



THE COALITION FOR ENVIRONMENTAL RIGHTS

It's time to recognise the right to a healthy environment.
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Attn: Standing Senate Committee on Energy, the Environment and Natural Resources

Dear Senators,

We, the [Coalition for Environmental Rights](#)¹, wish to bring your attention to a matter of great urgency, regarding the Committee's ongoing discussions of Bill S-5, *Strengthening Environmental Protection for a Healthier Canada Act*.

We wish to express concern that as Bill S-5 is currently worded, Canada is at risk of becoming the only country in the world where the right to a healthy environment is explicitly subjected to being 'balanced' against economic interests. Sub-clause 3(2) currently states:

(2) Subsection 2(1) of the Act is amended by adding the following after paragraph (a.1):(a.2) protect the right of every individual in Canada to a healthy environment as provided under this Act, which right may be balanced with relevant factors, including social, economic, health and scientific factors;

Similar language is included in Clause 5 of the Bill.

Several formal submissions and testimonies before the Committee have flagged why adding an economic qualifier to a human right is problematic, and out of step with language that other jurisdictions have used to recognize this right. We are not aware of any of the 156 members of the United Nations that have recognized this right in law, that have subjected it to "balancing" of any sort. Similarly, the resolution recently adopted by the UN Human Rights Council ([A/HRC/48/L.23/Rev.1](#)):

¹ The Coalition for Environmental Rights is guided by a small steering committee composed of organizations representing key constituencies seeking to achieve environmental rights, with support from highly-engaged volunteer advisors and coordinators. In addition, we are supported by national and local member organizations, representing diverse interests, who share our common vision and commit to supporting the coalition in pursuit of its goals and objectives. <https://www.environmentalrights.ca/who-we-are>

1. Recognizes the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;

2. Notes that the right to a safe, clean, healthy and sustainable environment is related to other rights that are in accordance with existing international law;

Can you imagine if it were proposed that any of our Charter rights be amended to explicitly subject them to being “balanced” against economic factors? Would we ever allow discrimination on the basis of race or gender, if that were deemed to be what was required to achieve “economic balance”? To suggest so would be scandalous. Yet that is effectively what is being suggested within Bill S-5.

As identified by the [UN Special Rapporteur on Toxics and Human Rights in a 2020 report](#), many communities in Canada do not currently have access to a healthy environment, and this is often a result of economic interests superseding those of less politically powerful communities². As a result, certain populations are disproportionately impacted by pollution and toxics- this is the very problem that environmental rights are meant to address. This includes Indigenous, Black, other racialized and low-income communities, as well as women, children, people with disabilities, and other people who have been made vulnerable.

Thus, the top recommendation made by the resulting UN report states that Canada should “*Recognize the right to a healthy environment through legislation and eventually a constitutional amendment, including the duty to prevent exposure to hazardous substances.*”³

Notably, this recommendation is not made subject to economic considerations.

Polling reveals that more than 90% of people in Canada support the right to a healthy environment⁴, so it’s no surprise that more than one hundred Members of Parliament, from all major parties, have now signed the **MP Pledge for Environmental Rights**⁵, which states: “*I hereby pledge that, as a Member of Parliament, I will support the recognition in law of the right to a healthy environment for all people in Canada.*” Again, this is not subject to economic “balancing.”

In the May 31st, 2022 Senate ENEV Committee hearing⁶, an alternative text was proposed, to the effect that the right to a healthy environment would instead be “*subject to reasonable limits.*”

² UN Human Rights Council, 2020. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to Canada. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/328/37/PDF/G2032837.pdf?OpenElement>

³ *Ibid*, p. 21-22.

⁴ The Gandalf Group, 2017. Canadian Public Opinion on Toxics. Commissioned by Environmental Defense. June 6, 2017. ([PDF](#)).

⁵ <https://www.environmentalrights.ca/copy-of-mp-pledge>

⁶ <https://sencanada.ca/en/committees/ENEV/noticeofmeeting/579237/44-1>

However, this does not address the problem. Our current predicament is the result of many years of decision makers believing that the environmental degradation being inflicted on the communities mentioned above is “reasonable.”

As raised in Committee on May 31st, 2022 by Senator Miville-Dechêne⁷, while human rights are not absolute, it is up to the courts to decide what other factors to take into consideration, and to what degree.

Our Coalition joins the many other groups and individuals that are calling for this provision to be kept consistent with international, national, provincial and municipal language recognizing the right to a healthy environment, and not made subject to any qualifications or restrictions. Consistent with this recommendation we urge the committee to ensure the bill reads as follows:

3 (2) Subsection 2(1) of the Act is amended by adding the following after paragraph (a.1):
(a.2) protect the right of every individual in Canada to a healthy environment as provided under this Act.

If this bill leaves the Senate without addressing this fundamental flaw, we will focus our efforts on ensuring that this is rectified in the House of Commons before becoming law.

We hope you will take these concerns into consideration as you complete your remaining deliberations on this bill. We would be happy to provide more information on the right to a healthy environment, the benefits it can provide, and the growing international movement that supports this concept.

Best regards,



Kristian Ferreira, LL.B



Peter Wood, Ph.D

On behalf of the Coalition for Environmental Rights

⁷ *Ibid*