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Environmental Consequences

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From the Executive Director

Truth & Consequences for our Environment

Paul Muldoon

On March 5th, CELA held its annual meeting at Innis College at the University of Toronto. The evening was devoted both to outlining what CELA is up to these days and to receiving input on future directions and priorities. When listening to CELA staff make presentations on their work and activities, it is hard not to be struck by the incredible pace of activities at the clinic. What was also apparent was a number of unifying themes in the presentations.

For example, it is difficult to miss that CELA's basic mandate is to represent individuals, families and organizations with environmental problems battling the typical David and Goliath scenario. Rick Lindgren, Raman Narasimhan and Paul McCulloch gave examples and discussed the enormous challenges that face so many of CELA's clients, whether it be attempting to stop environmentally inappropriate development or remedy an on-going situation. The lack of funding and the complexity of the legal and technical issues are two of the commonly cited challenges.

Another theme pervading the evening was a discussion of what CELA has been opposing for some time now — deregulation, downsizing and devolution. All levels of government are doing all three, in misguided attempts to save money. One good example is the recent conclusion of the federal-provincial harmonization accord that will have significant implications on the capacity of governments, and in particular, the federal government, to fulfill its environmental mandate.

The third theme was perhaps the most overarching one — the implications of globalization and free trade agreements. Ken Traynor drew fascinating insights on the implications and consequences of globalization and free trade both in the developed and developing worlds.

Make no mistake, we will pay for our obsessions with bottom lines. As environmental protection is eroded, we will suffer the consequences — increased illness, higher health care costs, more severe weather patterns. These consequences are apparent now and some of them are revealed in this

edition of the *Intervenor*.

In addition to its legal and law reform work, CELA has been active in furthering public education and community development in these areas. We believe that an informed public is one of the best defenders of the environment. As we continue our work, it is also necessary to contemplate how to become even more effective in furthering our mandate. People attending the Annual General Meeting did contribute a number of interesting ideas for CELA to consider in its planning exercises. One of those ideas seems completely right — CELA was encouraged to continue its work to ensure that the general public becomes more aware of the lack of government commitment toward the environment, and its consequences.

On behalf of CELA, I would like to thank all of those who did attend the annual meeting. For those who could not, please do not hesitate to contact us with your ideas and feedback to our work. We really would appreciate your input and need your support. ☺

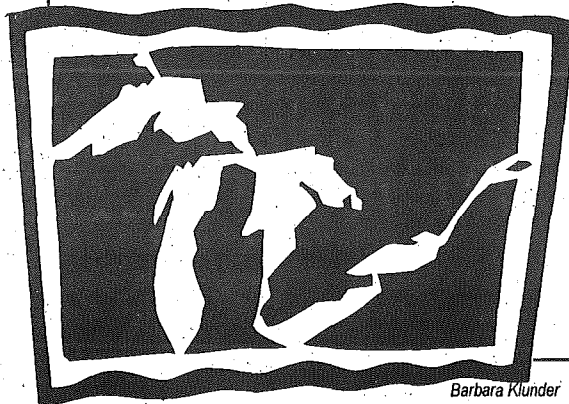
Treading Water is a comprehensive review of government efforts to protect the Great Lakes

In October 1997, CELA, along with Great Lakes United and the National Wildlife Federation, released one of the most comprehensive reviews of government action dealing with Great Lakes protection this decade. The 170 page study, entitled *Treading Water: A Review of Government Progress Under the Great Lakes Water Quality Agreement*, was formally presented to the International Joint Commission at its biennial meeting last October in Niagara Falls, Ontario. The study details the state of the Great Lakes, progress being made by federal, state and provincial governments in meeting the goal of "virtual elimination" of persistent toxic substances in the Great Lakes, along with a number of other important commitments in the agreement.

While the report concludes that some progress has been made, considerable work must still be undertaken in order to protect the Lakes and human health from toxic substances. The report outlines that over 17 million pounds of compounds that affect the endocrine (developmental) systems of wildlife, and possibly humans, continue to be released into the air. Moreover, fish advisories (that is, warnings about the hazards of fish consumption) continue to be issued, and in fact, there has been a 26% increase in U.S. fish advisories since 1995.

The impetus of the report derives from the fact that governments no longer undertake an evaluation of their progress in achieving the goals of the Agreement.

The Report is available from CELA for \$30.+ \$2. shipping and handling.
Phone 416-960-2284 or use the order form at the back of this newsletter.



Barbara Klunder

Canadian Environmental Law Association
<http://www.web.net/cela>



Intervenor v.23 n.1 — Jan.-Mar. 1998
Environmental Consequences

CELA Takes Feds to Court over Accord

Paul Muldoon, CELA Counsel & Executive Director

On January 29, 1998, the federal government downloaded its responsibilities for our environment into the laps of the provinces. On that date, the federal Environment Minister, Christine Stewart signed the "Canada-Wide Environmental Harmonization Accord" with the provinces. Québec would not sign the Accord until it was satisfied that the new *Canadian Environmental Protection Act* would reflect the Accord. Only Québec did not conclude the Accord. The Accord includes three sub-agreements pertaining to inspections, standard-setting and environmental assessment. It is expected that up to seven more sub-agreements will be concluded under the Accord within the next three years.

The Canadian Environmental Law Association is so concerned about the Accord and its ramifications for environmental protection, that we launched a judicial review in the Federal Court of Canada on March 2, 1998. The legal action alleges that the federal Environment Minister exceeded her jurisdiction in concluding the Accord for a number of reasons, including the fact that the Accord may be inconsistent with federal legislation. The action also alleges that the Minister has inappropriately fettered her discretion in concluding the Accord since, if an area is devolved to the provinces, the federal government agreed that it shall not act within a given time period. CELA is seeking to have all or parts of the Accord declared invalid.

Under the terms of the Accord, the order to government "best situated" to deal with an issue will be responsible for that issue. It is apparent

from the definition of the term "best situated" that the provinces will have carriage for many of the responsibilities formerly the domain of the federal government, such as inspections and the setting of standards.

The Provinces aren't ready for the downloaded responsibilities. Ontario has cut over 36% of its MoE staff and over 40% of MNR staff. Cuts to environment in Alberta are over 30% and in Newfoundland, they're over 60%.

Since 1994, the provinces and the federal government had been negotiating the agreement to "harmonize" federal-provincial activities with respect to the protection of the environment. Environmental groups from across Canada opposed the furtherance of the agreement on the grounds that the initiative was not really about avoiding overlap and duplication but about downloading federal environmental roles and responsibilities to the provinces.

This downloading comes at a time when the provinces themselves are undergoing serious downsizing. Most provinces have, or are in the process of downsizing their environmental ministries by 30% and often much more (such as

Ontario and Newfoundland). In Ontario, the environment ministry's staff has been cut by over 36% and Ministry of Natural Resources' staff by over 40% — a "saving" to the Province of over half a billion dollars (see *Intervenor v.22*, no.5&6 for details of the cuts in Ontario). Alberta's environment ministry has suffered reductions of over 30%, and Newfoundland has reduced its Environmental Ministry by 60%.

Such cuts do not instill confidence in an already doubting public, that our environment will be protected. In a 1996 Insight Canada poll, respondents gave the provinces a 4.7 out of 10 for their environmental performance. (They gave the federal government a 4.8 out of 10 for its performance, but with the Harmonization Accord now signed and sealed, if not quite delivered, even that score may be too high.)

Ironically, only last September the Supreme Court of Canada indicated that Canada has a strong role to play in protecting the environment. In *R v Hydro-Québec* (1987), the Court upheld the federal government's right to regulate toxic substances. CELA intervened in that case on behalf of Canada and its authority to apply the *Canadian Environmental Protection Act* to matters that might be considered within the jurisdictions of provinces. (For a more complete discussion of that case see *Intervenor v.22*, no.4.)

Now, it seems, the federal government has given away what it has won. Pleadings will be exchanged over the next few months, with a court date to be scheduled at that time. Stay tuned to the *Intervenor* for updates. ☎

THE MAI IS NOT JUST ANOTHER FREE TRADE AGREEMENT (IT'S A LOT MORE)

by
Michelle
Swenarchuk,

*CELA Counsel, International
Trade Policy*

For more on the MAI, see Michelle's submission to the House of Commons Subcommittee on International Trade, Trade Disputes and Investment, "The Multilateral Agreement on Investment and the Environment: Context and Concerns," November 24, 1997, CELA brief no. 337. (\$5.00 ordered from CELA)

Canada is now far down the road of de-regulated trade and investment, having signed three trade agreements with major consequences for this country: The Canada-US agreement, the NAFTA, and the 1994 GATT/WTO agreements. We also have free trade agreements with Chile and Israel, and have signed or are negotiating bilateral investment agreements with 59 countries. Given that approximately two-thirds of foreign direct investment in Canada comes from the US, the most significant investment "treaty" for Canada is the investment chapter of the NAFTA (Chapter 11), the model for the MAI.

However, as the government of British Columbia has noted, Canada does not appear to have benefited from the NAFTA investment chapter. US investment in Canada has steadily declined from 1985, when Canada's proportion of US and Canada direct foreign investment stock was 25.9 percent to 1996, when it was 16.7 percent. Given this NAFTA experience, it is reasonable to question whether further de-regulation of investment through the MAI will provide economic benefits to Canada.

The Current Environmental Protection Context in Canada

The era of de-regulation of trade and investment has been a decade of systematic weakening of green laws; elimination of public rights of participation in environmental decision-making; increasing unwillingness of governments to accept responsibility for environmental protection; and radical cuts to environmental and natural resource ministries budgets. (See *Intervenor v.22* no.5&6.) Further, the persistent downloading of responsibilities from the federal to provincial governments and in Ontario (formerly the environmental leader of the country), from the province to municipalities, is occurring with no certainty that the receiving jurisdiction will have the

will or resources to act. The era of de-regulated trade has been, and remains, the era of environmental de-regulation.

This is not a coincidence. The trade agreements have targeted environmental protection laws and policies by constraining government powers to manage resources and set standards. The constraints are in the FTA/NAFTA limitations on managing the levels of export of resources and the NAFTA and GATT 1994 chapters on Technical Barriers to Trade and Sanitary and Phytosanitary Standards. The agreements' designation of international standard setters, including the International Standardization Organization and Codex Alimentarius Commission, further undermine domestic standards. FTA and GATT trade dispute panel decisions on environmental and health issues have all favoured trade over domestic standards, requiring the standards to be changed or eliminated.

Finally, the "expropriation" clause of the investment chapter of the NAFTA has provided a basis for US-based Ethyl Corporation to sue the Canadian government for \$350 million Canadian for its effective ban on MMT, a neuro-toxic gasoline additive. (Full story in *Intervenor v.22* no.4.)

Environmental Elements of the MAI

The MAI would further constrain Canadian governments from exercising powers to benefit Canadian communities and the environment.

National treatment includes very broad definitions of investor and investment and extends national treatment and most favoured nation treatment to foreign investors. These provisions not only eliminate arbitrary interference with foreign investors' rights, but in the view of the BC government, also restrict "transparent and non-discriminatory efforts to negotiate and enforce local and national eco-

(Continued on page 5)

(Continued from page 4)

conomic benefits." The requirement for national treatment for investment incentives (eg, subsidies) appears to require payment of the same subsidies to large foreign corporations as may now be provided to Canadian companies. Incredibly, foreign corporations may even be entitled to the same subsidies we provide for small, local or non-profit community-based health, social services, and educators, and the health and medicare sector overall.

Performance requirements. The MAI includes extensive prohibitions against performance requirements for linking approvals or providing subsidies or other advantages to investors regardless of whether investors are foreign or domestic. It exceeds the NAFTA provisions in the types that are prohibited and the breadth of scope and application.

These provisions will particularly affect provincial (and federal) rights to require job creation and other benefits for local communities from foreign investors' exploitation of natural resources.

"Expropriation" rights. A most dangerous provision in the MAI is the NAFTA-style "expropriation" clause which provides to investors an unconditional right to compensation for expropriation of an investment or for "measures having equivalent effect". It goes beyond national treatment since even measures applied to both foreign and domestic investors could give rise to a claim for compensation by the foreign one. It extends "expropriation" claims beyond what is compensable in Canadian domestic law with no balancing of the public interest in resource conservation, human health and safety, or any other purpose, in determining whether compensation is payable and to what extent.

The BC government identified the issue of native land claim settlements which may require return of land or other resources (fish, forests) now subject to non-native use (investment). Foreign investors could claim

full compensation, no matter how tenuous or preliminary their "investment". The recent Supreme Court of Canada decision in *Delgamuukw*, which recognizes aboriginal rights to unsundered lands, may make the requirement of compensation for "investment" even more onerous.

Aboriginal rights to land and resources provide an excellent example of the problems posed by international harmonization without regard to historical, social, or environmental differences. Aboriginal rights are not issues for public policy decisions in European OECD countries, but raise many live and pressing questions in Canada, and other countries with extant aboriginal populations. The federal government has attempted to exempt its aboriginal obligations from the purview of the MAI, but whether that exemption will survive the negotiation process is unknown. No protection for provincial obligations is proposed.

Like NAFTA, the MAI provides for expropriation through private tribunals without public scrutiny, appeals, or interventions. The secrecy and broad powers of trade dispute panels are anti-democratic as the capacity of governments to legislate is squelched. The investment protection expropriation panels add the additional burden that governments must pay huge amounts to act in accordance with domestic public interest policies or even, constitutional law (ie, constitutional aboriginal rights). The "chilling effect" of adding investor compensation payments to every sector of public interest legislation is obviously considerable.

Possible protections. The October 1997 draft text of the MAI reveals that the negotiators are discussing the inclusion of wording to discourage the lowering of domestic health, safety, and environmental standards in order to attract investment. It appears unlikely that the wording, if included at all, will be any stronger than NAFTA Article

1114. The NAFTA wording merely indicates that countries "should not waive or derogate from" standards; it does not prohibit the practice and certainly has not prevented the weakening of standards in Canada since NAFTA was signed. Similarly, such wording in the MAI will not offer much comfort to concerned environmentalists and health advocates.

The federal government has filed "reservations" to exempt certain policies and sectors from the MAI, but environmental laws are not among them. Nor do the federal reservations refer to provincial measures. If the MAI is to cover provincial measures, as foreign national governments apparently assume, but British Columbia disputes, considerably expanded reservations would be required to protect provincial measures in all sectors of provincial jurisdiction. Subnational non-conforming measures were exempted from NAFTA's national treatment and performance requirement terms by an exchange of letters between governments. No such reservations have been introduced into the MAI negotiations.

The Canadian Environmental Law Association has proposed a substantial "carve-out" of environmental protection and resource conservation measures.

Expected impacts. If adopted as currently designed, the MAI will provide European and Japanese corporations with rights similar to those which US corporations obtained in Canada under NAFTA. It will also allow them to pressure many Southern countries into signing the MAI.

Meanwhile, the Canadian government is quietly signing similar agreements all over the world, entrenching a lack of balance between the rights of corporate investors and the rights of citizens to have governments respond to local economic, social, and environmental needs. Critics of investment agreements need to focus on a broader landscape than just the MAI. ☉

It's Our Health.

Coming to terms with the politics of cancer

One of the most frustrating and discouraging aspects of CELA's work over the two decades I have worked here has been our chronic inability to deal with the health problems of our clients. We have had clients who have lived near industrial facilities and legal and illegal waste disposal sites, have contaminated well water and soils, ailing livestock, work or live in hazardous environments, have

by
Sarah
Miller,
CELA
Coordinator

played in radioactive dumps as children, have been exposed to pesticide spraying, live under transmission lines or electro-magnetic fields. They are suffering from cancers, chemical sensitivity and other new diseases leaving them with intolerance to their environments and a host of other health and developmental problems affecting their families. CELA staff continues to be frustrated with our inability to find justice and compensation for them. We are told we must establish a direct cause and effect and we face a phalanx of confounding arguments constantly trotted out that say any health outcome could have been caused by the lifestyle of the victim concerned.

The State of the Debate

There is however a vast difference between voluntary and involuntary exposure to harm which gets overlooked in these debates. While pollution prevention seems to be a logical path to limit a lot of the involuntary assaults and stresses on our health, corporations and governments continue to require absolute proof, risk analysis and evidence-based cause and effect, chemical by chemical. This still leaves the burden of proof on the victim to prove he or she has been harmed, rather than on the polluters to prove their products are not harmful to human health.

The system continues to deny that we are exposed to a range of contaminants from a range of pathways in our lives, and that it is this battering, and the synergistic effects of multiple assaults that is most likely to cause complex diseases like cancer. If this reality were accepted, our health and environmental protection budgets would support a precautionary approach with aggressive prevention programs.

Increasingly, CELA finds allies in the medical reform community and the powerful voices of survivors. However, embarking on a prevention path has many obstacles in these times. The environmental community managed to shift attention to prevention temporarily in the early 1990s, until industrial forces mustered and turned the fo-

cus away from pollution prevention back to pollution control. In the current frenzy of deregulation and voluntary compliance in aid of competitiveness and profit, there is little room for effective pollution prevention. Will the same thing happen to disease prevention initiatives?

CELA joins Health Alliances

Last summer CELA was invited to represent environmental interests on a working group considering ways to implement the March 1995 *Report of the Ontario Task Force on the Primary Prevention of Cancer*, produced under the leadership of then Minister of Health, Ruth Grier. Cancer is one of the leading causes of morbidity and mortality in Ontario. It accounts for 27% of all deaths and the loss of 20,000 lives a year in the Province. This report sets out an agenda for cancer prevention "as a part of cancer control" in the Province.

The Report makes recommendations for a number of pathways contributing to cancer, including tobacco use, dietary factors, alcohol, occupational and environmental carcinogens, sunlight, reproductive factors, infections, medications and genetics. It also sets out strategies for implementation. Other members of the working group include representatives from the Centre for Health Promotion at the University of Toronto, Cancer Care Ontario, breast cancer survivor groups, cancer advocacy and care groups and the City of Toronto Department of Health.

After several months of planning, the work group sponsored a meeting on February 9, 1998, "Towards a Toronto Cancer Prevention Council" in the new city. The meeting at Victoria College brought together over sixty oncologists, academics, cancer survivor and care advocacy groups, cancer agencies, municipal and provincial government staff, labour and food policy groups, and poverty and environmental activists. Cer-

tainly it was a good foundation for the formation of the Council.

There are also many confounding factors. The politics of cancer are as complex as the disease. Indeed, cancer is not one, but fifty different diseases as key-note speaker Dr. Robert Buckman pointed out. There is considerable dis-ease between the traditionalists and those promoting prevention, aggravated by competition for funds and the turmoil caused by the current health care restructuring. The cuts in health care, lay offs, hospital closings and the cuts to local health units make this a difficult time to introduce new programs and promote paradigm shifts. Health protection, like environmental protection is fragmented between federal, provincial and local jurisdictions. The Province has just established a new agency called Cancer Care Ontario (CCO) which will take three years to put its strategic plans in place by 2000. CCO's mandate includes delivering services, improving cancer outcomes through research, evidence-

based care, supportive care, reduction of incidence and mortality and improved access and use of knowledge.

The new City of Toronto's amalgamated Health Department has been told they must cut costs further by 15%. The Board of Health has voted to defy this decree. The cuts would mean that some of the most progressive preventative initiatives in North America, which were pioneered by local Boards of Health of the old City and Metro Boroughs, are threatened. The Toronto Department of Health was the first to create its own Environmental Protection Office institutionalizing the links between health and environmental protection. CELA has joined Citizens for Public Health, a coalition of groups benefiting from public health initiatives for the homeless, hungry, youth, drug users, seniors, cultural and special needs communities, and AIDs prevention.

Despite these huge obstacles, CELA is hopeful that investing time in these new health and environmen-

tal alliances will be mutually beneficial to both sectors' work in protection. The costs of ignoring the growing health problems and resultant costs in human loss is huge. The personal losses we have experienced with deaths of colleagues like Barbara Rutherford and Nettie Vaughan give us added impetus to act to prevent cancer. London, Ontario has already started its own Cancer Prevention initiative, which Toronto can draw on. CELA has volunteered to administer a Health Canada grant for the Toronto Cancer Prevention Council to create a handbook on their efforts for other municipalities to use. ☉

If you are interested in more information on the Toronto Cancer Prevention Council, please contact Sarah Miller at CELA.
Phone: 416-960-2284

Females Report More Adverse Health Outcomes from Hazardous Substances

Females exposed to certain hazardous substances report more adverse health outcomes than national norms and, in some cases, more than similarly exposed males, according to data from the National Exposure Registry of the Agency for Toxic Substances and Disease Registry. The registry currently consists of subregistries for benzene, trichloroethylene (TCE), trichloroethane (TCA), and dioxin. The purpose of the registry is to assess the potential long-term health impact on the general population of exposures to environmental hazards, such as those at Superfund sites. Female registrants at the TCE registry seem to be particularly susceptible to illnesses. Their rates were higher than national norms and male registrants for:

Anemia & other blood disorders (18-54 yrs)
Diabetes (18-24 yrs. & 45-54 yrs)
Kidney & liver diseases (55-64 yrs)
Skin rashes (all ages)
Speech impairment (10-17 yrs)
Stroke (35-65+ yrs)
Urinary tract disorders (18-24 & 55-65+ yrs). The benzene and dioxin subregistries also recorded high rates for all ages.

(from "Hazardous Substances & Public Health", US Dept. of Health & Human Services)



Paul Lachine, 1997

BOOK REVIEW

Living Downstream

Kathleen Cooper, CELA Researcher

I read this book last summer during the time that I sat for many long hours with my sister as she died a tortuously slow and horrible death to pancreatic cancer. I sensed a book as important as Rachel Carson's *Silent Spring*, published in the early 60s and a potent motivator for environmental activism ever since. Recognizing that my perspective could have been skewed by personal circumstances and desperately numb and angry from that experience, this review has sat on my "to-do" list these many months.

Since then more friends, relatives, colleagues, friend's children, have fought cancer; all but one of them are or were under 40, some have died, others continue with gruelling treatment regimes with poor to fair odds of survival, often with permanent loss or disfigurement to their bodies and of course the ever-present chance of recurrence. I have felt utterly surrounded by cancer these many months. Also in that intervening time, *Living Downstream* has been hailed across North America as a remarkable achievement and Sandra Steingraber has been compared many times to Rachel Carson.

The book was written because Steingraber went looking for an answer to a very basic question: what is the relationship between cancer and environmental contaminants? Since the 1940s the industrialized world has released to the environment massive amounts of known or suspected human carcinogens. Cancer rates have risen accordingly, and dramatically. When she went looking for an answer the response from cancer researchers was the same as the response I received

from the oncologist who cared for my sister: the evidence is preliminary, it is a possibility, but nobody really knows.

These frustrating answers revealed a scientific community that said, we don't know and we can't act because, as Steingraber saw it, nobody had pulled all the data together in one place so we could actually look at it. So she did it her-

compassionate and intimate accounts of her own battle with cancer, Rachel Carson's battle with cancer, and those of her friends and family.

This book contains the brevity, power and compassion of a poet, the compelling narrative skill of a creative writer, the knowledge of an accomplished scientific scholar, and above all the holistic approach of an environmental ecologist.

In all of the glowing reviews, a single negative reaction came in the *New England Journal of Medicine*. However, the ensuing flap has served to heighten interest in the book since it was quickly revealed that the reviewer is employed by one of the largest chemical manufacturers in the United States. The Journal has since had to tighten its conflict of interest policy and apologise to Steingraber. Follow the story and find more information about *Living Downstream* at www.steingraber.com. ☉

What Others Are Saying

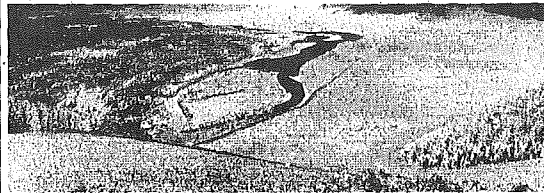
"Steingraber's focus on prevention goes to the heart of public health, and public health represents the best values of our society. *Living Downstream* is a rallying cry when we need it most."

David Ozonoff, M.D., M.P.H.,
Boston University School of
Public Health

"Sandra Steingraber has an extraordinary knack for accurately rendering complex scientific issues in plain, even lyrical language. Her book deserves to be widely read."

Philip J. Landrigan, M.D., Mount
Sinai School of Medicine

LIVING



downstream

AN ECOLOGIST

LOOKS AT

CANCER AND THE

ENVIRONMENT

Sandra Steingraber

self. The result is a stunning accomplishment reviewing all lines of evidence showing the strong link between cancer and the environment. It carefully includes the limits of the evidence and the gaps in our knowledge. Her scientific search is seamlessly blended with

CELA Represents Clients at Plastimet Hearing

Ramani Nadarajah, CELA Counsel

The Canadian Environmental Law Association is representing the Community Action North End (CANE) at hearings before the Environmental Appeal Board (EAB) dealing with clean-up following the aftermath of the Plastimet fire.

Plastimet Inc operated a plastics recycling operation at the site on the north end of Hamilton. The company's warehouse had been filled with plastic auto parts, vinyl and polyurethane foam. When these materials burn, they release hydrochloric acid, carbon monoxide gases and carcinogenic substances including benzene, dioxins and furans.

On the morning of July 9, 1997 a fire broke out at the site and continued to rage on until the early morning of July 12th. The fire generated a dense black cloud of smoke rising hundreds of metres into the air and transporting the plume over the city of Hamilton. The fire also resulted in the release of toxic contaminants

which caused serious adverse effects to residents, including breathing problems, sore throat and burning eyes. Approximately six hundred residents had to be evacuated as a result of the toxic smoke.

According to MoE reports prepared after the fire, "worst-case estimates suggest that the Canadian Tolerable Daily Intake (TDI) of dioxins and furans of 10pg TEQ/kg body weight/day may have been exceeded for some people". In addition, elevated levels of contaminant have also been found present in the soil at the site. These include dioxins and furans at concentrations well above the Ministry of Environment clean-up criteria.

Following the aftermath of the fire, a group of residents who reside directly adjacent or near the Plastimet site came together to form CANE to address issues of common concerns about the fire and contamination at the Plastimet site.

The MoE subsequently issued a series of field orders to the owner of

Plastimet as well as the owner of the site to provide full site security and to undertake clean-up work. The site clean-up did not proceed in a controlled and timely manner, therefore, the director of the MoE issued a notice of its intention to do the clean-up. Following the clean-up, the MoE director issued another order to the owners to collect the clean-up cost.

The owner of the site has appealed the clean-up order and the owner of Plastimet appealed the cost order. At the pre-hearing conference before the Environmental Appeal Board, CANE sought and was given party status at the hearing addressing the issues regarding clean-up. CANE will thus be able to fully participate in the hearing by leading evidence, undertaking cross-examination and will have the same rights of appeal as the other parties at the hearing.

The hearing before the EAB regarding the clean-up has been set to commence May 19, 1998 in Hamilton. ☉

Worth Quoting

The January 1998 issue of *Canadian Lawyer* looked at the tort of regulatory negligence and how government cost cutting may lead to increased litigation and liability of public authorities for enforcing environmental regulations. The article says that courts usually hold that authorities can't be held liable for their policy decisions, but can be for operational ones. According to a December 1996 memo to Jack Johnson, director of the legal services branch at the MoE, from Sheila Willis, an assistant deputy minister, "The purpose of ... [compliance] strategies is to provide the policy exemption defence available under the tort of regulatory negligence. It will also provide operational guidance to our field staff and thereby promote consistency."

However, the article quotes Ramani Nadarajah from CELA as seeing compliance strategies as "the smoking gun. It's very clear that the ministry is aware that it can't really fulfil its core regulatory mandate and must therefore prepare defences to actions which citizens might bring in the future. In the context of what's been occurring in environmental law in the past two years, there has probably been the most dramatic deregulation in environmental law in Ontario."



DAY 1

I

first encounter Ice Storm '98 while driving at night from CELA to my home on Wolfe Island near Kingston. Around Napanee, Highway 401 suddenly turns into a skating rink, and vehicles begin to skid off the road. Upon my arrival in Kingston, I go shopping at an all-night grocery store — which then loses power and becomes completely dark while I'm standing in the canned goods aisle. A few hours later, after I catch the last ferry to Wolfe Island, the

and vehicles escape any major damage, but a large tree is leaning on our roof, our ancient oak tree is largely delimbed, and most bushes and shrubs are bent low to the ground under the weight of the ice.

The barter system is resurrected as I go to a friend's farm to trade a bottle of whiskey for a few litres of kerosene — just like pioneer days. At night, we pull out the sleeping bags, stoke up the fireplace, and camp out on the living room floor.

The Ice Storm Cometh & the Hydro Goeth

CELA lawyer Rick Lindgren lives on Wolfe Island which was hit hard by the worst ice storm of the century (so far). Here, he chronicles his chilling experience in the age of global warming.

power to our house goes off as we sleep.

DAY 2

We awake early to the sound of ice-encrusted tree limbs bumping the roof or crashing to the ground. Our house, built in the 1970's during the heady days of cheap electricity, is becoming chilly due to the lifeless baseboard heaters. We close off most of the house,

build a cozy fire in the fireplace, and cook breakfast outside on our camping stove. Old habits die hard — every time I go to the basement for more firewood, I flip on the light switch.

We scoop buckets of water from the basement cistern to wash dishes and flush toilets. We empty the fridge contents into a cooler, which we place on the porch; however, we are later forced to dispose of thawed food from the freezers. My computer literacy and legal skills are rendered totally irrelevant, and I revert to more basic hunting-gathering instincts — hunting down the ever-elusive "D" battery, and gathering the equally-elusive lamp oil.

My three-year old daughter Rachel repeatedly requests my wife Laura Lee to put on a video. Seven-year old Anna and I go outside and videotape some of the devastation: countless fallen trees, dangling power cables, snapped telephone lines, broken hydro poles, crushed buildings and cars. As if on cue, the battery on the videocamera goes dead with no prospect of being recharged. Luckily, our house

DAY 3

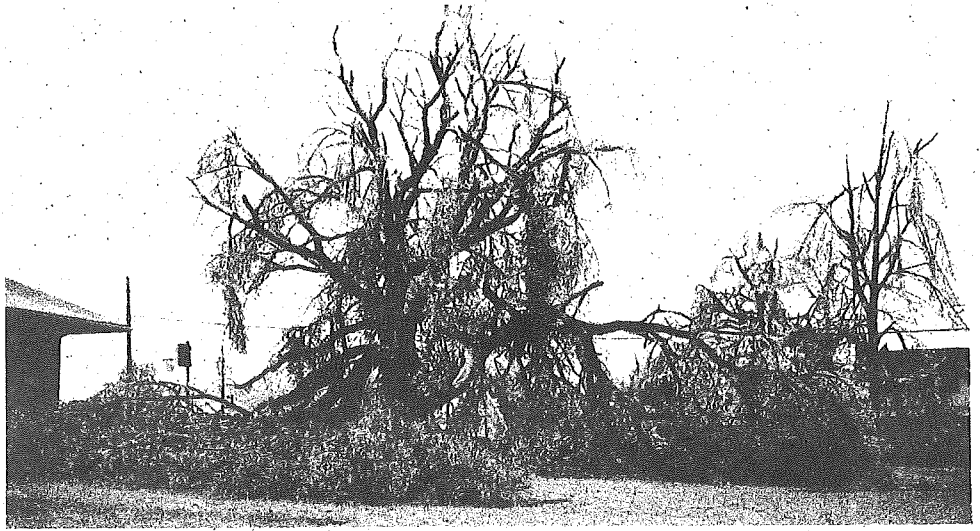
We can see our breath in the house when we wake up. A series of thunder storms roll through the area, and bluish lightning flashes across the gray sky. We decide that Laura Lee and the kids should become environmental refugees, and they flee to the warmth of a friend's house in Kingston. Our friend has no power, but she has a wood stove and running water! I stay home to safeguard our house, and to stay with my mother-in-law Janice, who lives nearby on the Island. Her basement is flooded with two feet of water due to sump pump failure, and the oil furnace motor is completely submerged. Her house was built in the late 1880's, and probably pre-dates the arrival of electricity on the Island. I suspect that an ice storm back then would not have seriously affected the house's original occupants, who fortunately lacked our "essential" modern amenities.

On the horizon of Lake Ontario, I can see the twin stacks of Ontario Hydro's Bath Generating Station billowing smoke into the air, and I wonder where the electricity is actually going. I check my house and discover that a courier somehow made it through the ice storm of the cen-



tury to deliver documents from a CELA colleague. I phone my colleague and thank him for the kindling.

At night, Janice and I huddle around candles, inhale kerosene fumes, and listen to round-the-clock newscasts on a small "Smurf" transistor radio that Anna rescued from the Island dump years ago. Only one radio station is left broadcasting in Kingston, and we hear grim stories about victims of hypothermia, carbon monoxide poisoning, and house fires. We are informed that Wolfe Island is one of the hardest-hit areas, as 300 to 400 hydro poles have collapsed along the Island highways. The Island Mayor declares a state of emergency, as does the Mayor of Kingston.



DAY 4

My ice-laden telephone lines fall to the ground, work for a while, then go dead. I meet an Ontario Hydro worker from Owen Sound who tells me that it may be one to two weeks before power is fully restored to the Island. I visit the historic Island hotel for a hot meal cooked on a propane stove. Coffee is unavailable because the hotel has run out of drinking water — so I treat myself to a warm beer in the darkened dining room.

I quickly discover that timing is everything — I just happen to be at a hardware store when a truck arrives with "D" batteries and kerosene jugs (limit two per customer). I buy kerosene for my uncle, and two dozen "D" batteries for myself and friends. On Wolfe Island, I sell my surplus "D" batteries at cost to the general store, which has none in stock. While I'm in the candle-lit store, four cans of camping fluid arrive from the ferry — our only lifeline to the mainland. I buy a can of camping fluid, and the storekeeper tells me to hide the "liquid gold" under my coat so I don't get mugged on the way home. I think he was kidding.

In the afternoon, scenes from Apocalypse Now are recreated as Prime Minister Jean Chrétien and Defence Minister Art Eggleton arrive in military helicopters to visit Wolfe Island.

Kingston's water treatment plant has failed due to the power outage.

A miracle then materializes — a friend arrives unexpectedly from Kingston with a rented generator that is being lent to us by a person whose power has been restored. We wire

the 2500 watt generator into Janice's electrical panel, and we manage to pump out the basement. I quickly entertain thoughts of hooking up the television to watch *Hockey Night in Canada*. However, these hopes are cruelly dashed when I realize that the local CBC station's 300 metre broadcast tower (located on Wolfe Island) has crashed to the ground due to ice buildup. I later visit the twisted metal wreckage of the doomed tower, which looks like a UFO crash-landed in the field. I am told that the local transmitters for PBS and TVO are off the air due to the ice storm, and I ponder what is worse — life without Barney, or life without Polkaroo?

DAY 5

At my house, the tropical fish have died, and the African violets are withering away. The two cats are content to just eat and sleep in the frosty house — not much change from their usual routine. Our dog is having the time of her life, chasing and chewing all the dead branches which cover our yard.

The Smurf radio advises that Ice Storm '98 will be the costliest natural disaster in Canadian history. I wonder how "natural" this disaster really is — was it caused by El Nino? Global warming? Hot air from Parliament Hill? We read in the local newspaper that the trusty *Farmer's Almanac* accurately predicted the arrival of the ice storm. Ominously, the *Almanac* warns of more huge storms in February and March.

The morning ferry trips to Wolfe Island bring an army of utility workers, countless bucket trucks, and long convoys of flatbed trucks carrying new hydro poles. The workers labour under extreme weather conditions until dusk, then return to their Kingston hotels at night. The new poles are installed fairly quickly beside the broken poles, but I notice it takes much more time for the line crews to restring the poles with new power cables, insulators, switches and transformers.

(Continued on page 12)

(Continued from page 11)

Then, another miracle occurs — my handyman friend makes a triumphant return to the Island after having disassembled, dried, and re-built Janice's furnace motor. We install the motor, plug it into the generator, and hear the furnace start up — we have heat! It turns out that the generator cannot run the furnace and the sump pump at the same time — so Janice and I take turns getting up every 90 minutes through the night to switch the furnace off and turn the sump pump on in order to prevent another basement flood.

In the middle of the night, I fill up the generator's gas tank by the light of the full moon. I glance at the outside thermometer, which has dipped to -20°C. Getting up every 90 minutes to ensure that we have heat seems to be a highly acceptable trade-off in the circumstances.

DAY 6

In the morning, Janice and I throw caution to the wind and unplug both the furnace and the sump pump from the generator so that we can plug in the coffee maker for fresh, hot brew — delicious! Later, I meet some MNR forestry workers from Sioux Lookout who wander into my yard. They fire up their chainsaws to cut up dead limbs and to remove the tree from my house roof. Army soldiers also assist in our cleanup operation, and Ministry of Transportation employees drop by with a tree-chipper to shred the massive brush piles.

The Smurf radio relays information about inevitable breakdowns in the social order — two people try to steal a generator from a local fire hall; price gouging is being reported across the region; scam artists are extorting large sums of money from homeowners for cutting and removing fallen trees; and one person is caught and convicted for breaking into a blacked-out house in Kingston. He is sentenced to one year in jail — double the usual time for such crimes, according to the Crown Attorney who wants to deter other burglars from taking advantage of the ice crisis.

Each night, while looking across the lake, I can see more and more lights twinkling along the Kingston waterfront. Standing on the blacked-out Island, I feel like an inhabitant of a developing nation, staring enviously at the people of plenty across the ocean. An Island resident later puts it in proper perspective for me by commenting that despite our hardships, we still have good food, potable water, and warm shelter — three commodities that are rare or non-existent in many other parts of the world.

As the days drag on, the state of emergency has acquired a surreal quality as Kingston's downtown core (where powerlines are below-ground) becomes active again. We can't even turn on a tap on the stricken Island, but it is possible to ferry to the City, order a good meal at a trendy restaurant, watch a movie (*Titanic* seems appropriate), and enjoy a cocktail before returning home. Was this how Paris seemed to soldiers in the trenches during World War One?

However, since Janice and I only have a 90 minute op-

portunity to leave the house, we decide to go out for a meal at the Island fire hall, which is being used as an emergency shelter. We enjoy homemade turkey stew and sandwiches, and we exchange war stories with other Islanders. An eager volunteer insists that we take home some of the groceries donated by Kingston stores. We try to resist since our cupboards remain well-stocked, and since there might be Islanders who have a greater need for the food. The volunteer persists, however, and we take home some noodle packages to keep her happy.

DAY 7

I pick up Laura Lee and the kids, who want to visit our house and see the pets. While in Kingston, I see scores of out-of-town utility crews and vehicles, including many from Scarborough, Toronto, and North York. I am so heartened by this show of GTA generosity that I *almost* wish I could have voted for Mayor Mel.

Several provincial Cabinet ministers, including Treasurer Ernie Eves and Minister of Natural Resources John Snobelen, visit the Island in the morning to inspect the damage. It appears, however, that Mr. Eves forgot his cheque book at Queen's Park, while Mr. Snobelen left his chainsaw somewhere in Whitney Block. Mr. Eves subsequently announces a multi-million dollar disaster relief package, and the federal government does likewise. I wonder if and when some money might wind its way to Wolfe Island.

In the afternoon, scenes from *Apocalypse Now* are recreated as Prime Minister Jean Chrétien and Defence Minister Art Eggleton arrive in military helicopters to visit Wolfe Island. They are accompanied by a phalanx of security staff, OPP officers and media types. Laura Lee and the kids meet and talk with the Prime Minister — an encounter that I manage to videotape with a newly charged battery from Kingston. We are later told that Mr. Chrétien is the first Prime Minister since Sir John A. MacDonald to set foot on the Island. I wonder what brought Sir John here — did he, too, enjoy the hospitality (or warm beer) at the Island hotel?

Shortly after the Prime Minister departs, there are rumours that power has been restored to the village on Wolfe Island. We rush home, switch on the main breaker, and are astounded as our household appliances roar back to life. Janice's house is also powered up at this time. The phone lines are working again, and the fax machine and modem quietly hum back to life. Rachel gets to watch her long-awaited video, and the Prime Minister's visit to Wolfe Island is highlighted on the CBC *National News*. Wolfe Island is finally on the map, and gets its fifteen minutes of fame.

Life slowly returns to normal, although it takes another full week for our other friends and neighbours on the Island to have their power and phone service restored. We collectively reflect upon our Ice Storm '98 experiences, and we hope that the *Farmer's Almanac* is wrong for a change. ☺

Adams Mine Landfill

Rick Lindgren, CELA Counsel

CELA is involved in a precedent-setting hearing before the Environmental Assessment Board in relation to a private sector proposal to rail-haul Metro Toronto garbage to an iron ore mine near Kirkland Lake for disposal purposes.

This proposal, which was first conceived but then abandoned by Metro Toronto, has been actively opposed on environmental and socio-economic grounds by a coalition of groups represented by CELA. The coalition represents the interests of local residents, farmers and various environmental groups.

The EA Board hearing is significant for several reasons:

- the large-scale and long-term nature of the undertaking (i.e. disposal of 20 million tonnes of waste over 20 years, with a potential contaminating lifespan at the site of approximately 1,000 years);
- the novel landfill design which proposes to capture leachate (i.e. contaminated groundwater) through an

engineered "hydraulic containment" system; and

- this case is the first "scoped" hearing to be held under the recent Bill 76 amendments to the *Environmental Assessment Act*.

In deciding to send the matter to the EA Board for a hearing, the Minister only referred four specific questions:

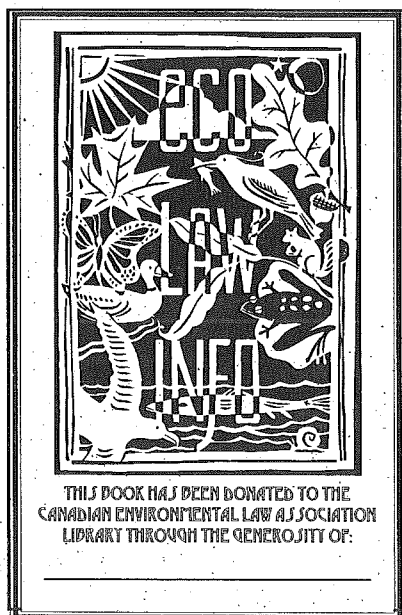
1. Will the "hydraulic containment" system effectively contain and collect the leachate generated at the site?
2. If not, are there other design alternatives which may effectively contain and collect the leachate?
3. Are certain proposed conditions of approval (i.e. community liaison committee, monitoring, contingency planning) adequate?
4. If not, what additional conditions of approval are appropriate?

Critical threshold questions — such as whether there is a demonstrable need for the undertaking, or whether the proponent has adequately assessed the alternatives to

the undertaking — are not going to be adjudicated by the EA Board.

The EA Board held a preliminary hearing on this matter in late February. The main hearing will likely commence in late March and will take approximately 20 hearing days to complete. The outcome of this significant case will be reported in a future issue of the *Intervenor*. ☐

"People who live in the area are really frustrated," said Norm Macdonald, a resident of Boston Township, where the Adams Mine is located. "This has been going on for years. We've had petitions, and referendums, and public processes, and it doesn't seem to matter how often or how loudly we say 'no', the proposal just keeps coming back at us."



Adopt a Book and Help Support the CELA Library

The CELA Resource Library has one of the most extensive and varied environmental collections in Canada. Unfortunately, the recent loss of government funding has imperiled the continued development of library acquisitions, at a time when the public is in greater need than ever for environmental information and new tools to deal with changing government regulatory regimes and with the consequences of globalization.

To help support these efforts, we are requesting your help through our new "Adopt a Book" program. For donations to the library of \$25.00 or over, we will inscribe your name on a bookplate (based on our new library logo) at the front of a new book of the approximate value of your donation. You will receive a note telling you what your donation has enabled us to buy, along with a charitable donation receipt.

Send cheques or money orders to CELA, made out to the

"Resource Library for the Environment and the Law"

Mail to: CELA Library, 517 College St., Toronto, Ontario M6G 4A2

CELA Clients Sue Ontario MoE

Ramani Nadarajah, CELA Counsel

The Canadian Environmental Law Association is representing Karl and Vicki Braeker who reside at a farm in Grey County, Ontario next to an illegal tire dump. The tires had been brought onto the property by the owner of the site almost eight years ago. The Ontario Ministry of the Environment (MoE) had inspected the property at that time and advised the owner that the site constituted an illegal waste disposal site since it did not have a Certificate of Approval. The owner of the site was also ordered by the local fire department to store the tires in accordance with the requirement of the *Ontario Fire Code*.

The owner of the dump, therefore, advised the Ministry of Environment (MoE) that he would "temporarily store" the tires by encapsulating and burying them. The proposal was considered to be a sound approach by the MoE which had become increasingly concerned with illegal tire dumps, following the fire at the Hagersville tire dump which resulted in the discharge of toxic fumes and caused extensive contamination.

In January of 1991, approximately 33,000 tires were buried in a trench. These events were observed and video taped by municipal and MoE staff. Prior to the burial operations, the MoE failed to undertake any detailed hydrogeological assessment to determine if the tires could be buried without causing ground water or surface water contamination. The MoE did not object to the burial of tires with the understanding that this would be for only two years. However, MoE sampling of the trench wa-

ter where the tires were buried indicated that it was contaminated with cresols; manganese; cobalt; diphenylamine; and NDMA (which was the carcinogen involved in a recent controversy over the water supply in Elmira, Ontario). The contaminants are in concentrations which greatly exceed levels permitted under provincial water quality objectives.

"We have waited seven years for the Government to clean up this environmental disaster," says Karl Braeker. "It is now time to hold the Government legally accountable for the mess it helped create."

In December 1994, a MoE groundwater specialist made an internal recommendation that: "Since leachate from the tires could contaminate the groundwater resources in the area, I strongly recommend that all measures be taken to have the tires removed from the trench and disposed of in an environmentally acceptable manner as soon as possible."

Consequently, the MoE indicated to the owner of the site and the mortgagee that the MoE intended to issue an order requiring the tires be removed and to register notice of the tire dump on title.

The owner of the property was later charged and convicted of operating an illegal waste dump. The former owner, who has since disappeared, was also convicted for fail-

ing to comply with the Ministry order to remove the tires. The Director of the MoE, therefore, issued an order against the mortgagee to remove the tires. The mortgagee appealed the order to the Environmental Appeal Board (EAB).

At the hearing before the EAB, the board ruled that the mortgagee was responsible for removing the tires, provided the tires were first unearthed and cleaned by the public officials who had caused or acquiesced in the tire burial. However, the tires remain buried to date and the mortgagee has since appealed the EAB decision to the Divisional Court.

It has been three years since the MoE's specialist recommended removal of the tires and, at this writing, the MoE has failed to excavate and remove the tires.

CELA's clients have issued a Notice of Claim *Proceedings Against the Crown Act* against the government alleging negligence, in monitoring, inspection and enforcement, and seeking damages for loss, injury and harm.

This case is indicative of a growing number of cases where the government is being sued for regulatory negligence for its failure to exercise its regulatory powers to protect the natural environment. With the drastic cuts to the MoE budget and staff, the capacity of the government to fulfil its core regulatory mandate is open to question. Citizens will, therefore, be increasingly resorting to the courts to prompt the government to exercise its statutory powers to ensure that environmental protection in Ontario is achieved and maintained. ☐

Request for Investigation under the EBR

Paul McCulloch, CELA Student at Law

Consider the following: you live near a facility, whether it be commercial, industrial, or institutional, and the operation is contravening an environmental statute, causing damage to the environment, and perhaps even impairing your own health or property. You call the Ministry of the Environment (MoE) and report the problem, but Ministry staff conclude there is no problem. But you remain unconvinced and unsatisfied with the Ministry's conclusions. What do you do?

If you are not satisfied with how the MoE is handling the situation, then the Request for Investigation (RfI) section of the *Environmental Bill of Rights, 1993* (EBR) is for you.

The RfI process enables you to file an official petition requesting that a proper investigation be conducted. Your request is handled by a separate, arm's length agency, the Environmental Commissioner of Ontario (ECO), who ensures that it is directed to the correct Ministry. More importantly, the RfI process requires that a formal response must be given to the applicant and the ECO office.

The RfI process is initiated by obtaining an application from the ECO office. The application must be made by two persons who are resident of Ontario, and must set out: the nature of the incident, the statute or regulation that is being contravened, the names and addresses of each person alleged to have been involved (if known), a summary of evidence and witnesses, and the details of any previous contact with the appropriate government Ministry. This information must be accompanied by a sworn affidavit from both applicants, affirmed by a recognized commissioner

for taking affidavits, stating that they believe this information to be true.

Within ten days of receiving the application, the ECO office must refer the request to the appropriate Minister, who must acknowledge receipt of the request within twenty days. The Minister then has 60 days to decide whether or not to conduct an investigation. A request may be denied, but only in prescribed circumstances, and the applicant must be given reasons as to why an investigation will not be carried out. If the situation does not fit into these circumstances, then the investigation must be conducted, although the size and scope of the investigation may be determined by the Minister. The Minister has an additional 60 days to complete the investigation, and must notify the applicant and the ECO of the outcome of the investigation and what action will be taken, if any.

Although it appears that the Minister has a great deal of discretion over this process, keep in mind that the Minister must have sufficient evidence upon which to base his or her decision and that the Environmental Commissioner is empowered to review and report on the exercise of a Minister's discretion under the Act. Thus there are checks and balances at work that ensure that credible requests receive proper attention, while frivolous claims do not use up valuable staff and resources.

A few other points are worth noting. First, the Request for Investigation process only applies to certain Acts and accompanying regulations, 18 in all, that are prescribed by Ontario Regulation 73/94. Nevertheless, all of the most important environmental protection statutes are pre-

scribed, including the *Environmental Protection Act*, *Ontario Water Resources Act*, *Environmental Assessment Act* and the federal *Fisheries Act*. Second, an individual must complete an RfI before employing the Right to Sue provisions of the EBR. These provisions enable any person in Ontario to initiate a court action to protect the environment. Finally, this process should only be used after availing oneself of the regular channels for reporting environmental concerns. It is only when someone has contacted the proper government department and is unsatisfied with the response that an RfI is appropriate. ☉

Who you gonna call?

To obtain the forms necessary to initiate a Request for Investigation, contact:

The Environmental
Commissioner's Office
1075 Bay Street, Suite 605
Toronto, Ontario
M5S 2B1
416-325-3377 or 1-800-701-6454

There's also the Ontario MoE
Info. line at 1-800-565-4923.

For more detailed information on the Request for Information process, and the EBR in general, you may wish to consult the following book, written by two of CELA's staff lawyers:

Rick Lindgren and Paul Muldoon, *The Environmental Bill of Rights: A Practical Guide*.
Toronto, Emond-Montgomery Publications Ltd, 1995.

[It's available in the CELA Library]

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Lisa McShane, Librarian, Resource Library for the Environment

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Zuckerman, Francine, producer and director, and Martha Butterfield, producer and writer. *Exposure: Environmental Links to Breast Cancer* [video; 55:33 min.]. Toronto: Women's

Network on Health and the environment, 1997. Accompanied by: Rosenberg, Dorothy Goldin. *Taking Action for a Healthy Future: Educational Resource Guide and Community Handbook for the Film "Exposure: Environmental Links to Breast Cancer"*. Toronto: Women's Network on Health & Environment, 1997. 60 p.

Periodicals

Rachel's Environment & Health Weekly. Published by the Environmental Research Foundation in Annapolis, MD. Weekly 2-page summaries of many important environment and health topics. Topics in the last year included the causes of lymph cancer, childhood cancer and pollution, and the true story of Alar, and the truth about breast cancer. Available on the Internet at <http://www.monitor.net/rachel/>

Health and Environment Digest. This monthly newsletter, also American, is published by the Freshwater Foundation in Maine. Recent issues have dealt with topics such as nique susceptibilities of children to environmental contaminants, diet and cancer, and the health effects of low-level radiation.

Other selected recent articles

"Global action plan initiated at World Breast Cancer Conference", *News and Views* 10 (2), September 1997, pp. 7-11.

"Prevention is crucial: pesticides and breast cancer", *Journal of Pesticide Reform* 16(1), Spring 1996, pp. 2-7.

"Breast cancer and the environment", *The Ecologist* 23 (5), Sept/Oct 1993, pp. 192-193.

"Profiting from cancer: vested interests and the cancer epidemic", *The Ecologist* 22 (5), Sept/Oct 1992, pp. 233-240.

"Inert" pesticide ingredients pose hazards", *PANUPS: Pesticide Action Network North America Updates Service* 33, pp. 6-7.

You will find all of these references, and a lot more, in the CELA Resource Library for the Environment. It's at the CELA offices, 517 College St., suite 401 in Toronto. The Library is open Tuesday, Thursday and Friday from 1:00 to 5:00 pm.

Phone 416-960-2284 for more information.



From the Headlines

David McLaren, Communications Coordinator

Politicians like to think the public has a short memory. So, we've decided to provide you with the following mnemonic device — a selection of headlines over the past few months.

— Ed.

Québec forestry polluters break federal laws

Globe & Mail, Jan. 26, 1998

At least 20 pulp and paper mills in Québec have violated federal pollution laws against killing fish but have not been charged, according to documents obtained by environmental groups under the Access to Information Act.

Ecology pact gives provinces more power

Globe & Mail, Jan. 30, 1998

Environmental ministers (except Québec) sign the Harmonization Accord, giving the provinces more control over what they must do to protect air, water and land. (*CELA takes feds to court — see story this Intervenor, page 3*)

Cleaners creating bacteria that resist antibiotics

Globe & Mail, Feb. 3, 1998

Common pine-oil-based cleaners may cause the germs they are designed to kill to become antibiotic resistant.

Killer El Nino effect predicted to last into spring

Globe & Mail, Feb. 4, 1998

The toll from this year's phenomenon has surpassed that from the 1982-83 El Nino, the strongest previously studied. Severe winter storms have ripped through California, the US south, Québec and Ontario.

Buried tires headed for court

Owen Sound Sun Times, Feb. 5, 1998

A Durham area farm couple is suing the Ontario Ministry of the Environment over 30,000 tires that have been buried next to their farm since 1991. (*See story in this Intervenor, page 14*)

Province breaking own logging laws

Toronto Star, Feb. 7, 1998

The Ontario Ministry of Natural Resources is violating its own laws by approving commercial logging in vast regions of Northern Ontario, a 3-judge panel of the Ont. Divisional Court has ruled. Logging on as much as 40% of crown lands may be illegal. The MNR has 1 year to come up with proper plans.

Land claim case fallout seen

Vancouver Sun, Feb. 11, 1998

A leaked memo from the BC government says the Attorney-General admits the Dec. 11th *Delgamuukw* decision of the Supreme Court of Canada may have given First Nations in BC the power to stop development on their lands. *Delgamuukw* recognizes that First Nations who have not surrendered their lands hold an "underlying title" to them, which carries the weight of a constitutionally protected aboriginal right.

Is Global Warming causing more frequent and extreme El Ninos?

Gallon Newsletter, Feb. 17, 1998

Preliminary research from the US National Centre for Atmospheric Research indicates that El Nino's strange behaviour may be caused by the influence of global warming, itself caused by the increase in greenhouse gases.

Southeast Asia haze costly for region

Toronto Star, Feb. 26, 1998

Fires, some set purposely to clear land for agriculture, and some the result of El Nino, have caused more than \$1.45 billion in damages to the region in lost tourism, lost industry and lost health.

Foresters puzzle the unknowns of UV-B radiation

Globe & Mail, Feb. 28, 1998

Ultraviolet-B radiation is a form of invisible, sterilizing sunlight that penetrates the atmosphere through Earth's damaged ozone layer. One theory has it that if UV-B had always struck the Earth, the land would still be lifeless. In some humans, it can cause skin cancer. In some species of trees, it stunts their growth and malforms their foliage.

Environment official forced out

Globe & Mail, Mar. 2, 1998

The Executive Director of the NAFTA Commission for Environmental Cooperation (CEC) was forced to resign Feb. 10th by all 3 NAFTA partners. Last year the Commission released a study that found Ontario is the 3rd worst polluter in North America, after Texas and Tennessee. The CEC was established in 1993 to make sure environmental standards did not drop because of free trade.

Major Canadian Companies on list of North America's worst polluters

Globe & Mail, Mar. 3, 1998

Canada tries to suppress a report of the CEC that names at least 8 Canadian companies (including Dofasco, Novacor and Methanex) as being among North America's worst polluters.

Angler group longs for dirty Lake Erie

Globe and Mail, March 3, 1998

The Ontario Federation of Anglers and Hunters is claiming that sewage treatment controls should be slackened to help boost forage fish stocks for sportfish. Current phosphate levels in Lake Erie are a little more than double those before the time of European settlement.

Ontario silent on smog action; Canada slow

CP, March 13, 1998

Ontario missed a March 9th deadline to lobby the US Environmental Protection Agency (EPA) for tougher limits on smog from the US. In Ontario, 1,800 residents die prematurely every year from air pollution-induced diseases. Environment Canada was unable to complete its submission to the EPA on time. ☹

DEAR READER

Thinking Globally, Acting Locally

David McLaren, Communications Coordinator

More changes for the *Intervenor*. If you've been following the stories in the *Intervenor* over the past few months you (hopefully) will have noticed an increase in the detail of reporting and the depth of analysis. Kathy Cooper's "Chronological Guide to Environmental Deregulation in Ontario" (*Intervenor* v.22 n.5&6) is perhaps the best summary of its kind in the field. In this issue, Michelle Swenarchuk's article on the MAI (pages 4-5) is one of the most concise critiques of this agreement I have yet come across. In future issues, we hope to bring you more such "reports of record."

In addition, we have begun a couple of new features — "Casework" and the "Environmental Tool-Kit". The Casework articles feature actual cases CELA is working on. Obviously, the authors are limited as to what they can say about a case when it is before the courts, but they will try to bring out the larger implications of the environmental problems people are facing in their own backyards. At the same time, the "Casework" articles demonstrate CELA's primary mandate — to represent citizens on a range of environmental issues who would not otherwise be able to defend themselves.

The "Environmental Tool-Kit"

articles are designed to give our readers a better idea of the legislative, policy and non-government tools available to help citizens protect their environment.

In coming issues we will be bringing you stories of the work CELA is doing locally, provincially, nationally and internationally. As J La Forest of the Supreme Court of Canada said in *R v Québec*, the protection of the environment "is an international problem, one that requires action by governments at all levels."

International problems always have a way of making themselves felt locally. It isn't Canada that is suffering from the consequences of the Plastimet fire. It isn't Ontario. It is a community of citizens. It always is.

However, with Ken Traynor and Michelle Swenarchuk concentrating on international issues; with Paul Muldoon calling the feds to account in Ottawa; with Sarah Miller watching our water; with Ramani Nadarajah and Rick Lindgren watching the Province, and with Kathy Cooper's research and

work with communities, CELA is wonderfully placed to give real meaning to the sometimes empty slogan, "think globally, act locally."

The *Intervenor* will reflect these efforts. Beginning with this issue, we will be reflecting them four times in 1998, instead of the usual six. Increased content, and increased distribution

have made the change necessary, at least for the time being. At the same time we are exploring other ways of getting CELA's message to you, in a more timely way, including increasing our use of mainstream media (watch your local paper and

stay tuned to your local radio and TV stations).

CELA is entering a new stage in which one of the questions we will be asking ourselves is how we can make CELA even more effective. My own experience tells me that, as the bottom-liners rush to the global market and as nations lose their ability to protect their citizens from the environmental consequences, we need to help develop the expertise of citizens and their communities. And that, dear reader, is where you come in. ☉

***Intervenor* moves
to 4 times a year
on a trial basis
and CELA re-
tools for the
millenium.**



Government contacts for the issues discussed in this issue of the *Intervenor*

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Price List for Recent Publications

(from November 1997 — for earlier briefs, see earlier Intervenor or phone CELA for complete list)

- 337. The Multilateral Agreement on Investment and the Environment: Context and Concerns. Prepared for the House of Commons Sub-Committee on International Trade, Trade Disputes and Investment, November 24, 1997. M. Swenarchuk, November 1997. \$5.00
- 337. [A] The MAI in Canada: Economic De-regulation Round Four. M. Swenarchuk, January 1998. \$2.50
- 338. World Trade Organization Downs European Health Standard. M. Swenarchuk, November 1997. \$2.50
- 339. Comments on Bill 139, the *Fish and Wildlife Conservation Act, 1977*. Presented to the Standing Committee on General Government. D. McLaren, December 1997. \$2.50
- 340. Petition to the Commissioner of the Environmental & Sustainable Development Concerning the Proposed "Canada-wide Accord on Environmental Harmonization". P. Muldoon, January 1998. \$5.00
- 341. Submission of CELA to the Standing Committee on Resources Development regarding Bill 146 - An Act to Protect Farming & Food Production. P. McCulloch, February 1998. \$5.00
- 342. Enforcement and the *Canadian Environmental Protection Act*: The Need for a Federal Environmental Bill of Rights. Submission to the Standing Committee on Environment & Sustainable Development. P. Muldoon, February 1998. \$10.00



The video version of CELA's 1996 Conference, "Law for the Public Interest" is finally available.

Well, maybe it's not as steamy as the clip art suggests, but it's still pretty gripping stuff. Hear about the effects of deregulation on labour, your health care and on the environment from the people who have been fighting them the hardest. We have squeezed as many of the presenters as we could into 150 minutes, including Dr. Marjorie Cohen's important speech on the ideology of the bottom line.

For front-row seats in front of your VCR, send us \$25 and we'll send you CELA, the movie.

Canadian Environmental Law Association



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