

The Canadian Environmental Law Association

Selected Highlights from the
First Decades of CELA's Work



“We too have played our role as hewers of wood as the piles of boxes
have continued to grow to impossible heights over the years.” – Sarah
Miller

Brian Chang

Hon BA (Toronto), MES Candidate (York)

With thanks Naomi Smedbol, Hon BA (Victoria), MES Candidate (York) for copyediting
And Theresa Mclenaghan, LL.B. (Western) Executive Director and counsel of CELA for editing



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Preface

Compiling forty years of history for any organization would be daunting, but for CELA was even more a task of mammoth proportions. To do so while studying for my Master of Environmental Studies at York University was definitely an adventurous proposition. Somewhere in the past forty years the decision was made never to throw anything away. Archives full of information from the past sit in storage while thousands of vertical files and periodicals and every official CELA publication ever written make up the vast portion of the resource library. This was my home: sitting at the big wooden table underneath a slow-spinning fan—always two seconds away from smashing in the loud quartz clock on the wall—where I spent hours researching this report. But now here it is, all nice and shiny, ready for you to read. Where they occur, I take full responsibility for inaccuracies and errors.

As a student of environmental studies, the constant fear of being overwhelmed by the magnitude of the crisis our planet and all its inhabitants face consistently pulls you apart from the inside. Remembering our history and the battles we have fought helps to put it all into perspective and realize that change can and does happen. There is such great hope in every bit of work that we do to remind us that making the little changes in our lives will help with bigger changes in the broader world.

This report is a start to what others may build on later. CELA's past is storied, hidden in files, felt in memory, and known through anecdotes in the



complex way that stories come to be. There is no overarching line of analysis that flows through the forty years of history. There is not even a common battle that has been fought in all that time. Like any true organization, CELA has come to grow and change; organic and living, parts have died off, parts have blossomed, seeds have been planted, and, of course, like any good legal organization, tonnes of other trees have been chopped down for paper. The extensive resource library is proof enough of that.

This report is organized mostly by chronology, exploring the links over time that CELA has focused on at any given moment. Key campaigns like the battles for the Environmental Bill of Rights, Legal-Aid funding, and dozens of dangerous landfill cases are just a few examples of the important work that CELA has done. Proper respect is given on my part for exceptional cases in CELA history. But there are equally important small cases, such as protecting a maple tree; fighting against unsafe radioactive materials storage at the University of Toronto; cultivating environmental law centres all across the country; and proffering the official CELA submissions which keep the government accountable, not to mention demonstrating the wherewithal to keep fighting these battles day in and out. This is a story of those battles and the ways CELA volunteers and staff have worked over forty years to implement a magnificent world of imagination which we continue to dream every day.

Forty years ago the world was a different place. The battles still rage on, but the ways we learn about them, study them, talk about them, and fight for them have changed. One thing that has never changed over that time is the power of a bunch of people coming together over a pint of beer. Indeed,



monumental decisions with long-lasting effects have been made over a cold pint: CELA itself is one of those phenomena, born out of the ideas of an eager group of students funded by nothing but fifty-cent beers. Forty years ago that is where this all began, and look how far we have come. The only difference is that beer definitely does not cost fifty cents anymore...

If nothing else, environmentalists have always had the capacity to dream a beautiful future. Here's to another forty years and more of environmental law in the public interest—and a dream bigger and better than any of us could have ever hoped for. It starts here, with us, right now. So to you who read this report, dream, imagine, and hope for a better future. CELA has spent forty years doing just that.

It has been a great privilege to explore the history of our organization. Enjoy the story of CELA, because it is far from over and it is going to be a swell time!

November, 2010



List of Acronyms

CELA – Canadian Environmental Law Association

CoA – Certificate of Approval

CRAW – Citizens Rebelling Against Waste

EA – Environmental Assessment

EAB – Environmental Assessment Board; formerly the EHB; later the ERT

EBR – Environmental Bill of Rights

EHB – Environmental Hearing Board; later the EAB then ERT

EPA – Environmental Protection Act (Ontario)

ERT – Environmental Review Tribunal; formerly the EAB

GORGE – Group Organized to Retain the Gorge for Everyone

HOPE – Halidmand-Norfolk Organization for a Pure Environment

LAO – Legal Aid Ontario

LSUC – Law Society of Upper Canada

MAD – Maple Against Dumping

MTC – Ministry of Transportation and Communication

OMB – Ontario Municipal Board

SELA – Sudbury Environmental Law Association

TRS – Toronto Refineries and Smelters

VELC – Vancouver Environmental Law Centre

WELA – Windsor Environmental Law Association



Chapter 1: Forty Years Ago

"The challenges faced in 1970 were daunting. Staff operated on a shoestring budget with virtually no resources. CELA was unknown and to the extent it was known by industry or regulators, it was abhorred." – 30th Anniversary of CELA¹

Forty years ago a Ministry of the Environment did not exist at the Federal or Provincial level. Great concrete monoliths called brutalist architecture dominated the city, most of the skyscrapers in Toronto had yet to be built, beer was fifty cents, and environmental law and policy were in their infancy, but it was a magical time of social upheaval felt all over the continent, from Greenpeace on the West Coast to the Quiet Revolution in Quebec. The founding of CELA came during 1970 from a group of students at the University of Toronto. In the intervening years, a lot has changed. Even since a decade ago, CELA's thirtieth anniversary, a lot has changed: September eleventh had not occurred, Canada was not at war, and the recession had yet to hit. I, for one, was not even in high school yet. Some wider perspective is important in the short history that makes up environmental policy in the larger scheme of things.

CELA remained a volunteer organization until 1972 when the organization received funding under the federal government's "Local Initiatives Program"; David Estrin was hired as the first counsel for the Environmental Law Association. Most of the other staff for CELA at the time were volunteers. The

¹ Intervenor. 1995, 20(5).



first office was donated by the University of Toronto in the Ramsey Wright Zoological Labs. It was here that the first bunch of law students launched the Environmental Law Association that would eventually become CELA.

The model of what CELA began forty years ago has rippled across every piece of environmental legislation in Ontario, and organizations all over Canada have built on the work and the ideals that CELA helped establish. Celebrating forty years of CELA's work provides a good opportunity to reflect on the amazing work that has been done and a chance to celebrate the victories and battles that have helped shape the public policy that affects our lives.

Initial Cases under the Ontario Environmental Protection Act

The first case CELA brought before the courts under the Environmental Protection Act (EPA) set an important precedent for private prosecutions in an environmental context. *McCarthy v Adventure Charcoal Enterprises Ltd.* (1972) became the first private prosecution under the Ontario Environmental Protection Act. Dalton McCarthy was a farm owner in an area close to the project, which was breaching the conditions of its Certificate of Approval (CoA). The government had refused to act on the matter, and CELA took up the fight. At Renfrew County Provincial Court, the case was successful and the fine was set at \$500 of a possible \$5000.² The judge in the decision, however, did not award costs to CELA. This costs decision was later reversed on appeal. The case also revealed that the government was deliberately allowing the construction of this project to go ahead without securing a certificate of approval. Until CELA

² Canadian Environmental Law News. 1972, 1(1).



brought forward this case, the government would not admit that it should prosecute and take action.

The lack of government initiative in dealing with environmental issues and utilizing the authority provided by the EPA frustrated a lot of the work that CELA engaged with in its early years. Across the board, the government's application of the EPA was less than spectacular. A shining example of this deference was taken up by CELA in the town of Whitchurch-Stouffville. York Sanitation Company Ltd. had applied for an eleven-year Certificate of Approval for up to 7500 tonnes of garbage a day. On top of the tonnes of waste already in the dump, there was evidence of leachate in the groundwater past the boundaries of the site. To complicate matters, six thousand residents of the town relied directly on groundwater from areas linked to the water under the dump.

The town of Whitchurch-Stouffville attempted to prevent the expansion of the dump, but could not get Provincial cooperation. The company in question had already breached two by-laws under the EPA, and the town and residents argued that this track record did not warrant further approvals. MoE eventually stepped in and restricted operations, but did not prosecute the company under the EPA. Even at the urging of the town the provincial government refused to bring York Sanitation to court. Instead, the government decided to order a hearing under the Environmental Hearings Board (EHB). Confused residents and CELA were surprised by this decision because the EHB had no authority or legal power to fine, prosecute, or require legal accountability. These hearings would eventually take up twenty-six days over the course of seven months.



John Swaigen became the CELA counsel working on this file, along with allies in the Town Council and the Preserve Our Waters Resources Group.

After the hearings were completed, the EHB took another six months before giving their decision. The EHB officially recommended to the MoE to accept the expansion of the dump, but with conditions. Other than continuous ground-water monitoring for leachate and runoff, protection of woodlands, and a public hearing after five years, chief amongst these conditions was the recommendation for York Sanitation to start a fund to guarantee potable water to any resident in the event of contamination. The company complied and posted a bond of \$80 000 to create a fund to protect drinking water for the town.

Tree Huggers and Noisy Construction

CELA represented Shirley Strathy in a criminal case laid against a construction company that had damaged a beautiful old maple tree. In a decision handed down by the Provincial Court, Criminal Division on February 27th, 1975, CELA successfully used the antiquated 1914 Trees Act to prosecute Konvey Construction Company Ltd. The successful case penalized Konvey Construction only \$25, as this was the maximum allowed by the Trees Act. For the work done on this case, however, Shirley Strathy and CELA were honoured by the Ontario Association of Landscape Architects.

During this case many of the key principles CELA has fought for over its forty years arose. The case reaffirmed CELA's push for increased standing for environmental protection through private prosecutions and reiterated the



need for law reform, especially in the absence of relevant statutes (and antiquated ones) and funding for court costs and expert witnesses.

Noise pollution is a common problem in an urban city. But when was the last time you were woken up at 11:30pm to drilling, nail guns, and super bright lights because a company was working across from your building? The early history of CELA details a lot of battles over noise pollution; indeed, at one point the association even employed a person, Pat Reed, directly on the subject. Today, there are by-laws and regulations that control when and where construction can happen. CELA participated in the law reform that spurred the need for both the City of Toronto and the Provincial government to implement the first province-wide noise limits from everything from snowmobiles to horns.³

Another one of the earliest noise pollutions cases was in 1976 when Kelson Springs Products Ltd., a woodworking company, was fined with CELA's help by the Ministry of the Environment under the Environmental Protection Act. But in a later case Lisl Levinsohn was complaining about construction that was taking place at all hours of the night across from her home, and MOE and the city would not intervene until CELA came to represent her. Under a civil case Ms. Levinsohn, represented by CELA, brought forward a small claim suit of \$400 against the construction complaint. The judge dismissed the case on the basis that if Ms. Levinsohn was so grieved by the noise, she should have just moved. Many of CELA's clients, and many other Ontarians, do not have the ability to

³ Canadian Environmental Law News. 1972, 1(2).



just pick up and leave when environmental injustices happen nearby. However, while many noise pollution cases met with the same result, others like that against Kelson Springs Products Ltd. were successful.

Hazards of the Job

The story of One Spadina Avenue is truly memorable. After the forced move away from the Ramsey Wright Laboratories (CELA was kicked out by the University of Toronto), One Spadina became the beautiful Gothic Revival home of CELA and a mess of laboratories and offices in the late seventies. What neither CELA staff nor other occupants of the building knew at the time was that One Spadina was also the storage home to almost all the radioactive and hazardous waste that came from the University of Toronto. Until unmarked, unprotected trucks carried the low-level radioactive substances for long-term disposal at Chalk River near Ottawa, One Spadina was the home of these substances, along with chloroform, benzene, and acetone, to name a few—and of course CELA staff.⁴

After numerous health complaints by CELA staff working long hours in the offices, questions started to be raised. Investigations by Joe Castrilli and Shelly Howell lead to discovery of the storage facilities and their contents. Requests for radioactive readings of the area were unanswered. CELA approached the University Ombudsman to intervene after four months of inaction. The readings, when finally ordered, found that radiation levels were normal throughout the building, but that levels one foot away from the storage area

⁴ CELA Newsletter. 1980, 5(1).



were eighteen times the normal amount, and at eight feet away were still four and half times the norm.⁵ It became clear that the dangerous health exposures for staff were not coming from inside of the building but actually from use of the rear entrance, within five feet of the storage facility and the indicated radiation exposure area of potentially up to eighteen times the norm.

Health problems for CELA staff continued as headaches, pain, confusion, dizziness, and lack of focus became common complaints. These effects may have been attributable to or exacerbated by improper lab facilities in the building on top of radiation exposures. CELA staff Laura Parrell went on a hunt to find the location of a particularly offensive scent one day in December, 1979. Her nose led to a lab underneath the CELA offices. Her interrogation of the workers led to their finally admitting that a fume hood was broken and likely responsible for the smell. Further interrogation by the impassioned Parrell revealed that the chemicals being used included xylene, toluene, chloroform, formaldehyde, and methanol.⁶

CELA staff decided under the leadership of Grace Patterson to vacate the premises as quickly as possible. Calls to the University came to naught, and CELA even approached the Occupational Health and Safety Branch of the Ministry of Labour without result. New space was found on York St. and Lake Shore Blvd. and the move was completed on February 8th, 1980 where the health of staff, oddly enough, improved.

⁵ CELA Newsletter. 1980, 5(1).

⁶ CELA Newsletter. 1980, 5(1).



The story of One Spadina did not end once CELA left. Improper care and training resulted in radioactive contamination of a lab worker's jar of Coffee-mate. Further, in a completely bizarre case of security failure, man broke into the radioactive storage area, evaded security, and managed to escape with several containers of radioactive materials. He then buried them in random places around the city. After repeated calls for increased security and accountability for One Spadina, frustrated student groups led by the Student's Administrative Council (now the University of Toronto Students' Union) protested outside the building. Of course, the University of Toronto consequently vowed to remove the waste.

It is unclear what happened to One Spadina after CELA left. The move marked the final association the two institutions would have together. But there were some advantages: I am sure CELA staff did not miss the late-evening arrivals of eyeballs for the eye bank at Ramsey Wright.

Legal Aid

At the beginning of 1973 changes to funding by the Legal Aid Committee for York County (now Legal Aid Ontario) allowed the granting of certificates to groups of people that would offset the cost of legal proceedings. Prior to this important change, groups of people (as opposed to individuals) were ineligible to receive certificates for funding. Still, the legal aid system was not providing everything required by CELA clients. In 1973, the Ontario Task Force on Legal Aid, eventually known as the Osler Task Force on Legal Aid, was struck to review the state of legal aid funding and procedures of the Ontario Legal Aid



Plan (OLAP). On March 26th, 1974, Clifford Lax⁷ presented a brief written by Elizabeth Block and Joe Castrilli on legal aid access to the task force. They made four requests:

1. That group or representative certificates for private prosecutions as well as civil actions be issued,
2. That legal aid should be accessible to middle-income people,
3. That costs should not be awarded in special circumstances, and
4. That public-interest law groups should be allowed to advertise services and accept legal aid certificates.

CELA became recognized as a legal aid clinic in 1976 when Legal Aid Ontario issued its first certificate to CELA. The legal aid system now numbers about seventy-seven clinics across Ontario, which focuses on providing legal advice and protection for people who would not otherwise be able to attain it. In addition to the regional poverty law clinics, there are eighteen specialty clinics dealing with a variety of topics across the province such as elder law, advocacy for the disabled, and HIV-AIDS; CELA is the specialty environmental law clinic serving all of Ontario.

Chapter 2: Raising a Big Stink with Landfills

“Administrative procedures are simply the government talking to itself—and doing so far too often, in such a way as to make sure it is not overheard.” – John Low⁸

⁷ Canadian Environmental Law News. 1974, 3(2).

⁸ Canadian Environmental Law News. 1975, 3(1).



Garbage—junk, refuse, rubbish, and lots of it—has inspired much of the work that CELA has done over the years. The prevalence of garbage in our society has increasingly required us to find bigger and bigger holes to bury it in. But whether it is possible to do that safely remains an unanswered question. The 1980s marked a particular focus on landfill cases. Grace Patterson recalls this as one of the primary issues that she had to face in her tenure as Executive Director for CELA.

Tony Barrett and the Great Garbage Gamble

Something has to be said for the ability of an environmentalist to get a politician in a tight spot. In a particularly memorable story,⁹ Tony Barrett, one of the founders of CELA, was awarded the 1975 White Owl Conservation Award. Although serving in a more substantial capacity with Pollution Probe, Barrett's work between CELA and Pollution Probe was key in getting federal restrictions on the use of DDT, a federal ban on phosphates in detergents, and the Ontario Environmental Protection Act. His successful tenure at Pollution Probe led to the fundraising of over \$1 million for environmental research and action projects.

On the day that he accepted the award from then-Minister of the Environment George Kerr, Tony hijacked the presentation to present his Garbage Gamble. Using half of the award money, he came on stage with thirty \$50 bills pinned to a board. The challenge was to all 24 members of cabinet,

⁹ Canadian Environmental Law News. 1975, 4(6).



the opposition environment critic, the Premier, and the Speaker of the Legislature, with a call for waste reduction that read as follows:

- I shall neither buy nor throw away non-returnable soft drink bottles or cans
- I shall buy milk only in returnable plastic jugs and glass bottles
- I shall bundle all newsprint separately
- I shall separate all recyclable glass and metals and take them to a recycling depot
- I shall compost all possible vegetable and garden waste if I have an outdoor yard

Barrett challenged MPs to follow these terms, vowing to donate a \$50 bill to charity for each one who did and extending the challenge to claim that for each one who did not, George Kerr would do the same. Placed suddenly on the spot, George Kerr agreed to the gamble with a strained look.

Sadly, I cannot relate the end to this story. It never came up again in CELA news. However, today we have green bins and a comprehensive recycling program in the City of Toronto. It is quite a marked contrast to forty years ago, when there was not a city-wide recycling program for even paper.

Dumps. Everywhere.

In Maple, just north of Toronto, Crawford Allied Industries was proposing a landfill construction to deal with garbage from the GTA in the late 1970s. Grace Patterson and Joe Castrilli appeared before the EAB at the request of a citizen's organization called Maple Against Dumping (MAD). The project in question was a landfill to serve the needs of local municipalities. The EAB settled into what



would eventually become eighty hearings days over ten months.¹⁰ At the time, the proposal for Maple Pits would make the project the largest landfill in Canada. The concern of the community and of activists was that it was located on top of an aquifer that provided groundwater for the area. Following the EAB hearings, the project was successfully rejected.

In the early 1980s, there was an attempt to locate a substantial landfill site for industrial waste and municipal waste in South-east Ontario. The first attempt was the Ridge Landfill which was proposed near Chatham, Ontario. This project was given the go-ahead by MoE without a certificate of approval. A group called Citizens Rebelling Against Waste (CRAW) came together to oppose the development. If the project were to go ahead, it would have been the largest liquid industrial waste site in Ontario.¹¹ CRAW, led by its secretary-treasurer Diane Jacobs, moved to fully incorporate itself in order to avoid personal liability in the battle it were gearing up for. A case was made by CRAW and CELA for judicial review of the decision to proceed without a CoA. The Ontario Superior Court held that MoE could not legally issue a CoA without hearings by the EAB.

When the Ridge landfill project did not proceed as planned because of the lawsuit brought forward by CRAW and CELA, the government decided to move ahead and propose CoAs for a new site in South Cayuga at the Grand River and Lake Erie. Once again, in response to a proposal for liquid industrial waste, a citizen's group organized—Halidmand-Norfolk Organization for a Pure

¹⁰ CELA Newsletter. 1978, 1(4).

¹¹ CELA Newsletter. 1982,7(1).



Environment (HOPE) —to contest the project. CELA helped represent HOPE over the course of the EAB hearings in this case. After two years of hearings, the site was officially rejected by the Ministry of the Environment on November 19th, 1981.¹²

On another landfill case, which stretched almost two decades, CELA represented Peter and Erika Nippa, organic farmers near London, Ontario. The land in question was purchased by the Nippas specifically for organic farming and a bed and breakfast. Their land was also adjacent to the landfill site operated by C.H. Lewis Ltd. Problems occurred on a regular basis for the Nippas as smells, dust, noise, pests, spontaneous garbage fires, and more directly affected their land and their use of it. MoE conducted its first investigation in 1972 and found the facility unsatisfactory. CELA, on behalf of the Nippas, eventually launched a nuisance case against C. H. Lewis in 1984, which then remained undefended until 1987. The case proceeded and in 1991 the Nippas were awarded \$103 500 and the company was ordered to stop land filling.

Chapter 3: Environmental Assessment

“Look before you leap! Or to put it another way, hold an environmental assessment.”

– Murray Klippenstein¹³

The foundation for Environmental Assessment (EA) in Canada came from the direct work of CELA. Alan Levy recalled how CELA staff were in Premier Bill

¹² CELA Newsletter. 1981, 6(6).

¹³ Intervenor. 2000, 20(5).



Davis's office negotiating the terms of the Ontario EA legislation.¹⁴ Representing a minority government, Bill Davis was wary of the threat of full-page attack ads in newspapers across Ontario. Concessions were made on both sides, but the result was passage of the Environmental Assessment Act in 1976, which still stands as the key informational tool available to the Minister of the Environment and the public of Ontario. But as would become the norm with EA programs across Canada, the Ontario EAA came along with 200 pages of exemptions, including the plans for the Darlington Nuclear Generating Station, conservation projects, and municipal buildings.

In October 1974 CELA presented a comprehensive list of amendments to the proposed Ontario Environmental Assessment Act. The first submission on environmental policy to any government in Canada, this bold, novel move embodied work that CELA is now known for and set the stage for direct communication between environmental groups and the government.

Sometimes They Get it Right—With CELA's Help, of Course

The first test of the Environmental Assessment Act (EAA) came against the government from the government itself. Oddly enough, it was successful, attributing personal culpability to a Minister and Deputy Minister. CELA later launched a successful case that would eventually see the Attorney General prosecute James Snow, then Minister of Transportation and Communication (MTC).

¹⁴ Intervenor. 1990, 15(3).



In 1981, the 404 highway terminated at Steeles Avenue, within Metro Toronto limits. But the MTC proposed expansion of the 400-series highways across the Greater Toronto Area, with the 404 in particular expanding to Newmarket. Construction plans began and an EA was submitted according to the new regulation guidelines. The proposed 404 extension would pass through the ecologically sensitive White Rose Bog.

As the EAs proceeded, Grace Patterson served as lead counsel for CELA and the Federation of Ontario Naturalists. MTC had already begun construction of the highway prior to securing any approvals.¹⁵ CELA and its allies made official complaints to the Ministry of the Environment, which resulted in a stop order from the Cabinet for one day to consider the matter. Premier Bill Davis admitted that MTC was in violation but ordered a non-proactive exemption for the project from the EAA. The political discretion afforded to the government in the case of environmental statutes continues to be a contemporary problem for environmental law but even thirty years ago it was still an issue; as Clifford Lax pointed out, the minister “is literally given the power to decide to whom the statute should apply and how it should apply.”¹⁶ This case exemplifies this problem, as that is just what Premier Davis did.

CELA launched a private prosecution against MTC for not complying with the Environmental Assessment Act. The case went ahead to the Ontario Superior Court of Justice, where both Minister Snow and Deputy Minister Harold Gilbert were subpoenaed. At this point, the Attorney General stepped in

¹⁵ CELA Newsletter. 1981, 6(5).

¹⁶ Canadian Environmental Law News. 1976, 5(2).



and took over the case. Although entitled to stay the charges, the AG proceeded. On September 11th, 1981 Harold Gilbert pleaded guilty and he and the Minister of Transport and Communication were fined \$6300.¹⁷

Chapter 4: The Decades of Battle for an Environmental Bill of Rights

"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." – Preamble to the Environmental Bill of Rights (1993)¹⁸

From the inception of CELA, the principle of public participation in government and the courts has always been a key pillar of what the organization stands for. Fundamentally, CELA has always believed that "the public [should have] the right to as much information as possible, the right to determine the basis for standards and the fundamental right to a meaningful role in determining the quality of the environment in which they must exist."¹⁹ One of the first iterations of an Environmental Bill of Rights (EBR) came from a resolution

¹⁷ CELA Newsletter. 1981, 6(5).

¹⁸ Environmental Bill of Rights. S.O. 1993, Chapter 28

¹⁹ Canadian Environmental Law News. 1976, 5(2).



passed by the National Executive Committee of CELA in April 1973.²⁰ A goal was adopted for the “maximization of the use of the legal system to preserve and enhance Canadian environmental quality.” Four recommendations were identified by the Committee: a public complaint and advisory service, public education about environmental rights, public interest environmental litigation, and environmental law reform.

That same year, CELA committed to a fight to make the EBR a reality. CELA was always highly critical of closed-door proceedings and lacking transparency, as these procedures were conducted in “isolation” from the public. Calls for an Environmental Bill of Rights supported increased transparency of decision making and to provide legitimacy for those decisions. In the management of the vast expanses of resources in Ontario, there was a strong call from citizens for participation in the decision-making processes that in many ways drastically affect their lives. CELA envisioned the EBR as a tool of “participatory democracy in environmental management [restoring] public confidence in government handling of environmental affairs.”²¹

The Sandbanks

In August 1972, CELA launched a case against Lake Ontario Cement and the Ministry of the Environment (*Green v Ontario and Lake Ontario Cement* 1973) regarding the removal of sand from Sandbanks Provincial Park. Located near Belleville in Southern Ontario, this Provincial Park is known for its beautiful

²⁰ Canadian Environmental Law News. 1972, 2(2).

²¹ Canadian Environmental Law News. 1986, 11(2).



dunes and makes up one of the largest freshwater sandbars in the world. MOE had issued permits for Lake Ontario Cement to extract sand from the area to be used for cement processing. CELA, on behalf of concerned citizens, launched the case against MOE and the company. Several key principles came out of the case which were important for the time:

1. There was no statutory or common law legal duty of the government or a private citizen to ensure that parks are preserved;
2. The government retained power and discretion, through the Governor in Council, to set, change, or eliminate a park; and
3. Public trust was not found in Ontario statutes and public standing did not exist.

Of particular importance to the work of CELA is the last point. The case was dismissed a few months after it began when the Ontario Superior Court ruled that there was no public standing for Green or CELA to prosecute on behalf of the public interest. This case reiterated one of the biggest law-reform challenges that citizens and CELA have faced for decades—the right of the public to prosecute on environmental matters when the government fails to do so. However, though the case was technically unsuccessful in the courts, the high level of scrutiny placed on the activities by CELA led to the ceasing of extraction. In David Estrin’s words “without our actions, the sand would all be gone today.”²² This case demonstrated the need for a statute like an Environmental Bill of Rights.

²² Canadian Environmental Law News. 1980, 11(2)



The Environmental Bill of Rights

If CELA has ever had a message that has resonated over its forty-year history, it is that the public should have the right to participate in environmental decision making in their communities. Public participation has always been a hallmark of the organization, and remains a constant battle even today. A review of CELA's briefing notes over the course of the past few decades reveals the consistent demand for a set of statutory rights for the public, including:

- the citizen's right to sue,
- a shift of the burden of proof to the polluter,
- access to information,
- public participation in decision making, and
- intervener funding

In response to these ongoing submissions, the very first government attempt to implement a statutory guarantee of environmental rights and access to decision making for the public came about from the Liberal Party of Ontario in 1979. Bill Davis's Progressive Conservatives were the minority government at the time, and Stuart Smith of the Liberals put forward a private member's Bill 185, "*An Act to establish an environmental magna carta for Ontario.*" The bill was defeated, and Smith would later go on to become the leader of the Liberals. A subsequent attempt by the NDP in 1980 failed, as did another Liberal attempt in 1982. Ruth Grier of the New Democrats attempted to put through an EBR twice in 1987 and then again in 1989. She, too, was unsuccessful, and the last attempt was made by Barbara Sullivan of the Liberals before they lost power in 1990 to the New Democrats.



Table 1: Attempts to Implement an Environmental Bill of Rights

Year	Bill	Proponent	Party
1979	185	Stuart Smith	Liberals
1980	91	Marion Bryden	NDP
1982	96	Murray Elston	Liberals
1987	9	Ruth Grier	NDP
1987	13	Ruth Grier	NDP
1989	12	Ruth Grier	NDP
1990	23	Barbara Sullivan	Liberals

Despite assurances from then-Premier Bob Rae that an EBR would be forthcoming, there was substantial delay before a task force was finally struck in 1992. In 1993, the Environmental Bill of Rights passed in the Legislature. The legislation we now call the EBR has since proven a hallmark of environmental law in Ontario and one of the unique policy innovations Ontario has introduced into the world of public policy. The battle for this legislation spanned over two decades with CELA consistently at the forefront. This chapter of CELA's story continues, as—along with other colleagues in the environmental movement—CELA continues to advocate for the implementation of a federal Environmental Bill of Rights.

Chapter 5: CELA's Extended Family

CELA was the first environmental law organization of its kind in Canada, both offering services to low-income clients as a speciality legal-aid clinic while



simultaneously undertaking law reform. This history is important as it traces how the influence of a few individuals in the present can have drastic effects forty years into the future. Today major organizations like Environmental Defence, the Canadian Institute for Environmental Law and Policy, and West Coast Environmental Law have roots and foundations that came from CELA. Other organizations like Sudbury Environmental Law Association (SELA) and Windsor Environmental Law Association (WELA) all had roots in CELA as well, even if they are not around anymore.

Sudbury Environmental Law Association

In 1972, CELA expanded operations to Sudbury to start addressing the disastrous environmental impacts that industry was inflicting on the landscapes and people's health. Because it was regarded as one of the most polluted places in North America at the time, a team of six people began work in the area in June of 1972.

The battles against the smoke easements issued by the Ministry of the Environment began as citizens and environmental groups came to realize just how devastated the local ecology had become. With little area left untouched by natural resource extraction, it was only a matter of time until the water supply found in Lake Ramsey would be directly threatened.

In 1973, SELA brought forth a private prosecution against INCO for emitting black smoke. MoE guidelines for establishing permissible emissions were set by a colour gradient which Environmental officers would carry around with them, comparing the actual smoke emitted to what “acceptable” smoke should look



like. Despite local residents repeatedly noting black smoke from INCO's stacks, the Ministry of the Environment refused to prosecute or take steps to control the further acidification of the area. Meanwhile, local residents such as Steven Yawney were suffering the effects of this inaction. For two years prior, MoE had promised to set up a special task force to address the issue; unknown to anyone but MoE, it had apparently done so in 1972. By the middle of 1973, even the Minister had to admit that the task force (if there ever was one) had gone nowhere, so SELA brought forward Ontario's very first private prosecution for air emissions. SELA's work eventually led MoE to lay prosecutions against INCO for unlawful air emissions.

West Coast Environmental Law

In the summer of 1974, CELA executive committee member Ann Rounthwaite spearheaded the opening of an environmental law office in Vancouver. The organization was then incorporated the following spring as the Vancouver Environmental Law Centre (VELC), and James McKenzie became its first paid counsel. Like the other iterations of the organization, VELC offered no-cost legal advice and representation on environmental issues.

The Centre's first case was in Celista, BC—*Lamarche v Emma Elliot*. A hotel was being built adjacent to a flood plain that served as a drainage area into the Shuswap Lake. The BC Health Act was raised as a concern by residents because 90% of the cottages in the area drew water from the Shuswap. VELC helped Isobel Lemarche argue the case on behalf of concerned residents against the permitting of the septic tank on the flood plain.



Over time, the organization renamed itself West Coast Environmental Law and is now one of the leading organizations for environmental law in the public interest in British Columbia.

Chapter 6: Environment and Health

“You can rest assured that companies making chemicals, particularly the large ones, usually are very responsible organizations that have adequate research backing and testing.” – DOW Chemical Canada to the Standing Committee on Fisheries and Forestry Regarding Brief C-25, the Environmental Contaminants Act²³

The 1980s saw a lot of public attention to environmental health, with particular emphasis on important concerns surrounding the effects of air pollution and water contamination. Emerging epidemiology was furthering the debate of safe exposures, and the issue was clearly front and centre in communities like Love Canal and other examples like the air quality in Sudbury and the Sydney Tar Ponds. The 1980s saw a shift in the CELA newsletters toward a focus on environmental health issues that had been previously unreported on. By the mid-eighties, the newsletter was publishing a section called “spotlight on major pollutants,” which comprised relevant current information on substances like trichloroethylene and volatile organic compounds.

One of the original cases of the environmental justice movement concerned the community of Love Canal in New York State, near Niagara. Considered one of the most toxic communities in the United States, Love Canal

²³ Canadian Environmental Law news. 1975. 4(4).



had eighty thousand pounds of toxic substances like benzene, mercury and dioxins buried under the houses and buildings in the area by Hooker Chemical Ltd.²⁴ The community living atop all of these substances organized and launched a battle to get the government to evacuate the community and give restitution for what was a severe deviance in environmental protection. As a result of the debacle and the lack of oversight by the EPA, a hearing was called by the Federal Court in Buffalo to figure out what happened. CELA participated in the court proceedings as a friend of the court, or *amicus curiae*.

In 1981, CELA, on behalf of Professor Michael Dickman of Brock University, initiated a private prosecution against Cynamid Canada Inc. The plant was located on the Welland River and already had extensive pollution and toxic control programs mandated by MoE because of the facility's known high levels of toxins. Biology Professor Dickman tested the effluent from the facility on fish to determine mortality. He observed a 100% mortality rate in minutes, but not before observing erratic behaviour in the fish as their nervous systems collapsed.²⁵ In this case, CELA was successful at its prosecution, though in a bizarre, uncontestable decision the fine was set at \$1 of a possible maximum of \$50 000.

Lead

CELA's battles with lead marked to a large extent the organization's movement towards health issues, and Kathy Cooper has been the spearhead on the

²⁴ CELA Newsletter. 1981, 6(3).

²⁵ CELA Newsletter. 1981, 6(5).



particular issue of lead for most of her time at CELA. In Toronto, from the sixties through the eighties, a company called Toronto Refineries and Smelters (TRS) was emitting lead residue into the air that coated land, trees, flowers, dust, and homes in the area.

The process in question at the facility was a battery disposal operation with an outdoor crushing facility for reclaiming materials from used car and industrial batteries. MoE testing found high levels of lead in dust, soil, and nearby vegetation. Further testing showed lead content in the soil at 5190 ppm in 1980 which spiked to 11 745 ppm five years later.²⁶ Despite these findings, MoE refused to prosecute or take any action.

The science on health effects from lead exposure was confusing at the time, as an established correlation between toxic lead fumes and human health was not immediately clear. Residents in the area were unaware of the danger posed by the TRS facility. Once information regarding lead levels started to emerge, residents organized into the Niagara Neighbourhood Association Lead Pollution Committee. The lack of support from the Ministry of the Environment, together with inaction by the City of Toronto, empowered citizens to take up the fight themselves to protect their health and environment. CELA was engaged as an advisor and provided legal representation to the residents.

In response to the community's response, the community's local Board of Health agreed to inspect the facility and surrounding area. Following the investigation, whose findings were not released to the public, the Medical

²⁶ Canadian Environmental Law News. 1980, 11(5)



Officer of Health determined that it was entirely up to the Provincial government to act, rather than the local health board. The lack of disclosed testing in the area led citizens to take initiative in finding their own data. Blood tests in the area revealed lead content three to four times higher than the norm, and data collected from the Hospital for Sick Children revealed that five of fifteen open cases of lead poisoning came from the neighbourhoods immediately surrounding the TRS smelter. What was even more troubling, as CELA and residents investigated further, was the revelation that both MoE and the Health Board were both already fully aware of these problems.

The City of Toronto eventually became interested in the problem and began to lobby for provincial action on the facility, but nothing else was being done by the province. The issue then captured media attention. On January 29th, CBC Television's *As it Happens* was to air a special on the TRS smelter and neighbourhood called "Dying of Lead." Painting a story of the environmental health effects for a broader audience, the program would have provided needed publicity on the problem, but TRS immediately went to court to seek an injunction preventing the CBC from airing the show, citing libel. The injunction was granted, and the CBC had to eliminate and censor certain parts of the program, which was then aired.

The injunction was successful at preventing the CBC from airing its TV broadcast but was not media-specific. *The Globe and Mail* picked up the story and printed the parts the CBC could not. The front page of the *Globe* printed "Dying of Lead" the very day after it should have aired in full on television. The CBC again sought the right to air the original program in full but was denied. In



the context of this public relations battle, CELA presented a case with 19 violations. The smelter was eventually shut down in 1988.

Chapter 7: The Imagination to Dream Policy

"Would that we could rest on our laurels in the knowledge that we and our children can be confident in a secure and clean environment." – Graham Rempe, CELA's 25th Anniversary²⁷

The social imagination of a group of people to dream a better world and the policies to enable it creates a tangible space full of great wonder. CELA's commitment to sustaining this imagination over the course of forty years is an exemplary feat. The magnitude of our collective ability to come together and not only dream but work towards a better future for all makes CELA the special place that it is. Generations of staff, students, volunteers, directors, politicians, professors, activists, artists, musicians, citizens, and more have come to know CELA over its lifetime. Now I have joined the ranks of generations to learn that the Environmental Bill of Rights was fought for over decades; to hear the stories of clients fighting for trees, the right to a quiet night's rest, and the right to sue polluters; to become acquainted with the call for the government to open the doors to its decision making processes that let us get involved; and to discover the capacity to do so without forgetting the most disadvantaged members of our society. Organizations like CELA are not made every forty years, ones that spawn an entire legacy of environmental statutes across a

²⁷ Intervenor. 2000, 25(5).



province. CELA has a great history and the people behind it continue to do great things.

This initial version of the report brings us to the mid-nineties in CELA's history. The more recent years are the ones staff and volunteers still remember well. But no report on CELA's work would be complete without particular respect to the hard work that was done in the Walkerton Inquiry after the environmental disaster in 2000. Other cases bear remembrance, of course, such as the Onco-Mouse, the Walkerton Inquiry, and the important networks and work that have been done on water issues, and environmental health. There is much more history to CELA than is contained in this report; a lot more has yet to be told, and it is a fascinating read.