



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
*L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT*

January 26, 2010

Law Reform Commission of Ontario  
Modernization of the Provincial Offences Act Project  
276 York Lanes, York University  
4700 Keele Street  
Toronto, Ontario  
M3J 1P3

*Via fax (416) 650-8418*

Dear Sir/Madame:

**Re: The Modernization of the Provincial Offences Act**

The Canadian Environmental Law Association (CELA) is writing to you in response to the Law Reform Commission of Ontario's consultation paper, "The Modernization of the Provincial Offences Act."

CELA is a non-profit organization founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizen's groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. CELA also undertakes public education, community organization, and law reform activities. CELA counsel was a member of the Ontario Ministry of Environment's Environmental Penalties Regulatory Development Working Group, a multi-stakeholder group, established to examine the use of administrative monetary penalties for environmental violations.

Administrative penalties are generally regarded as a quick and less costly way to implement regulatory sanctioning. CELA is of the view that the use of administrative penalties can provide efficiency and flexibility in comparison to criminal enforcement. A number of studies reveal that regulators are more likely to take enforcement action when administrative penalties are available as an enforcement tool, as opposed to when prosecution is the only option. There is also evidence that using administrative sanctions has been effective in promoting regulatory compliance.

CELA, however, remains strongly opposed to the use of administrative penalties for serious regulatory violations. These include violations which have either caused or had the potential to cause adverse impacts to human health or the environment as well as cases involving a repeat offender. In our view, serious regulatory offences should be subject to prosecution under the *Provincial Offences Act*. CELA also favours an administrative penalty regime which allows for parallel proceedings in order to give the regulator the option of either prosecuting the offence under *Provincial Offences Act* or imposing an administrative penalty. This would ensure that the regulator has discretion to assess and determine which type of proceeding is appropriate given seriousness of the violation in a particular case.

We would refer you to the article, “Environmental Penalties: New Enforcement Tool or the Demise of Environmental Prosecutions” published in *Environmental Law – A Year in Review, 2007* by Stan Berger and Dianne Saxe. The article provides a more detailed critique regarding the pros and cons of using administrative penalties with regards to environmental violations. The analysis provided in the article is equally applicable to other types of regulatory offences.

Yours truly,  
**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



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