



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

May 13, 2010

BY EMAIL

James Rajotte, Chair
Standing Committee on Finance
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Rajotte:

**RE: BILL C-9: PROPOSED CHANGES TO THE CANADIAN ENVIRONMENTAL
ASSESSMENT ACT**

On behalf of the Canadian Environmental Law Association (“CELA”), I am writing to follow up on my presentation to the Standing Committee on May 11, 2010 in relation to Bill C-9’s proposed amendments to the *Canadian Environmental Assessment Act* (“CEAA”).

While CELA appreciated the opportunity to speak to Committee members about this important matter, it was not possible, within our allotted five minutes for CELA’s presentation, to fully canvass the substantive problems with the proposed CEAA changes.

Accordingly, we are writing to you and all Committee members at this time to address the fundamental deficiencies of the CEAA “reform” package contained within Bill C-9.

If passed, the Bill C-9 proposals, among other things, would:

- exempt many types of undertakings from CEAA coverage;
- enable substitution of regulatory or licencing proceedings for EA processes;
- facilitate “project-splitting” so that environmentally significant components of contentious projects may escape federal EA scrutiny;
- diminish or undermine public participation rights under CEAA; and
- erode accountability for EA processes and outcomes under CEAA.

In our opinion, there is no public interest justification for these sweeping changes to CEAA, nor has the federal government provided any compelling reasons for such changes. We are particularly perplexed by the unmeritorious claim that the Bill C-9 changes are necessary to

address “overlap and duplication” within EA processes. In our view, such claims have long been discredited by the Standing Committee on Environment and Sustainable Development¹ and other observers,² and we are unclear why such arguments are currently being invoked as the apparent rationale for the CEAA changes being proposed within Bill C-9.

Moreover, it strikes us as highly ironic that the proposed CEAA changes are unlikely to resolve the specific EA issues that Bill C-9 purports to address (i.e., delay, inefficiency, uncertainty, cost, etc.). To the contrary, to the extent that the proposed CEAA amendments further weaken the existing law, CELA anticipates that the amendments will likely cause or contribute to more – not less – delay, inefficiency, uncertainty and cost, particularly as proponents, stakeholders and federal officials debate the proper scope of the project, the timing and type of EA process to be undertaken, and the factors to be considered.

In addition, CELA notes that the Bill C-9 proposals do not actually address the real issues which need to be tackled in order to improve and strengthen CEAA. These issues include:

- creation of a rules-based regime which requires undertakings subject to CEAA to provide for sustainability and societal benefits, rather than merely focusing upon impact mitigation;
- greater emphasis upon identifying and evaluating the direct, indirect, and cumulative effects of undertakings upon ecological, social, cultural, and economic environments (and their interrelationships), rather than generally limiting EAs to biophysical impacts (or related effects);
- establishment of a robust legislative framework for strategic level EA of governmental plans, policies and programs, rather than focusing EA on individual physical works or activities;
- enhancing opportunities for public participation in the planning of undertakings subject to CEAA, particularly during the upfront determination of the purpose of the undertaking and consideration of reasonable alternatives; and
- development of clear decision-making criteria under CEAA, and the creation of enforceable approval/rejection decisions under CEAA (with or without terms and conditions).

These and other issues are examined in more detail in the appended article on Bill C-9 by Dr. Robert Gibson, who is a noted authority on EA policy and practice in Canada. Please be advised that CELA fully endorses the findings and recommendations set out in Dr. Gibson’s article, and we strongly commend his Bill C-9 critique to the Standing Committee.

In particular, we would draw the Committee’s attention to Dr. Gibson’s overall conclusion:

Together, the analyses suggest that the CEAA amendments proposed in Bill C-9 proposals would add to the weaknesses of the current law while failing to resolve the

problems they are meant to address. The findings point to the need for a more complete and better integrated initiative to re-examine CEAA and its record of application, and to design renewal steps through amendments and policy and administrative changes that promise establishment of much more effective, efficient and fair assessment in Canada.

In closing, CELA submits that there are numerous procedural and substantive reasons why the Bill C-9's proposed changes to CEAA should not be enacted by Parliament. We further submit that it is both premature and inappropriate for these changes to be buried in a budget bill and introduced mere weeks before the mandatory Parliamentary review of CEAA is scheduled to commence.

We therefore call upon the Standing Committee to delete, defer or defeat Bill C-9's proposals to amend CEAA.

Please feel free to contact the undersigned if you or other Committee members have further questions or comments about these supplementary submissions.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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cc. The Right Hon. Stephen Harper
The Hon. Jim Prentice, Minister of the Environment
Michael Ignatieff, Liberal Leader
Gilles Duceppe, BQ Leader
Jack Layton, NDP Leader
Elizabeth May, Green Party Leader

¹ Standing Committee on Environment and Sustainable Development, *Harmonization and Environmental Protection: An Analysis of the Harmonization Initiative of the Canadian Council of Ministers of the Environment* (December 1997), wherein the Committee rejected “unsubstantiated claims of overlap and duplication” within Canada’s environmental management regime.

² Arlene Kwasniak, “Environmental Assessment, Overlap, Duplication, Harmonization, Equivalency and Substitution: Interpretation, Misinterpretation, and a Path Forward” (2009), JELP 20:2, pp.1-35