

CIELAP Newsletter

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

Spring 1994

What's Inside:

- ▶ *Biotechnology Primer*
- ▶ *Green Industries*
- ▶ *CEPA Reform*
- ▶ *3Rs Review*
- ▶ *International Projects*

Charting a Course for Ontario's New Environmental Bill of Rights

Ontario's newest piece of environmental legislation, the Environmental Bill of Rights (EBR), received a thorough critique at CIELAP's EBR course on the 29-30 of March. The course, co-sponsored by the Ontario Ministry of Environment and Energy (MOEE), was held at the University of Toronto's Hart House. Approximately 120 delegates participated. The participants came from a variety of backgrounds including government, business, labour, law, citizens and environmentalists.

The course commenced on Tuesday morning with an introductory welcome by Anne Mitchell, CIELAP's Executive Director followed by four plenary presentations. Michael Cochrane of the law firm Scott Aylen and Chair of the EBR Task Force delivered a presentation on the history and overview of the

Environmental Bill of Rights. Sharon Suter of the Ministry of Environment and Energy's EBR Office presented an Overview of the Environmental Bill of Rights Registry System. John Swaigen, Chair of Ontario's Environmental Appeal Board, delivered a presentation on the role of appellate bodies under the EBR. Finally, John Macnamara, the EBR Task Force Member representing the Ontario Chamber of Commerce spoke on government accountability under the EBR.

(see EBR Course Overview on page 2)

CO₂ Emissions Reduction Plan Underway

CIELAP is continuing with its plan to establish a multistakeholder group which will recommend measures to reduce Ontario's CO₂ emissions. This project is designed to assist in Ontario achieving the emission stabilization target by 2000 set by the Rio Treaty on Climate Change and the target of a 20% emission reduction by 2005 set by the Ontario Round Table on the Environment and Economy.

The first step in the process will be
(see CO₂ Reduction Plan, page 4)



Premier Rae addresses the delegates of the CIELAP/MOEE Environmental Bill of Rights Course. Details of address on page 2.

Environmental Bill of Rights

Course Overview (Continued from page 1)

The Premier's Address

Tuesday's luncheon speaker was the Honourable Bob Rae, Premier of Ontario. Premier Rae particularly applauded the consensus reached by all parties in the development of the EBR. The Premier expressed great satisfaction with the ability of the EBR to empower citizens: "At its best, in terms of the sharing of information and the availability of information in this effort to create genuine transparency and a broader knowledge, it is educational and it is empowering." Additionally, he cited its ability to respond to the concerns of the business community: "I happen to believe, and again, this is a view that might seem counterintuitive but I think it is the case, I happen to believe that in being enforceable, but within clear rules and guidelines and again, by being more transparent, the EBR is good for business. In fact, it responds to the concerns which the business community has expressed." The Premier's address was delivered at the Royal Ontario Museum's Eaton Court and was warmly received by those in attendance.

Workshops

On Tuesday afternoon, the first workshop session featuring the EBR in practice commenced. Delegates were asked to select in advance the workshops that were of most interest to them. Scenario 1 highlighted the protection afforded Whistleblowers by the EBR provisions, its request for investigation and cause of action. These features were illuminated through the construction of a logging road by the fictitious company Evergreen Lumber. Scenario 2 presented the approvals process under the EBR through another fictitious endeavour, a gravel pit proposal by Quality Aggregate and Cement. The process by which Ministries and Agencies would develop their Statements of Environmental Values, a key component of government accountability under the EBR, was the focus of Scenario 3. On Wednesday morning, delegates attended their second set of workshops.

The Minister's Address

Wednesday's luncheon address was delivered by the Honourable Bud Wildman, Minister of Environment and Energy. The Minister emphasized the importance of the Statements of Environmental Values: "The Ministry of Environment and Energy has developed its draft Statement of Environmental Values -- or SEVs -- and is assisting the thirteen other prescribed ministries as they develop theirs. The statements will set the standard against which MOEE and the government's performance will be measured -- by the public and by the Environmental Commissioner." The Minister used the luncheon as an opportunity to announce a regulation that sets a strict timetable for the phase-out of ozone depleting refrigerants (see page *Phase-Out of Ozone Depleting Substances on page 4*). Summary of Final Plenary on Page 3.



Minister Wildman addresses the Wednesday Afternoon Plenary

Environmental Bill of Rights Course Materials Available

For those who did not attend the course but would like a resource on the EBR, the course materials are available from the Institute. They include: a copy of the Act and accompanying regulations; EBR Reference Guide; Background papers on workshop scenarios; and EBR task force reports.

The proceedings, which will be available by summer 1994, will include: the text of the plenary presentations and summaries of the scenario workshop results.

Participants in the course will receive the Proceedings, when available, without charge. Look for notice of the Proceedings in the next issue of the *CIELAP Newsletter*.

The cost for the Course Materials is \$25.00; (please include 15% for shipping and handling). To order, please use the order form provided on page 7.

Final Plenary

The final afternoon's plenary session began with a reporting of results from each workshop by the workshop recorders: Sol Chrom, Andrea Mozer and James Flagel. The afternoon closed with a Panel Discussion on the Environmental Bill of Rights in the year 2000. The discussion was chaired by Professor Paul Emond from Osgoode Hall Law School and featured Peter Victor, Assistant Deputy Minister, Ministry of Environment and Energy; Paul Muldoon, Counsel, Canadian Environmental Law Association; Dianne Saxe, Barrister and Solicitor; Dennis O'Leary, Counsel, Cassels, Brock & Blackwell and David Donnelly, Executive Director of the Canadian Environmental Defence Fund.

Throughout the two-day Course, demonstrations of the EBR Electronic Registry were provided by MOEE Staff. For more details on the type of information on, and dates of availability for the registry see page 7. The final event of the two-day mini-course was a Public Forum on the EBR at the University of Toronto's Innis Town Hall.

Public Forum

The EBR Public Forum, themed "What Does the EBR Mean to You" and hosted by Steve Paikin, engaged many aspects of the new legislation from its effect on government decision-making process to its effect on resource extraction industries. The forum panel included: Marie Rauter, President and CEO of the Ontario Forest Industries Association; Dennis O'Leary, Counsel at Cassels, Brock & Blackwell; Michael Cochrane, Helle Tosine, Director of the MOEE's EBR Office and Professor Paul Emond.

Thanks extended

CIELAP would like to thank the Ministry of Environment and Energy, Innis College and particularly the faculty and volunteers for helping to make this event a success (complete Faculty Listing appears on Page 6).

EDITORIAL

Environmental Commissioner Key to Success of Environmental Bill of Rights

The Ontario Environmental Bill of Rights has been described as the most important piece of environmental legislation enacted in the province since the passage of the Environmental Assessment Act in 1975. CIELAP's two-day course on the EBR provided an opportunity to take a close-up look at the contents of the Bill. The picture which emerged is that of a complex ("byzantine" in the words of one participant) and challenging statute.

Over the course of the conference, it became clear that three components of the EBR will be critical to its success. First, the environmental registry will provide an important new point of access to environmental decision-making in the province for citizens of Ontario. Its now up to the government to ensure that the registry is extended, on schedule, to agencies other than the Ministry of the Environment and Energy, and ensuring that all significant decisions are placed on the registry.

The second important element of the Bill is the removal of the traditional limitations on the pursuit of common-law public nuisance actions. In fact, many delegates felt that public nuisance actions were likely to be a more important tool for environmental protection than the new cause of action provided by the EBR. This conclusion was prompted by a combination of the significant limitations imposed on the cause of action in the EBR, and by the applicability of the Class Proceedings Act to public nuisance actions.

The third critical aspect of the EBR is the creation of the Office of the Environmental Commissioner. Indeed, the success or failure of the EBR will turn, to a great degree, on how the Environmental Commissioner chooses to approach his or her mandate. An excessively legalistic or bureaucratic approach will be a recipe for failure, and may even present barriers to public participation in environmental decision-making in addition to those which already exist.

It must be remembered that the Office of the Commissioner is intended as an instrument of political accountability. That means that it is the Commissioner's duty to make public, facts which the government of the day may prefer remain hidden and, when necessary, to be openly critical of government actions and policies. The fulfillment of the goals of the Office will require a careful balancing of the need to have political impact, with the requirement to maintain the Office's credibility and integrity. However, if the EBR is to achieve its stated purposes of enhancing political accountability for environmental decision-making and ensuring public participation in those decisions, it is a challenge which the Commissioner will have to be able to meet.

Mark Winfield.

CIELAP Plans Primer on Biotechnology

Over the past several years, CIELAP has been receiving numerous requests for information on biotechnology. The inquiries have come from students, concerned citizens, and other environmental groups. The type of information usually being sought is a comprehensive and critical analysis of biotechnology. However, currently there is no Canadian source for this type of information.

To fill this void, CIELAP has decided to write, publish and distribute a primer on Biotechnology and the Environment. The Primer will explain the environmental issues surrounding biotechnology in a straight-forward manner. It is intended to be user-friendly and to contain information on various aspects of this increasingly controversial technology.

So far, CIELAP has received funding for this project from the Metcalf Foundation and from the Biotechnology Caucus of the Canadian Environmental Network.

CO2 Reduction Plan

Continued from page 1

the completion of an options paper which will identify potential areas of reduction on a sectoral basis. The options paper will attempt to quantify the reductions achievable through such methods as: the generation of electricity from non-utility generators to reduce fossil fuel use; the removal of existing subsidies for energy consumption; the establishment of a system of tradeable or non-tradeable carbon quotas; a carbon tax; and the implementation of fuel efficiency standards for vehicles in the

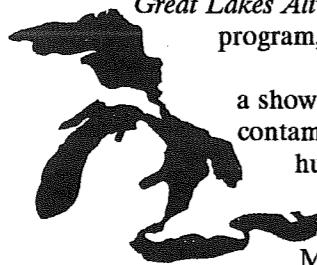
Province of Ontario to name but a few.

The options paper project is being supported financially by the Ontario Round Table on the Environment and Economy, the Ministry of the Environment and Energy and Ontario Hydro and will be available in June 1994.

Minister Announces Phase-out of Ozone Depleting Substances

At CIELAP's EBR Course on March 30, 1994 the Minister of Environment and Energy announced a regulation which immediately outlaws the venting or release of fluorocarbons used in refrigeration or cooling equipment to the environment. The regulation applies to chlorofluorocarbons (CFCs), hydrofluorocarbons (HFCs) and hydrofluoro-chlorocarbons (HCFCs). These substances have been linked to the destruction of the ozone layer which protects the earth from ultraviolet (UV-B) radiation and can contribute to global warming. For information on the new regulation contact the MOEE's Program Development Branch at (416) 314-7980.

Program on Great Lakes to Air on TVOntario. TVO is presenting a documentary series called *Great Lakes Alive*. The first program, *The Great Experiment*, a show about toxic contamination and human health in the basin will air on May 24, 1994 at 8:00 pm.



CIELAP Addresses House of Commons Standing Committee on the Environment and Sustainable Development on Creation of Environmental Commissioner's Office

On April 19 CIELAP Research Director Mark Winfield and Research Associate Glenna Ford made a presentation to the House of Commons Standing Committee on the Environment and Sustainable Development regarding the federal government's proposal to establish an Office of the Environmental Commissioner or Auditor-General.

Drawing upon CIELAP's recent work regarding the Office of the Environmental Commissioner created by the Ontario Environmental Bill of Rights, Dr. Winfield and Ms. Ford stressed the need to provide the proposed federal Commissioner's Office with a broad mandate to conduct an ongoing and independent review and evaluation of federal policies, programs and decisions as they relate to the environment and sustainable development.

CIELAP's representatives emphasized their belief that a federal Commissioner's Office should be outwardly focussed, and serve as a point of contact between the public and the federal government, rather than being oriented towards the review of internal government management practices. Dr. Winfield and Ms. Ford argued that the Office should provide a means by which members of the public can request and obtain reviews of federal policies, programs and decisions, and be a mechanism for conveying information to the public regarding the effect of federal programs, policies and decisions on the environment.



Canadian Connections to Environmental Issues in North and Central America :

CIELAP is continuing and strengthening its partnerships with environmental organizations in the United States, Mexico and Costa Rica. Some of the Institute's recent activities include:

Canadian Consultant to Share Expertise with Costa Rica

As part of CIELAP's partnership and ongoing working relationship with Fundación Ambio, chemical engineer Jack McGinnis will travel to Costa Rica for the last two weeks in May. Mr. McGinnis will be visiting banana plantations on the Atlantic coast of Costa Rica to analyze banana production processes, the use of pesticides, and the final disposal of plastic bags used in banana production. He will also visit local producers and recyclers of plastics used in the banana industry. Mr. McGinnis will describe the Canadian and U.S. experience regarding the collection, separation, reuse and recycling of distinct types of plastic wastes. His visit will be subsidized by GTZ, the German international development funding organization, and a final report will be made to the Costa Rican Ministry of Health.

Biodiversity in the Americas

CIELAP is continuing and expanding its work on international environmental law reform with its U.S. and Latin American partners. In March 1994 CIELAP Research Associate Ian Attridge participated in the First North American Conference on Social and Economic Incentives for the Conservation of Biodiversity and Biological Resources in Mexico City. The conference was hosted by CIELAP Mexican partner organization, the Fundación Mexicana para la Educación Ambiental. Mr. Attridge presented an overview of Canadian biodiversity protection law to the conference. Copies of his paper are available from the Institute.

CIELAP has also been invited to be the Canadian partner in a joint North and South American project on adapting national legislation for effective implementation of the Biodiversity Convention. The project includes non-governmental environmental law organizations from the United States, Argentina, Colombia, Costa Rica, Ecuador, Paraguay, and Peru, as well as the International Union for the Conservation of Nature (IUCN) Law Centre. A major focus of the project will be a comparative analysis of national legal regimes regulating access to genetic resources. The project will link CIELAP's international partnerships with its ongoing work on biodiversity protection and the environmental regulation of biotechnology.

New Publications from CIELAP

**The Key to Compliance
How to Avoid Environmental Liability,
Exercise Due Diligence and Keep Out of
Jail** by John Tidball, Bruce McMeekin,
Christine O'Donohue

The authors affirm that the key to compliance is diligence: in understanding the regulatory scheme, in pursuing a solid relationship with the government regulators, and in establishing a proper system of pollution prevention. It is the intent of this book to assist small businesses in understanding the regulatory regime and the regulators, and to assist them in the practice of prevention through the establishment of a proper environmental management system. \$28.00

**Consequences of the Bill 220/90
Amendments to the Environmental
Protection Act: Defining Responsible
Persons and their Liabilities under
Administrative Orders**

This report sets out a principled approach to imposing liability based on the goals and objectives of the Environmental Protection Act. Recommendations for policies and legislative amendments when issuing orders are presented and are intended to assist government in achieving the objectives of the EPA, given the sometimes conflicting obligations to stimulate and manage the economy. Shipping and handling charge only applies. \$5.00

Recent Briefs Available from CIELAP (\$5.00):

**Comments on Environmental Industry
Strategy for Canada: Draft Consultation
Paper** (Brief 94/1)

**Recommended Undertakings from
Interprovincial Pipe Line System Inc. and
Consumers' Gas to the Lieutenant-
Governor-in-Council** (Brief 94/2)

**Comments on a New Approach to Land-
Use Planning** (Brief 94/3)

**Brief to the Standing Committee on
Environment and Sustainable
Development Regarding the Establishment
of a Federal Environmental Commissioner
or Auditor-General** (Brief 94/4)

EBR Course Faculty

CIELAP would like to thank the course faculty for the generous donation of their time :

Plenary Presentations

Michael Cochrane
Sharon Suter
John Swaigen
John Macnamara

Workshop Scenario 1

Michael Cochrane
Bob Shaw
Ian Attridge
Glenna Ford
David Donnelly
Andrea Mozer

Workshop Scenario 2

John Vincett
Sharon Suter
Gordon Crann
Paul Muldoon
Morgan Gardner
Sol Chrom

Workshop Scenario 3

Mary Rowe
Sandy Walker
Marcia Valiante
Steve Shrybman
Rod Northey
James Flagel

EBR in 2000 Panel

Paul Emond
Peter Victor
Paul Muldoon
Dianne Saxe
Dennis O'Leary
David Donnelly

Public Forum

Steve Paikin
Marie Rauter
Dennis O'Leary
Micheal Cochrane
Paul Emond
Helle Tosine

Volunteers

Lisa Burley
Matt Jackson
Shelley Kaufman
Burkhard Mausberg
Ken Moores
Jody Pilbeam
Jan Rabantek
Richard Robinson

CIELAP to Participate in Review of Interim Waste Authority Estimates of 3Rs Diversion Potential

CIELAP has been contracted by the It's Not Garbage Coalition, as part of a team of consultants, to review the Interim Waste Authority's (IWA) estimates of the potential for waste diversion in the Greater Toronto Area. The development of an estimate of diversion potential by the IWA was a requirement of the 1992 Waste Management Act. It's Not Garbage is a coalition of community, labour and environmental organizations, which promotes waste reduction, reuse and recycling solutions for Metro's waste crisis. The Coalition opposes incineration and waste export schemes as being fundamentally incompatible with the 3Rs.

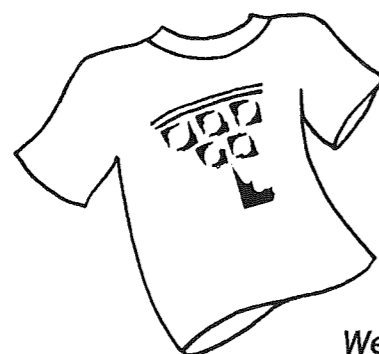
CIELAP's work for the Coalition will focus on the need to develop markets for secondary materials, the potential for the diversion of packaging waste from landfill in the Great Toronto Area and, following-up on the September 1993 *Who Pays For Blue?* report, the possible effect of the adoption of product stewardship systems on the financing and operation of residential recycling programs.

The Coalition's review of the IWA's estimates will be completed by the end of the summer.

CIELAP Participates in Ontario Minister of Finance's Pre-Budget Forum

On February 16, 1994 CIELAP Research Director Mark Winfield took part in a pre-budget forum hosted by the Ontario Minister of Finance. During the forum Dr. Winfield drew the Minister of Finance's attention to CIELAP's recent proposals regarding the financing of residential waste diversion contained in the September 1993 *Who Pays for Blue?* report. In addition, Dr. Winfield stressed CIELAP's support for the application of taxes to the substances on the Ministry of the Environment and Energy's Sunset Chemical List, as was proposed in the report of the Taxation and Environment Working Group of the Fair Tax Commission. Finally, Dr. Winfield noted the potential for the use of tax measures to support the province's effort to address the problem of global warming due to fossil fuel use, and the need to reform the accelerated capital cost allowance program for pollution control equipment to place a greater emphasis on pollution prevention efforts.

It's Here! The CIELAP T-Shirt



- ▶ Great for Summer
- ▶ 100% Unbleached cotton
- ▶ 12\$ Canadian / 15\$ U.S. + \$1.35 postage and handling
- ▶ Large or Extra Large

Wear the Maple Leaf with pride !



The Electronic Registry : Key to the Access of Information under the Environmental Bill of Rights

The Electronic Registry (ER) will allow users access to pertinent environmental information through simple search functions and user-friendly menu selections. Efforts are underway to make the ER accessible through a home, office or library computer and modem system; and on existing network systems such as Internet and WEB. Some of the information to be found on the ER will include: (1) Draft and Final Statements of Environmental Values. Draft statements will be on-line on May 15 and final statements by November 15, 1994. (2) Environmentally significant proposals for decisions on policies, Acts, and prescribed regulations and instruments. For a summary of dates on Acts and Regulations to be covered by the EBR see Ontario Regulation 73/94. (3) Appeals on instruments and court actions as a result of law suits. The date slated for the Electronic Registry to be up and running is May 15, 1994.

CIELAP Receives Grant from Laidlaw Foundation for Work on Reform of Canadian Environmental Protection Act (CEPA)

CIELAP has received a grant from the Laidlaw Foundation to support its work on the reform of the Canadian Environmental Protection Act (CEPA). The Act is scheduled to be reviewed by the House of Commons Standing Committee on the Environment and Sustainable Development this summer and fall. CEPA was enacted in 1988, and is widely regarded by Canadian environmental non-governmental and labour organizations to be a failure.

Working with other members of the Toxics caucus of the Canadian Environment Network, CIELAP will be seeking to have a preventative and precautionary approach to the regulation of toxic substances incorporated into the Act. In addition, CIELAP hopes to increase public access to information regarding toxic substances regulated through CEPA and to clarify and strengthen opportunities of public participation in decision-making under the Act. Finally, the Institute will argue that the CEPA process for the approval of new substances, such as biotechnology products, should be overhauled and amended to include the consideration of the purpose, availability of alternatives to, and the possible cumulative and long-term environmental effects of, substances new to Canada.

Yes, I would like to make a donation to the Canadian Institute for Environmental Law and Policy:

- \$500.00 \$250.00 \$100.00 \$50.00 \$25.00 Other Amount _____
 Cheque/Money Order Visa # _____ Exp. ____ Tax Receipt Required

I would like to order the following CIELAP publications:

Title	Price
15% Shipping and Handling	
Charitable # 0380584-59	TOTAL

Name and Address (if it differs from mailing label name and address):

Please Mail to the:

Canadian Institute for Environmental Law and Policy
517 College Street, Suite 400, Toronto, Ontario M6G 4A2



CIELAP Newsletter is the quarterly communication of the Canadian Institute for Environmental Law and Policy

Editor: Greg Jenish

Regular Contributors:
Jack Gibbons
Burkhard Mausberg
Patricia Merriman
Anne Mitchell
Mark Winfield

Guest Contributor:
Ken Moores

Photography:
Tessa J. Buchan

The *CIELAP Newsletter* is distributed by mail to all persons listed in the Institute mailing database. There is no established fee for receiving the *CIELAP Newsletter*, though donations are always appreciated.

CIELAP Annual General Meeting Held, Strategic Priorities Session Planned

CIELAP held its Annual General Meeting on January 20, 1994 at the home of board member Marjorie Lamb. At the meeting Professor Isobel Heathcote, who teaches in the Faculty of Engineering at the University of Guelph, became CIELAP's new president. Professor Heathcote will be taking over from Marjory Loveys, the former Vice-President of Energy Pathways Inc. who has taken a position in the senior federal civil service.

It was announced at the Annual General Meeting that a Strategic Priorities Session would be held in the Spring of 1994. The date for this session has now been set for May 2. Members of the board, staff, research associates and volunteers will be meeting to discuss CIELAP's future research directions. If you would like more information about this session please contact the Institute.

Green Industries and Restructuring for Sustainability

"Green" industries have received a great deal of public and media attention over the past year, and CIELAP has identified this sector as major research focus in the coming months. This work will be supported by a grant from the McConnell Foundation as part of the Foundation's environment and economy program.

CIELAP believes that environmental industries can function as an instrument for the development and diffusion of pollution prevention, waste reduction, reuse and recycling, and energy and water efficient skills and technologies throughout the broader economy. The adoption of such skills and technologies is essential if Ontario and Canada's economies are to be placed on an environmentally sustainable basis.

CIELAP's Executive Director, Anne Mitchell, is a member of the Ontario Minister of Environment and Energy's Green Industry Advisory Committee and CIELAP's Research Director, Mark Winfield, has participated in Environment Canada and Industry Canada's consultations on the development of an environmental industry strategy for Canada.



The Resource Library for the Environment and the Law is now incorporated as a

charitable foundation with a joint CIELAP \ CELA Board of Directors. *You know*, that library where you got all those great references for your thesis, the one popularly known as the CELA library, well that library is in need of your assistance.

As the only public-interest environmental library in Ontario, the Resource Library is heavily used by students, teachers, lawyers and environmentalists. As well as daily visitors, the library receives numerous telephone and mail requests for information on, and bibliographic searches of scientific, environmental and legal topics. With your assistance this library can continue to provide these valuable services to the public. Tax deductible donations may be made to:

Resource Library for the Environment and the Law c/o Canadian Environmental Law Association

517 College Street • Suite 401
Toronto, Ontario • M6G 4A2

Charitable # 0962092-50

Canadian Institute for Environmental Law and Policy
517 College Street, Suite 400, Toronto, Ontario M6G 4A2