



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

WELCOMING CLOTHESLINES IN ONTARIO

Attention:

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Ministry of Energy

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Re: Regulation under the Energy Conservation Leadership Act, 2006 to encourage and permit the use of outdoor clotheslines.

EBR Registry Number 010-2553

Ministry of Energy

Posted January 21, 2008; Comment Period to March 21, 2008

CELA Welcomes Clotheslines

CELA is pleased to provide these comments in support of the proposal for a regulation to permit the use of clotheslines. CELA encourages the Minister of Energy and the government of Ontario to proceed as soon as possible with the regulation, and to make it effective immediately upon proclamation. In particular, CELA encourages the government to ensure that the regulation is in effect by early spring 2008 in order to provide the benefit of the new regulation as soon as possible in the warmer seasons of the year.

CELA is an Ontario Legal Aid clinic, providing legal services support to low income and vulnerable communities in Ontario in the areas of environmental law, public legal education, and law reform. CELA has provided extensive commentary related to energy issues, conservation, and low income communities over the past several years, including through its work as a founding and steering member of the Low Income Energy Network. CELA was also the co-

author of the report, *Power for the Future*, along with the Pembina Institute, advocating meeting Ontario's growing electricity gap primarily through conservation and renewable power.

Energy Conservation Leadership Act

For a number of years, CELA has encouraged the government to legally over-rule any municipal by-laws and restrictive covenants registered on titles to property that restrict, prohibit or curtail the use of clotheslines. In particular, CELA was encouraged when the government proceeded with legislative provisions in the *Energy Conservation Leadership Act, 2006*, empowering the regulation now under consideration:

That Act provides as follows:

Permissive designation of goods, services and technologies

3. (1) In order to assist in the removal of barriers and to promote opportunities for energy conservation, the Lieutenant Governor in Council may, by regulation, designate goods, services and technologies. 2006, c. 3, Sched. A, s. 3 (1).

Effect of designation

(2) A person is permitted to use designated goods, services and technologies in such circumstances as may be prescribed, despite any restriction imposed at law that would otherwise prevent or restrict their use, including a restriction established by a municipal by-law, a condominium by-law, an encumbrance on real property or an agreement. 2006, c. 3, Sched. A, s. 3 (2).

Same

(3) A restriction imposed at law that would otherwise prevent or restrict the use of designated goods, services or technologies is inoperative. 2006, c. 3, Sched. A, s. 3 (3).

Exception

(4) Subsections (2) and (3) do not apply with respect to a restriction imposed by an Act or regulation. 2006, c. 3, Sched. A, s. 3 (4).

Invalidating Legal Restrictions on Clotheslines

CELA was supportive of the above-noted provision which provides the ability for the government by regulation, to designate clotheslines under this section. The legal result will be that persons may use outdoor clotheslines despite any restrictions such as municipal by-laws; real property restrictive covenants or condominium by-laws. CELA has advocated for some years that these legal restrictions must be removed and that Ontarians must be free to use outdoor clotheslines, for among other reasons, energy conservation and greenhouse gas reduction.

For some decades, it has been the practice of the development community in Ontario (and elsewhere) to register restrictive covenants on title when registering new plans of subdivision. These covenants typically cover a range of subjects. However, the covenant of concern here is the typical covenant concerning clotheslines. Some covenants prohibit outdoor clotheslines

entirely, while others restrict clotheslines, for example to a collapsible umbrella style clothes rack. Furthermore, the covenants are typically registered to last for decades; examples include 25 or 40 years from time of registration.

When a home buyer purchases a home, the buyer is obliged to acknowledge the restrictive covenants that run with the title, and is legally obligated to comply with those covenants. The restrictive covenants are enforceable at law by any interested person – for example by the original developer or others in the community.

Without the proposed regulation, the only mechanism by which a home owner could escape the legal obligations of the covenant would be by seeking a court declaration to declare the covenant unenforceable as contrary to public policy; certainly a possible but cumbersome remedy. In addition, the effect of such a declaration, if granted, would be limited to that property and would not necessarily be of benefit to the rest of the property owners across Ontario who are similarly affected by such restrictions.

Even for properties on which some type of limited clothesline is allowed, there is a need to end the restrictions. For example, some restrictive covenants allow a “collapsible, umbrella style” clothesline. However such clotheslines do not necessarily provide the same drying capacity both in terms of numbers of loads of laundry or in terms of drying speed as, for example, traditional linear clotheslines.

Right to Dry

There has been a robust “Right to Dry” movement in the United States which has resulted in similar legislation such as that of Florida – see Appendix A to this letter for an excerpt of their “solar rights” legislation. Further resources and information can be found at “Project Laundry List” at <http://www.laundrylist.org>. That organization provides the following eloquent testimony to clotheslines:

I love clotheslines and all that they stand for: beautiful and proud, art installations with clothes, the flags of our life. So join me as I hang my clothes. Save energy, take time to whiff the blue breezes, feel the sparkling yellow sunshine, beautify Poughkeepsie and hang a clothesline. In Venice, when one woman wants to compliment another it is said: "She hangs a beautiful line."

-Marian Dioguardi to the Mayor of Poughkeepsie, September, 2007

Leadership by Ontario

Ontario will be at the forefront of Canadian jurisdictions with this regulation. In Nova Scotia a private members bill has been introduced, as found at Appendix B.

As noted earlier, it is important to provide that the effective date of the regulation is made as soon as possible. This will maximize the energy saving benefits of the regulation and immediately provide for greenhouse gas reductions from the avoided emissions of clothes dryers.

The potential for energy use reduction and greenhouse gas reduction is significant. Each family of four who uses clothesline drying instead of an automated clothes dryer would on average save 100 Kw per month of clothesline use. Clothes dryers are one of the biggest consumers of energy among household appliances. Depending on the number of months of use and size of family, a family may save between \$60 and \$120 per year on energy costs in addition to reducing their family's energy and carbon footprint. (Source: HydroOne Appliance Calculator www.hydroonenetworks.com)

Public Outreach and Education

It will also be critical to ensure that there is thorough outreach and broad-based education to the public across Ontario to ensure that homeowners become aware that clotheslines are permitted on properties where the residents have been accustomed to the knowledge that there are restrictions on their property and in their neighbourhood. Although the province's initial announcement through this EBR posting has drawn widespread attention, it will be critical to widely disseminate and reinforce the change in legal effect of the subject provisions once the regulation takes effect and for some time thereafter. Effective methods would include notices in community and regional newspapers, displays at Ministry of Energy and Ontario Power Authority booths at shopping malls, fall fairs and other venues (for example such displays are frequently mounted for promotion of conservation in general), inclusion in OPA materials and mailings, and inclusion in utility bills when other OPA or Ministry of Energy material is being disseminated. This will be important to ensure the maximum energy benefits of the regulation by allowing all households who prefer to use clotheslines to proceed to do so without appreciating that formerly registered restrictive covenants no longer present a barrier.

Land Registry Offices

CELA also recommends that the province's land registry offices refuse future registration of restrictions on clotheslines for townhouses, row-houses, freehold properties, including similarly constructed condominium corporations, properties occupied by owners, or properties occupied by tenants or other persons than owners. This additional step will assist in ensuring that these clauses are not continued and replicated in new home construction in future years, and to ensure that there is not a continual population of residents who must be advised that those restrictions are not of legal effect. Over time, as existing restrictive covenants expiry under their terms, and if no new restrictive covenants are registered, fewer residents will have a basis to believe that they are not permitted clotheslines for their properties.

Low Income Residents and High-Rise Dwellings

It is critical to ensure that low income Ontarians derive the benefit of this regulation as well. Many low income Ontarians are tenants, and as such they would be covered by the proposed regulation if they are occupants of the types of structures described – freehold, low rise, row-houses and town-houses. However, if their occupancy is in a “high-rise” structure, it appears that the regulation would not yet cover their situation. It is essential that the Minister investigate the issues associated with high rise dwellings as expeditiously as possible in order to extend the benefit of the regulation to them. Low income tenants are doubly impacted by

restrictions on clotheslines; not only because they lose the energy savings benefits of line drying, but also because their access to automated drying facilities is in itself often expensive and cumbersome. In many European communities, clothesline supports are built into apartment structures, including highrises, and the image of laundry flapping in the breeze on the historic and picturesque buildings is valued by residents and tourists alike.

In all cases, the type of occupancy and legal status of the dwelling should not affect the regulation. So for example, condominium corporations whose buildings are row-house, town-house, low rise should be equally affected by the regulation at this time for the benefit of those occupants. Similarly, when high-rise structures are addressed, the regulation should apply equally regardless of whether the buildings are condominium corporation controlled or not. In fact, the empowering legislation recognized this when it provided for the types of legal restrictions that would become invalid upon designation in a regulation.

In summary, CELA is strongly supportive of the proposed regulation and encourages expeditious promulgation. CELA also strongly advocates extension of the regulation to high-rise dwellings as soon as possible. Finally, CELA stresses the need for wide-spread public outreach and education to ensure that the regulation is understood and that Ontario residents do not mistakenly believe they are bound by legal restrictions that will no longer prevent their use of outdoor clotheslines.

All of which is submitted,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Theresa McClenaghan', written in a cursive style.

Per
Theresa McClenaghan
Executive Director and Counsel

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APPENDIX A

The 2007 Florida Statutes

[Title XI](#)

COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

[Chapter 163](#)

INTERGOVERNMENTAL
PROGRAMS

[View
Entire
Chapter](#)

163.04 Energy devices based on renewable resources.--

(1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.

(2) No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings not exceeding three stories in height. For purposes of this subsection, such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south provided that such determination does not impair the effective operation of the solar collectors.

(3) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(4) The legislative intent in enacting these provisions is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving the costs of owning and operating commercial or residential property beyond

the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

History.--s. 8, ch. 80-163; s. 1, ch. 92-89; s. 14, ch. 93-249.

Appendix B

BILL NO. 185

(as introduced)



*1st Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007*

Private Member's Bill

**Energy Resources Conservation Act
(amended)**

Howard Epstein
Halifax Chebucto

[First Reading](#): April 10, 2007

[\(Explanatory Notes\)](#)

Second Reading:

Third Reading:

Explanatory Notes

[Clause 1](#) amends the *Energy Resources Conservation Act* to require the Government to make available interest-free loans for energy-efficiency retrofitting of private homes and eligible small businesses.

Clause 2

- (a) prevents restrictions on property owners from erecting clotheslines on their property;
- (b) requires owners or operators of retail gasoline stations to provide air for the inflation of tires free of charge;
- (c) prevents the construction of buildings in a way that obstructs solar panels on existing buildings; and
- (d) requires the Minister of Energy to establish conservation standards for Government and table a report in the House of Assembly respecting the energy consumption of Government.

Clause 3 adds regulation-making authority respecting the eligibility of small businesses for loans and prescribing loan re-payment terms.

An Act to Promote Greater Energy Efficiency in Nova Scotia

Be it enacted by the Governor and Assembly as follows:

1 Chapter 147 of the Revised Statutes, 1989, the *Energy Resources Conservation Act*, is amended by adding immediately after Section 12 the following Section:

13 (1) Subject to subsection (2), the Government of the Province shall, on or before July 1, 2007, make available interest-free loans

(a) to a maximum of ten thousand dollars per recipient for the purpose of facilitating energy-efficiency retrofitting of private homes; and

(b) to a maximum of twenty-five thousand dollars per recipient for the purpose of facilitating energy-efficiency retrofitting of eligible small businesses,

upon such re-payment terms as the Governor in Council prescribes.

(2) The moneys required for the purpose of subsection (1) shall be paid out of moneys appropriated by the Legislature for that purpose.

2 Chapter 147 is further amended by adding immediately after Section 14 the following Sections:

14A Any term or condition of an instrument affecting real property that prevents an owner or occupier from erecting a clothesline is of no effect.

14B (1) Every owner or operator of a retail gasoline station that provides air for the inflation of tires free of charge shall continue to do so.

(2) No owner or operator of a retail gasoline station shall, after July 1, 2007, charge a fee for the inflation of tires.

14C No person shall construct commercial or residential buildings in a way that interferes with or obstructs solar panels on existing buildings.

14D (1) The Minister of Energy shall, before January 1, 2008, establish energy conservation standards for all Government buildings and property leased by the Government.

(2) The Minister of Energy shall, in accordance with subsection (3), prepare an annual report to be tabled in the House of Assembly on an annual basis before March 31st, commencing in 2008.

(3) The report must contain information respecting the energy consumption of Government including, but not limited to,

(a) the gasoline consumption of the Government fleet of vehicles;

(b) the make, model and average fuel efficiency of the vehicles within the Government fleet;

(c) the electricity used within Government buildings and property leased by the Government;

(d) the educational and awareness programs undertaken by Government to educate employees about energy conservation; and

(e) estimated savings achieved on a yearly basis as a result of conservation efforts.

3 Subsection 29(1) of Chapter 147, as amended by Chapter 15 of the Acts of 2001, is further amended by adding immediately before clause (g) the following clauses:

(e) respecting eligibility of small businesses for loans pursuant to clause 13(1)(b);

(f) prescribing loan re-payment terms for the purpose of subsection 13(1);

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