REPORT TO: CELA'S BOARD OF DIRECTORS

RE: STAFF SALARIES FOR 1987/88, AND SALARY REVIEW PROCEDURE AND POLICY RECOMMENDATIONS

FROM: MANAGEMENT AND PERSONNEL COMMITTEE (BUCYS, HEATHCOTE, LEVY, SAVAN & WILKINS)

DATE: June 24, 1987

Prior to 1986, CELA staff (legal and non-legal) had agreed internally on how the funding for salaries, as provided by OLAP, should be split among the individual staff members. In practice, all staff were generally given equal percentage increases. As the additional funds granted by OLAP each year were low, the average percentage increases given were also low. To have increased one person or group's salary disproportionately would have resulted in an unacceptably low level of increase for the others.

In 1986, OLAP granted salary funds that were significantly in excess of what might have been expected in times of low inflation. OLAP indicated that the clinics were free to allocate these funds as they saw fit; however, the reason that additional funds were granted were to help "catch-up" salaries to those paid in other sectors. Legal and non-legal staff were unable to internally agree on the allocation of the salary pool and it was left to a special committee of the Board to determine a "fair" allocation. After considering proposals from legal and non-legal staff, the final allocation that was arrived at gave our lawyers an annual increase of 12.7 percent overall, clinic legal workers 8% and secretarial staff 7.7%.

In 1987, OLAP again gave CELA a salary allocation which was significantly in excess of inflation. OLAP specifically stated that the funding granted "includes a special 'catch-up' amount for clinic lawyers", and that the "Clinic Funding Committee's goal is to provide sufficient funds to allow an increase of up to 20% on average lawyers' salaries". The catch-up mechanism employed to determine the amount of increase given to each clinic was to increase the credit given for each year since his/her call to the Bar. These career progress units (CPU's) increased from last year's $1,675.00/year since one's call to the Bar to $2,600.00/year this year (a 55% increase). CELA benefited far more than the average clinic this year since Michelle Swenarchuk, who was hired one year ago, brought a very large number of CPU's into the OLAP salary pool calculation. Had a lawyer just called to the Bar been hired instead of Michelle, the overall salary allocation from OLAP would have been $26,500.00 less.

CELA legal and non-legal staff in 1987 were again unable to agree on an allocation of the salary pool and the Board at its June 1st meeting appointed a special committee (non-staff members of the Management and Personnel Committees) to recommend to the Board an appropriate allocation of funds having regard to OLAP's directive and salary levels in other sectors. Our committee met on June 5th, 12th, 17th and 24th. We individually made inquiries and carried out assignments between those meetings. A wide divergence of views and alternatives were canvassed. After discussions with OLAP, investigation of a wide variety of salary ranges in other sectors, review of the two very thorough, persuasive and helpful written memos from the staff providing two alternative proposals, consideration of a host of other factors and much anxious consideration and debate, the Committee has come to the following conclusions:

1) It is counter-productive and very stressful on all staff to expect them to decide and agree internally on what individual staff raises should be. This is not done at most other clinics. Further it is frowned upon by CFC. Thus, either a policy should be instituted which automatically gives all staff an equal percentage increase each year, or the decision on salary allocation should be taken away from the staff entirely and put into the hands of a sub-committee of the Board each year. We would suggest that the latter take place for the reasons set out in APPENDIX I which is attached to the end of this Report (p.5).

2) For 1987, no detailed performance appraisals have taken place to date. Staff independently decided to leave this until after salary allocations were finalized. It is impractical given time constraints to now undertake this before determining 87/88 salaries. In future, performance appraisals must be conducted prior to the commencement of the salary review process. This Committee therefore recommends that salaries now be set in accordance with APPENDIX II attached hereto (p.6). APPENDIX III articulates the reasons for the salary increases which we recommend (p.7).

3) A detailed methodology for determination of salaries should be adopted by the Board and in force by the beginning of 1988. It must include an analysis of

performance appraisals. A draft outline of our proposed methodology is set out in APPENDIX IV attached hereto (p.9).

4) In the past, the specific obligations of each position at CELA, and the performance of the people in these positions have not been articulated either clearly or regularly enough. As a result, it has been difficult to identify those responsible for rectifying matters, when management problems arose. While a small organization like CELA, with a dedicated staff, doesn't need the kind of formal rigid procedures common in a large bureaucracy, some improvements to CELA's style of management seem to be in order. Several changes of this kind are suggested in APPENDIX V (p.13).

Due to our haste in attempting to complete our investigation, deliberations, recommendations and Report well in advance of the July 6th Board meeting, we have had very little time to refine, edit and retype the final (and rough) draft of this Report. We apologize for any confusion, gaps, inconsistencies, bad grammar and typo's which it might therefore contain.

APPENDIX I

POLICY ON SALARY ALLOCATION & PROCESS

As a matter of policy, three factors must be considered in salary allocation: current inflation, individual merit and market conditions. It is a goal of CFC, and CELA to attempt to pay salaries approximating those paid elsewhere for the same work. We want to be as competitive as possible in order to keep good staff who are difficult to replace and train. Once comparable salary levels are achieved, inflation increases only are justified unless individual merit justifies a larger increase.

Finding a just and fair solution, given limited funds to allocate, is difficult enough. Expecting the staff to work through and past their own competing interests in order to arrive at a comfortable consensus is unrealistic, as the past two years' effort has demonstrated. Even assuming the staff could reach a consensus, this does not necessarily result in the enhancement of the objectives of the Board and the organization. An extreme example would be a decision by staff to split the entire salary pool equally. Such a move might not help the organization to attract and keep experienced and talented lawyers, because of comparatively low salaries, even though the present staff might prefer such a plan for their own political or ideological reasons.

It is hoped that the Board can be objective, and maintain an overview - a longer range vision of how the objectives and best interests of the organization will best be served in allocating salary monies.

We do not think it healthy or productive for the staff to annually compete over how the salary pie will be divided. Wounds suffered in the process can lead to scars which may not heal. The good working relationship of staff members, once so undermined, may be difficult to restore without the expenditure of far more energy and time. And even then, much of the damage may be permanent.

It is the Board's responsibility to provide leadership for the organization in this important area by establishing policy and then ensuring that such policy is implemented each year. Automatic, equal, across-the-board salary increases, although simple to effect, fail to respond to the organization's need to balance inflation, individual merit and market conditions in determining salaries. Further, it can lead to some members or groups within staff achieving salary levels superior to those paid in the market, at the expense of others who might be relatively underpaid.

For these reasons we reject the concept of staff determination of salaries, and the principle of uniform equal annual increases. We favour a non-staff Management/Personnel Committee investigating and reporting to the Board with recommendations.

APPENDIX II

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

1987/88 PROPOSED SALARY ALLOCATIONS

Annualized 1986/87 Salary		Recommended % Increase	Proposed 1987/88 Salary
$39,062.00	Toby Vigod (clinic director)	22.5 26.4 47,850	$49,357.00
37,600.00	Michelle Swenarchuk	22.5 25.1 46,060	47,026.00
36,612.00	Steven Shrybman	22.5 25.1 44,850	45,803.00
113,274.00	Lawyers	22.5 25.5 138,760	142,186.00
—	Kathy Cooper	+(1806) n/a 26,500	24,694.00
26,706.00	Frank Giorno	n/a	—
27,386.00	Sarah Miller	11.8 10.0 30,617	30,125.00
54,092.00	Clinic Legal Workers		54,819.00
20,824.00	Deborah McKeon	11.8 10.0 23,281	22,906.00
20,824.00	Linda Gilbert	11.8 10.0 23,281	22,906.00
13,102.00	Bonnie Gibson	11.8 10.0 14,648	14,412.00
8,735.00	Mary Vise	11.8 10.0 9765	9,609.00
63,485.00	Secretarial	10.0	69,833.00
19,962.00	Articling student	n/a	20,000.00
250,813.00	Total	286,852	286,838.00
17,557.00	Benefits at 7.0%		20,080.00
			306,918.00
1,641.00	Bookkeeper	9.7	1,800.00
—	Contingency		—
$270,011.00			$308,718.00

Note: Legal Aid 1987/88 final Salary Pool Allocation, after adjustment for the Giorno change is:

1.	Personnel Allocation:	$ 289,950.00
2.	Benefits @ .064	18,493.00
3.	LSUC Compensation and Legal Aid levies: 3 x $425.00	1,275.00
	Total Personnel	$ 308,718.00

EXPLANATORY NOTES ON 1987/88 SALARY RECOMMENDATIONS

A. The Lawyers.

Our investigation has revealed that the clinic lawyers, who are recognized specialists in environmental/municipal law, administrative law, advocacy and law reform were paid far less in 1986/87, given their experience, skill and ability, than their peers in private practice or government employment. Notwithstanding last year's catch-up of 12.7%, they would likely earn 50% more, or better in private practice or government.

CFC views our lawyers' salaries as below average, given their seniority and experience, when compared with the other OLAP clinics, thereby justifying increases of well beyond 20% to the lawyers' salary pool. They have suggested a 25% overall increase to this pool.

CELA is on record for the past many years of complaining to CFC that lawyers' salaries are inadequate to ensure that we can attract and retain talented lawyers, particularly after they have acquired some experience and know-how at CELA.

CFC has advised us that this is the year for lawyer catch-up, and catch-up we had better or forever hold our peace. Under the circumstances, a 25% increase is still quite modest, considering the large gap that continues to remain even after that increase is in place. We feel that, as a matter of policy, the clinic Director's stipend allocation should be reflected in the Director's salary (ie: it should be the senior salary), given the added responsibilities of the Director. This explains the discrepancy in the Director's proposed salary.

The nature of CELA's work is such that our lawyers' area of expertise is far more complex and scientific than that of most other clinic lawyers. Municipal, provincial, federal and international law is involved. In contrast, the work undertaken by most other clinics is in more traditional areas. There are far more lawyers with experience who are available to compete for such clinic positions. It does not take as long to train a lawyer in those areas. Few other clinics require the degree of scientific study and knowledge as does CELA.

Given their years of experience and seniority, and the complexity of their field, our present lawyers should be amongst the highest paid clinic lawyers. However, given the history of the salary allocation process undertaken by staff this year, we do not feel that a larger increase at this time would be wise.

B. Clinic Legal Workers.

Kathy is new on staff, and the review process does not therefore affect her. Our reasons for the amount of increase for Sarah is the same as that articulated under "C" below.

C. Secretaries.

Our investigation concludes that for 86/87 our support staff were not below the market in salary. In fact, many examples emerged in which they were equal to or ahead of the market. Inflation is low and not climbing (4.3%). A 10% increase is more than double that required as a cost of living adjustment. It is the maximum increase we can justify in light of the large market disparity that continues to persist in the lawyer category. An increase beyond 10%, in our view, would undermine our ability to make any serious catch-up progress in the lawyer category, and would render CELA's commitment to attaining comparable salary levels in <u>all</u> groups open to serious doubt.

Overtime work should be compensated by equal time off, where appropriate, rather than extra pay. This is consistent with the model employed in most clinics, and private law offices.

D. Contingencies.

We have budgeted nothing from the salary pool for contingencies. This is because of the considerable "other" funds which are now available, or will be, to apply for such purposes. In addition, any salary monies not applied to the wages of permanent employees will be lost to us for future base rates, from which further increases will be calculated. MISA funds received already ($2,200.00) indicate that a $4,000.00 target might be conservative. $5,000.00 is expected from the Nuclear Safety Project, the funds for which are now confirmed. Additional teaching mones for Toby ($700.00) are uncertain. A $4,000.00 MOE grant received has not been dedicated thus far to any other purpose. From these various funds, we propose the following allocation, leaving a generous surplus for other potential uses or applications:

(a) General Contingency: $2,000.00. This amount is an acceptable allowance for CFC, and comparable to that provided by other clinics.

(b) Law Society Fees: $1,700.00. This amount is the balance of fees payable, after payment of the Compensation Fund and Legal Aid Levy. This allocation can be made only on a year-to-year basis, as funds are available.

(c) Peter Pickfield (West Burlington): $1,000.00.

(d) Additional Librarian Work: $4,200.00. This is the sum proposed by CELA non-lawyer staff.

Total: $8,900.00

APPENDIX IV

PROPOSAL FOR ANNUAL SALARY REVIEW MECHANISM
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Classification and Remuneration

An employee's classification (formal or informal) and consequent salary should be based on level of responsibility (level of routine contact, reporting relationship, budget responsibilty, supervisory responsibility, and so on). Ordinarily, the higher the level of responsibility, the higher the employee's classification and therefore salary. Someone whose job requires that s/he is regularly in contact with senior personnel elsewhere, that s/he supervise one or more employees, and that s/he is responsible for a substantial annual budget should be paid more than someone who regularly communicates with clerical-level staff elsewhere, and has no supervisory or budget responsibilities.

Note that these factors are based on the <u>nature of the job</u>, not on the particular person filling the job. The position must be considered an entity unto itself, with a description of duties that CELA believes is appropriate. This has a number of implications. For instance, just because a junior staff member <u>chooses</u> to become involved in activities that are typical of more senior levels does not mean that that employee should be paid more for his/her job. In most cases, an employee should seek formal approval from CELA management to undertake responsibilities not normally part of his/her job description. Furthermore, the employee should be able to demonstrate that the new duties will not conflict with his/her regular responsibilities.

If CELA believes that the new activity is an important part of the job, CELA management should alter the job description (and possibly the salary) to reflect the change in routine duties <u>regardless of whoever holds the position at the time</u>. One consequence of this is that if the staff member then leaves CELA, a replacement would need to be found who is both willing and able to assume the higher level of responsibility, or the position description should be re-written. In other words, the position would not automatically revert to its earlier description.

A second concern is that length of work experience is less important than length of work experience <u>at CELA</u>. In other words, someone who worked seven years as a clerk with a real estate firm and three years in a different type of job at CELA would ordinarily have the same salary status as someone who has the same seniority at CELA but lacked the seven years earlier experience.

Appendix IV, cont'd

This is predicated on the assumption that the previous work experience is not necessarily good preparation for work at CELA. If the previous work experience has been useful preparation, this should be reflected in the employee's starting level and/or salary, or specific contractual arrangements regarding accelerated merit increases should be built into the employment contract.

Performance and Salary Review

Performance and salary review should be interrelated. It follows that there should be a regular mechanism to review staff performance and recommend salary increases to the CELA Board of Directors for approval. The following mechanism is suggested.

Ideally, performance review and salary increases should occur on the anniversary of an employee's entering employment with CELA[1]. In CELA's case, however, funding for salary increases is available once a year, at the same time for everyone. It may therefore be preferable to conduct all reviews simultaneously in a predetermined universal review period, preferably in March of each year (see below).

Recommended Ranges for Salary Increases

Once a year, before the annual review period, the CELA Board of Directors (acting on the advice of the combined non-staff members of the Management and Personnel Committees) should decide on recommended ranges for percent salary increase for each type of position. Decisions should be made based on the expected average level of performance and the total available pool of money for salary increases. The recommended ranges could take the form of a matrix, with performance categories across the top and type of job down the side. A simple matrix might look like this:

	Poor	Fair	Average	Above-Avg	Excellent
All Positions	--(Body of matrix made up of recommended % increases)--				

These figures are assumed to exclude across-the-board increases to account for inflation and across-the-board or specialized "catch-up" increases.

[1]For new employees, the anniversary may be a calendar quarter or six-month period; for employees with longer service, the anniversary is usually a one-year period.

Appendix IV, cont'd

Performance Review Interview

The employee is responsible for obtaining and completing a performance review form for him- or herself. It is the employee's responsibility to initiate this review. All reviews should be complete by the end of September, 1987, for the current year, and by the end of March in future years. They may also be requested at any other time by the employee, supervisor, or Board member. Performance reviews should be carried out first for support staff, then for clinic legal workers, and finally for legal staff. The Office Manager should review support staff, and the Clinic Director should review all other staff. The Clinic Director's performance should be reviewed by the joint Management/Personnel Committees.

When the employee has completed the performance review form, s/he should make an appointment with his or her supervisor for a performance review interview. Several days' notice should be given to allow the supervisor to complete the next step. After the appointment is made, it is the supervisor's responsibility to complete a second copy of the performance review form from his or her perspective.

One non-staff member of the Personnel/Management Committees should be present at the interview to act as an observer and, where necessary, intermediary. This person may be selected by the employee.

The interview itself should be conducted as follows. At least half an hour should be allocated, and preferably an hour. The employee should speak first, detailing any achievements and difficulties encountered over the review period and using as a focus for the discussion his or her completed performance review form. This is also the time for the employee to volunteer information about long-term career goals and any career development activities that may be appropriate to achieve those goals.

In the second part of the interview, the employee should be provided with a copy of the supervisor's assessment of his or her performance. The supervisor should then discuss any areas of agreement or disagreement, make suggestions about possible areas for improvement or development, and so on. The employee's performance should at all times be judged against the job description, to avoid any disagreement about the precise nature of the job and its duties. Where the employee has "strayed" into areas or responsibilities not normally part of the job, the supervisor and employee should discuss whether this is taking time away from more important routine duties, or whether the new activities should be built into a revised job description.

Appendix IV, cont'd

At the end of the interview, the supervisor should, with clarity and tact, inform the employee whether his or her performance is judged to be poor, fair, average, better than average, or excellent. If performance deficiencies have been noted, the interview should include specific plans to improve performance.

Having judged the level of performance, the supervisor need only consult the CELA Board's recommended ranges of increase for each position and performance, and select an increase from within the recommended range. All recommendations for salary increases must be confirmed by the CELA Board of Directors.

APPENDIX V

Management Objectives for CELA

During the process of discussing and agreeing on a new policy for setting future CELA salary increases, it became clear to the joint Management and Personnel committees that improvements in the routine management of CELA are essential. Historically, CELA has operated in a rather non-hierarchical fashion, and individuals have had an enviable degree of flexibility in choosing and placing priorities on their tasks. This has attracted committed employees to the organization, which has clearly benefitted, but it has also caused confusion and differences of opinion about who should be doing what when. Without clearly articulated and generally known job descriptions, lines of authority, and avenues of communication, it is difficult for staff to agree on how well they are performing their jobs, and also to sort out day to day problems that arise in the organization. This appendix makes an attempt to identify some innovations which would improve the workings of CELA, and help to prevent the disputes which arose over the budget this year and in 1986.

Most of these items are mentioned in the job descriptions for the Clinic Director and the Office Manager. Those that are not (or those for which refinements are suggested), are marked below with an * and should be added to the job descriptions. The intent of this Appendix is to raise the priority of all of these managerial tasks, in the total set of responsibilities of each of these positions in CELA.

1. Responsibilities of the Clinic Director

It is the Clinic Director's job to ensure that performance reviews have been completed for all staff prior to the new OLAP personnel funding award each April. The Clinic Director should personally carry out the reviews for all clinic legal workers and legal staff.* This year, in addition, the Clinic Director should ensure that all the revised job descriptions are completed by August, and performance reviews carried out by October.

Attendance at all meetings of the legal-priorities and management committees, of the full board and of the staff should be a very high priority for the Clinic Director. When participation in hearings or out-of-town engagements makes this impossible, the Director should specifically delegate this responsibility to another staff member.*

The Clinic Director should report directly to the Board twice each year, primarily to let them know how the priorities set in the annual (or biennial) review of CELA's mandate have been pursued, and what cases or projects are consuming the bulk of the legal staff's time.*

2. Responsibilities of the Office Manager

The Office Manager should directly supervise the support staff, and should carry out their performance reviews.* The Manager should also be responsible for ensuring that overtime arrangements are fair and reasonable.

Scheduling is also the job of this person; he or she should carry out or delegate the task of keeping track of who will likely be doing what when, and also should track the projects underway in the office. A public record of these work plans should be maintained by the office manager or the delegated support staff on a board in an open area in the CELA offices.*

The Office Manager should arrange bi-weekly or monthly staff meetings, preferably at a regularly scheduled time, and should ensure that all members of the Board of Directors receive minutes of these meetings with the agenda for the next Board meeting.

3. Joint Responsibilities

The Clinic Director and the Office Manager should consult with each other prior to the performance reviews to ensure that each is aware of the other's perspective prior to all the interviews.

Once the new CELA salary scheme has been agreed, the Clinic Director and the Office Manager should jointly develop a plan to deal with the needs of the CELA library. Specifically, they should devise a strategy to pay for time to choose and set up the computer funded by MOE.