



David
Suzuki
Foundation

Vancouver (Head Office)
219-2211 West 4th Avenue
Vancouver BC V6K 4S2
604 732 4228

Toronto
102-179 John Street
Toronto ON M5T 1X4
416 348 9885

Montréal
540-50 rue Ste-Catherine Ouest
Montréal QC H2X 3V4
514 871 4932

March 14, 2017

Standing Committee on Environment and Sustainable Development
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

SENT BY E-MAIL TO: ENVI@parl.gc.ca

Dear Members of the Standing Committee on Environment and Sustainable Development,

In the context of your review of the Canadian Environmental Protection Act, 1999 (CEPA), the David Suzuki Foundation wishes to draw your attention to the recent report of the United Nations Special Rapporteur on Human Rights and the Environment examining the relationship between biodiversity and human rights. The report is available online in English and French at the following URL:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>.

Below we (1) summarize key findings and recommendations from this report that, in our view, are relevant to the review of CEPA, (2) review the context for recognition of environmental rights in Canada and globally, and (3) identify opportunities to protect environmental rights — and environmental justice — in Canadian law.

1. The Special Rapporteur's 2017 report on biodiversity and human rights

Recognizing that many states now incorporate a right to healthy environment in their constitutions, the United Nations Human Rights Council (UNHCR) first appointed an Independent Expert on Human Rights and the Environment in 2012,¹ and, in 2015, renewed this mandate — now as Special Rapporteur — for another three years.² The Special Rapporteur's annual reports to UNHCR examine various elements of the relationship between human rights and the environment and make recommendations regarding the human rights obligations of UN member states relating to the enjoyment of a safe, clean, healthy and sustainable environment.

The Special Rapporteur on Human Rights and the Environment is John Knox, a professor of international law at Wake Forest University, in North Carolina, who has published extensively on human rights law, environmental law and their relationship with one another.

His recent report on biodiversity and human rights was presented to the UNHCR on March 7, 2017. The report explains:

¹ Human Rights Council Resolution 19/10

² Human Rights Council Resolution 28/11

- That the full enjoyment of human rights — including the rights to life, health, food and water — depends on the services provided by ecosystems;
- That the provision of ecosystem services depends on the health and sustainability of ecosystems;
- That healthy ecosystems, in turn, depend on biodiversity; and,
- That therefore the full enjoyment of human rights depends on biodiversity.

As a result, degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights. States, then, have obligations to protect against environmental harm that interferes with the enjoyment of human rights.

The report details both procedural and substantive human rights obligations in relation to the environment. Procedural obligations include duties:

- To assess impacts and make environmental information public;
- To facilitate public participation in environmental decision-making, including protecting the rights of expression and association; and,
- To provide access to remedies for harm.

Substantive obligations centre on the duty to adopt legal and institutional frameworks that effectively protect against environmental harm that interferes with the enjoyment of human rights. In particular, states have a general obligation to safeguard biodiversity in order to protect those rights from infringement.

Moreover, according to the report, states have heightened duties with respect to those who are particularly vulnerable to environmental harm, and specifically Indigenous peoples who depend directly on ecosystems for their food, water, fuel and culture. The report further recommends that states take into account the human rights obligations owed to others in vulnerable situations — e.g., women, children, the elderly, the disabled and the extremely poor — in relation to environmental harm in general and the loss of ecosystem services in particular.

The report concludes that incorporating a human rights perspective in environmental decision-making offers several advantages, which have the potential to improve environmental outcomes:

- It helps to clarify that the loss of biodiversity also undermines the full enjoyment of human rights;
- It heightens the urgent need to protect biodiversity; and,
- It helps promote policy coherence and legitimacy in biodiversity conservation and sustainable development.

2. Environmental rights in context

In 1972, the United Nations Stockholm Declaration on the Human Environment proclaimed that people have “the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being.”³

Legal recognition of environmental rights comprises substantive and procedural guarantees, as noted by the Special Rapporteur in his recent report. Substantive rights include clean air, safe water, a non-toxic environment and healthy ecosystems. Related procedural rights include access to information, participation in environmental decision-making and access to justice.

More than 110 countries have passed laws recognizing citizens’ rights to live in a healthy environment. For example, France amended its constitution in 2005 to include an Environmental Charter, which states in Article 1, “Everyone has the right to live in a balanced environment which shows due respect for health.”

In contrast, no Canadian law explicitly protects environmental rights. The Charter of Rights and Freedoms and the Canadian Human Rights Act are both silent on the environment. In its current form, CEPA confers some procedural rights but does not address substantive environmental rights.

3. Recognizing and protecting environmental rights in Canadian law

We strongly recommend that CEPA be amended to recognize Canadians’ right to a live in a healthy environment in the preamble and to include a duty to respect environmental rights in the administration of the act. With respect to the latter, the David Suzuki Foundation agrees with the amending language proposed by Ecojustice/Environmental Defence/Équiterre in their joint brief to the committee.⁴ We further recommend the committee give serious consideration to a stand-alone environmental bill of rights to complement CEPA and other environmental statutes.

The review of CEPA is also an opportunity to establish requirements respecting environmental health equity (also referred to as environmental justice; environmental racism is a related concept). All Canadians should have the right to a healthy environment, but there is increasing evidence that disadvantaged and vulnerable communities bear a disproportionate burden of preventable environmental health hazards, such as pollution, environmental degradation and the effects of climate change. The concept of environmental health *inequity* describes “inadequate, unresponsive, and/or discriminatory policies that result in the concentration of multiple environmental risks, as well as inadequate access to environmental benefits among disadvantaged Canadian communities.”⁵ Environmental health equity requires legal protections and institutional structures to prevent, assess and respond to such discrimination.

³ Stockholm Declaration on the Human Environment

<http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>

⁴ Recommendation 1 on page 5 at:

<http://www.parl.gc.ca/Content/HOC/Committee/421/ENVI/Brief/BR8693959/br-external/Ecojustice-e.pdf>.

⁵ “What Is Environmental Health Inequity?” *The Centre for Environmental Health Equity*, accessed August 6, 2014, <http://cehe.ca/aboutus>.

As the Special Rapporteur notes in his recent report, states have human rights obligations to those who are particularly vulnerable to environmental harm, and specifically Indigenous peoples who depend directly on ecosystems for their food, water, fuel and culture. The David Suzuki Foundation agrees with the specific amending language on environmental justice proposed by the Canadian Environmental Law Association.⁶

We draw the committee's attention to a related proposal developed by the Green Budget Coalition for a national strategy on environmental health equity, to be led by a new Office of Environmental Health Equity. This proposal is attached as Annex 1.

We expect that legally recognizing environmental rights and complementary measures to advance environmental health equity would improve Canada's environmental performance. Environmental lawyer David Boyd's research, which he presented to this committee, finds countries that recognize environmental rights tend to have stronger environmental laws, better enforcement of those laws, enhanced government and corporate accountability, improved access to environmental information and higher levels of public participation in decision-making.⁷ France offers a compelling example. For hundreds of years, the French constitution was silent on the environment. When President Jacques Chirac proposed a constitutional Environmental Charter in 2001, people scoffed. But after adding the Environmental Charter to its constitution in 2005, France passed world-leading laws on fracking, pesticide use and disposable plastic items. In the Conference Board of Canada's environmental performance rankings, France has climbed from the middle of the pack a decade ago to the top (while Canada still languishes near the bottom).⁸

The Supreme Court of Canada has acknowledged that reconciliation efforts require integration of Indigenous legal concepts into Canadian law. The long-standing legal traditions of Canada's Indigenous peoples recognize the idea of a living Earth, with a set of rights and responsibilities to govern relationships between humans and the natural world. Mi'kmaq law, for instance, is rooted in ecological relationships, extending personhood to animals, plants, insects and rocks, and imposing legal obligations on Mi'kmaq persons. Adding environmental rights and responsibilities to federal statutes could have the powerful effect of weaving Indigenous law with common and civil law within our legal system.⁹

We are struck by the broad public support for protecting environmental rights. As Ontario's Ministry of Environment and Climate Change recognized in recent consultations on Ontario's Environmental Bill of Rights, "A dialogue about the right to a healthy environment is growing worldwide."¹⁰

Polling conducted by Environics in 2010 found 95 per cent of Canadians agree that everyone should have the right to a healthy environment.¹¹ A Nanos poll in Ontario last year again found overwhelming support for legal recognition of environmental rights — including the right to clean air and water — and stricter laws protecting the environment: 70 per cent of Ontarians agreed environmental rights should

⁶ <http://www.cela.ca/sites/cela.ca/files/CELAResponse-to-Questions-from-HC%20EnvSD%20June2016.pdf>

⁷ David Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (Vancouver: UBC Press, 2012)

⁸ Conference Board of Canada, *How Canada Performs – Environment* (2016)

⁹ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

¹⁰ *Discussion Guide to Review of Ontario's Environmental Bill of Rights and Regulations and Consideration of Ontarians' Environmental Rights* (2016).

http://www.downloads.ene.gov.on.ca/envision/env_reg/er/documents/2016/012-8002%20guide.pdf

¹¹ Environics Research Group, *Human Rights in Canada Today: A National Opinion Survey* (Winnipeg: Trudeau Foundation, 2010).

be afforded the same protection as human rights and 97 per cent support the right to clean air and water.¹²

Moreover, over the past two years more than 140 municipal governments representing more than 15 million Canadians have passed environmental rights declarations.¹³ This groundswell of support for the right to a healthy environment reflects the importance of environmental protection as a deeply held value of Canadians throughout the country and across all demographics.


From coast to coast to coast, hundreds of thousands of Canadians are recognizing and expressing a simple but powerful truth: environmental rights are human rights. This truth is founded in the scientific understanding that all Canadians need clean air and water, safe food, a stable climate and access to nature to thrive and be healthy.

In response to the recent report of the UN Special Rapporteur on Human Rights and Environment, we encourage this committee to give expression to this movement for environmental rights in Canada by:

- Recommending amendments to CEPA that recognize the right to a healthy and environment (including measures to advance environmental health equity); and,
- Considering complementary stand-alone legislation; i.e., an environmental bill of rights.

The David Suzuki Foundation welcomes the opportunity to discuss these issues with the committee or individual members and to answer any questions you may have.

Yours truly,



Lisa Gue
Senior Researcher and Analyst, Science and Policy Unit
David Suzuki Foundation

About the David Suzuki Foundation

The David Suzuki Foundation collaborates with Canadians from all walks of life to conserve our environment and find solutions that will create a sustainable Canada through science-based research, education and policy work. We are a registered charity with regional offices in Vancouver, Toronto and Montreal.

¹² Nanos, "The Government of Ontario and the environment," David Suzuki Foundation Survey Summary (November 2016).

¹³ www.bluedot.ca/declarations



*Healthy Communities
for all Canadians*

*featuring:
Environmental
Health Equity*

Environmental Health Equity

Recommendation Summary

All Canadians should have the right to a healthy environment, but there is increasing evidence that disadvantaged and vulnerable communities bear a disproportionate burden of preventable environmental health hazards, such as pollution, environmental degradation and the effects of climate change.

The Green Budget Coalition recommends that the Government of Canada invest in an environmental health equity agenda, including initiatives to:

- Better understand the burden of preventable environmental health hazards facing disadvantaged and vulnerable communities in Canada, as well as inequalities in access to environmental health benefits;
- Assess the extent to which it may be possible to intervene so that preventable environmental health hazards do not disproportionately affect disadvantaged or vulnerable communities, and to ensure equal access to environmental health benefits; and,
- Identify and implement mechanisms to ensure that all Canadians have the opportunity to enjoy the same level of protection from environmental health hazards and access to environmental health benefits.

The Green Budget Coalition recommends a new federal Office of Environmental Health Equity be established to support ongoing assessment and to champion the integration of environmental health equity across all relevant government departments and agencies, programs, policies and activities.

Ensuring healthy environments for all Canadians will require complementary federal actions on many fronts. The best federal budgetary opportunities to improve Canadians' environmental health are outlined in the following pages, regarding protecting Canada's fresh water, remedial measures to safeguard Canadians against radon gas in certain homes, implementing the Air Quality Management System, continuing the Chemicals Management Plan, and strengthening green infrastructure in First Nations communities.

Recommended Investment: \$15 million per year, ongoing

*Recommendation endorsed by the Centre for Environmental Health Equity.*¹⁰²

¹⁰² Contact: Dr. Jeff Masuda, Director, Centre for Environmental Health Equity, and Canada Research Chair in Environmental Health Equity, jeff.masuda@cehe.ca, 204-272-1643.

Benefits for Canadians

- Reduced health inequities and a healthier population overall, with associated economic benefits in terms of health care savings and increased productivity

Background and Rationale

No matter who you are or where you live in Canada, we all need clean air to breathe and clean water to drink. All Canadians should have the right to a healthy environment, but disadvantaged and vulnerable communities bear a disproportionate burden of preventable environmental health hazards, such as pollution, environmental degradation and the effects of climate change. A recent study found that one in four low-income Canadians (25 per cent) lives within a kilometre of a major polluting industrial facility, whereas only seven per cent of the wealthiest quintile lives within this radius. Proximity to major sources of pollution results in higher levels of respiratory and cardiovascular illness for low-income Canadians.¹⁰³ This is but one example of population health inequities resulting from preventable environmental exposures.

The concept of environmental health inequity (also referred to as *environmental injustice* or *environmental racism*) describes “inadequate, unresponsive, and/or discriminatory policies that result in the concentration of multiple environmental risks, as well as inadequate access to environmental benefits among disadvantaged Canadian communities.”¹⁰⁴

The Centre for Environmental Health Equity identifies four population sub-groups in Canada that tend to bear a greater burden of adverse environmental effects on health.¹⁰⁵

- Resource-dependent communities that reside in close proximity to a predominant industry (such as agriculture, forestry, oil and gas or mining);
- Aboriginal communities, both on and off reserve;

- Low-income and ethno-racial communities typically in urban settings; and,
- Biologically vulnerable populations such as children, pregnant women and older adults.

Although various government programs and regulations aim to tackle environmental health hazards, rarely do they address population-level inequities. Canada lacks co-ordinated capacity to ensure disadvantaged and vulnerable communities have the opportunity to enjoy the same level of environmental protection as other Canadians.

Mounting Evidence of Environmental Health Inequities

- As previously noted, one in four low-income Canadians lives within a kilometre of a major polluting industrial facility, whereas only seven per cent of the wealthiest quintile lives within this radius. Proximity to major sources of pollution results in higher levels of respiratory and cardiovascular illness for low-income Canadians.¹⁰⁶
- Inuit people in Canada’s North are at greater risk of economic losses and poor health as a result of climate change. Rapid warming of the Canadian Arctic is jeopardizing hunting and many other day-to-day activities, with implications for livelihoods and well-being.¹⁰⁷
- Approximately 40 per cent of Canada’s petrochemical industry operates within a few kilometres of Sarnia and the Aamjiwnaang First Nation. Community members are exposed to a range of harmful pollutants, including cancer-causing benzene, as well as sulphur dioxide, particulate matter and oxides of nitrogen — chemicals known to adversely affect respiratory and cardiovascular health. Members of the Aamjiwnaang First Nation are challenging Ontario’s ongoing approval of pollution in Sarnia’s Chemical Valley on the grounds that it violates their equality rights, as well as their right to life, liberty and security of the person under the Canadian Charter of Rights and Freedoms.¹⁰⁸

¹⁰³ *Urban Physical Environments and Health Inequalities* (Ottawa: Canadian Institute for Health Information, March 2011). http://www.cihi.ca/CIHI-ext-portal/pdf/internet/CPHI_UPE_SUMMARY_REP_EN

¹⁰⁴ “What Is Environmental Health Inequity?” *The Centre for Environmental Health Equity*, accessed August 6, 2014, <http://cehe.ca/aboutus>.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Urban Physical Environments and Health Inequalities* (Ottawa: Canadian Institute for Health Information, March 2011). http://www.cihi.ca/CIHI-ext-portal/pdf/internet/CPHI_UPE_SUMMARY_REP_EN

¹⁰⁷ *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, UK and New York, NY: IPCC, 2014), chap. 11, http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap11_FINAL.pdf

¹⁰⁸ “Chemical Valley Charter Challenge,” *Ecojustice*, accessed August 6, 2014, <https://www.ecojustice.ca/cases/chemical-valley-charter-challenge-1>