

February 18, 2020

VIA E-MAIL (Sara.Peckford@ontario.ca)

Sara Peckford
Food Safety and Environmental Policy Branch
1 Stone Road West
Ontario Government Building, 2nd floor, Southwest
Guelph, ON
N1G 4Y2

Re: Drainage Act Discussion Paper ([ERO Number 019-1187](#))

Dear Ms Peckford,

According to the above-noted Environmental Registry of Ontario (ERO) notice:
OMAFRA is proposing changes to the *Drainage Act* that would:

- provide the minister with legislative authority to develop and sign off on technical protocols such as the *Drainage Act* and *Conservation Authorities Act* Protocol
- create a new streamlined *Drainage Act* process for minor improvements
- enable a simplified process to update the engineer's report to account for changes to the design made during construction

Canadian Environmental Law Association (CELA) is writing to encourage the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) to work with other ministries, agencies, and the interested public to develop legal and policy reforms which will create climate resilient communities. Piecemeal reforms, aimed primarily at reducing alleged "red tape", will not enable Ontario to address the biodiversity crisis and climate change urgency that we are currently facing.

The proposed changes, to provide OMAFRA with legislative authority to authorize technical protocols, must be done in a manner that enables and encourages ministerial and agency collaboration. OMAFRA's role must be one of partnership, not holding authority over another ministry's jurisdiction (eg, the Ministry of Natural Resources and conservation authorities' roles in wetland protection and restoration). Further, any authority to establish technical protocols must continue to require public participation in advance of decision-making, pursuant to Ontario's *Environmental Bill of Rights, 1993* (EBR).

CELA encourages OMAFRA to establish reasonable limitations to what can be dealt with by a streamlined process, so that there are no unintended consequences. Drainage works regulated under the *Drainage Act* have already been wholly exempted under the *Environmental Assessment Act* (see s5(2)(c), [O Reg 334](#)). Agricultural drainage projects have historically caused

Canadian Environmental Law Association

T 416 960-2284 • 1-844-755-1420 • F 416 960-9392 • 55 University Avenue, Suite 1500 Toronto, Ontario M5J 2H7 • cela.ca

wetland losses throughout southern Ontario (see Estrin & Swaigen, *Environment on Trial* (3rd ed.) (1993: Emond-Montgomery, Toronto), at page 336). Consequently, a comprehensive and coordinated inter-agency approach is needed to fully utilize all applicable provincial authority to ensure that Ontario's remaining wetlands are not adversely impacted or degraded by further drainage activities. Seeking consensus among partner ministries, agencies and others is a possible mechanism to ensure the proposed processes and any associated technical guidance will achieve the desired outcome. The [Drainage Act and Conservation Authorities Act Protocol](#) developed by the inter-agency Drainage Act & Section 28 Regulations Team (DART) is an example of jointly developing policies. If it is not possible to achieve consensus, then it would be inappropriate to allow OMAFRA to impose policy on other jurisdictions.

CELA recognizes the importance of well-maintained drainage infrastructure and the various efforts to incentivize ecosystem services on agricultural lands (eg, [ALUS Canada](#)). With respect to ensuring drainage infrastructure is properly maintained, repaired, and operated, there needs to be adequate resources committed/raised for this purpose. Investment in such preventative maintenance for flood management purposes is becoming increasingly important.

Further, there needs to be meaningful public participation in government decision-making. Webinars were offered by OMAFRA for “key stakeholders” only – invitations to municipalities, conservation authorities, drainage industry, and general farm organizations. To avoid unintended consequences and ensure consistency with the EBR, broader participation is strongly encouraged.

Finally, OMAFRA consultations are separate and disconnected from the on-going conservation authorities consultation being conducted by the Ministry of the Environment, Conservation and Parks.

CELA recommends that a meaningful, comprehensive consultation process be established in order to determine how best to modernize policies and laws to address the biodiversity crisis and need for climate action. Creating resilient communities which are protected from floods and droughts requires broad cooperation and coordination. Consultations should include: relevant ministries; municipalities; First Nations and Métis communities; environmental organizations; scientific community; industrial, agricultural, recreational and tourism sectors; and conservation authorities.

CELA would be happy to meet and discuss our recommendations further.

Sincerely,



Anastasia M Lintner, PhD, LLB
Special Projects Counsel
Healthy Great Lakes
e: anastasia@cela.ca
c: 647-705-7564