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LAW ASSOCIATION  
D'AVOCATS  
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**SUBMISSIONS TO THE COMMISSION FOR  
ENVIRONMENTAL COOPERATION  
TORONTO, AUGUST 1, 1996**

I appreciate the opportunity to address the Council regarding the work of the Commission.

We have been asked to comment on the Commission's paper "Strengthening Environment and Economy Linkages in North America." Unfortunately, we find it disappointing.

The paper fails to acknowledge the deficiencies in many international fora for addressing the linkage issues (Mercosur, OECD, ISO, WTO), including the reality that those fora provide little or no access to citizens, and few provide access to environmental groups.

It also fails to acknowledge that very little movement to integrate environmental protection as a goal of equal importance to economic activity has occurred.

However, the greatest disappointment in the paper is that it fails to address the greatest single problem environmentalists in the three countries are unanimous in naming. That is, the problem of deregulation, the elimination, in the three countries, of a host of green laws since the signing of NAFTA.

In Canada, both federally and provincially, we are seeing the framework of environmental laws dismantled.

In Ontario, yes, at a dizzying pace.

But also at the federal level, with drastic cuts to Environment Canada, coupled with harmonization and devolution of powers to the provinces, even though the provinces give no indication that they intend to take up the new responsibilities given to them. A vacuum of regulation and non-enforcement may well result.

At this time, we are concerned that the Canadian federal government will not act to strengthen its basic law, the Canadian Environmental Protection Act, but will allow it to be weakened by industry lobbying. Certainly, it is failing to exert a strong, national role in environmental protection.

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It is particularly disappointing that the CEC and its paper have not dealt forthrightly with the deregulation problem, since many environmentalists warned that the trade deal would lead to falling standards. Certainly, the harmonization and standards-limiting language of the agreement does play a role in the current debacle. Our government officials remind us of that constantly.

## **THE NEED FOR LAW**

Why do we need strong regulations for environmental protection?

First, because they work better than any other strategy in requiring that industry integrate its economic and environmental decisions. When the international consulting firm, KPMG surveys Canadian industry about what motivates their environmental protection practices, ninety-five per cent respond that compliance with regulation is their number one motivator. Not voluntarism or self-regulation.

Industry also demands strong regulation when it wants results. The outstanding example within NAFTA (and a contrast with the deregulatory bent of the agreement overall) is the chapter on intellectual property. It requires NAFTA parties to establish strong legal regulations for the protection of corporate intellectual property, and even dictates legal structures and enforcement measures to be implemented in the three countries.

Second, because the public wants it (and we are democratic countries). Public opinion polls in Canada, including those commissioned annually by the Canadian Council of Ministers of the Environment, repeatedly show very high levels of support for environmental protection and for green laws. They also show wide scepticism and lack of acceptance of industry self-regulation.

We are concerned when we read, in the CEC Work Program Overview Paper, about interest in "innovative mechanisms (regulatory mechanisms) for better compliance . . . related to . . . voluntary compliance mechanisms."

Third, only democratically-enacted laws provide the public with a process for public involvement in setting standards, with ongoing accountability from industry, and enforceability.

In our view, the Commission could benefit from the example just set by the International Joint Commission (the IJC), a binational border institution charged with responsibility for the Great Lakes Water Quality Agreement. It has focused on the problem of deregulation in its Eighth Biennial Report, released in June of this year, stating:

Further progress and past accomplishments could be jeopardized if cutbacks in environmental legislation, regulation and funding for monitoring, enforcement and research are permitted to occur. Only with our continued commitment to current and future laws and policies, will we achieve adequate progress toward the Agreement's goals.

By lending its voice to those of citizens concerned with erosion of green laws in both countries, the IJC has enhanced its own credibility and has made a significant contribution to efforts to stop the rollbacks.

This is the type of report and voice which, in our view, the three parties of NAFTA also need at this time. The interminable policy discussions in international fora are not advancing environmental protection under free trade regimes.

We urge you to act on the deregulation problem as the IJC has done by investigating, with broad public input, and reporting, the de-regulatory actions have been taken in the three countries, and the dangers to the environment that they represent.

Such action would provide concrete support to citizens working to keep green laws in place.

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