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A READERS DIGEST VERSION OF CELA'S HISTORY

by **ALAN LEVY**

(with input from David Estrin and John Swaigen)

Once upon a time, there was no Ontario Ministry of Environment or Environment Canada. Environmental law was not taught in the law schools, and there was not even an index listing in legal texts, digests and journals. And it was in these days, long ago, that CELA was born.

The idea of CELA was established in 1970 by a group of young people that included some Pollution Probe staffers (Peter Middleton and Tony Barrett), law professors at Osgoode Hall (Barry Stuart, now a Judge, and Harry Arthurs), lawyers (Clay Hudson, Harvin Pitch), and some law students and graduates, mostly from the Faculty of Law at the University of Toronto. David Estrin was an exception, having studied law in Alberta. The organization's original name was ELA, with 'Canadian' being added sometime in the early 1970s.

The concept was to create a public interest law clinic that could provide support for environmental groups like Pollution Probe that needed expertise (there was very little at that time in the private bar) at little or no cost (Probe, like most environmental groups then and now, had no money to spare). At the time, Probe was receiving numerous calls from people living in Ontario and beyond with environmental concerns and problems, and wanted a legal team mobilized to be able to assist them.

The first step was the establishment of the Canadian Environmental Law Research Foundation (CELRF) in 1970, complete with federal charitable status and the power to issue tax receipts. This work was quickly undertaken by Clayton A. Hudson (Shibley Righton LLP), one of the founding members. CELRF would be CELA's twin and try to raise funds to launch and finance the clinic; it would also undertake related legal and policy research projects.

From the fall of 1970 until the spring of 1971, the complaint files generated by Probe were fielded primarily by a group of my classmates (the U of T Faculty of Law graduating class of 1970) who were articling at that time. I still recall a tense discussion with the Faculty's Assistant Dean who wanted an organizing notice I posted at the law school to be removed, since in his view it created the impression that something radical was being planned. Perhaps it even used the word 'radical' in describing our fledgling group.

For the first year we had neither office nor operating funds, and worked strictly as volunteers - we met often at our homes after hours. In the spring or summer of 1971 a small federal grant became available (each full-time staffer was paid \$70 per week), and temporary space in the U of T Ramsey Wright building was donated by Prof. Donald Chant. Thus began the full-time operation of CELA. At the same time, in a corner of David Estrin's law office, a student (now a Superior Court judge) toiled away doing environmental legal research for CELA.

Prof. Stuart worked part-time as a volunteer director of CELA for a period of many months, and then David Estrin became its first full-time lawyer in late 1971. One of the first law reform projects at that time was a thorough critique of the bill which would create the *Environmental*

Protection Act. Among other things, CELA fought to remove the bill's prohibition against private prosecutions.

After lengthy negotiations with the Law Society, CELA was granted permission to establish a roster of private lawyers so that referrals to the private bar could be made in appropriate cases. We tried to keep it a secret that the outside lawyer in private practice who started the incorporation work *pro bono* for CELA was sent to jail for an unrelated fraud. Someone else eventually finished the job of incorporating CELA.

Within a short time, the board of directors was faced with a demand by staff that they wanted membership on the board with voting rights (except of course for personnel matters). After all, staff were paid very little, had to share a single one-room science laboratory as their "office," and were working long hours to do most of the important work of the organization. The board resisted, the staff protested and after a spirited stand-off-turned-negotiation session, the board relented and corporate democracy was established. This model of governance, unique in the Ontario legal aid clinic system, I understand, continues to the present and has served CELA well. I feel that it may be one of the most significant factors in CELA's survival and success.

Periodic newsletters were published and still continue in the form of the *Intervenor* and an e-mail bulletin. Reports of environmental court and tribunal decisions were summarized (initially David Estrin typed decision summaries at home on his old typewriter - clearly without the aid of any spell-checker) and printed in-house (the *Environmental Law News*); they were later published professionally with Canada-wide circulation by Carswell. The *Canadian Environmental Law Reports*, the country's primary environmental law reporting service, continues to be edited by a team which includes three CELA staff lawyers. Several books were written by staff, including the encyclopedic *Environment on Trial*, currently in its third edition.

In 1975, staff lawyer John Swaigen organized a fund-raising *Stringband* concert to support the litigation costs of public interest environmental cases. The event was a success and raised \$5,000, thereby launching the first Canadian Environmental Defence Fund (CEDF). After a subsequent period of dormancy, the CEDF was revitalized and now continues to operate on a much larger scale than ever before.

The two siblings, CELA and CELRF, lived together with overlapping staff and boards of directors, until CELRF decided that it could not expand and have more clout unless it had an identity very distinct from CELA. There was a perception on the part of some at CELRF that CELA was too radical in the eyes of foundations, sponsors from the business community, and government. Some of us resisted the separation but to no avail. And so it was that CELRF left home and eventually changed its name to the Canadian Institute of Environmental Law and Policy (CIELAP). Neither organization was a fund-raiser's delight, mind you. Core funding and financing of projects involving law reform and legal process were difficult to find, and CELA board members were as disinterested and unskilled in fund-raising as they were learned and keen about environmental law.

Similar public interest environmental law clinics soon opened in Sudbury (Sudbury Environmental Law Association) and British Columbia (West Coast Environmental Law Association). The Sudbury office closed after a time, although in its short life it had the distinction of being the first organization to prosecute Inco for pollution, long before the Ministry of Environment got around to doing so. WCELA in Vancouver still remains. Dean John McLaren and Associate Dean Ron Ianni at the University of Windsor's Faculty of Law, two of CELA-CELRF's backers in the early days, opened the Windsor Environmental Law Association. One of its active law students at that time was a young Eva Ligeti.

Meanwhile, in Toronto, CELA expanded and moved offices, but without permanent and adequate funding, life for staff and the board was very strained. Staff lawyers toiled with little administrative assistance or legal support. Signing personal guarantees (which several board members and other CELA supporters did in 1975) to back CELA's bank indebtedness and sustain operations when funding ran out, was an experience some of us try to forget.

It was probably due to this austerity that CELA's preferred form of retreat in those days was an annual canoe trip over the May long weekend - it was all we could afford. How many other organizations do you know that met and traveled in the wilderness during the most buggy time of year? On the other hand, it may help to explain why some of us have remained good friends ever since.

Provincial legal aid funding arrived just in the nick of time. A one-year group certificate was issued in 1976 for \$2,000 per month to cover the salaries of our two staff lawyers. CELA was recognized by legal aid as a clinic, one of the first in the system which now numbers more than 70, and we remain forever indebted to Legal Aid Ontario for its continuing financial support. Although legal aid never accounted for the entire budget, and other fund-raising efforts continued, the change permitted salaries at a level at which staff were no longer forced to leave CELA in order to obtain a measure of financial security and a lifestyle beyond that expected by summer students. As a result, CELA ceased to be just a training ground for environmental lawyers and researchers and also became a potential career base. Not that all board members agreed with this shift - and it took a difficult and heated board debate in the 1980s before the new paradigm prevailed. This change too has served CELA well.

Staff had time to learn and practice their craft, and many chose to remain when higher-paying opportunities inevitably beckoned. CELA was consulted more and more by government on legislative and policy initiatives, and CELA lawyers spoke regularly at professional conferences. Still, opportunities continued for law students and others to work or volunteer at CELA for short periods. And CELA itself is now a volunteer partner in the Environmental Law Practicum, which commenced last year at UofT's Law Faculty. The Practicum provides opportunities for law students to earn an academic credit by working on client files with an environmental lawyer as supervisor. CELA has not forgotten its roots.

Occasional board controversies were always interesting, if not entertaining. Once a board member defended a large public corporation that CELA successfully prosecuted. After the conviction, he campaigned on behalf of the polluter to repeal that part of the *Fisheries Act* which permitted our client's private prosecution, or at least to split the fine. On a later occasion, CELA was attempting to stop a large scale water diversion project only to discover that one of its directors was publicly supporting it. Sometimes, we had to create new rules for board governance on the fly, in order to deal with situations which we never expected to encounter. Most of the time, however, we operated through consensus. At CELA, there was usually an understood and shared set of values to guide us through the maze.

Many of those who worked for CELA (and CELRF) in summer jobs, as articling students or as staff lawyers, or who served on its board of directors, remained in the environmental law and policy field and have distinguished themselves elsewhere. Although there is not space to name them all, examples (in addition to those named above) include environmental law professors (Paul Emond and Marcia Valiante), the first Environmental Commissioner of Ontario (Eva Ligeti), a founder and head of the Non-Smokers' Rights Association (Gar Mahood), a publisher of many environmental law titles (Paul Emond - he was one of the first group of summer students

and years later wrote and published the important 1978 text, *Environmental Assessment Law in Canada*), Graham Rempe who worked as solicitor for the Environmental Compensation Corporation 1986 – 1988 and now with the City of Toronto practising environmental and municipal law, a member of an Ontario Royal Commission on Planning who later chaired the B.C. Environmental Appeal Board (Toby Vigod), the first (and only) special Ontario Cabinet advisor on environmental issues (Steve Shrybman), former executive director of the Canadian Coalition on Acid Rain and current Director of the Ontario Campaign for Action on Tobacco (Michael Perley), former Chair of the Environmental Assessment Board (Grace Patterson), former Chair of the Environmental Appeal Board (John Swaigen), and heads and members of environmental law departments in large Bay Street and small environmental specialty firms (Chuck Birchall, Joe Castrilli, Roger Cotton, David Estrin, Robert Fishlock, David & Harry Poch, Stan Stein, John Willms and Dennis Wood, to name just a few).

Sadly, we also lost some former staff (Dolores Montgomery, Nettie Vaughan and Barbara Rutherford) and at least one board member (Pat Reed) along the way to illness and accident. Dolores, a good friend, died tragically in a small plane crash (it hit a hydro line) while doing public consultation work for the Porter Royal Commission on hydroelectric power in 1976. The 3rd edition of *Environment on Trial* is dedicated to Dolores and Pat.

CELA has been an important player in several law reform projects, such as the creation of the *Environmental Assessment Act*, the *Intervenor Funding Project Act* and the *Environmental Bill of Rights*. In fact, CELA has been an advocate in these three legislative areas for almost all of its 30 years. The EAA 1970s campaign was long, elaborate, expensive and successful - it also left us in perilous debt. CELA has also been involved in numerous cases before the Ontario Court of Appeal and Supreme Court of Canada - more than many lawyers will see in their career.

Now, CELA has five lawyers in a full-time staff totaling 13 people, its own in-house international environmental law team, and an extraordinary library. When the Ministry of Environment and Pollution Probe disbanded their libraries due to cutbacks, CELA filled the void. That library is now managed by the Resource Library for the Environment and the Law (RLEL), a non-profit charitable corporation housed at CELA. Its collection is vast. CELA has collaborated with CIELAP, CEDF and RLEL on research projects. CIELAP, having separated from CELA years ago, is now located just down the hall from CELA's offices. And CEDF is located on the same street, just blocks away.

CELA has seen provincial and federal governments and politicians come and go - some who genuinely tried to help and advance the cause of environmental protection, and some who have unfortunately tried to undermine it. CELA was active when environmentalism was flourishing, and continued on during the low points. CELA has survived the efforts of a few people who regarded environmentalism as a problem to be eliminated.

An environmental consultant informed me just weeks ago that CELA is often considered "a little too radical" by many of his firm's clients. Maybe they heard about that notice posted long ago on a law school bulletin board. Another opinion, offered by the federal Environment Minister in a letter last month, is that the "founding members can be justly proud of the work the Association has done, and the influence it has had on Canadian environmental policy over the years." He congratulated the board and staff for "achieving 30 years of committed service to Canadians."

And it is not only the founders of CELA who continue to be very proud of its many accomplishments.

by **JOHN SWAIGEN**

Today, the world is run by “bean counters” - management gurus, efficiency experts, “quality assurance” types (and even governments) that seem to think that process is more important than product. To run an efficient and effective organization, they claim, you need “visioning” exercises, mission statements, strategic plans, long term goals, medium range objectives, short term targets, action plans, blah, blah, blah.... . These goals, objectives and targets must all be “measurable” and the results are to be measured and compared against “indicators” and “benchmarks” and “best practices”.

And when, pray tell, is one expected to find the time to actually do the work?

Given this context, it is instructive to “measure” CELA’s performance against its vision, mission, goals, objectives, targets, and all the rest of the paraphernalia of the bean counters. Around 1970, CELA enunciated what we now might call a vision or mission or a set of long term goals. CELA stated that Ontario needed an Environmental Bill of Rights and set out to make it happen. In my days at CELA I don’t remember anyone ever developing a strategic plan or setting goals or targets as to how we would get there. Nevertheless, using this simple measuring stick quickly makes clear just how effective CELA has been.

CELA’s Environmental Bill of Rights included:

- standing to sue in courts and appear before tribunals:

Result? Numerous court decisions broadening the right to participate, a report by the Law Reform Commission recommending broader standing, and standing provisions in the actual Environmental Bill of Rights passed by the Ontario Government

- Class actions:

Result? Ontario’s Class Proceedings Act, as well as similar legislation in at least one other province

- funding to participate in proceedings before courts and tribunals:

Result? The establishment of a case-by-case intervenor funding program by former Environment Minister Andy Brandt as a result of lobbying by a coalition spearheaded by CELA, followed by the Intervenor Funding Act, passed by a previous Ontario Government and killed by the current one; the existence of the Canadian Environmental Defence Fund, which CELA helped to found. CEDF raises money to fund citizen interventions; and the fund set up under the Class Proceedings Act to support class actions; as well as funds for disbursements and to relieve against adverse costs awards available to clinics like CELA through Legal Aid Ontario

- Reform of the party-and-party costs rule that acts as a barrier to citizens enforcing their environmental rights:

Result? Well, you can’t win ‘em all. We still have the same old costs rule, but CELA’s efforts have brought a new approach closer to reality. CELA’s submissions resulted in the Osler Task Force on Legal Aid commenting in its report that a one-way costs rule should be considered in public interest lawsuits, an idea that the Law Reform Commission of Ontario (disbanded by the

current government) ran with in one of its reports - either the one on standing or the one on class actions, I think.

- Freedom of information laws:

Result? The federal government, Ontario, and every other province have freedom of information laws which make it easier (somewhat, sometimes, depending on how hard government departments fight to avoid complying) to get government information about the environment

- Whistleblower protection:

Result? Added to the Environmental Protection Act around 1981 and incorporated in the EBR in 1993

- An environmental Ombudsman:

Result? Ontario and the federal government both have appointed environmental commissioners and the BC government has just announced that it will establish such an office

- Laws requiring environmental impact assessment of environmentally significant projects and programs:

Result? Ontario passed the first environmental assessment act in Canada in 1975, and today most, if not all provinces, have such legislation, as well as the federal government. In addition, many other laws governing specific matters such as pipelines or land use planning require assessment of environmental impacts before approvals are granted.

- Public participation in setting environmental standards:

Result? In the 1980s, the Ontario government set up several advisory committees to review proposed environmental standards and guidelines. They have all been disbanded by the current government, but the Environmental Bill of Rights remains. It requires an opportunity for public participation before many regulations, policies, guidelines and enforcement and compliance instruments are issued.

- The right to a healthy environment:

Result? Well, again, you can't win 'em all, but the Environmental Bill of Rights contains a new cause of action that gives ordinary citizens the right to protect public resources when governments decline to do so, and CELA was probably the first organization in Canada to argue that a clean and healthy environment should be enshrined in the Canadian Charter of Rights and Freedoms. When Toby Vigod went to Ottawa in 1978 or 1979 to argue before a joint committee of the House of Commons and the Senate that our Constitution should contain a right to a clean environment, her submissions were ignored not only in the committee's report but also by the media (possibly the only time in thirty years that a CELA press release has not resulted in media coverage). Today, however, there is a respectable body of academic literature arguing for such a constitutional right and the Supreme Court of Canada in at least four cases has talked about environmental protection as an important, and even fundamental, value in Canadian society.

So, measured against its original goals, even the bean-counters would have to concede that CELA, despite its lack of a detailed thirty-year plan with monthly measureables, is somewhat of a success.

I was at CELA from December 1972 to the summer of 1980, with seven months off to attend the Bar Admission Course. Unlike the governments of today, the governments of the Trudeau-Davis era didn't always feel compelled to act when CELA made a suggestion or revealed a problem in the way they dealt with the environment. Back in those days, it often took a disaster or near disaster, like the Mississauga derailment, Bhopal, Three Mile Island, or mercury poisoning in Japan, on First Nations reserves in northern Ontario, and in the St. Clair River in southwestern Ontario to convince a government that something needed to change. Of course, now governments are so much more responsive. It is inconceivable that today it would take, for example, children dying, to persuade a government to set drinking water standards and enforce existing laws to protect our water supplies.

Nevertheless, despite recalcitrant governments, we had many small victories, and some major ones. The major ones included, of course, the Environmental Assessment Act, shaped by a CELA campaign lasting several years run by Gar Mahood, Joe Castrilli, John Low (for a while) and the late Dolores Montgomery with important input from CELA directors such as Cliff Lax and Dennis Wood (forgive me if I've forgotten anyone). Less well known perhaps, is CELA's success in raising the issue of compensation for pollution victims, which may have been a factor in the Ontario Government's introduction of the Spills Bill in 1979 and CELA's partially successful efforts to protect that Bill from a strong industrial and commercial lobby to weaken it. These efforts led to the addition of an Environmental Compensation Corporation to the Bill. (Note: the ECC has been killed by the current government, which declared that it is not the business of government to compensate pollution victims. Its rush to compensate the people of Walkerton seems to suggest a change of mind).

Other successes in the 1970s and 80s included CELA's success in using the media and private prosecutions to embarrass the Ministry of the Environment into abandoning a policy that it would not prosecute noise violations under the Environmental Protection Act (the current Ministry has instructed its staff not to investigate or prosecute offences involving noise, vibration, dust or odours); CELA's role along with the Conservation Council of Ontario in persuading the government to replace a weak Pits and Quarries Control Act with a strong Aggregate Resources Act (the current government amended the latter Act to remove some of the strong provisions that CELA had argued for); CELA's role, again along with the Conservation Council, in persuading the Government to amend legislation intended to immunize farmers against lawsuits resulting from certain types of pollution; and CELA's success in persuading municipalities to pass stronger urban tree protection by-laws.

I could go on, and perhaps I will when it comes time for CELA's fortieth. But there is one last story that I think is worth telling for the first time, some twenty-odd years later. It was a small victory in the scheme of things, but an important one, I think.

Some time in the mid-1970s, the media got wind of the fact that the Ontario Government planned to grant a logging company the right to clear cut vast areas of northwestern Ontario, without an environmental assessment and without any notice to the First Nations communities that inhabited the area. The resulting outcry became such an acute embarrassment to the government that it moved quickly to control the damage by appointing a Royal Commission to report on how to protect the Northern Environment. (Bill Davis did that a lot. My, how things have changed).

One day, an employee of the Ontario government came to CELA's office and asked to see a lawyer. He was visibly shaken; close to tears, in fact. Only a year or so away from retirement, he had been accused of leaking to the press the document that had revealed the secret deal to sell off much of northern Ontario. He was facing a disciplinary hearing and would likely lose his job and his pension if the hearing concluded that he was the whistleblower. He needed CELA's help.

A phone call was made on the alleged whistleblower's behalf to a Tory power broker who had the ear of the Premier. The CELA staffer explained that CELA wanted to help the government avoid any embarrassment. If the discipline proceedings went ahead, every organization advocating freedom of information legislation (non-existent at that time), civil liberties, protection of the environment, and native rights would undoubtedly feel compelled to ride to the rescue. The martyrdom of the alleged whistleblower would be a boon to their causes and a bane to the government. Indeed, such a disciplinary proceeding might be the best thing that ever happened to these groups.

Two days later, CELA received a curt telephone call. The alleged whistleblower would not be fired, which was "more than he deserved." The alleged whistleblower was stripped of his usual duties, moved to an isolated office, given an impressive-sounding but useless research project to work on, and permitted to spend his days chasing chimeras until he retired, with full pension, a year or so later.

by **PAUL MULDOON**
Executive Director

CELA at the Turn of the Century - Where We Are and Where We Are Going

No matter which way you look at it, CELA has been a very busy place over the past few years. CELA is also a difficult organization to understand at times, owing to its multiple mandates derived both from its historical mandate and the *Legal Aid Services Act, 1998*. Is it a public interest law firm? Is it an advocacy group? Is it an educational and resource centre? Is it a community organizer? The reality is that it is all of these things and it has been *very* active in acting under all of these mandates.

CELA and Its Cases

While one could talk about all of the interesting and high profile cases that CELA has been involved with in the past decade, the reality is that staff prides itself on taking the "little guy" cases. Flowing from its statutory mandate to represent "low income people and disadvantaged communities," most of the cases that CELA gets involved with relate to people or community groups fighting incredible odds to attack environmental injustice. Families living beside leaking landfills, groups opposed to development projects trying to save wetlands, children exposed to toxic chemicals, are just a few examples of these cases. Seldom do they make headlines, but the issues are genuine and are profoundly important to the lives of our clients. While our clients are often attempting to protect their health and property, almost invariably their real interest is fighting for the broader environmental protection principles. These cases really define the essence of CELA – ensuring that the poor and disadvantaged have some access to justice through the courts and tribunals.

While the “little guy” cases may represent the mainstream, CELA has never hesitated to take on controversy. Most recently, CELA has opposed the Adams Mine landfill, the export of Lake Superior water to Asia and the patenting of life forms. The organization also challenged the federal-provincial environmental harmonization accord and the air transportation of the nuclear material plutonium (MOX). These cases have put CELA’s name in the media. In addition, CELA has been very active intervening in cases that provide an opportunity to improve the law, including a federal judicial review over the Red Hill Valley Expressway. CELA will be in the Supreme Court of Canada in April of 2001, its third trip there since 1997, when it was an intervenor in a challenge to the *Canadian Environmental Protection Act*. In 2000, CELA was an intervenor arguing for municipal powers to regulate pesticide use.

One of the most notable trends this decade has been the explosion in the number of requests received by CELA for representation. For whatever reason, Ontarians are increasingly looking to the courts and tribunals to adjudicate their environmental issues. This has placed enormous pressure on CELA to attempt to prioritize its resources. While CELA must reluctantly turn down many worthy applicants, it has continued the worthwhile but time-consuming task of providing summary advice. Each week, many hours are spent on the phone or in person, assisting people from across Ontario with problems that they can resolve with help from CELA’s knowledgeable and experienced staff.

CELA’s Efforts to Strengthen Laws and Policies

As John Swaigen and others have articulated, CELA has fought for better laws and policies to protect the environment since its inception. It would take pages to fully and accurately reflect this continuing tradition. Each year, CELA writes dozens of submissions in response to government initiative and undertakes dozens of public speaking engagements. Further, there are thousands of hours devoted to outreach, community meetings and government consultations on related topics. A focus of all our law reform campaigns has been to improve the public’s access to justice and environmental decision-making.

Since the mid-1990s, CELA also formulated its own campaigns, the highlights of are explained below. There are a number of principles that pervade all of this work. Of necessity, many of our campaigns have focused on the “3Ds”- downsizing, deregulation and devolution. It is apparent that the “3Ds” have profoundly affected environmental protection and all of CELA’s work.

Toxics and Human Health: In the 1990s there was increasing recognition of the impact of environmental contamination on human health. One of CELA’s “flagship” campaigns has been, and will continue to be, efforts to strengthen standards to protect children. CELA and its partner, the Canadian College of Family Physicians, Environment Committee, released a seminal study on the topic in May of 2000 that has, in many respects, defined a law reform agenda for years to come.

CELA is committed to collaboration with others on all our campaigns.

Since 1994, CELA has led a campaign with members of the Toxic Caucus of the Canadian Environmental Network to revamp the federal government’s major law to address toxic substances, the *Canadian Environmental Protection Act*. This campaign has included a half dozen presentations to the parliamentary committees, thousands of pages of submissions and countless meetings with stakeholders and policy-makers. CELA is now focussed on consultations with respect to implementing the new 1999 CEPA.

CELA has also been involved with an important campaign directly focussed on human health and cancer. It co-sponsored a tremendously important conference in 1999 entitled "Everyday Carcinogens," and produced materials demonstrating the link between exposure to contaminants and cancer.

Protecting our Natural Heritage: CELA has fought to protect natural areas, farmlands and forests since 1970. We recently campaigned vigorously for zero discharge in Remedial Action Cleanup Plans, and made efforts to strengthen Great Lakes international agreements.

Water: It seems that CELA has always had a focus on water. Throughout the 1980s and 1990s, it devoted significant time to Great Lakes issues, and these efforts continue today. One of the key themes has been water use and quantity. With the publication of the report, *The Fate of the Great Lakes – Sustaining or Draining Sweet Water Seas?*, CELA and its partners alerted the Canadian public to the vulnerability of Canada's water supplies.

CELA also continues to work on water quality issues and has developed a model water law that if enacted, would provide a regulatory framework to protect Ontario's water resources.

More recently, CELA's involvement in the Walkerton Inquiry has provided a further opportunity to strengthen water protection and to reframe one of our first campaigns in the form of a *Safe Drinking Water Act*. CELA, Concerned Walkerton Citizens, CUPE and OPSEU will be submitting papers in Part II of the Inquiry on the need for a Safe Drinking Water Act and the need to retain public ownership and operation of water utilities.

Environment and Trade: Since the late 1980s, CELA has been in the forefront in recognizing the impact of the liberalization of trade on environmental and natural resource protection. These efforts are continuing through a generous grant from the Mott Foundation and it is no surprise that CELA is seen to be a respected authority on the topic. In addition to trade, CELA has been working on environmental issues abroad in communities impacted by Canadian mining ventures. This work, with our Peruvian collaborator, CooperAcción, is tremendously important.

CELA and Public Education: Each year, hundreds of people contact CELA for information on a wide range of topics. CELA is one of the few organizations that has retained a capacity to respond to a very information thirsty public. This work, often unrecognized, has made a real difference for many in Ontario and indeed, across Canada. One of the tasks in this regard is attempting to make law more accessible and understandable.

One of the increasingly important vehicles for dissemination of information is the CELA website [www.cela.ca]. With growing frequency, the CELA website is visited by the public, affording opportunities to use this vehicle not only to disseminate information, but also as an organizing tool. In addition to the website, CELA also produces a monthly "E-Mail bulletin" that outlines the organization's activities and important upcoming events. Of course, CELA's newsletter, the *Intervenor*, is still published four times a year. This newsletter is being converted to an electronic format and will continue to provide the reader with an array of interesting articles on current legislative and policy initiatives, case updates and insight into issues of the day.

What has yet to be mentioned is the Resource Library for the Law and Environment, which has served the Ontario public so well, for so long. While the collection continues to grow, the library catalogue will soon be available electronically, affording great access. The library continues to be a valuable resource to students, lawyers, consultants, community groups and other stakeholders.

When you add together all of these activities, one gains a glimpse of the day-to-day workings of CELA. There is every indication that the demand for its services will continue to grow. It will no doubt be a challenge to respond to this ever increasing demand and still discharge CELA's key mandates. Fortunately, CELA's dedicated staff and board will respond to the challenge to continue the organization's 30 year struggle of serving the public in the name of environmental protection.

by **TOBY VIGOD**

In August 1978, I began articling at CELA. Our offices were at 1 Spadina Crescent- an environmental disaster itself as there was a storage site for radioactive material behind the building! During my articles, I was fortunate to assist Grace Patterson and Ann Lancaster in a number of hearings- in those days, anything longer than a week or two was considered a major hearing. Our clients in those days had acronyms such as MAD, HELP, and CRAW.

I managed to spend some time in Buffalo in the early 1980s, when I represented Pollution Probe and Operation Clean-Niagara regarding the leaky Hooker Chemical Hyde Park landfill in the vicinity of the infamous Love Canal. It was in Buffalo that I lost my one good suit. Very late at night, I placed my suit bag on the top of our consultant's car before we headed back to where I was spending the night. The next morning there was no suit and I had to borrow clothes from Anne Wordsworth (Pollution Probe) to go to court for our final argument. While "shiftless" in Buffalo, our experts were ultimately and sadly correct about the path of the chemicals leaking to the Niagara River.

During the late 1980s, we were successful in upholding a ban of alachlor, a corn herbicide that caused cancer in lab animals, which was showing up in Ontario drinking water. We slogged through an extremely long landfill hearing in Halton, but were successful on behalf of our clients, the West Burlington Citizens' Group, in ensuring that a landfill not be placed on fractured shale. In the early 1990s, we spent more time on land use issues, recognizing land use planning as an important factor in protecting the environment. Climate change, trade law, and Great Lakes issues were all important issues during those years.

In 1991, I left CELA after 13 years to become a Commissioner on the Commission on Planning and Development Reform in Ontario. After two enjoyable years working with John Sewell and George Penfold, I returned to CELA for four months, before heading off to Victoria, British Columbia. After almost three years as an Assistant Deputy Minister in the Ministry of Environment, Lands and Parks, I took over as Chair of the British Columbia Environmental Appeal Board and Forest Appeals Commission. This was clearly in keeping with CELA tradition, as my former colleagues Grace Patterson and John Swaigen had both been Chairs of Environmental Boards in Ontario.

As CELA turns 30, I find myself back in Ontario, working for the federal government on climate change. Plus ça change.....

All the best to CELA for the 21st century.



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by **CHUCK BIRCHALL**

I first worked for CELA in 1977 as a law student. At that time the offices were located at Connaught Laboratories near U. of T. John Swaigen, Don Collison and Ann Lancaster taught me a lot that summer about environmental matters, the law and fundraising. Those were the days before CELA's designation as a legal aid clinic and we all devoted a good deal of time to raising money. My friends thought that this would be an easy task as the "greening" of America was upon us. Thirteen years later the "greening" still seems to be in its infancy.

That summer I also learned to walk very slowly after 6 p.m. Occasionally, the door bell would ring after hours. The first person reaching the door was usually greeted by a cab driver who would pass over a special box containing recently donated human eyes. At that time, Connaught Laboratories housed an eye bank. After one or two of these experiences, it took me a very long time to reach the front door.

CELA has new premises and the media and others tell us that we are firmly entrenched in the era of "sustainable development." The public is keenly aware of the environmental challenges confronting us and the politicians are beginning to respond. I would like to think that the environmental crusading and consciousness-raising efforts that characterized CELA's work during the 70s and 80s contributed to the change. Some of my colleagues have suggested that change has occurred and that CELA is now just part of a larger environmental movement. I do not agree. Society and government will have to make critically tough choices in the next decade in order to substantially improve our environment and begin to reverse the consequences of global degradation. CELA will play a leading role as these choices are confronted. If there has been a change it is that society no longer regards CELA's efforts as quixotic. In fact, people (including politicians) seem to be listening.

And, when all is said and done, the one thing that will not change is that CELA will continue to be a legal aid clinic providing essential services to those who otherwise would have no access to the justice system. This piece does not do justice to CELA's staff and directors. Thank you for letting me play a small part and I look forward to CELA's next 20 years.

by **JOE CASTRILLI**

It was the worst of times. It was the worst of times. My first tour of duty at CELA began in 1973. We were located in the Zoology Department experimental laboratories in the Ramsey Wright Building at the University of Toronto. David Estrin was General Counsel and John Swaigen was an articling student. Alan Levy was on the Board of Directors. We were taking the first experimental steps in using the law to defend the environment. One of our first private prosecutions was against an ashtray. We lost. Pierre Trudeau and Bill Davis were in power. They too were experimenting - on Canada.

There was lead in Toronto's air. There was mercury in Ontario's northwestern lakes and rivers. There was the Federal Fisheries Act, but no fish. There was no *Canadian Environmental Protection Act*. There was no *Environmental Assessment Act*. But there were promises. During 1973 -1975, CELA lobbied the Ontario and Federal Governments to produce environmental

legislation that would combine environmental assessment principles with an environmental right of action. We traveled to Michigan to confer with the authors, legislative sponsors and organizers behind the successful Michigan *Environmental Protection Act*. We traveled west and to Ottawa to preach the gospel of environmental assessment to federal bureaucrats, biologists and bulldozer operators who were preparing to lay pipeline in the MacKenzie Valley. We drafted our own model environmental assessment legislation and then toured Ontario to press for its adoption rather than the bill of goods being proposed by the Ontario government. We were noisy and we were brash, but trying to excite people about environmental assessment was like trying to interest them in watching paint dry. There was a lot to be said for taking up another line of work

In 1978, I returned to CELA for a second tour of duty, this time as Research Director. Trudeau and Davis were still in power. Lead and Mercury were still in the air, now joined by other toxic chemicals, pesticides and hazardous wastes. CELA was increasingly involved in administrative hearings including the Maple landfill case – still the longest hearing before the Environmental Appeal Board; lobbying on national issues such as the IBT scandal – regarding the fraudulent testing of pesticides; and drafting model legislation on environmental rights, including a version of the bill that was eventually introduced as a private members bill in the Ontario legislature in 1979 by Stuart Smith, then Liberal Leader of the Opposition. As we were learning, however, there was no safe place, including the location of CELA's offices – then at Spadina Crescent – which had to be vacated in 1980 because they were radioactive.

As CELA moved into the 1980s, the Board of Directors approved the organization's increasing focus on toxic chemicals, pesticides and hazardous wastes. With this focus came PCB litigation (St. Lawrence Cement); litigation in the U.S. federal courts surrounding the Hyde Park chemical dump, and a series of national roundtables on toxics and the law that were the forerunners of the many circular events we see all too frequently on the national environmental scene today.

When I left the staff of CELA in 1981 many things had changed, though Trudeau and Davis were still in power.

by **BOB GIBSON**

For several years in the early eighties I graced – or sullied, depending on your perspective – the boards of directors of several environmental organizations, including CELA's. Devotion to moral and political rectitude eventually led me to relinquish these positions (the faint prospect of conflict of interest had arisen and not being in the land development business, I felt obliged to avoid the merest hint that I might favour the views of my friends and colleagues) but it was fun while it lasted.

Actually, I stretch the truth here. Only the CELA board was fun. I was relieved to retire from the others.

In my experience the boards of environmental groups are not major sources of illumination or comedy. You might think they spend their time wrestling with environmental crises and plotting campaigns to save the world. Not so. Mostly they deal with the organization's pending financial doom. Sometimes they get to handle office politics as well. Whoopie.

CELA's board was an exception. We examined issues, discussed potential cases and considered options. We debated strategies and tactics. We exchanged informative and only slightly embellished accounts of environmental victories and defeats.

Members with administrative competence, real or imagined, attended to the two main budgetary matters – the perennial funding battled with legal aid functionaries and the interminable negotiations surrounding CELA's moves from one building to another, and were kind enough to let their administratively-disadvantaged colleagues snooze through to the next agenda item.

CELA board meetings were not always uplifting and there were sometimes reasons to suspect that the CELA staff could have gotten along just fine without our sagacious assistance. But I looked forward to the gatherings and I'm sure I learned more than I contributed.

I should confess that my memories of the CELA board are warmed also by an extra-curricular factor. The board held evening meetings in deference to the conventionally employed. I usually came down from Waterloo by train earlier in the day, often with my learned colleague and fellow board member John Robinson. We would return to Waterloo on VIA's late train. Since the formal meetings usually ended before 9:30 p.m. and the train didn't leave until after 11:00 p.m., we faced the dreadful prospect of idle time. Mercifully, several other members of CELA's exceedingly civilized board proved willing to join us for post-meeting study sessions in the Canuck Room of the Strathcona Hotel. I'm sure I learned more than I contributed to these deliberations as well, though my recollections are just a little hazy.

VIA's late train was cancelled years ago. The Canuck room has probably been renovated, or even (perish the thought) renamed. So many good things have gone down. I am therefore especially thankful that CELA continues into its third decade, still defending our battered old environment with wit and commitment.

May its tribe increase.

by **DOUG MACDONALD**

What I remember are the offices at 8 York Street, a barn of a building. It started life as a Yardley's soap factory I understand, creaky old elevators with the OPP Anti-Racket squad one floor below. But all that space and light. I went there for my job interview in the summer of 1982, sitting around the bowling-alley table in the library with Toby, Sarah and Frank. There were at least five or six chairs in the room and every one of them was a beat-up wreck; arms missing, legs missing, canting over at drunken angles, a parody of a boardroom.

The central space in those offices was like a ballroom, with long high windows looking out on Lake Ontario and the central adornment was a shaggy old sofa that made the board-room chairs look like they just arrived from Ridpath's. Over the water fountain was a campaign photo, long hair, bowler and cigar. "Harry Dahm for Mayor". What I remember is the afternoon Steve and Frank made like airplanes, arms stretched out, motors buzzing, over the back of the sofa, up and over desks, flying loops around and around that huge, airy room.

Then the move to Queen Street. A year spent trying to find downtown space for under \$10.00, a contradiction in terms finally visiting the top floor of Barry Swadron's office, a cramped warren after all that space on York Street. My heart sank at the thought of fitting all of us in there and I can still remember walking down Queen after our first visit there, Grace and me, with Chuck and Phil, the McCarthy's mafia boys on the move committee, and they were saying "this is it – this is a real lawyer's office." But then I never could understand why anyone wanted to grow up to be a lawyer.

So we moved and the whole thing was a nightmare, taking along boxes and boxes of old files because Sarah wouldn't let me throw them out, squabbling over who got what office, proving environmentalists have egos too, but we settled in somehow. So what I remember is, again, the central reception space, this time cramped and tiny, with the elevator opening right into the office. And what I remember best is the night we held a CELA Board meeting out there because the library was too small. We were debating, yet again, whether we should take a downtown development case. All through the evening the elevator kept opening right into our meeting, disgorging Ross to give us the Legal Aid view, Jack Layton and his constituents and finally, the Campeau lawyers arriving unannounced, standing right there amongst us, demanding to know if this publicly funded body was holding a public meeting or what? That's what I remember.

by **HARRY POCH**

Looking back to the summer of 1976, John Swaigen, CELA's general counsel and I had the opportunity to join forces several times while I was employed as a student researcher with the Association. Here's what happened:

1. On a prosecution taken by CELA against a landfill operator, counsel Swaigen called "hydrogeologist" Poch as a witness in a successful prosecution under provisions of the *Environmental Protection Act*. Needless to say, what was then a "hydrogeologist" could never pass the test of qualification before a tribunal or the court in environmental proceedings today;
2. Having had such great success, counsel Swaigen later that summer again looked to law student Poch as an advisor on hydrogeologic matters, as related to the Maple landfill site Environmental Assessment Board hearings. Again, one marvels how times have improved the quality of environmental consulting services.

by **GRAHAM REMPE**

About being a summer student at CELA – I did it for the money. Oh sure, I could have gone to a big law firm...grappled with important social policy issues and gained invaluable experience. But I just couldn't resist the lure of big bucks (\$120 a week) and the glittering social swirl offered with a summer at a legal clinic.

That was the summer of 1982. I liked it so much, I came back in 1983.

The life of a summer student at CELA? Start with the compulsory bicycle ride into work. Downhill, thankfully, all the way to the old Yardley building at the foot of York Street. The north/south bike path on York Street consisted of a dangerous pedestrian-dodge on the sidewalk of the York Street tunnel in the choking dust from the (non-toxic, we are assured) loads of fill destined for the Leslie spit. Chained up the bike on the grille windows of the ground floor, behind which lurked drugs, porno films, or scientology documents, as the space belonged to the OPP's Anti-Racket division (who were most proprietorial).

Bag lunches were obligatory. After all, you can only eat so many croissants at Queen's Quay. The dress code was rigidly enforced. You had to be dressed. Minimally, though, as numerous southerly windows made the 5th floor a sweatbox at the best of times.

I was involved with numerous projects. One of the most memorable was an occurrence at Coroner's Court, when I was sent to observe the proceedings and report back. Not knowing that I was going to be in court, I came to work in my usual "cycling greens" (those dapper green workpants and shirts so popular among law students). When I arrived, even though I tried to be unobtrusive, the investigating officer immediately demanded to know who I was and what I was doing there. I told him that I was there on behalf of CELA. He wanted to see my identification card (perhaps he thought that I was CSIS?) and was suspicious when I could not provide one. I was so nervous that I couldn't even give him CELA's telephone number. I don't think he believed me and he wasn't very co-operative, notwithstanding the public nature of the proceedings.

The following day I had learned my lesson and showed up in a three-piece suit. It was very helpful at Coroner's Court. Let me assure you, however, that it is not very pleasant riding a bicycle downtown in sweltering heat wearing a three-piece suit.

So, that is my CELA summer student story. I enjoyed my time at CELA. I met some fine people and did some interesting work. It was an experience I would recommend to anyone even if it may not lead to a great deal of respect from Police Officers or others in authority. If I had to do it over again, I'd say I was from CSIS.

