IMPACT

A QUARTERLY NEWSLETTER ON ENVIRONMENTAL LAW SEPTEMBER 1987

Environmental Defender's Office Ltd

8th Floor, 280 Pitt St., Sydney 2000 DX 722 Sydney Phone (02) 261 3599 Editor: Brian J. Preston

Wyan Quarry Case: Some Gains, Some Losses

by Nicola Pain, Solicitor of the Supreme Court
of New South Wales
Principal Solicitor, E.D.O.

Third party appeals to the Land and Environment Court by residents opposed to a particular development are sometimes seen as only being successful when the Court rejects the development outright. This, of course, is not always possible or desirable.

Third party appeals are also important in forcing developers to re-think their developments so as to make them more environmentally acceptable (and hence improve their chances of obtaining consent from the Court) as well as allowing a non-political, independent body in the form of the Court to reconsider the matter afresh in light of all the evidence, both for and against the development, put forward by the parties. The result can be a finely tuned development which may go a long way to overcoming the residents concerns. This benefit of third party appeals is shown in the Wyan Quarry case summarized by the author.

One of the longer running Land and Environment Court cases in which the EDO has been involved recently is *Bignall -v- Greater Taree City Council & Wyan Holdings Pty. Ltd.* (Unreported L&E Nos. 10293 of 1986 and 10160 of 1987, 6 July 1987, Cripps C.J.). This was a case about a hard rock quarry and crushing plant proposed by Wyan Holdings Pty. Ltd. ("the developer") for a site on Possum Brush Road in a small and picturesque valley near Raleigh N.S.W. The applicant in the proceedings was a resident in the area who represented a group of concerned citizens calling themselves "The Possum Brush Road Anti-Quarry Committee". The group had formed for the particular purpose of opposing the development.

The land was zoned non-urbn 1(a). Extractive industries were permissible with consent. This type of industry is also specified as being designated development under the *Environmental Planning & Assessment Act,* 1979, (NSW) and certain procedures are prescribed under that Act for the development approval process.

The developer lodged the development application with the Council in July 1985. A three stage development was proposed with Area A to be quarried for 30 years, Area B for a further 90 years and Area C for another 60 years. The development was a large one, being over one kilometre in length. A large number of individual objections and a petition were received by the Council, including an objection from the applicant. About 1200 people advised the Council of their opposition, including residents of the area and both interstate and overseas visitors who came to the area for its scenic beauty and peaceful atmosphere. There were several popular tourist attractions in the area, such as Breakneck Lookout. The main objections to the development were based on the possible adverse effects of noise, dust and visual impact and the possible disadvantageous social and economic effects caused by the development on the residents in the area and tourist activity.

The Council's town planner recommended that the development be rejected outright, or approved for area A only, so that its impact on the area could be assessed at a later date. The Council's Deputy Chief Health and Building Surveyor also recommended that consent be refused because of the possible impact of the development on the character of the valley and its tourist potential and the availability of the hard rock resource elsewhere in the area. On 23 May 1986, the Council granted development consent for the application, subject to certain development conditions in Areas A and B, a development having a life of approximately 120 years.

The residents successfully applied for legal aid to commence Class 1 proceedings in the Land and Environment Court. The purpose of the proceedings was to obtain a decision of the Land and Environment Court that consent to the development should not be given to the development application because of the adverse impact of the quarry on the residents and surrounding countryside.

The matter was first set down for hearing in November 1986. At the hearing the developer sought to rely on a different method of extraction to that proposed in the original development application. The change of method minimised the visual and noise effects of the development to a greater extent than the original application. It was successfully argued by the residents' counsel that what was now proposed was substantially different to the proposal originally lodged by the developer with the Council and a new developmnt application should be lodged. The proceedings were adjourned to enable the developer to lodge a new development application with the Council.

The developer subsequently lodged a further development application and the procedures specified for a designated development were carried out. More objections were received. The Council's town planner made a similar recommendation in relation to the second application as to the first. He did note that the proposed changes to the extraction process would alleviate the visual and noise impact of the development. He also suggested that

another quarry in the locality could produce similar material although details of the quantity and quality of the material from that source were unknown. He considered that the development as proposed would be adverse to the visual quality of the area and its character, among other matters. The Chief Health and Building Surveyor considered the second application reduced the impact of noise on adjoining sites to an acceptable level. The Council determined to grant consent on 25 March 1987.

Fresh Class 1 proceedings were filed by the residents appealing against the decision of the Council to grant consent. The two appeals were joined and heard together.

The matter was set down for hearing in May 1987 and took 10 days. Both parties relied on substantial expert evidence in support of their respective cases in the proceedings. The residents argued, inter alia, that the noise from the quarry and the trucks using it would be excessive and the beautiful visual impact of the valley would be unacceptably changed by the proposed development. It was also argued that the developer had an onus to investigate feasible alternatives and had not carried out such an evaluation.

On 6 July 1987, Cripps C.J. handed down his decision to grant development consent to the amended development application (proceedings no. 10160 of 1987) and refuse consent to the original development application (proceedings no. 10293 of 1986). Although the Court's decision to grant consent at all was in one sense a loss for the residents and the environment they sought to protect, there were a number of positive aspects to the judgment which justified the residents' actions.

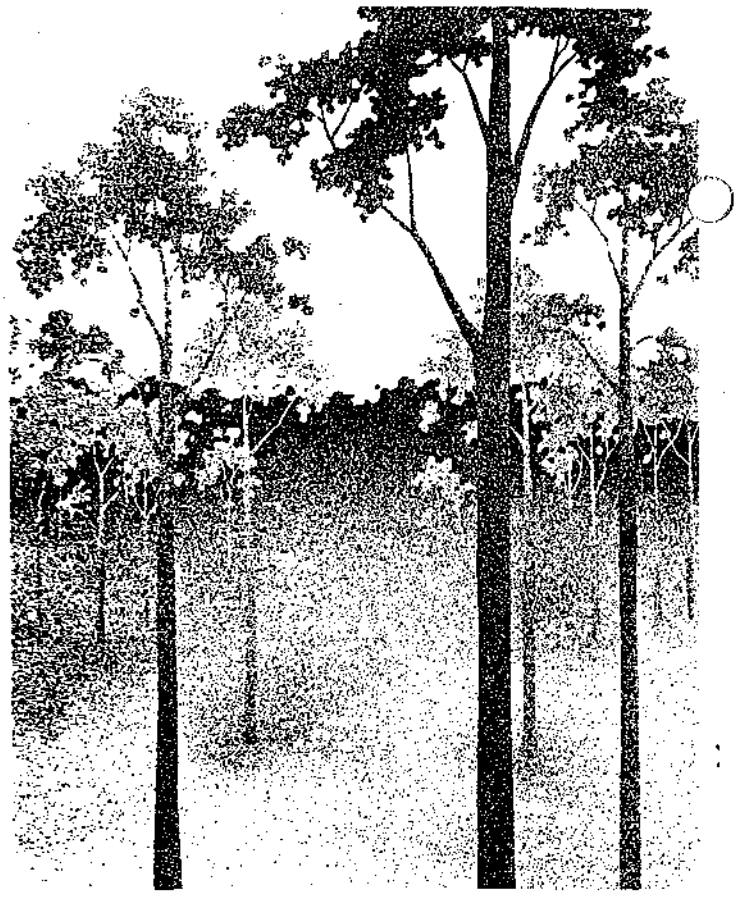
Firstly, the Court upheld the residents original appeal against the decision of the Council to grant consent to the first and far more extensive and environmentally damaging development. The actions of the residents in appealing forced the developer to substantially modify the proposed development so as to make it more environmentally acceptable.

Secondly, although the Court granted consent to the amended development application, it did so subject to 52 conditions. The conditions were strict and limited the activity at the quarry in several respects by such measures as setting maximum noise levels which had to be achieved, defining revegetation requirements and requiring a large bond of $50,000 to be lodged with Council to cover the cost of landscaping. These conditions may at least alleviate many of the residents concerns. The condition requiring a bond to ensure adequate landscaping is a particularly promising precedent. The residents were also successful in reducing the extent and life of the quarry by 150 years. The Court determined to reject the developer's application for Areas B and C and granted development consent only for Area A and for a period of 32 years. As Cripps C.J. noted, restricting consent for quarrying in Area A only and for a duration of 32 years will have the effect of limiting the time within which the future rural residential development of the valley will be affected by quarrying.

One of the important issues raised by the case is whether the developer has an onus to show there is a need and market for a particular resource. It was submitted by the residents that the developer bears an onus of producing evidence that satisfies the Court that the developer's aggregate deposit exists, is viable and warrants exploitation having regard to the needs and the market demand.

Cripps C.J. did not seem to expressly reject the residents' submission. He concluded that the deposit existed and was viable, but is not clear what he concluded as far as the third leg of the submission, namely whether the deposit warranted exploitation having regard to the need and the market demand. There was certain evidence adduced by the residents which threw doubt on the need and market demand for the resource and pointed to other quarries which might satisfy that demand if it existed. However, Cripps C.J. thought that that evidence was inconclusive and declined to delay the decision about the quarry merely because the possibility has been floated that another quarry might be able to produce the resource (pp. 19-20 of judgment). This may mean that Cripps C.J. has impliedly placed some onus on the residents. That is to say, he may have held that developments should proceed unless objectors are able to conclusively prove that there is not a need or that the need can be satisfied by some other source. This issue along with others is the subject of an appeal to the Court of Appeal.

In relation to matters procedural, the Council asked to be excused from attending the proceedings at the commencement of the second hearing. In his judgment, Cripps C.J. made some comments about the role of Councils in litigation of this nature. He commented that it is important that the Council participate in view of the adversarial nature of the proceedings. The Court relies on the parties to introduce relevant material and the Council plays an important role in that regard as it first decides whether or not consent ought be given and on what conditions.



EDITORIAL
Public Interest Litigation: Some Inspiring Words From India

Public interest litigation is still in its infancy in Australia. Its growth has been assisted by provisions such as S.123 of the *Environmental Planning and Assessment Act 1979* (N.S.W.) which allow any person to bring proceedings in the public interest to remedy or restrain breaches of the Act. Such a provision, and others are to be found in the *Heritage Act* (N.S.W.) and the *Trade Practices Act* (Cth.), do more than just liberalise the standing rules. These sections are of major importance in identifying the true role of the courts in applying these Acts. This wider importance was recognised by the N.S.W. Court of Appeal in *F. Hannan Pty. Limited -v- The Electricity Commission of N.S.W.* (Unreported, No. C.A. 31 of 1985, Street C.J., Priestley and McHugh JJ. A.). The Chief Justice said:

> "This provision [S.123] read in the context of the objects of the Act as set down in S.5 makes it apparent that the task of the Court is to administer social justice in the enforcement of the legislative scheme of the Act. It is a task that travels far beyond administering justice inter partes. S.123 totally removes the conventional requirement that relief is normally only granted at the wish of a person having a sufficient interest in the matter sought to be litigated. It is open to *any person* to bring proceedings to remedy or restrain a breach of the Act. There could hardly be a clearer indication of the width of the adjudicative responsibilities of the Court. The precise manner in which the Court will frame its orders in the context of particular disputes is ultimately the discretionary province of the Court to determine in the light of all of the factors falling within the purview of the dispute."

Australian courts, however, have been reticent to depart from traditional rules and approaches except where there is a section such as S.123 which clearly mandates a different approach. It is interesting, therefore, to come across a decision of a court which, by way of judicial activism, takes the opportunity in a public interest case to jettison the shackles of common law tradition. Such a case is *People's Union for Democratic Rights -v- Union of India* A.I.R. 1982 S.C. 1473, a decision of the Supreme Court of India. The case concerned the working conditions of workmen employed in the construction work of various projects connected with the Asian Games. A group of civil minded citizens formed an organisation for the purpose of protecting democratic rights. The organisation wrote a letter to one of the Justices of the Supreme Court of India. The Court treated the letter as a writ petition on the judicial side and notice was issued to the employer organisations and unions to appear as respondents. Although the case concerns labour laws rather than environmental laws, it is of importance in the recognition it gives to public interest litigation. Indeed, it has been subsequently applied in environmental cases (Anil Divan, "The Need for Laws to Protect the Environment and Exploitation of Natural Resources in the Asian and Pacific Region", a paper presented to the 10th LAWASIA Conference, 29 June — 4 July 1987, Kuala Lumpur, Malaysia, p.12).

The leading judgement was given by Bhagwati J. In the opening part of his judgment, Bhagwati J. forcefully explains the importance of public interest litigation:

> "2. Before we proceed to deal with the facts giving rise to this writ petition, we may repeat what we have said earlier in various orders made by us from time to time dealing with public interest litigation. We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol Kings have the Fundamental Right to carry on their business and to fatten their purses by exploiting the consuming public, have the 'chamars' belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of Fundamental Right, the courage and their independence and fearlessness are applauded and acclaimed. But, if the Fundamental Right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters. Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a subhuman existence in conditions of abject poverty, utter grinding poverty has broken their back and sapped

their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce? This was brought out forcibly by W. Paul Gormseley at the Silver Jubilee Celebrations of the Universal Declaration of Human Rights at the Banaras Hindu University.

'Since India is one of those countries which has given a pride of place to the basic human rights and freedoms in its Constitution in its chapter on fundamental rights and on the Directive Principles of State Policy and has already completed twenty-five years of independence, the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavoidable. We, in India, should on this occasion study the Human Rights declared and defined by the United Nations and compare them with the rights available in practice and secured by the law of our country.'

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the international Human Rights Conference in Tehran called by the General Assembly in 1968 declared in a final proclamation:

'Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.'

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

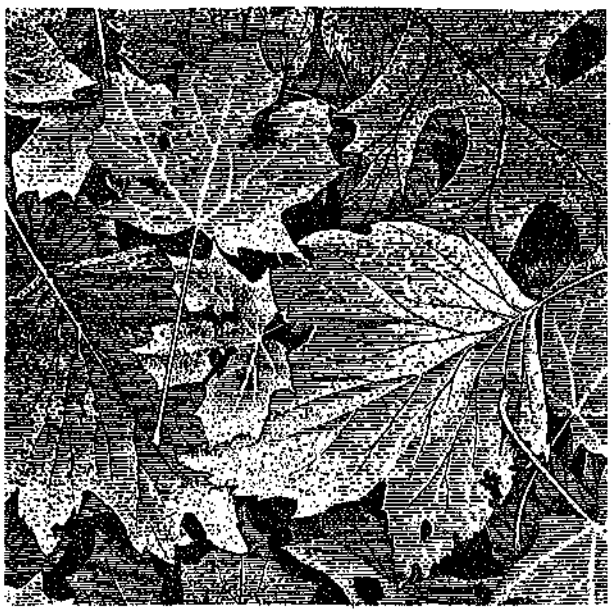
3. There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the Court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the downtrodden the havenots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the downtrodden, the ignorant and the illiterate and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court in Judges. Appointment and Transfer cases AIR 1982 SC 149. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears. Mahatma Gandhi once said to Gurudev Tagore, "I have had the pain of watching birds who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For millions it is an eternal vigil or an eternal trance." This is true of the 'human bird' in India even today after more than 30 years of independence. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India", who gave to themselves this magnificent Constitution. It is true that there are large arrears pending in the courts but that cannot be any reason for denying access to justice to the poor and weaker sections of the community. No State has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford, is disposed of. The time has now come when the courts must become the courts for the poor and struggling

masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution, and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals. The new change has to come if the judicial system is to become an effective instrument of social justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future. This writ petition is one such instance of public interest litigation."

Later in the judgment, Bhagwati J. dealt with the respondents objection to the standing of the petitioners. The dicta on this point is also of topical interest given the recent Australian Law Reform Commission's report on standing in public interest litigation. Bhagwati J. states:

"9. The first preliminary objection raises the question of locus standi of the petitioners to maintain the writ petition. It is true that the complaint of the petitioners in the writ petition is in regard to the violations of the provisions of various labour laws designed for the welfare of workmen and therefore from a strictly traditional point of view, it would be only the workmen whose legal rights are violated who would be entitled to approach the court for judicial redress. But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo-Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of locus standi which has revolutionised the whole concept of access to justice in a way not known before to the western system of jurisprudence. This Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a prson wronged can sue for judicial redress were to be blindly adhered to and followed and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost. It has been held by this Court in its recent judgment in the Judges Appointment and Transfer case in a major breakthrough which in the years to come is likely to impart new significance and relevance in the judicial system and to transform it into an instrument of socio-economic change, that where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the Court. Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the Court and the Court is moved for this purpose by a member of a public by address a letter drawing the attention of the Court to such legal injury or legal wrong, Court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. That is what has happened in the present case. Here the workmen whose rights are said to have been violated and to whom a life of basic human dignity has been denied are poor, ignorant, illiterate humans who, by reason of their poverty and social and economic disability, are unable to approach the Courts for judicial redress and hence the petitioners have, under the liberalised rule of standing, locus standi to maintain the present writ petition espousing the cause of the workmen. It is not the case of the respondents that the petitioners are acting mala fide or out of extraneous motives and in fact the respondents cannot so allege, since the first petitioner is admittedly an organisation dedicated to the protection and enforcement of Fundamental Rights and making Directive Principles of State Policy enforceable and justiciable. There can be no doubt that it is out of a sense of public service that the present litigation has been brought by the petitioners and it is clearly maintainable."

— Brian Preston
Editor



E.D.O. SEMINAR: Transboundary Air Pollution

On 2 July 1987, Armin Rosencrantz, an environmental lawyer, and President of the Pacific Energy and Resources Centre, California delivered a public lecture on transboundary air pollution in Europe and North America. The lecture was organised by the E.D.O. and held at St. Andrews House.

Rosencrantz discussed the *Convention on Long Range Transboundary Air Pollution* which was signed in 1979 by 32 European Nations, Canada, the United Stated and the European Economic Community. The Convention was an attempt to reduce international air pollution. The need for such a convention was initially promoted as a consequence of growing concern in Sweden and Norway over the rising levels of acidity in lakes and streams in the 1950s and 1960s. Environmental damage was attributed to international air pollutants. More recently, the effects of international air pollutants have become manifest in other countries. The lakes of Eastern Canada are suffering from high levels of acidification largely due to the emissions of the midwestern industrial region of the United States. In Poland, spruce and fir tree forests have been decimated by sulphur emissions originating in East Germany and Czechoslovakia.

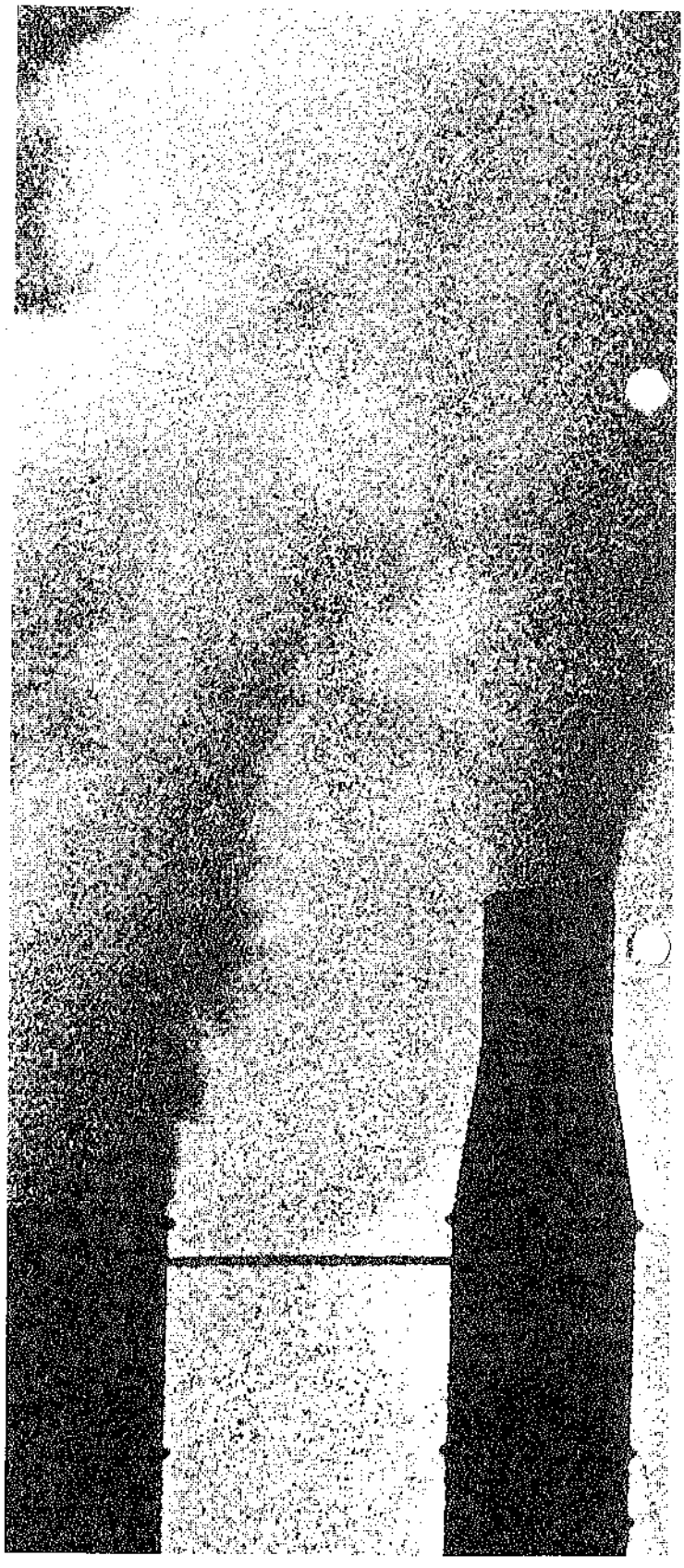
Rosencrantz emphasised that the 1979 Convention had no teeth because it lacked numerical standards, timetable and enforcement provisions. However 30 of the 33 signatories to the 1979 Convention have now signed an agreement which embodies a pledge to reduce sulphur emissions at the source to a level of 30 per cent less than the 1980 levels as soon as possible, at the latest by 1993. Rosencrantz believes that the 30 per cent agreement "provides some teeth to the Convention in the form of numerical goals". Unfortunately, the agreement is substantially flawed by the refusal of the United Kingdom, Poland and the United States to be parties to the agreement. According to Rosencrantz, "Political leaders, economic planners and scientists in these countries have not yet reached a consensus that the benefits of a 30 per cent sulphur reduction justify the costs".

The political, economic and legal problems associated with the attempt to regulate the effects of transboundary air pollution highlight the major forces contributing to ecological imbalance generally. It is abundantly clear that sound environmental practices will only be effectively implemented if political opportunities are created so that the economy, science and technology will be "put in their place" in the context of a rationally informed debate about the "good life", in particular the good life as it arises out of the human/nature relations.[1]

The Rosencrantz lecture displayed the pressing need for social movements, both domestic and international, to attempt to introduce a rational basis for the use of economic resources. "In our world the production of commodities is no longer . . . related to humanity's sense of its own real needs. Both commodities and needs have acquired a blind life of their own; . . . an irrational dimension that seems to determine the destiny of the people who produce and consume them."[2] In short, these movements will need to overcome the irrational forces of economic growth, the lack of effective participation by citizens in political decisions in both domestic and international matters as well as the competitive political and economic relationships between sovereign states.

1. See Jurgen Habermas, *Toward a Rational Society.* (Heinemann Books, London, 1981), Chapters 4-6.
2. M. Bookchin, *The Ecology of Freedom.* (Cheshire Books, Palo Alto, 1982), p.68.

Bernard Dunne
EDO BOARD MEMBER



LEGAL BRIEFS

STANDING TO ENFORCE STATUTORY NOTICES

Legislation such as the *Local Government Act* 1919 (N.S.W.) often contain provisions empowering local councils to issue notices to an owner of a property to undertake certain work such as the repair or demolition of existing buildings (S.317B) or work to improve the fire safety of the building (S.317D). There is usually also power, where the owner fails to comply with the notice, for the council to enter upon the property and carry out the work specified in the notice (see, for example, SS.317B(ii), 317H(i)). Sometimes, however, the council issues a notice but declines to enter upon the land and carry out the work when the owner fails to comply with the notice. The question then arises whether a member of the public can take proceedings to enforce compliance by the owner with the statutory notice. Such a situation arose in the recent case of *King -v- Goussetis* (1986) 60 L.G.R.A. 116. The local council gave a notice to an owner of a building to carry out fire safety work under S.317D of the *Local Government Act* 1919 (N.S.W.). The tenant of the building commenced proceedings in the Land and Environment Court seeking a mandatory injunction requiring the owner to comply with the notice. An issue arose as to whether the tenant had standing to enforce the *Local Government Act*. There is no provision in the *Local Government Act* equivalent to S.123 of the*Environmental Planning and Assessment Act* which grants members of the public standing to enforce the Act. The tenant, therefore, had to rely on the common law rules of standing. The N.S.W. Court of Appeal, overturning the decision of the Land and Environment Court, held that the tenant did have standing to bring such proceedings on the basis that he had a "special interest" in enforcement of the statute since his life and property were at risk by the continued failure of the owner to carry out the work.

PUBLIC NOTICE OF DEVELOPMENT APPLICATIONS MANDATORY

In the December 1986 issue of *IMPACT*, the Land and Environment Court's decission in *Broomham* and *Owen -v- Tallaganda Shire Council and Mehilo Pty. Limited* (Unreported, L&E No. 40172 of 1985, 31 October 1986, Stein J.) was reported. The Land and Environment Court held that a failure to comply with the public notification requirements in S.84(1)(c) of the *Environmental Planning and Assessment Act* 1979 (N.S.W.) and Cl.39 of the *Environmental Planning and Assessment Regulation* 1980 (N.S.W.) rendered invalid the subsequent decision of council to grant consent. The Court followed its earlier decision in *CSR Ltd. trading as The Readymix Group -v- Yarrowlumla Shire Council* (Unreported, L&E No. 40054 of 1985, 2 August 1985, Cripps J.) and the decision of the High Court in *Scurr -v- Brisbane City Council* (1973) 47 A.L.J.R. 532. Recently, there have been similar decisions in other jurisdictions. Two examples are the decision of a Full Court of the Supreme Court of South Australia in *R.V. City of Salisbury; ex parte Burns Philp Trustee Co. Ltd.* (1986) 60 L.G.R.A. 40 and the decision of the South Australian Planning Appeal Tribunal in *Riches -v- District Court of Willunga* (1986) 21 A.P.A.D. 458.

UNREASONABLENESS AS A GROUND OF INVALIDITY

Although there has been a difference of opinion amongst judges in the past, the Land and Environment Court in *Bentham -v- Kiama Municipal Council* (1986) 59 L.G.R.A. 94, seems to have accepted that a development consent can be invalidated on the basis that it is a decision so unreasonable that no reasonable council could have reached it (see *Associated Provincial Picture Houses Limited -v- Wednesbury Corporation* (1948) 1 K.B. 223, 230; *Parramatta City Council -v- Hale* (1982) 49 L.G.R.A. 319; *Pioneer Concrete -v- Port Macquarie Concrete* (Unreported, 20 July 1984, Cripps J.). The issue to be decided in that case was whether a decision of a local council categorising a development as a motel instead of an hotel was so unreasonable that it was not open to the council acting reasonably. In the circumstances, Stein J. held that the decision was not unreasonable.

EVIDENCE OF INJURY TO AMENITY

One of the considerations that a council and, on appeal, a court or tribunal must consider when deciding whether to grant or refuse development consent to a development application is the affect the proposed development might have on the amenity of the neighbourhood. The term amenity is a rather amorphous term. Hence, deciding whether the development will have an unacceptable impact on the amenity of the neighbourhood is a difficult task. In a recent case in Queensland, an applicant for development submitted that the only evidence on injury to amenity which should be admitted and considered by the court was evidence which was objectively based. In *Broad -v- Brisbane City Council* (1986) 59 L.G.R.A. 296, the tribunal at first instance had considered submissions by local residents that in their opinion the development would affect the amenity of the neighbourhood. This evidence, the developer argued, was subjectively based and inadmissible. On appeal, a Full Court of the Supreme Court of Queensland rejected the developer's submissions. The Full Court held that whilst it is preferable that evidence of adverse effects on amenity be justified in objective, observable, likely consequences, more subjectively based views are not necessarily irrelevant, although they may be accorded little weight. Furthermore, in assessing the amenity of an area it is inevitable that individual perceptions will be received and evaluated. This decision suggests that whilst residents are still able to make submissions based on their subjective views as to the likely effect of the development on the amenity of the neighbourhood, they should, wherever possible, ensure that their views are supported by objective criteria. This will enable their submissions to carry greater weight.