

Check Against Delivery
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SPEAKING NOTES:

**PRESENTATION TO THE STANDING COMMITTEE ON FINANCE AND ECONOMIC
AFFAIRS**

RE: BILL 229 (Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020)

Prepared by

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and

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The Canadian Environmental Law Association (CELA) welcomes this opportunity to speak to Bill 229. My name is Kerrie Blaise and I am Northern Services Counsel. With me today is Anastasia Lintner, Special Projects Counsel, Healthy Great Lakes.

CELA is a public interest law group based in Toronto with a province-wide mandate and a clinic of Legal Aid Ontario. For 50 years, we have provided legal services to communities who have been disproportionately exposed to adverse health impacts from pollution and advocate on behalf of low-income individuals, to further access to justice and the public's right to full and fair decision-making processes.

Today we will discuss Bill 229 - an omnibus budget measures bill. Bill 229 not only upends the legal protections and processes that are in place to safeguard endangered species and watersheds, but removes tools the government has to enforce its environmental laws, such as the issuance of orders when there is imminent danger to an already declining species.

In our presentation today, we will highlight our primary concerns in support of our recommendation that Schedules 6 and 8 be withdrawn in their entirety from Bill 229.

I will make two points before turning to Dr. Lintner.

First, the Government is expediting Bill 229 through the legislative process despite there being no prior public and First Nation engagement, and the potential for public debate and dialogue, was limited at best. And within this very narrow opportunity for public consultation, First Nation communities - who are among CELA's clients - are among those most left out. The COVID-19 pandemic has exacerbated pre-existing challenges with respect to housing and clean water, and Ontario has not engaged in a way which enables First Nation participation, in a context of crisis management and under-resourcing. Indigenous leadership must be able to consult directly with their members in order to discuss impacts to their rights and interests and there must be equal access to virtual alternatives, such as remote communication and video-conferencing, which are not feasible in many remote, Northern communities.

CELA submits that this fast-track approach is both unacceptable and unwarranted and the text of Bill 229, misrepresents these amendments as being a necessary part of COVID recovery. Given the tight timelines, CELA has not been able to fully analyze and assess all of the potential changes to environmental laws. We will speak today only to Schedules 6 and 8.

Second, if enacted as currently drafted, Schedule 8 of Bill 229 will permanently exempt forestry operations from the prohibitions against killing and destroying species at risk habitat. The footprint of forestry operations in Ontario encompasses about two-thirds of the province's land base and it is precisely because of the *Crown Forest Sustainability Act's* (CFSA) application to the majority of Ontario, that makes the rollbacks proposed in Schedule 8 so significant and objectionable from a public interest perspective.

If enacted, Schedule 8 will remove the legal protections for endangered species and their habitat, as contained in the *Endangered Species Act, 2007*. Despite Ontario being home to over 240 species that are at some level of risk of disappearing from the wild in Ontario, these amendments exempt forestry operations - when carried out on public land, as part of a forest management plan or forest resource licence - from the *Endangered Species Act's* prohibitions on killing, harming, or harassing a listed species and damaging or destroying habitat necessary for their survival and recovery.

More alarmingly, Schedule 8 removes the ability of the Minister of Environment, Conservation and Parks to issue a species protection order or a habitat protection order to halt or alter forestry operations, even in circumstances where significant harm to an endangered species will result.

These amendments, reviewed alongside the earlier actions by the province in July of this year which exempted forestry activities from the requirements of the *Environmental Assessment Act*, leaves species at increased risk of extinction, jeopardizes their ability to recover, and ties the hands of the Minister of Environment, Conservation and Parks to issue orders at a time when we need *more* protection of biodiversity and the ecological services forests provide. These actions also stand in direct opposition to the findings of the Auditor General which just last month reported that Ontario's wild plants and animals are under increasing threat from human activities and the Ministry has not met its objective of improving outcomes for species at risk.

Before turning to my colleague, Dr. Lintner, I close by noting that among the commitments in the Made-in-Ontario Environment Plan was a promise to "protect species at risk and their habitats." In CELA's view, this is not a commitment that can be fulfilled in light of a process that minimizes public attention and scrutiny, and fast tracks sweeping changes to environmental laws.

Thank you Ms Blaise. My remarks are directed at Schedule 6, proposed changes to the *Conservation Authorities Act* and consequential amendments. CELA submitted both our preliminary analysis on Schedule 6 (with our request to appear before this Committee) and a more detailed written submission on both Schedules 6 and 8 (on Friday, November 27). In the brief amount of time in which we have for opening remarks, I will restate CELA's overall conclusion regarding Schedule 6: while a small number of the proposed changes (including improved transparency through publicly available information) may be supportable in principle, the majority of the proposed amendments are regressive in nature and are contradictory to

fulfilling both the purpose of the *Conservation Authorities Act* and the desire to set the course for more climate resilient communities in the future. It is our opinion that the “watershed approach” and the “conservation authority model” that Ontario’s Special Advisor on Flooding lauded and that are the envy of other jurisdictions both in Canada and within the international Great Lakes - St Lawrence River region, will be stripped down and made unrecognizable. This model only works if conservation authorities retain the ability to actively participate in and intervene on land use planning decisions to ensure watershed resilience to climate change and flooding. In particular, the current processes for seeking section 28 permits, which are working quite well, will be made more uncertain and unpredictable, as well as likely more costly. You will have heard the reasons for such concerns yesterday in presentations from Conservation Ontario, Toronto and Region Conservation Authority, and Credit Valley Conservation.

In closing, CELA concludes that Schedules 6 and 8 of Bill 229 are highly problematic and should not be enacted in their present form.

However, given the Standing Committee’s compressed timeframe for reviewing and reporting Bill 229 back to the Legislature, the complete re-writing of Schedules 6 and 8 does not appear to be a realistic option, 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 such highly contested amendments passed into law by an arbitrary deadline.

In these circumstances, CELA recommends that Schedule 6 (proposed changes to the *Conservation Authorities Act* and consequential amendments) and Schedule 8 (proposed changes to the *Crown Forest Sustainability Act, 1994*) both be withdrawn in their entirety from Bill 229 at the earliest possible opportunity.

Thank you for your attention.