# SENIORS FOR CLIMATE ACTION NOW!

SUBMISSION TO

# THE LAW COMMISSION OF ONTARIO

IN RESPONSE TO ITS

## SEPTEMBER 2022 CONSULTATION PAPER

## *ENVIRONMENTAL ACCOUNTABILITY IN ONTARIO*

JANUARY 2023

Contents




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SCAN! appreciates the opportunity to comment on the Consultation Paper, "Environmental Accountability in Ontario," prepared by the Law Commission of Ontario (LCO) and to contribute to its effort to examine the acute problem of environmental accountability and what can be done to strengthen the *Environmental Bill of Rights, 1993* (*EBR*). Our attempt to answer the specific questions raised in the Consultation Paper is found in Appendix A to this submission.

Our position is that the *EBR* must be quickly fortified in every way possible in order to help the growing civic movement which is trying to reverse the climate disaster.

## 1. INTRODUCTION

Words matter, but they are not enough when it comes to environmental accountability. Decades of periodic government inaction and mismanagement of climate change (CC) are a stark reminder of this fact. During the past four and a half years in Ontario, words have been used by the government to try and persuade the public to minimize any concern about the climate crisis, and to carry on with business as usual as if nothing has changed.

But things have changed, and continue to do so at an exceedingly fast pace. As discussed further below, according to the Intergovernmental Panel on Climate Change (IPCC) we will pass a point of no return in just two years. From the perspective of CC, the *EBR* has failed the people of Ontario. At least, that is the case if the intent of the *EBR* was to help keep us safe from environmental harm. It was enacted thirty years ago in recognition of the fact that the *Environmental Protection Act* (*EPA*) was not up to the job.[1]

It is necessary to reform the *EBR* as soon as possible so that it can begin to live up to the goals declared in the words of its Preamble:

> The people of Ontario recognize the inherent value of the natural environment.
> The people of Ontario have a ***right to a healthful environment***.
> The people of Ontario have as a common goal the protection, conservation and restoration of

[1] The *EPA* was enacted in 1971.

> the natural environment for the benefit of present and future generations.
> While the government has the ***primary responsibility*** for achieving this goal, the people should have means to ***ensure*** that it is achieved in an effective, timely, open and fair manner.

At present the so-called "right to a healthful environment" is mythical. Including nice words in the Preamble did not create a corresponding legal entitlement in Ontario.

Many other significant words were selected for the "purpose" section of the *EBR*, which is reproduced in Appendix B to this submission. References to conserving the environment, providing sustainability, eliminating pollutants that are an unreasonable threat, conserving biodiversity and wise management of ecological systems, however vague, convey some meaning to the public. But including these words in the purpose section of the Act did not create substantive and enforceable rights.

Rights matter in a system governed by the rule of law. As will be discussed below, the regime established by the *EBR* in Ontario in 1993 did create opportunities to enhance public awareness and permit slightly more access to tribunal and court proceedings, but it contains very few enforceable environmental rights. It was a huge stretch to label it as a bill of rights.

Similarly, the *Canadian Bill of Rights*, enacted in 1960, contained some very nice words but it was found to be ineffective and unenforceable. As a result, in 1982 the *Canadian Charter of Rights and Freedoms* was enacted to provide judicial intervention and oversight. The *EBR* must now be reformed to include concrete rights and enforceable powers.

Rights involve responsibilities. In our view the current Ontario government has lost all credibility with respect to environmental protection in general, and climate action in particular. It has also received a poor grade from the Auditor General for its administration of the *EBR*.[2] This is discussed further below, and highlights the need for independent accountability, rapid public intervention and judicial enforcement.

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[2] The Auditor General's November 2021 report, *Operation of the Environmental Bill of Rights, 1993* reported that the environment Ministry fully met only 18% of the Auditor General's audit criteria (p.4). It blamed violations and non-compliance with the *EBR* in part on "a lack of leadership from the Environment Ministry ... and from a failure by individual prescribed ministries to prioritize their compliance with and implementation of the EBR Act."

Honesty also matters. In a true democracy leaders must say what they mean and mean what they say. What happens when a government is deceptive and unreliable? A recent controversy over protection of the Greenbelt is a case in point, and underscores the need for enhanced powers for public intervention. In May 2018 during an election campaign, the Premier changed course and announced that the Greenbelt would never be touched for development.[3] This position was repeated by him and the Housing Minister 18 times between 2018-2021.[4] But then shortly after re-election in 2022 the Premier authorized development on parts of the Greenbelt for new housing. The rationale offered to the public for this, the widespread shortage of affordable housing, was false. In reality, there is plenty of land, much more suitable for this purpose, already zoned and available elsewhere in the province.

In our view, a very muscular *EBR* is needed to help instigate much more climate action, and to protect the environment and public from government and industry betrayal.

Action speaks louder than words. Warnings about global warming and the climate crisis have been reported in the media for at least four decades. Over the years, some governments within Canada have acknowledged the problem, talked about taking action and begun to take some small steps. But overall greenhouse gas (GHG) emissions have continued to rise in this country. Efforts to reduce them have been too little too late.

Of course, there is plenty of blame to go around. That includes the massive campaign of deception by the oil and gas industry (as early as 1959 it knew that the climate was deteriorating due to anthropogenic activities such as burning fossil fuels), collusion by some politicians,[5] refusal or failure by successive Ontario governments to take any (or not enough) action, and the public itself for indulging in excessive and wasteful consumption of energy and resources, and voting for political parties dead-set against spending time and resources on climate action.

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[3] Video footage of the Premier's comments in the Legislature is at https://secure.gpo.ca/civicrm/contribute/transact?reset=1&id=208&source=C22.FFSD.E.VID .

[4] Editorial, Globe & Mail newspaper, December 1, 2022.

[5] We remember a Canadian Prime Minister more than a decade ago who tried to bury the truth about climate breakdown by muzzling climate scientists and ordering the destruction of science research libraries maintained by the federal government. The 'book-burning' news was labelled by some as 'libricide.'

## 2. ABOUT SCAN!

SCAN! is an organization of seniors based in Ontario and dedicated to educating, motivating and mobilizing seniors to engage in the civil movement advocating for an urgent, just transition to a more sustainable, equitable, low carbon economy and society. SCAN! was founded in 2020 and currently has more than 250 members. Our group is democratic in structure and aims to be accountable, equitable and participatory. We value the knowledge, experience and views of our members. They include both working and retired educators, researchers, writers, labour and women's advocates, health workers, trades people, lawyers, caregivers, film makers, actors, artists, parents and grandparents.

We believe the Ontario government's incredibly detrimental campaign to slow or stop action to combat climate breakdown is dead wrong and constitutes "an unreasonable threat to the integrity of the environment" (*EBR* section 2(2)1).[6] It is the opposite of what is needed for our survival. Not only has the government failed to promote climate action, it has actively dismantled most if not all climate programs that were in place prior to the 2018 election when it came to power. Rather than work to increase public awareness of the true scope of the climate disaster, the government has consistently attempted to hide it.[7]

Although the climate disaster is our focus, SCAN! believes that the Ontario government has been moving in the wrong direction with respect to environmental and natural resource protection in general. Our members are old enough to remember what happens when wrong-headed governmental leadership makes environmentally destructive decisions, and people (and the rest of the environment) are made to suffer the consequences long after that leadership has departed.

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[6] Not content with preventing climate action in Ontario, the government went after federal programs as well. Fortunately, the judicial branch knew better. The Premier created a $30 million fund to combat the federal government's carbon reduction legislation, the *Greenhouse Gas Pollution Pricing Act*. The Premier's effort failed in both the Ontario Court of Appeal (2019) and the Supreme Court of Canada (2021). The Ontario government also enacted bone-headed legislation in 2019 requiring decals containing disinformation about the federal carbon reduction program, to be attached to gasoline pumps in all service stations. That move helped the business of decal manufacturers but it was struck down by the Superior Court of Justice in 2020 in proceedings brought by the Canadian Civil Liberties Association.

[7] For example, after the 2018 election two important words were immediately dropped from the name of the Ministry of Environment & Climate Change (MOECC). It was renamed the Ministry of Environment, Conservation and Parks (MOECP).

The result of this misguided governance has been tragic. Think of Walkerton.

We are a voice for one of severable groups vulnerable[8] to the impacts of global warming and concerned about our legacy for future generations. We value the contributions of Indigenous peoples in all aspects of Canadian life, including the development and implementation of climate mitigation and adaptation strategies. We deeply appreciate the respect for earth and elders which is embedded in Indigenous world views.[9]

Our purpose in contributing to the LCO consultation process is to provide a perspective based on full lifetimes of knowledge and experience. We submit that climate action must include demands for social and environmental justice, economic transformation and equity, elimination of environmental racism and the end of climate disinformation schemes.

Although SCAN! has not utilized the *EBR* process as a party in specific cases, some of our members have done so. Collectively the experience of our membership stretches back to the inception of the *EBR*.

## 3. CLIMATE EMERGENCY & *EBR*

As noted previously, the focus of SCAN! is on the ever-expanding climate disaster.[10] There is not much time left for action to reverse course. A press release for an IPCC (Intergovernmental Panel on Climate Change) report issued April 4, 2022 states:

> [L]imiting warming to around 1.5° C (2.7° F) requires global greenhouse gas emissions to peak

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[8] S.4(2) of Bill 5, *Strengthening Environmental Protection for a Healthier Canada Act*, defines vulnerable population as “a group of individuals within the Canadian population who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances.”

[9] S.5(d) of the *Sustainable Development Act* (Canada 2008) identifies the “principle that it is important to involve Aboriginal peoples because of their traditional knowledge and their unique understanding of, and connection to, Canada’s lands and waters.” S.2(3) of Bill S-5 will add to the Preamble of the *Canadian Environmental Protection Act* (*CEPA*) that the Canadian government “is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples.”

[10] It is a positive step forward that the definition of environment in Bill C-219, the draft *Canadian Environmental Bill of Rights* (*CEBR*), includes “all layers of the atmosphere” (s.2(b)).

> before ***2025*** at the latest, and be reduced by **43%** by 2030; at the same time methane would also need to be reduced by about a third. … [L]imiting warming to around 2° C (3.6° F) still requires global greenhouse gas emissions to peak before 2025 at the latest, and be reduced by a quarter by 2030.[11]

Although *before 2025* is just around the corner, GHG emissions world-wide are rising, not falling. And that includes Ontario.[12] Other than a temporary drop in GHGs due to the effects of the Covid pandemic on the provincial economy, carbon emissions have been rising since the 2018 election.[13] The Auditor General of Ontario reported in November 2020 that

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[11] The report's title: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. See https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_PressRelease-English.pdf and coverage in Toronto Star, April 4, 2022 - https://www.thestar.com/politics/federal/2022/04/04/cap-greenhouse-gases-by-2025-or-prepare-for-the-worst-un-warns.html.

[12] "Ontario on track to see major increases in greenhouse gas emissions - Add pollution and costs from electricity generation to that list too," Mark Winfield & Colleen Kaiser, Hamilton Spectator, December 19, 2021 - https://www.thespec.com/opinion/contributors/2021/12/19/ontario-on-track-to-see-major-increases-in-greenhouse-gas-emissions.html.

> The Ontario Independent Electricity System Operator's (IESO) Annual Planning Outlook report released last week contains some very bad news for Ontarians in terms of greenhouse gas (GHG) emissions, air quality, and future electricity costs. The directions laid out in the report also present major challenges to the federal government's plans to move the electricity sector to net-zero greenhouse gas emissions by 2035.
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> The report makes it clear that Ontario is on track to see between a 375 per cent growth in GHG emissions in its electricity-related emissions by 2030 relative to 2017, as natural gas-fired power plants are ramped up to replace nuclear facilities facing retirement or being taken out of service for refurbishment.
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> By the late 2030s electricity related GHG emissions are projected to be 600 per cent above 2017 levels, with the curve continuing upwards from there. Gas-fired generation is projected to account for a quarter of the province's electricity generation by the late 2040 – more than triple its current role. That would be roughly the same portion as coal-fired generation at its peak, before its phase-out in 2013. Along with the increases in GHG emissions, there would be proportional increases in emissions from gas-fired plants of nitrogen oxides and particulate matter, important smog precursors, concerns over which were major drivers of the coal phase-out.
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> The situation gives Ontario the unique status within Canada of being the only province that seems to be planning on major increases in its electricity-related emissions. The reasons why Ontario has found itself in this situation lie, not surprisingly, at the feet of the Ford government, although its Liberal predecessors are due some of the blame as well.

[13] Prior to the 2018 election, Ontario had reduced GHGs by about 25% compared to 2005 levels due to the shut down of coal-fired electricity plants in the province. But this historic carbon advantage has been squandered since this government came to power in 2018.

> Overall, our audit found that the province risks missing its 2030 emission-reduction target, in part because climate change and the reduction of greenhouse gas emissions is not yet a cross-government priority, even though there is a specific commitment in *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* ... to make climate change a cross-government priority to meet the target.[14] (p.2)

We recognize that a more powerful *EBR* will not prevent continuing disinformation campaigns from the fossil fuel sector[15] and the anti-climate *modus operandi* of a destructive, bull-headed government, but it can nevertheless become an important tool in mobilizing the public to organize and fight back.

Sadly the *EBR* hit an all-time low immediately after the 2018 provincial election, and has not recovered since. In its haste to repeal all prior provincial climate legislation, regulations, policies, programs and incentives, the government did not provide any comment period under the EBR in one instance, the *Cap and Trade Cancellation Act, 2018* (the judicial fallout from this is discussed in Appendix B), and allowed only bare minimum time in at least one other.[16]

The ECO issued several reports about the climate crisis and lack of action on the part of the current government.[17] As a result, the government promptly took revenge and announced the elimination of the ECO agency by transferring its responsibilities to the office of the Auditor General.[18] And the Environmental Commissioner (EC) was fired.

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[14] This report is titled *Reducing Greenhouse Gas Emissions from Energy Use in Buildings*.

[15] See *The Petroleum Papers - Inside the Far-Right Conspiracy to Cover up Climate Change* by Canadian author Geoff Dembicki (Greystone Books, 2022). Also from Greystone: *Climate Cover-Up - the Crusade to Deny Global Warming* by James Hoggan and Richard Littleman (2009).

[16] The comment period for the proposed Climate Change Plan was less than a full month. Posting on the Registry was on October 18, 2018 with deadline for comment on November 16, 2018.

[17] See for example the hefty September 2018 report by ECO entitled *Climate Action in Ontario: What's Next - 2018 Greenhouse Gas Progress Report* (254 pages) - https://www.auditor.on.ca/en/content/reporttopics/envreports/env18/Climate-Action-in-Ontario.pdf.

[18] The legislation that accomplished this was Bill 57, passed in December 2018 and deceptively named the *Restoring Trust, Transparency and Accountability Act, 2018*.

> Critics have denounced the decision to combine the watchdog offices, saying it will erode government accountability on key issues. Advocacy groups have noted some of the environment commissioner's duties, such as the power to issue special reports on topics like climate change, will not carry over to the auditor. They have also warned there will be less scrutiny of the Tories' recently announced climate change plan, which replaced the cap-and-trade system brought in by the Liberals. Opposition parties have also condemned the move, calling it an effort to remove independent criticism of government policy.[19]

The vulnerability of the *EBR* was on full display when the government silenced the messenger:

> In the fall of 2018, on the 25th anniversary of the creation of the position, the Ford government eliminated the office of the environmental commissioner, an independent provincial watchdog that held the government accountable on its environmental actions or inactions. The position was created under the Environmental Bill of Rights, and tasked with monitoring the government's compliance with environmental laws and reporting annually on the government's progress on its greenhouse gas reduction targets. The position was then, and last, held by Dianne Saxe ... who revealed that over 1,300 tonnes of sewage had been dumped into Ontario waterways in 2017 just days before her office was axed.
>
> The bill of rights also allowed any two Ontario residents to apply to the commissioner's office to ask it to review any law, regulation or decision by the government pertaining to the protection of the environment. That accountability mechanism was stripped, just as the Ford government was enacting one environmental cut after another. Now, those appeals go directly to the Minister of Environment, Conservation and Parks and some of the accountability work of the environment commissioner's office has been folded into the office of the auditor general. The government did not provide The Narwhal with an update on how the new appeal process is working.[20]

So much for environmental and climate accountability through political persuasion!

Even with systematic governmental non-compliance with the *EBR*'s participation requirements,

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[19] CBC News, March 15, 2019: "Five Losing Jobs as Ontario environment commissioner's office folds in with auditor" - https://www.cbc.ca/news/canada/toronto/ontario-offices-merging-1.5058471.

[20] The Narwhal (May 25, 2022): https://thenarwhal.ca/doug-ford-ontario-environment-explainer/.

the court can do little but issue a declaration stating that this has occurred. As a result of *EBR* s.37 there are no other consequences; the non-compliant decisions are not reversible or affected in any way. And as a result of s.118, no judicial review is otherwise possible for any breach of the Act.

Where comment periods were provided during the government's elimination of climate programs, little or no time was allowed for government staff, politicians and the public to review and consider comments. Steps were taken immediately after the comment period deadlines to implement the new changes. No consultation was undertaken with people who submitted comments.[21] Indeed, they did not even receive a reply confirming receipt of their submissions. Contrast this with references in the *EBR* to a higher level of engagement. The following are examples:

- s.3 provides that Part II of the Act (Public Participation in Government Decision Making) sets *minimum* levels of public participation that must be met;
- comment periods (minimum 30 days) should be longer depending on complexity, level of public interest and the time required by people to submit comments (s.8(6), 17(2));
- s.23 provides for the allowance of additional time for public comment with respect to Class II proposals "in order to permit more informed public consultation;"
- the Act includes terms such as 'public participation' and 'consultation' in addition to 'public comment' (s.8(5));
- s.24(2) provides for "enhanced public participation" involving Class II proposals, such as oral representations as well as written comments, public meetings, mediation and "any other process that would facilitate more informed public participation in decision-making on the proposal."

The government's headlong rush to implement changes immediately after the close of comment periods conflicts with explicit guidance included in the *EBR*. For example, s.35 outlines the Minister's responsibility to consider public comments on legislation, regulations, policies and instruments. It states that the Minister "shall take every reasonable step to ensure that all

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[21] By comparison, s.8 of the *CEBR* identifies "the right to effective, informed and timely public participation in decision-making regarding the environment."

comments relevant to the proposal ... are considered when decisions are made in the ministry."

The terms 'consultation' and 'participation' are not defined in the *EBR*. Dictionary definitions for consultation include such things as taking counsel together, deliberation, a conference in which parties consult and deliberate, act of discussing something with someone or with a group of people before making a decision about it, discussion with a view to mutual agreement or understanding, and interactive methods to prevent and resolve disputes. Definitions for participation include partaking, cooperating, combining, connecting, forming part of, sharing in common with each other.[22]

Content is important. The *EBR* sheds some light on the intended meaning for these terms, as s.2(3)(a) states that the Act provides the "means by which residents of Ontario may participate in the making of environmentally significant decisions" by the government. Furthermore, s.2(3)(b) states the Act is intended to provide increased accountability for the government's environmental decision-making. The Preamble declares that people should have means to ensure that the "common goal" of protecting, conserving and restoring "the natural environment for the benefit of present and future generations ... is achieved in an effective, timely, open and fair manner."[23]

An indicator of the approach the government had promised to take in environmental decision-making is found in the environment Ministry's Statement of Environmental Values (SEV). The *EBR* requires that each of the 16 ministries operating under its influence must develop its own SEV. The Act requires the SEV to explain how the *EBR*'s purposes will be applied to decision-making, and how the *EBR*'s purposes will be "integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry" (*EBR* s.7(b)).[24]

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[22] Sources include *The Dictionary of Canadian Law* (Carswell 1991), *Black's Law Dictionary* (3rd edition 1999), *Burton's Legal Thesaurus* (5th edition, McGraw Hill, 2013) and *The Shorter Oxford English Dictionary on Historical Principles* (3rd edition 1973).

[23] The government could take a lesson on consultation by reviewing the comprehensive public participation process adopted by the LCO for its Environmental Accountability Project. See p.38 of the Consultation Paper.

[24] The first version of the ministries' SEVs after passage of the *EBR* were so weak that the Canadian Environmental Law Association (CELA) referred to them as 'eco-fluff.'

The 2008 version of the Ministry's SEV is currently posted on its website and remains applicable, although a revised draft had been posted on the Registry in December 2020 for comment. It was never implemented.[25]

With respect to engagement with the public, section 6 of the current SEV (entitled "Consultation") states the Ministry "believes that public consultation is vital to sound environmental decision-making" and that it "will provide opportunities for an open and consultative process." The evidence, however, is quite to the contrary.

This SEV indicates that the MOECP applies a group of principles when developing legislation, regulations and policies. The full list is reproduced in Appendix B. Key amongst them are adopting an ecosystem approach to environmental protection and resource management, considering cumulative effects and effects on future generations, sustainable development principles, use of precautionary approach, preventing pollution, minimizing the creation of pollutants, polluter pays principle, rehabilitating the environment, adaptive management of the environment, stewardship, outreach, education, increased transparency, and enhanced ongoing engagement with the public as part of the government's environmental decision-making.

It states that decisions must involve a consideration of these principles. Climate action is missing, though. There is not even a mention of CC anywhere in the SEV.[26]

It is also concerning that the SEV does not state that it will be applied to instruments,[27] and this despite a binding court decision that ruled otherwise.[28] The ECO has subsequently reported that

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[25] ERO file number 019-2826. CELA responded with a submission on January 26, 2021 but there is no indication that the proposed replacement has been adopted by the MOECP.

[26] There are two paragraphs at the end of the SEV in section 8 under the heading "Greening internal operations." They mention such things as conservation of natural resources and reducing the Ministry's own environmental and "carbon" footprint.

[27] Instrument is defined by *EBR* s.1(1) as "any document of legal effect issued under an Act and includes a permit, licence, appeal, authorization, direction or order issued under an Act, but does not include a regulation."

[28] *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*, 2008 CanLII 30290 (Divisional Court). Later in 2008 the Ontario Court of Appeal refused to grant Lafarge's application for leave to appeal the decision.

MOECP's mistaken insistence that the SEV is inapplicable to instrument decisions has continued despite the *Lafarge* judgment:

> The ECO is extremely disappointed that four years after the court decision, some ministries still try to avoid documenting their SEV consideration for prescribed instruments, screening out some "non-environmentally significant" instruments and inadequately "embedding" SEV consideration in other reports. This saga has gone on long enough. In order for the ECO to determine whether SEV consideration has occurred, the ECO must be provided with documentation that fully demonstrates how the SEV was considered during the decision-making process. To improve transparency and accountability, the ECO recommends that ministries provide links to their SEV consideration documents in decision notices for instruments posted on the Environmental Registry. Openly explaining to the public how specific SEV principles were considered and accounted for during the decision-making process would provide clarity about the ministry's rationale for the decision, and would improve assurance that SEV principles were taken into account even if the decision does not fully conform to them.[29]

Contrast this with *EBR* s.11 which requires the Environment Minister to take *every reasonable step* to ensure the SEV is considered whenever the Ministry makes a decision that *might* significantly affect the environment. Instruments are not excepted from the application of this provision.

The ECO's 2017 report indicated that SEVs are having little, if any, influence on environmental decision-making by Ontario ministries in general:

> Statements of Environmental Values have only been minimally effective in changing environmental outcomes to date. One limitation to their effectiveness is that ministries do not share with the public how they considered their SEVs in making decisions. This lack of transparency can be easily and quickly fixed. If ministries were to publicly share their SEV consideration documents, members of the public would then be able to hold ministries to

[29] ECO *Annual Report 2011/2012 Part 1: Losing Touch* (2012), page 25.

account for how they consider their SEVs.[30]

CELA filed a detailed submission with the MOECP in 2021 making numerous recommendations for revising and strengthening the Ministry's SEV. None of them have been adopted by the government. We concur with those recommendations.

The government's credibility problem with environmental and climate decision-making under the *EBR* has grown even larger since then.

## 6. CONCLUSION

Words are important but they must be followed by action. With appropriate reform of the *EBR*, it is our hope that Ontario residents will be empowered to take more concrete action to expose and banish climate disinformation, and force their provincial government and the fossil fuel industry to reverse course on the climate front. They must step up to the plate very quickly as there is precious little time left.

SCAN! thanks the Law Commission of Ontario for its work on this extremely important topic.[31] The length of this submission is hardly sufficient to analyse the issues raised in the Consultation Paper. That said, our response to the specific questions put forward by the LCO is found in Appendix A.

We look forward to your consultations with the public on *EBR* reform, and your final report and recommendations.

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[30] ECO, *2017 Environmental Protection Report: Good Choices, Bad Choices - Environmental Rights & Environmental Protection in Ontario*, at p.19.

[31] The Consultation Paper has identified many useful sources to review, including: UN General Assembly Declaration (UNGA) titled "The human right to a clean, healthy and sustainable environment" (July 2022, no. A/76/L.75), *CEBR* (Bill C-219), *Sustainable Development Act* (Canada 2008), *Strengthening Environmental Protection for a Healthier Canada Act* (Senate Bill S-5), and *National Strategy to Redress Environmental Racism* (Bill C-230).

**Appendix A** LCO Consultation Paper, "Environmental Accountability in Ontario"

QUESTIONS & ANSWERS

The Consultation Paper posed a series of questions clustered around 16 issues. Those questions are reproduced below along with our attempt to answer them (denoted by "A").

Consultation Question 1:

Does the *EBR*'s emphasis on political accountability remain appropriate, or should there be greater emphasis on legal accountability? *A: Yes to more legal accountability.*

If so, should legal accountability focus on ministries' compliance with *EBR* procedural requirements, or should legal accountability be broader, potentially including provisions to ensure the *EBR* achieves its stated purpose? *A: Yes to both propositions.*

Consultation Question 2:

Should Statements of Environmental Values (SEVs) be strengthened to improve the provincial government's environmental accountability? *A: Yes.*

For example,

- Should Ontario adopt the model of sustainable development strategies in the *Federal Sustainable Development Act*? *A: The SDA contains many nice words and principles, but does not provide for concrete action on the ground. In addition, it seeks to "balance" environmental concerns with social and economic factors (i.e. growth, profits, lifestyle).*

  *Experience indicates that social and economic always outweigh the environment - that is why we have a climate catastrophe that is destroying us. It has been 14 years since the SDA was passed and since then, GHG emissions within Canada and Ontario have increased substantially, and climate breakdown has become far worse. According to the IPCC report in April 2022, the tipping point for the climate emergency is 2025.*
- What other measures are required to ensure that the SEVs are strengthened and integrated into environmental decision-making? *A: The following items a-c were raised by the Consultation Paper at p.21. a) Review and update SEVs every 5 years with a consultative process pursuant to the EBR. b) EBR to specify that SEVs are applicable to all decision-making including instruments. c) When notice of a final decision is posted on the Registry, the SEV should require that a consideration form also be posted to explain and document how the SEV was considered*

*and the extent to which it influenced the decision. d) Content of amended SEV should be reviewable by court (or a competent, qualified tribunal like the ERT, if applicant chooses) for non-compliance with EBR.*

Consultation Question 3:

Are the *EBR*'s restrictions on judicial review and restricted remedies appropriate? *A: No. Restrictions should be removed.*

For example,

- Should the privative clause in section 118(1) be modified or repealed? *A: Repealed.*
- Should section 37 [government failure to comply with EBR does not affect validity of policies, etc.] be modified or repealed to incentivize government compliance? *A: Repealed.*
- If a legal accountability framework is adopted what legal remedies should be available for noncompliance with the *EBR*? *A: Among other things, a court should have the power to quash a decision and order a redo of the decision-making process, or to substitute its own decision. Quasi-criminal sanctions should also be available in cases of intentional or negligent non-compliance.*

Consultation Question 4:

Should access to information be improved under the *EBR*? *A: Yes.*

If so, how? *A: The EBR should require that the government provide reasonable, timely and affordable access to information (see s.7 of CEBR). If a commenter requires more information or documentation, the comment period should stop running, or not begin to run, until the request for information has been satisfied.*

Consultation Question 5:

Should the public trust doctrine be included in the *EBR*? *A: Yes. This is related to Question 16 regarding rights of nature.* If so, how should the law address:

- Types of resources subject to the public trust doctrine? *A: All environmental resources large and small.*
- Potential defences and defendants? *A: Range of defences should be as limited as possible. Range of potential defendants, both public and private actors (from industrial, commercial and residential sectors) should be as wide as possible.*
- Threshold of harm needed to invoke the public trust doctrine? *A: Some credible evidence of*

*risk of potential environmental harm. The adjective 'significant' (i.e., from the phrase significant environmental harm) has been intentionally excluded here.*

● Most effective forum for adjudicating the public trust doctrine? *A: Application to court by motion. The Land Tribunal of Ontario (LTO) as it functions under the current government is not independent, impartial or qualified as an environmental decision-maker.*[32] *Appointments are now made on a partisan and patronage basis. The previous appointment process for administrative tribunals, involving criteria for merit and experience, was scrapped by the government after the 2018 election.*

*The Environmental Review Tribunal (ERT) was also eliminated by the government at that point. Its duties have been absorbed into the LTO, which has jurisdiction over many areas unrelated to environmental protection and climate change. The LTO is not a specialized tribunal with environmental expertise. By contrast, the CEBR provides the right to bring an environmental protection matter "before a court* <u>*or*</u> *tribunal" (s.9(1)). The ERT should be reinstated.*

● Legal remedies? *A: The full array of civil (e.g., declaration, interim and permanent injunction, including mandatory injunction) and quasi-criminal remedies. See s.17(3) of CEBR. Among other things, the court should be explicitly empowered to override government environmental policy.*

Consultation Question 6:

Are amendments or changes required to the role of the Environmental Commissioner to help strengthen government accountability? *A: Yes. We accept the 3 suggestions noted at p.26 of the Consultation Paper: a) restore ECO's role and responsibilities; b) mandate ECO to report on substantive government environmental performance, including the climate crisis; and c) amend the EBR to require ministries to respond to recommendations made in the EC's annual and special reports.*

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[32] The Law Times (Dec. 21, 2022) has reported on research into the functioning of Ontario tribunals conducted by Tribunal Watch Ontario. TWO has called for Ontario tribunals to become "independent, expert, inclusive and able to provide dispute resolution processes that are both fair and timely." A survey of tribunal users found "the confidence in the timeliness and fairness of the tribunal processes was 'overwhelmingly negative.'" It also found "unprecedented delays in processing and resolving cases in a timely and accessible way." TWO has called for Ontario tribunals to have "a full complement of expert adjudicators," and to "depoliticize appointments and reappointments to all adjudicative tribunals by establishing an Adjudicative Tribunal Justice Council to provide independent oversight of the system."

*From a climate perspective, we stress that the EC's role as an independent officer of the Legislature must be immediately restored. In addition, the EC should have enforcement powers, including the authority to seek a court or ERT order requiring compliance.*

*In order to encourage the government to respond appropriately to the reports and recommendations of the ECO, the idea of periodic review by a legislative committee into the functioning of the EBR makes good sense (CELA 2016, p.25).*[33] *Among other things, it could review and report on ministries' responses (or lack thereof) to ECO reports and recommendations, and requests for review and investigations. Witnesses before the Committee would include Ministry staff .*

*A key barrier for access to good environmental information is the proliferation of disinformation campaigns, particularly those related to climate. We maintain that they constitute a form of fraud. The ECO should be mandated and funded to research and report on these campaigns and the extent to which they have influenced public perceptions and government policies.*

Consultation Question 7:

Is it necessary to improve access to justice under the *EBR*? *A: Yes.*

If so, how should the law, policies, or rules address:

- Section 38 standing rules? *A: Anyone should be able to seek remedies without standing rules creating a barrier. See s.9(1) and (2) of CEBR. Note also the allowance of additional participants in proceedings under CEBR s.22.*
- Public nuisance[34] standing under section 103? *A: Remove the precondition that a plaintiff must have sustained special damages and have a direct personal or pecuniary loss.*
- Intervenor funding? *A: The Intervenor Funding Project Act (IFPA) provided an acceptable model that could be adopted to provide upfront and ongoing financial support. An additional or alternative route is to allow an automatic award of reasonable costs (for legal and expert*

[33] Discussed in a brief by CELA to the MOECC entitled "Ensuring Access to Environmental Justice: How to Strengthen Ontario's Environmental Bill of Rights" (November 4, 2016).

[34] Public nuisance is "an act or omission which obstructs or causes inconvenience to the public in the exercise of rights common to all. ... Where the nuisance is a public one, in addition to abatement, the author of the nuisance is also liable to be prosecuted for the offence of common nuisance under Section 176 of the *Criminal Code of Canada*. Where a statute authorizes the doing of an act, then such an act will not constitute nuisance, provided the statutory powers are used *bona fide*, using reasonable care not to do unnecessary damage to neighbouring persons." *The Canadian Law Dictionary* (Law & Business Publications (Canada) Inc., 1980).

*services) to an applicant if leave to appeal is granted (or to a plaintiff if successful). If leave is denied (or a civil claim fails), costs may be awarded nevertheless, where appropriate (factors should be listed). As an application proceeds to a full hearing after leave has been granted, interim and final costs awards should be available regardless of the final outcome of the hearing.*

● Leave to appeal? *A: allow 30 days to file appeal instead of just 15 days. No personal "interest" should be required of an applicant. Eliminate the "no reasonable person" threshold test - it is far too restrictive.*

● Other amendments or reforms to promote access to justice? *A: Establish an EBR assistance department within the ECO to provide public outreach and prompt clinical help to anyone seeking to participate under the EBR, file leave applications, etc. It should include legal assistance by trained duty counsel at no cost to the public and without a financial means test.*

Consultation Question 8:

Should the right to sue for harm to a public resource be modified? *A: Yes.*

If so, how? *A: Amend s.84 and remove barriers including the class action prohibition under s.84(7). Delete subsections 2, 3 and 8. If a prima facie case is established by a plaintiff, the burden of proof should then shift to the defendants. Eliminate s.85 and potential costs exposure for plaintiffs.*

Consultation Question 9:

Should additional ministries, including the Ministry of Finance, be subject to the *EBR*? *A: Yes.*

Consultation Question 10:

Are specific criteria required for section 30 [adequate consideration given in a previous and substantially equivalent process] of the *EBR*? *A: Yes. There is great concern that this "exception" can be used to avoid scrutiny, and it should be deleted.*

If so, how should they be defined? *A: An equivalent process must involve a comprehensive inquiry by a competent and independent ERT or court, and where all SEV factors have been applied.*

Consultation Question 11:

Should section 32 [*Environmental Assessment Act* exemption] of the *EBR* be amended? *A: Yes.*

If so, how? *A: Eliminate the EAA exemption entirely.*

Consultation Question 12:

Do the purposes and governing principles of the *EBR* remain appropriate? *A: Yes, but it should acknowledge that the strategy of political persuasion has been a dismal failure.*

Are there other principles or purposes that should be explicitly recognized in the *EBR*? *A: Yes. All of the points listed in the Consultation Paper regarding this issue seem worthwhile. In addition, principles and purposes directly related to the climate emergency should be added, and issues such as climate disinformation should be identified and sanctioned.*

If so, why? *A: The urgency to find ways to stop environmental erosion has increased due to increased human population, development, urban sprawl, energy use and loss of natural habitat. Atmospheric heating has been spiralling out of control for years due to increasing concentration of carbon in the atmosphere beyond 350 ppm. It has ben fuelled in part by disinformation campaigns and industry capture of political and government leadership.*

Consultation Question 13:

How should the *EBR* be modified to meet new obligations regarding the rights of Indigenous Peoples? *A: For all of the questions in this section, consult with Indigenous leaders for their recommendations. Among other changes, incorporate into the EBR reference to the United Nations Declaration on the Rights of Indigenous Peoples (2007), including Article 19 (consult and cooperate in good faith with Indigenous peoples; allow for their free, prior and informed consent). Include in the EBR an exception to standard procedural requirements for remote Indigenous communities. Allow for many alternate communications options such as telephone, fax, email, video platforms, courier, regular post, radio/television broadcasts, posters and in-person meetings.*

For example,

- How can Indigenous law and perspectives be recognized and applied in the context of the *EBR*? *A: Request Indigenous leaders to identify relevant Indigenous laws and perspectives that should be acknowledged in the EBR.*
- What are the barriers for Indigenous people participating in the *EBR* process and how should they be addressed? *A: Communication barriers such as language, no or inadequate internet, and lack of funding are some of the major barriers that come to mind. As for addressing barriers, see suggestions noted at Question 7 above. An EBR assistance department should help*

*to provide translation of documents where needed. The formation of an ongoing EBR Indigenous advisory council could help identify barriers, recommend solutions and monitor their effectiveness.*

● Are there additional methods of notice that would bring forward Indigenous rights and interests? *A: See suggested answers to first question in this section.*

● What are the best ways to meet Indigenous consultation requirements? *A: Include in-person meetings and funding, as well as other forms of outreach.*

Consultation Issue 14:

Should the *EBR* be amended to include a substantive RTHE [right to a healthy environment]? *A: Yes.*

If so, how should the law address the following issues:

● Definition. *A: Incorporate parts of the EBR Preamble into substantive provisions and examine other sources such as the recent UN General Assembly Declaration on the human right to a clean, healthy and sustainable environment (July 2022) and federal Bill S-5.*

● Adjudication forum. *A: Courts.*

● Applicability and Enforceability. *A: It should be binding on the provincial and municipal governments as well as private actors (industrial, commercial and residential sectors), and enforceable through the entire array of civil and quasi-criminal sanctions.*

● Standing. *A: Eliminate barriers to standing, as suggested previously.*

● Evidential standard. *A: Prima facie case to be established by plaintiff, then reverse onus applies. S.24 of CEBR describes shifting onus on defendant to prove his action did not or will not cause significant environmental harm. However, the adjective 'significant' should be dropped.*

● Defences. *A: The range of defences should be as limited as possible. Under CEBR s.25 any/all defences are available, even a "mistake of law." This approach should be rejected.*

● Remedies. *A: The full array of civil remedies (e.g. declaration, damages, injunction) and quasi-criminal sanctions should be available.*

Consultation Question 15:

Should the *EBR* address environmental justice? *A: Yes.*

If so, should the *EBR* impose a statutory duty on government ministries to ensure engagement with low-income and marginalized communities in environmental decision-making? *A: Yes.*

Consultation Question 16:

Should the *EBR* recognize the rights of nature? *A: Yes. This is related to Question 5 above (public trust doctrine).*

If so, how? *A: Include in EBR a statement defining these rights. Consider tasking the ECO with the duty to administer this right and take enforcement action. See for example the roles of the Public Guardian and Trustee, Office of the Children's Lawyer, and the duty of courts as parens patriae to oversee the welfare and best interests of children.*

**Appendix B** BACKGROUND INFORMATION

This submission may be posted on the website of SCAN! so that it is easily available to our members and the public at large and will hopefully raise general awareness of the *EBR* and its deficiencies. For that reason, we have included here some background information (without attribution) which was reported in the Consultation Paper and elsewhere.

The *EBR* was enacted in 1993 after years of campaigning by CELA beginning in the early 1970s.[35] The Ontario Branch of the Canadian Bar Association formed a committee back then as well to push for its creation.

The Act is arranged in 9 separate parts: 1) Definitions & Purposes; 1.1) Environment Minister; 2) Public Participation in Government Decision-Making; 3) Commissioner of the Environment, Reports, etc.; 4) Application for Review; 5) Application for Investigation; 6) Right to Sue; 7) Employer Reprisals; and 8) General. In addition, two Regulations have been promulgated pursuant to the *EBR*, titled "General" (no. 73/94) and "Classification of Proposals for Instruments" (no. 681/94).

The *EBR*'s purposes are reproduced in part below:

> s.2(1) ...
> a) to protect, conserve and, where reasonable, restore the integrity of the environment ...
> b) to provide sustainability of the environment ...
> c) to protect the right to a healthful environment ...
>
> (2) The purposes set out in subsection (1) include the following:
> 1. prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment;
> 2. protection and conservation of biological, ecological and genetic diversity.

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[35] According to a brief by CELA to the MOECC entitled "Ensuring Access to Environmental Justice: How to Strengthen Ontario's Environmental Bill of Rights" (November 4, 2016), the process involved a multi-stakeholder advisory committee established by the Ontario government in 1990, followed by a Task Force established in 1991, two Task Force reports in 1992, Bill 26 introduced in 1993, legislative committee hearings, 3rd Reading and Royal Assent in December 1993, and proclamation in early 1994.

3. protection and conservation of natural resources, including plant life, animal life and ecological systems.
4. encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
5. identification, protection and conservation of ecologically sensitive areas or processes.

(3) In order to fulfil the purposes set out in subsections (1) and (2), this Act provides,

a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
b) increased accountability of the Government ... for its environmental decision-making;
c) increased access to the courts by residents ... for the protection of the environment; and
d) enhanced protection for employees who take action in respect of environmental harm.

The legislation established a number of tools described in the Consultation Paper. They include the following:

1) online Environmental Registry of Ontario;[36]
2) public participation;[37]
3) Statements of Environmental Values;[38]
4) office of the independent ECO, a watchdog appointed by and reporting to the Legislature; the Environmental Commissioner is an officer of the Legislative Assembly;

[36] The 16 ministries prescribed under the *EBR* are required to post developing or changing policies, laws and regulations which might significantly effect the environment. There is a similar obligation with respect to new "instruments" (e.g., permits, licenses, approvals and orders).

[37] The *EBR* created the opportunity to submit comments on certain types of items posted on the Registry. Although the government is required to consider public comments when making decisions, there is no mechanism to ensure this happens. The Act also requires government to post a notice on the Registry to indicate whether/how comments affected its decisions.

[38] A separate SEV is issued by each prescribed ministry and identifies a list of environmental values (e.g., sustainability) which will be considered by that ministry when making decisions that might significantly affect the environment.

5) third party leave to appeal process for some posted "instruments";[39]
6) requests to the environment Ministry for review of existing policies, acts, regulations, permits, approvals, licences or orders;
7) requests for new legislation, regulations and policies to improve environmental protection;
8) requests to investigate contravention of legislation, regulations or instruments;
9) a new civil cause of action based on harm caused to a public resource;
10) strengthening the right to sue for public nuisance causing environmental harm;
11) whistle-blower protection for employees exercising rights under the *EBR*.

The ECO was designed to play a major role in important environmental issues such as the climate disaster, including educating the public and legislators, and enabling public participation in government decision-making. Yet the ECO was not give any enforcement powers. Instead, the *EBR* opted to rely on political persuasion rather than legal compulsion (such as judicial intervention) to achieve compliance. In 1993 no one imagined that one day there would be an Ontario government with an avowed belligerence and defiance toward environmental protection, particularly with respect to the climate crisis. In hindsight that faith in the power of political persuasion was dangerously naive.

In 2010 CELA applied to the government under Part IV of the *EBR* for a review of the *EBR* and its regulations. The application was granted by MOECC in 2011. It agreed that a review was warranted. But years passed, despite reminders, before MOECC posted an information notice on the Registry in 2016, announcing the commencement of the review process. The questions raised in the notice[40] are summarized below:

1) Should *EBR* purposes and principles be changed?
2) Are there additional ministries, instruments or legislation that should be covered under the *EBR*?

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[39] Instruments are defined in s.1(1) of the *EBR* as a range of documents including a "permit, licence, approval, authorization, direction or order issued under an Act, but does not include a regulation." There are 3 classes of instruments, but the vast majority of instruments fall within Class II.

[40] The *2016* EBR Review document is available at www/downloads.ene.gov.on.ca/env_reg/er/documents/2016/012-8002%20guide.pdf.

3) Is there a need to adjust *EBR* requirements regarding the content, review and updating, or application of SEVs?
4) Should changes be made to the *EBR*'s requirements for public participation in decision-making to improve engagement of the public, particularly regarding the Registry and its notice requirements?
5) Comments on the leave-to-appeal process?
6) Should the s.32 "EA exception" to public participation be modified?[41]
7) Should changes be made to the applications for review part of the *EBR*, specifically time lines and content of governmental responses?
8) Should changes be made to the application for investigation part of the EBR, specifically time lines and content of governmental responses?
9) Is there a need to enhance a right to a healthy environment?
10) What additional rights should be protected and where should these rights be enshrined?

CELA filed a submission in 2016 and waited for a response, but no changes were forthcoming. We concur with the recommendations which were made by CELA.

As noted in the Consultation Paper, since that time several reports from the ECO and some court decisions have highlighted serious problems with poor or non-compliance with the *EBR* by the Ontario government. At pp. 17-18 the Consultation Paper discussed the following judicial decisions:

(1) *Greenpeace v. Ontario (Minister of the Environment)* aka Greenpeace 1, Divisional Court, 2019 ONSC 5629.
(2) *Greenpeace Canada (2471256 Canada Inc.) v. Ontario (Minister of the Environment, Conservation and Parks)* - aka Greenpeace 2, Divisional Court, 2021 ONSC 4521.

In Greenpeace 1, the court found that the government unlawfully failed to consult with the public when it scrapped the carbon cap-and-trade regime established by the previous government.[42]

[41] In brief, matters affected by the application of the *Environmental Assessment Act* are exempt from consultation and review under the *EBR*.

[42] The *Green Energy Act*, formerly named the *Green Energy & Green Economy Act, 2009* was repealed on January 1, 2019 by the *Restoring Trust, Transparency & Accountability Act, 2018*.

Then, after judicial review proceedings were commenced by Greenpeace, the government tried to circumvent judicial review by adding a privative clause to the new legislation. It also argued that the 2018 election campaign constituted a form of consultation which obviated the need for following the process required by the *EBR*.[43]

In separate reasons, Justice Corbett dissented from the majority opinion, but only with respect to outcome. The three judges agreed on the facts and concluded that the government acted improperly. He noted that the government "has since sought to justify that illegality by its election victory and has passed legislation purporting to preclude judicial review of what it has done," but declared that "self-granted impunity does not trump the Rule of Law" (par.3). Additional excerpts from his opinion are set out below:

> [38] However, to be clear, I find that the Minister did not put his mind to the requirements of the EBR before the Cancelling Regulation was enacted. Invoking the exemption in s.30(1) of the EBR was done after the decision had been made to enact the Cancelling Regulation, to try to save it, in the face of clear failure to meet the requirements of the EBR. And a general election is in no way "substantially equivalent" to the process of public participation prescribed in the EBR. ...
> [50) What does the process under the EBR require? It requires more than notice of an intention to implement a new policy. It requires specific notice of the proposed action, an opportunity for Ontarians - all Ontarians - to provide comments about the proposed action. It requires the government to consider the comments given to it by Ontarians. And it requires the government to explain what impact, if any, the process of public consultation had on its proposed action. ...
> [61] This case is not about whether the new government had the power or authority to repeal cap and trade. It did and it has done so. This case is about whether the government was obliged to observe the requirements of the EBR, and to solicit, consider and report upon comments it received during public participation. It was and it did not do so. ...
> [63] I understand the political logic of the government's actions. lt is this. "We ran on a platform that we would repeal cap and trade. We won. We are going to fulfil our promise. lt doesn't matter what the public might say in a process under the EBR: we said we would do this,

[43] The government also relied on s.37 of the *EBR* in defense of its conduct. That provision states: "Failure to comply with a provision of this Part [Part II, involving public participation] does not affect the validity of any policy, Act, regulation or instrument, except as provided in section 118." That section contains a privative clause, although subsection 2 allows for judicial review based on fundamental non-compliance with Part II of the Act.

> and we are going to do this. Therefore, we are not going to conduct the public participation process required by the EBR." This is not defensible as a matter of law. In a democracy characterized by the Rule of Law, the government cannot ignore the EBR on the basis that it has the legal authority to govern: its authority to govern is circumscribed by the law.

In Greenpeace 2, the court found that the Minister of Municipal Affairs and Housing acted unreasonably and unlawfully by failing to post proposed amendments to the *Planning Act* and refusing to consult with the public before the legislation was passed. The amendments provided increased power for the government to issue Minister's Zoning Orders, an end-run designed to undermine municipal authority among other things.

Sections 7-11 of Part 2 of the Act deal with Statements of Environmental Value. The current SEV for MOECP indicates that the Ministry applies the following principles when developing legislation, regulations and policies:

- ecosystem approach to environmental protection and resource management - an ecosystem is composed of air, land, water and living organisms, including humans, and interactions among them.
- cumulative effects on environment.
- interdependence of air, land, water and living organisms.
- relationships among environment, economy and society.
- effects of Ministry decisions on current and future generations, consistent with sustainable development principles.
- a precautionary, science-based approach in decision-making to protect human health and environment.
- priority on preventing pollution and minimizing the creation of pollutants.
- polluter-pays principle: perpetrator of pollution to pay the cost of clean up and rehabilitation.
- rehabilitation of significant environmental harm to the extent feasible.
- planning and management for environmental protection to strive for continuous improvement and effectiveness through adaptive management.
- use of a range of tools that encourages environmental protection and sustainability (e.g. stewardship, outreach, education).

- increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision-making.

For more extensive information and analysis about the *EBR* we highly recommend the LCO's Consultation Paper (52 pages) which is available at https://www.lco-cdo.org/wp-content/uploads/2022/10/LCO-Environmental-Accountability-Paper-Sep-16-2022-Rev.pdf.

In addition, an informative webinar was convened by CELA on November 22, 2022 to discuss the *EBR* and the Consultation Paper. It can be replayed by going to the following link: https://cela.ca/webinar-enhancing-environmental-accountability-under-the-ebr-review-of-the-law-commission-of-ontarios-discussion-paper/.

**Appendix C** GLOSSARY

Bill 57: *Restoring Trust, Transparency and Accountability Act, 2018* (Ontario)

Bill C-219: *Canadian Environmental Bill of Rights (*Private Member's Bill, 1st reading on Dec.16, 2021).

Bill C-230: *National Strategy to Redress Environmental Racism Act*, 1st reading Feb.26, 2020. On June 22, 2021 the Environment Committee of the House of Commons proposed a new name: *An Act Respecting the Development of a National Strategy to Assess, Prevent and Address Environmental Racism and to Advance Environmental Justice*.

Bill S-5: *Strengthening Environmental Protection for a Healthier Canada Act*, Senate Government Bill, 3rd reading in Senate on June 22, 2022, and 2nd reading in House of Commons on Nov.3, 2022.

CC: climate change

*CEBR*: Bill C-219, *Canadian Environmental Bill of Rights*

CELA: Canadian Environmental Law Association, a public interest legal clinic in Toronto representing low income and vulnerable communities in environmental matters.

*CEPA*: *Canadian Environmental Protection Act*

EA: environmental assessment

*EAA*: *Environmental Assessment Act* (Ontario)

*EBR*: *Environmental Bill of Rights, 1993* (Ontario)

EC: Environmental Commissioner of Ontario

ECO: Office of the Environmental Commissioner of Ontario

environmental equity: also known as environmental justice, ensures that "low-income or vulnerable communities are not disproportionately burdened or put at risk when government decisions are made in relation to standard-setting and instrument issuance" (CELA 2016, p.5).

environmental justice: "there should be a just distribution of environmental benefits and burdens among Canadians, without discrimination on the basis of any ground prohibited by the *Canadian Charter of Rights and Freedoms*" (*CERB* s.5(e)).

environmental racism: Preamble of Bill C-230 states that "a disproportionate number of people who live in environmentally hazardous areas are members of an Indigenous or racialized community." Establishing hazardous facilities in areas inhabited by these communities "could be racial discrimination." Targeting these areas for hazardous sites and neglecting clean up efforts there "would constitute environmental racism."

*EPA*: *Environmental Protection Act* (Ontario)

ERO: online Environmental Registry of Ontario

GHG: greenhouse gas emissions

*IFPA* Ontario *Intervenor Funding Project Act, 1988*, repealed 1996 by the Harris government.

instrument: a permit, license, approval, authorization, direction or order (but not including a regulation) issued by a ministry prescribed under the *EBR* and posted on the Registry.

intergenerational equity: "principle that it is important to meet the needs of the present generation without compromising the ability of future generations to meet their own needs" (s.5(b) of *SDA*). S.5(d) of *CEBR* states it differently: "present generations of Canadians hold the environment in trust for future generations and have an obligation to use its resources in a way that leaves that environment in the same, or better, condition for future generations."

IPCC Intergovernmental Panel on Climate Change

LCO: Law Commission of Ontario

LTO: Land Tribunal of Ontario

Minister: Ontario Minster of Environment, Conservation & Parks

MOECC: Ontario Ministry of Environment & Climate Change

MOECP: Ontario Ministry of Environment, Conservation & Parks

precautionary principle: "lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation if there are threats of serious irreversible damage;" s.3(1) of Bill S-5 adds the application of the precautionary principle to *CEPA* s.2(1)(a)(ii) .

public nuisance: unlawfully obstructing the public in its use of public property, or causing inconvenience with that use; unreasonable interference with a right common to the general public.

public trust doctrine: fiduciary duty of government to manage public resources in trust on behalf of the public. Preamble of *CEBR* states that the federal government "is the trustee of the environment within its jurisdiction and is responsible for protecting the environment for present and future generations of Canadians." S.4(b) confirms the government's "public trust duty to protect the environment so as to preserve and protect the collective interest of Canadians in the quality of the environment for the benefit of present and future generations."

Registry: online Environmental Registry of Ontario

RTHE: right to a healthy environment. S.2(1) of Bill S-5 adds to preamble of *CEPA* that "every individual in Canada has a right to a healthy environment." The substantive provision is s.3(2), which adds a new subsection a.2 to s.2(1): "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." The definition in s.6 of *CEBR* refers to a "healthy and ecologically balanced environment."

s.: abbreviation for a section of legislation

SCAN!: Seniors for Climate Action Now!

*SDA*: Canadian *Sustainable Development Act*, S.C. 2008 c.33. It requires the "development and implementation of a Federal Sustainable Development Strategy and the development of goals and targets with respect to sustainable development in Canada, and to make consequential amendments to another Act."

SEV: Statement of Environmental Values

sustainability: "capacity of a thing, action, activity or process to be maintained indefinitely" (s.2 of *SDA*).

sustainable development: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (s.2, *SDA*); sustainable development is "a continuously evolving concept" (s.5(a.1)(I)).

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples, adopted by UNGA in 2007.

UNGA: United Nations General Assembly Declaration on the human right to a clean, healthy and sustainable environment (July 2022).

vulnerable population: s.3(1) of Bill S-5 adds a new s.2(1)(a) to *CEPA*, protecting environment and human health including "the health of vulnerable populations." S.4(2) defines vulnerable population as "a group of individuals within the Canadian population who, due to greater susceptibility or greater exposure, may be at an increased risk of experiencing adverse health effects from exposure to substances."