

November 12, 2015

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Langevin Block
Ottawa, Ontario
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Dear Prime Minister Trudeau:

The Canadian Environmental Law Association writes to congratulate you and your team on your election and forming the new government of Canada. In the coming days and months, CELA will be ready to assist, to provide advice, and to respond to proposals and consultations as your team embarks on undertaking improvements to federal environmental law.

CELA is a forty-five year old, federally-incorporated national ENGO, as well as a specialty legal clinic within the Ontario Legal Aid clinic system. Our mandate includes improving environmental laws, as well as using law to improve the environment and the consequent health and safety of Canadians. We have a particular focus on low income and vulnerable communities in our analysis of environmental law issues in Canada, and we act for many not-for-profit groups, First Nations, families, and individuals in specific environmental law challenges, providing a unique perspective as to where law reform is needed.

We are a very active member of the Green Budget Coalition, which I co-chair, and we strongly endorse the Vision statement for the 2016 budget which the GBC has recently provided to you.

CELA's lawyers and researchers have extensive experience and expertise on a number of key matters that we believe your team will address shortly. We urge you to give these issues a high priority within the term of your mandate (additional comments on each follow below):

- Revisions to the **Canadian Environmental Assessment Act**
- Revisions to environmental review and approvals of **major energy projects** including the approval agencies themselves
- Revisions to the **Navigable Waters Protection Act** and the **Fisheries Act**
- Revisions to control and reductions of **toxic chemicals** in Canada under the Chemicals Management Plan
- Tackling specific substances including **pesticides, asbestos, mercury, and radon**
- **First Nations drinking water** protection
- **Climate change** – in particular protection for low income and vulnerable communities
- **Great Lakes** investments and a **national fresh water strategy**
- **Trade Agreements** – namely environmental analysis of their impacts as proposed

Canadian Environmental Law Association

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Canadian Environmental Assessment Act

As you indicated in your platform, your government intends to review and revise the Canadian Environmental Assessment Act (CEAA) which was significantly revised, and in our opinion, weakened, by amendments in 2012 and 2013. CELA recommends that those changes be revisited, but also that advice as to needed improvements to the prior CEAA be sought. CELA had participated in the Standing Committee hearings on its most recent review of CEAA and provided a suite of improvements that, in our experience, would strengthen the effectiveness of the CEAA in accordance with its purpose. We also appeared before the Senate Committee on Finance to oppose the omnibus repeal of CEAA 1992 and passage of CEAA 2012. CEAA must ensure the early, precautionary consideration of the potential adverse environmental effects of projects, and ensure that projects not proceed without considering whether they are needed, and what the alternatives are to the project. In particular, in our view, a return to a clear “trigger” approach as to which projects must be assessed under the CEAA is of paramount importance. A related need is a review of the process of establishing Joint Review Panels and their secretariats, and the governance of same. In addition to our detailed analysis about improvements to the prior version of CEAA 2002, and a strong critique of the amended CEAA, CELA has had extensive experience since the passage of CEAA 2012 and will bring these insights to assist you in your work to revise CEAA to ensure it meets the necessary goals of precautionary, sustainable decision making.

Major Energy Projects

One of the key areas to which the CEAA applies is that of major energy projects in Canada. In addition to oil and gas projects of which much has been heard, major nuclear energy projects are also considered under CEAA and CELA has extensive experience with these projects. In our view, the recent changes which put the conduct and oversight of environmental assessment solely in the hands of either the National Energy Board (NEB), or the Canadian Nuclear Safety Commission (CNSC), rather than in the hands of the Canadian Environmental Assessment Agency and shared with other responsible departments such as the Department of Fisheries and Oceans, has resulted in EAs that are not meeting the expectations of the public nor the purposes of the Act. In particular there arises a tendency of the major energy regulators to perceive their role in part as expeditors of these major projects. This tarnishes the public perception of, and acceptability of, the results of the EA processes and hearings. CELA recommends a major review of the statutory authorities, roles, responsibilities and mandates of these major energy project regulators, namely the NEB and the CNSC, as well as a review of their rules of procedure, public participation mechanisms, governance and accountability mechanisms.

Navigable Waters Protection Act and Fisheries Act

CELA echoes the many voices that are calling for a review of the changes made to these key pieces of national water law, and a return to the much stronger provisions of the previous Acts. Both of these statutes have become integral to the protection of Canada’s waters, fish and marine and freshwaters, and were well balanced with provincial and territorial law and practice prior to the ill-advised changes introduced between 2012 and 2013.

Chemicals Management

While having received less attention during the campaign, a significant area of federal action on environmental and health protection arises from the implementation of the Chemicals Management sections of the *Canadian Environmental Protection Act*. There was early promise with the introduction of the Chemicals Management Plan in Canada, which was lauded internationally as a model that promised to reduce exposures to toxic chemicals across the country. However, in its implementation we have been very disappointed in that very little real progress has been made, public engagement has been poor, and the promising tools and approaches of the *CEPA* have been subverted. As a result, there has been very little reduction in the emissions and exposures to toxic and carcinogenic chemicals in Canada's environment under the *CEPA* over the last decade.

Specific Substances

CELA works intensively on improving the federal laws and actual exposure in relation to a number of specific substances. These include pesticides, asbestos, mercury, and radon, each of which requires particular attention from the federal government, both domestically and in relation to international commitments. CELA encourages your team to move expeditiously to reduce domestic exposure as well as to reduce Canada's role in international exposure to these substances.

This being federal Radon Awareness Month, it is worth highlighting that a very expeditious action that could be taken immediately is the introduction of a radon tax credit – whereby the costs incurred by homeowners taking action to reduce radon exposure would be eligible for a tax credit. There are separate campaigns and efforts by large numbers of groups, many of whom we have and will join in urging the necessary action, and we strongly encourage you in giving these a high level of attention in the coming days.

Asbestos should be the subject of a ban in Canada, and Canada should increase its support for the Rotterdam Convention. Public engagement should be restored in Canada's work on international pollution and hazardous substance agreements (such as by holding domestic consultations on Canada's positions and including NGO delegates in Canada's negotiating teams). Upcoming examples include the next conferences on the Stockholm Convention on Persistent Organic Pollutants, and the Minamata Convention on Mercury.

First Nations' Drinking Water

A recent federal statute, the Safe Drinking Water for First Nations Act, was passed but has not been proclaimed. CELA was strongly critical of this statute in the various versions in which it was introduced and reviewed in the Senate and the House; and remains critical of its final form. We urge your government to repeal this statute, and to recommence consultations with First Nations peoples. You should take advantage of extensive technical and academic drinking water expertise in Canada, to arrive at a much more acceptable solution to the appalling situation where so many First Nations' communities' drinking water is inadequate or downright dangerous. The Kelowna Accord is a model to consider in undertaking this work anew. CELA emphasizes that a major aspect of the issue of First Nations' drinking water safety is adequate resources; it is not

merely the question of standards, training and enforcement. In many cases the issue is one of needed capital works such as relocation of wastewater outfalls or lagoons which are imperiling existing drinking water intakes. Serious discussions as to roles and responsibilities need to be held in order to arrive at a much more workable approach to the issues surrounding First Nations drinking water as well as waste water management.

Climate Change

You well know the serious global issues presented by climate change. Canada has serious responsibilities to the global community to set appropriate targets supported by real action, and to contribute to the global climate fund in supporting action to protect those countries most at risk. Furthermore, impacts in our own north, and on the communities that rely on its environment and natural resources, are in need of critical attention. Canada must also end the cycle of contributing more than its fair share to the problem of climate change. CELA urges you in your work on climate change solutions to pay close attention to the needs of low income and vulnerable communities, as well as First Nations communities, in all of the facets of climate change prevention, mitigation and adaptation. In addition, CELA urges you to focus some of the support for job creation in new green technologies and climate solutions on low income and indigenous youth so that they are permanent beneficiaries of the economic transition that will follow true solutions to the climate change challenge. Furthermore, federal support for research and development, tax incentives, and other measures to increase the role of conservation, efficient buildings and industry, and renewable energy will go a long way to ensure that Canada is participating in the changing green economy instead of being left behind as a relic of old energy intensive and fossil fuel dependent ways of doing business. A good early example of prompt action would be the renewal of the home energy / ecoenergy for homes program.

Infrastructure

A significant effort is about to commence in the area of infrastructure according to your platform. CELA is very supportive of the need for a major effort to redress the massive decades-long under-investment in drinking water and waste water infrastructure, and in public transit. We urge you to ensure that your programs place environmental criteria, including climate change, at the head of program design and objectives. With a major investment about to be undertaken, we cannot afford to lose the opportunity this presents to avoid future costs and impacts from current approaches to infrastructure. These opportunities range from including soft green infrastructure options within capital programs to provide needed services, to ensuring that rural and remote low population communities have as much opportunity to upgrade their systems as southern urban populations. While innovation is a much-used term, there are exciting opportunities to combine multiple environmental and societal benefits by allowing new approaches to tackle these problems, despite current boiler plate standards and approaches to infrastructure that merely perpetuate current impacts and issues. Examples include combining energy sources into one system; doing away with the distinctions between electricity and thermal energy and focusing instead on energy services; facilitating energy storage, and supporting research into new materials, equipment and practices related to water use and reuse. In particular, in conjunction with your work on climate change, a new approach to a national energy

strategy should focus on a national renewable energy strategy rather than the current preoccupation with fossil fuels that dominates the discussion.

Great Lakes and Other Binational Waters

Canada recently renegotiated the Great Lakes Water Quality Protocol, and there are several other significant areas of federal freshwater responsibility across the country. Canada has been under-investing in protecting and restoring the Great Lakes as well as freshwater nationally. From lakes and rivers science and research, groundwater monitoring and mapping, to clean-up of contaminated sites and support to municipalities to reduce wastewater effluent pollution, much work is needed. CELA has long advocated a national water strategy and suggests that this could provide a much needed framework to support a new approach to federal investment in Canada's significant and highly valuable freshwaters.

Trade Agreements

CELA has a lengthy history of analysis of Canada's trade agreements as to their impacts on domestic environmental law. We have attended various standing committee hearings on a range of trade agreements over the last decade specifically to provide commentary on the environmental implications. We have also undertaken reviews and critiques of issues arising from the proposed CETA as well as the TPP, and have published analysis of one of the high profile investor-state cases dealing with pesticides. Due to the secrecy surrounding the negotiation of these agreements, we strongly urge the government to conduct broad and thoughtful consultations on the agreements before deciding whether to ratify them. The agreements do not effectively protect the environment or the ability of governments to take steps to promote environmental protection. Canada should not be entering into any trade agreements which include Investor-State Dispute Settlement provisions because they are increasingly being used to by investors to challenge public interest regulation. There is no need for an investor-state chapter, which in particular is very damaging to new environmental law and policy discussions in Canada. We are also continuously concerned about the ability of Canada to achieve best-in-class environmental regulation in light of certain provisions in these agreements including harmonization provisions. Impacts on ensuring high levels of environmental regulation and scrutiny in services such as drinking water and waste water are also among our significant concerns arising from the draft agreements.

Thank you for your attention, and as indicated at the outset, CELA is available to meet with you, your Ministers, and your officials in relation to these matters, and to advise, respond to, and support improvements in Canada's critical environmental law framework.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Cc:

Hon. Stephan Dion, Minister of Foreign Affairs

Hon. Catherine McKenna, Minister of the Environment

Hon. Jim Carr, Minister of Natural Resources

Hon. Hunter Tootoo, Minister of Fisheries, Oceans and Canadian Coast Guard

Hon. Jane Philpott, Minister of Health

Hon. Kirsty Duncan, Minister of Science