



CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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301-130 Spadina Ave. St. Toronto ON M5V 2L4 • ph: 416/960-2284 • fx: 416/960-9392
Web site: www.cela.ca

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CELA DENOUNCES McGUINTY GOVERNMENT'S DECISION TO EXEMPT PROVINCIAL ENERGY PLAN FROM ENVIRONMENTAL ASSESSMENT

Today the Canadian Environmental Law Association (CELA) strongly condemned the McGuinty government's decision to pass a regulation that unconditionally exempts Ontario's proposed energy plan from the province's *Environmental Assessment Act* (EA Act).

"In our view, this exemption is unacceptable, unjustified, and contrary to the public interest," stated CELA lawyer Richard Lindgren. "The EA Act is Ontario's main environmental planning statute, and it should be applied in this case to rigorously scrutinize the significant environmental, public health, and socio-economic impacts of the provincial energy plan, particularly the nuclear component."

The exempting regulation was quietly posted on June 14, 2006 to the Ontario government's e-laws website. However, the regulation was apparently made on June 12, 2006, but was not disclosed by governmental officials when the provincial energy plan was unveiled to the public on June 13, 2006. Alarming, the regulation exempts not only the provincial energy plan, but also generally exempts any "enterprise or activity" carried out by or for Ontario that is "related" to the provincial energy plan.

"Developing the provincial energy plan under the *Electricity Act, 1998* is not an adequate substitute for the EA Act," declared Mr. Lindgren. "Unlike the *Electricity Act, 1998*, the EA Act provides for meaningful public participation, and requires the proponent to identify and assess alternatives to the proposed plan, and alternative ways of meeting the objectives of the proposed plan."

"We note that the Peterson government properly applied the EA Act to the previous provincial energy plan proposed in 1989 by Ontario Hydro, which also included a large and costly nuclear component," continued Mr. Lindgren. "However, the proponent withdrew the proposed plan after it became clear that the long-term energy forecasts could not be substantiated within the EA hearing. In my view, this outcome demonstrates the benefits of the EA Act, and illustrates the real reason why an exempting regulation has been passed – the Ontario government knows that the provincial energy plan is unlikely to survive the rigorous scrutiny and public interest test under the EA Act."

CELA is also gravely concerned about the secretive manner in which the regulation was developed.

"The Ontario government was obliged by the *Environmental Bill of Rights* (EBR) to ensure meaningful public notice and comment on the proposed exemption before the regulation was passed," said Mr. Lindgren. "Posting this proposal on the EBR Registry would have provided the public with an opportunity to express its views on whether the exemption is appropriate, or whether stringent terms and conditions ought to have been included in the exemption regulation. We therefore call upon the Environmental Commissioner of Ontario to immediately investigate and report upon this non-compliance with the EBR."

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Richard Lindgren, CELA lawyer (613-385-1686)