



July 16, 2020

Sent via email

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Honourable Minister Jeff Yurek
Ministry of Environment, Conservation and Parks
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Dear Minister Yurek and Team:

Re: Consultation Requirements for the Proposed *Environmental Assessment Act (EAA)* Amendments in the *COVID-19 Economic Recovery Act (ERO Number 019-2051)*

We are writing on behalf of twelve established Ontario and national Canadian environmental organizations to express our concern in response to the above-noted Registry posting in relation to Schedule 6 of the Bill 197 (*COVID-19 Economic Recovery Act*). This omnibus Bill was tabled

for first reading on July 8, 2020, the same day as the Registry posting for amendments to the Ontario *Environmental Assessment Act*.

The posting on the Registry is a “bulletin” which claims that it was posted for information purposes only since there is “no requirement to consult on this initiative.” It is our position that the Bill requires mandatory posting and that this must be urgently corrected.

First, it is our opinion that the limited exceptions to public participation under sections 29 to 33 of the *Environmental Bill of Rights* are clearly inapplicable to Schedule 6 of Bill 197. Therefore, these statutory exceptions do not relieve or exclude your Ministry’s mandatory duty to provide meaningful public notice and comment opportunities in relation to proposed changes to the *Environmental Assessment Act*.

Second, the controversial regulation (O. Reg. 115/20) that temporarily suspended Part II of the *Environment Bill of Rights* was revoked last month by the Ontario government (see O. Reg. 277/20). Accordingly, this spent regulation cannot now be invoked as the basis for your Ministry’s inexplicable refusal to provide public notice and comment opportunities in relation to the proposed amendments in Schedule 6 of Bill 197.

Third, we are aware that Schedule 6 contains a consequential amendment to the *Environmental Bill of Rights* that, if enacted, purports to retroactively dispense with compliance with public notice/comment rights with respect to the proposed *Environmental Assessment Act* changes. In particular, the proposed new section 33.1 provides that Part II requirements “are deemed not to have applied with respect to the amendments made by Schedule 6.” In our view, this deeming provision represents an unconscionable and unprecedented attempt to override important public notice/comment rights under Part II of the *Environmental Bill of Rights*. Moreover, it is beyond dispute that Bill 197 has neither been enacted nor proclaimed in force. Therefore, as a matter of law, your Ministry cannot, at the present time, rely on an unpassed provision in Schedule 6 to exempt the *Environmental Assessment Act* amendments from the posting requirements specified in section 15 of the *Environmental Bill of Rights*.

For these reasons, it is our position that section 15 of the *Environmental Bill of Rights* clearly requires posting of this legislative proposal for at least a 30-day consultation period prior to third reading of Bill 197. Accordingly, it is our opinion that simply posting the above-noted bulletin, and failing to provide the public notice/comment opportunities required by law, is improper, unacceptable and non-compliant with Part II of the *Environmental Bill of Rights*.

Schedule 6’s proposed changes to the *Environmental Assessment Act* (which is a prescribed statute under the *Environmental Bill of Rights*) are sweeping and comprehensive in nature. If enacted, they would undeniably have a significant effect on the environment by resulting in major changes to how individual projects (and classes of projects) are exempted, designated, assessed, approved and monitored under the *Environmental Assessment Act*. Further, Schedule 6 proposes to dramatically reduce Ministry and public oversight over environmental decision-making under the Act. Finally, last year’s questionable consultation on the vague ideas and overgeneralized “vision” outlined in the Ministry’s “EA modernization” discussion paper is not

an acceptable substitute for public consultation on the critically important legislative details that the Ontario government has suddenly unveiled in Schedule 6.

Please confirm forthwith that you will post the Schedule 6 amendments on the Registry for at least 30 days for public comment prior to the third reading of Bill 197. Moreover, it is our position that given the breadth and complexity of the amendments, additional time for public consultation is warranted under section 17 of the *Environmental Bill of Rights*. In our submission, the matter is complex, the public is highly interested in this matter, and a minimum of 45 days is required for the public to make informed comments on the *Environmental Assessment Act* changes.

We look forward to your immediate reply to this urgent request. It is our understanding that Bill 197 may go to third reading in the coming weeks. If you do not respond within three (3) business days, please be advised that we will consider all necessary steps to address this blatant non-compliance with Part II of the *Environmental Bill of Rights*.

Regards,



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