



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

January 11, 2012

Hon. Dalton McGuinty, Premier of Ontario
Legislative Bldg, Room 281, Queen's Park
Toronto, Ontario, M7A-1A1

Via e-mail

Dear Premier McGuinty,

Re: Ontario's services offer for the Canada and European-Union Comprehensive Economic & Trade Agreement (CETA)

As Canada is set to conclude its negotiations with the European Union on its most comprehensive trade agreement to date, binding both Ontario and its municipalities, the Canadian Environmental Law Association (CELA) would like to bring your attention to the serious potential for negative environmental implications arising from Ontario's recent services offer.

Canada and its Provinces released their service offers -that is, lists of services they want excluded from the ambit of CETA- to the European Commission negotiators on October 12, 2011. These offers were leaked to Canadian Civil society shortly thereafter.

Ontario's offer did not include the following essential public services:

- drinking water,
- sewage and waste water treatment,
- waste management, and
- public transportation.

CELA not only urges Ontario to include these in its services offers going forward on CETA, but also, that these negotiations be open and transparent and subject to public scrutiny.

Services offers under CETA

Under CETA, services are subject to its drastically liberalizing provisions secured with investor-state dispute settlement mechanism, unless they are included in an exemption list. The Canadian negotiators have provided two lists, specifying that:

- Annex I reservations apply to “*any existing* non-conforming measures that are maintained by the national or sub-national (provincial or municipal) levels of government”; while,



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

- the items listed in Annex II apply to “any measures that *are maintained or to be adopted* by the national or sub-national levels of government with respect to sectors, subsectors or activities.” [emphasis added]

Ontario Hydro One and its subsidiaries have been listed in Annex I to protect the Ontario monopoly from CETA ‘market access’ provisions. CELA supports the listing of Hydro One and its subsidiaries, as it helps to ensure accessibility and affordability of electricity in Ontario; however, it does not protect any future measures taken by Hydro-One or its subsidiaries. As such, Ontario should consider listing Hydro One to Annex II instead of Annex I.

In Annex II, CELA supports Ontario’s listing of renewable energy systems, so as to ensure the “right to adopt or maintain any measure relating to investment in or provision of services in renewable energy and renewable energy systems, including the production of wind and solar power.” This reservation from CETA provisions regarding national treatment, performance requirements, market access, and senior management and board of directors’ provisions will help protect Ontario’s efforts to support the renewable energy industry in Ontario, specifically under the *Green Energy Act*.

CELA is extremely concerned about the major environmental risks posed by the potential privatization under CETA of essential public services, and urges Ontario to include the following services under Annex II of its services offer:

- drinking water,
- sewage and waste water treatment,
- waste management, and
- public transportation.

Risks of subjecting essential public services to CETA’s provisions

Drinking water, sewage and waste water treatment are critical services that are essential to the protection of human health and the environment. To provide this protection, these services require high sanitation, environmental and health standards. Democratically elected governments are best placed to provide the necessary transparency and accountability to ensure high standards and universal access. This was well established in our 2001 report prepared for the Inquiry on public versus private ownership established during the Walkerton Inquiry, available at: http://s.cela.ca/files/uploads/public_private_paper.pdf.

Claims that water privatization tend to benefit the environment are refuted by many real-world examples.¹ Experiments with privatization of water and sanitation services have been shown to

¹ For further examples and analysis of the negative effects of privatization of public water, see: ‘Public Water for Sale: How Canada will Privatize our Public Water System’ (December 2010) Canadian Council of Canadians and



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

lead to rate hikes and cut-offs to lower income households, poor environmental stewardship, and decreased transparency and accountability. Many of these issues were exemplified in Hamilton, Ontario, where privatization of water and waste-water treatment resulted in re-municipalization after millions of raw liters of sewage were spilled into the Hamilton harbour, for which the company evaded liability for years.

Liberalizing essential public services, like water, wastewater, public transportation, and sewage treatment would also limit Ontario's ability to leverage these industries for green jobs, a policy enacted in both the *Green Energy Act* and *Water Opportunities Act*.

Furthermore, under CETA, any access that foreign corporations and investors would gain to Ontario public services would empower them with legal rights enforceable in international tribunals; tribunals with a history of favouring commercial rights over environmental, health, or other social rights.

Our governments oversee our public services in the public interest and these need to be retained in public ownership and control, a principle which your government to this point supported. We urge you not to deviate from this position in respect of CETA.

The decision of whether to provide EU investors with rights to our essential public services is up to the provinces. CELA urges you to reconsider Ontario's recent services offer by expanding it to include the essential services listed above in Annex II.

Sincerely,

Theresa McClenaghan
Executive Director and Counsel
Canadian Environmental Law Association
theresa@cela.ca
(416) 960-2284, ext.219

CC: Hon. Brad Duguid, Minister of Economic Development and Innovation,
Hon. James J. Bradley, Minister of the Environment, and
Hon. Kathleen Wynne, Minister of Municipal Affairs and Housing.

the Canadian Union of Public Employees, available at: <http://canadians.org/trade/documents/CETA/water-report-1210.pdf>



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

- For further information about the potential environmental impacts of CETA, see our report at: <http://www.cela.ca/publications/report-environmental-impact-canadian-european-union-comprehensive-economic-and-trade-ag>
- For further information about the potential for water privatization under CETA, see the following report at: <http://canadians.org/trade/documents/CETA/water-report-1210.pdf>
- For an in-depth analysis of public versus private water ownership in Ontario, see our report at: http://s.cela.ca/files/uploads/public_private_paper.pdf