Publication #356

October 19, 1998

Standing Committee on Administration of Justice
Legislative Assembly of Ontario
Toronto, ON
M7A 1A2

Attention: Gerry Ouelette, M.P.P., Chairperson

Dear Mr. Ouelette:

RE: *BILL 25, RED TAPE REDUCTION ACT*, 1998
SCHEDULE C: "STATUTE AND REGULATION REVISION ACT, 1998"

PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 to use and improve laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities. CELA□s general interest mandate includes matters pertaining to public access to decision making and ensuring the transparency and accountability of government decision making.

The purpose of this brief is to provide comments to the Legislative Committee of the Legislature regarding Schedule C to Bill 25, the proposed □"Statute and Regulation Revision Act, 1998". Bill 25 is titled the □"Red Tape Reduction Act, 1998". Several schedules are appended, to that Bill, dealing with a wide variety of proposed legislative revisions. This brief will deal only with Schedule C. CELA will also be preparing a written submission regarding Schedule 1, to the Bill, titled the "Amendments and Repeals Proposed by the Ministry of Natural Resources" and providing those comments to the Legislative Committee under separate cover.

The proposed *Statute and Regulation Revision Act* would give cabinet the power to make amendments to statutes. The proposed process would allow the "Chief Legislative Counsel" to draft amendments, and cabinet to put them into legal force just by causing the revised statute to be deposited with the Clerk of the Legislative Assembly. Such amended statutes will be in force as if passed by the Legislature once published by the Queen□s Printer "on a day to be named by proclamation of the Lieutenant Governor". Even the publication requirement is not specified; merely that it be "published in a printed form". Such amended statutes could then conceivably be

in force without notice to the public or opposition parties, and without any opportunity for debate or consideration by the members of the Legislative Assembly.

The issue is: Can the Legislative Assembly pass a statute to give cabinet the power to amend statutes (without a process whereby the amendments, revisions or repeals are confirmed by the Legislative Assembly)?

This Brief, as to Schedule C, the proposed Statute and Regulation Revision Act, 1998, follows and is submitted in support of the presentation made to the Standing Committee on the Administration of Justice by the Canadian Environmental Law Association on Tuesday, September 29, 1998.

The concerns that CELA has include the following:

- The proposed Statute and Regulation Revision Act, 1998 is unconstitutional. The powers given to the Chief Legislative Counsel and the Lieutenant Governor in council exceed the powers appropriately exercised by the executive branch of the government.

- The proposed Statute and Regulation Revision Act, 1998 contravenes the Rule of Law. It does not follow due process for statutory amendments.

- The proposed Statute and Regulation Revision Act, 1998 offends principles of parliamentary democracy. Statutory law in Ontario must be enacted, revised and repealed by the Legislature.

- The goal of providing for efficient routine amendments of clearly non-controversial matters or the correcting of clear errors can easily be accomplished in a constitutionally valid manner by providing for the corrections to be passed by the Legislative Assembly. One such model is found in the federal revision statute.

PART II - Recommendations:

1. Delete Schedule C from Bill 25 in its entirety.

2. Alternatively, amend Schedule C so as to provide for passage of a specific revision Bill by the Legislative Assembly from time to time as needed (examples of such a process are discussed below). The process must provide for express and specific reference to the Statutes being amended by the future revision Bills, and to the amendments thus being enacted.

Part III - General Comments on the Proposed "Statute and Regulation Revision Act, 1998", Schedule C to Bill 25, 1998.

A. THE PROPOSED ACT IS UNCONSTITUTIONAL

The powers given to the Chief Legislative Counsel and the Lieutenant Governor in Council for the Province of Ontario under the proposed Act exceed the powers appropriately exercised by the executive branch of government.

The provisions of the proposed Act contravene the division of responsibility between the executive and the legislative branches of government in Canada□s Parliamentary democracy. The Constitution Act 1867 continued the separation of the legislative and executive branches of government in Canada (Preamble, paragraph 3). This separation requires that the legislative functions of government be carried out by the legislative branch.

The relevant section of the preamble reads:

> And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the *Constitution of the Legislative Authority* in the dominion be provided for, but also that the *Nature of the Executive Government* therein be declared (emphasis added)

This separation of powers was originally established in Ontario (Upper Canada) in 1791 when the constitution (the Constitutional Act 1791) established the two provinces of Canada and provided for (1) a governor and executive council; (2) a nominated legislative council and (3) a popularly elected legislative assembly. (This structure was amended in 1867 to the present single chamber system).

> Porritt, Edward, Evolution of the Dominion of Canada, Yonkers-on-Hudson, New York, World Book Company, 1918, pp. 67 and 484

Many of the powers proposed to be given to the Chief Legislative Counsel and the Lieutenant Governor in Council under the proposed Act are properly exercised only by the Legislature of the Province of Ontario.

B. THE PROPOSED ACT CONTRAVENES THE RULE OF LAW

The proposed Act is contrary to the rule of law in that it contravenes due process requirements for the enactment of Statutory amendments. The importance of the rule of law was stated in the text, The Legal Framework of Government, by Gregory Tardi (Canada Law Book, 1992), in

which he states at page 18:

> In a constitutional democracy, there are restraints on the use of government authority and political power which have evolved as a result of the acceptance and gradual extension of the rule of law.... The rule of law prevents avoidance of the application of legal principles and norms in favour of the exclusive use of power and it ensures that the law is given sufficient weight.

Later, he states:

> A regime founded in law is based on stability, the expectation of observance and a pattern of institutional rituals. (page 19)

Similarly, Monahan states that after the Constitution Act, 1982,

> It would appear that the principle of the rule of law - which requires that all actions of the state must be authorized by law in order to be valid - has now supplanted the principle of parliamentary supremacy as a bedrock principle of the Canadian constitutional order.
>
> Monahan, Patrick J., Constitutional Law, Irwin Law, 1997, p. 37

Furthermore, there is a possibility under the proposed Bill that revisions to a statute could result in a change to a substantive prohibition that has penalties attached. In such a case, if someone is charged under the prohibition, their counsel will be likely to challenge the validity of the provision. The result will be more; not less litigation as a result of the change and "clarification". Following the appropriate legislative process for changes to statutes will avoid this problem.

C. THE PROPOSED ACT OFFENDS PRINCIPLES OF PARLIAMENTARY DEMOCRACY

The proposed Act raises serious concerns as to the democratic process of decision making in Ontario. The *Constitution Act, 1982* provides that Canada is founded on the principle that it is a free and democratic society; in fact democratic rights are given Charter protection under the Constitution.

Constitution Act, 1982, sections 1, 3-5.

Ontario□s government is subject to constitutional requirements to act in accordance with the tenets of a constitutional parliamentary democracy by way of the *Act Introducing English Civil Law into Upper Canada*, 1792 (U.C.), section 1, and the continuance of that law in Ontario (Upper Canada) by section 129 of the *Constitution Act, 1867*.

Section 129 provides,

> Except as otherwise provided by this Act, all Laws in force in Canada... at the Union, and all Courts ... and all legal Commissions, Powers and Authorities, and all officers, Judicial, Administrative and Ministerial, existing therein at the Union, shall continue in Ontario... subject nevertheless... to be repealed, abolished, or altered by the Parliament of Canada or *by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.* (emphasis added)

From the first sitting of the Legislature of Upper Canada at Niagara in 1792, the Legislative Assembly has followed the Westminster rules of parliamentary procedure, including □the rules of debate and procedure on bills - introduction and first reading, second reading, committee stage, and third reading....

Porritt, supra, pp. 77, 78, 492.

The rules and procedure of the legislature may be described as the □law of Parliament□, dating from the adoption of the Westminster rules in 1792.

Porritt, p. 400

Tardi states that:

> In a constitutional democracy based on the rule of law, the institution of Parliament is of fundamental importance....In *House of Commons v. Canada (Labour Relations Board)* (1986), 27 D.L.R. (4th 481 at 494 (F.C.A.) {a case dealing with federal Parliament}, the court described the House of Commons as □far more than a creature of the Constitution; it is central to it and the single most important institution of our free and democratic system of government□.
>
> Tardi, supra, at page 64.

The same comments apply to the Legislative Assembly of Ontario.

The Legislative Power in Ontario is founded upon sections 69 and 70 of the *Constitution Act, 1867*, which provides for a Legislature for Ontario consisting of the Lieutenant Governor and of the Legislative Assembly of Ontario with Members of the Legislative Assembly, elected to their positions. There is no provision for legislative action to be taken by the executive branch. Nor is there any provision in express or conventional constitutional law for the Legislative Power to be exercisable by the Lieutenant Governor alone.

While there is provision both in Section 65 and 129 of the *Constitution Act, 1867* and in section 45 of *The Constitution Act, 1982* for provincial amendment of the provincial constitution, we are assuming that there is no intention in Bill 25, being the "Red Tape Reduction Bill" to make

constitutional amendments to the constitution of the Province of Ontario. To provide that the Lieutenant Governor can proclaim legislation in force without any enactment of the Legislative Assembly would amount to a constitutional amendment of the powers of the Lieutenant Governor.

> *Re Initiative and Referendum Act* [1919] A.C. 935 (P.C.) in which the said Act of the Manitoba legislature was held to be invalid since it intended seriously to affect the position of the Lieutenant-Governor as an integral part of the Legislature and to detract from the rights which are important in the legal theory of that position. For if the Act is valid it compels him to submit a proposed law to a body of voters totally distinct from the Legislature of which he is the constitutional head, and renders him powerless to prevent it from becoming an actual law...The Lieutenant Governor appears to be wholly excluded from the new legislative authority. These considerations are sufficient to establish the *ultra vires* of the Act.
>
> *Credit Foncier Franco-Canadien v. Ross* [1937] 3 D.L.R. 365 (Alta. A.D.), regarding the *Alberta reduction and Settlement of Debts Act*, 1936. The Act was held to be *ultra vires* the Province as an unwarranted delegation of legislative authority to the Lieutenant-Governor. The Act provided that "the Lieutenant-Governor in council may from time to time declare that any debt or description of debt is a debt to which this Act does not apply and every such order shall take effect upon publication in the Alberta Gazette...and upon such publication shall have the same force and effect as if it had been enacted as a part of this Act." The Court held that, "there seems no doubt that the intended effect of section 12 is to confer legislative authority upon the Lieutenant-Governor...No doubt the Lieutenant-Governor is an integral part of the Legislature but his function is not to initiate or enact legislation but merely to authorize the introduction to the Legislative Assembly of certain classes of legislation and to assent or withhold assent from legislation proposed by the Legislative Assembly. What is intended by section 12 is to confer a quite different function from any of those recognized by the Constitution... This case is different [from the *Re Initiation and Referendum Act]* only in that it adds to rather than subtracts from the Lieutenant-Governor s functions. The difference is in my opinion of no importance...[quoting from Leroy s Canada s Federal System at page 387] It is immaterial whether a Legislature by an Act seeks to add to or take away from the rights, powers or authorities which by virtue of his office a Lieutenant-Governor exercises, in either case it is legislation respecting his office (at p. 368) ...It is said that the Legislature has full power to delegate its authority...It is apparent that the authority to make regulations in order to make legislation enacted by the Legislature completely effective is a quite different thing from the authority to make an independent enactment. That is not ancillary to legislation but is legislation itself." (at p. 369)

If there is, in fact such an intention, then it ought to be expressly stated, introduced as a separate

Bill, and debated before the Legislative Assembly upon the footing that a constitutional amendment is sought. (Even in that case, the Canadian Environmental Law Association would oppose such an amendment for the reasons stated in this brief regarding Parliamentary democracy, the rule of law, and the argument that legislative activity must be conducted by the legislative branch.)

Monahan states that,

> the legislative function is the power to enact general rules that determine the structure and authority of the sate, as well as the rights and obligations of individuals, both in relation to the state and as between each other. Since the ***Bill of Rights of 1688***, English law has recognized that the enactment of legislation required a statute enacted by Parliament, and that the king could no longer legislate through the exercise of the royal prerogative....This same requirement was incorporated into the law of the British North American colonies in the late eighteenth century, with the establishment of the Legislative Assemblies in each colony.
>
> This principle was carried forward into the *Constitution Act, 1867*....Within each province, laws in relation to areas of provincial jurisdiction may be enacted by the Legislative Assembly of the province and approved by the Lieutenant Governor.
>
> Monahan, *supra*, p. 79

It is not the *preparation* of legislative amendments by staff that is objectionable; it is the process of rendering them into law without the involvement of the Legislative Assembly that is so.

Tardi quoted the Quebec Court in saying that:

> ...the truth is that Parliament is the supreme power in the field of legislation□, *Coorsh v. Decker* [1956] Que. R.P. 200 (S.C.), at 206 affd [1956] Que. Q.B. 78 (C.A.)
>
> Tardi, *supra* at p. 127.

Monahan states that,

> □There had developed [by the end of the 17th Century in England] a right to representative political institutions, in the sense that law could only be made by an elected Parliament rather than by the King exercising the royal prerogative.□
>
> Monahan, supra, p. 37

Although delegation of law-making power from the Legislative Assembly to subordinate bodies

is possible (□delegated legislation□ such as regulations, rules, orders and by-laws), the concern here is not with the delegated legislation, but with revisions to the legislation itself. Another way of understanding this concern is to state that statutes cannot be amended by regulation.

> As to delegated legislation, see Hogg, Peter, Constitutional Law of Canada, (3rd ed.), Carswell 1992, p. 340.

The legislative process cannot by-pass the legislative assembly.

> *Re Initiative and Referendum Act*, supra at p. 944 where there was an attempt to by-pass not only the Lieutenant Governor, but also the province□s legislative assembly. The latter was found objectionable by the Manitoba Court of Appeal; the Privy Council dealt only with the ground that the process amended the office of the Lieutenant Governor.
>
> *OPSEU v. Ont.* [1987] 2 S.C.R. 2 at 47 per Beetz, J., where he said that □...the fact that a province can validly give legislative effect to a prerequisite condition of responsible government does not necessarily mean it can do anything it pleases with the principles of responsible government itself".
>
> *R. v. Nat Bell Liquors* [1922] 2 A.C. 128 in which it was held that the *Liquor Act* was *intra vires* the legislative power of the province. Per Lord Sumner, it had been passed in 1916 under the *Direct Legislation Act*, whereby an initiative petition was duly presented to the Legislative Assembly of Alberta, praying that a Bill which was identical in all material respects to the *Liquor Act* should be enacted. "Thereupon as the Act required, the Bill was presented to the people of Alberta to be voted on, and having been passed by a considerable majority, was passed by the Legislature without substantial alteration. The respondents in the case contended that it was *ultra vires* because it was not □exclusively□ made by the Legislature but also partly by the people of Alberta. Indeed, the part played by the Legislature was practically only formal....A law is made by the Provincial Legislature when it has been passed **in accordance with the regular procedure** of the House or Houses and **has received the royal assent** duly signified by the Lieutenant-Governor on behalf of His Majesty. such was the case with the Act in question. It is impossible to say that it was not an Act of the Legislature and it is none the less a statute because it was the statutory duty of the Legislature to pass it." (emphasis added) (The Court declined to deal with the question of the validity of the *Direct Legislation Act* as it was not directly before it in this case.)
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> *Upper House Reference* [1980] 1 S.C.R 54 at 72 - The measure there contemplated to abolish the Senate would amount to a "transfer by Parliament of

> all its legislative powers to a new legislative body of which the Senate would not be a member" (in which the Court cited with approval the reasoning in the *Re Initiative and Referendum Reference*).

D. STATUTE REVISION IN OTHER JURISDICTIONS

It is enlightening to consider how the issue of "routine" or "non-controversial" statute amendments are carried out in another jurisdiction. For example, at the federal level, the *Statute Revision Act* established a Statute Revision Commission consisting of three employees of the Department of Justice appointed by the Minister of Justice. During the process of preparing a revision, or on the conclusion thereof, the Minister causes drafts of the statutes so revised to be laid before such Committee of the House of Commons and Committee of the Senate as may be designated for such examination and approval. Once they are examined and approved by such a Committee or Committees, the Minister must have prepared *and introduced in Parliament* a bill substantially in accord with the model bill set out in the Schedule to the Act. (Section 7 of the *Act*). A form of a bill is there set out, to be styled the *Revised Statutes of Canada (Year) Act.* The important aspect is not the form of proceeding (i.e. it need not be prepared by a Commission for example), but rather that however the proposed revisions are prepared, *they must be introduced into and passed by the Legislative Branch*.

It is also of interest to note that in the federal statute, the powers of the Commission are restricted by the words, □minor amendments□ and □without changing the substance of any enactment□, for example in section 6 (f).

> See *The Statute Revision Act*, S.C. Chapter S-20

Another example is the *Statute Law Revision Act, 1893*, titled, "An Act for further promoting the Revision of the Statute Law by repealing Enactments which have ceased to be in force or have become unnecessary", 56 & 57 Vict., c. 14 (U.K.). The preamble is of note in this context in that it reads, in part,

> Whereas it is expedient that certain amendments, which may be regarded as spent, or have ceased to be in force otherwise than by express specific repeal by Parliament, or have, by lapse of time or otherwise become unnecessary, *should be expressly and specifically repealed*... (emphasis added)

There follows section 1, providing in part,

> The enactments described in the schedule to the Act are hereby repealed...
> *Statute Law Revision Act, 1893*

These examples demonstrate that statute revision is an act of the legislative branch, that revisions must be passed by Act of the Legislature and that the specific revisions or repeals must be expressly stated in the Bill. There are many similar examples in Canada□s legislative history.

If the intention is to provide for the year 2000 Consolidation of the Statutes of Ontario and of the Regulations of Ontario, then a model is found in the *Statutes Revision Act, 1989* and the *Regulations Revision Act, 1989*. These Statutes are time limited in that they expressly and specifically authorize the revisions and refer specifically to the subject matter - the 1990 consolidation. They provide specific delegated authority for the restricted purpose of the stated consolidation with a correspondingly limited mandate to the Commissioners.

If the intention is to provide ongoing, continuing power to enact revisions, as appears to be the case with the proposed *Act*, then it must be carried out in a manner which includes the necessary step of the Legislative Assembly passing the revisions in question. The federal statute provides one model; others could be conceived.

PART IV - CLAUSE BY CLAUSE REVIEW

Some of the specific clauses of concern include the following excerpts:

Section 1: "The Chief Legislative Counsel for the Province of Ontario may prepare,

(a) a revision of any or all of the statutes of Ontario; and

(b) a revision of any or all of the regulations of Ontario."

Commentary: This section and the following section 2 are of concern due to the manner in which the prepared revisions may be enacted into Law under the proposal; i.e. without following the Parliamentary process.

Section 2(1): "In revising statutes or regulations, the Chief Legislative Counsel may,

(a) change the numbering or arrangement of provisions;

commentary - Obvious errors in numbering or arrangement may require revision, and this may be appropriate for an expeditious process. Nevertheless, the resulting changes must still be passed by the Legislative Assembly. Furthermore, there will be cases where the arrangement of provisions may result in a substantive or interpretation change to the statute and this should be scrutinized by the Legislature.

> *(b) make changes in language and punctuation to achieve greater uniformity;*

commentary - Corrections in language and punctuation may be needed; nevertheless the passage of the revisions is properly a Legislative function. On the other hand, □changes in language or punctuation□ may result in substantive changes. The phrase □to achieve greater uniformity□ is problematic since it does not specify □uniformity with what□.

> *(c) make changes that are necessary to clarify what is considered to be, in the case of a statute, the intention of the Legislature, or, in the case of a regulation, the intention of the authority that made the regulation;*

commentary - This provision is of great concern due to the substantial possibility that the "intention" of the Legislature that originally passed the Bill might be misconstrued by those proposing the amendment. Given the Parliamentary process, including debate and amendments to Bills, it can never be assumed that the Legislature made an error in the drafting; or that it misspoke itself. How would the □intent of the Legislature□ be ascertained? Is it proposed to use Hansard debates? Government memorandums? Courts generally give these sources little weight because they are not necessarily probative of the Legislative intent. Any concern in this regard must be returned to the Legislature after due process for debate and vote as to the proposed amendment.

> *(d) make changes to reconcile apparently inconsistent provisions;*

commentary - Apparent inconsistency is often a matter of interpretation. Proper interpretation may resolve such apparent inconsistencies. The changes made in an attempt to clarify such matters may themselves result in other inconsistencies within the subject statute and with other statutes. It is part of the function of the Parliamentary process to subject such changes to scrutiny.

> *(e) correct clerical, grammatical or typographical errors;*

commentary - Obvious clerical, grammatical or typographical errors may be appropriately dealt with by an expeditious process; nevertheless, the resulting proposal must still be introduced into and passed by the Legislative Assembly. An example of such a process is found in the federal legislation.

> *(f) repeal or revoke statutes, regulations or provisions that are obsolete, are spent or have no legal effect;*

commentary - Repeal and revocation of statutes must be done by the Legislature since this

function is a legislative one. Even where such action is clearly uncontroversial or needed, it is still properly a function of the legislative branch. There will be cases where the repeal or revocation is not uncontroversial or there is a debate as to whether the statute is □spent□ and in such cases subjecting the changes to the Parliamentary process will allow for that debate.

> *(g) include statutes or regulations that have not yet come into force and indicate how they are to come into force;*

commentary - Presumably this clause deals with a statute or regulation that has already been passed by the Legislative Assembly. Where the original statute does not provide for how they are to come into force, then inclusion of the statute in a revision Bill is appropriate, but again to be passed by the Legislature; not by the Executive.

> *(h) combine or divide statutes or regulations;*

commentary - Occasionally combination or division of legislative instruments will be a "housekeeping" matter; in other cases there may be implications to the action which must be debated by the Legislature. In any event, this function remains a legislative one; to be carried out by the Legislative branch of government.

> *(i) make changes to other statutes or regulations to reconcile them with a revised statute or regulation; and*

commentary - All such changes should be subject to the scrutiny of the Legislature. Often there will be implications to the change which were not noticed, if the original revision did not include them.

> *(j) include such information as the chief Legislative Counsel considers appropriate to show what changes have been made by the revision.*

commentary - This provision is vague and its purpose unclear. Is □such information□ intended to have legislative force?

> *(3) Contents of revised statute*
> *...may contain provisions making complementary amendments to other statutes and providing for transitional matters.*

commentary - Again, as above, this type of change must be done by the Legislature as a legislative function. Furthermore, "complementary amendments" and "transitional matters" must be scrutinized by the Legislature since such matters will often affect substantive rights.

Section 3: Deposit of revised statutes:

(1) "When the Chief Legislative Counsel reports to the Lieutenant Governor in Council that a statute has been revised, the Lieutenant Governor in Council may cause a copy of the revised statute, signed by the Chief Legislative Counsel, to be deposited in the office of the Clerk of the Assembly as the official copy of the revised statute."

commentary - This procedure has no provision for introduction of the revisions as a Bill for debate and vote in the Legislative Assembly.

(2) "A revised statute that has been deposited under subsection (1) comes into force on a day to be named by proclamation of the Lieutenant Governor that is not earlier than the day the revised statute is published under section 5."

commentary - This provision, together with section 5, could result in a situation where there is no public notice of the revision prior to the date on which it is in force by publication.

(3) "When a revised statute comes into force, it does so for all purposes as if it were an Act enacted by the Legislature."

commentary - This provision highlights the difference between the process envisaged here and the usual procedure of "an Act enacted by the Legislature". The fact that the revision might never have been scrutinized by the Legislature is a fundamental flaw in the proposed Act.

Section 5 - (1)"The Queen's Printer shall ensure that every revised statute deposited under section 3 and every revised regulation deposited under section 4 is published in a printed form."

(2) "In addition to any other method of publication that complies with subsection (1), revised statutes may be published in the annual volume of the Statutes of Ontario and revised regulations may be published in the Ontario Gazette."

commentary - The publication requirement is not specified; other than published in a printed form. It is not obvious how notice of the revision is intended to be provided to the public. There is no requirement for publication in the Annual Statutes or Gazette. This provision, combined with the provision as to when the revised statute is in force could result in the unacceptable consequence that the public has no practical notice of a revision to a statute that affects it.

Section 6 - "Judicial notice shall be taken of every revised statute and revised

regulation".

commentary - This is a normal aspect of judicial notice; but there may be great practical difficulties in bringing revisions to the attention of the Courts when the publication and notice requirements are vague and incomplete as noted in the comments as to section 5. Furthermore, the fundamental issue is as to the constitutional validity and legality of the process of enacting the revision as described in this brief. As well, this provision is already included in the Interpretation Act and would not be necessary to add here if proper legislative procedure was followed for revisions.

Section 7 - "A revised statute or revised regulation has effect and shall be interpreted as a consolidation of the law that was contained in the provisions that it replaces."

commentary - This section is already included in the Interpretation Act, and would not be necessary to add here if proper legislative procedure was followed for revisions.

Section 8 - "After a revised statute or revised regulation comes into force,

(a) a reference in any Act, regulation or other document to any statute or regulation that was replaced by the revision shall be deemed to be a reference to the revised statute or revised regulation, unless the context requires otherwise; and

(b) a reference in any Act, regulation or other document to a particular provision of any statute or regulation that was replaced by the revision shall be deemed to be a reference to the corresponding provision of the revised statute or revised regulation, unless the context requires otherwise.

commentary - Again, this is both a matter of legislative function (to define the references that are to be replaced) and statutory interpretation. This provision creates ambiguity and an extra layer of uncertainty (from the words □unless the context requires otherwise□).

Section 9 - "If a bill that is before the Assembly refers to provisions of a statute that is replaced by a revised statute, the Chief Legislative Counsel may cause the bill to be reprinted to refer instead to the corresponding provisions of the revised statute.

commentary - Where a statute is revised following passage by the Legislative Assembly, this would be an acceptable practice. Otherwise, there is room for substantial confusion and lack of notice that the revised printing contains substantively different provisions (i.e. reference to a different piece of legislation) than when originally introduced.

PART V - CONCLUSION:

Assuming a *bona fide* desire to provide a more expeditious mechanism for truly routine corrections to Statutes, this objective can be accomplished in a manner which is constitutionally valid and which respects the rule of law and the principles of Parliamentary democracy.

The Canadian Environmental Law Association makes the following recommendations:

1. **Delete Schedule C from Bill 25 in its entirety.**

2. **Alternatively, amend Schedule C so as to provide for passage of a specific revision Bill by the Legislative Assembly from time to time as needed (examples of such a process were discussed above). Amend Schedule C so as to provide a model for such future Bills, which must include express and specific reference to the Statutes being amended by the future revision Bills, and to the amendments thus being enacted. This process may be efficient and expeditious, but founded on legal and constitutional principles.**

Submitted this 19th day of October 1998.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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cc Sierra Legal Defence Fund
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