

Significant Amendments to the Canadian Environmental Protection Act Proposed

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On April 13, 2021, Bill C-28 – Strengthening Environmental Protection for a Healthier Canada Act (“Bill”) was introduced in the House of Commons.¹ Among other things, the Bill proposes amendments to the *Canadian Environmental Protection Act, 1999*² (“CEPA” or “Act”).

So far, the Bill has undergone its First Reading.³ It’s worth considering how quickly the Bill will progress to a Second Reading, given the current minority parliament. The chances of the Bill being passed prior to the next federal election remains to be seen.

The Preamble of the Act is being amended to include three notable provisions, among others:

1. Whereas the Government of Canada recognizes that every individual in Canada has a right to a healthy environment as provided under this Act;
2. Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;
3. Whereas the Government of Canada recognizes the importance of considering vulnerable populations in assessing whether substances are toxic or capable of becoming toxic;

¹ LEGISinfo, “C-28 An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act”, online: <

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11225029> >

² S.C. 1999, c. 33.

³ LEGISinfo, “C-28 An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act”, online:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11225029>

The right to a healthy environment is a potentially significant amendment to CEPA. Will this right be justiciable? At this point, provides for only an implementation framework. Under the proposed amendments, the Minister must, within two years, develop an implementation framework to set out how the right to a healthy environment will be considered in the administration of the Act.⁴ The implementation framework shall, among other things, elaborate on “principles of environmental justice”.⁵ This phrase is new to environmental legislation, and it is unclear what it means or how it will be applied. The implementation framework must also elaborate on: (i) research, studies or monitoring activities to support the protection of the right to a healthy environment; and (ii) the balancing of that right with relevant factors, including social, economic, health and scientific factors.⁶

The new protections also include provisions that will assess real life exposure based on cumulative effects of a substance.⁷ Additionally, in assessing whether a substance is toxic or capable of becoming toxic, there must be consideration of whether there is a vulnerable population in relation to the substance.⁸

The Bill also proposes a new regime that prioritizes the prohibition of uses and releases of substances that are considered the highest risk.⁹ Criteria determining which substances are considered of the “highest risk” will be set out in regulations.

Some of the amendments will require the Minister of the Environment to compile a list that specifies substances that the Ministers (of the Environment and Health) have determined to be capable of becoming toxic or have reason to suspect are capable of becoming toxic.¹⁰

Within two years, the Minister must develop and publish a plan that specifies the priority that substances will be given in assessing whether they are toxic or capable of becoming toxic.¹¹ The Plan of Chemicals Management Priorities is intended to help the government better understand and protect Canadians and the environment from substances of concern.¹²

⁴ Bill C- 28, online: < <https://parl.ca/DocumentViewer/en/43-2/bill/C-28/first-reading> >

⁵ *Ibid* at s. 5.

⁶ *Ibid*.

⁷ *Ibid* at s. 16 (2) (iii.1).

⁸ *Ibid* at s. 16 (2) (iii.2).

⁹ *Ibid* at s. 22 (1).

¹⁰ *Ibid* at s. 20.

¹¹ *Ibid* at s. 19.

¹² Government of Canada, “Government of Canada Delivers on Commitment to Strengthen the Canadian Environmental Protection Act, 1999 and Recognizes a Right to a Healthy Environment”, online: < <https://www.canada.ca/en/environment-climate-change/news/2021/04/government-of-canada-delivers->

REACTION TO THE BILL SO FAR

Since the proposed amendments were introduced on April 13, 2021, various interested parties have responded with their opinions or initial reactions.

The Canadian Environmental Law Association calls the Bill “vague, silent, or unhelpful on key issues of concern” and “purports to fix things that are not broken in the law and that now have the potential to become problems going forward – as a result of the amendments”.¹³

Other groups have been more optimistic about the announcement. In a recent newsletter, the David Suzuki Foundation called the amendments a “big win”. Their senior policy analyst stated “Too often, pollution and environmental degradation harm vulnerable people and disadvantaged communities disproportionately. The Strengthening Environmental Protection for a Healthier Canada Act could start to reverse this trend by applying a human rights lens to decision-making under CEPA.”

The Chemical Industry Association of Canada (“CIAC”) also welcomes the proposed changes, stating “We are pleased to see a legislative recognition of the Right to a Healthy Environment in the preamble of the Act, in keeping with our U.N.–recognized Responsible Care initiative”.¹⁴

The Bill sparks a number of questions. For example, to what extent will the Bill and the implementation framework deliver what the Minister of the Environment has described as “the legal right to a healthy environment” including “Canadians who may be at risk of greater exposure or are more susceptible to the risks of chemicals”?

Assuming there is no early call for an election, the Bill will undergo considerable debate and review as it proceeds through the House of Commons and Senate legislative processes.

The Bill has yet to appear on the Standing Committee on Environment and Sustainable Development’s agenda.

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¹³ Canadian Environmental Law Association, “Long-Awaited Amendments to CEPA: The Good, The Bad, and the Ugly on Chemicals and Environmental Rights”, online: < <https://cela.ca/blog-long-awaited-amendments-to-cepa-the-good-the-bad-and-the-ugly-on-chemicals-and-environmental-rights/> >

¹⁴ CIAC, “CIAC welcomes federal government’s tabling of the new CEPA modernization legislation”, online: < <https://canadianchemistry.ca/blog/2021/04/13/ciac-welcomes-federal-governments-tabling-of-the-new-cepa-modernization-legislation/> >

We will keep you posted with further updates.

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