

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

MININGWATCH CANADA

APPELLANT
(Respondent)

and

**MINISTER OF FISHERIES AND OCEANS,
MINISTER OF NATURAL RESOURCES, and
ATTORNEY GENERAL OF CANADA**

RESPONDENTS
(Appellants)

BETWEEN:

MININGWATCH CANADA

APPELLANT
(Respondent)

and

**RED CHRIS DEVELOPMENT COMPANY LTD. and
BCMETALS CORPORATION**

RESPONDENTS
(Appellants)

AFFIDAVIT OF THERESA McCLENAGHAN

I, Theresa McClenaghan, of the Town of Paris, Ontario, MAKE OATH AND SAY:

1. I am employed as Executive Director and Counsel at the Canadian Environmental Law Association (CELA), and have been on staff at CELA since 1998. I therefore have knowledge of the matters hereinafter deposed to.

(A) Overview

2. The general purpose of this affidavit is to describe CELA's background, expertise and interest that will enable CELA to provide useful and relevant submissions to this Honourable Court in the present appeal. In summary:

- a) CELA is a non-profit environmental law organization with decades of experience in public education, research, law reform, and public interest litigation in a variety of areas, including environmental assessment law and public involvement in environmental decision-making;
- b) CELA was extensively involved in the process leading up to the enactment of the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 ("CEAA") in 1992, and in the 2003 amendments to that statute (including the amendments to section 21 of the CEAA, which is the central focus of this appeal); and
- c) CELA seeks leave to intervene in this appeal as part of a broad coalition of public interest environmental groups who wish to assist the Court by providing information regarding the legal context within which section 21 of the CEAA must be interpreted, and the extensive implications of the Court's decision in this case.

(B) CELA's Background: Public Interest Environmental Litigation

3. CELA is a non-profit public interest organization founded in 1970 for the purposes of: using the Canadian legal system to protect the environment; enhancing opportunities for citizen participation in environmental decision-making; and advocating for environmental law reform at the international, national and provincial levels.

4. Since 1978, CELA has been funded and operated as a specialty legal aid clinic under Legal Aid Ontario (formerly the Ontario Legal Aid Plan), and has provided legal services in the area of environmental law to individuals, citizens' groups, and public interest organizations that would otherwise not have access to counsel.

5. CELA frequently represents individuals, citizens' groups, and public interest organizations in proceedings before courts, tribunals, boards and commissions with respect to a broad variety of environmental issues, including environmental assessment matters.

6. CELA has also been granted leave to intervene in its own right as an intervenor, both as friend of the court and as a party, in proceedings involving issues of public importance and environmental significance. In fact, CELA has acted as an Intervener before this Honourable Court (and the Federal Court of Appeal) in the following cases which are relevant to the issues in the within appeal, and which have been considered by the courts below and/or cited in the factum of the Appellant:

- a) *114957 Canada v. Hudson (Ville)*, 2001 SCC 40, [2001] 2 S.C.R. 241.
- b) *Friends of the West Country Assn. v. Canada (Minister of Fisheries and Oceans)*, [2000] 2 F.C. 263, 31 C.E.L.R. (N.S.) 239 (C.A.).
- c) *Attorney General of Canada v. Hydro-Quebec*, [1997] 3 S.C.R. 213, 24 C.E.L.R. (N.S.) 167.
- d) *Quebec (Attorney General) v. Canada (National Energy Board)*, [1994] 1 S.C.R. 159, 112 D.L.R. (4th) 129.
- e) *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, 88 D.L.R. (4th) 1.

7. Other significant cases in which CELA has been granted leave to intervene by this Honourable Court and other appellate courts include the following:

- a) *CropLife Canada v. Toronto (City)* (2005), 75 O.R. (3d) 357, 254 D.L.R. (4th)

40 (C.A.).

- b) *Fletcher v. Kingston (City)* (2004), 70 O.R. (3d) 577, 240 D.L.R. (4th) 734 (C.A.).
- c) *Harvard College v. Canada (Commissioner of Patents)*, 2002 SCC 76, [2002] 4 S.C.R. 45.
- d) *Hamilton-Wentworth (Regional Municipality) v. Canada (Minister of the Environment)*, 2001 FCA 347, 40 C.E.L.R. (N.S.) 165.
- e) *The Corporation of City of Guelph et al. v. Guelph Grangehill Developments Ltd. et al.* (1995), 78 O.A.C. 148, 15 C.E.L.R. (N.S.) 241 (Div. Ct.).
- f) *R. v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031, 42 O.R. (3d) 454 (note).
- g) *R. v. Ellis Don Ltd.*, [1992] 1 S.C.R. 840, 7 O.R. (3d) 320.
- h) *Reference re Ontario Energy Board Act* (1985), 51 O.R. (2d) 333, 19 D.L.R. (4th) 753 (Div. Ct.).

8. In addition to the above-noted interventions, CELA frequently participates in legal proceedings involving the interpretation, implementation, and enforcement of statutes related to environmental protection, natural resource management, and land use planning. In particular, CELA routinely provides advice and legal representation in judicial and administrative proceedings involving environmental assessment matters, including cases arising under CEAA, which forms the statutory subject-matter of the within appeal.

(C) CELA's Law Reform Activities: Environmental Assessment

9. Aside from its public interest environmental litigation, CELA also has a lengthy history of undertaking law reform and community education activities intended to promote environmental protection through the legal system. In fact, since 1970, CELA lawyers, researchers, and board members have produced over 650 legal briefs and

publications to promote law reform at the international, national and provincial level. In this regard, CELA staff lawyers, researchers, and board members have published or contributed to numerous books, articles, and newsletters respecting issues related to the subject-matter of this appeal, such as environmental assessment requirements and public participatory rights in environmental decision-making.

10. For example, when CEAA was first introduced and debated in the early 1990s, CELA prepared and filed a number of detailed written submissions (and testified before a parliamentary committee) on the substantive content of CEAA. These submissions included the following briefs:

- a) Craig Boljkovac & Karen Campbell, “Comments on two draft Regulations under Bill C-13, the Proposed Canadian Environmental Assessment Act” (February 1992) CELA Brief No. 207.
- b) Richard D. Lindgren, “Submission of CELA regarding Bill C-13 (*Canadian Environmental Assessment Act*): update” (March 1992) CELA Brief No. 199a.
- c) Richard D. Lindgren, “Preliminary Response of the Canadian Environmental Law Association to the Legislative Committee on Proposed Amendments to Bill C-13 (the Canadian Environmental Assessment Act)” (March 13, 1992) CELA Brief No. 199.
- d) Kathleen Cooper, “Reforming Federal Environmental Assessment: Submission of the Environmental Assessment Caucus on the *Canadian Environmental Assessment Act*, Bill C-78” (November 1990) CELA Brief No. 188.
- e) Toby Vigod, “Submission to the Special Committee on Bill C-78, the Proposed *Canadian Environmental Assessment Act*” (November 1990) CELA Brief No. 187.

11. In addition to making submissions during the development and passage of CEAA, CELA was also actively engaged in reviewing and responding to the 2003 amendments

to CEAA, including the public participation amendments to section 21 which are the central focus of the within appeal.

12. For example, in January 2002, CELA submitted detailed written submissions on Bill C-19 (*An Act to Amend the Canadian Environmental Assessment Act*, 1st Sess., 37th Parl., 2001) to the House of Commons Standing Committee on the Environment and Sustainable Development (the Committee), which had been assigned the bill for consideration after Second Reading. Among other things, CELA's submissions made numerous references to the importance of involving the public in the federal environmental assessment process. Attached to this my affidavit and marked as Exhibit A is a true copy of the cover page and table of contents of CELA's written submissions.

13. Similarly, on May 7, 2002, CELA staff testified before the Committee in relation to the proposed amendments to CEAA. Attached to this my affidavit and marked as Exhibit B is a true copy of the *Minutes of Proceedings* of the House of Commons Standing Committee on the Environment and Sustainable Development (No. 70, May 7, 2002).

14. In September 2002, Parliament prorogued and thereafter the Minister of the Environment tabled Bill C-9 (*An Act to Amend the Canadian Environmental Assessment Act*, 2nd Sess., 37th Parl., 2002) in the House of Commons. Other than the bill number, Bill C-9 was identical in form and content to Bill C-19. Attached to this my affidavit and marked as Exhibit C is a true copy of the title page and first page of Bill C-9.

15. During "clause-by-clause" consideration of Bill C-9, the Parliamentary Secretary to the Minister of the Environment specifically cited CELA's submissions as part of the Minister's motivation for moving an amendment to section 21:

Mrs. Karen Redman: Mr. Chair, I would move [motion number] G-12. This amendment follows through on a commitment made by the minister to provide an **explicit opportunity for public consultation on scoping decisions during the comprehensive study process. It responds to the concerns raised by the Canadian Environmental Law Association, as well as other witnesses we had**

before us. The consultation will occur prior to the Minister of Environment's making the decision on whether to continue the assessment as a comprehensive study or to review the project through a mediator [or] review panel.

The Chair: Thank you.

(Amendment agreed to [See *Minutes of Proceedings*])

Attached to this my affidavit and marked as Exhibit D is a true copy of the relevant excerpt of the *Evidence* of the House of Commons Standing Committee on the Environment and Sustainable Development for December 9, 2002 at 1720 hours, and attached and marked as Exhibit E is a true copy of relevant excerpt of the *Minutes of Proceedings* of the House of Commons Standing Committee on the Environment and Sustainable Development (No. 9, December 9, 2002).

16. In addition to the above-noted submissions and briefs regarding CEAA and the 2003 amendments to the Act, CELA lawyers, researchers, and board members have also written a number of other publications and briefs related to environmental assessment issues, including:

- a) Richard D. Lindgren et al., “Federal Environmental Assessment Briefing Note: Weakening Canada’s Environmental Protection Laws” (March, 2009) CELA Brief No. 645 (drafted by West Coast Environmental Law).
- b) Richard D. Lindgren & Kaitlyn Mitchell, “Response to Draft Regulations under the *Environmental Assessment Act* for Public Transit Projects and the Draft Transit Priority Statement” (May 12, 2008) CELA Brief No. 611.
- c) Theresa McClenaghan, “The Approvals Process for New Reactors in Canada: Comments to the Canadian Nuclear Safety Commission and Canadian Environmental Assessment Agency” (March 2008) CELA Brief No. 607.
- d) Anastasia Lintner (Sierra Legal Defence Fund) & Richard D. Lindgren (CELA), et al., “Proposed Environmental Assessment Changes for Ontario’s Waste Sector” (March 2007) CELA Brief No. 567.

- e) Michelle Swenarchuk & Richard D. Lindgren, “Letter to Ministry of Environment Regarding O. Reg. 276/06 Exempting the Integrated Power System Plan from Environmental Assessment” (June 2006) CELA Brief No. 540.
- f) Hugh J. Benevides, “Real Reform Deferred: Analysis of Recent Amendments to the *Canadian Environmental Assessment Act*” (2004) 13 J. Envtl. L. & Prac. 195.
- g) Alan D. Levy, “A Review of Environmental Assessment in Ontario” (2002) 11 J. Envtl. L. & Prac. 173.
- h) Alan D. Levy, “Scoping Issues and Imposing Time Limits by Ontario's Environment Minister at Environmental Assessment Hearings - A History and Case Study” (2001) 10 J. Envtl. L. & Prac. 147.
- i) Richard D. Lindgren, “Submission of the Canadian Environmental Law Association to the Ministry of the Environment regarding proposed guidelines under the *Environmental Assessment Act* (EBR Registry nos. PA7E0001, PA7E0002, PA01E001)” (March 2001), CELA Brief No. 398.
- j) Theresa McClenaghan, “Comments by CELA and Citizens' Environment Alliance of Southwestern Ontario to Legislative and Regulatory Affairs, Canadian Environmental Assessment Agency regarding the *Canada Port Authority Environmental Assessment Regulations*” (March 3, 1999) CELA Brief No. 365.
- k) Richard D. Lindgren, “Comments to MOEE regarding the draft “Timeline Regulation” proposed under the [Ontario] *Environmental Assessment Act*” (September 1997) CELA Brief No. 327.
- l) Richard D. Lindgren, “Cost Awards in Environmental Assessment Hearings: Principles, Practice and Procedure” (October 1996) CELA Brief No. 300.
- m) Richard D. Lindgren, “Submissions to the Standing Committee on Social

Development regarding Bill 76 - Environmental Assessment and Consultation Improvement Act, 1996” (July 1996) CELA Brief No. 291.

- n) Toby Vigod, “Submissions Regarding Proposed CEAA Regulations” (December 1993) CELA Brief No. 232.
- o) Richard D. Lindgren, “Comparison of Federal and Ontario Environmental Assessment Statutes” CELA Brief No. 215.
- p) Richard D. Lindgren, “Submissions to the Environmental Assessment Advisory Committee Regarding Procedures for Identifying Environmental Resources” (July 30, 1992) CELA Brief No. 209.
- q) Kathleen Cooper & Toby Vigod et al., “Response to Discussion Paper ‘Toward Improving the Environmental Assessment Program in Ontario’” (April 1991) CELA Brief No. 195.
- r) Toby Vigod & Zen Makuch, “Submission to the Ontario Environmental Assessment Board in Response to: ‘The Hearing Process: Discussion Papers on Procedural and Legislative Change’” (November 1990) CELA Brief No. 186.
- s) Maureen Turner, “Application of the Federal *Environmental Assessment and Review Process Guidelines Order* to the National Energy Board Natural Gas Export Licensing” (September 1990) CELA Brief No. 184.
- t) Toby Vigod & Kathleen Cooper, “Reforming Environmental Assessment: The Environmental Assessment Program Improvement Project (“EAPIP”)” (February 1990) CELA Brief No. 178.
- u) Steven Shrybman, “Submissions of the Canadian Environmental Law Association: Reforming Federal Environmental Assessment” (December 1987) CELA Brief No. 154.
- v) Robert Gibson & Grace Patterson, “Environmental Assessment in Canada”

(February 1984) CELA Brief No. 118.

- w) Grace Patterson, “The Future of Environmental Assessment in Canada: The Ontario Public Interest Context” (October 1983) CELA Brief No. 116.
- x) Grace Patterson, “[Ontario] *Environmental Assessment Act* Hearings: Preparation and Conduct of the Intervenor’s Case” (October 1981) CELA Brief No. 101.
- y) Joseph F. Castrilli, “Environmental Impact Assessment: The Law As It Is and As It Should Be (No. 2)” (May 1974) CELA Brief No. 25.
- z) David Estrin et al., “The Need for Public Participation in Ontario’s Environmental Planning” (November 1971) CELA Brief No. 2.

17. In addition, CELA has produced a considerable number of briefs and publications concerning the importance of public participation in environmental decision-making.

18. Because of CELA’s expertise in matters of environmental law and policy, CELA and its staff have been invited to participate on numerous international advisory committees and task forces on environmental protection, including the following:

- a) Advisory Committee to the Council of Great Lakes Governors on Implementation of the Great Lakes – Saint Lawrence River Basin Agreement (2009);
- b) Advisory Committee to the Council of Great Lakes Governors in information and data collection under the Great Lakes – Saint Lawrence River Basin Agreement (2009);
- c) Great Lakes Binational Toxics Strategy Consultation Group (2007-2008);
- d) Sound Management of Chemicals Initiative of the Commission for Environmental Cooperation (2005 & 2007);
- e) Advisory Committee to the Council of Great Lakes Governors on Goals and

Objectives for the Great Lakes Water Conservation Strategy (2007);

f) Binational Review of the Great Lakes Water Quality Agreement (2006-2007);

g) Advisory Committee to the Council of Great Lakes Governors on the Great Lakes Water Management Initiative (2001-2005);

h) Canadian Delegation to the Stockholm Convention on Persistent Organic Pollutants (2004-2006);

i) Intergovernmental Negotiating Committee meetings leading up to the Stockholm Convention on Persistent Organic Pollutants (1998-2004); and

j) Great Lakes Science Advisory Board to the International Joint Commission (1993-1996).

19. CELA has also been asked to participate on a number of federal and provincial advisory committees and task forces on environmental protection, including issues related specifically to environmental assessment. For example, CELA staff members have served on and/or given testimony before the following bodies:

a) Ontario Minister of the Environment's Environmental Assessment Advisory Panel – Executive Group. (June 2004-March 2005; released a two-volume report on legislative, regulatory and administrative reforms to Ontario's EA process);

b) Appearances before Parliamentary committees to give testimony respecting the *Canadian Environmental Assessment Act* (CEAA);

c) The Ontario Environmental Review Tribunal Client Advisory Committee (formerly the Ontario Environmental Assessment Board Client Advisory Committee) (ongoing; general mandate is to review/revise ERT rules of practice to ensure fairness, accessibility and accountability during the EA hearing process);

- d) The Canadian Environmental Assessment Research Council (CEARC), an advisory body established by the federal Minister of the Environment and the Federal Environmental Assessment Review Office, during 1984 and 1985;
 - e) *Environmental Contaminants Act* Advisory Committee, a minister's advisory committee where environmental assessment principles were discussed with respect to contaminants evaluation; and
 - f) Various other bodies concerned with making recommendations and implementing law and policy on environmental assessment, land-use planning and public participation in Ontario, including the Environmental Assessment Advisory Committee (EAAC).
20. CELA has participated in activities with non-governmental organizations in Canada concerned with environmental assessment. Related efforts include:
- a) participation in the Canadian Environmental Network's Environmental Planning and Assessment Caucus, including the period leading up to the CEAA's enactment in 1992, and when amendments to the CEAA were tabled and considered by Parliament in 2003;
 - b) participation in the Canadian Environmental Network's Harmonization Working Group that commented extensively on the impact of the Canada-Wide Accord on Environmental Harmonization (January, 1998) and its Sub-Agreement on Environmental Assessment; and
 - c) participation in the *Fisheries Act* Working Group of the Canadian Environmental Assessment Network that examined, *inter alia*, federal proposals to remove the *Fisheries Act* "triggers" from the CEAA's *Law List Regulations*.
21. CELA often works in partnership with non-governmental organizations and others to pursue a wide variety of shared environmental objectives, sometimes joining coalitions and networks for that purpose. For example, CELA was formerly a member of

the Appellant MiningWatch Canada. However, CELA ended its membership in MiningWatch Canada in March 2007. Attached as Exhibit F to this my affidavit is a true copy of CELA's email advising MiningWatch of this decision.

22. At the present time, CELA is not a member of MiningWatch Canada, and CELA had no direct or indirect involvement with the Appellant's judicial review application in the instant case prior to the release of Justice Martineau's decision in September, 2007.

23. CELA sought leave to intervene in the Federal Court of Appeal's proceedings in the present case. On March 28, 2008, Justice Sharlow of that Court refused to grant leave to CELA.

24. At the time of its proposed intervention in the Federal Court of Appeal, CELA was not a member of a broader coalition of proposed Interveners, which is now currently the case with respect the proposed intervention before this Honourable Court in this appeal. In addition, the Federal Court of Appeal did not have the opportunity to review CELA's intended submissions before determining the intervention motion. In contrast, a true copy of the proposed Interveners' draft submissions before this Honourable Court is attached as Exhibit G to this Affidavit. Finally, having now had the opportunity to read the Federal Court of Appeal's decision, and considering its serious environmental implications for CEAA "projects" across Canada and across industrial sectors, I believe that it is even more important and appropriate for groups with knowledge and expertise regarding the matters at issue to intervene in order to assist this Honourable Court in rendering its decision.

(D) Public Interest Nature of the Issues on Appeal

25. In CELA's view, the resolution of the statutory interpretation questions which arise in this appeal will have profound and far-ranging implications which transcend the interests of the immediate parties to the appeal, and which will fundamentally affect the implementation of CEAA in relation to numerous types of "projects" across Canada.

26. In particular, the outcome of the appeal will effectively determine the nature, extent and enforceability of the Canadian public's participatory rights provided under

CEAA, particularly in relation to project-scoping determinations under section 21 of CEAA.

27. In addition, the outcome of the appeal will establish whether – or to what extent – “Responsible Authorities” are free to piecemeal (or split) “projects” so as to sidestep or avoid mandatory types of environmental assessment prescribed under CEAA (i.e. Comprehensive Study), or to substitute less rigorous forms of environmental assessment available under CEAA (i.e. screening-level assessments).

28. In both instances, the Court’s disposition of the appeal will greatly affect the public’s ability to utilize CEAA to achieve the stated objectives of the legislation, including environmental sustainability, integrated and coordinated decision-making, and timely and meaningful public participation throughout the environmental assessment process.

29. While CELA has no direct interest in the specific outcome of the appeal insofar as it may affect the Red Chris Mine, CELA is deeply concerned about the potential impact of the Court’s judgment on the ability of CELA’s client community (and Canadians at large) to rely upon and utilize CEAA’s provisions regarding project-scoping and public participation.

(E) Focus on the Proposed Intervention

30. As a public interest law group with almost 40 years’ experience in matters relating to environmental assessment and public participatory rights, CELA is well positioned to provide useful and relevant assistance to this Honourable Court by way of written and oral submissions on the issues on appeal.

31. The public interest perspective of CELA on the issues on appeal is unique, broader and materially different from those represented by the Appellant and Respondents in this appeal.

32. If granted leave to intervene in the appeal, CELA and other proposed Interveners intend to make written and oral submissions that are different in substance and in scope

from those made by the other parties, and that are not duplicative of the submissions of the Appellant.

33. More specifically, as reflected in the proposed Intervenor's draft submissions (Exhibit G to this Affidavit), CELA and the other proposed Intervenor intend to focus their submissions on the following three matters:

- a) the need to interpret section 21 of CEAA in a manner that properly reflects the importance of public participation in the environmental assessment processes, in light of: (i) the value and benefits of public participation in environmental assessments, (ii) international law principles and values regarding environmental assessments, (iii) public rights in the environment that justify a strict interpretation of legislative provisions designed to protect such public rights, and (iv) the absence of adequate opportunities for public engagement in screening-level assessments under CEAA;
- b) the need to interpret CEAA in a manner that recognizes public rights in the environment and the corresponding duties upon the government to protect those rights; and
- c) the need to interpret section 21 of CEAA in a manner that ensures environmental sustainability by: (i) preventing a piecemeal approach or project-splitting by Responsible Authorities under CEAA, (ii) entrenching international law's recognition of the need for environmental assessments that are accessible, comprehensive, and accountable, and (iii) applying the precautionary principle of international law.

34. Since CELA and the other proposed Intervenor intend to undertake a focused intervention that does not address the particulars of the Red Chris Mine, it is my opinion that granting the Applicants leave to intervene in the appeal will not cause undue delay or injustice to the other parties.

35. As mentioned above, CELA is jointly seeking leave to intervene along with five other public interest environmental organizations with a broad range of relevant expertise, backgrounds, and perspectives. This group intends to collectively address a number of complex legal and policy issues not addressed by the other parties. The six proposed Interveners also intend to bring to this Honourable Court's attention relevant aspects of the extensive international law context within which section 21 of the CEAA must be interpreted.

36. The proposed Interveners' submissions on the foregoing matters will provide the Court with a comprehensive review and analysis of the nationally significant issues that it must decide in this appeal. The proposed Interveners are committed to ensuring that their submissions are not duplicative, and that they are as concise as possible. However, due to the number of groups involved, the number of complex legal and policy issues at play, and the extensive nature of the international law regime that is relevant to the present appeal, the proposed Interveners' intended written submissions will exceed the 20 page limit for an intervener's factum in this Honourable Court.

37. Therefore, if granted leave to intervene, CELA and the other proposed Interveners respectfully request the opportunity to file a factum longer than 20 pages, and the proposed Interveners undertake to comply with terms and conditions imposed by the Court in an Order granting leave to intervene. The proposed Interveners seek the following terms and conditions in an Order granting leave to intervene:

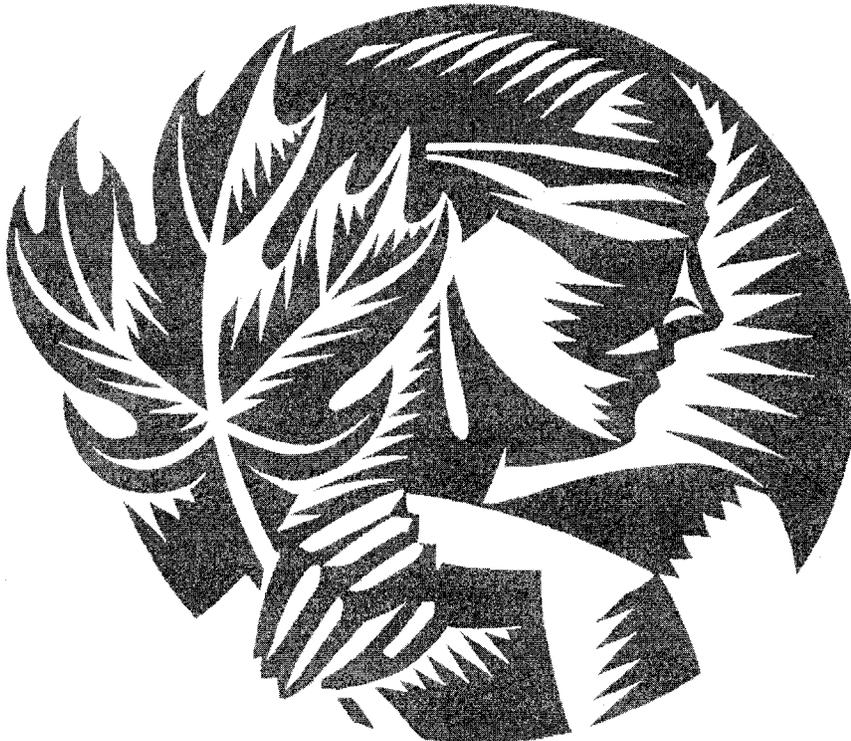
- a) a joint factum, not exceeding 30 pages, will be served and filed by the proposed Interveners within eight weeks after being granted leave to intervene;
- b) the proposed Interveners will make oral submissions at the hearing of the appeal that do not exceed 20 minutes;
- c) the proposed Interveners will not supplement the appeal record, file additional affidavits, or raise new issues in the appeal; and

This is Exhibit A referred to in the
affidavit of Theresa McClenaghan
sworn before me, this 7
day of May 2009
Kathryn Mitchell
A COMMISSIONER FOR TAKING AFFIDAVITS
(Kathryn Mitchell)

**Submission of the
Canadian Environmental Law Association
on Bill C-19: An Act to Amend the
Canadian Environmental Assessment Act**

*Submitted to the House of Commons Standing Committee
on Environment and Sustainable Development*

*Report No. 414
ISBN No. 1-894158-55-5*



January 2002

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

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Français Close

MINUTES OF PROCEEDINGS

Meeting No. 70

Tuesday, May 7, 2002

The Standing Committee on Environment and Sustainable Development met at 9:12 a.m. this day, in Room 269, West Block, the Chair, Charles L. Caccia, presiding.

Members of the Committee present: Roy Bailey, Charles L. Caccia, Karen Kraft Sloan, Karen Redman, Julian Reed, H el ene Scherrer, Alan Tonks.

In attendance: From the Library of Parliament: Kristen Douglas and Tim Williams, Analysts.

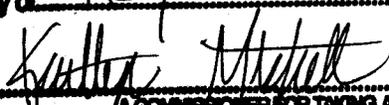
Witnesses: From the Canadian Bar Association: Magdalena A. Muir, Member, National Environmental Law Section; Tamra L. Thomson, Director, Legislation and Law Reform. *From the Canadian Environmental Law Association:* Paul Muldoon, Executive Director and Counsel; Hugh Benevides, Principal Researcher.

Pursuant to its Order of Reference of Monday, June 4, 2001, the Committee resumed consideration of Bill C-19, An Act to amend the Canadian Environmental Assessment Act (*See Minutes of Proceedings, Tuesday, December 4, 2001, Meeting No. 56*).

The witnesses made opening statements and answered questions.

At 11:02 a.m., the Committee adjourned to the call of the Chair.

Eugene Morawski
Clerk of the Committee

This is Exhibit B referred to in the
affidavit of Theresa McClenaghan
sworn before me, this 7
day of May 2002

A COMMISSIONER FOR TAKING AFFIDAVITS
(Kathryn Mitchell)

C-9

C-9

Second Session, Thirty-seventh Parliament,
51 Elizabeth II, 2002

Deuxième session, trente-septième législature,
51 Elizabeth II, 2002

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-9

PROJET DE LOI C-9

An Act to amend the Canadian Environmental Assessment
Act

Loi modifiant la Loi canadienne sur l'évaluation
environnementale

First reading, October 9, 2002

Première lecture le 9 octobre 2002

NOTE

Printed, pursuant to Order made October 7, 2002, in the same
form as Bill C-19 of the First Session of the Thirty-seventh
Parliament, at date of prorogation.

NOTE

Imprimé, conformément à un ordre adopté le 7 octobre 2002, dans
le même état où était le projet de loi C-19 de la première session de
la trente-septième législature à la date de prorogation.

This is Exhibit.....^C.....referred to in the
affidavit of.....Theresa McCloskey.....
sworn before me, this.....⁷.....
day of.....May.....2009.....

Kathryn Mitchell
A COMMISSIONER FOR TAKING AFFIDAVITS
Kathryn Mitchell

THE MINISTER OF THE ENVIRONMENT

LE MINISTRE DE L'ENVIRONNEMENT

RECOMMENDATION

Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to amend the Canadian Environmental Assessment Act*".

SUMMARY

This enactment implements the results of the statutory review of the *Canadian Environmental Assessment Act* conducted by the Minister of the Environment. It establishes a Federal Environmental Assessment Coordinator for projects that undergo screening or comprehensive study-level assessment. It modifies the comprehensive study process to prevent a second environmental assessment of a project by review panel, while extending the participant funding program to comprehensive studies. This enactment expands existing regulation-making authority for projects on federal lands, provides a new use for class screening reports as a replacement for project-specific assessments and makes follow-up programs mandatory for projects after a comprehensive study or review panel.

To provide Canadians with access to information about the environmental assessment of specific projects, this enactment creates the Canadian Environmental Assessment Registry. It requires that the Canadian Environmental Assessment Agency establish and lead a quality assurance program, promote and monitor compliance and assist relevant parties in building consensus and resolving disputes.

All parliamentary publications are available on the
Parliamentary Internet Parlementaire
at the following address:

<http://www.parl.gc.ca>

RECOMMANDATION

Son Excellence la gouverneure générale recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée « *Loi modifiant la Loi canadienne sur l'évaluation environnementale* ».

SOMMAIRE

Le texte met en oeuvre les résultats de l'examen de la *Loi canadienne sur l'évaluation environnementale* qu'a mené le ministre de l'Environnement aux termes de celle-ci. Il crée le poste de coordonnateur fédéral de l'évaluation environnementale de projets faisant l'objet d'une évaluation au niveau de l'examen préalable ou de l'étude approfondie. Il modifie le processus d'étude approfondie pour empêcher une deuxième évaluation d'un projet par une commission d'examen, tout en étendant aux études approfondies le programme d'aide financière aux participants. Il étend le pouvoir de réglementation aux projets situés sur le territoire domaniale, prévoit une nouvelle utilisation des rapports d'examen préalable par catégorie en remplacement des évaluations de chaque projet et rend obligatoire les programmes des projets après une étude approfondie ou un examen par une commission.

Afin d'assurer aux Canadiens et aux Canadiennes l'accès à l'information visant l'évaluation environnementale des projets particuliers, le texte crée le registre canadien d'évaluation environnementale. Il prévoit que l'Agence canadienne d'évaluation environnementale doit mettre en place et mener un programme d'assurance de la qualité, favoriser et surveiller la conformité et aider les parties prenantes à réaliser un consensus et à régler leurs différends.

Toutes les publications parlementaires sont disponibles sur le
réseau électronique « Parliamentary Internet Parlementaire »
à l'adresse suivante:

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CANADA

Standing Committee on Environment and Sustainable Development

NUMBER 009 1 2nd SESSION 1 37th PARLIAMENT

EVIDENCE

Monday, December 9, 2002

[Recorded by Electronic Apparatus]

The Chair: Then we'll move to clause 13 and G-12. Madam Redman.

↙ ↗

Mrs. Karen Redman: Mr. Chair, I would move G-12. This amendment follows through on a commitment made by the minister to provide an explicit opportunity for public consultation on scoping decisions during the comprehensive study process. It responds to the concerns raised by the Canadian Environmental Law Association, as well as other witnesses we had before us. The consultation will occur prior to the Minister of Environment's making the decision on whether to continue the assessment as a comprehensive study or to review the project through a mediator review panel.

Ⓢ ↗ (1720)

↙ ↗

The Chair: Thank you.

(Amendment agreed to [See *Minutes of Proceedings*])

This is Exhibit D referred to in the affidavit of Theresa McLennahan sworn before me, this 7 day of May 2009.

Kathryn Mitchell
A COMMISSIONER FOR TAKING AFFIDAVITS
(Kathryn Mitchell)

This is Exhibit.....8.....referred to in the
affidavit of Theresa McClenaghan
sworn before me, this.....7.....
day of.....May.....2009

KATHLEEN MITCHELL
COMMISSIONER FOR TAKING AFFIDAVITS
(Kathlyn Mitchell)

MINUTES OF PROCEEDINGS

Meeting No. 9

Monday, December 9, 2002

The Standing Committee on Environment and Sustainable Development met at 3:40 p.m. this day, in Room 308, West Block, the Chair, The Hon. Charles L. Caccia, presiding.

Members of the Committee present: Bernard Bigras, The Hon. Charles L. Caccia, Joe Comartin, Nancy Karetak-Lindell, Karen Kraft Sloan, Rick Laliberte, Gary Lunn, Karen Redman, Julian Reed, Andy Savoy, Alan Tonks.

Acting Member present: Rodger Cuzner for H el ene Scherrer.

In attendance: From the Research Branch of the Library of Parliament: Kristen Douglas and Tim Williams, analysts.

Witnesses: From the Canadian Environmental Assessment Agency: Robert G. Connelly, Vice-President, Policy Development; Heather Smith, Senior Counsel, Legal Services.

Pursuant to its Order of Reference of Monday, October 7, 2002, the Committee resumed consideration of Bill C-9, An Act to amend the Canadian Environmental Assessment Act (*See Minutes of Proceedings, Thursday, November 7, 2002, Meeting No. 2*).

The Committee resumed Clause-by-Clause consideration of the Bill.

...

On Clause 13,

Karen Redman moved, -- That Bill C-9, in Clause 13, be amended

(a) by replacing lines 29 to 37 on page 13 with the following:

"Public consultation

21. (1) Where a project is described in the comprehensive study list, the responsible authority shall ensure public consultation with respect to the proposed scope of the project for the purposes of the environmental assessment, the factors proposed to be considered in its assessment, the proposed scope of those factors and the ability of the comprehensive study to address issues relating to the project.

Report and recommendation

(2) After the public consultation, as soon as it is of the opinion that it has sufficient

information to do so, the responsible authority shall

(a) report to the Minister regarding

(i) the scope of the project, the factors to be considered in its assessment and the scope of those factors,"

(b) by replacing lines 8 to 10 on page 14 with the following:

"authority must report under paragraph 21(2)(a) and the recommendation of the responsible authority under paragraph 21(2)(b), shall, as the"

(c) by replacing line 30 on page 14 with the following:

"under subsection 21(1) and section 22, to participate in the"

The question being put on the amendment, it was adopted.

...

At 5:25 p.m., the Committee adjourned to the call of the Chair.

Eugene Morawski
Clerk of the Committee

Subject: Membership renewal
Date: Tue, 20 Mar 2007 14:20:33 -0400
From: "Ramani Nadarajah" <NadarajR@lao.on.ca>
To: <susan@miningwatch.ca>

Dear Susan,

Ken Traynor forwarded a copy of Mining Watch's request for membership renewal to my attention. As you may be aware, CELA's International Programme ended as of last December. Consequently, mining is not part of our core programme area at this point in time. CELA, therefore, will not be renewing its membership this year with Mining Watch. However, should we become involved with mining issues in the future we will definitely renew our membership.

Regards,

Ramani Nadarajah
Acting Executive Director

This is Exhibit F referred to in the
affidavit of Theresa McClennahan
sworn before me, this 7
day of May 2009.

A COMMISSIONER FOR TAKING AFFIDAVITS

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

MININGWATCH CANADA

**APPELLANT
(Respondent)**

and

**MINISTER OF FISHERIES AND OCEANS,
MINISTER OF NATURAL RESOURCES, and
ATTORNEY GENERAL OF CANADA**

**RESPONDENTS
(Appellants)**

BETWEEN:

MININGWATCH CANADA

**APPELLANT
(Respondent)**

and

**RED CHRIS DEVELOPMENT COMPANY LTD. and
BCMETALS CORPORATION**

**RESPONDENTS
(Appellants)**

**FACTUM OF THE INTERVENERS CANADIAN ENVIRONMENTAL
LAW ASSOCIATION, WEST COAST ENVIRONMENTAL LAW, SIERRA
CLUB OF CANADA, QUÉBEC ENVIRONMENTAL LAW CENTRE, FRIENDS
OF THE EARTH, AND INTERAMERICAN ASSOCIATION FOR
ENVIRONMENTAL DEFENSE**

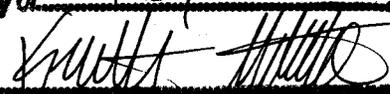
This is Exhibit.....G.....referred to in the
affidavit of Theresa McClenaghan
sworn before me, this 7
day of May 2009

A COMMISSIONER FOR TAKING AFFIDAVITS
(Kathryn Mitchell)

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