# European and Canadian Environmental Law:

## *Best Practices and Opportunities for Co-operation*

## CONCLUSION

**January 2007**

∗ This paper is the Conclusion to "European and Canadian Environmental Law: Best Practices and Opportunities for Co-operation". For a complete copy of the report, please go to: http://www.cela.ca/coreprograms/detail.shtml?x=2916

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This support has provided a timely opportunity for CELA to analyze the differences and similarities in Canadian and European law and policy, and to introduce an informed public interest perspective to the governmental, legal and diplomatic engagements seeking to reconcile our differing approaches.

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# ~ Conclusion ~

Our goal in this report has been to provide a balanced but critical evaluation of Canadian and European environmental legislation and policies in four important subject areas. The scope of our review includes chemicals, extended producer responsibility, the sustainable use of natural resources and genetically modified organisms in food technology. Our decisions on the components of best practices in each area have been drawn from comparing and contrasting approaches and effectiveness of laws and policies in Canada and the European Union.

Although claims have been made that environmental regulation is being used to create barriers to trade or is an obstacle to economic competitiveness, we have chosen to evaluate these laws and other relevant policies strictly on the basis of their contribution to the protection of environment and human health. It would be undesirable to weaken the legislation in a jurisdiction that has enacted strong environmental and health protections in order for a jurisdiction with less protective measures to gain access to their markets. The more desirable choice would be for all jurisdictions to bring their relevant legislation up to the same high standard. It should be noted that in most cases in spite of trade or economic considerations, public opinion strongly supports the more rigorous regulatory frameworks that have been put in place. For example, biotechnology regulations in Europe reflect the public's concerns about the safety of genetically modified food.

In addition, there is little evidence to suggest that tougher standards are creating trade or economic barriers. In fact, the reverse is more likely true – that EU leadership on health and environmental regulations is in fact helping to set an international "standard" that businesses must meet in order to continue to participate in the vital EU economy.

At the end of each chapter, we have identified the best practices in legislation and policy from our review and analysis of the various jurisdictions. Recommendations arising from our analysis of best practices have been made in other forums. For example, the Canadian Environmental Law Association has drawn on the analysis of the regulatory differences in chemicals policy between Europe and Canada to make recommendations to the Parliamentary Committee reviewing the Canadian Environmental Protection Act. CELA has also brought this analysis to the National Policy Consultation sponsored by the Canadian Partnership for Children's Health and Environment. This multi-stakeholder consultation is established to build a dialogue towards developing a national strategy for children's health and environment in Canada and will run throughout 2007.

Rather than make very detailed recommendations to either Canada or the European Union in this report, we have chosen to recommend our best practices as the most desirable way forward for improving legislation and policy in all jurisdictions. Revising legislation to incorporate best practices would in our view provide optimal protection.

In some cases, we are recommending concepts that are desirable but have not yet been adopted by any jurisdiction. For instance, where we identify legislated mandatory substitution for the most hazardous substances as the best practice, this provision of REACH was proposed and discussed, but ultimately not adopted in the final regulation. In another example, we

recommend that governments set absolute reduction targets for the use of certain kinds of resources.

We also strongly urge jurisdictions that already have best practices in place to maintain those practices. It is important that countries that have shown leadership in developing innovative and comprehensive legislation do not weaken their policies and legislation in the face of difficult implementation or opposition to establishing a high international standard. For example, when Germany first introduced extended producer responsibility requirements for packaging, serious problems arose around disposing of the plastics that were collected. As a result, the program was condemned by many people in other jurisdictions. But Germany persisted and this period of growing pains was overcome; the program has become a great success. It is also important that countries resist pressure to dilute environmental and health legislation as a result of challenges before the World Trade Organization or other trade-focused domestic policies.

Best practices are not static. Regular surveys of the effectiveness of legislation and policies are necessary in order to keep improving these frameworks and providing better protection of human health and the environment.

**Recommendation One:**
Our first and most important recommendation, then, is that all jurisdictions incorporate best practices into their policy and legislative frameworks in each of the four areas we have examined.

As a result of our research into these four areas of legislation and policy, we have identified several recurring themes to which we recommend both Canada and Europe give due consideration.

The first theme is the precautionary principle. Although both jurisdictions have incorporated the precautionary principle into legislative goals, it is important that the precautionary principle become more than simply a guiding principle in legislation and policy. Governments must do more to operationalize the precautionary principle across all four sectors – chemicals, food, waste and the use of resources.

Canada, for example, endorses the precautionary principle, and yet the federal government has not ratified the Cartagena Protocol on Biosafety which allows countries to take action on a precautionary basis. Furthermore, Canada has not incorporated the precautionary principle into its assessment and approval processes for genetically modified seeds or food products, as recommended by the Expert Panel of the Royal Society. Similarly, with respect to chemicals policy, there is some promise but as yet little actual result to demonstrate that Canada is adopting a more precautionary approach.

**Recommendation Two:**

Our second recommendation is that both Canada and Europe should not only adopt the precautionary principle in all environmental and health-related legislation, but that both countries should ensure that this principle is put into practice, particularly with respect to the approval of new chemicals and new genetically modified organisms, as well as in the assessments of existing chemicals and their approved uses.

Another recommendation that we offer based on our review is that both Europe and Canada review their policy goals and transform targets into legislated limits, so that these policies have the force of law and are respected by the regulated communities. This is particularly true in areas such as extended producer responsibility where legislated targets, such as 60 percent recovery rate for packaging by 2008 in Europe has resulted in these targets actually being exceeded in many of the European countries. This contrasts with the lower recovery rates in Canada, which lacks such legislated targets. Converting policy goals to legislated targets should also be applied in the chemicals policy framework where management strategies for toxic substances that are regulated are more effective and transparent than voluntary strategies.

**Recommendation Three:**

Third, from our review of the different legislative and policy frameworks, we recommend that governments legislate important environmental goals and targets under programs that currently rely on voluntary commitments.

Another important theme that arises from our research is the need for more transparency in the regulatory process. Although the public is asked to bear the risks of using products containing toxic substances or of eating genetically modified foods, the public's ability to influence decisions about their approvals and introduction onto the market is at best limited and in some areas non-existent. The public is also handicapped in many cases by the ability to identify toxic substances or genetically modified products by the lack of relevant labelling.

In establishing legislative frameworks, governments have in some instances been reluctant to share information with the public and to allow meaningful input into decision-making. As a result, in Canada new chemicals may come onto the market without sufficient information about their potential toxicity. In the case of genetically modified foods, the public has no notification, no information on assessments and no choice in their purchases. The overwhelming public support for labelling has been disregarded by the government. Therefore, we recommend that both the European Union and Canada, but particularly Canada, improve opportunities for public participation in the areas that we have identified in our reviews as lacking transparency.

**Recommendation Four:**

A fourth and equally important recommendation that arises from our review of legislation in Europe and Canada is the need to improve transparency by expanding the opportunities for the public to understand and influence environmental and health-related decisions that are made in the course of approvals processes. Transparency should also be improved by ensuring that mandatory labelling enables consumers to make informed choices.

The last area that we feel both Canada and the European Union should consider is better sharing of information for the mutual benefit of both jurisdictions and their citizens. Rather than contesting regulatory decisions in other jurisdictions, a more positive course of action would be to ensure productive communication around regulatory actions that protect human health and the environment.

In the area of chemicals policy, for example, both Canada and the European Union have legislated provisions in their chemicals legislation that would allow them to provide information on toxic substances to each other, while allowing for the protection of confidential business information. Canada's work on categorization of substances is an opportunity for Canada to work with the European Union as the REACH regulation comes into effect. Canada could assist Europe in the identification of substances that urgently need assessment, and Europe could eventually help Canada by sharing their evaluations. In addition, the United States will be developing information under the High Production Volume Challenge Program. It is desirable that all these efforts at information-gathering be collected into an "international bank" of information that would contribute to a better understanding world-wide of chemicals.

**Recommendation Five:**

Our fifth recommendation is that Canada and Europe share the information collected under the legislation discussed in this report in order to further the protection of environment and human health world-wide.

Despite their regulatory and cultural differences, both Canada and the European Union recognize the need and the public desire for improvements in legislative frameworks that protect the environment and human health. Co-operation and a commitment towards evolving and improving best practices would benefit not only both jurisdictions, but would provide the international community with leadership and guidance in these critical areas of public policy.

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