

# An Introduction to the Canadian Environmental Law Association

## *Advancing Environmental Justice*

Kerrie Blaise, Northern Services Counsel  
September 19, 2019

With thanks to  
EcoSuperior for the  
invitation



# Agenda

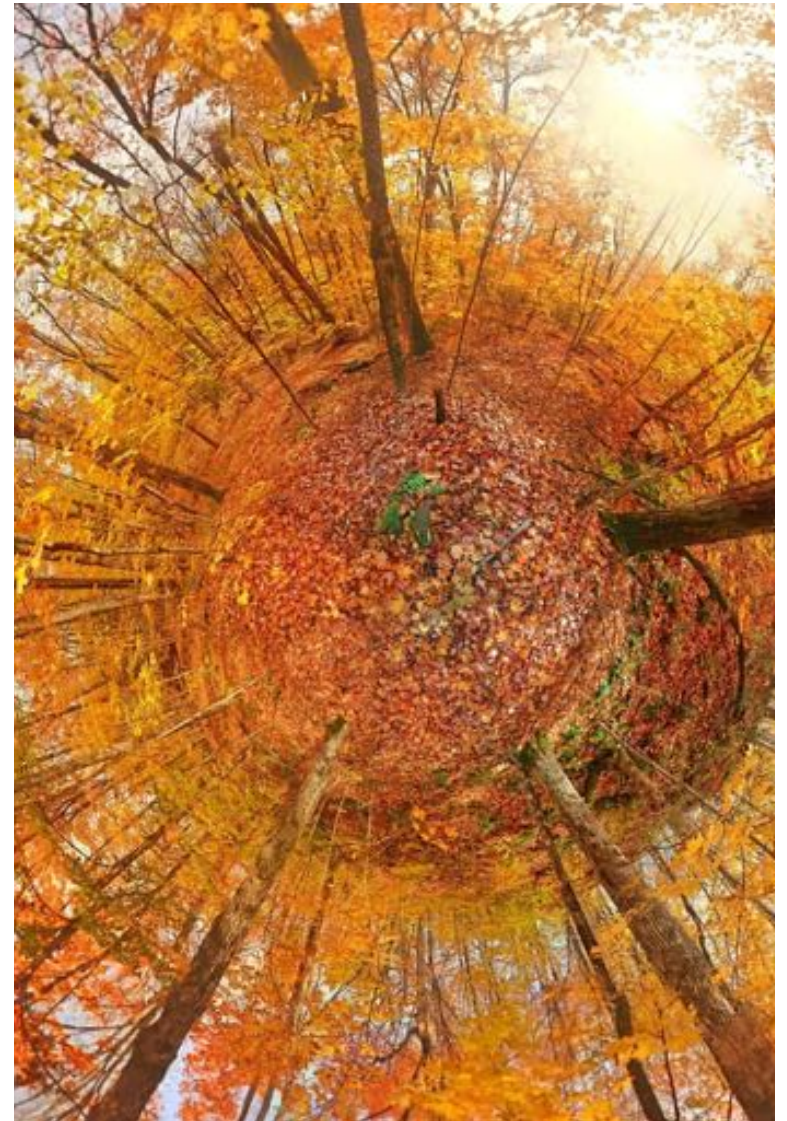
- An Introduction to CELA
- Environmental Justice
- Our Services
  - Cases
  - Law Reform
  - Regional Services
- Legal Resources
  - *Environmental Bill of Rights*
  - Legal tools for community-based source water protection



# About Us

[www.cela.ca](http://www.cela.ca)

- Public interest law organization, funded by Legal Aid Ontario
- Founded in 1970
- Core mandate is to provide access to justice, use and improve laws that protect human health and the environment
- **Northern Legal Services launched in Sept 2018**



# Our Priorities

## **1. Access to Environmental Justice**

CELA places high priority on cases and law reform work aimed at ensuring access to environmental justice; and

## **2. Pollution Prevention and Public Health and Safety**

CELA places high priority on cases and law reform work aimed at ensuring safe, healthy and livable communities.

# Casework Snapshot

- Cases and law reform work ensuring safe, healthy and livable communities
- Protecting groundwater and surface water from depletion or degradation (ie. environmental assessments)
- Protecting or improving air quality (ie. *Environmental Bill of Rights* and Environmental Compliance Approvals)
- Cleanup of “brownfield” properties or other contaminated sites, including open, closed or proposed waste disposal facilities
- Eliminating or reducing exposure to toxic substances in the indoor and outdoor environments (ie. RentSafe initiative)



# The Principle of Environmental Justice

The principle that environmental benefits and burdens should be equitably distributed among all persons, rather than allowing the majority of adverse impacts to be unfairly imposed upon poor people, visible minorities, or marginalized communities.



Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.

# Environmental Injustices

- Communities who lack power or a voice are often more adversely affected than others and are disproportionately exposed to higher pollution levels or historic pollution legacies
- Low income neighbourhoods receive relatively poor protection from adverse environmental impacts under Ontario and Canadian law
- Low-income and vulnerable communities are least responsible for climate change, yet most impacted

# Environmental Injustices (con't)

- UN special rapporteur on extreme poverty and human rights reported in June 2019 that climate change likely to undermine not only basic rights to life, water, food, and housing for hundreds of millions of people, but also democracy and the rule of law
- [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A\\_HRC\\_41\\_39.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_39.docx)



UN special  
rapporteur on  
human rights and  
toxics reports in  
June 2019 that  
“Canada’s inaction  
on toxic exposure a  
disturbing sign of  
discrimination: UN  
expert”

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24680&LangID=E>



# Our Services

1. Direct representation of eligible clients in proceedings in trial or appellate courts and before administrative tribunals
2. Test cases
3. Summary advice, including brief services and referrals
4. Public legal education and outreach
5. Law reform

We are Ontario's only clinic providing environmental law legal aid services across Ontario.

The specific allocation of time each year is dictated largely by needs of our client Community

# Casework

<https://www.cela.ca/collections/celacourts>



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**News**  
Publications  
Our Services  
Frequently Asked Questions

**CELA in the Courts**  
Access to Environmental Justice  
Water Sustainability  
Pollution and Health  
Green Energy

**CELA in the Courts**

CELA has been helping people face pollution and other environmental problems for 40 years. We work on behalf of both individuals and non-profit citizen or community groups.

more

- **Greenhouse Gas Pollution Pricing Reference**  
Reference cases delineating the constitutional jurisdiction of the federal and provincial governments to act on climate change
- **Friends of Simcoe Forests**  
Collection of Local Planning Appeal Tribunal submissions
- **Freedom of Information Appeals to Access Nuclear Emergency Planning Information**  
Collection of Information and Privacy Commission appeal submission materials
- **Asubpeeschoosewagong Nistum Anishinabek (Grassy Narrows First Nation)**  
Divisional Court challenge to clearcut logging plan in ashk territory
- **Citizens challenge aggregate pit proposal near Trout Lake in Unorganized Township of Gosham**  
Local Planning Appeal Tribunal appeal involving jurisdiction of local planning board



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# Law Reform

## 1. Proactively initiate law reform

(e.g. *Environmental Bill of Rights, Safe Drinking Water Act, etc.*).

## 2. Support law reform activities at federal, provincial and municipal levels of government

(e.g. *Bill C-69 Impact Assessment Act, Bill 108 – Endangered Species Act, City of Toronto Right to Know Bylaw*)

## 3. Actively link our law reform recommendations to our casework and environmental jurisprudence

(e.g. *Walkerton, Spraytech v Hudson, Red Hill, Interchurch Uranium Committee*)



# Regional Services

<https://www.cela.ca/collections/justice/northern-services>

Increase reach in historically underserved areas,  
including remote and fly-in communities

Collaborate with communities, residents, non-profits  
and other community legal aid clinics to:

- Identify emerging issues affecting human health and environmental protection
- Advance public participation in decision-making

Advocate for those lacking access to justice





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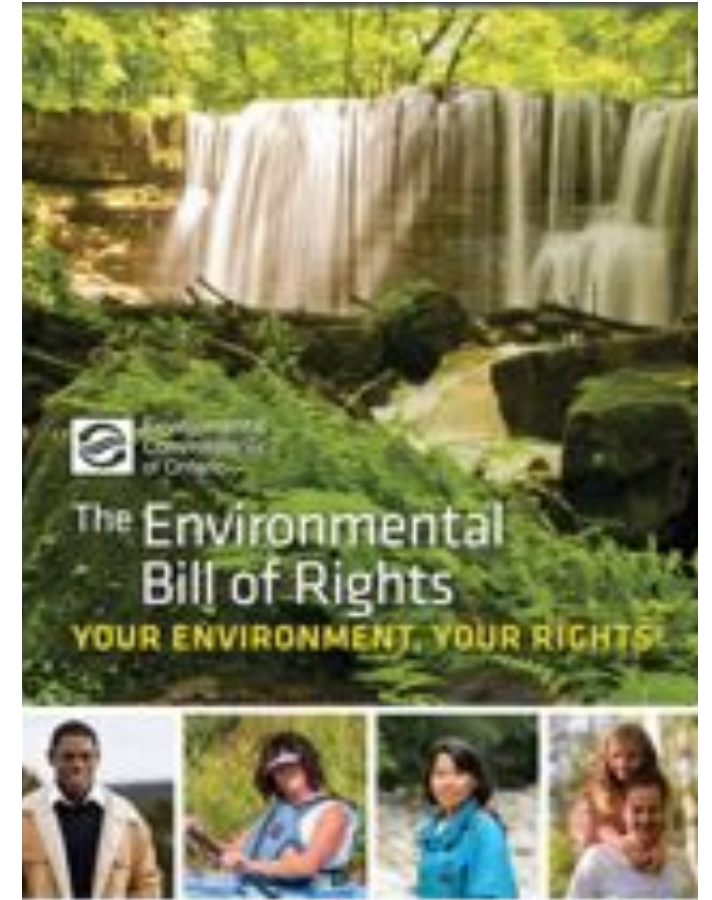


Thoughts and  
Questions?



# Legal Resources *Environmental Bill of Rights*

On **Feb 15, 1994** the  
*Environmental Bill of  
Rights* was proclaimed,  
recognizing that the  
people of Ontario have  
the right to participate  
in government decisions  
about the environment



# Legal Resources

## *Environmental Bill of Rights*

### **Preamble**

*The people of Ontario recognize the inherent value of the natural environment.*

*The people of Ontario have a right to a healthful environment.*

*The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.*

*While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.*

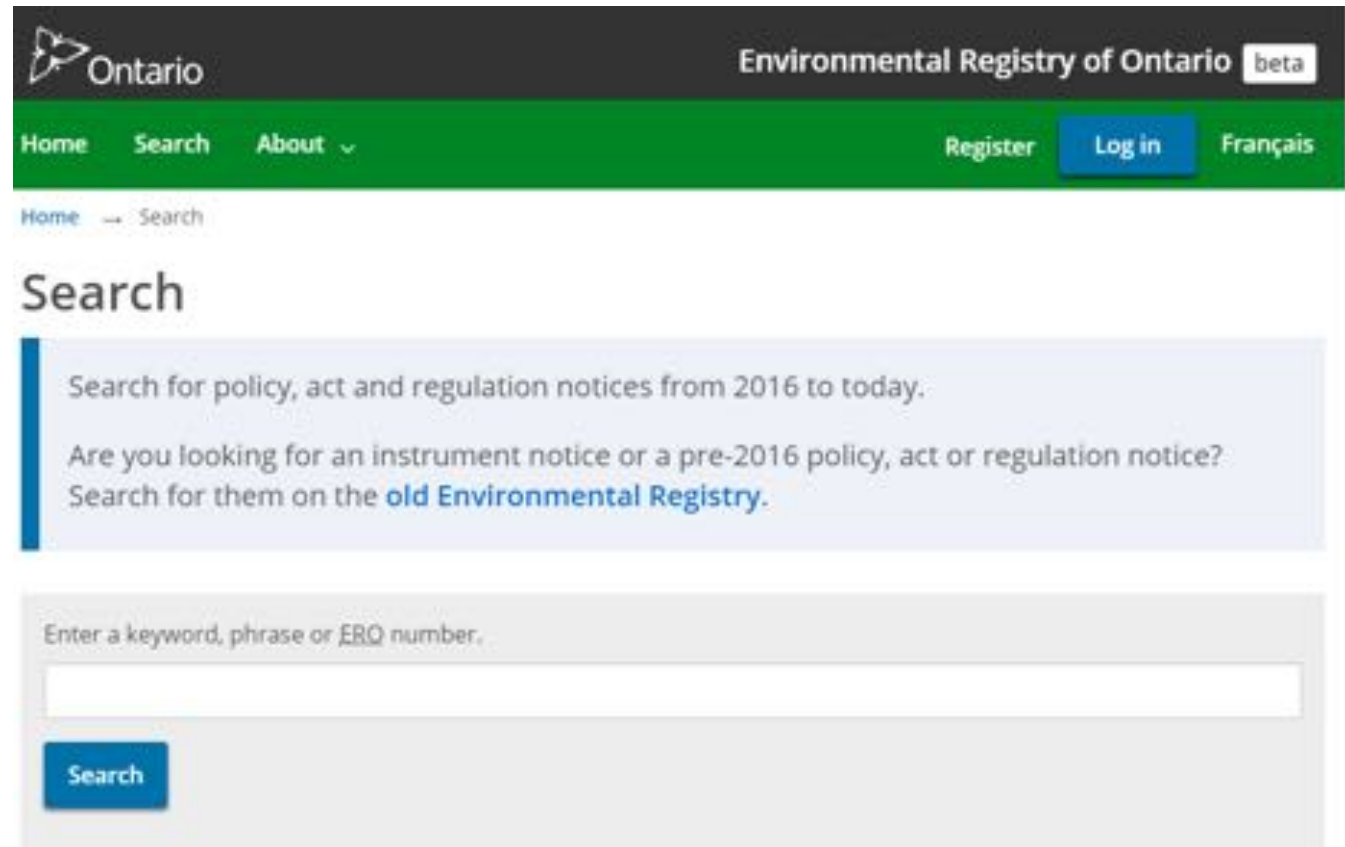
## Legal Resources *Environmental Bill of Rights*

- Receive notice of, and file comments on, governmental proposals
- Seek leave (permission) to appeal government decisions regarding instruments to an independent appellate body (e.g. Environmental Review Tribunal);
- **File applications for investigation** of suspected environmental offences;
- **File applications for review** of outdated or ineffective components of Ontario's environmental laws;
- Commence civil actions/ claim public nuisance



# Legal Resources

## *Environmental Bill of Rights*



The screenshot shows the homepage of the Environmental Registry of Ontario (ERO). The header features the Ontario logo and the text "Environmental Registry of Ontario" with a "beta" badge. Navigation links include "Home", "Search", "About", "Register", "Log in", and "Français". Below the header, a breadcrumb trail shows "Home" and "Search". The main heading is "Search". A light blue box contains instructions: "Search for policy, act and regulation notices from 2016 to today." and "Are you looking for an instrument notice or a pre-2016 policy, act or regulation notice? Search for them on the [old Environmental Registry](#)." Below this is a search input field with the placeholder text "Enter a keyword, phrase or ERO number." and a blue "Search" button.

<https://ero.ontario.ca/>

# Legal Resources

## *Environmental Bill of Rights*

### Request for Review

- Any two Ontarians can request either a review of an existing policy, act, regulation, permit or license, or the development of a new policy, act, or regulation
- The Ministry will then review the request and decide whether or not to conduct a review

For example, Ontarians have used the Application for Review process under the *EBR* to request:

- An overhaul of the *Endangered Species Act* and *Mining Act*
- Changes to a water bottling company's water-taking permit
- A review of how road salt is applied to highways
- A comprehensive land use planning system for northern Ontario
- New rules on the disposal of excess soil

# Legal Resources

## *Environmental Bill of Rights*

### Request for Investigations

- Any two Ontarians can request a ministry investigate an alleged violation of an environmentally significant act, regulation, permit or license
- Minister has a “duty to investigate” the matter to the extent they consider necessary
  - If Minister chooses not to investigate, you must be provided reasons

**FOR EXAMPLE, ONTARIANS HAVE ASKED THE GOVERNMENT TO INVESTIGATE:**

- Noise coming from a neighbouring factory
- The discharge of untreated sewage in provincial parks
- Damage to cougar habitat caused by forestry
- Leachate leaking from a landfill and contaminating local water sources
- Birds colliding into glass skyscrapers in Toronto





## Legal Resources *Source Water Protection*

Identify, assess, and mitigate actual and potential threats to sources of drinking water

Develop legal and policy tools to protect and improve our source waters

# Legal Resources *Source Water Protection (Then and Now)*

## Chippewas of the Thames, Munsee- Delaware, Oneidas of the Thames

- Funded by Law Foundation of Ontario
- **Toolkit:** incorporating traditional ecological knowledge in by-laws, consultation and accommodation protocol
- **Toolkit** available at: <https://www.cela.ca/source-water-protection-indigenous-communities>

## Pays Plat and Grassy Narrows First Nation

- Developed during 2013-2104
- Intended for use in other communities to protect source water from contamination
- **Toolkit** available at: <http://www.cela.ca/publications/first-nations-reserve-source-water-protection-legal-toolkit>





# A 5-Phased Approach to Community-Based SWP

- **Phase 1:** Form a Source Water Protection Steering Committee
- Phase 2:** Identify the community's source water protection challenges
- Phase 3:** Consult with the communities to determine priority threats and issues
- Phase 4:** Develop legal tools to address threats to source water protection
- Phase 5:** Communicate and share project results

# Source Water Protection *Project Layout*

- 6 workshops in the community, including input from youth and elders
- With guidance from the community-based steering committee, CELA has drafted legal instruments to respond to source water threats identified and prioritized by the communities
- Youth ambassadors share report and outcomes with community members





# Source Water Protection

*Seeking  
community  
feedback and  
threat  
prioritization*

- What concerns do you have about the health of the watershed?
- Have you noticed any changes in its quality or health?
- Do you have any traditional knowledge involving water or how to combat the threats to the water?



# Legal Tool 1

## Bylaws

### *Issue*

- Lack of effective or comprehensive federal environmental legislation for SWP

### *Solution*

- Environmental protection can be addressed through the enactment of by-laws in relation to First Nation lands under the *Indian Act* or the *Framework Agreement on First Nation Land Management*
- By-laws drafted related to (1) agricultural and nutrient management; (2) waste management, (3) septic systems and inspection and (4) wetland protection

## Legal Tool 2: *Consultation and Accommodation Protocol*

### ***Issue***

- Developments outside of a community (ie. the siting of landfills or the issuance of water taking permits) can cause or exacerbate threats to source water

### ***Solution***

- Consultation and Accommodation Protocol with SWP measures helps to ensure concerns about source water protection considered & central to decision-making and discussions
- Template also potentially applicable for Terms of Reference or Community Benefit Agreements

## Legal Tool 3: *Environmental Bill of Rights*

### ***Issue***

- Decisions being made outside of the community which could have repercussive effects on the health and quality of source waters

### ***Solution***

- Environmental rights of all Ontario residents recognized in the *Environmental Bill of Rights*
  - Facilitates public participation in environmentally significant decisions with the aim of protecting, conserving and restoring the integrity of the environment.
  - Public comment option available online via Environmental Registry

## Legal Tool 4: *Agricultural Leases*

### ***Issue***

- Leases allow farming on reserve land, however, often an inability to oversee farm tenants' actions, methods of farming

### ***Solution***

- A template lease under the *Indian Act* was drafted which includes provisions that establish the rights and obligations of the landlord and tenant
  - Provisions can dictate how the land will be used
  - Clauses relating to methods of farming (*ie.* fertilizer application)



## With Thanks and In Remembrance

- We wish to pay tribute to the late George Henry, former Councillor and Elder, at the Chippewas of the Thames First Nation who was instrumental in the vision for pursuing the source water protection project and Josephine Mandamin, a most unforgettable advocate for water
- Sincere thanks to Theresa McClenaghan, CELA's executive director and counsel for years of support and expertise in water law
- CELA appreciates the support of our funder, Legal Aid Ontario, along with funders who have supported our water source protection work with First Nations communities in Ontario, namely the Law Foundation of Ontario and Tides Canada
- With thanks to EcoSuperior and Bora Laskin Law School for facilitating our travel

Thank you!

[kerrie@cela.ca](mailto:kerrie@cela.ca)

[www.cela.ca](http://www.cela.ca)

