

October 19, 2017

Standing Committee on Justice Policy
Legislative Assembly of Ontario
Room 1405, Whitney Block
Queen's Park, Toronto, ON M7A

Attention: Clerk of the Committee

Dear Committee Members:

**Re: Bill 154, An Act to cut unnecessary red tape by enacting one new Act
and making various amendments and repeals**

1. Introduction

The purpose of this letter is to express in the strongest possible terms, the Canadian Environmental Law Association's (CELA) concern and opposition to certain provisions of Bill 154.

2. Background

CELA is a non-profit organization founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. CELA's mandate includes advocating for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality in Ontario and throughout Canada. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. CELA counsel represented approximately five hundred affected members of the local community during the Walkerton Inquiry, which examined the e-coli outbreak in Walkerton in May of 2000.

3. Bill 154

(i)Section 2, Schedule 4, Bill 154, One-for-one Rule

Section 2, Schedule 4 of Bill 154 states:

Where a regulation governed by this Act is made or approved and has the effect of creating or increasing one or more administrative costs, a prescribed offset must be made within a prescribed time after the regulation is made or approved.

Canadian Environmental Law Association

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Section 2, Schedule 4 of Bill 154 establishes a one-for-one-rule which will have a chilling impact on government's ability to enact regulations to protect public health and safety and the environment. Under this rule, if government adopts a new regulation it would need to eliminate an existing regulatory requirement. This is a profoundly misguided approach which would undermine crucial public protections provided under provincial laws. Robert Shiller, Professor of Economics at Yale University, observed "[e]ven if government regulations are sometimes a burden, they are clearly critical to the functioning of a modern economy and society."¹ Experts on public policy issues have noted "[r]egulations exist because history has demonstrated a need for them" and are required where private markets are insufficient or unable to "achieve high levels of economic and social development."² Regulations are necessary to "protect workers against unsafe working conditions, to protect consumers from technically deficient or hazardous products, and harm to the environment."³

Under the proposed rule, if the government enacted a new regulation to address toxic air emissions, for example, it would have to repeal or weaken another regulatory requirement, such as those aimed at ensuring safe drinking water, thereby jeopardizing the health and safety of Ontarians. Indeed, the adoption of similar provisions in other jurisdictions, such as the United Kingdom, is considered to have contributed to the U.K government's failure to adopt fire safety laws which could have prevented the deadliest fire in Britain earlier this year, resulting in the death of 80 people.⁴ The adoption of section 2, Schedule 4 of Bill 154 raises a very real concern that the Ontario government will forgo enacting regulations to protect public health and safety, even in the face of clear and pressing needs.

In the Ontario context, it should be noted that the adoption of similar requirements was determined to have contributed to the Walkerton tragedy, which resulted in seven deaths and caused 2,300 people to become ill as a result of drinking water contaminated with e-coli.⁵

CELA, therefore, recommends section 2 of Schedule 4 be deleted from Bill 154.

(ii) Section 8, Schedule 4, Bill 154, Crown Immunity

Section 8, Schedule 4 of Bill 154 states:

¹ Robert J. Schiller, "Why Trump's Two-for-One Rule on Regulations is no Quick fix", *The New York Times* (20 February 2017) online: <<https://www.nytimes.com/2017/02/17/upshot/why-trumps-2-for-1-rule-on-regulations-is-no-quick-fix.html>>.

² Marc Lee & Bruce Campbell, "Putting Canadians At Risk: How the federal government's deregulation agenda threatens health and environmental standards", (Ottawa: Canadian Centre for Policy Alternatives, September 2006) at 5, online:

<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/2006/Putting_Canadians_at_Risk.pdf>.

³ *Ibid* at 5.

⁴ David D. Kirkpatrick, Danny Hakim & James Glanz, "Why Grenfell Tower Burned: Regulators put cost before safety" *The Toronto Star* (25 June 2017) online: <<https://www.thestar.com/news/world/2017/06/25/why-grenfell-tower-burned-regulators-put-cost-before-safety.html>>. See also George. Monbiot, "With Grenfell Tower, we've seen what 'ripping up red tape' really looks like", *The Guardian* (15 June 2017) online: <<https://www.theguardian.com/commentisfree/2017/jun/15/grenfell-tower-red-tape-safety-deregulation>>.

⁵ *Report of the Walkerton Inquiry: Part 1* (Toronto: Queen's Printer, 2002), Chapter 10.

No action or other proceeding shall be commenced against the Crown or any of its agencies with respect to anything done or omitted to be done, or purported to be done or omitted to be done, under this Act.

The government has not provided any justification as to why immunizing the Crown from liability is warranted or even appropriate under Bill 154. In fact, the inclusion of a Crown immunity clause is a clear indication that the government is aware that its actions or omissions pursuant to the Bill could cause adverse impacts to the public and may result in regulatory negligence lawsuits. It should be noted that affording the Crown with protection from liability has been called into question by Canadian courts. In *Alberta Government Telephones v Canadian Radio-television Commission*, the Supreme Court of Canada, while upholding the claim for Crown immunity, observed that the doctrine conflicts with the “basic notions of equality before the law.”⁶

CELA, therefore, recommends section 8 of Schedule 4 be deleted from Bill 154.

(iii) Section 4, Schedule 4, Bill 154, Small Businesses

Section 4, Schedule 4 of Bill 154 states:

The Lieutenant Governor in Council and any other prescribed entity that makes or approves a regulation governed by this Act that imposes requirements on businesses shall ensure that the regulation includes, where appropriate, less onerous compliance requirements to apply to small businesses.

Bill 154 fails to define the conditions where it would be appropriate to impose less onerous compliance requirements on small businesses. Moreover, the Bill does not define what constitutes a “small business.” Industry Canada defines small business as a business with less than 100 employees.⁷ According to this definition, small businesses would constitute almost 98% of Canadian businesses.⁸ The size of a business, however, is not necessarily an indicator of risk. Many hazardous waste operations in Ontario whose operations have the potential to cause serious environmental harm, for example, would readily meet the definition of a small business.

The potential consequence of section 4, Schedule 4 of the Bill is that whenever Cabinet approves a regulation to protect public health and safety and the environment, it could also vary the compliance requirements which are applicable to the vast majority of businesses. There is no compelling rationale as to why small businesses should be afforded preferential treatment under the law. There is a very real concern that section 4 of Schedule 4 will pave the way for the inconsistent application of the law and create an uneven playing field for regulatory compliance.

⁶ [1989] 2SCR 225, [1989] SCJ No. 84.

⁷ Strategy, Canadian Small Business Definition, (17 November 2015), online: <<https://www.strategy.ca/article/canadian-small-business-defined>>.

⁸ *Ibid* at 7.

Such an approach is fundamentally at odds with the rule of law and the operation of a fair and effective regulatory framework.

CELA, therefore, recommends that section 4 of Schedule 4 be deleted from Bill 154.

(iv) Section 7, Schedule 4, Bill 154, Recognition of Excellent Compliance

Section 7, Schedule 4 of Bill 154 states:

Every Ministry of the Government of Ontario that administers regulatory programs shall develop a plan to recognize businesses that demonstrate excellent compliance with regulatory requirements.

The imposition of a mandatory requirement on government to develop a plan to recognize businesses that demonstrate excellent compliance with regulatory requirements is odd. Normally recognition of businesses (and individuals and not-for profit organizations) is done on an ad hoc voluntary basis by governments when it is deemed to be an appropriate mechanism for promoting regulatory compliance. Given the limited government resources in terms of budget and staff, CELA is of the view that the government's core mandate should be focused on establishing regulatory requirements to protect public health and safety and enforcing compliance, as opposed to devoting scarce resources to recognize certain businesses. CELA also notes that industry associations, as opposed to the provincial government, may be better suited to provide recognition to businesses which have excelled in achieving regulatory compliance.

CELA, therefore, recommends that section 7 of Schedule 4 be deleted from Bill 154.

4. Conclusion

CELA recommends that sections 2, 4, 7 and 8 of Schedule 4 be deleted from Bill 154.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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