

VIA EMAIL (ross.lashbrook@ontario.ca)

August 22, 2020

Ross Lashbrook, Manager, Environmental Assessment Modernization (Acting)
Environmental Assessment Modernization Team
Ministry of Environment, Conservation and Parks
135 St Clair Avenue West
Toronto, ON
M4V 1P5

Dear Ross Lashbrook and Environmental Assessment Modernization Team:

Re: Proposed exemption to the Environmental Assessment Act and a new policy under the Provincial Parks and Conservation Reserves Act for projects in provincial parks and conservation reserves (ERO No: 019-1804)
Proposal to exempt projects or activities related to land claim settlements and other agreements with Indigenous communities from the Environmental Assessment Act (ERO No: 019-1805)
Proposed regulation for a streamlined environmental assessment process for the Ministry of Transportation's Greater Toronto Area West Transportation Corridor project (ERO No: 019-1882)
Proposal to exempt various Ministry of Transportation projects from the requirements of the Environmental Assessment Act (ERO No: 019-1883)
Environmental assessment modernization: amendment proposals for Class Environmental Assessments (ERO No: 019-1712)

As Canadian Environmental Law Association (CELA) communicated following the release of the province's 2019 discussion paper entitled *Modernizing Ontario's Environmental Assessment Program*,¹ over the past 20 years, many commentators, stakeholders and independent officers of the Ontario Legislature have identified the structural improvements that are needed in the environmental assessment (EA) program in order to face the environmental issues and opportunities of the 21st century. Unfortunately, the suite of reforms for EA law undertaken by the province to date neglect to discuss or even mention these key reforms, and instead focus on quick-fixes that make Ontario's EA regime *less* robust, *less* participatory and *less* accountable to the people of Ontario.

CELA have separately provided detailed comments on the proposed exemption to the *Environmental Assessment Act* and a new policy under the *Provincial Parks and Conservation Reserves Act* for projects

¹ See online: <https://cela.ca/wp-content/uploads/2019/07/1268-CELASubmissionsOnEADiscussionPaper.pdf>

in provincial parks and conservation reserves (ERO No: 019-1804). In this submission, CELA comments on all of the five above noted proposals². On July 8, 2020, 4 proposals, 3 bulletins, and 1 decision notice were all posted to the ERO³. Collectively, these notices provide confusing, contradictory and insufficient information to allow the public to exercise rights guaranteed under the *Environmental Bill of Rights, 1993*.

CELA expects the government of Ontario halt these disparate and fragmented reforms, and in their place commence a robust, meaningful, transparent, and accountable public consultation process aimed at what we all want – a rigorous, efficient and effective environmental assessment program for Ontario, based on 21st century principles and best practices. Given the impact of our environmental decision-making to date, we can expect more flooding, wildfires and pandemics in the future. Ensuring that we are equipped with a set of consistent mechanisms for assessing the intersecting ecological, social, cultural, and economic consequences of our choices, particularly as relates to low-income, vulnerable, and disadvantaged communities, is of paramount importance.

Over the past five decades, the CELA has been involved in various law reform initiatives, court cases, public hearings and other administrative proceedings under the EAA on behalf of low-income individuals and disadvantaged or vulnerable communities. On the basis of this extensive experience, we provide our public interest perspective.

Environmental assessment is not duplicative and ought not to be considered mere regulatory red tape; it's original vision and purpose (which is more important today than ever) is to provide for consideration of the environmental, social and economic feasibility of activities in advance of any further authorizations or progress, thereby determining early and upfront whether an idea is aligned with goals of resilience to climate change and other ecologically important criteria for sustainability (or not). The calls for reform over the last two decades and more have been to ensure projects that move forward are consistent with the public interest and those that are not, do not. And, we all want to ensure that such decisions – both “yes” and “no” – happen as quickly as possible.

The proposals demonstrate a fundamental lack of appreciation for the separate and extremely important role that environmental assessment plays in decision-making. Overdue reforms recommended in recent

² Proposed exemption to the Environmental Assessment Act and a new policy under the Provincial Parks and Conservation Reserves Act for projects in provincial parks and conservation reserves (<https://ero.ontario.ca/notice/019-1804>), Proposal to exempt projects or activities related to land claim settlements and other agreements with Indigenous communities from the Environmental Assessment Act (<https://ero.ontario.ca/notice/019-1805>), Proposed regulation for a streamlined environmental assessment process for the Ministry of Transportation's Greater Toronto Area West Transportation Corridor project (<https://ero.ontario.ca/notice/019-1882>), Proposal to exempt various Ministry of Transportation projects from the requirements of the Environmental Assessment Act (<https://ero.ontario.ca/notice/019-1883>), Environmental assessment modernization: amendment proposals for Class Environmental Assessments (<https://ero.ontario.ca/notice/019-1712>)

³ In addition to the 5 notices on which this submission focused, the following were able posted on the same day: Proposed Environmental Assessment Act (EAA) Amendments in the COVID 19- Economic Recovery Act (<https://ero.ontario.ca/notice/019-2051>) – Bulletin; Administrative Amendments to Class Environmental Assessments (<https://ero.ontario.ca/notice/019-2038>) – Bulletin; Modernizing Ontario's environmental assessment program - Environmental Assessment Act (<https://ero.ontario.ca/notice/013-5102>) – Decision

years by environmental assessment practitioners, academics, non-governmental organizations, the Auditor General of Ontario, and the Environmental Commissioner of Ontario and not reflected in the approach being taken. As CELA stated in our response to Schedule 6 of Bill 197⁴, missing reforms in the province's approach to date include, but are not necessarily limited to, the following matters:

- updating and improving the purpose of the *Environmental Assessment Act* (EAA) to reflect a sustainability focus and to include environmental justice principles to guide decision-making;
- upgrading statutory provisions to ensure meaningful opportunities for public participation in all types of EAA processes;
- enhancing consultation requirements for engaging Indigenous communities in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent;
- reinstating “proponent pays” intervenor funding legislation to facilitate public participation and Indigenous engagement;
- entrenching a statutory climate change test to help EAA decision-makers to determine whether particular undertakings should be approved or rejected in light of their greenhouse gas emissions or carbon storage implications;
- curtailing the ability of the Minister to approve Terms of Reference that narrow or exclude the consideration of an undertaking's purpose, need, alternatives or other key factors in “comprehensive” (individual) EAs;
- extending the application of the EAA to environmentally significant projects within the private sector (e.g. mines);
- requiring mandatory and robust assessment of cumulative effects;
- facilitating regional assessments for sensitive or vulnerable geographic areas;
- ensuring strategic assessments of governmental plans, policies and programs;
- referring “comprehensive” (individual) EA applications, in whole or in part, to the Environmental Review Tribunal for a hearing and decision upon request from members of the public;
- reviewing and reducing the lengthy list of environmentally significant undertakings that have been exempted from the EAA by regulation, declaration orders, or legislative means;
- enhancing investigation, enforcement and penalty provisions under the EAA; and
- removing or restricting section 32 of the Environmental Bill of Rights (EBR), which currently exempts from the EBR's public participation regime any licences, permits or approvals that implement undertakings that have been approved or exempted under the EAA.

Based on our legal analysis, these proposals, collectively and individually, undermine environmental assessment program's purpose, scope, and efficacy. We recommend that the government immediately halt these reforms, and in their place commence a robust, meaningful, transparent, and accountable public consultation process aimed at what we all want – a rigorous, efficient and effective environmental assessment program for Ontario, based on 21st century principles and best practices.

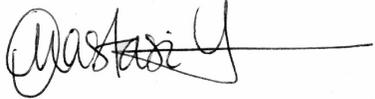
We trust that CELA's comments on these proposals will be considered and acted upon as the Ontario government determines its next steps in relation to the EA program. If requested, CELA would be pleased

⁴ See online: <https://cela.ca/wp-content/uploads/2020/07/Preliminary-Analysis-Schedule6-Bill-197-July-10-2020.pdf>

to meet with provincial staff to further elaborate upon this - and other proposed amendments - to Ontario's EA law and policy framework.

Thank you for your consideration of our submission.

Regards,

A handwritten signature in black ink, appearing to read "Anastasia", followed by a horizontal line extending to the right.

Anastasia M Lintner
Special Projects Counsel, Healthy Great Lakes

cc: Jerry DeMarco, Assistant Auditor General and Commissioner of the Environment, Office of the Auditor General of Ontario
Callee Robinson, Senior Program Support Coordinator (Acting), Environmental Assessments and Permissions Branch, MECP
Cindy Batista, Special Project Officer, Environmental Assessments and Permissions Branch, MECP
Tim Marchand, Policy Advisor, Protected Areas (Acting), Land and Water Division, MECP
Antonia Testa, Special Project Officer, Environmental Assessments and Permissions Branch, MECP