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

# NDP Public Hearing on Bill C-38 – federal budget bill

**Speaking Notes**
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My name is Kathleen Cooper, Senior Researcher with the Canadian Environmental Law Association.

Thank you for organizing these public hearings and the opportunity to speak this evening.

To begin, I'll tell you briefly that the Canadian Environmental Law Association (CELA) is a non-profit public interest organization as well as a legal aid clinic within Legal Aid Ontario. We represent individuals or organizations otherwise unable to afford legal assistance.

Our poverty law mandate includes the use of existing laws to protect the environment and that mandate extends to the broader public interest through our advocacy for environmental law reform. For over 40 years CELA has been involved in the creation and reform of provincial and federal law to protect the environment and safeguard public health.

Like many Canadians, we are deeply concerned about Bill C-38 both its content and the undemocratic process that is occurring to pass this Bill.

Our legal counsel and research staff are very experienced. Among our staff lawyers, there is, collectively, over 90 years of experience with Canadian environmental law. Including our research staff adds another 80 years, collectively, of experience.

In commenting on Bill C-38 I want to emphasize that the most important and progressive environmental laws and policies are those that require us to plan ahead, with the environment in mind: whether we are planning industrial development, municipal infrastructure, or energy supplies. We call them Environmental Assessment laws but they are fundamentally about planning for the best possible environmentally sustainable future.

The best of these laws requires a careful consideration of alternatives including the option of doing nothing where the environmental risk is too high. Environmental risks from future projects are often difficult to predict. The science can be complex and uncertain. The expert advice proponents want to hear can be bought and paid for. Those facing the risks, including future generations, are rarely the same as those who benefit. For all these reasons, the decision-making process must be open to the public and fair.

As you know Bill C-38 eliminates the Canadian Environmental Assessment Act. It is replaced with a new law by the same name but that will virtually eliminate the federal level environmental assessment process. What remains are ineffective reviews with limited public involvement.

The new law will severely reduce the number, scope, and credibility of federal environmental assessments of risk-laden projects across Canada. What should be an open process where environmental factors are considered from the beginning of project planning is being replaced with a range of unpredictable requirements at the project approval stage. Instead of environmental assessment, the government has set up a minimalist process where final decisions can be made by politicians with arbitrary and discretionary power to declare adverse effects "justifiable in the circumstances" and for such decisions to be publicly unaccountable and the subject of Cabinet secrecy.

There are many other attacks on environmental protection measures in Bill C-38 including repeal of the Kyoto Protocol Implementation Act, sweeping changes to the Fisheries Act, as well as changes to the Canadian Environmental Protection Act, and the Species at Risk Act. Throughout these changes, there is a clear pattern of removing protective measures for the habitat of fish and at-risk species, to enable the development of energy projects and pipelines. These changes will remove protections that have existed in law for decades.

Taken together, these legislative rollbacks are completely unjustified and unacceptable, and they undermine the environmental safety net that has existed in law for decades, not least of which include environmental laws brought into force by the Mulroney government, including the first enactment of the Canadian Environmental Assessment Act.

It is especially alarming that multiple changes in Bill C-38 may place constraints on public participation in environmental hearings on significant projects, such as nuclear facilities, oil and gas development, or inter-provincial pipelines. Federal environmental assessment should not be reduced to a superficial or rushed review of projects which pose risks to present and future generations of Canadians.

We have been repeatedly told by various federal Cabinet Ministers that the point of this exercise is to create more timely assessments and a robust review of major projects. However, in our opinion, these amendments will result in less, not more, robust reviews of major projects. Adding to this is a surfeit of cuts to important environmental and information gathering programs. In addition to the over-riding example of proper information gathering through the long form census, one of many environmental examples of such cuts is eliminating the Experimental Lakes science program in Northwestern Ontario, an internationally famous facility that has been instrumental in addressing key water quality issues such as phosphorous pollution and acid rain. One of many environmental examples of such cuts is eliminating the Experimental Lakes science program in Northwestern Ontario, an internationally famous facility that has been instrumental in addressing key water quality issues, at both the scientific and policy levels, such as phosphorous and mercury pollution and acid rain. On the list goes including removal of the National Round Table on the Environment and the Economy, and across-the-board cuts that are

proportionally larger in areas of federal government work involved with environmental protection than with other issues.

Overall, in reading through Bill C-38 and the budget tabled on March 29th, the many changes to Canadian environmental law, policy, and programs, indicates a systematic weakening of measures that stand in the way of swift construction of pipelines and other energy and mineral developments in environmentally sensitive, and soon to be less-protected locations. This fast-tracking of approvals and repeal of the Kyoto Protocol Implementation Act moves us in entirely the wrong direction from addressing the global crisis of climate change. As well, while we cannot predict the future, the development bias that these changes will build into our regulatory approvals process will very likely encourage hurried decisions inadequately informed by essential scientific and public input. The consequences to the environment and to local communities, particularly to First Nation communities, may well be devastating.

I will conclude by saying that CELA does not believe these cuts or these changes to our environmental laws are what the vast majority of Canadians want; rather Canadians want truly sustainable and environmentally protective reviews and decisions. As well, I want to table with you an excellent summary (attached) of the changes contained in C-38 prepared by our colleagues at Ecojustice and West Coast Environmental Law. A more detailed legal analysis of changes to the Canadian Environmental Assessment Act is in preparation at CELA and will be available in the near future.

*Analysis*

# What Bill C-38 means for the environment

The 2012 budget bill (Bill C-38) will weaken Canada's most important environmental laws and silence Canadians who want to defend them. Instead of using the usual process for sweeping changes, which allows for thorough debate, these changes are being shoehorned into a 452-page budget bill.

The changes amount to:

- weakened protection for fish and species at risk;
- an entirely new — and less comprehensive — environmental assessment law;
- broad decision making powers for Cabinet and Ministers; and
- less accountability and fewer opportunities for public participation.

What follows is a list of the **TOP 10** items of environmental concern in the budget bill.

1. **Changes to the *Fisheries Act* mean that the law may no longer protect *all* fish and the waters where they live.**
   The new protection framework could exclude many fish and watercourses. Generally, habitat protection will only include permanent alteration or destruction of "commercial, recreational or aboriginal fisher(ies)" habitat and some activities will be exempt from the law regardless of how much damage they cause. The federal government will also be able to hand over the power to authorize destruction of fish habitat to provincial governments or other entities, which is worrisome.

2. **No maximum time limits on permits allowing impacts on species at risk.**
   This means that there will no longer be any guaranteed review to evaluate ongoing impacts to endangered species. These potential 'perpetual' permits could continue even where there is a drastic decline in the population of a species affected by the permitted activity.

3. **The National Energy Board (NEB) will be exempted from species at risk protections.**
   The NEB will no longer have to ensure that measures have been taken to minimize impacts on the critical habitat of at-risk species before the NEB approves a pipeline or other major infrastructure. For example, there is no guarantee that an environmental assessment will consider the impacts of a proposed pipeline project and related oil tanker traffic on the habitat of endangered orca whales before the NEB issues a certificate approving that pipeline.

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4. **The *Canadian Environmental Assessment Act* is being replaced with a new Act that will significantly narrow the number of projects that will be assessed for their environmental, social and economic impacts.**
   Assessments, when they happen, will be less rigorous and subject to time limits that will place further constraints on public and First Nations' participation. The new Act will apply only to "designated projects," but we don't yet know what those will be. The new Act gives the Environment Minister and government officials broad decision-making power: The Canadian Environmental Assessment Agency would be able to exempt a designated project from even going through the assessment process.

5. **The federal government is offloading responsibilities to the provinces.**
   This is troubling because the patchwork of environmental laws and policies at the provincial level leave doubt as to whether they can act as a sufficient or legally defensible substitute for federal oversight. Prime examples of this offloading include shifting responsibility for implementation or enforcement of the *Fisheries Act* to provinces and eliminating many federal environmental assessments.

6. **Cabinet is now granted authority to override a "no" decision of the National Energy Board.**
   This may allow politics of the day to trump an independent, objective process and undermine the NEB's expertise.

7. **No more joint review panels.**
   Where a major energy project will be subject to an NEB hearing, a Canadian Environmental Assessment Agency-enabled review panel is prohibited, so there will be no more joint review panels. Thus, the environmental implications of major energy projects will now be evaluated only by the energy regulator.

8. **Broad decision-making powers are being shifted from the public realm and given to Cabinet and individual Ministers.**
   This means decisions related to fish habitat protection and environmental assessments will be allowed to be made behind closed doors with minimal public scrutiny.

9. **Significant narrowing of public engagement in resource review panel hearings, particularly for major oil projects, pipelines and mines.**
   In order to participate, people will have to prove they will be directly affected or have relevant information or expertise. In some cases, their contributions may still be ignored.

10. **Repeal of two important environmental laws.**
    The repeal of the *Kyoto Protocol Implementation Act,* means no more domestic accountability measures on climate change and the repeal of the *National Round Table on Environment and Economy Act* will phase out this valuable advisory body completely.

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