



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

17 May 2004

External Advisory Committee on Smart Regulation  
Privy Council Office  
Suite 1102 – 155 Queen Street  
Ottawa, ON K1P 6L1

Attention: Gaétan Lussier, Committee Chair

Dear Mr. Lussier and committee members,

Enclosed please find the submission of the Canadian Environmental Law Association (CELA) to the External Advisory Committee on Smart Regulation. Further information about CELA can be found on the first page of the submission.

The purposes of this letter are to deliver this submission, to highlight certain themes, and to formally request a meeting with the External Advisory Committee on Smart Regulation.

Three themes are particularly important in the context of “smart regulation” and our submission. First, the public expects regulation to protect public health and the environment. It does not expect an invisible “balancing act” to occur whereby competitiveness and other “socio-economic” considerations are pitted against public health and environmental protection. (Alternatively, if such a balancing act is to take place, we highlight the recommendation of the Auditor General, who said in 2000 that the Government of Canada should “explain to Canadians ... its priorities for health and safety regulatory programs, particularly the balance that the government has reached to protect Canadians and address budget, social, economic and trade objectives. The government should revise its regulatory policy and other policies to reflect this emphasis.” We are not aware of any adequate government response to this recommendation to date.)

Second, the continuing debate concerning the appropriate relationship between use of the precautionary principle and prevailing risk management approaches goes to the heart of questions about effective regulation. The Government of Canada’s *Framework for the Application of Precaution in Science-based Decision-Making About Risk* does not adequately address either the emergence of precaution as a response to the shortcomings of risk management practices, nor does it identify preventive and precautionary approaches as a priority among myriad other government policies, none of which is legally accountable. (CELA prepared a detailed submission to the discussion preceding the implementation of the policy. It is available on our website at <http://62.44.8.131/publications/cardfile.shtml?x=1002> (*Implementing Precaution: An NGO Response to the Government of Canada's Discussion Document "A Canadian Perspective on the Precautionary Approach/Principle"*..))

Third, public good regulations require adequate government capacity to administer and enforce them. Your committee’s recommendations for more effective implementation of legislation and regulations must emphasise the need for proper resources for implementation.

On April 13 we met with France Pégeot and Daniel Wolfish from your staff, along with officials from Regulatory Affairs, Privy Council Office, to discuss the submission and matters related to the federal regulatory process. A few notes of explanation of the submission may be useful, given what we learned there.

During the meeting, individual policy areas such as environmental assessment were raised by officials as attracting the particular interest of participants in the EACSR process.

In preparing the submission, we made an effort to direct the analysis not to individual policy areas but instead, identified “public good regulation” more broadly. While “regulation” may be thought of in terms of democratic values, rule of law principles, accountability and other related themes, the submission focuses particularly on those areas to which the Government of Canada Regulatory Policy applies. The submission identifies the Policy as representative of federal regulatory culture generally, and as a central instrument in the federal regulatory process.

Analysis of particular policy areas by CELA and other members of the non-governmental environmental community is available from those groups. We would be happy to discuss with the committee members the availability of such work, and to discuss with you its application to regulatory reform.

Because the regulatory system is central to democratic processes, our submission does not address particular policy areas such as environmental assessment. However, because environmental assessment is to be the subject of a chapter of your committee’s report, and because of persistent myths about duplication and overlap of federal EA with provincial regimes, we are enclosing a recently-published paper describing the key problems with federal EA. Chief among these is the absence of independent decision-making, the absence of an environmental test determining how and whether projects are allowed to proceed, and the lack of an enforceable regime for the environmental assessment of programs, plans and policies. Items of particular interest and sources of further information are highlighted throughout the text.

Finally, we wish to request a meeting with members of the External Advisory Committee. Please contact us at your earliest convenience, as we are eager to discuss the submission with members of the Committee.

Sincerely,



Paul Muldoon  
Executive Director and Counsel



Hugh Benevides  
CELA Research Associate

enclosures - CELA Smart Regulation submission  
- paper on Bill C-9 / CEAA reform

cc. Joe Jordan, Parliamentary Secretary to the President of the Treasury Board (Regulatory Reform)  
Jody Aylard, Director of Operations, Regulatory Affairs Division, Regulatory Affairs Secretariat, Privy Council Office  
John Arseneau, Director General, Risk Assessment Directorate, Environment Canada