

Right to a Healthy Environment Implementation Framework Team  
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To whom it may concern,

We appreciate the opportunity to participate in the consultation on Discussion Document on the Implementation Framework for a Right to a Healthy Environment under the *Canadian Environmental Protection Act*, 1999 (henceforth referred to as CEPA). The Green Party of Canada believes in the right to a healthy environment and is committed to principles of environmental justice.

CEPA is embedded with both enforceable and voluntary risk management tools, such as regulations and Codes of Practice, and guides federal chemical management activities. Through Bill S-5, which received Royal Assent in June 2023, CEPA now recognises that every individual has a right to a healthy environment. This in turn requires a robust implementation framework within two years that engages with all key stakeholders and Indigenous governments and communities, in particular by centering the perspectives and leadership of Indigenous women. Meaningful engagement is necessary to ensure the framework is in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Truth and Reconciliation Commission's calls to action, and the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. This alignment is provided for in CEPA's preamble.

We strongly believe that the right to a healthy environment must be enshrined in the Constitution. This would reflect over 110 countries that have already constitutionally recognised the rights of their citizens to a healthy environment. [The Library of Parliament wrote](#) that "while Canada's constitution does not explicitly include the right to a healthy environment, some existing constitutional rights are expected to be impacted by climate change and could, as such, be strengthened by recognising the right to a healthy environment. These constitutional rights include the rights to life and security of the person, equality rights, and the rights of Indigenous Peoples." We encourage decision-makers to build a requirement into the implementation framework to formally revisit and study the consequences of constitutionally enshrining this right.

While we would prefer to see this right embedded in the Constitution, we are pleased that there is an opportunity to create robust structures and laws that protect this right for Canadians. However, the right to a healthy environment is limited within the current Discussion Document. There are gaps in guaranteeing access to information for the general public regarding CEPA. The government must provide plain-language information to the general public that is not overly technical. While there are web pages

and resources available, it will likely be difficult for those not already invested in this issue to understand CEPA programs and decision-making.

There must be strengthened requirements for public, stakeholder and Indigenous participation in decision making. We recognise that this public consultation is a good start, however it again is difficult for members of the general public to be made aware of this process unless they are already familiar with government consultations. The government needs a concerted effort to educate the public through a diverse range of opportunities and advertising, such as on social media platforms. We appreciate the proposal in the Discussion Document to provide information in languages other than English and French and would go further to include a requirement that those seeking remedies for violations of the right are entitled to translation services to ensure their effective communication in the remedy process.

The term “vulnerable populations” is defined in CEPA as “a group of individuals within the population living in Canada who, due to greater susceptibility or greater exposure, may be at increased risk of experiencing adverse health effects from exposure to substances.” Through our efforts to pass Bill C-226, the National Strategy Respecting Environmental Racism and Environmental Justice Act, we are keenly aware of the need for federal leadership on data collection to identify and support communities experiencing environmental racism. The implementation framework must identify and define environmental racism and its intersections with vulnerable groups as defined in this right to a healthy environment. As well, children and youth, particularly those facing intersecting inequities linked to race, ethnicity and other characteristics are the ones who will face the brunt of climate change. Their perspectives and voices are needed in CEPA decision-making. We recommend the creation of a permanent youth advisory council on the right to a healthy environment that advises the development and review of the implementation framework.

There needs to be clear and accessible pathways available to remedy violations of the right to a healthy environment. Remediating violations of the right to a healthy environment requires legislative reforms to create the position of an independent commissioner who oversees an independent complaints process. The existing environmental protection action provision in *CEPA, 1999* has never been used due to procedural barriers and bureaucratic hurdles.

A right that cannot be enforced is a bumper-sticker, not a right. The above-noted Senate committee identified this issue in 2022. Below we have included amendments that we drafted with Senior Counsel to the Canadian Environmental Law Association (CELA), Joe Castrilli, that would help address this impossible set of hurdles for a complaint to enforce a violation of CEPA:

**“1. Section 22 of the Act is replaced by the following:**

- 22 (1)** Any individual may bring an environmental protection action in the Federal Court
- (a) against the Government of Canada for
    - (i) failing to protect the right to a healthy environment in respect of matters governed by this Act,
    - (ii) failing to exercise any power or perform any duty or function that is necessary for the administration of this Act,
    - (iii) failing to fulfil its duty as trustee of the environment, or
    - (iv) authorizing, or failing to prevent, an activity that results in or is likely to result in harm to the environment; or



(b) against any person for a contravention of any provision of this Act or the regulations that results in or is likely to result in harm to the environment.

(2) An individual intending to bring an environmental protection action shall give notice of their intention to the Minister and any potential defendant at least 60 days before the day on which they intend to serve the defendant with the document originating the action.

(3) Proceedings must not be commenced or continued in respect of a contravention referred to in paragraph (1)(b) if the Attorney General of Canada has commenced proceedings against the defendant in respect of the same contravention.

(4) Despite subsection (3), proceedings may be commenced or continued if the activity that has resulted in or is likely to result in harm to the environment is authorized under an Act of Parliament.

(5) An environmental protection action is to be referred to mediation for a period of 30 days after the day on which proceedings commence. The period may be extended by agreement of the parties.

**22.1** Despite the provisions of any other Act of Parliament that provide for relief, the court may make any of the following orders:

- (a) an order for declaratory relief against the defendant;
- (b) an order, including an interlocutory order, requiring the defendant to refrain from doing anything that, in the opinion of the court, could constitute an offence under this Act;
- (c) an order, including an interlocutory order, requiring the defendant to do anything that, in the opinion of the court, may prevent the continuation of an offence under this Act;
- (d) an order suspending or cancelling a permit or other authorization issued to the defendant under this Act;
- (e) an order requiring the defendant to
  - (i) clean up, restore or rehabilitate any part of the environment that has been harmed or pay an amount, in the manner prescribed by the court, for the purpose of the clean-up, restoration or rehabilitation,
  - (ii) pay an amount, in the manner prescribed by the court, for the purpose of protecting or enhancing the environment, or
  - (iii) take any preventive measures specified in the order;
- (f) an order to the parties to negotiate a plan to correct or mitigate the harm to the environment or to human, animal or plant life or health, and to report to the court on the negotiations within a time set by the court;
- (g) an order to the Minister to comply with or monitor compliance with the terms of any order; and
- (h) an order for any other relief that the court considers appropriate.

**22.2** In an environmental protection action, the burden lies on the defendant to establish on a balance of probabilities that their act or omission did not or is not likely to result in harm to the environment if the plaintiff has demonstrated that sufficient evidence of harm or likely harm can be adduced.



**22.3** It is not a defence in an environmental protection action that the activity that is the subject matter of the action was authorized under an Act of Parliament unless the defendant establishes on a balance of probabilities that

- (a) harm to the environment was an unavoidable result of the activity; and
- (b) there were no reasonable measures by which the defendant could have avoided engaging in the activity.

**22.4** The court may, on application by the defendant, dismiss an environmental protection action if it is satisfied that

- (a) another proceeding has been commenced in respect of the same acts or omissions;
- (b) the action is frivolous, vexatious or harassing; or
- (c) the action has no reasonable prospect of success.

**22.5 (1)** The court may, on application by the plaintiff, make an interlocutory order requiring

- (a) the protection of the part of the environment that is the subject matter of the action if, in the court's opinion, there is a risk of harm to it; or
- (b) the advance of moneys for the payment of the costs of the action if, in the court's opinion, it is in the public interest to do so.

(2) The court shall not dismiss an application for an order under subsection (1) for the sole reason that the plaintiff is unable to give an undertaking to pay costs or damages in the event that the action is dismissed.

(3) The court shall not require the plaintiff to give an undertaking to pay more than \$1,000 for costs or damages.

**22.6** If an environmental protection action is dismissed, the plaintiff is liable for the costs of the action only if

- (a) the court determines that the action is not a test case and does not raise a matter of public importance or a novel point of law; or
- (b) the action is dismissed under paragraph 22.4(b).

**22.7 (1)** Despite subsection 18.1(1) of the Federal Courts Act, an application for judicial review of a decision of the Minister under this Act may be made under that Act by anyone not directly affected by the matter in respect of which relief is sought.

## **2. Repeal Sections 29-33 of the Act (CEPA).**

## **3. Repeal Section 38 of the Act (CEPA)."**

The availability of legal tools must enable true justice by heightening penalties for violations beyond fines that may not change the behaviour of big polluters (ex., by requiring those found guilty of violations to finance the clean-up of the polluted area). For example, the right to a healthy environment could be better secured by shifting the burden of proof when a plaintiff brings a prima facie case of environmental harm to the defendant to prove that the alleged actions will not result in environmental harm. This implementation framework must enhance responsibilities for the private sector throughout their supply chains and human rights practices.



Thank you again for taking the time to review our comments on this consultation. We look forward to reading and commenting on the draft implementation framework expected to be made available for public comment in Fall 2024/Winter 2025.

Sincerely,



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Saanich--Gulf Islands  
Leader of the Green Party of Canada



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