

RESPONSE OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION TO
"PERSPECTIVES ON ACCESS TO SUNLIGHT"

In May of 1978, the Ministry of Energy published a discussion paper, "Perspectives on Access to Sunlight", to stimulate discussion of the importance of access to solar energy in view of its potential impact on land-use patterns in Ontario. "Perspectives" pointed out that the law of Ontario does not protect solar access for most urban landowners since there is not automatic right to the light which crosses the property of others. While it is possible under existing law for neighbours to agree in writing not to block one another's sunlight, at best, such agreements are cumbersome, expensive and legally complex. An urban solar user in Ontario is generally unable to obtain legally secure access to sunlight. The existing remedy of ~~xxxx~~ ^{nuisance} and the possibility of enforcement of an easement for light, as pointed out "Prespectives", are uncertain, and although it is possible that willing courts could adapt traditional judicial remedies, such as nuisance, for this purpose, such an approach would be "at best, fragmented and haphazard". "Perspectives" raises, but does not answer the question whether legislation to protect access to sunlight for the purposes of solar energy is necessary or desirable in Ontario.

This is the response of the Canadian Environmental Law Association to "Perspectives on Access to Sunlight". This response was prepared by Patricia M. Reed, B. A., L.L.B. of the Board of Directors of the Canadian Environmental Law Association, Michael E. James of the Quelfh Law Firm of James & Geisler - Jaems, and John Willms, of the Toronto Law Firm of Vaughan, Willms. The response was coordinated by J. F. Castrilli, Chairman of the Law Reform and Legislation Committee of CELA, and edited by John Swaigen, CELA's general counsel.

We have concluded that legislation to protect access to sunlight for the purposes of providing solar energy is in fact, important and necessary in light of our diminishing energy resources, in light of the availability of technology to use solar energy, in light of the lively interest in the potential of solar radiation as a source of heating, and in light of the present use of solar energy in Ontario. Not only will the failure to pass appropriate legislation seriously deter landowners from installing solar energy collectors and inhibit the growth of a potentially important industry which need not be dominated by large corporations and which will be accessible to the small businessman, but present users of solar technology will continue to be in jeopardy. As "Perspectives" has recognized

The implementation of these principles will depend greatly on further consideration of the impact of exercising the rights on neighbouring landowners. This will involve consideration of factors such as the size and location of solar collectors needed to reasonably service any given property, and the degree of interference which can be tolerated at various levels of efficiency. The type of engineering and scientific research must be done as a background and a supplement to any legal commentary.