

CHRONOLOGY OF FOE'S CLIMATE CHANGE CASES

- **May 17, 2006:** *Kyoto Protocol Implementation Act* (Bill C-288) tabled and receives first reading at House of Commons.

- **October 19, 2006:** The proposed *Clean Air Act* was unveiled in Parliament. A FOE press release announces that the proposed Act deceives Canadians and should instead be called the “Dirty Air Act” as it contains nothing to protect Canadians from dirty air or climate chaos – no targets for real reductions of pollution and no schedules that nail down deadlines for reductions.

- **October 31, 2006:** FOE sent a letter to the then Canadian Minister of Environment, the Honourable Rona Ambrose, recalling her duty to act under s.166 of the *Canadian Environmental Protection Act, 1999* (CEPA) to “prevent, control or correct international air pollution caused by or contributed to by Canada’s emissions of greenhouse gases (GHGs) and to request certain assurances”. A copy of this letter was also sent to the then Minister of Foreign Affairs, to the then Environment Commissioner and to the United National Framework Convention on Climate Change (UNFCCC) Compliance Programme Coordinator.

- **December 4, 2006:** *Clean Air Act* (Bill C-30) was referred to the Legislative Committee for amendments.

- **December 19, 2006:** FOE meets with Associate Deputy Minister to the then Minister of Environment and federal legal counsel to discuss the contents of the letter. One outcome of the meeting is that FOE extends our deadline for a response from the Minister from November 30, 2006 to January 31, 2007.

- **January 31, 2007:** Still no response received from the then or the new Minister of Environment regarding the letter.

- **February 15, 2007:** *Kyoto Protocol Implementation Act* (Bill C-288) receives first reading at Senate.

- **March 30, 2007:** Legislative Committee Report on the *Clean Air Act* released.

- **April 26, 2007:** The Government releases its Regulatory Framework for Air Emissions, “Turning the Corner” which, in FOE’s view, violated and is likely to violate the UNFCCC and the Kyoto Protocol as it would leave Canada approximately 39 per cent off target with Kyoto in 2012 and would not achieve the Kyoto target until 2025, if at all.

- **May 28th 2007:** FOE sends another letter to the new Ministers of the Environment and Health, the Honourable John Baird and the Honourable

Honourable Tony Clement. This letter recalls the Minister of Environment's duty to act under s. 166 of CEPA, provides the Ministers with various updates regarding Canada's GHG emissions and indicates that in our view, the "Turning the Corner" climate change strategy violated and is likely to violate the UNFCCC and the Kyoto Protocol.

– **May 29, 2007:** FOE launched a landmark (lawsuit) in Federal Court against the Government of Canada for abandoning its international commitments under the Kyoto Protocol. The lawsuit alleged that the federal government was violating Canadian law by failing to meet its binding international commitments to reduce GHG emissions.

– **June 22, 2007:** In a completely unexpected move, The *Kyoto Protocol Implementation Act* (KPIA) was passed by the Senate and given Royal Assent. The purpose of the Act is "to ensure that Canada takes effective and timely action to meet its obligations under the Kyoto Protocol and help address the problem of global climate change." Section 5 of the KPIA requires that within 60 days of the Act coming into force, the Minister of Environment is to prepare a Climate Change Plan and release the Plan publicly. The Act sets out a specific list of measures to be described in the Plan to be taken to ensure that Canada meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol.

– **August 9, 2007:** In anticipation of the Government's new Climate Change Plan as required by the KPIA, FOE and Ministers of Environment and Health are granted a stay by the Federal Court on FOE's May 29, 2007 lawsuit against the Government of Canada. FOE decided to stay the first lawsuit against the Government for violating the duty to act under s. 166 of CEPA and abandoning its international commitments under the Kyoto Protocol pending the outcome of the Government's required report and providing, optimistically, the opportunity for a change in the Government's court of conduct.

– **August 21, 2007:** The Minister of Environment releases his Climate Change Plan. The Plan fails to comply with the requirements of the KPIA. In particular, the Plan explicitly does not aim at complying with the Kyoto Protocol, and therefore does not conform to the requirements of the Act.

– **September 14, 2007.** The Governor General, at the request of the Prime Minister prorogues Parliament thereby eliminating any chance of Bill C-30, the Amended Clean Air Act, returning for approval by Parliament.

– **September 20 2007:** FOE launches a new lawsuit in Federal Court against the Government of Canada seeking a declaration that the federal government is not complying with its legal obligation under s. 5 of the KPIA because the Minister has failed to prepare a Climate Change Plan within 60 days of the Act coming into force that provides a description of measures to be taken to ensure that Canada meets its obligations under Article 3.1 of the Kyoto Protocol. The new lawsuit will also seek a court order (i.e. mandamus) requiring the Minister to comply with the Act. Proceeding with a lawsuit based on the KPIA as opposed to s. 166 of CEPA not only has a higher chance of success, but is also likely to result

in a remedy that is far more effective in getting the desired results. The potential remedies available when using the KPIA will be more effective because the KPIA specifically refers to the Kyoto Protocol and requires that the Kyoto targets be met. Therefore, when the court requires the Minister to devise a plan that is in accordance with the KPIA, the court will, in effect, be requiring the Minister to devise a plan that will meet Kyoto Protocol targets. The remedies that would be available if we were solely relying on CEPA risk a less direct link to requiring the Government's plan meet Kyoto Protocol targets.

– **September 21, 2007:** The federal National Round Table on Environment and the Economy (NRTEE) reports that the KPIA Plan is badly flawed and won't help Canada to hit its international climate change targets. The report accused the federal government of using "systematic" exaggeration, "double accounting," "not accurately reflecting" emissions reductions, "important inconsistency" and "overestimated" reductions to produce false conclusions about the effectiveness of the Plan. Out of nine federal climate-change programs, the government had exaggerated the benefits of three and failed to produce sufficient information to support the other six. The NRTEE concluded that the nine programs in the Plan would not allow Canada to meet its Kyoto commitments.

– **October 5, 2007:** At the UN Special Session on Climate Change meetings in New York the Government of Canada indicated its intention to quit participating in the Kyoto Protocol when it expires in 2012 and instead join the Asia-Pacific Partnership which does not set any rigid requirements for GHG reductions.

– **October 16, 2007:** The Speech from the Throne stated that "Canada's emissions cannot be brought to the level required under the Kyoto Protocol".

– **October 20, 2007:** Under s. 8 of the *KPIA*, the Governor in Council was required to publish in the *Canada Gazette* proposed regulations which would ensure that Canada fully meets its obligations under Article 3.1 of the Kyoto Protocol as well as publishing a statement setting out the GHG emission reductions expected to result from the regulations.

– **October 25, 2007:** Under s. 10 of the *KPIA*, the NRTEE must publish their comments on the Kyoto Plan.

– **October 30, 2007:** Under s. 9 of the *KPIA*, the Minister must publish a statement setting out the GHG emission reductions that are reasonably expected to result from the draft regulations and other measures in the Plan for each year up to and including 2012.

– **December 2, 2007:** Under s. 10 of the *KPIA*, the NRTEE must publish comments on the above statement.

– **December 3 to December 14, 2007:** UNFCCC Annual Conference in Bali will bring together representatives of over 180 countries, including Canada, as well as observers from intergovernmental and nongovernmental organizations, and the media. The Conference includes meetings of the Parties to the UNFCCC as well as a meeting of the Parties of the Kyoto Protocol.

- **December 19, 2007:** Under s. 7 of the *KPIA*, the Governor in Council must ensure that Canada fully meets its obligations under Article 3.1 of the Kyoto Protocol by making, amending or repealing the necessary regulations under the *KPIA* or any other Act.
- **May 31, 2008:** The Government of Canada releases its second “Climate Change Plan for the Purposes of the *KPIA*”. As with the previous Plan, the requirements of the *KPIA* are not met by the new Plan. Specifically, the new Plan still does not aim at complying with the Kyoto Protocol, and therefore does not conform to the requirements of the Act.
- **June 18, 2008:** FOE’s *KPIA* cases are heard at the Federal Court in Toronto.
- **October 20, 2008:** After months of deliberation, the Federal Court releases its decision regarding the alleged violation of the *KPIA* by the Government of Canada. The Judge held that the *KPIA* is not justiciable, i.e. it is not an issue the Courts can resolve.
- **November 25, 2008:** FOE gives notice to the Government of Canada that we will be appealing the Federal Court decision.
- **December 1 to December 12, 2008:** UNFCCC Annual Conference in Poznan, Poland takes place.
- **May 12, 2009:** As part of the Auditor General of Canada’s Spring 2009 Report, the Commissioner of Environment and Sustainable Development reports on the Government’s lack of compliance with the *KPIA*.
- **May 28, 2009:** Environment Minister Jim Prentice announces that Canadian greenhouse gas regulations will not take effect until 2012, at the earliest.
- **May 30, 2009:** The Government of Canada releases its third “Climate Change Plan for the Purposes of the *KPIA*”. This Plan still fails to aim at complying with the Kyoto Protocol, and therefore does not meet the requirements of the *KPIA*.
- **October 15, 2009:** Scheduled date for the hearing before the Federal Court of Appeal.