

ANALYSIS OF SCFEA MOTIONS PACKAGE, BILL 229
AS RELATES TO SCHEDULE 6, PROPOSED AMENDMENTS TO
THE CONSERVATION AUTHORITIES ACT & OTHER CONSEQUENTIAL CHANGES

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Canadian Environmental Law Association (CELA) has reviewed the Standing Committee on Finance and Economic Affairs (SCFEA) Motions Package, as relates to the proposed amendments to Schedule 6 of Bill 229 (the proposed Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020). While there are some Government Motions proposing amendments to Schedule 6 that address concerns raised by CELA, Conservation Ontario and many others, there are also significant amendments that go even further to limit conservation authorities' jurisdiction when there is a development authorized under a Minister's Zoning Order (pursuant to the *Planning Act*). The Government's Motions propose amendments that, as a package, do not address the concerns raised by numerous conservation authorities, municipal councils, environmental organizations, as well as Conservation Ontario, Big City Mayors, Association of Municipalities of Ontario, and Ontario Federation of Agriculture. Thousands of residents of Ontario have written to or called their Members of Provincial Parliament; and many have also written to the Minister of Finance, the Premier and the SCFEA. Adding substantive amendments as the Government now proposes is unacceptable.

Canadian Environmental Law Association reiterates our recommendation that Schedule 6 be withdrawn in its entirety and further recommends that all Members of the SCFEA vote against Schedule 6 for Bill 229.

Below is CELA's analysis of the Government's proposed motions.

Government Motion 1 (p1)

Proposes an amendment to Schedule 6 that will change the requirement that all members of a conservation authority be municipal councilors. Instead, the municipality will need to ensure that at least 70% of the appointees are selected from their councilors. The municipality can apply to the Minister to have that percentage reduced; the decision is at the Minister's discretion (including adding any conditions or restrictions). This partially addresses concerns raised.

Government Motion 2 (p2)

Proposes an amendment to Schedule 6 that will limit the voting powers of an agricultural representative appointed as a member of a conservation authority by the Minister. This partially addresses concerns raised.

Government Motion X (p5)

Proposes to vote against section 3 of Schedule 6; this would return the duties of members to the (yet to be proclaimed) section in the *Conservation Authorities Act*:

14.1 Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority.

This directly addresses a key concern raised.

Government Motion 3 (p6)

Proposes to amend Schedule 6 to provide additional detail to the term limits, which were already proposed amendments to the Conservation Authorities Act. Appears to address concerns expressed by Conservation Ontario.

Government Motion 4 (p9)

Proposes to amend Schedule 6 to strike out a prior condition (eg, “subject to the regulations”) from the new provisions regarding municipal programs and services. Neutral change; does not require that “the regulations” be in place in advance of implementation.

Government Motion 5 (p10)

Proposes to amend Schedule 6 to strike out a prior condition (eg, “subject to the regulations”) from the new provisions regarding other programs and services. Neutral change; does not require that “the regulations” be in place in advance of implementation.

Government Motion 6 (pp11-18)

Proposes to amend Schedule 6 to add a set of entirely new provision regarding section 28 permissions sought when a Municipal Zoning Order (MZO) applies to a development. [With further provisions to transition from these mandatory permissions under the current regime to mandatory permits once the new permitting regime is brought into force.]

If a development project (i) has been authorized by an MZO, (ii) is not within the Greenbelt, and (iii) meets any other conditions that may be set out in future regulations, a conservation authority is required to grant the permission (when all the three requirements are met).

The conservation authority cannot refuse to grant permission, regardless of whether or not it is prohibited (either under section 28 or under the PPS).

There may be conditions applied to the permission, if set out in a future regulation.

Further, conditions can be attached to the permit, which include mitigation of effects related to flooding, erosion, dynamic beaches, pollution or the conservation of land. Similarly, conditions can be attached in circumstances such that the development would jeopardize health/safety of people or damage/destruction of property, in the event of a natural hazard. The applicant must be granted a hearing before such conditions are attached. (Presumably, the public can potentially be engaged if a conservation authority’s hearing rules so permit.)

After the hearing, the conservation authority must provide reasons if conditions are ultimately attached to the permission.

If the applicant objects to the conditions attached, the applicant can seek a Minister's review or appeal directly to the Local Planning Appeal Tribunal (LPAT). The applicant need not seek a Minister's review before going to LPAT.

If the applicant determines that they will seek a Minister's review, the Minister decides whether to conduct the review and, if s/he decides to conduct a review, require any additional information of the applicant as desired. There will be public notice of the Minister's review on the Environmental Registry (this does not, in and of itself, trigger participatory rights to comment and have those comments consider and, similarly, the third party rights to seek leave to appeal under the *Environmental Bill of Rights*). The Minister can confirm or vary the conditions, including doing away with them or adding new ones. The Minister is required to consider certain factors in making the decision, including as laid out for the conservation authority or as set out in future regulations. The Minister's decision is final.

If the applicant determines that they wish to appeal the conditions to the LPAT (which they can do directly or they can do if the Minister either (i) determined that s/he would not review the conditions or (ii) did not communicate a decision to review within the specified time), they will send notice of the appeal to LPAT and the conservation authority. Notice will be given to interested parties by LPAT (which, presumably, could be interested members of the public). The LPAT is able to hear evidence and confirm, vary, remove or add conditions to the permission.

When a conservation authority grants permission in this manner, they are required to enter into an agreement with the holder of the permission and potentially a municipality or "such other person or entity" (to be defined in future regulations) considered appropriate. This agreement will set out "actions or requirements that the holder of the permission must complete or satisfy in order to compensate for ecological impacts" that may result from the development. Development cannot begin until such an agreement has been entered into.

It will be an offence to contravene a condition of a permission. It will also be an offence to begin development without a compensation agreement in place. Penalties for committing an offence are set out. Upon conviction, rehabilitation orders may also be issued by the court. If the holder of the permission does not comply with a rehabilitation order, the conservation authority can arrange for removal, repair or rehabilitation and recover the costs.

If there is a conflict between any conditions attached to a permission and the MZO, the MZO will prevail.

The Minister is given authority to make regulations, including to exempt lands or development projects from a variety of things, including this entire section, the regulations, and the requirement to enter into a compensation agreement.

This will apply to any application for permission that has been submitted to a conservation authority at the time these provisions come into force (which will need to be proclaimed).

These proposed amendments were not called for by CELA, Conservation Ontario, or any others that we are aware of; they are unacceptable.

Government Motion 7 (pp20-23)

Proposes to amend Schedule 6 to add a substantively identical set of provisions that will require a conservation authority to issue a mandatory permit when there is an MZO. [Transition regulation making power in a subsequent motion.]

These proposed amendments were not called for by CELA, Conservation Ontario, or any others that we are aware of; they are unacceptable.

Government Motion 8 (p25)

Proposes to amend Schedule 6 to make minor and non-substantive change to the entry without a warrant provisions.

Government Motion 9 (p26)

Proposes to amend Schedule 6 to make non-substantive change to entry without a warrant provisions (adding compliance with the new mandatory permission under an MZO).

Government Motion 10 (pp27-28)

Proposes to amend Schedule 6 to replace the removal of the stop order provision with conditions under which a conservation authority could issue a stop order, including when the conservation authority “has reasonable grounds to believe” that a person is engaging in or about to engage in activities that are or will contravene prohibitions or conditions of permits, which has caused, is causing, or is likely to cause significant damage to matters that are within the core mandate of a conservation authority. This appears to be responsive to concerns of Conservation Ontario.

Government Motion 11 (p29)

Proposes to amend Schedule 6 to added offences, including contravening conditions of mandatory permissions/permits or a stop order. This appears to be responsive to concerns of Conservation Ontario.

Government Motion 12 (p30)

Proposes to amend Schedule 6 to adjust the regulation making powers of the Lieutenant Governor in Council.

Government Motion 13 (p31)

Proposes to amend Schedule 6 to add regulation making powers for the Lieutenant Governor in Council regarding conversation authorities budgetary matters.

Government Motion 14 (p32)

Proposed to amend Schedule 6 to correct a typo in Local Planning Appeal Tribunal.

Government Motion 15 (p33)

Proposes to amend Schedule 6 to add regulation making powers for the Lieutenant Governor in Council, most notably to govern “transition matters related to the repeal of section 28.0.1” (the mandatory permissions when there is a MZO).

Government Motion 16 (pp34-35)

Proposes to amend Schedule 6 to give the Minister regulation making authority in respect of the new mandatory permissions when there is a MZO. These proposed amendments were not called for by CELA, Conservation Ontario, or any others that we are aware of; they are unacceptable.

Government Motion 17 (p36)

Proposes to amend Schedule 6 to give the Minister regulation making authority in respect to implementing the yet to be proclaimed Part VI of the *Conservation Authorities Act* (“Regulation of Areas Over Which Authorities Have Jurisdiction”

Government Motion 18 (p37)

Proposes to amend Schedule 6 to add a provision that will apply to regulations that both the Lieutenant Governor in Council and the Minister may make; that a regulation can be “general or particular in its application”.

Government Motion 19 (pp38-39)

Proposes to amend Schedule 6 to strike out the current proposed amendment to the *Planning Act* and replaces it with a limitation on the definition of public body in certain instances. Particularly, a conservation authority will not be a public body for the purposes of appealing or being a party to certain matters before the LPAT, unless the appeal relates to a “prescribed natural hazard” or the conservation authority was the applicant for a consent. This appears to address Conservation Ontario’s concern.

Government Motion 20 (p41)

Proposes to amend Schedule 6 to alter the provisions that come into force upon Royal Assent, which would include the new stop order provisions. This appears to address Conservation Ontario’s concern.

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