

December 11, 2015

BY EMAIL

The Hon. Glen Murray
Minister of the Environment & Climate Change
Ferguson Block, 11th Floor
77 Wellesley Street West
Toronto, ON M7A 2T5

Dear Minister:

RE: REVIEW OF ONTARIO'S ENVIRONMENTAL BILL OF RIGHTS, 1993

We are writing to again object to your Ministry's inexcusable delay in completing its review of Ontario's *Environmental Bill of Rights, 1993* ("EBR").

As you know, we filed an Application for Review of the EBR in December 2010. In March 2011, your Ministry agreed that the public interest warranted a review of the EBR and its regulations.

Unfortunately, no tangible progress appears to have been made by your Ministry in the EBR review, and no meaningful steps have been undertaken to engage the public on this important matter.

Since 2011, CELA, Ecojustice and other stakeholders have repeatedly written to you and your predecessor, the Hon. James Bradley, to convey our serious concerns about the Ministry's dilatory approach to the EBR review. We have also met with senior Ministry officials to discuss this continuing inaction, but the EBR review remains inexplicably stalled at the present time.

Subsection 69(1) of the EBR establishes a mandatory legal duty upon your Ministry to conduct the EBR review "within a reasonable time":

69(1). A minister who determines that the public interest warrants a review under section 67 shall conduct the review within a reasonable time (emphasis added).

It is our opinion that this important legal duty has been contravened by your Ministry's inordinate delay in this case. A half-decade has now expired since our EBR application was first filed, but there is still no clear indication as to when – or even if – the EBR review will be completed by the Ministry. By any objective standard, this ongoing delay is unreasonable and unacceptable.

Canadian Environmental Law Association

T 416 960-2284 • F 416 960-9392 • 130 Spadina Avenue, Suite 301 Toronto, Ontario M5V 2L4 • cela.ca

We have recently received a letter dated November 24, 2015 from Assistant Deputy Minister Robert Fleming, who offers various reasons why the EBR review will not commence until November 2016 at the earliest. In our view, none of the reasons cited by Mr. Fleming are persuasive or compelling, nor do they adequately explain why the EBR review could not have been completed in the preceding five years. We further note that Mr. Fleming's letter does not set a completion date for the EBR review; instead, Mr. Fleming merely advises that we will be contacted a year from now to discuss the "scope definition and timelines for the EBR review."

In addition, while Mr. Fleming's letter identifies some minor administrative EBR improvements undertaken by the Ministry, these "housekeeping" activities are not responsive to the statutory, regulatory and policy issues raised in our Application for Review. More importantly, these modest activities do not oust or affect the Ministry's legal duty under subsection 69(1) to conduct the EBR review within a reasonable time. Indeed, if the Ministry allows yet another year to elapse before determining the scope and timing of the EBR review, then it is likely that the outcome of the review may not be available until 2017 (or even later), approximately seven years after our Application was first filed. This timeline is unbelievable, unreasonable, and unjustifiable.

We further note that the Environmental Commissioner of Ontario has recently published a blog which is highly critical of the Ministry's mishandling of the EBR review, and which concludes that the Ministry's continuing delay amounts to a denial of environmental rights under the EBR: <http://eco.on.ca/delayed-decisions-deny-ebr-applicants-their-environmental-rights/>

Accordingly, we hereby request that you take the following steps:

1. Direct Ministry staff to prioritize the immediate commencement of the EBR review, and to ensure the completion of a comprehensive EBR review before November 2016, or as soon thereafter as the review can be completed. This means that sufficient Ministry staff time and resources must be immediately allocated to the EBR review.
2. Direct Ministry staff to provide meaningful public participation opportunities throughout the EBR review prior to its completion, and well before the Ministry develops and web-posts any proposed changes to the EBR or the regulations.
3. On or before December 21, 2015, provide us with a reporting letter that details how and when the foregoing steps will be implemented. We are particularly interested in receiving the Ministry's description of the specific statutory/regulatory issues to be reviewed, the interim and final deadlines for completing the EBR review, and the nature and extent of public consultation that will be carried out during the EBR review.

Please be advised that if we do not receive a timely and satisfactory response to the above-noted requests, then we will be considering our available legal options for ensuring that your Ministry complies with subsection 69(1) of the EBR forthwith.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Theresa A. McClenaghan
Executive Director



Richard D. Lindgren
Counsel

cc. Premier Kathleen Wynne
ADM Robert Fleming
Dianne Saxe, ECO
John Swaigen/Kaitlyn Mitchell, Ecojustice