

SPEAKING NOTES:
PRESENTATION TO THE STANDING COMMITTEE ON GENERAL GOVERNMENT
RE: BILL 132 (*Better for People, Smarter for Business Act, 2019*)

Prepared by
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The Canadian Environmental Law Association (CELA) welcomes this opportunity to speak to Bill 132.

CELA is a public interest law group based in Toronto. For almost 50 years, we have provided legal services to low-income persons and vulnerable communities in all regions of Ontario. In the courts and before tribunals, our clients have used or relied upon many of the environmental laws that Bill 132 proposes to amend.

In particular, Bill 132 proposes to change 14 different environmental laws. However, only a 30 day public comment period has been provided under the *Environmental Bill of Rights* for all of these significant legislative changes. CELA submits that this fast-track approach is both unacceptable and unwarranted, and that it is inappropriate to bury the proposed changes in a 100 page omnibus bill containing 17 different Schedules.

Given the short notice for the Committee hearings, CELA has not been able to complete a detailed written brief that responds to all of the amendments proposed in Bill 132. However, CELA undertakes to provide the Committee with our written submissions prior to the November 29th deadline.

In the meantime, I will focus my comments today on our top three concerns about Schedule 9 and Schedule 16 of Bill 132. Please note that we have additional concerns about these and other Schedules, but given the limited time available today, I will briefly discuss our high-priority concerns about Bill 132.

1. Administrative Monetary Penalties

In principle, CELA supports the use of administrative monetary penalties (AMPs) as an alternative to prosecutions in appropriate cases. AMPs have existed in the *Environmental Protection Act* and *Ontario Water Resources Act* for years, and they have proven to be a useful compliance mechanism for holding polluters accountable without going to court.

Schedule 9 of Bill 132 now proposes to amend and expand the AMP regime to three other environmental laws. While this sounds like a good idea in theory, CELA is concerned that the wording of the amendments is counter-productive and will undermine the effectiveness of AMPs.

For example, under Schedule 9, the availability of AMPs under the three other laws depends on regulations that have not yet been made, and there is no clear deadline in Bill 132 for making these regulations.

Even if the regulations are quickly developed, Schedule 9 proposes to change AMPs from a per diem penalty to a per contravention penalty. This is a rollback from current AMP provisions, which state that AMPs can be imposed for every day that the offence continues. In our view, the current per diem approach should be retained since it can result in higher penalties for multi-day offences, which will have a greater deterrent effect on polluters.

Finally, in cases where an AMP is issued, Schedule 9 will make it easier for polluters to appeal the penalty by removing the reverse onus that exists in the current AMP regime. This onus correctly puts the burden on polluters to prove on appeal that the alleged facts did not occur; however, Schedule 9 proposes to remove this onus. In our view, this is a major step backwards, and should not be enacted.

For these and other reasons, CELA cannot support the proposed AMP reforms in Bill 132. In our view, these reforms require serious re-thinking and complete re-drafting before they move forward.

2. Changes to the *Pesticides Act*

The *Pesticides Act* is Ontario's primary law for regulating or prohibiting the use of pest control products. These products are specifically intended to kill living organisms, which is why pesticide applications must be strictly controlled under the Act.

However, CELA is concerned that Schedule 9 proposes to amend the *Pesticides Act* in a manner that may result in the expanded use of cosmetic pesticides for non-agricultural purposes. This is because Schedule 9 proposes to move the list of permitted pesticides from the current regulation to a discretionary bureaucratic list. We are also opposed to the Schedule 9 proposal to abolish the Ontario Pesticides Advisory Council, which has provided non-partisan expert advice to the Environment Minister since the 1970s.

Therefore, CELA recommends that these and other proposed amendments to the *Pesticides Act* should not be adopted.

3. Changes to the *Aggregate Resources Act*

On behalf of our clients, CELA has been involved in countless pit and quarry cases over the years. In our experience, aggregate extraction can cause a number of serious environmental and nuisance impacts in the short- and long-term, especially if the sites are not properly rehabilitated, which is all too frequent in Ontario.

Unfortunately, Schedule 16 of Bill 132 contains amendments to the *Aggregate Resources Act* that weaken or remove some important safeguards that currently exist in law. For example, Schedule 16 proposes to make municipal by-laws "inoperative" if they restrict the depth of aggregate

extraction in order to protect groundwater. Schedule 16 also proposes to expand the ability of aggregate companies to self-file their own changes to site plans without Ministerial approval.

In our view, these and other aggregate reforms are undesirable and unnecessary, and should not be undertaken by the Ontario government.

In closing, CELA concludes that Schedules 9 and 16 of Bill 132 are highly problematic and should not be enacted in their present form.

However, given the Committee's compressed timeframe for reviewing and reporting Bill 132 back to the Legislature, the complete re-writing of Schedules 9 and 16 does not appear to be a realistic option for the Committee, although that is precisely what is required, in our opinion.

From a public interest perspective, CELA submits that it is far more important to get environmental legislation right, rather than rush things just to get some questionable amendments passed into law by an arbitrary deadline.

In these circumstances, CELA recommends that Schedules 9 and 16 be withdrawn from Bill 132 at the earliest possible opportunity.



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