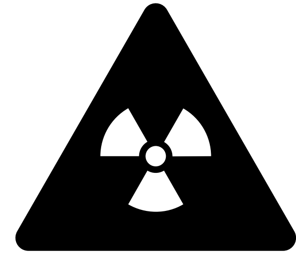
Environmental Injustice: What You **Should** Know



An Informational Pamphlet

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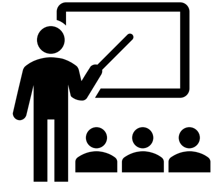
LAWS 2280

INTRODUCTION

Purpose

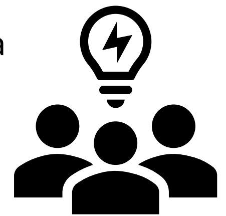
The information presented in this pamphlet is intended to do the following:

1. **Inform**

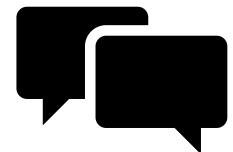
   Environmental injustice is one of many barriers to reconciling Canada's relationship with Indigenous Peoples. By providing a brief overview of this one issue, the intention is that readers will get an introduction to some factors that impede progress in improving this relationship.

2. **Elicit a Critical Perspective**

   Without a background in law or government, it can be intimidating to try and understand the complex dynamic between Indigenous Peoples and the Canadian state. As a result, it can be easy to read a headline or listen to a politician's words and accept the information at face value. The intention behind this pamphlet is to demonstrate the ways the public can engage in critical analysis to understand why an issue like environmental injustice is able to continue happening. By understanding how Canada's history of colonialism impacts the ways the Canadian state engages with Indigenous Peoples today, and by recognizing the connection between colonialism, environmental injustice, and the way that environmental injustice is addressed by the government, individuals can gain a critical perspective that can be used to combat issues such as environmental racism.

3. **Prompt Engagement**

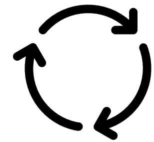
   

   The intention is that by becoming informed and gaining a critical perspective, readers will understand the role of the public in engaging with issues, such as environmental racism, faced by Indigenous Peoples. Sitting back and insisting that the public does not play a role in how the government engages with Indigenous Peoples is not an adequate excuse.

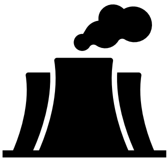
THE PROBLEM

What is Environmental Racism?

"Environmental policies, practices, or directives that disproportionately disadvantage individuals, groups, or communities (intentionally or unintentionally) based on race or colour." – Dr. Robert Bullard, 2002



How is it Carried out?



- The **disproportionate location and greater** exposure of Indigenous and racialized communities to contamination and pollution from polluting industries and other environmentally hazardous activities.
- The **lack of political power** these communities have for resisting the placement of industrial polluters in their communities, the implementation of policies that sanction the harmful, and, in many cases, life-threatening presence of poisons in these communities.
- The **disproportionate negative impacts of environmental policies** that result in differential rates of cleanup of environmental contaminants in these communities.
- The **history of excluding Indigenous and racialized communities** from mainstream environmental groups decision-making boards, commissions, and regulatory bodies.

What does it Look Like?

At a glance…

Aamjiwnaang First Nation, located near Sarnia, Ontario in "Chemical Valley," is surrounded by over 50 industrial plants within 25km of its territory. The disproportionate exposure to toxic substances is known to cause lung, cardiovascular, neurological, endocrine, reproductive, and digestive damage, higher rates of cancer, and birth defects or stillbirths.

Pictou Landing First Nation was once situated on fertile hunting and fishing ground near an estuary called Boat Harbour. In 1967, an effluent treatment facility was built and operated by the provincial government, which turned Boat Harbour into a highly toxic site.

"…my son will never be able to just a boy because kids here already are taught to be afraid of the water, whereas we were taught embrace the water" –member of Aamjiwnaang First Nation

"Just knowing where I came from and the family that's gone before me, I never expected to live long…" –Michelle Francis-Denny on living in Boat Harbour

Why and how is this Happening?

Broadly speaking…

Colonialism

Canada was founded on "the displacement, subjugation, and oppression" of Indigenous Peoples. The state developed and maintained its power by reinforcing processes of dispossession and genocide. The reliance on this power structure has not changed. As a result, neither have the state's oppressive policies. The state continues to permit the exploitation of Indigenous Peoples and their land to maintain power and control. Environmental racism is one way that the state carries out these oppressive colonialist policies.

Some Thoughts from Environmental Justice Scholars…

"Struggles for environmental injustice highlight not only efforts on the part of settlers to possess, dispossess, and extract, but also attempts to sublimate Indigenous epistemologies or ways of knowing that are premised on collectivist and communal values."

"Decolonization must be central to opposition against environmental racism and requires meaningful resistance against processes of colonialism that seek to subjugate the minds, bodies, and lands of colonized people."

Government Response

What is Being Done?

1. Reports

> **Note**: Reports such as the UN Special Rapporteur Report are valuable because (1) Special Rapporteurs are independent from the Canadian government, which avoids bias and (2) The Canadian government must request for them to be conducted, which means the information is given right to them, therefore leaving the government without an excuse not to address the issues presented.

Environmental health inequities are not a secret. There has been scholarship on environmental racism since the 1970s. Countless reports have been made that explicitly document the environmental harm faced by Indigenous and racialized peoples. More recently, government officials have begun to acknowledge the subject and there has been discussion about implementing legislation to address it. This legislation notably fails to reflect the substantial findings of the scholarship and the reports.

In 2019, the United Nations Special Rapporteur on human rights and hazardous substances and wastes visited Canada to assess the government's action in protecting human rights in relation to hazardous substances and wastes. The Report contains a long list of the government's shortcomings, including the following:

- an **absence of socio-economic mapping** to establish the connection between exposure to toxic substances and Indigenous communities;
- a "**pervasive trend of inaction of the Canadian government** in the face of existing health threats from decades of historical and current environmental injustices";
- a **difficulty in compelling meaningful consultations** with project proponents and the Government;
- a **lack of investigation** from Health Canada into the health impacts of Indigenous communities; and
- the **use of intimidation tactics** against human rights defenders.

2. Government Promises

The Liberal Party, in their platform preceding the 2021 election, pledged to "identify and prioritize the clean-up of contaminated sites in areas where Indigenous, racialized, and low-income Canadians live," and to "examine the link between race, socio-economic status, and exposure to environmental risk, and develop a strategy to address environmental justice." While it sounds promising that the party that is now in power acknowledged environmental injustice in its platform, there is little evidence that these promises have substantive backing.

The first point treats environmental racism as a one-dimensional problem. It presents the problem in a way that suggests Indigenous and racialized groups happen to be located near contaminated sites, and that this problem can be solved simply by "cleaning up" these areas. It does not account for the reality that these "sites" are often also the sites where big industries have imposed themselves and have been authorized by the government to do so. Unless the government plans to prevent Coastal GasLink from continuing construction in Wet'suwet'en territory or plans to stop Imperial Oil from

emitting inhumane amounts of benzene, these pledges to "clean up" are essentially meaningless. The problem is not in "identifying" these contaminated sites. People have been drawing attention to these sites for decades. The government is aware of where these sites are, so "identifying" them should not be viewed as positive action.

The second point has slightly more substance in that it acknowledges a connection between race and exposure to environmental risk, however "examining the link" is not a solution. The statement is baseless without any indication of how the process will be carried out.

3. Amending *CEPA*
    a. What is being proposed?

There is evidence that the government plans to follow through with other promises in its section about environmental justice. The Liberal government, in its platform, promised to amend the *Canadian Environmental Protection Act*, 1999 (CEPA) and to recognize "the right to a healthy environment." Bill S-5 is evidence that there are potentially steps being taken to make improvements to CEPA to address environmental injustice.

The bill proposes to amend CEPA. It includes a change to the preamble that would recognize that every individual in Canada has a right to a healthy environment, and will require under section 2 of the Act, that the government protect this right. Further, the amendment proposes that the preamble will include statements that "confirm" the government's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), a recognition of "the importance of considering vulnerable populations in risk assessments and of minimizing the risks posed by the cumulative effects of toxic substances." If the bill passes, it will require that "within 2 years, the Ministers must develop, consult on, and publish a Plan of Chemicals Management Priorities, which will set out a multi-year, integrated plan...." In developing the plan, the government "must consider a number of factors" that includes "vulnerable populations and cumulative effects."

    b. What does this actually mean?

First, the amendment does not include any direct action. It merely requires the Ministers to develop a plan. There is no indication that this plan will be carried out, nor is there evidence that the plan will contain anything substantive that would improve environmental injustices.

Note: Being critical about the language used in government legislation is not necessarily equivalent to being cynical. The intention here is to understand that amending CEPA with Bill S-5 is not automatically going to solve environmental injustice; it does not, however, mean that there is no potential for it to be used towards positive action.

Second, the use of the words "must consider" indicate that the Minister does not actually have to act on any considerations. Instead, they simply would have to show that they considered "vulnerable populations," determined that there was no risk, and permit the destructive project to move forward. Further, there is no explanation of what is meant by "vulnerable populations." Vulnerable might mean Indigenous or racialized peoples, or it might mean elderly people, or disabled people, or any number of other groups. It is a vague term that has little meaning without more context. Not to mention, it is a problematic term. If the intention here is to address environmental racism, and "vulnerable" is meant to refer to Indigenous and racialized peoples who are disproportionately impacted by environmental harm, then that is what should be included. Vulnerable is purposefully vague and does

not put any onus on the government to actually take these people into account. If that is the term that is going to be used, there should at least be an indication about what makes the people vulnerable. With that said, for the government to include this explanation would mean they would have to admit that their own policies are what make certain groups "vulnerable."

Next, the amendment states that "The Ministers are empowered to consult with interested stakeholders and partners." "Empowered" is an interesting choice here. It sounds slightly more dressed up than the Ministers "may" consult, but it does not actually indicate any direct requirement. This language is strategic in that it presents as being substantive. By including "vulnerable people" and consultation with Indigenous Peoples, the amendment presents as something aimed at creating change. Closer examination of how these terms are used and the surrounding language reveals that there are no substantive requirements in the amendment to make any direct changes. The government can use legislation this way to claim to be making progress without actually doing anything. This way, people can read in the news that there are changes being made to CEPA that require the recognition of the right to a healthy environment and they can believe that the government is doing something about the chemical industry that is causing half of their neighbouring community to die of cancer.

What about UNDRIP?

In 2016, the Liberal government endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2021, the federal government demonstrated its commitment to domestic implementation of UNDRIP when it passed the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, making it law. The Act stipulates that Canada must create an action plan that includes "measures to address the injustices, violence, racism and discrimination Indigenous peoples have faced within Canadian society, as well as promote mutual respect and understanding, as well as specific measures relating to monitoring, oversight, and recourse or remedy or other accountability measures with respect to the implementation of the Declaration." Unfortunately, confusion over how to apply UNDRIP remains, and so it has not yet been adequately implemented by the courts. This is partially on account of (1) the courts' limited understanding of international law and (2) a lack of explanation on how parties hope for the court to apply it.

With that said, it is promising that the proposed Bill S-5 makes reference to UNDRIP. This is a starting point for greater recognition of the principles of UNDRIP, and greater clarity on how it can be applied.

What about the Duty to Consult?

Another potential tool for addressing environmental injustice is the Duty to Consult (DTC). Broadly, the DTC arises when the Crown contemplates conduct that could impact a potential Aboriginal right. For example, if the Crown wanted to approve a resource extraction project that could result in environmental harm that would affect a First Nation's hunting or fishing rights, the Crown would have to engage in consultation with the First Nation to determine whether the project could proceed. From that broad perspective, it would seem that the DTC could prevent a lot of the effects of environmental injustice. There is, however, a long list of factors that goes into determining the extent of the consultation process. Ultimately, the power to determine whether a project goes forward lies with the Crown, meaning consent from Indigenous Peoples is not necessary.

What can you do?

The focus of this pamphlet has largely been on the ways the government and the broader Canadian state contribute to environmental racism. It is important to note, however, that these injustice does not exist without resistance. Indigenous Peoples have been fighting against discriminatory practices and policies for as long as the practices and policies have existed. With that said, land defenders and other activists within Indigenous and racialized communities should not be the only ones engaging in the fight.

1. Engage and Be Critical

One step that can be taken is to avoid making support dependant on the media. Social media can be a positive force in drawing attention to issues of environmental racism; however, the problem does not go away when issues stop trending on Twitter. It is crucial for people to understand that when the cameras go away, the daily violence experienced by land defenders and their supporters does not go with it.

Engaging with the experiences of land defenders only when it is convenient not only fails to offer actual support, but it serves as a parallel to the government's addressment of environmental racism. As discussed above, legislation and other government policies use vague language and discuss environmental racism in the abstract to present in a way that appears to be responding to the problem, when the reality is that it sustains the problem. The tendency to support land defenders only when their experiences are presented as a spectacle closely mirrors this behaviour. Therefore, this tendency in mainstream society to treat land defence as a fad contributes to the system that perpetuates environmental racism.

2. Listen

Another important part of supporting Indigenous Peoples in their fight for environmental justice is listening. While this might seem like a simple and obvious answer, it is not when one thinks about how history has tended to be communicated. Most non-Indigenous peoples in Canada grew up learning about the experiences of Indigenous Peoples through the settler colonial perspective. This was the norm, and it helped to skew history in a way that favoured the colonial state and got a large portion of the population on board with this understanding. Part of this includes reading a headline and sharing it without engaging further with the material to ensure that it is accurate. This is especially easy in the age of social media, where short, eye-catching posts are the fastest way to get attention.

Again, this type of behaviour reflects the same behaviour that contributes to the oppressive system. It mirrors both the history of miseducation and the continued tendency for courts to silence Indigenous parties.

Conclusion:

Stay informed, engage in critical analysis, and exercise genuine support!