

# *Turning up the Heat on the Right to Cooling*



Low-Income Energy Network - Annual Conference 2023

Jacqueline Wilson, Counsel -- Thursday, October 26, 2023

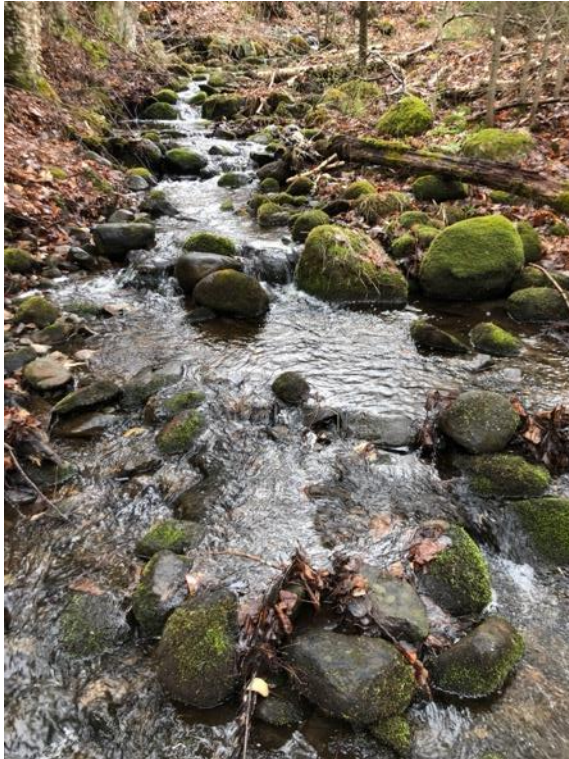


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*Photo: Linda Pim*

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# Canadian Environmental Law Association (CELA)



*Photo: Kelly Mathews*

- Specialty legal aid clinic dedicated to environmental equity, justice, and health
- Founded in 1970, funded by Legal Aid Ontario since 1978
- CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable communities in the courts and before tribunals. CELA also provides free summary advice to the public and engages in legal education and law reform initiatives.



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# Canadian Environmental Law Foundation



*Photo: Ghislain Tillard*

- Key initiatives include:
  - Canadian Environmental Law Archives
  - Annual fellowship for one aspiring environmental lawyer,
  - Access to Justice for Northern Communities Initiative.
- The Foundation also supports ongoing education and outreach efforts to promote public participation in environmental decision-making.



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# Environmental Racism and Environmental Justice

The disproportionate burden of environmental harms on Indigenous and other racialized communities, and uneven access to nature and environmental benefits.

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.



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## Under-resourced communities experience:

- **Significantly higher siting of waste or heavily polluting facilities**
- **Less access to meaningful public participation for decisions with substantial environmental and health impacts**
- **Lower levels of environmental law enforcement**
- **Relative lack of political or financial means to challenge powerful polluting industries**
- **Increased societal pressures to accept such industries because of the need for employment, among other factors**
- **Lack of equal access to environmental necessities such as greenspace, clean water and healthy food.**



# Climate Change and Equity

- *IPCC: Climate Change 2023: Synthesis Report*
  - *Emphasized issues of equity in fight against climate change*

“Prioritising equity, climate justice, social justice, inclusion, and just transition processes can enable adaptation and ambitious mitigation actions and climate-resilient development. Adaptation outcomes are enhanced by increased support to regions and people with the highest vulnerability to climatic hazards. Integrating climate adaptation into social protection programs improves resilience.” *[IPCC, AR6, SYR, p 33]*

# Climate Change and Equity

- ***References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 at para 206***
  - If Parliament were unable to constitutionally address the matter of GHGs at a national level, the irreversible harms to the environment, for human health and safety and for the economy, would be felt across the country and would be borne disproportionately by vulnerable communities and regions, with profound effects on Indigenous peoples, on the Canadian Arctic and on Canada's coastal regions.



# Extreme Heat

The temperature is rising in Canada.

- Various life-threatening conditions can occur when the body cannot maintain its core temperature of approximately 36.6°C due to excessive external heat
- Findings in Quebec in 2018 and British Columbia in 2021 were similar and stressed disproportionate impacts of heat on most vulnerable
- Most vulnerable were:
  - Seniors
  - Infants and young children
  - Chronic illnesses and morbidity challenges
  - Socially disadvantaged



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# Law Reform Project

- Climate Change and Vulnerable Communities
  - Tracking of Heat-Related Death
  - Municipal powers
  - Reports: urban tree cover, green roofs, flooding, extreme heat, rural transportation
- Focus on collaboration with other organizations
- Recommendations available on CELA website:  
<https://cela.ca/climate-change-impacts-and-vulnerable-communities/>



# Tracking Heat-Related Death

- Accurate and complete data is a baseline for good advocacy
- No accurate tracking of heat-related death in Ontario
  - Legal aid clinic collaboration to seek better tracking by Office of the Chief Coroner
- Other data (heat-related illness, hospital visits) necessary, too

# Memo on Municipal Powers

- *Spraytech v Hudson*, [2001] 2 SCR 241
  - ‘General welfare powers’
  - Presumption that by-laws passed by municipalities are valid
  - Municipalities can enhance protection provided by other levels of government
  - Provincial legislation in a field “does not oust municipal prerogatives to regulate the subject matter” barring an operational conflict
- Provincial legislation: *Municipal Act, 2001 (ss.8(1), 10(2), 11(2)); Health Protection and Promotion; Act, Planning Act*

# Maximum Temperature By-Law Draft Language

## DEFINITIONS

1. In this By-Law:

“adequate and suitable cooling” means an indoor air temperature in the dwelling unit that does not exceed 26 degrees Celsius (26° C).

“dwelling unit” means one or more habitable rooms used or designed to be used for human habitation;

“habitable space” means a room or area used or intended to be used for living, sleeping, cooking or eating purposes and includes a washroom;



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# Maximum Temperature By-Law Draft Language

“landlord” includes, (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit, (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being, (a) a co-owner of the residential complex in which the rental unit is located, or (b) a shareholder of a corporation that owns the residential complex



# Maximum Temperature By-Law Draft Language

## ADEQUATE AND SUITABLE COOLING

2. (1) Adequate and suitable cooling shall be provided and maintained so that the room temperature at 1.5 metres above floor level and one metre from exterior walls in all habitable space and in any area intended for normal use by tenants, including recreation rooms and laundry rooms but excluding locker rooms and garages, is a maximum of 26 °C.



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(2) Subsection (1) does not apply to a rental unit in which the tenant can regulate the temperature and a maximum temperature of 26 °C can be maintained.

(3) Every residential complex shall have cooling equipment capable of maintaining the temperature levels required by subsection (1).

(4) Only cooling equipment approved for use by a recognized standards testing authority shall be provided in a room used or intended for use for sleeping purposes



# Maximum Temperature By-Law Draft Language

3. Section 2 shall be implemented by the landlord within one year of the passing of this by-law.



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