

# SENIORS FOR CLIMATE ACTION NOW!

SUBMISSION TO

ENVIRONMENT AND CLIMATE CHANGE CANADA & HEALTH CANADA

## IMPLEMENTATION FRAMEWORK RIGHT TO A HEALTHY ENVIRONMENT CANADIAN ENVIRONMENTAL PROTECTION ACT

APRIL 2024

There is a growing international consensus that efforts to mitigate and adapt to climate change are ultimately necessary to protect and advance basic human rights, including the right to life. The right to a clean, healthy and sustainable environment has emerged as another way of recognizing that humans require a healthy environment for their survival and for the realization of all other human rights.<sup>1</sup>

Seniors for Climate Action Now! (SCAN) is an Ontario-based climate action group whose members are older adults determined to address the climate emergency and protect the planet for future generations. SCAN has a particular focus on the impact of the deteriorating climate on vulnerable groups such as youth,<sup>2</sup> young people and Indigenous communities,<sup>3</sup> in addition to seniors.

We are responding to the online consultation process conducted by Environment and Climate Change Canada (ECCC) and Health Canada (HC), titled “Advancing Environmental Equity”

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<sup>1</sup> From executive summary of “Climate Change and the Right to a Healthy Environment: International and Canadian Developments,” by Robert Mason, analyst, International Affairs and Integrated Reference Services, Library of Parliament (January 15, 2024). The paper is available at <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2023-12-E.pdf>.

<sup>2</sup> Canada has ratified the international 2023 Convention on the Rights of the Child. The same year, the UN Committee on the rights of the Child provided guidance on children’s RTHE in relation to climate change. Ibid. p.9.

<sup>3</sup> Canada has committed to implementing UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples), which was approved in 2007. According to Robert Mason, Canada’s Action Plan under UNDRIP addresses the RTHE and climate action (p.9). At p.10 he referred to the finding by the Supreme Court of Canada in *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, para.11, that climate change has seriously impacted Indigenous communities. At section 6 of SCAN’s Platform, such things as the importance of involving them in a national climate plan is discussed: [https://seniorsforclimateactionnow.org/wp-content/uploads/2022/03/Platform\\_Final\\_Format\\_Sept-2021-1.pdf](https://seniorsforclimateactionnow.org/wp-content/uploads/2022/03/Platform_Final_Format_Sept-2021-1.pdf).

(<https://enviroequity.ca/>). They are developing an implementation framework for the right to a clean, healthy and sustainable environment (RTHE), which was added to the Canadian Environmental Protection Act, 1999 (CEPA) in June 2023. We have reviewed the Discussion Document which was posted online by ECCC/HC,<sup>4</sup> and wish to register our key concerns.

Under “scope,” the consultation material states that “CEPA is the cornerstone of Canada’s environmental legislation and an important part of Canada’s broader legislative framework aimed at preventing pollution and protecting the environment and human health.” It also states that greenhouse gas emissions (GHGs) are key environmental and health issues managed under the Act:

CEPA provides authorities to develop and administer regulatory and non-regulatory risk management instruments to reduce the releases of GHGs from certain activities and sources (e.g., electricity production, oil and gas activities, landfills, vehicles and engines), contributing to Canada’s action on climate change.

It is also important to note the following:

In 2005, the most significant GHGs were added to Schedule 1 [to CEPA], including carbon dioxide, methane and nitrous oxide. Many regulations made under CEPA are relevant to climate change and GHG reduction.<sup>5</sup>

The consultation material indicates that the RTHE is subject to reasonable limits,<sup>6</sup> and the

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<sup>4</sup> The title is “Discussion Document on the Implementation Framework for a Right to a Healthy Environment under the Canadian Environmental Protection Act, 1999” (February 2024, 26 pages). It is available at, [https://publications.gc.ca/collections/collection\\_2024/eccc/En14-542-2024-eng.pdf](https://publications.gc.ca/collections/collection_2024/eccc/En14-542-2024-eng.pdf).

<sup>5</sup> Robert Mason, *op. cit.* at p.7.

<sup>6</sup> This is discussed in section 3.1.1 of the Discussion Document at pp.11-12: “As the right under CEPA will be considered in the administration of the Act, it is important to note that this right is not absolute and is subject to reasonable limits. CEPA requires that the framework elaborate on relevant factors to be considered in determining reasonable limits, including social, health, scientific, and economic factors that apply in the context of the different types of decisions made under CEPA. These factors are not new considerations for CEPA decision-making. Science is the foundation of decision-making under CEPA. CEPA also recognizes the role of Indigenous knowledge in decisions related to protecting the environment and human health. Social, economic, and technical issues are also considered in the risk management process. These factors might not be relevant in all cases,

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framework will elaborate on relevant factors (e.g., social, health, scientific and economic) to be considered when determining those reasonable limits. Certain principles relevant to fulfilling the government's duty to protect the RTHE will be integrated into CEPA processes to help guide decision-makers.

According to the recently amended legislation, the framework must elaborate on three newly recognized principles which were also added to the Act last year (although other principles can also be included in the framework): environmental justice, non-regression and inter-generational equity. These are explained in Appendix 1.

A number of other principles included in CEPA are explained in Appendix 2 of the Discussion Document: sustainable development, ecosystem approach, intergovernmental cooperation, national standards, science-based decision-making, precautionary principle, pollution prevention and the polluter pays doctrine.

Listed below are four of the questions posed by the RTHE implementation framework consultation.<sup>7</sup> SCAN's response is based on the fundamental view that radically augmented climate action is needed in order to decarbonize the atmosphere and save civilization from the destruction being wrought by the climate's disintegration.

1. What does a healthy environment mean to you in the context of actions taken under CEPA?

SCAN'S Response: The RTHE is a human right<sup>8</sup> that should not be compromised. When developing the implementation framework, one should remember a frightening milestone is almost upon us.

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but decision-making under CEPA typically involves situations where many considerations need to be evaluated on a case-by-case basis. Important public interests need to be considered when protecting the right to a healthy environment, as provided under CEPA, and it is equally important to apply a consistent approach to the consideration of relevant factors."

<sup>7</sup> Available at <https://enviroequity.ca/right-to-a-healthy-environment>.

<sup>8</sup> Canada supported the 2022 UN General Assembly resolution adopting the right to a clean, healthy and sustainable environment as a human right (A/Res/76/300).

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The IPCC<sup>9</sup> report issued on April 4, 2022, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* warned that limiting global warming to 1.5° C will require global GHGs to peak before 2025 at the latest, and be reduced by 43% by 2030.<sup>10</sup>

At the same time, methane (i.e., fossil gas) would also need to be reduced by about a third. And if an even weaker target is considered, namely limiting warming to 2° C (which will have far worse consequences than 1.5° C), that will also require global GHGs to peak before 2025 at the latest, and be reduced by one quarter by 2030.

Since that report was issued, credible scientists have warned that even greater GHG reductions are required. In short, to avoid dire, irreversible harm there can be no more delay in reducing atmospheric global GHGs.

## 2. How would you know if your environment is healthy?

SCAN'S Response: From a climate perspective, this point will occur once we reach net zero carbon emissions, the concentration of atmospheric carbon plummets, and global warming is reduced to less than a 1.5° C increase above pre-industrial levels. But not before then.

Of course we are very concerned about all manner of other environmental problems, and recognize that tackling them is also necessary before environmental health is achieved. To name just a few, increasing pollution (air, water and land), chemical toxicity, loss of biodiversity, depletion of natural resources, disposal of nuclear waste and loss of soil cover urgently require remediation.

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<sup>9</sup> The Intergovernmental Panel on Climate Change (IPCC) established in 1988 by the World Meteorological Society and the United Nations Environment Programme (UNEP). It has been tasked with assessing the science related to climate change.

<sup>10</sup> Available at [https://www.ipcc.ch/site/assets/uploads/2022/04/IPCC\\_AR6\\_WGIII\\_PressRelease\\_English.pdf](https://www.ipcc.ch/site/assets/uploads/2022/04/IPCC_AR6_WGIII_PressRelease_English.pdf).

3. How would you see the factors to limit the consideration of the RTHE being taken into account when making decisions under CEPA?

SCAN'S Response: The climate disaster is imperiling the continued survival of human civilization, hence the common reference to an existential crisis. Thus, where climate is concerned, we cannot envisage any factors which should limit consideration of the RTHE. The risk has already materialized; climate deterioration is a current, factual reality. No cost-benefit analysis is justified at this stage.

CEPA decision-makers should not be pondering whether saving civilization is worth the cost of climate mitigation and adaptation measures. That would be absurd. As Seth Klein explains in his 2020 book, *The Good War - Mobilizing Canada for the Climate Emergency*, Canadian society should be organized to immediately ramp up climate action in the same way it went all out when responding to WW2. Klein's book should be required reading for all CEPA decision-makers.

4. Are any of the principles dealing with the scope and limit of the RTHE, and the way in which they can contribute to that right under CEPA, unclear?

SCAN'S Response: Any/all principles should be clearly defined in the framework. Subjectivity, flexibility and discretion should be removed when it comes to decision-making related to reducing GHG emissions and augmenting climate mitigation and adaptation. SCAN is deeply concerned about negative impacts of the climate crisis on vulnerable communities including many seniors. With respect to young people and future generations, we stress the importance of emphasizing the principle of inter-generational equity.

As well, the following types of concerns of SCAN should be acknowledged and incorporated into additional principles: negative climate impacts on Indigenous communities; importance of learning what they can teach us about managing the environment; recognition of their sovereign and political rights; and the need for free, prior and informed consent. Otherwise there can be no effective climate solution.

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When considering the array of principles under CEPA, we urge that the highest priority should always be accorded to climate action. The framework should contain a special set of protocols for this purpose.

In developing the RTHE implementation framework, we have some additional comments and questions for the Implementation Team to ponder. They involve the need to ramp up climate action in order to reduce GHG emissions and decarbonize society.

- a) So many administrative and political decisions have been made by Ottawa in the past few years to support fossil fuels (facilities, pipelines, exemptions, financing, etc.) that are totally inconsistent with the goal of reducing GHGs to net zero and enhancing mitigation and adaptation efforts. How did federal decision-makers allow this to happen?
- b) In light of the above, there is an apparent lack of accountability for decision-making. Why didn't the array of principles found in CEPA work to prevent these decisions?
- c) What review has been undertaken to investigate this category of climate-related destructive decisions and mistakes?
- d) What steps can be taken to ensure that making such decisions will not occur in the future? For example, will the framework include a mandatory climate impact screen for all CEPA decision-making?
- e) How can priority for the RTHE be incorporated into federal regulatory regimes beyond CEPA so that decision-makers across the spectrum are required to focus on decarbonizing the economy and other aspects of Canadian society?
- f) Will the implementation framework address "the lack of mechanisms to enforce the [RTHE] under CEPA,"<sup>11</sup> and propose concrete solutions to address this omission?

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<sup>11</sup> Robert Mason, *op. cit.* At p.7. For example, the problem of shortcomings in s.22 of CEPA (court proceedings) is discussed in the submission being made by the Canadian Environmental Law Association (CELA) to the RTHE Framework Implementation Team.

We hope that our input will be of assistance to ECCC and HC in developing the RTHE implementation framework.



On behalf of Seniors for Climate Action Now! (SCAN!)

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## APPENDIX 1

The following description of three new CEPA principles is found in the consultation materials posted online by ECCC/HC, and reproduced below. They are discussed in more detail in the Discussion Document at pp. 13-16.

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Environmental Justice. Environmental justice addresses discrimination against specific communities as it relates to pollution. Discrimination can be a result of where people live in relation to pollution or from barriers to participating in decisions that impact their health. In CEPA, this includes the consideration of the avoidance of adverse effects that disproportionately affect populations who may be impacted by pollution or chemical exposure.

Example: Under CEPA, where information is available, populations who may be disproportionately impacted by pollution or chemical exposures are considered in risk assessments as some segments of the population may be more susceptible to the harmful effects of substances than others, or more exposed (for example, as a result of their life stage or behaviours).

For more information and to contribute on the work on environmental justice more broadly than CEPA through Bill C-226, please click here: <https://enviroequity.ca/environmental-justice>.

Non-Regression. While there is no universally established definition, it can generally be understood as the notion that current levels of protection must be maintained. It may also include the continuous improvement in environmental and health protection.

Example: The process for making regulations includes a cost-benefit analysis, which is summarized in the Regulatory Impact Analysis Statement. Cost-benefit analysis is undertaken from a societal standpoint and aims to quantitatively (and/or qualitatively, where data are unavailable) demonstrate the incremental net societal benefit (or loss) of a proposed regulation, consistent with the principle of non-regression.

Intergenerational Equity Intergenerational equity means meeting the needs of the present generation without compromising the ability of future generations to meet their own needs. This is fundamental to the concept of sustainable development and aligns with many First Nations' teachings about respecting and protecting the needs of and impacts on people seven generations in the future.

Example: The Maternal-Infant Research on Environmental Chemicals(External link) (MIREC) platform looks at the effects of chemicals throughout generations. One of the goals is to understand the potential impacts of environmental chemical exposures during pregnancy on the health of the next generation. These results are considered in CEPA decision-making.