

SUBMISSIONS BY THE  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
TO THE STANDING COMMITTEE ON THE  
LEGISLATIVE ASSEMBLY

RE: BILL 164  
*COMMUNITY RIGHT TO KNOW ACT*  
*(DISCLOSURE OF TOXINS AND POLLUTANTS), 2006*

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## **PART I – INTRODUCTION**

These are the comments of the Canadian Environmental Law Association (“CELA”) in relation to Bill 164 (*Community Right to Know Act (Disclosure of Toxins and Pollutants)*, 2006).

For the reasons outlined below, CELA strongly supports Bill 164, and we respectfully urge the Ontario Legislature to pass Bill 164 and to proclaim it into force as soon as possible.

CELA is a public interest law group founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens’ groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

For many years, CELA has strongly advocated the entrenchment of community right to know (“CRTK”) principles into law, policy and practice at the federal, provincial and municipal levels of government. For example, CELA has strongly supported the creation of meaningful public reporting mechanisms under the federal *Canadian Environmental Protection Act, 1999*, such as the National Pollutant Release Inventory (“NPRI”). Similarly, CELA was a co-founder of the “Pollution Watch” website ([www.pollutionwatch.org](http://www.pollutionwatch.org)), which represents an attempt by non-governmental organizations to provide citizens with information about potential contaminant sources within their neighbourhoods.

In addition, while serving as counsel for Walkerton residents at the Walkerton Inquiry, we strongly advocated entrenching public notification and public reporting mechanisms into provincial laws regulating the treatment and distribution of drinking water (i.e. *Safe Drinking Water Act, 2002*). Moreover, in 2006 CELA researched and wrote a major report for the City of Toronto on various legal options for implementing CRTK principles at the municipal level. CELA is also a member of the Occupational and Environmental Carcinogens Working Group of

the Toronto Cancer Prevention Coalition, and we are currently participating in a multi-stakeholder campaign for the enactment of a CRTK by-law in Toronto.

While some headway has been made in recent years in terms of entrenching CRTK principles into legally enforceable mechanisms, CELA submits that there is considerable room for improvement and key opportunities for further reform, particularly at the provincial level, as discussed below.

## **PART II – OVERVIEW OF BILL 164**

### **(a) Need for Reform**

In general terms, CRTK refers to the ability of a community – such as residents, groups, and workers – to obtain full and timely access to information held by government or industry on substances or conditions that may pose risks to the environment or public health. The overall purpose of CRTK programs is to allow community members to understand these risks, to make informed judgments, and to take appropriate measures in their homes and workplaces to prevent or reduce their exposure to such risks.

In CELA’s opinion, the existing legislative framework within Ontario does not adequately incorporate or facilitate CRTK principles. As we documented in our report to Toronto’s public health department, some limited CRTK programs currently exist at the provincial level (i.e. various provincial databases and registries overseen by the Ministry of the Environment), but public access to this non-centralized information has often proven to be slow, incomplete, inconsistent, and problematic for a variety of reasons.<sup>1</sup>

Similarly, the above-noted Occupational and Environmental Carcinogens Working Group (of which CELA is a member) conducted a study of the South Riverdale community, which is under considerable environmental stress due to the presence of numerous industrial and commercial facilities. This study found that members of the public had extremely limited access to information on substances of concern, particularly those used, manufactured or stored by small

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<sup>1</sup> CELA, *Creating Community Right-to-Know Opportunities in the City of Toronto* (January 2006), CELA Publication #538 (available at [www.cela.ca](http://www.cela.ca)).

facilities within the community.<sup>2</sup> These smaller facilities are not generally required to report to the NPRI. This study led CELA to research and submit a background paper to the local medical officer of health on opportunities for cancer prevention through CRTK programs. Toronto's public health officials have conducted follow-up analysis on this issue, and determined that they only had access to information on about 3% of toxic substances used in Toronto. It is reasonable to anticipate that this problem is not limited to Toronto, and that it likely exists in most if not all municipalities within Ontario.

These findings, in and of themselves, are alarming and clearly underscore the need to improve and strengthen CRTK within Ontario. However, CELA's concerns are further amplified by the Special Report released yesterday by the Environmental Commissioner of Ontario, who found that the Ministry of the Environment lacked the institutional capacity to oversee, review or update environmental approvals; conduct timely inspections; or undertake effective enforcement action to protect the environment and public health.<sup>3</sup>

Accordingly, CELA submits that it is incumbent upon Ontario to entrench CRTK principles within provincial legislation dealing with environmental protection, consumer protection, and workplace safety. In particular, CELA concludes that Ontario's existing legislative framework should be amended forthwith in order to strengthen and enhance:

- the public's right to timely access to information about environmental pollutants and their sources;
- the consumers' right to know about toxic substances associated with commercial goods and services;
- the workers' right to know about health effects associated with occupational exposure to hazardous materials; and

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<sup>2</sup> See Toronto Cancer Prevention Coalition, *Report of the Occupational and Environmental Carcinogens Working Group: Development of a Community-Right-to-Know Strategy for Toronto – Case Study in South Riverdale/Beaches Community* (December 10, 2004).

<sup>3</sup> ECO Special Report, *Doing Less with Less* (April 24, 2007).

- the safety and effectiveness of emergency response.

Accordingly, CELA supports Bill 164 because it represents a significant step forward in terms of implementing these important legal rights for Ontarians.

The environmental and public health benefits of meaningful CRTK mechanisms are well-documented,<sup>4</sup> and need not be repeated here. In summary, the overall purpose and benefits of CRTK are generally understood to include:

- providing residents, workers and communities with information about hazardous substances or conditions to which they may be exposed;
- enabling residents, workers and communities to take proactive steps to prevent, reduce or mitigate environmental or public health risks;
- facilitating emergency preparedness and response;
- identifying the need for better pollution prevention measures, improved regulatory enforcement, or more stringent environmental standards; and
- motivating industry to improve environmental performance and reduce the use of hazardous substances (i.e. by reformulating the product or feedstock, changing the production process, etc.).

It should be further noted that many forward-looking governments within the United States have entrenched CRTK principles into law and implemented cost-effective CRTK programs that have resulted in significant reductions in the use of toxic substances (i.e. California, New Jersey, etc.). Thus, if Bill 164 is passed into law, then Ontario will join other leading North American

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<sup>4</sup> CELA, *Creating Community Right-to-Know Opportunities in the City of Toronto* (January 2006), CELA Publication #538 (available at [www.cela.ca](http://www.cela.ca)).

jurisdictions which have recognized the public interest value in utilizing legal tools to implement CRTK principles.

CELA notes that during the Second Reading debate on Bill 164 on November 30, 2006, some members of the Ontario Legislature raised various legal and/or constitutional concerns about Ontario's jurisdiction to enact Bill 164. In CELA's opinion, these concerns are groundless and unpersuasive. As a matter of constitutional law, environmental protection and health protection are not matters within the exclusive jurisdiction of the federal government. Instead, these are matters of shared or concurrent jurisdiction as between the federal and provincial levels of government, and, in our opinion, there is no constitutional constraint that prevents Ontario from enacting Bill 164 (particularly since there appears to be no operative conflict between Bill 164 and any federal laws). Indeed, there are several heads of provincial power under the Canadian Constitution (i.e. property/civil rights, local works/undertakings, etc.) that clearly confer legislative competence upon the Ontario government to enact laws to protect the environment and public health. Thus, the question is not whether Ontario can pass Bill 164; instead, the question is whether Ontario should pass Bill 164, and CELA submits that this question should be answered in the affirmative.

**(b) The Environmental Component of Bill 164**

Section 3 of Bill 164 amends Ontario's *Environmental Protection Act* ("EPA") by imposing a new duty upon the Ministry of the Environment to create and maintain a "pollutant inventory" that consolidates various records, reports, instruments, and other documents currently authorized or required under provincial laws and regulations (i.e. EPA, MISA regulations, *Ontario Water Resources Act*, *Nutrient Management Act*, *Pesticides Act*, *Clean Water Act*, and *Safe Drinking Water Act*).

CELA strongly supports this modest amendment to the EPA, and submits that Bill 164 will facilitate public access to critically important information about matters affecting the air, land and water of Ontario. The public need for such information has attained additional urgency in light of the Environmental Commissioner's findings that the Ministry's capacity to protect the

environment and public health has been significantly diminished by staff reductions, budget cutbacks, and other policy and administrative changes dating back to the 1990s.

In addition to establishing a centralized, user-friendly, internet-based portal to such information, the Ministry of the Environment is further obliged by Bill 164 to provide “prescribed information” on the environmental and health impacts of “prescribed pollutants”. While the details of this obligation have yet to be outlined by regulation, CELA strongly supports the creation of a statutory duty upon the Ministry to ensure that the public has ready access to credible, reliable and comprehensive information about the environmental and health significance of substances caught by the “pollutant inventory.”

### **PART III – CONCLUSIONS**

For the foregoing reasons, CELA believes that Bill 164 is legally sound, represents good public policy, and will help safeguard the environment and public health within Ontario.

Therefore, CELA recommends that Bill 164 should be given Third Reading and Royal Assent, and should be proclaimed in force as soon as possible.



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