

2<sup>nd</sup> Session, 38<sup>th</sup> Parliament  
54 Elizabeth II, 2005

HOUSE OF COMMONS OF CANADA

**BILL C-1**

An Act to Amend the Canadian Environmental Protection Act, 1999.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows:

**The Children's Clean Air Act, An Act to Amend the Canadian Environmental Protection Act, 1999**

**1. The Act is amended by adding the following immediately before the last paragraph of the Preamble:**

Whereas the Government of Canada recognizes that children are entitled to grow and live in healthy environments, in the spirit of the Convention on the Rights of the Child;<sup>1</sup>

Whereas protecting and promoting the health of children is a fundamental value shared by all Canadians;<sup>2</sup>

Whereas a growing body of scientific literature demonstrates that children suffer greater instances of illness and death from respiratory problems due to being more vulnerable than adults to environmental contaminants caused by environmental pollutants, toxic substances and environmental hazards;

Whereas the respiratory system of millions of children are at risk because of dangerous levels of ambient air pollution from power plants, industry and increased vehicular traffic;

Whereas a lack of comprehensive science, environmental protection programs, standards and testing protocols has meant that children have often not been fully protected from environmental threats;<sup>3</sup>

Whereas prevention of exposure is the single most effective means of protecting children against environmental threats;<sup>4</sup>

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<sup>1</sup> Convention on the Rights of the Child, November 1989, ratified by Canada 1992.

<sup>2</sup> Joint Declaration of Children's Environmental Health Network and Canadian Institute of Child Health (Joint Declaration from Children's Environmental Health II: A Global Forum for action).

<sup>3</sup> 1997 Declaration of the Environmental Leaders of the Eight (G7 + Russia) on Children's Environmental Health [1997 Declaration Leaders of the Eight].

Whereas the Canadian Public Health Association has recognized that the protection of children from environmental contaminants is an important but generally neglected issue that must be addressed with some urgency;<sup>5</sup>

Whereas a number of jurisdictions in Europe and in the United States have taken special measures to safeguard children's health in their regulatory structures;

Whereas the government of Canada is a signatory to international agreements, in which it has committed itself to ensuring that children are protected from environmental hazards and environmental pollutants;<sup>6</sup>

Whereas the multitude of hazards facing children should be addressed in unison and placed within the context of a child's life, from pre-conception parental exposures to hazardous substances through developments during teen years.<sup>7</sup>

**2. The Act is amended by adding the following to subsection 2(1) of the Act, immediately following subsection 2(1)(o):**

**2.(1)**

- (p) Improve levels of environmental protection for children, and reaffirm the priority of children's environmental health<sup>8</sup>
- (q) Ensure that environmental health standards are prudently protective of children, recognizing their unique developmental, biological, and behavioural vulnerabilities.<sup>9</sup>
- (r) Employ more explicit scientific consideration of children's characteristics and behaviour in the process of environmental standard setting.<sup>10</sup>

**3. The Act is amended by adding the following after section 76:**

***Special toxins to Children***

**76.1** (1) Within two years from the giving of Royal Assent to this Part, the Advocate referred to in Part 10 of this Act shall establish a list of up to five of the most toxic air contaminants that may cause children to be especially susceptible to illness. In developing the list, the Advocate shall take into account public exposures to toxic air contaminants, whether by themselves or interacting with other toxic air contaminants or pollutants; and

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<sup>4</sup> Ibid.

<sup>5</sup> 1999 Motion No.1 Canadian Public Health Association Motion.

<sup>6</sup> As declared in the Cooperative Agenda for Children's Environmental Health in North America and in the 1997 Declaration Leaders of the Eight, *supra* note 3.

<sup>7</sup> Joint Declaration of Children's Environmental Health Network and Canadian Institute of Child Health [Joint Declaration CEHN & CICH].

<sup>8</sup> 1997 Declaration Leaders of the Eight, *supra* note 3.

<sup>9</sup> Joint Declaration CEHN & CICH, *supra* note 7.

<sup>10</sup> 1997 Declaration Leaders of the Eight, *supra* note 3.

(2) Within one year of the establishment of the list required pursuant to subsection (1), the Governor in Council shall review and, as appropriate, revise any control measures adopted for the toxic air contaminants identified on the list, to reduce exposure to those toxic air contaminants, to protect public health, and particularly children.<sup>11</sup>

**4. The Act is amended by adding the following after subsection 81(4):**

(5) In situations where there is evidence of potentially significant and irreversible harm to children from the introduction of a substance under (1), (2), (3) or (4) the Advocate shall recommend to the Governor in Council the appropriate burden of proof that a proponent of a substance must meet in order to establish that the use of the substance is safe.

**5. The Act is amended by adding the following after section 93:**

**94.** (1) In order to ensure the protection of children's environmental health, the Advocate referred to in Part 10, shall review all existing ambient air quality guidelines, standards and airborne toxic control measures to determine whether these adequately protect the health of children taking into consideration exposure pattern data and scientific literature and information.

(2) After reviewing the air quality guidelines, standards and airborne toxic control measures, pursuant to subsection (1), the Advocate shall provide the Governor in Council with recommendations as to how these guidelines, standards and measures should be revised so that they adequately protect children's environmental health.

- (a) The recommendations issued by the Advocate regarding air quality guidelines, standards and toxic control measures shall be considered for adoption by the Governor in Council no later than 6 months after they have been issued by the Advocate.
- (b) If the Governor in Council fails to adopt the recommendations of the Advocate, the Governor in Council shall include a statement in the Canada Gazette setting out its reasons.
- (c) Where the Governor in Council has not taken a course of action under subsection 94(2)(a) or (b) within six months after receiving the recommendations from the Advocate, the Governor in Council shall, by order, amend the air quality guidelines, standards and measures in accordance with the Advocate's assessment.

(3) In recommending revisions to the air quality guidelines, standards and measures established pursuant to this Act, the Advocate shall consider the health impacts to all populations of children, including special subpopulations of children that comprise a meaningful portion of the general population, such as children with asthma, cystic fibrosis, or other respiratory conditions or diseases.

(4) Following the revision of the air quality guidelines, standards and toxic control measures, the Advocate shall review these on a yearly basis to ensure that they continue to adequately protect children's environmental health.

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<sup>11</sup> State of California's Senate Bill 25, December 7, 1998 – "An act to amend ... the Health and Safety Code, relating to environmental health protection." [Senate Bill 25].

**5. The Act is amended by adding the following immediately after Part 9:**

**PART 10  
CHILDREN'S ENVIRONMENTAL HEALTH ADVOCATE**

INTERPRETATION

1. The definitions in this section apply in this Part.

“Advocate” means the Children’s Environmental Health Advocate.

“Children” includes both human beings under the age of 18, and fetuses prior to their birth.

CHILDREN’S ENVIRONMENTAL HEALTH ADVOCATE

2. There is hereby established a Children's Environmental Health Advocate (Advocate). The Advocate shall be an independent advocate for the better use of the Canadian Environmental Protection Act to protect children’s environmental health.

3. The Advocate shall be appointed to a five year term by the Governor in Council on the recommendation of the Federal Minister of Environment.

4. The Advocate shall report to the Parliament of Canada and simultaneously to the public.

5. The Advocate may employ such employees as the Advocate considers necessary for the efficient operation of his or her office, including scientists and experts in the field of children’s environmental health. The Advocate may determine their remuneration, which shall be comparable to the remuneration for similar positions or classifications in the public service of Canada, and their terms of employment.

DUTIES

6. The Advocate shall be responsible for conducting or coordinating assessments on the effects of air pollutants on children’s health, evaluating federal legislation and programs that impact children’s environmental health, making recommendations for standards and strategies that will protect children’s environmental health, and evaluating the current monitoring framework on environmental pollutants that affect children’s health.

7. The Advocate shall analyze CEPA and other federal legislation or programs that may impact children’s environmental health and within two years from the giving of Royal Assent to this Part, the Advocate shall establish an action plan detailing how the federal legislative structure can better protect children’s environmental health. This will include:

- (a) an assessment of the effectiveness of federal statutes, regulations, and programs designed to protect children from environmental hazards caused by environmental pollution.

- (b) an assessment of the policies, programs, activities, and standards of federal agencies/bodies to determine whether they adequately take into consideration the disproportionate risks to children that result from environmental health risks caused by environmental pollution;<sup>12</sup> and
- (c) an assessment of whether there are further legislative actions that the government could undertake to decrease children's exposure to air contaminants that are harmful to their health.

8. The Advocate shall monitor the exposure of children, and of men and women of reproductive age, to substances which may be or are emitted into the ambient air and that may be determined to be toxic air contaminants.

8.1. In conducting the monitoring pursuant to s. 8, the Advocate shall consider all available scientific data and assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance, and shall, to the extent that information is available, assess all of the following:

- (a) exposure patterns among children that are likely to result in disproportionately high exposure to ambient air pollutants in comparison to the general population;
- (b) special susceptibility of children to ambient air pollutants in comparison to the general population;
- (c) the effects on children of exposure to toxic air contaminants and other substances that have a common mechanism of toxicity; and
- (d) the interaction of multiple air pollutants on children, including the interaction between air pollutants and toxic air contaminants.<sup>13</sup>

8.2 Based on the monitoring conducted pursuant to s. 8, the Advocate shall issue a report containing an estimate of the levels of exposure that may cause or contribute to adverse health effects. If it can be established that a threshold of adverse health effects exists, the estimate shall include both of the following factors:

- (a) the exposure level below which no adverse health effects are anticipated; and
- (b) an ample margin of safety that accounts for the special vulnerability experienced by children to environmental contaminants, pollutants and toxins.<sup>14</sup>

9. The Advocate shall also evaluate the adequacy of the current monitoring network for its ability to gather the data necessary to determine the exposure of children to air pollutants and to toxic air contaminants. This will include:

- (a) identifying areas where the exposure of children to air pollutants is not adequately measured by the current monitoring network; and

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<sup>12</sup> Adapted from the Executive Order 13045 on Health Risks to Children, passed by the White House in 1997 [Executive Order 13045].

<sup>13</sup> Adapted from Senate Bill 25, *supra* note 11.

<sup>14</sup> *Ibid.*

- (b) recommending changes to improve air pollution monitoring networks and data collection to more accurately reflect the exposure of children to air pollutants.<sup>15</sup>

10. The Advocate shall establish a coordinated research agenda on children's environmental health. This will include:

- (a) a compilation of research activities that have been conducted in Canada and in other jurisdictions on the risks that children face to their environmental health from air pollution and other air contaminants;
- (b) an assessment of the state of the science on this topic; and
- (c) an identification and prioritization of research needs and data gaps regarding risks to children's environmental health from air pollution and other air contaminants, and the development of a mechanism for filling these research needs.<sup>16</sup>

11. The Advocate shall develop criteria for identifying carcinogens likely to have a greater impact if exposures occur early in life and assess methodologies used in existing guidelines to address early -in-life exposures.<sup>17</sup>

#### BIENNIAL REPORT

12. The Advocate shall prepare a biennial report on research, data, or other information that will assist the Government of Canada in understanding, analyzing and responding to environmental health risks that pose a threat to children.<sup>18</sup>

#### ENVIRONMENTAL HEALTH RISK LEGISLATION

13. When developing legislation regulating substances that may have an adverse impact on children's environmental health, Federal Ministries shall provide the Advocate with:

- (a) an evaluation of the environmental health of the planned regulation on children; and
- (b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

14. In emergency situations, or when a Ministry is obligated by law to act more quickly than normal review procedures allow, the Ministry shall comply with the provisions of this section to the extent practicable.<sup>19</sup>

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<sup>15</sup> Ibid.

<sup>16</sup> 1997 Declaration Leaders of the Eight, *supra* note 3.

<sup>17</sup> Adapted from the California Health and Safety Code.

<sup>18</sup> Executive Order 13045, *supra* note 12.

<sup>19</sup> Ibid.