry of Environment);  
ensure enforcement of decisions arising from SEAs and EAs.

## **5. Mobilizing the Needed Capacities**

Three sets of capacities got attention: human capacities; tools; and, powers and processes. Pertinent to all three, Gord Miller expressed his concern about the need to rebuild MOE's capacities before the few remaining baby boomers, with their extensive experience, leave. They are the ones with the wisdom to make the rebuilding so much more useful and relevant.

### **5.1 Human Capacities**

As new tools are developed there may be a need for training to ensure their proper deployment. For example, Silvia Strobl emphasized that cumulative effects assessment should not be viewed as a simple add-on to EA, but has to be fully integrated. As one can readily appreciate from reading her presentation, the tool that she introduced clearly requires considerable data and careful and skilled analysis. (At the time of writing this summary, Silvia's presentation had yet to be posted.)

Another area of particular need arises from the duty to consult Aboriginal peoples. As Shantz observed, the Crown is lacking people with experience in Northern Ontario. This makes it harder for the proponents to hold constructive discussions with governments and thus with the local inhabitants.

As for the needs on the part of the Aboriginal groups, I got a more complex message. Yes, there is a need for training in the use of, for example, the new toolkit that has just been developed by the First Nations in Ontario to guide their involvement in consultation processes. However, as Henry Lickers told me during a break, there are a fair number of Aboriginals with training in the relevant fields to enable constructive discussion, but the lack of funding for Aboriginal participation in meaningful consultation (and other planning) processes means that these people tend to seek employment in the USA, where government funds do exist to employ them.

## **5.2 The Tools**

There were some excellent presentations made of the appropriate application of tools used by SEA and EA professionals. Most of those presentations are available on the OIA's web site. Here, I am referring specifically to those presentations by Tim Smith on regional assessments, by François Bregha on SEA in general, by David Hardy on the application of SEA to a complex programme of electricity infrastructure development, by Bob Gibson on sustainability assessments, by Silvia Strobl on cumulative effects assessment (to come), by Graham Whitelaw on comprehensive EAs (to come), by Tom Włodarczyk on socio-economic assessments, and by Phil Byer on incorporating climate change considerations in EA. Other presentations incorporated information on specific tools, for example, Zafar Adeel's excellent illustration of true-cost accounting in his presentation on international experience.

These tools are not discussed here at length. The very length of the list of tools we were exposed to tends to support Bregha's claim that we are not lacking in tools. What we need is more attention to making best use of the tools available. Better information is needed in some cases, but in other cases key inhibiting factors are really lack of understanding of what one should be achieving through an SEA or EA and an accompanying lack of political and administrative will to demand a thorough analysis of the data. Scott Vaughan's scathing but constructive criticism of the poor performance of the Federal Government's departments and agencies in conducting SEAs bears testimony to this lack of political and administrative will. And Hugh MacLeod's key point about the need to address the off-book costs of PPP is probably the best illustration of a major technical shortcoming in so many assessments that has its roots in lack of understanding and lack of will. This makes Zafar Adeel's presentation of an approach to true-cost accounting, in the context of cost-benefit analysis, particularly well worth reading.

## **5.3 Powers and Processes**

With the upcoming review of the Canadian Environmental Assessment (CEA) Act in 2010, the CEA Agency's lack of powers to enforce the implementation of the CEA Act are already getting considerable attention. In our conference in 2008, in Ottawa, Candace Anderson, of the Agency, had done an excellent job of suggesting what is really needed. This year, Steve Mongrain's presentation (on the web site) provided a very useful backdrop to the review: both a history of the CEA Act and its evolution; and, a long list of issues that we can expect will be on the agenda. The list embraces many of the shortcomings of SEA and EA processes already mentioned above, whether old, such as citizen participation, or new, such as climate change. Some are not spelled out explicitly, but implicit, such as the need for more political support. If these issues can be resolved through the review, Canada's development process will be very much improved. But that is a big if.

The 2010 review should also prove to be very informative for the future of Ontario's EA legislation. For example, currently, there is no formal demand for cumulative effects assessment in the Ontario Act. Given that there is such a demand in the CEA Act, it will

be interesting to see how the federal review approaches these newer areas in the field of EA and SEA.

Some shortcomings mentioned in this summary did not make it onto Steve Mongrain's shortlist, but deserve to be there. Most notably, as Ray Lamoureux, of the CEA Agency, reminded us last year – keep it simple. This applies both to the review document and to the legislation that follows. And to reiterate Hugh Macleod's advice, make sure it talks the language of those whom it is meant to reach and give them an incentive to pay attention.

#### **6. Hope: Beware the Universal Panacea**

Our speakers – whether civil servants, academics, professional planners or lawyers, citizens from Aboriginal or environmental communities, or whatever – are all human. They were very good at pinpointing what is wrong with not just SEA and EA, but with our society. But, with few exceptions, almost all maintain there is some reason to hope that things will get better. Only one of them, Hugh MacLeod, suggested that this predisposition to hope may also be seen as one of our shortcomings. Why? He did not elaborate, but I would suggest that maybe it is because it reduces the motivational force of the prospect of being hanged in a fortnight which, as we all know, is meant to focus the mind. We desperately need that focus right now. We would be wise not to pin too much on hope.

#### **In Conclusion**

Each of us will have taken our own messages from the conference. We should think about how we can apply what we have learned, both in our actions as individuals and collectively. With respect to our collective action through OAlA, those who attended our conference last year will recall that Yves Leboeuf, Vice-President of Policy for the CEA Agency, had encouraged us to take an active role in the 2010 Review of the CEA Act. This year, Steve Mongrain gave us a useful summary of the issues we can expect to be dealing with over the next year if we do decide to give our time to this review.

Simon Miles  
14 December 2009.