



# MANITOBA ECO-NETWORK

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Implementation Framework Team (Environment Canada & Health Canada)

Comments submitted to [HealthyEnv-EnvSain@ec.gc.ca](mailto:HealthyEnv-EnvSain@ec.gc.ca)

## **Re: Feedback on the Implementation Framework for a Right to a Healthy Environment**

The Manitoba Eco-Network (MbEN) is making this submission to provide input on the development of an implementation framework which will set out how the right to a healthy environment will influence the regulatory processes under the *Canadian Environmental Protection Act, 1999* (“CEPA”).<sup>1</sup> We are pleased to contribute to the ongoing process that will help determine what the right to a healthy environment actually means for Canadians, and how our newly recognized federal environmental rights should influence changes to CEPA processes.

CEPA is one of Canada’s most important environmental laws, created to protect human health and the environment. This federal law sets out the requirements for a range of environmental matters such as air and water pollution, waste management, and toxic substances, including activities and decisions related to:

- the regulation of toxic substances (i.e., lead, mercury, pharmaceuticals, volatile organic compounds (VOCs), plastics, per-and polyfluoroalkyl substances (PFAS), endocrine disruptors, contaminants of emerging concern, etc.),
- programs related to air and water pollution, hazardous waste, and greenhouse gas emissions,
- animate products of biotechnology,
- pollution prevention planning, and
- environmental emergencies.

The CEPA framework also includes more than 65 regulations that address issues ranging from the phase out of single use plastics, to the development of a *Clean Electricity Regulation*, to the reduction of methane emissions.

The implementation framework required by section 5.1 of CEPA, will provide insights into how the right to a healthy environment and other positive legal changes, such as the addition of important new legal principles - environmental justice, non-regression, and intergenerational equity - will influence the many complicated processes and decision-making opportunities currently regulated by CEPA. We see this as a significant opportunity for the federal government to improve protections for human health and the environment under CEPA and facilitate better public access to environmental justice for all Canadians, especially vulnerable populations. Of particular importance to MbEN are the research, studies, and monitoring activities that will be developed and undertaken in support of citizens’ environmental rights and the mechanisms that are going to help citizens protect their environmental rights.

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<sup>1</sup> *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.

This written submission is complementary to the input we provided directly to the implementation team through a local consultation event held by MbEN on March 27, 2024. More information and the recording of the event can be accessed here:

<https://mbeconetwork.org/right-to-a-healthy-environment-webinar-recording-march-27-2024/>

### **MbEN Engagement on the Right to a Healthy Environment and Environmental Justice:**

Over the past three years, MbEN has been working with community members in Manitoba to encourage governments at all levels (federal, provincial, and municipal) to enact meaningful legal and policy changes that will better protect vulnerable populations<sup>2</sup> from negative and health consequences and improve their access to environmental justice.

Through collaborative projects, MbEN has also received considerable input from Manitobans on the need for more access to environmental legal tools, plain language legal information, and more opportunity for meaningful public engagement. The feedback and recommendations provided in this submission are, in part, based off this previous work:

- Healthy Environment, Healthy Neighbourhood Project<sup>3</sup>
- Navigating the Law to Project the Environment Project<sup>4</sup>
- MbEN engagement in the parliamentary process for Bill S-5<sup>5</sup>

MbEN has also been participating in the current implementation framework consultation process. We participated in the two workshops hosted by the implementation team, and also held a local consultation event so Manitobans could share their input directly with the team.<sup>6</sup> Feedback provided in this submission reflects the input of Manitobans gathered from these past projects and engagement activities undertaken by MbEN.

### **Indigenous Rights**

The Manitoba Eco-Network feels that Indigenous voices should take priority when determining the meaning and impact of the right to a healthy environment and other changes to CEPA on Indigenous rights and the engagement of Indigenous peoples in CEPA processes.

We support changes that will ensure CEPA aligns with the *United Nations Declaration on the Rights of Indigenous Peoples* and empower Indigenous peoples to be more meaningfully involved in CEPA processes. This includes equitable inclusion of Indigenous traditional knowledge in CEPA decision-making processes.

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<sup>2</sup> Defined under CEPA as “a group of individuals within the population living in Canada who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances.” [s. 3]

<sup>3</sup> Manitoba Eco-Network, *Healthy Environment, Healthy Neighbourhood*, online: <https://mbeconetwork.org/what-we-do/healthy-environment-healthy-neighbourhood/>

<sup>4</sup> Manitoba Eco-Network, *Navigating the Law*, online: <https://mbeconetwork.org/what-we-do/navigating-the-law/>

<sup>5</sup> Manitoba Eco-Network, “Written Submission to the Standing Committee on Environment and Sustainable Development on Bill S-5” (November 21, 2022).

<sup>6</sup> Manitoba Eco-Network, *Right to a Healthy Environment*, online: <https://mbeconetwork.org/what-we-do/r2he/>

We look forward to learning more from the Indigenous stakeholders who have contributed their time and expertise to this consultation process and seeing how their feedback will be incorporated into the draft implementation framework.

**New Principles: Environmental Justice, Non-Regression, Intergenerational Equity**

Besides providing more clarity about the application and scope of the right to a healthy environment under CEPA, the implementation framework must also provide insight into the meaning of the new principles recognized by Bill S-5: environmental justice, intergenerational equity, and non-regression.

**Environmental Justice:**

“To me [environmental justice] means the right to protect our environment from damage and abuse and to make amends to repair and restore the environment from damage that has already occurred. Just like we want justice for humans for protection and fair treatment, our environment needs to be protected in the same way.” – MbEN survey participant

At its core, environmental justice is focused on equity, empowerment, and meaningful policy and legal change. It is a difficult term to define as environmental justice means different things to different people based on the context of the situation and their particular perspective. For example, the term “justice” is a foundational concept with a long history in legal jurisprudence. However, even in the legal realm, the term “environmental justice” has different meanings, or in the case of Canadian law, has not yet been given a clear legal meaning. Thus, the implementation framework provides the federal government with a unique opportunity to make a significant contribution to the understanding of the meaning and application of the principle of environmental justice in a Canadian context.

In North America, the term “environmental justice” is directly linked to the concept of “environmental racism”.<sup>7</sup> In the 1980s, the environmental justice movement was started by African American advocates such as Benjamin Chavez seeking to better protect African American communities from exposure to toxic waste as a result of systemic racism in land use and environmental approval processes that sited large-scale developments with significant environmental and health impacts near their communities. In a Canadian context, this linkage is also recognized, as mentioned in the Discussion Paper.

Thus, MbEN agrees with the Discussion Paper that the principle of environmental justice should require CEPA processes to acknowledge and address environmental racism, including “the procedural and geographic discrimination of specific communities, which could include Indigenous, Black and other racialized people, 2SLGBTQI+ people, women, persons with disabilities, and other marginalized people such as the very young, older adults, or people who experience structural inequity, poverty, or isolation.”

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<sup>7</sup> Adnil Gosine & Cheryl Teelucksingh, *Environmental Justice and Racism in Canada: An Introduction* (Toronto, Can: Emond Montgomery Publications Ltd., 2008).

However, there is a need for a broader understanding of the term “environmental justice” in the context of CEPA. Environmental justice can be understood as both a lens through which to approach certain problems or processes, and an outcome to be achieved. The implementation framework should recognize that environmental justice means more than addressing environmental racism and requires tangible outcomes for citizens that improve their access to justice.

Environmental justice outcomes are often broken into four categories:

- Procedural justice: opportunities for meaningful participation in environmental governance processes.
- Recognitional justice: recognition of the diversity of participants and experiences in affected communities.
- Distributive justice: equity in the distribution of environmental risk.
- Restorative justice: the extent to which negative environmental, health, and social impacts are remedied.<sup>8</sup>

Three of these outcomes were acknowledged in the Discussion Paper – procedural, recognitional, and distributive justice.

The feedback received from Manitobans reflects both of these realities as environmental justice was understood to have a broad, encompassing meaning. For example, participants recognized environmental justice as a principle that will require meaningful consideration of potential impacts on vulnerable populations and ensure systemic racism is addressed when decisions are made and actions are taken under CEPA. Environmental justice was also understood as an influence that will make environmental protection a priority in CEPA processes. Thus, environmental justice was understood as an influence that means more protection and support for the public and vulnerable communities, but also for the environment itself.

Participants also identified a range of outcomes they expected to see as a result of this new principle being added to the CEPA framework:

- Amplification of the voices of those with lived experience and those who live in vulnerable environments.
- Polluters are made directly responsible for the impact or harms that they have caused.
- All Canadians live in a healthy environment regardless of race or economic status and to have meaningful input into decisions about their land and water.
- Free, Prior, and Informed Consent from Indigenous communities.
- Access to legal tools and supports to protect rights and interests.
- Restorative justice.

#### Recommendations:

MbEN recommends adopting a working definition of “environmental justice” that captures its influence on CEPA processes both as a lens through which to approach decision-making, and the need for outcomes of CEPA processes that reflect environmental justice. This includes the

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<sup>8</sup> For example see: Robert R Kuehn, "A Taxonomy of Environmental Justice" (2000) 30:9 Environmental L Reporter News & Analysis 10681; C. Motupalli, "International justice, environmental law, and restorative justice" (2018) 8(2) Washington Journal of Environmental Law and Policy 333.

identification of measurable indicators to determine if the application of the new principle is achieving intended outcomes.

We also recommend that the work being done on environmental justice under CEPA align with the work underway to develop a National Strategy to Assess, Prevent and Address Environmental Racism and Advance Environmental Justice. This includes input received from Canadians through future consultation processes required under Bill C-226, once passed.

MbEN agrees that definition and application of environmental justice should include improved procedural, distributive, and recognition justice. However, we recommend that the implementation framework go further and also include improved restorative justice as a required outcome of the implementation framework. In particular, there should be emphasis on the need for more procedural support and access to effective remedies in order to address existing procedural discrimination under CEPA.

### **Intergenerational Equity:**

Manitobans, in particular the youth participants we engaged with, viewed the addition of the principle of intergenerational equity as a very positive step forward in ensuring that government decision-makers consider the interests and needs of future generations when decisions are made and actions are taken under CEPA. There is a need for a working definition of intergenerational equity that explains both the meaning and the potential changes to CEPA processes this principle will influence.

In terms of what intergenerational equity means, our participants indicated the following:

- Acknowledging the impact toxic chemicals and environmental harm can have on multiple generations.
- Recognizing the importance of considering the rights of future generations.
- Protection for all generations of people, including those who will come after us.
- Ensuring that each generation has an equal quality of life in whichever environment they live.
- All ages have equal rights to environmental information.
- Feedback from people of all ages treated and considered equally.
- Making sure that decisions made and actions taken now do not jeopardize the safety and health of the environment for future generations.

A range of potential influences on CEPA processes and outcomes were also identified:

- Decision-making criteria developed to ensure the perspective of youth and potential impacts on future generations are considered. Criteria should be re-evaluated every five years.
- Direct involvement of youth in CEPA decision-making processes.
- Independent, community-based research on cumulative effects and intergenerational impacts.
- Long term studies to track environmental quality and health now and over time.
- The enactment harsher punishments for polluters to discourage behaviour that will negatively impact future generations.

- Improved environmental and human health in the future.

#### Recommendations:

MbEN recommends adopting a working definition of “intergenerational equity” that captures its meaning and potential influence on CEPA processes. This includes the identification of measurable indicators to determine if the application of the new principle is achieving intended outcomes.

MbEN also recommends the implementation team prioritize the feedback of youth participants when determining the meaning and impact of the principle of intergenerational equity. The input of Indigenous governments and organizations should also be prioritized as Indigenous law and culture has long recognized the need for intergenerational equity. Such as the Seventh Generation principle of the Iroquois peoples, which states that “any action or decision should take into account its consequences for up to seven generations to come”.<sup>9</sup>

#### **Non-Regression:**

The principle of non-regression is a mechanism developed at the international level to help prevent governments from weakening environmental standards and human rights protections. At the time the principle is adopted, a baseline of legal protections is established and cannot be reduced moving forward. This legal principle has been successfully adopted into international agreements and laws in other countries.<sup>10</sup>

There appears to be two main components to the meaning of “non-regression” in a legal context:

1. Legal protections must not be weakened to a level below that of the baseline standard established when the principle was adopted.
2. The adoption of the principle of non-regression encompasses a commitment from government to continue to improve legal protections.

Thus, to MbEN non-regression under CEPA implies that moving forward, there will be continual work on the part of the federal government to improve existing legal protections for citizens and the environment. Non-regression means keeping pace with best practice and ensuring the CEPA regulatory framework does not get stagnant.

#### Recommendations:

MbEN recommends adopting a working definition of “non-regression” that captures its meaning and intended influence on the CEPA regulatory framework. This includes an understanding that non-regression sets a standard of legal protection that cannot be weakened and requires continuous work to improve legal protections to ensure the legal standard maintains alignment with recognized best practice.

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<sup>9</sup> Antoine Ebel and Tatiana Rinke, “Listening to the Voices of Young and Future Generations”, in Worldwatch Institute, *Governing for Sustainability*, at 82, (Island Press, 2014).

<sup>10</sup> See for example, Michel Prieur and Laurent Vassallo, “The principle of non-regression and biodiversity” (2019) Vol 44(3) *Environmental Legal Review* 499; Andrew Michell and James Munro, “No retreat: An Emerging Principle of Non-Regression from Environmental Protections in international Investment Law (2019) 50 *Georgetown Journal of International Law* 627.

We recommend that additional work be undertaken, in consultation with the public and Indigenous communities, to establish a baseline understanding of the current level of legal protection available under CEPA, ideally with connection to established scientific standards and required reporting requirements under CEPA. A regular review (e.g., every five years) and public reporting should be required to track the success of non-regression activities undertaken by government and ensure accountability and transparency.

### **Other Principles:**

As indicated in the Discussion Paper, there are a range of other legal principles under CEPA that already influence decision-making processes. This includes:

- sustainable development,
- ecosystems approach,
- precautionary principle,
- pollution prevention, and
- polluter pays.<sup>11</sup>

Each of these principles influence CEPA decision-making processes in their own way and should be given new understanding in the context of the right to a healthy environment. The feedback we received from Manitobans about the potential influence and of the implementation framework directly links to these existing principles. These connections should be explored and acknowledged in the implementation framework.

### Recommendation:

MbEN recommends the inclusion of additional CEPA principles in the right to a healthy environment implementation framework. In particular: sustainable development, ecosystems approach, precautionary principle, pollution prevention, and polluter pays.

It would also be useful if the implementation framework could indicate how the addition of new principles and the recognition of the right to a healthy environment under CEPA will amplify the positive benefits already seen from the application of the existing principles (e.g., will there be improvement in terms of preventing pollution or holding polluters accountable?).

### **“Vulnerable Environment”:**

An additional CEPA component that should be included in the implementation framework is the concept of “vulnerable environment”.<sup>12</sup> It is widely recognized that the vulnerability of humanity is directly linked to the vulnerability of the natural environment. Thus, any interpretation and application of the right to a healthy environment and other related principles like environmental justice under CEPA should go beyond humans and include consideration of the health and protection of the environment too. Protection of vulnerable environments should be prioritized in the implementation framework alongside the protection of vulnerable populations.

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<sup>11</sup> CEPA s 2, s 3.

<sup>12</sup> CEPA ss 68(a)(iii.2), ss 76.1(2), ss 287.1(2)(b).

Although the term vulnerable environment was incorporated into the CEPA framework, there was no definition included. Thus, the implementation framework is an opportunity for the federal government to provide insight into the meaning and application of the term within CEPA processes. There is no agreed upon definition of “vulnerable environment” within environmental and legal literature, but there are commonalities between different understandings of the concept. For example, environmental vulnerability is most often associated with the ability of the natural area to tolerate different negative impacts and ecosystem changes over time.<sup>13</sup> The more vulnerable a particular area is, the more additional protections are required.

There are a range of perspectives in terms of what makes a natural area vulnerable and why some areas may be more vulnerable than others. This includes:

- the fragility of the natural area – i.e. areas that cannot be easily restored if damage occurs,
- the likelihood of biomagnification and/or amplification of existing environmental damage,
- unique or rare features of the area, including culturally significant features.

Recommendation:

MbEN recommends including a working definition of “vulnerable environment” in the implementation framework. It would also be helpful to indicate how vulnerable environments will be identified and protected under the implementation framework and in CEPA processes.

**Substantive Meaning of the Right to a Healthy Environment:**

A healthy environment is “[a]n environment with clean air, water, soil that can sustain life and have it thrive without adverse effects to human or wildlife.” – MbEN survey participant

Although the right to a healthy environment has been recognized in many countries, there is no consensus about what it means. This lack of consensus on a precise definition makes sense as public and legal understandings of what encompasses a “healthy environment” depends on the context of the situation and the unique ecosystem features of the jurisdiction adopting environmental rights. In Canada, the implementation framework is an important opportunity to provide guidance to the public and decision-makers on what the right to a healthy environment means at the federal level, and how it will influence CEPA processes. This includes the scope of its application and substantive meaning.

Environmental human rights can help establish a basic standard of living and treatment by others (including government actors). This is, in part, accomplished by defining the scope and application of the right(s) in question. The legal meaning of a term can be clarified in different ways – including defining the term in legislation, government guidance materials, or through judicial interpretation. The first step in clarifying the meaning of the right to a healthy environment was taken by legislators responsible for the adoption of Bill S-5, which defined “healthy environment” as “an environment that is clean, healthy and sustainable”.<sup>14</sup>

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<sup>13</sup>For example see: Michaela Halpern, “Protecting Vulnerable Environments in Armed Conflict: Deficiencies in International Humanitarian Law” (2015) 51:2 Stanford Journal of International Law 119; L. R. R. Williams and L. A. Kaputcka, “Ecosystem Vulnerability: A Complex Interface with Technical Components” (2000), 19 Environ Toxicol Chem 1056.

<sup>14</sup> CEPA, s 3.



To MbEN, this definition indicates legislative intent to align the legal meaning of the right to a healthy environment with the United Nation's understanding of what the right to a healthy environment should encompass.<sup>15</sup> This includes six recognized elements of the right to a clean, healthy, and sustainable environment:

- Safe climate,
- Clean air,
- Healthy ecosystems and biodiversity,
- Safe and sufficient water,
- Healthy and sustainable food,
- Non-toxic environment.

We recommend the implementation team use these six elements as a framework to describe the scope of the right to a healthy environment under CEPA. For example, the team could identify which of the six elements of the right are protected/reflected in the recognized areas where ECCC and HC currently take action under CEPA:

- Air pollution.
- Water pollution.
- Risks posed by harmful substances.
- Greenhouse gas (GHG) releases.
- Waste.<sup>16</sup>

This framework could then be incorporated into decision-making and reporting processes under CEPA to provide specific details and measurements of success for the implementation of the right to a healthy environment.

The discussion paper approached this aspect of the implementation framework by asking: What does a healthy environment mean to you in the context of the CEPA cycle or areas described? How would you know if your environment was healthy? MbEN used these questions to gather feedback from Manitobans on what they thought the right to a healthy environment should mean at the federal level. Overall, the feedback we received indicates the need for a broad definition and understanding of what the right to a healthy environment means at the federal level.

We heard from Manitobans that the application of the right to a healthy environment should go beyond the protection of humans and include broader considerations of ecosystem health and the protection of nature. This includes protection of animals, natural entities, and sacred spaces. It was also suggested that the impact of the right could be measured based on identified parameters of health (i.e., scientific indicators).

Recognized indicators of a healthy environment include:

- Health of humans and animals.

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<sup>15</sup> United Nations, "What is the Right to a Healthy Environment?: Information Note" (2019), online: <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>; HRC, A/HRC/43/53, 43<sup>rd</sup> Sess (2020) "Good Practices on the right to a safe, clean, healthy and sustainable environment", online: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable>

<sup>16</sup> Discussion paper, p. 10-11.

- Citizens feel safe.
- Laws and policies that protect citizens from negative environmental and health impacts.
- Access to green space.
- Ecosystems with lots of biodiversity (including birds and insects), healthy and vibrant flora and fauna.
- Clean air and water.

Participants also identified the need to adopt an objective approach to determining the meaning and application of a healthy environment to ensure marginalized groups and vulnerable populations are not subjected to a different standard of “healthy” than in other communities. Participants saw direct linkages between the scope of the right and the application of new legal principles like environmental justice and intergenerational equity, and recognized that however the right to a healthy environment is defined, it needs to be equitable in a temporal sense (i.e. maintaining a healthy environment requires consideration of future impacts and future generations), and ensures disproportionately impacted communities are able to access to same level of “healthy” as other citizens, even if this requires additional supports.

### **Procedural Rights and Tools:**

Beyond the substantive meaning of the right to a healthy environment, the other main component that the implementation framework will provide insights on are the procedural elements of the right. In the discussion paper, these procedural elements were framed as “Procedural duties” related to “the process of making decisions”, and included:

- access to information,
- participation in decision-making, and
- access to effective remedies in the event of harm to the environment and human health.

This approach reflects the three procedural rights generally associated with the right to a healthy environment, although “access to effective remedies” is more often phrased as “access to justice”.

The feedback and recommendations in this section are based on the on broad outcomes and procedural support mechanisms identified by Manitobans. There is more work needed to identify the particular needs of certain groups (e.g., youth), the best approach to fill exist data gaps, and ways improve opportunities for meaningful engagement in CEPA processes.

### **Public Participation:**

When asked about the main outcome expected now that Manitobans have federally recognized environmental rights, a majority of participants anticipated an improvement in available opportunities for public participation in CEPA processes. Other outcomes and supports identified in relation to public participation include:

- More opportunities for funding and access to expert information.
- A variety of opportunities to engage, including use of social media platforms.
- Better advertising of opportunities to engage.
- A focus on engaging with youth and developing new approaches so they can be meaningfully involved in CEPA processes.

- Access to a broader range of plain language information about CEPA processes and the potential impacts of substances/activities regulated under CEPA.

Recommendation:

MbEN recommends including specific details in the implementation framework about new initiatives and funding opportunities that will facilitate more meaningful public engagement in CEPA processes. This includes:

- Production of more plain language information, in a variety of formats, about public engagement in CEPA processes.
- Public funding for citizens and public interest organizations so they can access expert assistance and other capacity building measures.
- A communication strategy outlining plans to improve the advertising of public engagement opportunities and dissemination of public information about engagement in CEPA processes.

**Access to Information:**

“Increase public knowledge of what CEPA is, where CEPA applies and how to participate in process. There should be examples of when and how to use CEPA.” – MbEN survey participant.

MbEN also received a significant amount of feedback about the need for more public access to information about CEPA processes, and the potential impacts of substances/activities regulated under CEPA. This includes the need for:

- More public access to information in a variety of formats.
- Collection of new data to fill existing information gaps and facilitate innovative studies.
- Plain language public education.
- CEPA education in schools so youth are better informed.
- Support for citizen science, especially projects involving youth.

However, we have been cautioned by community members not to overemphasize the value of “more information”. There have been many instances in the past where the public were promised studies or other information gathering activities that have ultimately not resulted in meaningful change, particularly in the context of toxic substances. Thus, the implementation framework needs to go beyond the promise of new information and provide actionable outcomes that generate useful data that can be utilized by citizens to protect their health and the environment. This could include public access to more monitoring and enforcement data to ensure accountability and transparency, access to independent experts to assist with analysis of technical information, and funding so communities can undertake testing themselves if industry or government is unwilling.

Recommendation:

MbEN recommends including specific details in the implementation framework about new initiatives and funding opportunities that will facilitate more public access to information. This includes:

- Plain language information about engagement in public processes.
- Funding for independent and community-based data collection.
- Supports for youth stakeholders – e.g., specific education initiatives, outreach activities.

- Funding for capacity building mechanisms (e.g., access to experts).

**Access to Justice (i.e. effective remedies):**

Of the three categories of procedural duties highlighted in the Discussion Paper, “Access to Effective Remedies” was the most unclear in terms of how this procedural duty will be fulfilled and supported by new and existing mechanisms under CEPA. This was disappointing as Manitobans identified this as one of the most promising aspects of a new environmental rights framework at the federal level – in particular, the potential for the public to gain access to more legal tools to help them protect their rights.

For example, our survey respondents identified a range of outcomes and procedural supports they were hoping to see as a result of the new rights framework under CEPA:

- Better holding polluters accountable – punishment should include more than just a fine.
- Monetary penalties being used to clean up pollution, re-build communities.
- A broader range of remedies that are easy to use.
- Independent oversight.
- Funding for vulnerable communities and grassroots groups so they can access legal representation and expert evidence.
- Legislative reform of s. 17-22 of CEPA to remove participation barriers.
- Additional legal protections for public advocates (e.g., Anti-SLAPP provisions).

While some of these supports may be provided through the mechanisms identified in the Discussion Paper, there is clearly a need for further legal and policy reforms to fully implement an effective rights-based approach under CEPA.

As MbEN, and other stakeholders like the Canadian Environmental Law Association (CELA) noted during the Parliamentary process for Bill S-5, there are many existing legal problems within the CEPA framework, such as the barriers preventing citizens from utilizing s. 22, that must be fixed so citizens can actually enforce their environmental rights and have access to environmental justice.<sup>17</sup> We urge the implementation team to identify the additional reforms needed to ensure citizens environmental rights are effectively supported and protected under the CEPA framework. In particular, the reforms needed to fix existing barriers preventing citizens from utilizing court processes to protect their rights.

Recommendation:

MbEN recommends documenting the reforms suggested by consultation stakeholders to improve the implementation of the right to a healthy environment and other new aspects of the CEPA framework, such as the principle of environmental justice. These recommendations should be documented in future consultation reports and forwarded to Cabinet for consideration.

In terms of potential reforms that could help the Canadian government fulfill its procedural duties associated with the right to a healthy environment, MbEN recommends particular attention be

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<sup>17</sup> Manitoba Eco-Network, “Written Submission to the Standing Committee on Environment and Sustainable Development on Bill S-5” (November 21, 2022).

given to the reforms necessary to remove current barriers preventing effective use of sections 17-22. This includes, but is not limited to, the following barriers and limitations:

- The requirement that an investigation request be submitted before an Environmental Protection Action (EPA) can be pursued.
- The high threshold of “significant” harm that must be met for an EPA.
- The costs of pursuing an EPA, including the risk of adverse court costs.

### **Independent Oversight:**

Independent oversight is a vital element of an environmental rights approach that is not identified in the Discussion Paper. There are a range of different institutions and government-appointed oversight positions used in environmental government processes including the Courts, Ombudsmen, the Auditor General, or a specialized government officer (e.g., Commissioner of the Environment and Sustainable Development).

In an environmental rights context, some jurisdictions have created a new position, such as Ontario’s office of the Environmental Commissioner, to oversee the implementation of the environmental rights framework, report deficiencies to the Legislature and support citizens seeking to utilize their procedural rights and access government processes.<sup>18</sup> Duties associated with such an oversight function can include:

- Educating the public,
- Advising government on compliance with the rights framework,
- Auditing programs and tools associated with the rights framework,
- Reporting – e.g., annual report, special reports,
- Referring applications for investigations and other processes to the appropriate body/department.<sup>19</sup>

### **Recommendation:**

MbEN recommends adding the element of “Independent Oversight” to the implementation framework and identifying which existing and/or new oversight mechanisms will help facilitate public education and engagement activities and support citizens seeking to exercise their rights under CEPA. If the creation of a new oversight mechanism is required, the implementation framework should indicate what, if any, legal or policy reforms will be required.

### **Potential Limitations on the Right to a Healthy Environment:**

The implementation framework will 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, but it is currently unclear how these factors actually influence CEPA processes.

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<sup>18</sup> David R. Boyd, “Elements of an Effective Environmental Bill of Rights”, (2015) 27 JELP 247.

<sup>19</sup> Boyd, *ibid*.

As indicated when engaging on Bill S-5, MbEN does not feel it is appropriate to place limitations on the scope or application of the right to a healthy environment under CEPA. The majority of the factors mentioned including social, health, and scientific factors also seem likely to support CEPA outcomes that facilitate better protection of the environment and human health. Thus, more clarity is needed to identify situations where consideration of these factors would influence a potential limitation of environmental rights.

Recommendation:

MbEN supports the recommendation of other organizations like the Canadian Environmental Law Association and the David Suzuki Foundation that the determination of any limits on the right to a healthy environment under CEPA should align with the approach taken under section 1 of the *Canadian Charter of Rights and Freedoms*, which requires government to justify any limitations of existing human rights through the *Oakes* test established by the Supreme Court of Canada.<sup>20</sup>

Input from ENGOs and Other Organizations:

This submission has responded to the questions from the Discussion Document from a grassroots perspective, primarily based on the feedback MbEN has received directly from Manitobans. However, MbEN recognizes the need for the implementation team to meaningfully consider the insightful and more technical legal recommendations provided by other environmental organizations. Specifically, we support the recommendations made by the Canadian Environmental Law Association (CELA) and the David Suzuki Foundation.<sup>21</sup>

This consultation process has produced a wealth of information that will hopefully influence environmental law reform in Canada for years to come. We look forward to seeing how the implementation team is going to incorporate the many compelling recommendations and suggestions for further reform of CEPA that MbEN has heard from other stakeholders in this consultation process into the draft framework.

Conclusion:

Overall, Manitobans see a broad range of potential positive influences and outcomes associated with the implementation of the right to a healthy environmental framework. Based on the feedback we received, there is particular interest in new legal tools and supports for citizens seeking to engage in CEPA processes. The implementation team should prioritize changes that will facilitate meaningful public participation, improve public access to information, and create funding opportunities that support capacity building measures and community-based research.

Although the application of the right to a healthy environment at the federal level is currently limited to the activities and decisions made under CEPA, we understand that the feedback received during the consultation for the implementation framework will also be shared with other departments and agencies at the federal level. This means this consultation process has the

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<sup>20</sup> *R v Oakes* [1986] 1 SCR 103.

<sup>21</sup> Submitted on behalf of Ecojustice, the David Suzuki Foundation, Environmental Defence, Breast Cancer Action Quebec and the Canadian Association of Physicians for the Environment.

potential to influence future changes to law and policy at the federal level, including broader recognition of environmental human rights.

Manitobans have unique experiences and needs that should be considered by the federal government when new laws and government programs are developed and implemented. We hope the insights of Manitobans shared with you through our work will help guide the development of the implementation framework and ensure better outcomes for Manitobans under the CEPA framework, including improved access to environmental justice.

The Eco-Network appreciates your consideration of our comments and recommendations for the next steps in the development of the implementation framework for the right to a healthy environment under CEPA. We welcome future opportunities to engage with Environment Canada and Health Canada to ensure the highest level of environmental and health protection measures are enacted for the benefit of current and future generations.

Sincerely,

Heather Fast, Policy Advocacy Director

*About MbEN*

*Since 1988, the Manitoba Eco-Network (MbEN) has promoted positive environmental action by supporting people and groups in our community. We are a public interest environmental organization seeking to promote and facilitate good environmental governance and the protection of Manitoba's environment for the benefit of current and future generations.*

*Our Mission is to promote good environmental governance, support and build capacity, advocate for environmental justice, and act as a bridge between environmental organizations, the public, and all levels of government. Learn more at: [www.mbeconetwork.org](http://www.mbeconetwork.org)*