

DELIVERED BY EMAIL

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October 11, 2018

Re: Bill 4, Cap and Trade Cancellation Act, 2018
EBO Number: 013-3738

Please accept this submission of the Canadian Environmental Law Association on Bill 4, *Cap and Trade Cancellation Act, 2018*.

Ontario's climate change plan must meet stringent greenhouse gas reduction targets commensurate with the scope of the threat of climate change and in line with our international commitments. Every decision about the design of the new climate change plan must reflect the urgency of the climate crisis.

Climate change is the biggest public health threat that Ontarians face and will have disproportionate impacts on low-income and vulnerable people. Ontario's climate change plan must focus on measures to allow low-income people to participate in the transition to a low-carbon economy and to assist vulnerable communities to adapt to climate change.

A. Background on Canadian Environmental Law Association

The Canadian Environmental Law Association ("CELA") is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment. As an Ontario legal aid clinic, CELA's top priority is to represent low-income individuals and communities. CELA is a founding member of the Low-Income Energy Network ("LIEN").

B. CELA's Recommendations on Bill 4

(a) Opposition to cancellation of the cap and trade program

CELA opposes the government's decision to cancel the cap and trade program. Responding to climate change is necessarily multi-faceted. Greenhouse gas ("GHG") pricing is an efficient tool that assists government in meeting its climate change commitments and transitioning to a low-carbon economy. It corresponds to the polluter pays principle and recognizes the rising costs of

failing to act on climate change. Governments should be using all tools at their disposal to address the climate change crisis.

CELA reiterates its concern that the cap and trade program was cancelled through Ontario Regulation 386/18 without being posted to the Environmental Registry for public comment. Our concerns are outlined in detail in our *Environmental Bill of Rights* application for review, submitted on July 18, 2018.¹

(b) Ontario's new climate change mitigation plan

Framework of Climate Change Plan

Bill 4 provides almost no detail for a new climate change mitigation plan.

A new climate change mitigation plan should be based on the following key principles, which should be enshrined in the Act. Several of these principles are addressed in more detail below:

- 1- The climate change plan should focus on environmental justice and emphasize mitigation measures for low-income and vulnerable communities.
- 2- GHG reduction targets should be stringent and entrenched in law.
- 3- Without GHG pricing, the backbone of Ontario's climate change plan must be regulation:
 - a. Ontario must establish regulations to set emissions standards and pollution limits for large emitters.
 - b. Ontario must establish mandatory efficiency standards for buildings, appliances and equipment.
- 4- The climate change plan must include transitional incentives and supports for sectors contributing most to GHG emissions.
- 5- The climate change mitigation plan requires stable and adequate funding in the Ontario budget.

¹ Jacqueline Wilson and Richard D. Lindgren, "Application for Review to the Ministry of the Environment, Conservation and Parks", 18 July 2018 < http://www.cela.ca/sites/cela.ca/files/EBR-Application-for-Review_cap-and-trade.pdf>.

Environmental justice

Bill 4 should be amended to recognize the impact of climate change on low-income and vulnerable communities. Ontario should commit to targeted mitigation and adaptation programs for those communities.

Income inequality and poverty are very serious problems in Canada.² For example, shelter allowances for Ontario Works recipients are inadequate. In 2017, the maximum shelter allowance for a single parent with two children living in a two bedroom apartment was \$686 regardless of where the family lived in Ontario, while average rent for a two bedroom apartment across the province was \$1208.³

The link to climate change is simple: low-income communities have contributed least to GHG emissions, but will be impacted most by climate change.⁴

The Intergovernmental Panel on Climate Change identifies climate change equity as having three dimensions: intergenerational (fairness between generations), international (fairness between states), and national (fairness between individuals).⁵

Low-income people want to be part of the solution to climate change. However, as Portland, Oregon's Climate Action Plan 2015 correctly observes, low-income populations have been under-served by programs and investments in the past, and are under-represented in climate change policy:

Communities of color and low-income populations have historically been under-served by programs and investments and under-represented in decision making on climate policy. Lack of low-carbon, safe transportation options, inefficient housing and the inability to afford healthy food are examples of disparities experienced by these communities that result in fewer benefits from climate action opportunities. These inequities primarily result from ongoing institutional racial bias and historical discriminatory practices that have resulted in the inequitable distribution of resources and access to opportunities.⁶

² Boardbent Institute, "Towards a More Equal Canada" (October 2012), online (pdf): *YWCA Canada* <https://ywacacanada.ca/data/research_docs/00000292.pdf>.

³ Ontario, Canada Mortgage and Housing Corporation, "Rental Market Survey Report", (2017) online: <https://eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/cmhc/pubsandreports/esub/_all_esub_pdfs/64507_2017_a01.pdf?sv=2017-07-29&ss=b&srt=sco&sp=r&se=2019-05-09T06:10:51Z&st=2018-03-11T22:10:51Z&spr=https,http&sig=0Ketq0sPGtnokWOe66BpqquDjVgBRH9wLOCg8HfE3w%3D>.

⁴ Marc Lee, "Fair and Effective Carbon Pricing: Lessons from BC" (Revised January 2013), online (pdf): *Canadian Centre for Policy Alternatives* <https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2011/02/CCPA-BC_Fair_Effective_Carbon_FULL_2.pdf>.

⁵ Marc Fleurbaey et al. *Fifth Assessment Report (AR5)*, IPCC, 2014 online <<http://www.ipcc.ch/activities/activities.shtml#.UMzUkuB2MiA>>.

⁶ Multnomah County "Local Strategies to Address Climate Change" (June 2015) at 43, online (pdf): *City of Portland* <<https://www.portlandoregon.gov/bps/article/531984>>.

Climate change programs must be specifically designed to include low-income people. For instance, building retrofit programs should include mandatory, minimum thresholds for employing low-income people.

The government of Ontario should incorporate and improve subsection 7(3) of the *Climate Change Mitigation and Low-Carbon Economy Act*, which requires the climate change plan to “consider the impact of the regulatory scheme on low-income households and must include actions to assist those households”. Bill 4 should establish minimum requirements for spending in low-income and vulnerable communities. We recommend California’s model, where 35% of all climate change spending is required by law to be spent on low-income and vulnerable communities.⁷

Recommendation 1: Bill 4 should be amended to require that at least 35% of climate change mitigation funds be spent in low-income and vulnerable communities.

Greenhouse Gas Reduction Targets

Subsection 3(1) of Bill 4 creates a mandatory duty on government to establish targets for the reduction of GHG emissions. The recent International Panel on Climate Change report made it very clear that global climate change efforts must limit climate change to 1.5 °C to avoid catastrophic consequences⁸. Ontario must demonstrate how its target will assist Canada in meeting its international commitments and the overall international goal of limiting climate change to 1.5 °C.

The GHG targets should be based on a 1990 baseline. The targets should be scientifically-based and transparent. The targets should be included in the Act, along with mechanisms to make the targets enforceable.

Recommendation 2: Ontario’s GHG reduction targets should be entrenched in law and enforceable, based on a 1990 baseline, transparent, and stringent enough to assist Canada in meeting its international commitments.

Progress Reports

Section 5 should be amended to require annual progress reports to be presented to the Legislative Assembly. The current proposal to make progress reports “on a regular basis” and to make the reports available on a public website is insufficient to allow government and public scrutiny of Ontario’s progress to meet the GHG reduction targets.

⁷ US, AB 1550, *Greenhouse Gases: Investment Plan: Disadvantaged Communities, 2015-2016, Cal*, 2016.

⁸ “Global Warming of 1.5 °C”, Intergovernmental Panel on Climate Change, 6 October 2018, online (pdf): *IPCC* <http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf>.

The progress reports should evaluate all climate change programs, report on GHG emissions reductions that result from the programs, and report on co-benefits from the programs.

Recommendation 3: Section 5 should require detailed progress reports on the climate change mitigation plan to be prepared annually and presented to the Legislative Assembly.

Recommendation 4: The annual progress reports on the climate change mitigation plan should provide detail on the amount of funding provided to each program, the GHG emissions reductions associated with each program, and co-benefits associated with each program.

Climate Change Mitigation Plan Recommendations

CELA is providing the following preliminary recommendations on programs that should be included in the climate change plan. The plan must take a whole-of-government approach, which recognizes that climate change mitigation action will be necessary across government. We look forward to further consultation on the details of the climate change plan.

1. A GHG reduction fund should be established and include criteria that emphasizes programs designed to assist low-income and vulnerable communities

The criteria for a GHG reduction fund should be carefully designed to ensure that low-income and vulnerable community programs are included. A cost-effectiveness test for GHG emissions reductions would be ineffective in accounting for the impacts of climate change on low-income and vulnerable communities. It would likely act as a deterrent to the creation and delivery of appropriate and accountable programs.

A cost-effectiveness paradigm would favour programs with the fewest and least complicated barriers to delivery. The delivery of programs to low-income and vulnerable communities, and remote communities, often require that the programs overcome significant additional barriers to be successful.

Funding criteria must value co-benefits. For instance, reducing GHG emissions from transportation has health co-benefits from reduced air pollution. Program criteria should also favour applications which offer co-benefits, for instance retrofit programs that include employment opportunities in low-income and vulnerable communities.

CELA recommends that the following principles be considered for low-income climate change mitigation programs and be reflected in any funding criteria for a GHG reduction fund:

- 1- Climate change mitigation programs should be accessible province-wide to low-income and vulnerable communities.
- 2- The programs should be free for low-income or vulnerable people. They should be “turnkey solutions”, which do not require additional efforts or resources to be expended by low-income and vulnerable communities.

- 3- The program design, and funding criteria, must address non-financial barriers to program success (i.e. communication issues, distrust of government programs).
- 4- Organizations supporting low-income and vulnerable communities often do not have capacity or resources to apply for program funding and deliver climate change programs. The funding must include provision for capacity-building in those communities to allow for organizations to apply and deliver targeted programs.
- 5- The programs should be simple to access. They should be integrated with other programs designed for low-income and vulnerable communities, for instance by including only one screening and intake process.
- 6- The programs must include on-going measurement of results and mechanisms to gather and address feedback from low-income and vulnerable communities.

2. Natural gas and electricity conservation programs should be expanded.

The climate change plan should focus on conservation efforts, which will also lower electricity and natural gas bills.

CELA recommends mandatory energy efficiency standards for all major appliances and equipment. Energy efficiency labelling should be required. A sales tax rebates for energy-efficient products may be introduced, until the product reaches 50% market saturation.

Electricity and natural gas efficiency programs provide important health co-benefits. For instance, old appliances are both inefficient and pose potential safety hazards. Efforts to reduce energy costs can be dangerous.⁹ One example is that old water heaters left at lukewarm temperatures, in order to reduce energy costs, are a breeding ground for Legionnaire's disease.

3. Programs to provide Northern and remote communities with access to cheap, cleaner fuel.

Diesel, wood, propane and oil are all used to heat northern and remote homes and are environmentally damaging and expensive. Electrical heating is also much more common in Northern Ontario than elsewhere in the province. The climate change plan should include programs to promote fuel switching, particularly to renewable energy sources, and conservation in these communities.

CELA also urges the government to reverse its decision to indiscriminately cancel all recent renewable energy contracts, which were cost effective and primarily owned by municipalities, utilities, farmers and First Nations.

⁹ Pembina Institute and Canadian Environmental Law Association, "Power for the Future: Towards a Sustainable Electricity System for Ontario", (May 2004). Online (pdf): *Canadian Environmental Law Association* <<http://www.cela.ca/sites/cela.ca/pdf/energyreport-fullreport.pdf>>.

4. Housing retrofits for low-income people

The climate change plan should include retrofit programs for low-income people living in social-housing, the private rental market, and low-income homeowners.

It is critical that housing retrofit programs target all low-income tenants and homeowners, not only those living in social housing. The majority of low-income renters live in the private rental market:

- Only 29% of low-income renter households in Ontario live in subsidized housing. 71% live in the private rental market.
- 87% of Ontario Works beneficiaries live in the private rental market.
- 68% of Ontario Disability Support Payment beneficiaries live in the private rental market.
- 37% of all renter households in Ontario are low-income; 9% of owner households in Ontario are low-income.

Affordable housing is a major issue in both urban and rural Ontario, and there are a variety of pressures on housing markets in each type of community that may limit access to affordable housing for low-income residents. In rural and Northern Ontario, some of the major affordable housing issues include the age and poor condition of homes, as well as increases in housing prices and utility costs. Additionally, there are often limited housing options for low-income residents in rural Ontario.

The climate change plan should continue to fund the social housing retrofits previously targeted by the Social Housing Apartment Retrofit Program (SHARP) and the Social Housing Apartment Improvement Program (SHAIP).

The climate change plan should also include free retrofit programs to assist low-income people living in the private rental market, and low-income homeowners.

As well, because buildings are a large source of emissions in Ontario, the Ontario Building Code standards should be strengthened to mandate efficient performance and low-carbon technologies.

5. Gas taxes should be used for public transit and focus on low-income and disadvantaged communities.

A key focus of the climate change plan should be the transportation sector. There are also important health co-benefits to addressing local air pollution. Provincial gas taxes should continue to be focused on public transit and active transport.

Time-of-use road pricing will raise funds to be used on active and public transit and will encourage freight to drive at off-peak times.

6. Renewable energy needs to be prioritized and supported.

Renewable energy needs to be prioritized. The climate change plan should maintain programs to support net metering, rooftop solar, and other measures that promote energy resilience. The climate change plan should ensure that barriers to communities that wish to move use renewable energy are removed.

7. Ontario should ensure that no new landfills are created and organic waste is effectively diverted.

Methane is a potent GHG. Landfills are overfilled and cause significant environmental problems, along with GHG emissions. The climate change plan should fund programs to ensure organic waste is more effectively diverted from landfills.

8. Environmental Assessment Act should be amended to include an enforceable climate change test¹⁰

The Ontario *Environmental Assessment Act* is a planning tool. It should be amended to allow the province to ensure future development accounts for Ontario's GHG reduction targets, and adaptation concerns.

(c) Climate Change Adaptation Plan

Bill 4 should also clearly mandate the creation of a fulsome, detailed climate change adaptation plan. This plan should be framed by environmental justice concerns. When Ontario experiences more frequent and severe extreme weather events, low-income individuals and remote communities are most vulnerable to infrastructure disruptions. The rising price of food caused by disruptions to the global production and supply chain will significantly impact already food insecure low-income communities. Changes to plant and animal species ranges and the surge in invasive species will disproportionately affect First Nations traditional and subsistence food sources.

Recommendation 5: A robust climate change adaptation plan will include the following three interconnected phases: (1) climate change risk assessment, (2) detailed action plans, and (3) progress and monitoring reports.

1. Province-wide climate change risk assessment

There is currently a lack of evidence about how much funding is required to meet the climate change adaptation needs of Ontarians. The first step toward creating a robust and sufficient climate change adaptation plan is to conduct a risk assessment which will identify areas of

¹⁰ Richard D. Lindgren, "Consideration of Climate Change in Environmental Assessment in Ontario (August 2016 draft) - Registry Notice #012-5806", 17 October 2016, online (pdf): *Canadian Environmental Law Association* <<http://www.cela.ca/using-EA-to-address-climate-change>>.

concern and provide details on how low-income and vulnerable communities will be disproportionately impacted by the effects of climate change. The government should build on the Ontario Climate Change and Health Toolkit¹¹, and other previous work that has been done to assess climate change adaptation needs.

The risk assessment should include a Low-Income Barrier Study to identify the economic, social, psychological, technological and political challenges faced by low-income and vulnerable communities in adapting to climate change.

California Senate Bill 350 provides a model for Ontario to emulate in designing a Low-Income Barrier Study. Bill 350 provides that Low-Income Barrier Studies should be conducted to better understand the barriers faced by low-income communities in establishing solar photovoltaic energy generation and in accessing renewable energy, energy-efficient investments, and zero or near-zero emission transportation options.¹² In 2016, California completed its Low-Income Barrier Study regarding access to renewable energy, weatherization, and energy efficient technologies.¹³ In February 2018, the Low-Income Barrier Study on Overcoming Barriers to Clean Transportation Access for Low-Income Residents was released.¹⁴ The reports were informed by literature reviews, community meetings, and technical workshops.¹⁵

2. Detailed action plan

A climate change adaptation plan requires stable and sufficient funding in the Ontario budget. The level of funding should be determined based on the results of the risk assessment.

Similar to CELA's recommendation for Ontario's climate change mitigation plan, a legislated minimum threshold of climate change adaptation funds should be spent in low-income and vulnerable communities.

In negotiations with the Federal government regarding infrastructure spending, funding criteria should prioritize climate-friendly applications from municipalities. For example, in Norfolk County, an infrastructure program is helping to fund storm-sewer upgrades; storm-sewers are among the hardest hit pieces of infrastructure from the weather impacts of climate change.

Extreme heat is most harmful for vulnerable people including the elderly, children and people with pre-existing health conditions. Along with the harmonized heat warning and information

¹¹ Ontario, Ontario Ministry of Health and Long Term Care, "Ontario Climate Change and Health Toolkit", (2016) Online (pdf): <http://www.health.gov.on.ca/en/common/ministry/publications/reports/climate_change_toolkit/climate_change_toolkit.pdf>

¹² US, SB 350, *Clean Energy and Pollution Reduction Act of 2015*, 2015-2016, Reg Sess, Cal, 2015, ss 25327 (1)-(4).

¹³ California, California Energy Commission, "SB 350 Low-Income Barriers Study, Part A – Commission Final Report", (December 2016) online: <http://www.energy.ca.gov/sb350/barriers_report/> [Low-Income Barrier Study].

¹⁴ California, California Air Resources Board, "Low-Income Barriers Study, Part B – Overcoming Barriers to Clean Transportation Access for Low-Income Residents", (February 2018) Online (pdf): <https://ww2.arb.ca.gov/sites/default/files/2018-08/sb350_final_guidance_document_022118.pdf>

¹⁵ Low-Income Barriers Study, *supra* note 14 and 15, Part A at 2, Part B at 20-21.

system, Ontario should create a province-wide strategy to ensure that a health-based indoor maximum temperature of 26 °C is established throughout the province.

3. Commit to annual progress and monitoring reports to Legislative Assembly

Bill 4 should be amended to also require annual progress reports on the climate change adaptation plan to be presented to the Legislative Assembly.

Conclusion

Bill 4 is inadequate to meet the challenge of climate change. It provides no detail on Ontario's plan to address climate change. CELA makes the following recommendations:

Recommendation 1: Bill 4 should be amended to require that at least 35% of climate change mitigation funds be spent in low-income and vulnerable communities.

Recommendation 2: Ontario's GHG reduction targets should be entrenched in law and enforceable, based on a 1990 baseline, transparent, and stringent enough to assist Canada in meeting its international commitments.

Recommendation 3: Section 5 should require detailed progress reports on the climate change mitigation plan to be prepared annually and presented to the Legislative Assembly.

Recommendation 4: The annual progress reports on the climate change mitigation plan should provide detail on the amount of funding provided to each program, the GHG emissions reductions associated with each program, and co-benefits associated with each program.

Recommendation 5: A robust climate change adaptation plan must include the following three interconnected phases: (1) climate change risk assessment, (2) detailed action plans, and (3) progress and monitoring reports.

We look forward to providing feedback on future, more detailed proposals on climate change mitigation and adaptation in Ontario.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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