May 31, 2016

The Honourable MaryAnn Mihychuk
Minister of Employment, Workforce Development and Labour
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Honourable Minister,

Re: *Canada Labour Code* Reference Level for Radon and CLC Definition of "Danger"

We write concerning a long overdue revision for the radon reference level in the *Canada Labour Code* (CLC) and the narrowing of the CLC definition of "danger" as enacted by the previous federal government.

Radon Reference Level

The current reference level, applicable to federal government employees and federally regulated workplaces, is 800 Bequerels per cubic metre (Bq/m^3). This level is woefully out of date and four times higher than Health Canada's Radon Guideline reference level for taking steps to mitigate radon exposure in indoor environments. It is also out of step with the Naturally Occurring Radioactive Materials (NORM) Guidelines prepared by a Working Group of the Federal-Provincial-Territorial Radiation Protection Committee.

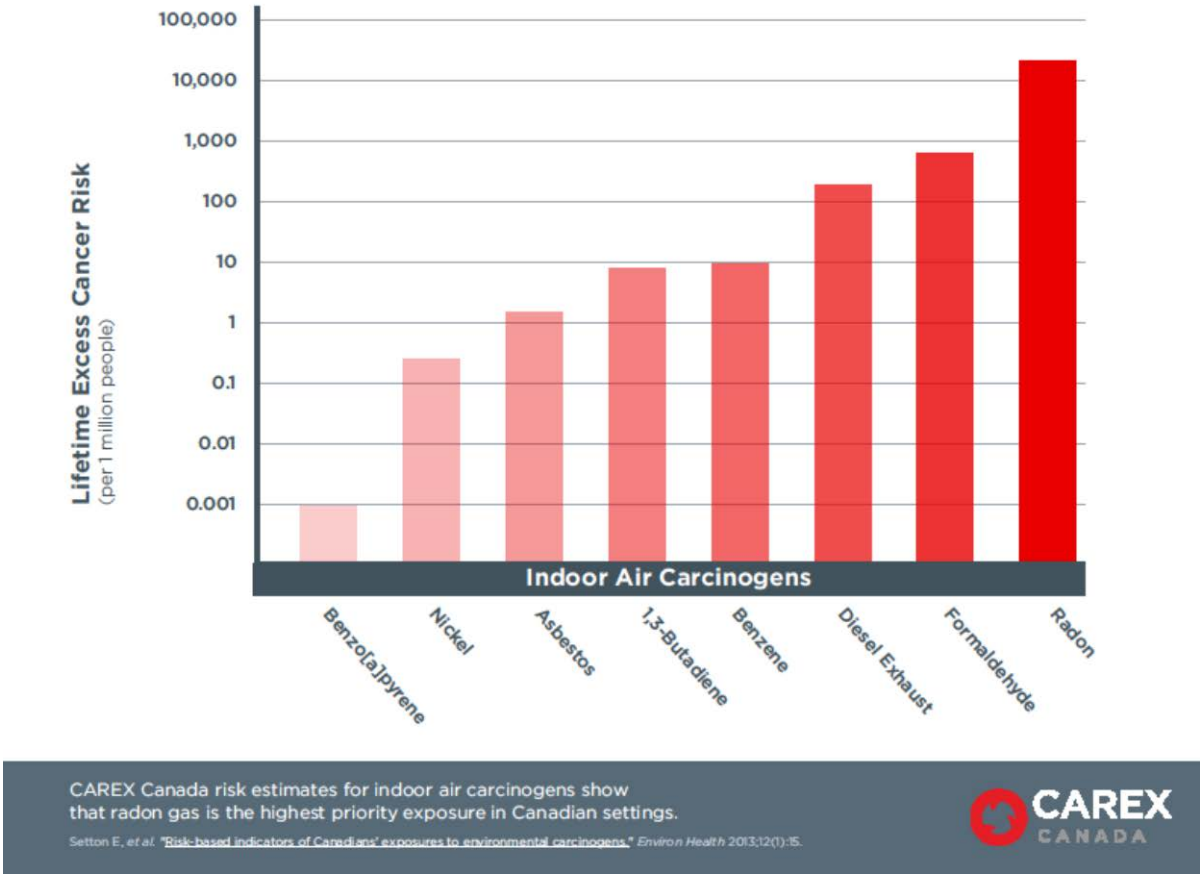
As you will know, the previous federal government repeatedly promised to make this revision to the CLC but failed to do so.

After smoking, indoor radon exposure is the leading cause of lung cancer in Canada and lung cancer remains the leading cause of death from cancer for both men and women. Health Canada notes that approximated 16% of lung cancer deaths are attributable to radon or about 3300 deaths per year.

Radon is identified as a top priority for action by CAREX Canada, a multi-institution research project that estimates the number of Canadians exposed to substances associated with cancer in workplace and community environments.

We recognize that the federal government has demonstrated important leadership on this issue in several key areas including revising the "reference level" for indoor radon at 200 Bq/m3, conducting cross-Canada radon testing in thousands of homes and workplaces, updating the guidance provided to provinces and territories in the National Building Code, establishing a Canadian certification program for radon mitigation professionals, and extensive public outreach encouraging testing for radon in all homes across Canada.

This attention to radon risks is entirely appropriate given the relative importance of radon as a public health risk. As an environmental cancer agent radon is in a league of its own. When compared to four other carcinogens with the highest "lifetime excess cancer risk" in Canada, the cancer risk from radon is orders of magnitude greater than the next four including formaldehyde, diesel exhaust, and arsenic (see graph below).



Hence, federal action on radon, while laudable, must continue with bringing the CLC up to date for the sake of workplace health and safety in all federal and federally-regulated workplaces across Canada.

CELA and CARST have extensive background in the scientific and policy issues related to radon. In a report published in 2014,[1] CELA canvassed policy and law across Canada concerning radon and noted the above discrepancies between the CLC, the federal radon reference level, and the NORM Guidelines.

We found confusion and uncertainty about radon rules for workplaces creating potential health risks for all workers. We interviewed provincial/territorial compliance officers across Canada and found that some apply the NORM Guidelines to workplaces for 'incidentally exposed

[1] Dunn B and K Cooper, 2014. Radon in Indoor Air: A Review of Policy and Law in Canada. Canadian Environmental Law Association. http://www.cela.ca/publications/radon-indoor-air-review-policy-and-law-canada

workers', while others denied that radon is an occupational health and safety issue. Combined with the out of date provisions in the CLC, we concluded that such variability in enforcement means inconsistent worker protection. It is also conceivable that some workers could be over-exposed to radon in both the workplace and their homes if high radon levels existed in both of these indoor spaces.

***Canada Labour Code* Definition of "Danger"**

We also write (and in CELA's case write again) concerning positive statements you have made about the need to address and correct regressive actions taken by the previous federal government in amending the CLC. Specifically, we urge you to correct the changes enacted in the March, 2013 omnibus budget bill that revised the definition of "danger" in the CLC.

The previous definition of "danger" in the *CLC* was an important statutory tool to ensure the protection of worker health and safety from chronic disease risks, such as, but certainly not limited to, cancer.

As previously defined in section 122(1) of the *CLC*, (emphasis added):

> *"danger"* means any existing or **potential** hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, **whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;**

This definition was comparable to that incorporated into a long-overdue modernization of the *Hazardous Products Act (*HPA*)*. Much of the HPA was rewritten as the *Canada Consumer Product Safety Act*, (enacted in 2011) wherein the definition of "danger" specifically recognizes that danger can be a potential hazard that may, in future, contribute to chronic illness or disease. Such a definition is essential to be able to include multiple chronic conditions, including radon-induced lung cancer.

For comparison purposes, the *Canada Consumer Product Safety Act* - S.C. 2010, c. 21 (Section 2) defines "danger to human health or safety" as follows (with emphasis added):

> "danger to human health or safety" means any unreasonable hazard — existing or **potential** — that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual's health — including an injury — **whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health.**

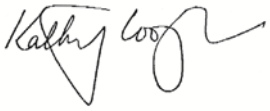
Despite legitimate concerns about the risk of chronic disease or illness, or reproductive hazards from workplace exposures, the previous government amended the *CLC* drastically by narrowing the definition of danger to address only immediate or acute hazard.

The revised definition states: “any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered”.

Not only is this language a very backward step and out of line with the modernizing changes to the *CCPSA*, it was proposed and enacted in an omnibus budget bill with absolutely no consultation with businesses, unions, private sector lawyers, law professors, or experts in labour management.

Conclusions
For the sake of worker health and safety, protection against future chronic disease or illness for federally-regulated employees, we strongly urge you to reinstate the previous definition of “danger” in the Canada Labour Code. We also urge you to address the long overdue delay in revising CLC radon provisions to bring them in line with other radon guidance provided in the federal reference level and the NORM Guidelines.

Yours very truly,



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About CELA
The Canadian Environmental Law Association is a public interest organization founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

About CARST

CARST (Canadian Association of Radon Scientists and Technologists) has members across Canada involved in or supportive of the radon industry in Canada. CARST promotes public awareness about radon measurement and mitigation, provides a community for sharing information among radon professionals, and seeks to ensure the development and adoption of the highest quality standards for radon measurement, mitigation, and reduction. www.carst.ca