

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



**2008**  
**ANNUAL**  
**REPORT**





## **CELA's Objectives:**

- To provide equitable access to justice to those otherwise unable to afford representation for their environmental problems.
- To advocate for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality in Ontario and throughout Canada.
- To increase public participation in environmental decision-making.
- To work with the public and public interest groups to foster long-term sustainable solutions to environmental concerns and resource use.
- To prevent harm to human and ecosystem health through application of precautionary measures.

In accomplishing all of these objectives, primary recognition is given to CELA's mandate to assist low-income people and disadvantaged communities.



# The Year in Review: Message from the Executive Director

On behalf of the Staff and Board of CELA I am pleased to provide this year's Annual Report. Space allows us to provide highlights only of some of CELA's notable work this year in the area of environmental law. For more information I encourage you to access CELA's website at [www.cela.ca](http://www.cela.ca) or to contact us at CELA.

We said many hellos and good-byes this year. Sadly, we lost long-time counsel and past Executive Director Michelle Swenarchuk in February 2008. We also said good-bye to Hugh Benevides and Fowzia Mohammed who moved on to other opportunities. We welcomed Joe Castrilli in a new role as permanent CELA counsel, Christopher Waffle as our source protection coordinator, Julia Ford in administration, Renee Griffin as our incoming articling student, and Kaitlyn Mitchell in her new role as special projects counsel.

CELA is one of Legal Aid Ontario's **specialty law clinics** under the Clinic Law program. With a province-wide mandate, CELA serves members of the public from a broad and diverse group of clients that includes low-income, disadvantaged and aboriginal communities. CELA provides client legal services and representation in a variety of environmental and administrative law tribunals and courts. We also provide summary advice and brief legal services to a large range of Ontarians across a variety of environmental statutes and issues.

## CASEWORK

CELA's litigation files generally involve lengthy, precedent-setting proceedings which raise complex issues of fact and law. For example, for the past 15 years, CELA has represented a family whose dairy operations and farm property were adversely affected by contaminants emanating from waste roadbed material (i.e., asphalt, concrete, etc.) which had been buried upon the farm in the 1960s. In January 2008, the trial judge ruled in favour of CELA's clients and awarded them \$1.7 million in damages. Later in July, the trial judge awarded the Berendsens \$655,000 in costs for legal/expert fees and disbursements. This matter is now under appeal to the Ontario Court of Appeal.

Similarly, CELA represents a public interest group that is concerned about air and water pollution arising from the proposed burning of tires, plastics and other solid waste as "alternative fuels" at a cement plant near Bath, Ontario. In a landmark 2007 decision by the Environmental Review Tribunal under the *Environmental Bill of Rights*, CELA's client and local residents obtained leave to appeal two waste-burning approvals that had been issued to the cement company by the Ministry of the Environment. The company then brought a judicial review application to quash the Tribunal's leave decision, and the Ministry supported the application. In June 2008, however, the Ontario Divisional Court unanimously dismissed the application. This precedent-setting result clears the way for the Tribunal to hold a ten week public hearing into the waste-burning approvals in the fall of 2008.



During 2008 CELA represented a citizens group regarding licensing decisions at the Canadian Nuclear Safety Commission involving a facility that processes and manufactures products incorporating tritium. An ongoing concern has been the adequacy of due process in these licensing decisions.

CELA also assisted a First Nation in updating a water supply agreement with progress on the negotiations which would see the first nation through to 2032. Additional negotiations ensure closure of the same municipality's landfill located adjacent to the first nation as pursuant to an earlier agreement.

In various civil litigation claims, CELA has been assisting clients including one where property has been badly impacted by a contaminating neighbouring landfill operation, and another where clients suffered personal injury from emissions from the operation of a chemical facility. Other client assistance has included environmental mediation, assistance with proceedings before the Ontario Human Rights Commission, assistance with navigating proceedings before the Ontario Municipal Board, and various proceedings under the federal *Environmental Assessment Act*, and before the Canadian Nuclear Safety Commission.

CELA has also been participating in the Ontario Energy Board's Low Income Energy consultation, on behalf of the Low Income Energy Network (LIEN). The OEB is holding this consultation in response to a recent landmark divisional court decision pursued by LIEN, holding that the Board has jurisdiction to consider low income energy matters in its proceedings.

## SELECTED FOCUS ON LAW REFORM, OUTREACH, COMMUNITY DEVELOPMENT

CELA participates in, collaborates and contributes to a variety of networks of advocates and service providers, and environmental not-for-profit organizations. This approach to focussed and goal-oriented advocacy draws on the strengths of the various participants, enriches CELA's ability to respond to client and public needs, and allows for greater dissemination of the work that CELA does. This work also helps to set agendas for law reform advocacy in areas of public interest environmental law, and collaboration ensures greater chance of success with the law reform efforts that are needed to better protect CELA's clients and the general public.

Examples include:

### Access to Environmental Justice

**Pollution Watch and the Poverty and Pollution Study** – A forthcoming study outlines the areas by income level in the Great Lakes – St. Lawrence region which are most impacted by the largest pollution emitters in Canada, and then further studies the GTA region in much more detail.

**Community right to know** – Work continues in advocating for what would be the first municipal community right to know by-law in Canada, dealing with toxic emissions, in the City of Toronto. CELA is working with a wide variety of communities including health, environmental, grass roots, cancer prevention, and labour in advancing this agenda.

**Low Income Energy Network** – CELA was a founding member of LIEN, formed in 2004, and has participated on its steering committee since this network's inception. LIEN allows a variety of legal aid clinics, poverty activists, grass roots environmental organizations, and shelter advocates, to name a few communities, to develop a priority action agenda to fight energy poverty and its impacts in Ontario.

**Canadian Network on Environment, Health, and Social Equity** – CELA is an early member of this network which is gaining momentum across the country as an interdisciplinary network aimed at furthering understanding and practice of environmental equity in various contexts. CELA is engaged in processes under the *Environmental Bill of Rights* in Ontario and regularly assists clients with other mechanisms for obtaining the information needed for the issues affecting them.

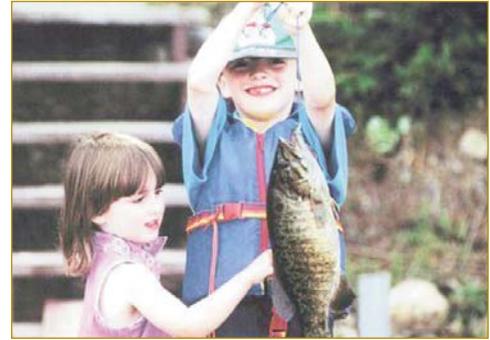
**Transparency and Public Access to Decision Making** - In 2008 CELA staff have undertaken pilot projects with the federal government regarding public access through "reading room" models to detailed data and support for chemicals decision making both regarding federal approval of pesticides and federal review of chemicals. CELA has historically pressed for changes to legislation to allow this type of access.

**Technical Standards and Safety Authority** - In 2008, CELA and others called for improved accountability mechanisms regarding freedom of information, auditing, and environmental oversight for the TSSA, in part responding to a large number of public calls received after the recent large explosion of a propane facility in Toronto. CELA also began work in 2008 on advocacy for an anti-SLAPP law. "SLAPP" stands for strategic litigation against public participation and is a strategy that is used by industry and development on occasion to stifle or chill public participation in decision making processes.



## Pollution and Health

**Toxics Use Reduction Act and Model Bill** – CELA in 2008 released a model Toxics Use Reduction Act and a companion policy report, which CELA hopes will be very influential and helpful to government as it contemplates introduction of a Bill in the legislature as early as the fall of 2008. Similarly, CELA's **cancer prevention work** involves a range of stakeholders including labour, occupational health, health, service providers, and others working on prevention of cancer from environmental exposures. **Canadian Partnership for Children's Health and the Environment** - CELA has worked with its partners in 2008 to produce a Vision and Strategy document to reflect the current priority needs for policy responses to better protect children's environmental health. In 2008, CELA working with CPCHE influenced the obtaining of **significant commitments in the federal budget for human biomonitoring and funding of children's environmental health research**. **Pesticides** - CELA's work on pesticides issues over the last decade and beyond is a good demonstration of the multi-faceted impact across jurisdictions of the legal interventions that assist grass-roots groups and individuals in their quest for a safer environment. Provincial legislation was passed in June 2008 to amend the *Pesticides Act* to ban the use and sale of lawn and garden pesticides across the province. **Toxic Chemicals** - Legislation was introduced in 2008 to amend the federal *Hazardous Products Act* to improve recall powers and provide other measures aimed at better controlling hazardous consumer products in Canada. The Bill died with the federal election call but CELA will continue to advocate for measures to improve the preventative and up-stream controls that would be needed to substantially reduce toxic exposures from consumer products. CELA has continued, in a wide range of capacities, to work on the high hazard chemicals under the **Chemicals Management Plan**, and to advocate for action on the medium hazard chemicals. Among other things recent work on bisphenol A and phthalates in plastics, lead in consumer products available to children, and the need for a full ban on all brominated flame retardants has been particularly notable. In 2008, CELA has also been active with the International Pops Elimination Network, and the Ban Asbestos Coalition.



## Water Sustainability

**Source Water Protection and Drinking Water** – CELA continues to work on and respond to a large number of initiatives to better protect Ontario's drinking water arising in part out of the events of Walkerton, Ontario eight years ago. In 2008 this work continued with a number of regulations and developments under the *Safe Drinking Water Act* and the *Clean Water Act*. CELA continues to work with and co-lead the **Ontario Water Guardians Network** in providing opportunities for robust input, participation and education on the developing source water protection framework under the *Clean Water Act*. As well, CELA is working with other environmental, conservation, water power, first nations, women's, faith, youth and agriculture groups on overall Ontario and federal water policy. **Great Lakes** – Various CELA staff were involved in 2008 in many aspects of Great Lakes protection, including toxic chemicals in the Great Lakes, emerging threats, Great Lakes water quality and quantity, climate change implications, and integration with drinking water protection programs.



## On the Land

CELA has a long and deep history in **environmental assessment and land use planning**, two critical areas among others in which Ontario residents can participate in decision making that will directly affect their environment and their community. There have been a long list of recent changes to some of the governing statutes and processes, including the *Municipal Act*, the *Planning Act*, the Provincial Policy Statement, the *City of Toronto Act*, regulations under the *Environmental Assessment Act*, and certain processes applying to waste, and recycling, energy, and transit programs, among others. CELA staff advise clients, participate in advisory committees and consultations on these programs, and advocate for further improvements to these systems. CELA provided input in relation to consultations on transit Environmental Assessment reform. In the area

of **sustainable energy**, CELA provided input to the newly adopted regulation making clotheslines legal throughout the province, and joined calls for a provincial Green Energy Act.

CELA also provided written and oral submissions to the House of Commons Standing Committee on Environment and Sustainable Development on the constitutional implications of Bill C-377, a proposed Climate Change Accountability Act. 2008 has been a very active year in the **Campaign for Nuclear Phase-Out** as issues arose in regard to the Canadian Nuclear Safety Commission including the termination of the appointment of the sitting president; issues regarding Bill C-38 dealing with Parliament countermanding the regulatory commission over the production of medical isotopes; and assistance with issues regarding proposed building of new nuclear plants in the province. **Brownfields** – There are various initiatives underway in the province to implement a series of brownfields reforms aimed at increasing the numbers of properties that are returned to safe and useful land uses. CELA has long advocated re-use of brownfield lands for a variety of reasons including taking advantage of already developed urban centres and infrastructure, but CELA has also been a strong advocate to ensure that such development is safe for future residents, tenants and neighbouring properties. CELA continued in 2008 to participate actively in these consultations.

### Public Legal Education

In 2008, CELA staff continued to provide public legal education in a rich variety of ways. CELA has prepared new **FAQs** for its website, and CELA staff have provided diverse **outreach and education sessions** on topics including water issues, source water protection, toxic use reduction, cancer prevention, environmental equity, low income energy, pesticides, children's environmental health and toxic chemicals, waste management, air pollution and land use planning.



CELA circulates an **email bulletin** which is utilized to highlight some of the most significant developments in our work as they happen. The bulletin reaches in excess of 1100 subscribers. CELA staff maintain, contribute to and promote the in-depth and highly useful **websites** in which we participate, including CELA's website, [www.cela.ca](http://www.cela.ca) the website for the **Resource Library for the Environment and the Law**, [www.ecolawinfo.org](http://www.ecolawinfo.org), the **Canadian Partnership for Children's Health and Environment**, [www.healthyenvironmentforkids.ca](http://www.healthyenvironmentforkids.ca) website, the Waterhole website of the **Ontario Water Guardians**, [www.thewaterhole.ca](http://www.thewaterhole.ca), the **Low Income Energy Network** website, [www.lowincomeenergy.ca](http://www.lowincomeenergy.ca) and the **PollutionWatch website**, [www.pollutionwatch.org](http://www.pollutionwatch.org). CELA's **website collections** are a very useful feature where related reports, news releases, submissions, and advocacy documents are collected for specific subjects. From time to time, new collections are developed and featured, and all collections are constantly modified as new materials are available. Links to many other organizations with whom we work are provided, as well as a complete set of all of CELA's publications over the years. CELA regularly publishes its **briefs and submissions**, making them available on line or in paper, as well as in the Resource Library for the Environment and the Law, housed at CELA's offices.

CELA staff continued in 2008 as editors of the **Environmental Law Reports**, and were authors of a range of environmental law texts, books, annotated guides to major environmental statutes, book chapters, and journal articles including in 2008 topics related to water, energy, children's environmental health, pesticides and general environmental law.

At CELA, it is our privilege and our passion to be able to assist our clients, the general public, and decision makers with environmental law issues and with access to environmental justice. For us, there is no more important work to be doing, at a critical time in our history.

A handwritten signature in black ink, appearing to read 'Theresa McClenaghan'.

**Theresa McClenaghan**  
**Executive Director**  
**October, 2008**

# Audited Financial Statements – 2007-2008

## Statement of Financial Position as at March 31, 2008

			<u>March 31</u>	
	Legal Aid Ontario	Other Funds	2008	2007
<b>ASSETS</b>				
Current				
Cash and short-term investments	\$80,881	\$294,585	\$375,466	\$229,114
Grants and accounts receivable	83,731	146,830	230,561	194,954
Inter-fund receivable (payable)	(4,145)	4,145	-	-
Prepaid expenses	10,508	-	10,508	15,250
	<u>170,975</u>	<u>445,560</u>	<u>616,535</u>	<u>439,318</u>
Capital assets	-	986	986	26,814
	<u>\$170,975</u>	<u>\$446,546</u>	<u>\$617,521</u>	<u>\$466,132</u>
<b>LIABILITIES</b>				
Current				
Accounts payable and accrued liabilities	\$47,614	\$43,477	\$91,091	\$66,323
Deferred revenue	-	168,827	168,827	41,639
	<u>47,614</u>	<u>212,304</u>	<u>259,918</u>	<u>107,962</u>
<b>NET ASSETS</b>	<u>123,361</u>	<u>234,242</u>	<u>357,603</u>	<u>358,170</u>
	<u>\$170,975</u>	<u>\$446,546</u>	<u>\$617,521</u>	<u>\$466,132</u>

Note: The above financial information is condensed from the combined audited financial statements of the Canadian Environmental Law Association – Legal Aid Ontario and the audited financial statements of the Canadian Environmental Law Association – Other Funds. Audited statements were prepared by Chaplin and Co Chartered Accountants, and are available on request.

## Statement of Operations and Net Assets for the year ended March 31, 2008

	<b>Legal Aid Ontario</b>	<b>Other Funds</b>	<b>2008 Total</b>	<b>2007 Total</b>
<b>REVENUE</b>				
Legal Aid Ontario	\$1,064,354	-	\$1,064,354	\$942,495
Legal Aid indirect payments	16,010	-	16,010	76,782
Grants	-	212,220	212,220	384,993
Honouraria	-	2,201	2,201	7,350
Interest	789	7,766	8,555	18,070
Recoveries and other	3,100	31,826	34,926	27,760
Recoveries from other	16,061	-	16,061	-
	<u>1,100,314</u>	<u>254,013</u>	<u>1,354,327</u>	<u>1,457,450</u>
<b>EXPENSES</b>				
Amortization	25,403	425	25,828	43,889
Communications, printing and distribution	15,593	3,582	19,175	19,029
Contract services	-	149,633	149,633	118,130
Equipment	6,253	-	6,253	7,049
Indirect payments	16,010	-	16,010	76,782
Library purchases	12,177	-	12,177	13,110
Occupancy	124,769	-	124,769	121,089
Office and General	29,405	11,220	40,625	39,174
Professional dues	10,177	-	10,177	7,069
Professional fees	6,756	1,957	8,713	9,422
Salaries and benefits	850,707	64,464	915,171	857,666
Travel	7,115	19,248	26,363	31,910
	<u>1,104,365</u>	<u>250,529</u>	<u>1,354,894</u>	<u>1,344,319</u>
Excess of revenue over expenses (expenses over revenue) for the year	(4,051)	3,484	(567)	113,131
Net assets, beginning of year	<u>127,412</u>	<u>230,758</u>	<u>358,170</u>	<u>245,039</u>
Net assets, end of year	<u>\$123,361</u>	<u>\$234,242</u>	<u>\$357,603</u>	<u>\$358,170</u>

Note: The above financial information is condensed from the combined audited financial statements of the Canadian Environmental Law Association – Legal Aid Ontario and the audited financial statements of the Canadian Environmental Law Association – Other Funds. Audited statements were prepared by Chaplin and Co Chartered Accountants, and are available on request.

# THANK YOU!

*CELA is blessed with wonderful staff, Board members and volunteers. We also deeply appreciate the support and good relationships we enjoy with our clients. We work collaboratively with many groups and individuals. Thank you to:*

## **CELA Core Staff:**

Mary Anderson, Joe Castrilli, Kathleen Cooper, Fe de Leon, Sharon Fleishman, Julia Ford, Renee Griffin, Richard Lindgren, Theresa McClenaghan, Kaitlyn Mitchell, Sarah Miller, Fowzia Mohamoud, Ramani Nadarajah, Christopher Waffle.

## **Contract Staff and/or Expert Advisors:**

Alan Abelsohn, Hugh Benevides, Chaplin & Company, Miriam Diamond, Alan Dixon, Jessica Ginsburg, Bryony Halpin, John Jackson, Greg Lecinski, Sarah Rang, Anne Wordsworth.

## **CELA non-staff Board Members:**

Vicki Barron, Elizabeth Block, Margaret Casey, Lesley Cameron (Incoming Chair), Bruce Davidson, Miriam Diamond, John Jackson, John Lang, Jacinta O'Brien (Incoming President), Grace Patterson, Graham Rempe, Judy Simon (Outgoing President), Catherina Spoel.



## **Volunteers:**

Isobel Foote, Shahzma Haji, Patrick Hamilton, Ka-Wai Leung, Kathy Mahinpou, Debbie Nolan, Logan Rathbone.

## **Key Partners and Partnerships:**

Advocacy Centre for Tenants Ontario, Alliance for the Great Lakes, Ban Asbestos Canada, Campaign for Nuclear Phaseout, Canadian Association of Physicians for the Environment, Canadian Centre for Policy Alternatives, Canadian Environmental Network, Canadian Partnership Against Cancer – National Committee on Environmental and Occupational Exposures, Canadian Partnership for Children's Health and Environment, Canadian Institute for Environmental Law and Policy, Centre for Social Innovation, Coalition on the Niagara Escarpment, Environmental Defence, Freshwater Future, Great Lakes United, International POPs Elimination Network, Low Income Energy Network, Ontario Environment Network, Northwatch, Partnership for Pesticide Bylaws, Pollution Probe, PollutionWatch, the Biodiversity Project, Toronto Cancer Prevention Coalition, Toronto Environmental Alliance, Toronto Right to Know Coalition, the Water Guardians Network and Wilfred Laurier University.

*And we extend an extra special thanks to our funders who make it all possible. Our core funding support is provided by Legal Aid Ontario. Often in conjunction with our partner organizations, we have also obtained generous project grants from several private foundations as well as some government agencies. This additional funding support, beyond that provided by Legal Aid Ontario, dramatically extends CELA's ability to conduct law reform and public legal education in Ontario and across Canada.*

Thanks to the following:

## **Funders:**

Alliance for the Great Lakes, Best Start Resource Centre, Canadian Auto Workers, Canadian Bar Association, Canadian Breast Cancer Foundation – Ontario Region, Canadian Child Care Federation, Canadian Environmental Network, Canadian International Development Agency, Charles Stewart Mott Foundation, City of Toronto, Council of Great Lakes Governors, Environment Canada, Environmental Defence, European Commission, Great Lakes United, Health Canada, Hollyhead Foundation, Human Resources Skills Development Canada, Joyce Foundation, Law Foundation of Ontario, Legal Aid Ontario, North South Institute, Office of the Auditor General, Ontario Ministry of Energy, Ontario Ministry of Environment, Ontario Ministry of Natural Resources, Ontario Trillium Foundation, Salamander Foundation, United Steelworkers, Walter and Duncan Gordon Foundation.



### **In Memoriam Michelle Swenarchuk October 30, 1948 - February 27, 2008**

It was with great sadness that we marked the untimely loss this year of Michelle Swenarchuk, long time CELA counsel, Executive Director and advocate. Michelle's contributions to the environmental law movement and beyond were incalculable and we will miss her greatly. An ardent feminist, Michelle was active in the women's movement for many years, including with the National Action Committee on the Status of Women. Among her many accomplishments at CELA was her leadership of a successful intervention before the Supreme Court of Canada in the Harvard Oncomouse case preventing the patenting of higher life forms in Canada. Michelle's work as a senior practitioner in environmental protection, international trade, Aboriginal rights, labour and administrative law was recognized by her peers in 2004, when she was awarded the Law Society Medal for 'outstanding contributions to public policy law.' The staff and board of CELA express again our profound condolences to Michelle's family. CELA is planning to establish a memorial scholarship fund in Michelle's name and further information will follow on our web site at [www.cela.ca](http://www.cela.ca)





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