

November 21, 2013

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Dear Ms Lafrance, Ms Bosc, and Ms Richardson,

Re: Commons and Senate Committee Reviews of Bill C-4, *A second Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures*

Please consider this letter as the submissions of the Canadian Environmental Law Association to your respective Committees regarding the above-noted Bill C-4. We are providing the following comments on the matters delegated by FINA to HUMA, specifically with amendments in Part 3 of Bill C-4 having to do with the proposed revision to the definition of “danger” under the *Canada Labour Code (CLC)*.

About CELA

The Canadian Environmental Law Association is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

Background

CELA’s concerns with the proposed revision to the definition of “danger” under the *CLC* arise from our long-standing involvement on the issue of toxic substances. CELA has a long history of work addressing the regulation of toxic substances generally as well as with respect to the siting, environmental assessment, and emergency planning around nuclear power facilities and related

sources of radiation. We also have extensive expertise on matters of public access to information and ensuring due process in environmental and public health decision-making.

We recently completed a comprehensive scoping review of the literature concerning early environmental exposures and associations with several chronic diseases.¹ Multiple toxic substances as well as sources of radiation figure prominently in the results of this research and thus remain within our top priorities for seeking regulatory action and conducting public outreach to encourage exposure reduction measures.

We have worked extensively towards the prohibition of all asbestos use, manufacture, release, export and disposal.² Our partners include labour organizations and family members of those exposed to asbestos. To address the global problem of persistent organic pollutants, we were closely involved in efforts to establish and, currently, to continue to expand the purview of the Stockholm Convention on Persistent Organic Pollutants.³ We also continue to be extensively involved in numerous environmental assessments of nuclear facilities and have made detailed comments about the inadequacy of emergency preparedness around Ontario's nuclear generating stations.⁴

The scientific evidence in support of this policy activity confirms that the time of greatest vulnerability is in the womb where exposure to very low levels of toxic substances can create permanent health impacts, including chronic disease risks, with lifelong implications. It remains a matter of concern and regulatory omission that the assessment of toxic substances that occurs under the *Canadian Environmental Protection Act* does not account for the occupationally-exposed workforce, particularly where there are reproductive or developmental risks to prospective parents (male or female) or to pregnant women.

Another important area of research and advocacy on environmental contaminants is the increasing reality of exposure to toxic substances via consumer products. For this reason, we placed a high priority on engaging in multi-year consultations to reform the *Hazardous Products Act* that resulted in passage of the *Canada Consumer Product Safety Act (CCPSA)*. Key among the product safety reforms included in the CCPSA was a revision to the definition of danger such that it was expanded beyond acute toxic effects to include the risk of chronic toxicity.

The *Canada Consumer Product Safety Act* - S.C. 2010, c. 21 (Section 2) defines "danger to human health or safety" as follows (with emphasis added):

¹ Cooper K, Marshall L, Vanderlinden L, and Ursitti F (2011) *Early Exposures to Hazardous Chemicals/Pollution and Associations with Chronic Disease: A Scoping Review*. A report from the Canadian Environmental Law Association, the Ontario College of Family Physicians, and the Environmental Health Institute of Canada. <http://www.cela.ca/publications/EE-and-CD-Scoping-Review>

² Rotterdam Convention Alliance (2013) Position Paper presented to the 6th Conference of the Parties in Geneva in April-May, 2013.

³ Canadian Environmental Law Association (2011) Submissions to the Fifth Conference of the Parties to the Stockholm Convention of Persistent Organic Pollutants April 25-29, 2011, Geneva, Switzerland.

⁴ Canadian Environmental Law Association (2013) Emergency Planning at Pickering A and B Nuclear Generating Station, Presentation to Canadian Nuclear Safety Commission Licensing Hearing May 29 - 31, 2013.

“danger to human health or safety” means any unreasonable hazard — existing or **potential** — that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual’s health — including an injury — **whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health.**

Bill C-4 amendment to the definition of “danger” in the *Canada Labour Code*

While CELA’s areas of specialty and interest are environmental protection and consumer product safety, as well as access to information and public participation rights, nonetheless, our work has often overlapped with occupational health and safety issues including “whistleblower” protections for workers reporting on unsafe or environmentally-damaging work or practices and on the role of public health personnel and inspectors in the underlying statutory regimes. In this regard, we have often referred to the existing definition of “danger” in the *CLC* as an important statutory tool to ensure the protection of worker health and safety from chronic disease risks.

As currently defined in section 122(1) of the *CLC*, (emphasis added):

“*danger*” means any existing or **potential** hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, **whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;**

This definition is comparable to that recently included in the *CCPSA* because they both explicitly recognize that danger can be a potential hazard that may, in future, contribute to chronic illness or disease.

Moreover, the current *CLC* definition also explicitly includes “damage to the reproductive system” and thus provides an important protection for both men and women, particularly women of child-bearing age and pregnant women; a protection they do not necessarily have, as noted above, under the chemical assessment requirements flowing from the *Canadian Environmental Protection Act*. Scientific evidence, as summarized in the above-noted scoping review clearly indicates that very strong evidence exists for adverse reproductive outcomes from exposure to endocrine disrupting substances. This reality was emphasized by the World Health Organization this year in a report which notes that *endocrine disrupting substances have the capacity to interfere with tissue and organ development and function, and therefore they may alter susceptibility to different types of disease throughout life.*” The report further states that “*This is*

a global threat that needs to be resolved".⁵ Given that dozens and potentially hundreds of substances are known or suspected to act as endocrine disruptors, diverse workplaces may contribute to worker exposures. Such exposures are but one example of the need to retain appropriately broad definitions as environmental and worker health safeguards in federal legislation.

Despite legitimate concerns about the risk of chronic disease or illness, or reproductive hazards from workplace exposures, Bill C-4 seeks to amend the *CLC* drastically by narrowing the definition of danger to address only immediate or acute hazard.

The proposed revised definition under section 176(2) of Bill C-4 would be: "any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered". Not only is this proposed amendment a very backward step and out of line with very recent and modernizing changes to the *CCPSA*, it has been proposed with absolutely no consultation.


In deliberations this month with the Finance Committee about Bill C-4, federal officials acknowledged that these and other fundamental changes to the *CLC* contained in Bill C-4, a budget bill, have been written without any consultation with businesses, unions, private sector lawyers, law professors, or experts in labour management.

Conclusions

For the sake of worker health and safety, protection against future chronic disease or illness, including reproductive damage, for federally-regulated employees, CELA strongly urges you to reject the amendment to the definition of "danger" in the *CLC*. Simply stated: the current definition of "danger" in section 122(1) is not broken – so it does not need to be fixed.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Kathleen Cooper
Senior Researcher

⁵ World Health Organization, International Program on Chemical Safety (2013) *Global assessment of the state-of-the-science of endocrine disruptors*. http://www.who.int/ipcs/publications/new_issues/endocrine_disruptors/en/