

# Climate Law and Vulnerable Communities

How Far does Canadian Law Extend to Protect Those Most impacted by Climate Change?

Theresa McClenaghan

Executive Director and Counsel, Canadian Environmental Law Association

October 2020

Climate and Equity Planning





## Clinic Mandate

- ▶ The Canadian Environmental Law Association (CELA) is a **specialty** community legal clinic providing services to **low income individuals and disadvantaged communities across Ontario** in **environmental law matters**. CELA was established in 1970, funded as an Ontario specialty legal aid clinic by Legal Aid Ontario since 1978.
- ▶ CELA services include environmental law legal services, including representation before a variety of courts and tribunals as well as assistance to individuals representing themselves, summary advice, law reform analysis and public legal education.

# Overview

- ▶ Why does climate law matter to our clients?
- ▶ What kinds of climate laws do we have in Canada and how are they protective of vulnerable communities?
- ▶ What considerations can be part of an equity approach that takes into account inequitable impacts on vulnerable communities?
- ▶ For later reference, our survey of Canadian climate change provisions as of April 2019 is posted on our website: <https://www.cela.ca/updated-survey-climate-change-provisions>

# Environment is a Social Justice Issue

- Poverty and environmental degradation or adverse environmental impacts have multiple impacts on vulnerable communities - an extensive empirical and academic literature such as “Child Poverty and Environmental Justice” by Hornberg and Pauli, Int.J.Hyg.Environ.Health (2007) 571-580
- Vulnerable people are poorly reflected in climate laws to date: Vink et al, “International Comparison of Measures Taken for vulnerable People in Disaster Risk Management Laws”, Int’l Jnl of diaster risk Reduction (2013) V.4 63-70  
<https://www.sciencedirect.com/science/article/pii/S2212420913000137>
- Communities who lack power or a voice are often more adversely affected than others and are disproportionately exposed to higher pollution levels or historic pollution legacies
- Low income neighbourhoods receive relatively poor protection from adverse environmental impacts under Ontario and Canadian law
- Blog: <https://cela.ca/access-to-environmental-justice-in-canada-the-road-ahead/>

# Environmental Inequities in Ontario

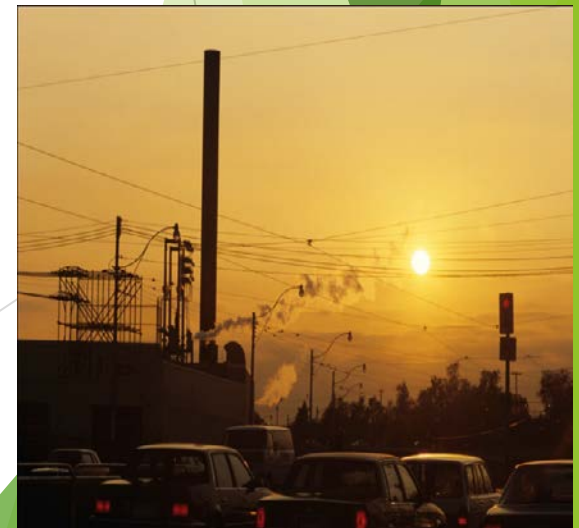
- ▶ As a result of resource development, small towns across Ontario are left with environmental health legacies
- ▶ Indigenous communities were often pushed to “undesirable” land as a result of colonialization. Now these communities are often left with a myriad of toxic legacies.
- ▶ Urban planning has developed to benefit middle to upper classes, allowing some areas of cities to deteriorate. Often, these areas are home to low income and new Canadian families.
- ▶ There is ongoing lack of recognition of the special needs of biologically vulnerable populations which contributes to environmental injustice, including children, seniors, and some types of illness.
- ▶ Rural, remote and northern communities especially struggle to find representation and a voice when environmental issues hit their communities.

# Why does climate change law matter?

- ▶ Climate affects low income and vulnerable communities more than others
  - ▶ Fewer resources to purchase mitigation
  - ▶ Housing less resilient and often located in situations more likely to be impacted by changing and adverse climate issues including heat, storms, flooding
  - ▶ Seniors medication may make them more prone to impact from heat related issues
  - ▶ Children are less able to respond to extreme temperatures due to body size and immature temperature regulation
  - ▶ Poverty exacerbates environmental health impacts

# What kinds of climate laws do we have in Canada

- ▶ Laws aimed at **mitigation**
- ▶ Laws aimed at **adaptation**
- ▶ Laws aimed at **protection**
- ▶ In this presentation I will provide an overview and sampling of whether and what types of these laws we have in Canada that provide protection for Canadian residents in respect of climate impacts
- ▶ My focus in this review is on statutory law, not current Canadian common law nor the Canadian Charter of Rights and Freedoms - topics for another day
- ▶ Also since the focus is on domestic law, I have not here outlined the relevance of trade agreements such as CETA, NAFTA and many others, nor other relevant international treaties and agreements that we work with extensively



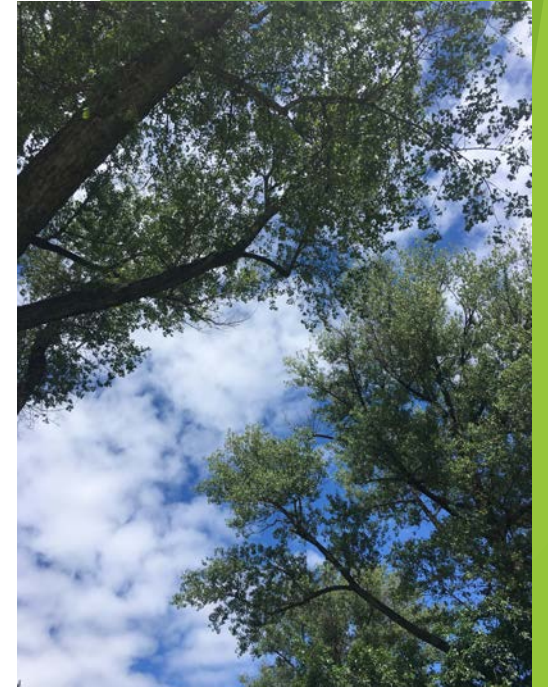
# Samples of Canadian Laws aimed at mitigation

- ▶ **Mitigation laws** are those that are aimed at reducing the causes of climate change
- ▶ Federal **carbon pricing** law - the Greenhouse Gas Pollution Pricing Act (currently on its way to Supreme Court of Canada after the Saskatchewan and Ontario Courts of Appeal both upheld its validity earlier this year)
- ▶ BC Carbon pricing law, the Carbon Tax Act, 2008, and the PEI fossil fuels levy
- ▶ Quebec Cap and Trade law, Nova Scotia's Cap and Trade law, and Manitoba's Climate and Green Plan Implementation Act
- ▶ Alberta, Saskatchewan industrial emitters carbon pricing laws (among others), and industrial emissions reporting rules in many Canadian jurisdictions such as in BC's Greenhouse Gas Industrial Reporting and Control Act, 2014
- ▶ **Regulatory responses** aimed at emissions such as the Greenhouse Gases and ozone depleting substances regulated under CEPA, or Manitoba's Environment Act - usually regulatory responses set some type of limits on the allowed emissions of listed chemicals from facilities



# Samples of Canadian Laws aimed at mitigation (2)

- ▶ Requirements for public transit to assist in GHG reduction, such as BC's South Coast Transportation Authority Act
- ▶ Fuel Standards and Vehicle emissions standards such as those adopted federally, and in British Columbia
- ▶ Laws encouraging clean-tech innovation such as Sustainable Development Technology Canada, and renewable energy such as British Columbia's Clean Energy Act, 2010
- ▶ Carbon capture funding law such as Alberta's Carbon Capture and Storage Funding Act
- ▶ Laws establishing funds to encourage zero emission vehicle adoption such as in Quebec
- ▶ Land use policies such as Manitoba's Land Use Policies under its Planning Act, encouraging greenhouse gas reductions and lowering building footprints, as well as encouraging local food production
- ▶ Laws allowing for clotheslines despite so-called restrictive covenants and by-laws to the contrary in Ontario and Nova Scotia



# Samples of Canadian laws aimed at adaptation

- ▶ Canadian, provincial and territorial **building codes**
- ▶ **Asset management plan** requirements such as under Ontario's municipal infrastructure legislation
- ▶ **Environmental impact review** requirements for infrastructure proposals such as the Nunavut Planning and Project Assessment Act
- ▶ Land use planning laws such as **prohibitions on building** in flood zones or steep slopes
- ▶ Municipal laws permitting cities to **plan for climate change adaptation** such as Cities of Edmonton and Calgary
- ▶ **Water management laws** providing for watershed perspectives, such as Ontario's Conservation Authorities Act and Manitoba's Watershed Districts
- ▶ Assessments of **major energy projects** including potential new aspects of Canada's new Impact Assessment Act which requires those assessments to evaluate how the project contributes to Canada's climate commitments
- ▶ Laws establishing climate **funds aimed at innovation, research**, and development of new climate mitigation or adaptation measures such as established by New Brunswick's Climate Change Act and Saskatchewan's Climate Research Corporation

# Samples of Canadian laws aimed at protection of vulnerable communities from climate impacts

- ▶ **By-laws** and requirements re heat islands and tracking of heat-related deaths
  - ▶ City of Toronto has been considering a by-law that would require landlords to mitigate extreme heat
  - ▶ In Montreal heat-related deaths are counted; but not in Ontario cities according to an in depth Toronto Star report earlier this year
- ▶ **Social housing retrofits** from climate / carbon related revenue such as in BC, Efficiency Manitoba or the First Nations On-Reserve Housing Retrofit Initiative supervised by the Canada Mortgage and Housing Corporation
- ▶ Offsetting the increased costs from carbon schemes for low income residents such as BC's **Climate Action Tax Credit**
- ▶ The federal **rebate** (the Climate Action Incentive Payment) for residents of provinces where the carbon tax is imposed is set based on location of residence and family composition, (but is not based on income level)
- ▶ **Energy Conservation** program requirements such as Ontario's Save On Energy program delivered by the IESO

# Samples of protective laws aimed at communities most vulnerable to climate impacts

- ▶ Once in force, Nunavut's **Public Health Act** would provide:
  - ▶ "The Chief Public Health Officer may identify and monitor the impact of climate change on public health and develop adaptation strategies to minimize the adverse effects of climate change on the health and well-being of people in Nunavut."
- ▶ Public health standards such as under Ontario's Health Protection and Promotion Act: the Healthy Environments and Climate Change Guideline, 2018, calling for **surveillance, epidemiological assessment** and mitigation programs to alleviate environmental risks
- ▶ **Energy poverty prevention** measures such as the suite of initiatives advocated by the Low Income Energy Network and adopted in Ontario - including electricity bill assistance, conservation programs, emergency financial assistance, better terms of service all designed specifically around the energy security issues facing low income residents
- ▶ I haven't addressed impacts on First Nations in this presentation; a starting point is the AFN resolution declaring a climate emergency <https://www.afn.ca/wp-content/uploads/2019/08/19-05-Declaring-a-First-Nations-Climate-Emergency.pdf>

# Obtaining information - disclosure from Canada's National Pollutant Release Inventory - sample query

<https://www.canada.ca/en/services/environment/pollution-waste-management/national-pollutant-release-inventory.html>

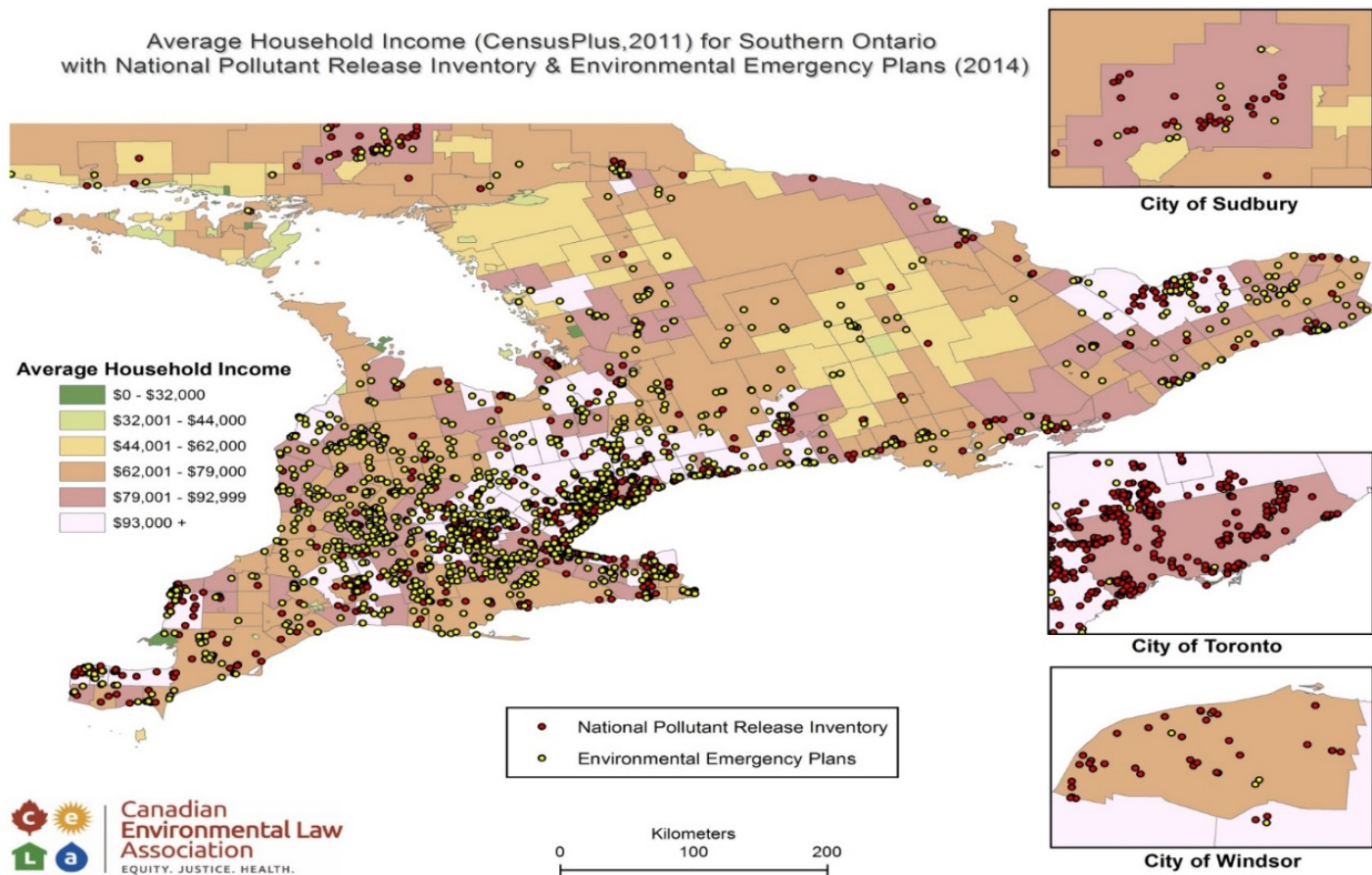
Facility	All Facilities
Industrial Sectors	All Sectors
Type	All Types
Total Results	5

The number of results returned here may differ from published lists of the number of facilities reporting pollutant releases and transfers to the NPRI due to the inclusion of facilities reporting only under Ontario Regulation 127/01, and/or facilities submitting "did not meet criteria" reports.

Sort by:	Facility Name ▾	Sort order:	Ascending ▾	Sort
NPRI ID	GHGRP ID	Facility	City	Province
11329		Coorstek Advanced Materials Hamilton ULC - Paris	Paris	ON
11873		Lafarge Canada Inc. - EAST - WEST PARIS AGG SITE	Paris	ON
4761		Molten Metallurgy Inc. - MOLTEN METALLURGY - PARIS	Paris	ON
7410		Paris Kitchens - PARIS KITCHENS	Paris	ON
10895		Patriot Forge Co. - Paris Division	Paris	ON



# NPRI plus StatsCan Pollution & Income Data allowed us to do mapping in southern Ontario



# GHG Reporting on national pollution inventory - sample query

<https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions.html>

Year	GHGRP ID	Pollutant Release Inventory (NPRI) identifier	Company & facility name	NAICS	City	Province / territory	Greenhouse Gas (tonnes CO <sub>2</sub> eq)						
							CO <sub>2</sub>	CH <sub>4</sub>	N <sub>2</sub> O	HFCs	PFCs	SF <sub>6</sub>	Total
2016	G10644	<a href="#">27020</a>	<a href="#">The University of Western Ontario - Main Campus</a>	611310	London	Ontario	49 220	24	274	0	0	0	49 518
2016	G10310	<a href="#">5790</a>	<a href="#">Corporation of the City of</a>	562210	London	Ontario	830	75 776	8	0	0	0	76 614

# How law could be improved to better protect vulnerable communities from adverse climate impacts

- ▶ Many opportunities to provide feedback to local, provincial, territorial, federal governments on climate laws
- ▶ Example recommendations from a recent CELA submission  
<https://www.cela.ca/sites/cela.ca/files/1161-CELALIENSubmissionsClimateChangeAdaptationProposal.pdf>
  - ▶ A risk assessment should identify low-income and vulnerable communities that will be disproportionately impacted by climate change and evaluate how much funding is required to address the needs of those communities
  - ▶ The province should conduct a Low-Income Barrier Study to identify the economic, social, psychological, technological and political factors that will affect the ability of low-income and vulnerable communities to adapt to climate change (based on California)
  - ▶ Climate change adaptation funds should address the impacts of climate pricing on low-income and vulnerable communities.



# CELA's Vulnerable Communities and Climate Protection at the Local Level Research Project

- ▶ CELA is engaged in researching what practices, policies and local laws are being utilized with an explicit equity lens as Ontario communities move ahead to implement climate action plans, developing a menu of options
- ▶ We are looking at Eastern Ontario, Southwest Ontario, GTHA-Niagara, Central-North, and Northern Ontario
- ▶ We are undertaking inter-jurisdictional scans as to examples and best practices that have worked elsewhere
- ▶ We are reaching out to those engaged on the ground and in their communities and to professional and academic partners to include existing efforts in the scan
- ▶ We are updating our bibliography on climate and vulnerable communities literature
- ▶ We hope to have results from this work throughout 2020 and 2021 and will be disseminating it in a variety of ways

# Conclusions

- ▶ Our clients are often the most impacted but least responsible for climate impacts and sometimes the additional impacts are even from the mitigation laws themselves if they are not set up to avoid this.
- ▶ There are a surprising number of diverse climate laws across Canadian jurisdictions, many falling into the categories of pricing or market mechanisms, especially for industrial emitters, as well as emissions regulations, establishment of funds for research and innovation, infrastructure and planning requirements.
- ▶ There are fewer climate laws that are aimed specifically at protecting vulnerable communities. However, law is both normative and enabling, and some of the laws that might prove useful include those that provide space for the impacts on vulnerable communities to be assessed and response measures developed, such as public health standards.

# Conclusions (2)

- ▶ The phrase “think global act local” is a very useful truism - while we seek strong international commitments by our national leaders, a great deal of the real activity needs to be - and is - at more local levels.
- ▶ For example, many municipalities are passing resolutions declaring a “climate emergency” which follows a great deal of work in that community developing a concrete, location-specific action plan of local measures to go with that declaration and back it up. Toolkits are available at <https://climateemergencydeclaration.org/>
- ▶ Utilizing the existing tools is very effective - and important - such as the national pollutant inventory, the federal right to submit a petition under to the Commissioner of Environment and Sustainable Development, and in Ontario, the Environmental Bill of Rights registry, including the right to request a formal review of existing law or policy.

# Conclusions (3)

- ▶ Many of us argue for a national law providing for a substantive right to a healthy environment.
- ▶ The recommendations of a recent federal standing committee for amendments to the Canadian Environmental Protection Act to add recognition of a right to a healthy environment to the duties of Canada in administering that Act would be a terrific improvement to that law. You can see the full standing committee report and all of its recommendations at <https://www.ourcommons.ca/Content/Committee/421/ENVI/Reports/RP9037962/envirp08/envirp08-e.pdf>
- ▶ Efforts to implement climate action should include consideration of transparency, engagement with local communities, bona fide efforts to reduce impacts of emissions and climate impacts on vulnerable communities, and support for better policies, practices and local laws that better protect those most impacted

# Information on our Websites

## [WWW.CELA.CA](http://WWW.CELA.CA) & [www.celafoundation.ca](http://www.celafoundation.ca)



### Friends of the Attawapiskat River comments on Ring of Fire

January 28, 2020

Comments on behalf of the Friends of Attawapiskat River regarding Webequie Supply Road Project and Marten Falls Access Road, draft Tailored Impact Statement Guidelines and draft Indigenous Engagement Plan.



### Environmental Law 2020: Looking Down the Road

January 13, 2020

CELA Counsel Rick Lindgren looks ahead to environmental law matters that litigators and legislators can expect in 2020.



### Water Wells Remain at Risk in Ontario

January 8, 2020

By: Theresa McClenaghan, CELA Counsel and Executive Director and Richard Lindgren, CELA Counsel The December 2019 annual report by the Auditor General of Ontario has focused public and political attention on the need for effective provincial action to reduce greenhouse...



**Canadian  
Environmental Law  
Association**  
EQUITY. JUSTICE. HEALTH.

Our Legal Services  
How can we help?

Public Legal Education  
Learn about the law

Advancing  
Environmental Law  
Action on environmental  
justice

[Home](#)

[Who We Are](#) ▾

[Blogs](#)

[CELA News](#) ▾

[CELA Says](#) ▾

[Donate](#)



Follow CELA



Search CELA Records

Search ...

Search

[OUR SUPPORTERS](#)

[MAKE A DONATION](#)

[VISIT US](#)



# Canadian Environmental Law Foundation

Reflecting and Cataloguing the Environmental History of Canada

[HOME](#)

[THE LIBRARY](#)

[SEARCH OUR CATALOGUE](#)

[ENVIRONMENTAL HISTORY PROGRAM](#)

## Who We Are

The Canadian Environmental Law Foundation hosts and maintains several projects that support

# Acknowledgements

- ▶ The material presented here includes and builds on excellent work done by many other people at CELA including a survey of Canadian climate law done by our former law students Catherine Bulman in 2014, and updated by Sara Desmerais in 2019.