



August 22, 2025

VIA ELECTRONIC MAIL

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Intergovernmental Affairs – Internal Trade
Privy Council Office
85 Sparks Street, Room 1000
Ottawa, Ontario
K1A 0A3

**Re: Considerations Respecting Future Free Trade and Labour Mobility in Canada
Act regulations**

Who is CELA

The Canadian Environmental Law Association (“CELA”), incorporated under federal law, is a public interest law clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest environmental advocates for environmental protection in the country. With funding from Legal Aid Ontario, CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives. CELA exists to ensure that low-income and disadvantaged people have access to environmental justice through the courts and tribunals.

Summary Conclusions and Recommendations

CELA submits that Division 8 of the *Canadian Environmental Protection Act, 1999* (“CEPA, 1999”) and the regulations that have been promulgated thereunder (*Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2021-25) constitute a complete code for controlling the cross-border movement from “cradle to grave” of substances that are highly dangerous to human health and the environment. The regulations have been developed over many years to protect the public from serious mishaps involving such materials and to ensure their safe movement from one province to another. They should not be interfered with in the name of expediting trade as they have not been shown to constitute a material interference with trade between the provinces and territories. Rather they have worked toward the objective of safeguarding human health and the environment in harmony with existing provincial regulations where they exist or have been the sole applicable measure in cases where provincial regulations do not exist. Accordingly, the federal government should not disturb or override the CEPA, 1999 Division 8 regime and regulations in the circumstances.

Background Basis for the Government Proposal

The recent notice from the Privy Council Office indicates that the Government of Canada is seeking feedback from interested parties regarding the development of regulations under the *Free Canadian Environmental Law Association*

Trade and Labour Mobility in Canada Act (“the *Free Trade Act*”), which received royal assent on June 26, 2025, as part of Bill C-5, *An Act to enact the Free Trade and Labour Mobility in Canada Act and the Building Canada Act*.

The notice indicates that this is a key step to strengthen the Canadian economy and overall growth and economic competitiveness. The *Free Trade Act* aims to reduce federal barriers to interprovincial trade and labour mobility by: (1) recognizing and applying “comparable” provincial/territorial regulatory requirements; and (2) ensuring that Canadians and Canadian businesses face fewer obstacles as they move goods, provide services, and pursue opportunities to work across the country.

The notice further indicates that the *Free Trade Act* provides a framework to reduce the burden of federal rules that apply to trade across provincial and territorial borders. This means that a good or service produced, used, or distributed in line with the requirements of a province or territory is recognized as meeting “comparable” federal requirements that pertain to interprovincial trade. The federal requirement remains in place but would be considered satisfied if the comparable provincial or territorial requirement has already been met. According to the notice, a requirement on goods or services falls within the scope of the *Free Trade Act* when it meets the two following criteria:

- (a) the federal requirement pertains to a good or service that is also subject to a provincial or territorial requirement; and
- (b) the federal requirement pertains to interprovincial movement of goods or the interprovincial provision of services.

Finally, the notice indicates that the Privy Council Office’s “initial assessment” suggests that the present scope of the *Free Trade Act* includes requirements under Division 8 of *CEPA, 1999* and associated regulations.

For the reasons set out below, CELA submits that the *Free Trade Act* is not applicable to, and should not be applied instead of, Division 8 of *CEPA, 1999* and its associated regulations.

The Test Under the *Free Trade Act* of “Comparable” is Weaker Than the Test of “Equivalent” Under *CEPA, 1999*

Under section 8 of the *Free Trade Act*, a good produced, used, or distributed in accordance with a provincial or territorial requirement is considered to be “comparable” to a federal requirement if the requirements are: (1) in respect of the same aspect or element of the good; and (2) intended to achieve a “similar” objective.

Whereas under section 189 of *CEPA, 1999*, there is a prohibition on the movement within Canada of hazardous waste and hazardous recyclable material except in accordance with Division 8 of that Act and the regulations, and under section 190 the Minister may issue a permit subject to conditions that would allow an activity that would not otherwise comply with the Division if the Minister is satisfied that the manner in which the activity will be conducted “provides a level of environmental safety at least equivalent to that provided by compliance with” Division 8. In

addition, under section 10 of *CEPA, 1999*, federal regulations can be declared inapplicable only if an agreement is reached that a provincial requirement is “equivalent” to the federal government requirement. The use of the weaker term “similar” under section 10 only applies to determinations respecting provisions for the investigation of alleged offences under provincial environmental legislation.

The unmistakable conclusion to be drawn with respect to *CEPA, 1999* is that given the severity of the consequences for human health and the environment of mis-handling toxic substances (or in the case of Division 8, toxic substances that have become wastes), Parliament wanted robust protections to be in place before allowing the federal government to declare that provincial requirements were “equivalent” to federal ones.

However, section 8 of the *Free Trade Act* provides no such assurances to the Canadian public. First, “comparable”, as the term is defined in the *Free Trade Act*, is a weaker term than “equivalent”. Second, there is no requirement in the *Free Trade Act* for the federal government and the respective provincial or territorial government to enter into an agreement in respect of the matter at issue. Third, unlike *CEPA, 1999*, where such agreements are the subject of public notice and comment before being approved, there is nothing in the *Free Trade Act* that suggests any material role for the public in the process.

When the subject is control of the movement of hazardous waste across the country, the Canadian public deserves better than what the *Free Trade Act* provides.

The *Free Trade Act* Applies to “Goods” Whereas *CEPA, 1999* Division 8 Applies to “Wastes”

The *Free Trade Act* applies to “goods” not “wastes”, let alone “hazardous wastes”. The *Free Trade Act* also does not define what it means by “goods”. On its face, therefore, this law does not apply to the matters set out in *CEPA, 1999* or the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* (SOR/2021-25). The objectives and purpose of *CEPA, 1999* are that of a remedial statute respecting such matters as: (1) protection of the environment and human health, including the health of vulnerable populations; (2) protection of the environment, its biological diversity, and human health, from the risk of any adverse effects of the use and release of toxic substances, pollutants, and wastes; and (3) application of the precautionary principle to prevent environmental degradation and avoid threats of serious and irreversible damage (*CEPA, 1999*, section 2(1)). These are not matters of commerce but of public health protection making the *Free Trade Act* regime inapplicable, in the circumstances.

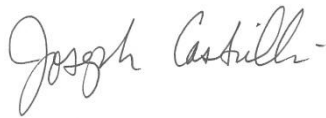
Finally, both the preamble and purpose of the *Free Trade Act* indicate that the law’s purpose is to “promote free trade and labour mobility by removing federal barriers to the interprovincial movement of goods and provision of services... while continuing to protect the health, safety and security of Canadians, their social and economic well-being and the environment” (preamble and section 4). However, the law does not otherwise indicate how the environment is to be protected under this statute. CELA submits that the way to protect the environment in the context of the threats posed by hazardous wastes is to continue to allow the *CEPA, 1999* Division 8 regime and regulations to apply.

Summary Conclusions and Recommendations

CELA submits that Division 8 of the *CEPA, 1999* and the regulations that have been promulgated thereunder (*Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2021-25) constitute a complete code for controlling the cross-border movement from “cradle to grave” of substances that are highly dangerous to human health and the environment. The regulations have been developed over many years to protect the public from serious mishaps involving such materials and to ensure their safe movement from one province to another. They should not be interfered with in the name of expediting trade as they have not been shown to constitute a material interference with trade between the provinces and territories. Rather they have worked toward the objective of safeguarding human health and the environment in harmony with existing provincial regulations where they exist or have been the sole applicable measure in cases where provincial regulations do not exist. Accordingly, the federal government should not disturb or override the *CEPA, 1999* Division 8 regime and regulations in the circumstances.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in cursive script, reading "Joseph F. Castrilli".

Joseph F. Castrilli
Counsel