

January 26, 2021

**BY EMAIL & REGULAR MAIL**

Diane Blachford  
Strategic Policy and Partnerships Branch  
Ministry of the Environment, Conservation and Parks  
438 University Avenue, 15th Floor  
Toronto, ON M7A 1N3

Dear Ms. Blachford:

**RE: ERO 019-2826 – PROPOSED REVISIONS TO THE MINISTRY’S STATEMENT  
OF ENVIRONMENTAL VALUES**

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On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide CELA’s comments on the Ministry’s proposed revisions to its Statement of Environmental Values (SEV) under the *Environmental Bill of Rights (EBR)*. These comments are being sent to you in accordance with the above-noted Registry notice.

**(a) Overview**

Over the past several decades, CELA has been actively involved in the development and implementation of the *EBR*. In the early 1990s, for example, CELA served as a member of the Minister’s Task Force that assisted in the drafting of the *EBR*.

After the *EBR* was enacted in 1993, CELA lawyers have provided summary advice, public education, and client representation in relation to various *EBR* tools, including Applications for Review, Applications for Investigation, and third-party appeals of instrument decisions (including the landmark [Lafarge](#) case which confirmed the legal effect of the Ministry’s SEV, as discussed below). CELA has also commented on previous iterations of the Ministry’s SEV, and we filed an Application for Review of the *EBR* that the Ministry granted in 2011 but still remains outstanding.

Based on our extensive *EBR* experience, and from the public interest perspective of our client communities, CELA has carefully reviewed the Ministry’s current proposal to amend the SEV.

Our overall conclusion is that the proposed SEV contains several substantive deficiencies, and falls considerably short of what is required under the *EBR* for accountability and environmental protection purposes. Accordingly, CELA recommends that the proposed SEV should be immediately reconsidered, substantially re-written, and promptly re-posted on the Registry for further public review and comment before it is finalized and re-issued under the *EBR*.

**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](http://cela.ca)

**RECOMMENDATION #1: The Ministry should withdraw the proposed SEV so that it can be re-considered, re-written and re-posted on the Registry for public review and comment before it is finalized and re-issued under the *EBR*.**

**(b) The Evolution, Purpose and Effect of SEVs under the *EBR***

Conceptually, the SEV mechanism was developed and adopted by the Minister's *EBR* Task Force as a unique made-in-Ontario option for ensuring environmental protection and enhancing governmental accountability in environmental decision-making.

When the *EBR* was first being crafted in the early 1990s, the Task Force considered various accountability mechanisms, such as entrenching the "public trust" doctrine in the *EBR*.<sup>1</sup> In summary, this doctrine promotes accountability by imposing a fiduciary duty on the government to manage natural resources for the benefit of current and future generations, and by enabling the beneficiaries of the trust (i.e. people) to go to court for relief if the government mismanages or otherwise treats these resources in a manner that is contrary to the public interest.<sup>2</sup>

Since there was no consensus among Task Force members on including the public trust doctrine in the *EBR*, other alternatives were explored and the Task Force ultimately agreed upon ministry-specific SEVs as an important mechanism for environmental protection and governmental accountability. The Task Force's 1992 [report](#) stated that:

The Task Force wanted to develop the best method of ensuring that the purposes of the Environmental Bill of Rights were carried through and influenced government decision-making with respect to the environment. The Ontario Environmental Bill of Rights would apply to a number of different ministries that have very different interests in the natural environment. The purposes of the Environmental Bill of Rights, for example, may have a very different meaning to the Ministry of Natural Resources than to the Ministry of Agriculture and Food. The Task Force considered how a specialized application of the Environmental Bill of Rights' purposes could be achieved ministry by ministry...

Many ministries within the Ontario Government have developed the equivalent of "mission statements" or "strategic plans" that set goals and methods of achieving those goals for a Ministry over a period of time. The Task Force is of the opinion that a similar statement is needed for each ministry with respect to its "environmental values". The Task Force recommends that each ministry that makes environmental decisions that have or may have an impact on the environment, develop a draft "Statement of Environmental Values"...

Individual ministries make thousands of decisions each year that affect the environment. These decisions are reflected in policies, in regulations and in individual instruments. The Ministry's Statement of Environmental Values, designed in consultation with affected

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<sup>1</sup> For a discussion on the operational distinction between SEVs and the public trust doctrine, see P. Muldoon and R. Lindgren, *The Environmental Bill of Rights: A Practical Guide* (Toronto: 1995, Emond Montgomery), pages 122-23.

<sup>2</sup> *Ibid.*

groups, should influence, from the top down, attitudes and, therefore, these environmental decisions (emphasis added, pages 23-24).

As noted in 1994 by CELA and other environmental groups:

The absence of the public trust doctrine in the *EBR* and the inclusion of the SEV provisions makes it fairly obvious the SEV is a tool to substitute for the public trust doctrine. This conclusion may not be too surprising since both concepts attempt to promote government accountability. In other words, the SEVs, like the public trust doctrine, are intended to create a substantive framework for governmental decision-making in matters respecting environmental protection and resource conservation.<sup>3</sup>

After the *EBR* was proclaimed into force in 1994, a number of prescribed ministries drafted and consulted upon their respective SEVs. In particular, the *EBR* required each ministry's SEV to:

- explain how the purposes<sup>4</sup> of the *EBR* are to be applied when decisions that might significantly affect the environment are made in the ministry; and
- explain how consideration of the purposes of the *EBR* should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry.<sup>5</sup>

Once the SEVs were finalized, the *EBR* imposed a mandatory duty upon ministers to “take every reasonable step” to ensure that the SEV is considered whenever environmentally significant decisions are being made by ministry officials:

The minister shall take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry.<sup>6</sup>

Despite these *EBR* provisions, however, the content and implementation of SEVs has proven to be highly controversial from the public interest perspective since the first generation of SEVs was introduced in the mid-1990s.

For example, CELA and other non-governmental organizations were highly critical of the initial SEVs on various grounds, including their failure to adequately explain how the *EBR* would be applied and integrated with other considerations, and their omission of measurable targets, benchmarks and goals for accountability purposes.<sup>7</sup> Similarly, the first Environmental Commissioner of Ontario (ECO) appointed under the *EBR* found that the Ministry's first SEV was “generally disappointing” and “troubling” for certain reasons, including its lack of measurable

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<sup>3</sup> CELA et al., *Submission on the Statements of Environmental Values under the Environmental Bill of Rights* (August 15, 1994), page 4.

<sup>4</sup> *EBR*, subsections 2(1) and (2).

<sup>5</sup> *EBR*, section 7.

<sup>6</sup> *EBR*, section 11.

<sup>7</sup> *Supra*, footnote 1, pages 125-27.

targets for its waste reduction program.<sup>8</sup> During the 10<sup>th</sup> anniversary of the *EBR*, the ECO's [special report](#) recommended that “it would be desirable to strengthen SEVs and ensure that they are integrated into ministry decision-making so that they become effective and meaningful.”<sup>9</sup>

More recently, the ECO reported that ever since SEVs were first introduced in 1994, they have not measured up to public expectations or the intent of the *EBR* Task Force:

These documents have neither measured up to the intent of the original *EBR* Task Force, nor to the public's expectations. The main concerns have been: that the SEVs are too vaguely worded; that they are not sufficiently integrated with ministry mandates; and that they are not consistently designed or applied by prescribed ministries. Most of the 1994 SEVs provided mission statements that did not mention the environment or sustainability. In addition, most ministries did not specifically state which aspects of their mandate might generate decisions with significant environmental implications. These documents tended to be a combination of “boilerplate” text from the *EBR*, motherhood statements regarding the importance of the environment, and general statements of intent.<sup>10</sup>

Moreover, it eventually became necessary for the Divisional Court to confirm in the *Lafarge* case that the SEV had to be considered when Ministry officials were making decisions about prescribed instruments. In addition, the annual *EBR* reports prepared by the ECO<sup>11</sup> and the Auditor General of Ontario<sup>12</sup> have repeatedly raised concerns about the Ministry's refusals to: (a) update its [“vague” and “outdated”](#) SEV in a timely manner;<sup>13</sup> or (b) apply and fully document its SEV consideration during environmental decision-making within the Ministry,<sup>14</sup> particularly in relation to instruments (i.e. permits, licenses and approvals).<sup>15</sup>

On this latter point, the ECO observed in the 2011-12 annual [report](#) that the Ministry's mistaken insistence that the SEV is inapplicable to instrument decisions has continued despite the *Lafarge* judgment:

The ECO is extremely disappointed that four years after the court decision, some ministries still try to avoid documenting their SEV consideration for prescribed instruments, screening out some “non-environmentally significant” instruments and inadequately “embedding” SEV consideration in other reports. This saga has gone on long enough. In

<sup>8</sup> ECO, *Annual Report 1994 – 1995: Opening the Door to Better Environmental Decision Making* (1995), page 17. Online, [Opening Doors to Better Environmental Decision Making \(auditor.on.ca\)](#).

<sup>9</sup> ECO, *Special Report: Looking Forward: The Environmental Bill of Rights* (2005), page 3.

<sup>10</sup> ECO, *Annual Report 2008/2009: Building Resilience* (2009), page 124. Online, <https://www.auditor.on.ca/en/content/reporttopics/envreports/env09/2008-09-AR.pdf>

<sup>11</sup> ECO, *Annual Report 1996: Keep the Doors Open to Better Environmental Decision Making* (1996), page 56. Online, [Annual Report 1996 \(Apr. 22, 1997\) \(auditor.on.ca\)](#).

<sup>12</sup> Auditor General of Ontario, *Operation of the Environmental Bill of Rights: Chapter 2* (2020), page 4. Online, [Operation of the Environmental Bill of Rights chapter 2, 2020 \(auditor.on.ca\)](#).

<sup>13</sup> ECO, *Annual Report 2004/2005: Planning Our Landscape* (2005), page 13.

<sup>14</sup> *Supra*, footnote 10, page 145.

<sup>15</sup> ECO, *Annual Report 2010/2011: Engaging Solutions* (2011), page 139. Online, [2010 Annual Report \(auditor.on.ca\)](#). See also ECO, *Annual Report 2012/2013: Serving the Public* (2013), page 30. Online, <https://www.auditor.on.ca/en/content/reporttopics/envreports/env13/2012-13-AR.pdf>

order for the ECO to determine whether SEV consideration has occurred, the ECO must be provided with documentation that fully demonstrates how the SEV was considered during the decision-making process. To improve transparency and accountability, the ECO recommends that ministries provide links to their SEV consideration documents in decision notices for instruments posted on the Environmental Registry. Openly explaining to the public how specific SEV principles were considered and accounted for during the decision-making process would provide clarity about the ministry's rationale for the decision, and would improve assurance that SEV principles were taken into account even if the decision does not fully conform to them (emphasis added).<sup>16</sup>

Moreover, the ECO correctly concluded in its 2017 [report](#) is that SEVs have not materially influenced environmental decision-making by provincial ministries:

Statements of Environmental Values have only been minimally effective in changing environmental outcomes to date. One limitation to their effectiveness is that ministries do not share with the public how they considered their SEVs in making decisions. This lack of transparency can be easily and quickly fixed. If ministries were to publicly share their SEV consideration documents, members of the public would then be able to hold ministries to account for how they consider their SEVs.<sup>17</sup>

Given this checkered SEV track record, it remains disappointing and highly unfortunate that the latest iteration of the SEV proposed by the Ministry still does not satisfactorily resolve the above-noted issues. CELA therefore concludes that considerably more work is needed to upgrade the proposed SEV, as discussed below.

We further note that the apparent rationale for revising the Ministry SEV at this time is not necessarily to strengthen the SEV, improve the Ministry's environmental decision-making, or make the Ministry more accountable for its decisions. Instead, the Registry notice simply indicates that the proposed SEV is in response to the province's 2018 commitment to "update" SEVs in order "to reflect Ontario's environmental plan." In our view, changing the Ministry's SEV just to reflect the controversial Made-in-Ontario Environment Plan is a poor public policy choice in light of the serious and unresolved deficiencies in the Plan that have been identified by [CELA](#) and numerous other non-governmental organizations.

### **(c) CELA's Comments on the Ministry's Proposed SEV**

The Registry notice for this proposal claims that the Ministry is proposing a "new" SEV. However, it is readily apparent that the proposed SEV retains most of the content found in the current SEV, which was issued years ago in 2008.

To illustrate this point, Appendix A of this letter contains a chart that sets out a side-by-side comparison of the current SEV with the proposed SEV. This chart reveals that for the most part,

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<sup>16</sup> ECO, *Annual Report 2011/2012 Part 1: Losing Touch* (2012), page 25.

<sup>17</sup> ECO, *Environmental Protection Report 2017: Good Choices, Bad Choices* (2017), page 19.

key sections of the current SEV have simply been carried forward into the proposed SEV with little or no material changes.

For example, the list of key environmental principles in Section 3 of the current SEV (“Application of SEV”) has been repeated verbatim in the proposed SEV. Similarly, Section 6 (“Consultation”) is identical in both the current and proposed SEV. In addition, the content of Section 7 of the current SEV (“Consideration of Aboriginal People”) has been incorporated unchanged in the proposed SEV, except that the word “Indigenous” now replaces the word “Aboriginal.” In our view, the Ministry’s proposal to leave most of the existing SEV provisions intact is unjustified and unresponsive to the fundamental concerns raised over the years by CELA, other stakeholders, the ECO, and the Auditor General of Ontario about SEV content and implementation.

Accordingly, CELA concludes that the Ministry’s proposal largely amounts to modest finetuning of the current SEV, and does not represent a bold new approach or fundamentally different direction, contrary to the above-noted claim of the Registry notice. At best, the proposed SEV is a slightly modified version of the status quo, and it appears inconsistent with the *EBR* goals of environmental protection, governmental accountability, and public participation in environmental decision-making.

CELA’s main findings and concerns about the small handful of relatively minor changes contained in the proposed SEV are summarized in the following paragraphs.

*(i) Amended SEV Introduction*

In essence, Section 1 of the proposed SEV (“Introduction”) carries forward the existing compilation of statutory purposes set out in the current *EBR*. For the most part, only minor housekeeping changes are made within proposed Section 1, such as the inclusion of the new phrase “by the means provided in this Act” in order to better align the Introduction with the *EBR* statement of purposes. Similarly, the proposed Introduction now states that the *EBR* “went into force,” rather than “was proclaimed,” in February 1994. In our view, these kinds of semantic changes are unobjectionable and unimpressive.

However, CELA is greatly concerned about the proposed SEV’s misguided attempt to narrow or shift *EBR* accountability from the “Government of Ontario” to “prescribed ministries.” In particular, subsection 2(3) of the *EBR* indicates, *inter alia*, that the legislation provides:

- means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario; and
- increased accountability of the Government of Ontario for its environmental decision-making (emphasis added).

These statutory provisions are correctly reflected in the current SEV, but the Introduction in the proposed SEV proposes to replace “Government of Ontario” with the phrase “prescribed ministries.” The specific rationale for this significant change is unexplained in the Registry notice. In addition, the switch to “prescribed ministries” is clearly contrary to subsection 2(3) of the *EBR* as well as the Preamble’s recital that “government” (not “ministries”) has the “primary

responsibility” for achieving the goal of “protection, conservation and restoration of the natural environment for the benefit of present and future generations.”

In our view, the Ontario Legislature decided to explicitly refer to the “Government of Ontario” in subsection 2(3) in order to ensure that *EBR* accountability was applicable to the provincial government as a whole, not to individual ministries as may be prescribed from time to time under the *EBR*. Accordingly, CELA submits that the proposed SEV’s reference to “prescribed ministries” is a clear rollback from the existing SEV and current *EBR* purposes. We therefore recommend that this phrase should be deleted from the proposed SEV.

**RECOMMENDATION #2: The Introduction of the proposed SEV must be amended to delete the reference to “prescribed ministries,” and to reinstate the existing reference to the “Government of Ontario.”**

The Introduction of the proposed SEV goes on to note that ministries that are prescribed by regulation under the *EBR* must “prepare and finalize” SEVs. While this language represents a slight departure from the relevant provisions of the current SEV, it is generally accurate from a legal perspective, and CELA has no objection in principle to including these new paragraphs. However, it is unclear why the current SEV’s references to “accountability” and “commitment to the environment” are now conspicuously absent from this portion of the Introduction of the proposed SEV. Given the central role that these concepts play in SEV content and implementation, CELA recommends that they should be reinstated in the Introduction of the proposed SEV.

**RECOMMENDATION #3: The Introduction of the proposed SEV should be amended to reinstate the current SEV references to “accountability” and “commitment to the environment.”**

The proposed SEV also suggests that the Ministry will “endeavour” to review the SEV every five years, and the Minister may make SEV amendments that are determined to be “necessary.” CELA has a number of comments and recommendations about this proposal.

First, CELA agrees that the proposed five-year review is preferable to the open-ended discretion in the current SEV to “examine” the SEV on a “periodic basis.” Second, given the importance of keeping the SEV up-to-date, effective and equitable, CELA submits that the ambiguous word “endeavour” should be replaced by more prescriptive language (i.e. the Minister “shall” ensure that the SEV is reviewed every five years). Third, since the *EBR* expressly requires public consultation on SEV amendments,<sup>18</sup> the proposed SEV should be amended to recognize that the SEV five-year review process will include public notice/comment opportunities. Fourth, the proposed SEV should similarly provide that the Minister may make SEV amendments after considering public comments received by the Minister. Fifth, the proposed SEV should be amended to specify that the Minister may make SEV amendments that are necessary for achieving the purposes of the *EBR*. Sixth, since this review mechanism is functionally related to the Ministry’s efforts in monitoring SEV usage, CELA submits that the review-related provisions are

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<sup>18</sup> *EBR*, subsection 10(2).

better placed in Section 5 of the proposed SEV (“Monitoring Use of the SEV”), rather than inserting it upfront in the introductory section.

**RECOMMENDATION #4: In relation to future SEV reviews, the Introduction of the proposed SEV should amended to:**

- **replace the word “endeavour” with more prescriptive language (i.e. “shall”);**
- **stipulate that the five-year SEV review process will include opportunities for public notice/comment;**
- **ensure that the Minister considers public comments received during the review process before making SEV amendments;**
- **specify that the Minister may make SEV amendments that are necessary for achieving the purposes of the *EBR*; and**
- **relocate the SEV review mechanism from the Introduction to Section 5 of the proposed SEV (“Monitoring Use of the SEV”).**

Finally, CELA would be remiss if we did not mention the long overdue need to update the stated purposes of the *EBR* in order to include other important environmental principles that have emerged since 1994 (e.g. intergenerational equity). In making this submission, we recognize that this step will require an amendment to the *EBR* itself.

However, there is nothing in law that prevents the Ministry’s SEV from incorporating updated or more specific principles in Section 3 of the SEV, provided that they flow from, or help implement, the current stated purposes of the *EBR*. For example, the proposed SEV properly includes reference to the “polluter pays” principle, although this principle is not expressly referenced in the current *EBR* purposes. CELA’s additional submissions regarding the need to revise, renew and revitalize the content of Section 3 of the proposed SEV are set out below.

(ii) Amended Ministry Vision and Mandate

Section 2 of the proposed SEV describes the Ministry’s vision for Ontario and the Ministry’s general mandate. While there are a number of similarities between the proposed SEV and current SEV, CELA is concerned about some of the questionable differences between the two documents.

For example, the 2008 version of the Ministry’s vision focuses on environmental protection outcomes (i.e. “clean and safe air, land and water”). However, the proposed SEV inexplicably deletes the word “safe” (and “ecological protection”), and adds a new economic dimension (i.e. “prosperous economy”) that, in CELA’s opinion, is entirely misplaced and wholly inappropriate in the SEV. As a matter of law, the SEV must explain how the *EBR* purposes will be implemented by the Ministry in its decision-making, and there is nothing in these purposes that mentions economic prosperity, financial growth, or other extraneous non-environmental matters. For this reason alone, CELA recommends that the phrase “prosperous economy” should be deleted from Section 2 of the proposed SEV.

In addition, CELA notes that Section 2 of the proposed SEV includes a revised description of the legislation now administered by the Ministry, including laws governing provincial parks,

conservation reserves, other protected areas, and species at risk and their habitat. CELA has no objection to this high-level description of what the Ministry currently does, but it appears to us that the Section 3 list of relevant considerations does not adequately reflect the Ministry's mandate in relation to protecting natural heritage and managing natural resources, as discussed below.

Similarly, the mandate description in Section 2 of the proposed SEV includes a new reference to “building community resilience and reducing greenhouse gas emissions to help tackle climate change.” Again, CELA does not disagree with this general description, but we note that the Ministry's track record in terms of successfully implementing this mandate has been debatable at best, as discussed below. Accordingly, CELA submits that the Ministry's proposed climate change commitments in Section 7 of the SEV need substantial improvement in order to ensure that the Ministry decision-making contributes to – rather than undermines – timely and tangible progress in addressing this existential threat, as discussed below.

**RECOMMENDATION #5: Section 2 of the proposed SEV should be amended to delete the reference to “prosperous economy” in the Ministry's vision statement.**

*(iii) Amended Application of the SEV*

Section 3 of the proposed SEV is arguably one of the most important components of the SEV since it attempts to articulate the environmental objectives, principles, and approaches which are to be applied by the Ministry whenever it makes environmentally significant decisions.

Unfortunately, CELA notes that the proposed SEV repeats the same fundamental flaw as the current SEV in that the Ministry claims that these environmental factors are only applicable when decisions are being made about Acts, policies and regulations. In short, the Ministry is again purporting to exclude instrument decisions from triggering the considerations listed in Section 3 of the SEV.

Incredibly, the Ministry is advancing this position even though the Divisional Court clearly ruled over a decade ago in the *Lafarge* case that the Ministry was duty-bound under the *EBR* to consider the SEV when it made decisions regarding statutory approvals that authorized tire-burning as “alternative fuel” at a cement plant in southeastern Ontario.

Among other things, the Court reached this conclusion on the grounds that the duty under section 11 of the *EBR* to consider the SEV did not carve out an exception for instrument decisions. Instead, the Court determined that this duty applied whenever the Ministry was making environmentally significant decisions, including those related to instruments. In CELA's view, this judgment is an important precedent that has since been repeatedly cited and relied upon by the Environmental Review Tribunal (ERT) in adjudicating third-party appeals under the *EBR*, but it appears that the Ministry has still not accepted the outcome of the *Lafarge* case after all these years.

As more fully explained in a recent CELA [blog](#), the continuing refusal by the Ministry to expressly include instruments in Section 3 of the SEV is both puzzling and unacceptable in the wake of the *Lafarge* decision. In fact, CELA raised this very concern about the exclusion of instruments from

the SEV over a decade ago when the 2008 version was being proposed without referring to instrument decisions.

In 2021, it appears to CELA that the same problem – and the same Ministry intransigence – is occurring once again without lawful justification. Accordingly, CELA submits that it is now time for the Ministry to recognize legal reality by specifically providing in the proposed SEV that the environmental factors outlined in Section 3 are applicable to instrument decisions. As discussed below, the SEV currently used by the Ministry of Natural Resources (MNR) expressly applies to instrument decisions. In our view, it is necessary for the Ministry’s SEV to do likewise.

**RECOMMENDATION #6: Section 3 of the proposed SEV must be amended to expressly refer to instruments in the list of Ministry decisions that are required by law to consider the SEV.**

At the same time, CELA is also concerned that section 3 of the proposed SEV keeps intact the existing suite of environmental factors that are now listed in the current SEV. In CELA’s view, this list is deficient for various reasons, and it must be substantially revised and expanded.

For example, CELA has no objection to the SEV’s inclusion of well-known environmental principles, concepts, or methodologies, such as the “polluter pays” principle, the ecosystem approach, consideration of cumulative effects, or pollution prevention. However, we remain unclear on the interpretation and application of the “precautionary, science-based approach” espoused by the proposed SEV. This peculiar terminology was first inserted into the 2008 SEV to replace the precautionary principle that had been entrenched in the Ministry’s first SEV in the mid-1990s (and which served, in part, as the basis upon which leave-to-appeal was granted under the *EBR* by the ERT<sup>19</sup> in the *Lafarge* case).

In particular, CELA has no objection to basing Ministry decisions on science (if available), but in situations where there is scientific uncertainty about the prospect of serious or irreversible environmental harm, then the precautionary principle should be triggered and caution should be exercised in favour of the environment. The precautionary principle was developed in international environmental law, and has been upheld by the Supreme Court of Canada and other Canadian courts.

Unfortunately, the two above-noted considerations – the role of science and the precautionary principle – are conflated in Section 3 of the proposed SEV, resulting in an incorrect articulation and uneven application of the precautionary principle in Ministry decision-making. CELA therefore recommends that the precautionary principle must be fully restored as a mandatory consideration in the SEV, and it must be disconnected from the Ministry’s declared intention to make science-based decisions. We further recommend that the principle of intergenerational equity should be added to Section 3 of the proposed SEV.

Another problem that arises from simply carrying forward the pre-existing list of environmental factors from the 2008 SEV is that these factors primarily reflect the Ministry’s traditional pollution

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<sup>19</sup> *Dawber v. Ontario* (2007), 28 CELR (3d) 281 (ERT).

control mandate. However, these factors do not encompass the Ministry's new roles and responsibilities in relation to provincial parks, conservation reserves, other protected areas, and species at risk and their habitat. Since assuming the administration of these additional programs, the Ministry has been making – and will be continuing to make – environmentally significant decisions respecting Acts, policies, regulations and instruments in these core areas of Ministry jurisdiction.

In relation to the Ministry's prior attempt to update the 2008 SEV (which has since been [discontinued](#) by the Ministry), the Auditor General's 2019 [report](#) was critical of the Ministry's failure to reflect its new conservation responsibilities in the SEV proposal:

Further, in June 2018, the Ministry was assigned new responsibilities, including the conservation of species at risk and the management of protected areas. The Ministry has not updated its Statement to include these new responsibilities. The Statement also does not provide Ministry staff with specific principles to guide decision-making related to them, such as values like the “conservation of biodiversity” that are found in the Statement of the Natural Resources Ministry, which was formerly responsible for these program areas.<sup>20</sup>

Unfortunately, this problem still persists in the proposed SEV that is now being put forward by the Ministry, even though it appears that the Ministry actually agreed over a year ago with the Auditor General's recommendation that the SEV should be updated to include these new responsibilities.<sup>21</sup>

In particular, the proposed SEV list of environmental factors provides little or no meaningful direction to Ministry decision-makers about wildlife, habitat, natural heritage protection, or resource management. This is because key environmental imperatives, principles and approaches – such as biodiversity conservation, ecological integrity, use of Indigenous knowledge, etc. – are wholly absent from Section 3 of the proposed SEV. Interestingly, the ECO [recommended](#) over a decade ago<sup>22</sup> that all SEVs should address biodiversity conservation; however, this has not been done to date in the Ministry's SEV.

In contrast, the current [SEV](#) used by the MNR (which previously had carriage of the natural heritage matters now overseen by the Ministry) mentions diversity and sets out other principles to be applied during decision-making:

As it develops Acts, regulations, policies and instruments, the ministry applies the following principles:

- a. The ministry strives to identify and manage healthy, resilient and diverse ecosystems to provide for sustainable natural resource use.
- b. The ministry recognizes the finite capacity of ecosystems and takes into account environmental, social and economic values, impacts and risks.

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<sup>20</sup> Auditor General of Ontario, *Annual Report 2019: Reports on the Environment* (2019), page 45.

<sup>21</sup> *Ibid.*

<sup>22</sup> ECO, *Annual Report 2007/2008: Getting to K(no)w* (2008), page 82.

- c. The ministry relies on the best available knowledge, including science, Traditional Ecological Knowledge, and other information to improve natural resource management and responsible use.
- d. The ministry exercises caution in the face of uncertainty and seeks to avoid, minimize or mitigate harm to the environment.
- e. The ministry provides for open and accessible engagement opportunities that promote awareness and understanding of natural resource management and use.
- f. The ministry seeks to make natural resource management and use decisions through consideration of input from the public, Indigenous peoples, stakeholders, and partners (emphasis added).

CELA does not take the position that the above-noted MNRF principles are sufficiently detailed, rigorous or comprehensive, or that these principles should be copied directly into the Ministry's SEV. However, these principles provide illustrative examples of the additional considerations that should be reflected in the proposed SEV in order to inform and direct Ministry decisions in relation to the *Provincial Parks and Conservation Reserves Act, 2006*, *Kawartha Highlands Signature Site Park Act, 2003*, *Endangered Species Act, 2007* and related legislation, policies, regulations, and instruments.

CELA further notes that in light of a significant change to the *Conservation Authorities Act* made under Bill 108 in 2019, the Ministry is poised to take over administration of this legislation from the MNRF. This new provision (which re-defines "Minister" as the Minister of the Environment, Conservation and Parks) has not yet been proclaimed into force, but it is reasonable to anticipate that proclamation may occur before the next scheduled five-year review of the proposed SEV. In CELA's view, this prospect reinforces the need to re-draft and re-post the proposed SEV to ensure that it includes appropriate direction, principles, and commitments that will inform Ministry decision-making under this important Act in relation to environmental protection, flood control, watershed-based planning, management of conservation authority lands, and other matters.

Similarly, as a result of *EBR* amendments that occurred in 2018 under Bill 57, the Minister now has the additional responsibility for providing public education and information on how to use the various tools that are available in the *EBR*.<sup>23</sup> Compared to the extensive educational activities (i.e. webinars, workshops, speaking events, how-to brochures, etc.) undertaken by the former ECO, it appears to CELA that the Ministry has undertaken relatively few, if any, public legal education efforts in relation to *EBR* tools. Accordingly, the proposed SEV should be amended to provide clear commitments and guidance on how this new *EBR* duty will be implemented by the Minister.

Finally, and most importantly, CELA is greatly concerned that Section 3 of the proposed SEV makes no attempt to incorporate Environmental Justice principles and commitments that should be considered during the Ministry's decision-making process. Environmental Justice has been defined by the [U.S. Environmental Protection Agency](#) in the following terms:

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<sup>23</sup> *EBR*, section 2.1.

**Environmental justice (EJ)** is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

**Fair treatment** means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

**Meaningful involvement** means:

- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Community concerns will be considered in the decision making process; and
- Decision makers will seek out and facilitate the involvement of those potentially affected.

Over the past 50 years, CELA has represented low-income persons and disadvantaged, vulnerable, racialized and Indigenous communities in numerous environmental disputes involving legislative reform, policy developments, regulatory initiatives, standard setting and permit issuing by the Ministry. However, due to various practical, legal, technical and financial barriers, our clients have frequently been unable to meaningfully participate in Ministry decision-making processes in relation to the above-noted matters. Even where our clients have been able to review the relevant documents and provide informed comments to Ministry decision-makers within typically short timelines, in many cases it appears that such input has had little or no discernible impact on the resulting decision.

Moreover, it has been CELA's experience that our client communities have too often been adversely and unfairly impacted by Ministry decisions, particularly those in relation to instruments that authorize contaminant discharges into air, land or water. The ongoing COVID-19 pandemic has revealed that these inequities continue to exist throughout Ontario. For example, the available [data](#) indicates that low-income persons or marginalized neighbourhoods may be [disproportionately](#) impacted by the virus in conjunction with their disproportionate exposures to air [pollutants](#) from local sources.

Accordingly, CELA concludes that it is long overdue for the Ministry to usher in a new era of Environmental Justice in this province. We therefore strongly recommend that Section 3 of the proposed SEV should be amended to establish effective and equitable Environmental Justice principles and commitments that will be applied by Ministry decision-makers. In short, CELA submits that Environmental Justice must be integrated into everything that the Ministry does and decides in all of the programs that it administers.

To maximize the Ministry's accountability for applying the full range of SEV factors during its decision-making, the SEV itself should be amended to compel the Ministry to post or link SEV consideration documents as part of the decision notice on the Registry, as recommended above in several ECO reports.

**RECOMMENDATION #7: The Section 3 list of environmental factors which are to be considered during the Ministry’s decision-making should be amended and expanded to address or entrench additional matters, including:**

- the precautionary principle;
- the principle of intergenerational equity;
- principles, approaches and commitments that are relevant to Ministry decisions in relation to provincial parks, conservation reserves, other protected areas, species at risk and their habitat, and matters under the *Conservation Authorities Act*;
- Ministry commitments regarding public education and outreach programs in accordance the *EBR* obligation to provide such programs.
- Environmental Justice principles and commitments;
- an obligation to post or link the Ministry’s SEV consideration documents as part of “decision” notices on the Registry.

(iv) Amended Integration with Other Considerations

Section 4 of the proposed SEV provides a slightly revised version of the current SEV’s discussion of integrating other considerations with the purposes of the *EBR* during the Ministry’s decision-making process. Nevertheless, CELA has flagged a number of serious shortcomings in the proposed language in Section 4.

For example, while the current SEV states that the Ministry “will” integrate other considerations, the proposed SEV merely provides that the Ministry will “strive” to do so. In CELA’s view, a simplistic statement that the Ministry intends to “strive” (i.e. “aim” or “attempt”) to integrate other considerations is less strong (and more ambiguous) than the current SEV’s clear assurance that such considerations “will” be integrated with the *EBR* purposes during decision-making. This kind of certainty is particularly important in relation to the new commitment in Section 4 of the proposed SEV to take into account “considerations raised by or related to Indigenous communities.”

In addition, we note that subsection 7(b) of the *EBR* expressly requires the SEV to “explain” how the *EBR* purposes are going to be integrated with social, economic, scientific or other considerations. In our opinion, this is not permissive language in the *EBR*, nor does it confer discretion or “wobble room” upon the Ministry in this regard. Instead, this subsection compels the Ministry to indicate how other considerations will be integrated, and does not allow the Ministry to simply commit to “striving” to integrate *EBR* purposes and other considerations.

CELA further notes that section 4 of the proposed SEV wholly omits the current SEV commitment to promote energy conservation “in those sectors where it provides policy direction or programs.” It is not readily apparent why “energy conservation” will no longer be considered by the Ministry (even though this topic is relevant to climate change matters mentioned in Section 7 of the proposed SEV), and the Registry notice provides no insight or rationale for this omission. Given the environmental and socio-economic benefits of robust energy conservation and efficiency measures, CELA recommends that these considerations should be reinstated and expanded upon within section 4 of the proposed SEV.

**RECOMMENDATION #8: Section 4 of the proposed SEV should be amended to:**

- **clarify that the Ministry “will” integrate *EBR* purposes with other considerations, and concisely explain how this will be done; and**
- **confirm and expand upon the Ministry’s commitment to energy conservation and efficiency when it is making environmentally significant decisions.**

*(v) Amended Monitoring of the Use of SEVs*

Section 5 of the proposed SEV contains a Ministry commitment to monitor the use of the SEV, document its consideration during decision-making, and ensure that Ministry staff are aware of the legal obligation to consider the SEV. Subject to some minor wording changes, this Section is substantially similar to the corresponding paragraphs in the current SEV. However, CELA has a several concerns about the content of Section 5 in the proposed SEV.

For example, this Section only commits the Ministry to review the use of the SEV in relation to decisions pertaining to Acts, policies, and regulations. Thus, Section 5 inexplicably excludes consideration of the SEV during the Ministry’s decision-making in relation to prescribed instruments despite the outcome of the *Lafarge* case, as discussed above.

In 2021, CELA finds that it is both astounding and inexcusable for the Ministry to again attempt to deliberately exclude instruments from the list of decisions for which SEV consideration will be monitored. In our view, SEV consideration is especially important in the context of Ministry-administered instruments, which, if issued, potentially create the risk of environmental harm. Accordingly, CELA recommends that Section 5 of the proposed SEV must be amended to include a specific reference to instruments for monitoring purposes.

Section 5 of the proposed SEV further suggests that Ministry staff will be trained to ensure they are “aware” of the Ministry’s *EBR* obligations, including the legal requirement to consider the SEV during environmental decision-making processes. CELA agrees that training is important and necessary, but we submit that merely making staff “aware” of the Ministry’s obligations is insufficient.

On this point, the ECO has reported countless examples over the years where the Ministry has failed to provide proper public notice/comment opportunities in accordance with Part II of the *EBR*, and where the Ministry’s consideration of the SEV in decision-making was not documented adequately or at all. Accordingly, CELA recommends that this aspect of Section 5 should be reworded to indicate that the purpose of training is to ensure that Ministry staff are aware of, and comply with, all of the Ministry’s obligations under the *EBR*, including those pertaining to the SEV.

In addition, CELA recommends that the five-year SEV review mechanism currently proposed in amended Section 1 should instead be added to the end of Section 5, as discussed above in Recommendation #4.

**RECOMMENDATION #9: Section 5 of the proposed SEV should be amended to:**

- expressly include instruments in the list of Ministry decisions that will be monitored for SEV consideration purposes; and
- ensure that Ministry staff are aware of, and comply with, all of the Ministry's obligations under the *EBR*, including the duty to consider the SEV every time that environmentally significant decisions are being made within the Ministry.

*(vi) SEV Consultation Commitment*

Aside from updating the Ministry's name (and replacing the word "believes" with "recognizes"), Section 6 of the proposed SEV contains no significant changes from the current language in the existing SEV in relation to public consultation.

On its face, Section 6 commits the Ministry to providing "opportunities for an open and consultative process when making decisions that might significantly affect the environment." However, there is an alarming lack of detail in the proposed SEV explaining precisely how this commitment will be implemented on a day-to-day basis as the Ministry considers environmentally significant decisions in relation to Acts, policies, regulations and instruments within its jurisdiction.

Moreover, the sparse language in Section 6 has not prevented the Ministry from failing or refusing to provide any meaningful public consultation under the *EBR* when significant legislative or regulatory initiatives have been undertaken (e.g. exempting the province's Integrated Power System Plan from the *Environmental Assessment Act*, repealing the provincial cap-and-trade regulation, amending the *Environmental Assessment Act* via Schedule 6 of Bill 197, etc.)

Accordingly, CELA views the proposed SEV's professed commitment to public consultation as little more than a simplistic platitude or motherhood statement. We therefore recommend that Section 6 requires considerable expansion in order to provide sufficient particulars on how the Ministry will utilize different consultation methods to meaningfully solicit input from Ontarians on all environmentally significant proposals under consideration by the Ministry.

**RECOMMENDATION #10: Section 6 of the proposed SEV should be amended to provide greater prescriptive detail on how the Ministry will ensure that "open and consultative processes" will be utilized by the Ministry to notify Ontarians and to solicit their comments whenever environmentally significant proposals are being considered by the Ministry.**

*(vii) SEV Climate Change Discussion*

Section 7 of the proposed SEV contains new language in relation to climate change. Unfortunately, this Section consists of aspirational goals, lacks sufficient particulars about the specific actions that the Ministry will take in terms of climate change mitigation or adaptation, and otherwise fails to include any clear targets or timeframes which can be tracked under the *EBR* by Ontarians and the Auditor General for accountability purposes.

For example, the first paragraph in Section 7 of the proposed SEV merely states that the Ministry will “work” with interested persons, stakeholders and other entities to “identify threats” and “evaluate opportunities to advance” provincial climate change goals “while fostering a prosperous economy and society in Ontario.” Similarly, the second paragraph of Section 7 simply states that the Ministry will “endeavour” to reduce greenhouse gas emissions and “enhance Ontario’s resilience to a changing climate by improving our understanding of how climate change will impact Ontario.” In addition, the third paragraph of Section 7 states that the Ministry will “endeavour” to “work with other ministries to support the integration of climate change considerations into government decision-making.” In CELA’s view, these and other vague statements in Section 7 are virtually meaningless and amount to a recipe for inaction despite the climate emergency that confronts all Ontarians.

Given the urgent need for timely and effective climate action, CELA submits that these SEV paragraphs should be strengthened and expanded to provide clear commitments and measurable benchmarks to drive the Ministry’s decision-making on climate change matters. In short, there will likely be no “prosperous economy or society” in Ontario’s future unless significant progress is quickly made in the implementation of provincial strategies, plans and programs that actually reduce greenhouse gas emissions and assist low-income persons and disadvantaged, vulnerable, racialized and Indigenous communities that are disproportionately impacted by climate change (i.e. [adverse health effects](#) from extreme heat events).

CELA acknowledges that the Ontario government has promulgated a greenhouse gas emission target that is to be achieved by 2030. However, the November 2020 [report](#) of the Auditor General under the *EBR* concludes that the province is on track to miss this target:

Overall, our audit found that the province risks missing its 2030 emission-reduction target, in part because climate change and the reduction of greenhouse gas emissions is not yet a cross-government priority, even though there is a specific commitment in *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan (Environment Plan)* to make climate change a cross-government priority to meet the target (page 2).

Therefore, CELA recommends that the provincial target should be cross-referenced in the proposed SEV for accountability purposes, and that the SEV should be amended to include greater specificity about precisely how and when Ministry decision-making will contribute to the achievement of the provincial target.

On this point, CELA notes that in May 2017, the Ministry proposed certain changes to its SEV to incorporate climate change and related initiatives. However, the ECO’s annual [report](#) at the time found that the proposed wording was “too vague”, and that ministries should include “clear and specific action statements in their SEVs for ministry staff and the public to understand how climate change considerations should be applied in practice and how they might affect the final decision.”<sup>24</sup> CELA concurs with the ECO’s views, and submits that they are equally applicable to the Ministry’s latest inadequate attempt to address climate change in its SEV.

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<sup>24</sup> ECO, *Environmental Protection Report 2017: Good Choices, Bad Choices* (2017), page 20.

**RECOMMENDATION #11: Section 7 of the proposed SEV should be strengthened and expanded in order to establish clear goals, binding commitments, and measurable benchmarks that drive the Ministry’s decision-making on climate change mitigation and adaptation.**

*(viii) Amended Consideration of Indigenous People*

Section 8 of the proposed SEV repeats *holus bolus* the current SEV’s brief assurance that the Ministry will engage Indigenous communities and “appropriately” consider their interests when making environmentally significant decisions that may affect them.

The only notable change between the proposed and current SEV is the replacement of the word “Aboriginal” with “Indigenous.” The Registry notice suggests that this change is necessitated, in part, by the UN Declaration of the Rights of Indigenous Peoples ([UNDRIP](#)), but otherwise no further changes are being proposed in Section 8. Interestingly, UNDRIP refers to “Peoples” in the plural, while the SEV uses the singular term “People”, which, in our view, does not adequately reflect the number and diversity of Indigenous communities in Ontario.

In CELA’s view, it is ironic that while the Registry notice cites the UNDRIP as the basis for switching to the new word “Indigenous,” the proposed SEV itself does not refer to or adopt the UNDRIP, nor does the SEV commit to complying with UNDRIP principles (i.e. Free Prior and Informed Consent (FPIC)) when the Ministry is making decisions that may affect Indigenous peoples, lands, resources or rights (particularly those protected by section 35 of the *Constitution Act, 1982*).

To remedy this glaring omission, CELA strongly recommends that Section 8 of the proposed SEV should be comprehensively re-written with the full participation of Indigenous communities to ensure that it not only refers to the UNDRIP, but also commits the Ministry to complying with UNDRIP principles during its environmental decision-making.

**RECOMMENDATION #12: Section 8 of the proposed SEV must be substantially re-drafted – with meaningful participation by Indigenous communities – to:**

- **ensure that the UNDRIP is expressly referred to and unequivocally adopted within the SEV; and**
- **specify that the Ministry’s decision-making about Acts, policies, regulations and instruments shall comply with UNDRIP principles, including FPIC.**

*(ix) Amended “Greening” of Internal Operations*

Section 9 of the proposed SEV essentially repeats all of the existing statements of governmental intention found in the current SEV in relation to “greening” the Ministry’s internal operations by various means. However, Section 9 also proposes to include a new commitment “to support Government of Ontario initiatives to reduce Ontario’s greenhouse gas emissions [and] prepare for the impacts of a changing climate.”

CELA submits that while this general statement may be laudable in theory, the new SEV provision is undermined by the abject lack of any quantitative targets or clear timeframes that can be used to assess whether the Ministry – or the government at large – is making any tangible progress (or not) in reducing greenhouse gas emissions or adequately preparing for the impacts of climate breakdown. In the absence of such benchmarks, it will be exceedingly difficult to ensure governmental accountability under the *EBR* in such matters.

This same concern applies to the other elements of Section 9 of the proposed SEV. For example, the high-level SEV commitment to energy and water conservation, or to reductions in air emissions, waste generation, and the Ministry’s carbon footprint, are not accompanied by any measurable objectives, deadlines or implementation information. Given the paucity of detail about how these commitments will be tracked and satisfied by the Ministry, CELA submits that these overgeneralized SEV provisions are virtually meaningless, and that they will inevitably reduce – not enhance – governmental accountability in relation to these key issues.

This systemic problem was previously raised over 15 years ago by the ECO’s 2004-05 [report](#), which concluded that like corporate environmental management systems, SEVs should “provide specific and measurable commitments as to how the purposes of the EBR will be applied when ministries make environmentally significant decisions [and] Ministries should be able to measure and report on their performance on a regular basis.”<sup>25</sup> In CELA’s view, it is long overdue for the Ministry to act upon this important recommendation by revising the proposed SEV accordingly.

**RECOMMENDATION #13: Section 9 of the proposed SEV should be expanded to include greater details on how and when the Ministry’s “greening” commitments will be achieved, evaluated and reported upon by the Ministry for accountability purposes.**

#### **(d) Conclusion and Summary of Recommendations**

For the foregoing reasons, CELA finds that in both form and content, the proposed SEV closely resembles the current SEV. Moreover, CELA finds that the minor amendments contained within the proposed SEV are relatively limited, largely inconsequential, and fundamentally fail to address long-standing concerns about the substance and implementation of the Ministry’s SEV.

CELA therefore concludes that the new or amended provisions in the proposed SEV are insufficient for operationalizing the purposes of the *EBR* purposes, or for providing substantive direction to Ministry decision-makers whenever environmentally significant decisions are being considered in relation to Acts, policies, regulations, and instruments.

These outstanding SEV deficiencies, in turn, diminish or undermine the *EBR*’s primary goals of protecting the environment, ensuring governmental accountability, and enhancing public participation. In our view, making incremental changes to an already unsatisfactory SEV is not an appropriate substitute for inserting robust, effective and enforceable language into the Ministry’s SEV.

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<sup>25</sup> Environmental Commissioner of Ontario, *Annual Report 2004/2005: Planning Our Landscape* (2005), page 14.

Accordingly, CELA makes the following recommendations:

**RECOMMENDATION #1:** The Ministry should withdraw the proposed SEV so that it can be re-considered, re-written and re-posted on the Registry for public review and comment before it is finalized and re-issued under the *EBR*.

**RECOMMENDATION #2:** The Introduction of the proposed SEV must be amended to delete the reference to “prescribed ministries,” and to reinstate the existing reference to the “Government of Ontario.”

**RECOMMENDATION #3:** The Introduction of the proposed SEV should be amended to reinstate the current SEV references to “accountability” and “commitment to the environment.”

**RECOMMENDATION #4:** In relation to future SEV reviews, the Introduction of the proposed SEV should be amended to:

- replace the word “endeavour” with more prescriptive language (i.e. “shall”);
- stipulate that the five-year SEV review process will include opportunities for public notice/comment;
- ensure that the Minister considers public comments received during the review process before making SEV amendments;
- specify that the Minister may make SEV amendments that are necessary for achieving the purposes of the *EBR*; and
- relocate the SEV review mechanism from the Introduction to Section 5 of the proposed SEV (“Monitoring Use of the SEV”).

**RECOMMENDATION #5:** Section 2 of the proposed SEV should be amended to delete the reference to “prosperous economy” in the Ministry’s vision statement.

**RECOMMENDATION #6:** Section 3 of the proposed SEV must be amended to expressly refer to instruments in the list of Ministry decisions that are required by law to consider the SEV.

**RECOMMENDATION #7:** The Section 3 list of environmental factors which are to be considered during the Ministry’s decision-making should be amended and expanded to address or entrench additional matters, including:

- the precautionary principle;
- the principle of intergenerational equity;
- principles, approaches and commitments that are relevant to Ministry decisions in relation to provincial parks, conservation reserves, other protected areas, species at risk and their habitat, and matters under the *Conservation Authorities Act*;
- Ministry commitments regarding public education and outreach programs in accordance with the *EBR* obligation to provide such programs.
- Environmental Justice principles and commitments;

- an obligation to post or link the Ministry’s SEV consideration documents as part of “decision” notices on the Registry.

**RECOMMENDATION #8:** Section 4 of the proposed SEV should be amended to:

- clarify that the Ministry “will” integrate *EBR* purposes with other considerations, and concisely explain how this will be done; and
- confirm and expand upon the Ministry’s commitment to energy conservation and efficiency when it is making environmentally significant decisions.

**RECOMMENDATION #9:** Section 5 of the proposed SEV should be amended to:

- expressly include instruments in the list of Ministry decisions that will be monitored for SEV consideration purposes; and
- ensure that Ministry staff are aware of, and comply with, all of the Ministry’s obligations under the *EBR*, including the duty to consider the SEV every time that environmentally significant decisions are being made within the Ministry.

**RECOMMENDATION #10:** Section 6 of the proposed SEV should be amended to provide greater prescriptive detail on how the Ministry will ensure that “open and consultative processes” will be utilized by the Ministry to notify Ontarians and to solicit their comments whenever environmentally significant proposals are being considered by the Ministry.

**RECOMMENDATION #11:** Section 7 of the proposed SEV should be strengthened and expanded in order to establish clear goals, binding commitments, and measurable benchmarks that drive the Ministry’s decision-making on climate change mitigation and adaptation.

**RECOMMENDATION #12:** Section 8 of the proposed SEV must be substantially re-drafted – with meaningful participation by Indigenous communities – to:

- ensure that the UNDRIP is expressly referred to and unequivocally adopted within the SEV; and
- specify that the Ministry’s decision-making about Acts, policies, regulations and instruments shall comply with UNDRIP principles, including FPIC.

**RECOMMENDATION #13:** Section 9 of the proposed SEV should be expanded to include greater details on how and when the Ministry’s “greening” commitments will be achieved, evaluated and reported upon by the Ministry for accountability purposes.

We trust that CELA’s findings, conclusions and recommendations will be taken into account as the Ministry considers its next steps in relation to long overdue SEV improvements.

Please contact the undersigned if you have any questions arising from this submission.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

A handwritten signature in black ink, appearing to read 'R. Lindgren', with a long horizontal stroke extending to the right.

Richard D. Lindgren  
Counsel

cc. Ms. Bonnie Lysyk, Auditor General of Ontario

**APPENDIX A**  
**COMPARISON OF THE MINISTRY’S CURRENT SEV AND THE PROPOSED SEV**

Prepared by  
Adam De Luca, CELA LPP Student

In the chart below, the left column sets out the Ministry’s current SEV provisions, and the right column sets out the Ministry’s proposed SEV under ERO 019-2826. Significant differences between the two documents (other than the Ministry’s change of name) are identified by yellow highlighting. Please note that Section 7 of the proposed SEV (“Climate Change”) is located at the end of the right column in order to better facilitate this comparative analysis.

| <u><b>CURRENT SEV PROVISIONS</b></u>  | <u><b>PROPOSED CHANGES TO SEV</b></u>   |
|---|---|
| <p style="text-align: center;"><b>1. Introduction</b></p> <p>The Ontario Environmental Bill of Rights (EBR) was proclaimed in February 1994. The founding principles of the EBR are stated in its Preamble:</p> <ul style="list-style-type: none"> <li>• The people of Ontario recognize the inherent value of the natural environment.</li> <li>• The people of Ontario have a right to a healthful environment.</li> <li>• The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.</li> </ul> <p>While the government has the primary responsibility for achieving this goal, Ontarians should have the means to ensure that it is achieved in an effective, timely, open and fair manner.</p> <p>The purposes of the Act are:</p> <ol style="list-style-type: none"> <li>1. To protect, conserve and where reasonable, restore the integrity of the environment;</li> </ol> | <p style="text-align: center;"><b>1. Introduction</b></p> <p>The Ontario Environmental Bill of Rights, 1993 (EBR or the Act) came into force in February 1994. The founding principles of the EBR are stated in its Preamble:</p> <ul style="list-style-type: none"> <li>• The people of Ontario recognize the inherent value of the natural environment.</li> <li>• The people of Ontario have a right to a healthful environment.</li> <li>• The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.</li> </ul> <p>While the government has the primary responsibility for achieving this goal, Ontarians should have the means to ensure that it is achieved in an effective, timely, open and fair manner.</p> <p>The purposes of the Act are:</p> |

2. To provide sustainability of the environment by the means provided in the Act; and
3. To protect the right to a healthful environment by the means provided in the Act.

These purposes include the following:

- The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
- The protection and conservation of biological, ecological and genetic diversity.
- The protection and conservation of natural resources, including plant life, animal life and ecological systems.
- The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
- The identification, protection and conservation of ecologically sensitive areas or processes.

To assist in fulfilling these purposes, the Act provides:

- The means by which Ontarians may participate in the making of environmentally significant decisions by the Government of Ontario;
- Increased accountability of the Government of Ontario for its environmental decision-making;
- Increased access to the courts by residents of Ontario for the protection of the environment; and
- Enhanced protection for employees who take action in respect of environmental harm.

- To protect, conserve and where reasonable, restore the integrity of the environment by the means provided in the Act;
- To provide sustainability of the environment by the means provided in the Act; and
- To protect the right to a healthful environment by the means provided in the Act.

These purposes include the following:

- The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
- The protection and conservation of biological, ecological and genetic diversity.
- The protection and conservation of natural resources, including plant life, animal life and ecological systems.
- The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
- The identification, protection and conservation of ecologically sensitive areas or processes.

To assist in fulfilling these purposes, the Act provides:

- A means by which Ontarians may participate in the making of decisions made by prescribed ministries which could have a significant effect on the environment;
- Increased accountability of prescribed ministries;
- Increased access to the courts by residents of Ontario for the protection of the environment; and

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| <p>The EBR requires a Statement of Environmental Values from all designated ministries. <a href="#">List of designated ministries.</a></p> <p>Statements of Environmental Values (SEV) are a means for designated government ministries to record their commitment to the environment and be accountable for ensuring consideration of the environment in their decisions. A SEV explains:</p> <ul style="list-style-type: none"> <li>• How the purposes of the EBR will be applied when decisions that might significantly affect the environment are made in the Ministry; and</li> <li>• How consideration of the purposes of the EBR will be integrated with other considerations, including social, economic and scientific considerations, which are part of decision-making in the Ministry.</li> </ul> <p>It is each Minister's responsibility to take every reasonable step to ensure that the SEV is considered whenever decisions that might significantly affect the environment are made in the Ministry.</p> <p>The Ministry will examine the SEV on a periodic basis to ensure the Statements are current.</p> | <ul style="list-style-type: none"> <li>• Enhanced protection for employees who take action in respect of environmental harm.</li> </ul> <p>The EBR requires that all prescribed ministries develop and finalize a Statement of Environmental Values (SEV).</p> <p>Ministries are prescribed for various provisions under the Act pursuant to O. Reg. 73/94, and a list of ministries that must develop an SEV can be found here: <a href="https://ero.ontario.ca/page/sevs">https://ero.ontario.ca/page/sevs</a></p> <p>The EBR states that an SEV explains how the purposes of the EBR are to be applied when decisions that might significantly affect the environment are made and explains how consideration of the purposes of the EBR should be integrated with other considerations, including social, economic, and scientific considerations.</p> <p>It is each Minister's responsibility to take every reasonable step to ensure that the SEV is considered whenever decisions that might significantly affect the environment are made in the Ministry.</p> <p>The Minister of the Environment, Conservation and Parks will endeavour to review the SEV every five years and will make any amendments that the Minister determines to be necessary.</p> |
| <p><b>2. Ministry Vision and Mandate</b></p> <p>The Ministry of the Environment and Climate Change's vision is an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations.</p> <p>The Ministry of the Environment and Climate Change develops and implements environmental legislation, regulations,</p>   | <p><b>2. Ministry Vision and Mandate</b></p> <p>The Ministry of the Environment, Conservation and Parks' vision is an Ontario with clean air, land and water with healthy communities and a prosperous economy.</p>  |

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| <p>standards, policies, guidelines and programs. The Ministry's research, monitoring, inspection, investigations and enforcement activities are integral to achieving Ontario's environmental goals.</p> <p>Specific details on the <a href="#">responsibilities of the Ministry of the Environment and Climate Change</a> can be found on the Ministry website.</p>  | <p>The Ministry of the Environment, Conservation and Parks administers legislation aimed at protecting clean air, land and water, species at risk and their habitat, building community resilience and reducing greenhouse gas emissions to help tackle climate change, and managing Ontario's provincial parks and conservation reserves for present and future generations of Ontarians.</p> <p>Specific details on the responsibilities of the Ministry of the Environment, Conservation and Parks can be found on the Ministry website <a href="https://www.ontario.ca/page/ministry-environment-conservation-parks">https://www.ontario.ca/page/ministry-environment-conservation-parks</a>.</p>  |
| <p><b>3. Application of the SEV</b></p> <p>The Ministry of the Environment and Climate Change is committed to applying the purposes of the EBR when decisions that might significantly affect the environment are made in the Ministry. As it develops Acts, regulations and policies, the Ministry will apply the following principles:</p> <ul style="list-style-type: none"> <li>• The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.</li> <li>• The Ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.</li> <li>• The Ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.</li> </ul> | <p><b>3. Application of the SEV</b></p> <p>The Ministry of the Environment, Conservation and Parks is committed to taking every reasonable step to ensure that the ministry's SEV is considered when decisions that might significantly affect the environment are made in the Ministry. As it develops Acts, regulations and policies, the Ministry will apply the following principles:</p> <ul style="list-style-type: none"> <li>• The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.</li> <li>• The Ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.</li> <li>• The Ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.</li> </ul> |

- The Ministry uses a precautionary, science-based approach in its decision-making to protect human health and the environment.
- The Ministry's environmental protection strategy will place priority on preventing pollution and minimizing the creation of pollutants that can adversely affect the environment.
- The Ministry endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle.
- In the event that significant environmental harm is caused, the Ministry will work to ensure that the environment is rehabilitated to the extent feasible.
- Planning and management for environmental protection should strive for continuous improvement and effectiveness through adaptive management.
- The Ministry supports and promotes a range of tools that encourage environmental protection and sustainability (e.g. stewardship, outreach, education).
- The Ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision making.

Decisions on proposed Acts, regulations and policies reflect the above principles. The ministry works to protect, restore and enhance the natural environment by:

- Developing policies, legislation, regulations and standards to protect the environment and human health,
- Using science and research to support policy development, environmental solutions and reporting,

generations, consistent with sustainable development principles.

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Decisions on proposed Acts, regulations and policies reflect the above principles. The ministry works to protect, restore and enhance the natural environment by:

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| <ul style="list-style-type: none"> <li>• Ensuring that planning, which aims to identify and evaluate environmental benefits and risks, takes place at the earliest stages in the decision- making process;</li> <li>• Undertaking compliance and enforcement actions to ensure consistency with environmental laws, and</li> <li>• Environmental monitoring and reporting to track progress over time and inform the public on environmental quality.</li> </ul> <p>In addition, the Ministry of the Environment and Climate Change <b>uses a range</b> of innovative programs and initiatives, including strong partnerships, public engagement, strategic knowledge management, and economic incentives and disincentives to carry out its responsibilities.</p> | <ul style="list-style-type: none"> <li>• Using science and research to support policy development, environmental solutions and reporting,</li> <li>• Ensuring that planning, which aims to identify and evaluate environmental benefits and risks, takes place at the earliest stages in the decision- making process;</li> <li>• Undertaking compliance and enforcement actions to ensure consistency with environmental laws, and</li> <li>• Environmental monitoring and reporting to track progress over time and inform the public on environmental quality.</li> </ul> <p>In addition, the Ministry of the Environment, Conservation and Parks <b>will use a range</b> of innovative programs and initiatives, including strong partnerships, public engagement, strategic knowledge management, and economic incentives and disincentives to carry out its responsibilities.</p> |
| <p style="text-align: center;"><b>4. Integration with Other Considerations</b></p> <p>The Ministry of the Environment and Climate Change will <b>take into account social, economic and other considerations</b>; these will be integrated with the purposes of the EBR when <b>decisions that might significantly affect the environment need to be made</b>.</p> <p>In making decisions, the Ministry will use the best science available. It will support scientific research, the development and application of technologies, processes and services.</p> <p><b>The Ministry will encourage energy conservation in those sectors where it provides policy direction or programs.</b></p>  | <p style="text-align: center;"><b>4. Integration with Other Considerations</b></p> <p>The Ministry of the Environment, Conservation and Parks will <b>strive to integrate environmental considerations with social, economic and scientific considerations</b>, as well as considerations raised by or related to <b>Indigenous communities, when making decisions that might significantly affect the environment</b>.</p> <p>In making decisions, the Ministry will use the best science available. It will support scientific research, the development and application of technologies, and processes and services.</p>   |

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| <p><b>5. Monitoring Use of the SEV</b></p> <p>The Ministry of the Environment and Climate Change will document how the SEV was considered each time a decision on an Act, regulation or policy is posted on the Environmental Registry. The Ministry will ensure that staff involved in decisions that might significantly affect the environment is aware of the Ministry’s Environmental Bill of Rights obligations.</p> <p>The Ministry of the Environment and Climate Change monitors and assesses changes in the environment. The Ministry reviews and reports, both internally and to the Environmental Commissioner’s Office, on its progress in implementing the SEV.</p> | <p><b>5. Monitoring Use of the SEV</b></p> <p>The Ministry of the Environment, Conservation and Parks will document how the SEV was considered when making decisions on acts, regulations or policies that might significantly affect the environment. The Ministry will ensure that its staff are aware of the Ministry’s obligations under the EBR, including the content in the SEV, and how to apply the SEV.</p> <p>The Ministry of the Environment, Conservation and Parks reviews and reports, both internally and to the Auditor General of Ontario, on its progress in implementing the SEV.</p> |
| <p><b>6. Consultation</b></p> <p>The Ministry of the Environment and Climate Change believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment</p>   | <p><b>6. Consultation</b></p> <p>The Ministry of the Environment, Conservation and Parks recognizes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment.</p>   |
| <p><b>7. Consideration of Aboriginal People</b></p> <p>The Ministry of the Environment and Climate Change recognizes the value that Aboriginal peoples place on the environment. When making decisions that might significantly affect the environment, the Ministry will provide opportunities for involvement of Aboriginal peoples whose interests may be affected by such decisions so that Aboriginal interests can be appropriately considered.</p>   | <p><b>8. Consideration of Indigenous People</b></p> <p>The Ministry of the Environment, Conservation and Parks recognizes the value that Indigenous peoples place on the environment. When making decisions that might significantly affect the environment, the Ministry will provide opportunities for involvement of Indigenous peoples whose interests may be affected by such decisions so that Indigenous people’s interests can be appropriately considered.</p>   |

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| <p>This commitment is not intended to alter or detract from any constitutional obligation the province may have to consult with Aboriginal peoples</p>   | <p>This commitment is not intended to alter or detract from any constitutional obligation the province may have to consult with Indigenous peoples.</p>   |
| <p style="text-align: center;"><b>8. Greening Internal Operations</b></p> <p>The Ministry of the Environment and Climate Change believes in the wise use and conservation of natural resources. The Ministry will support Government of Ontario initiatives to conserve energy and water, and to wisely use our air, water and land resources in order to generate sustainable environmental, health and economic benefits for present and future generations.</p> <p>The Ministry of the Environment and Climate Change is committed to reducing its environmental footprint by greening its internal operations, and supporting environmentally sustainable practices for its partners, stakeholders and suppliers. A range of activities is being undertaken to reduce the Ministry’s air emissions, energy use, water consumption, and waste generation. These include: monitoring and reducing the Ministry’s carbon footprint, promoting energy and water conservation in ministry outreach and educational activities, and supporting government-wide greening and sustainability initiatives</p> | <p style="text-align: center;"><b>9. Greening of Internal Operations</b></p> <p>The Ministry of the Environment, Conservation and Parks recognizes the wise use and conservation of natural resources. The Ministry will support Government of Ontario initiatives to reduce Ontario’s greenhouse gas emissions, prepare for the impacts of a changing climate, conserve energy and water, and to wisely use our air, water and land resources in order to generate sustainable environmental, health and economic benefits for present and future generations.</p> <p>The Ministry of the Environment, Conservation and Parks is committed to reducing its environmental footprint by greening its internal operations, and supporting environmentally sustainable practices for its partners, stakeholders and suppliers. A range of activities is being undertaken to reduce the Ministry’s air emissions, energy use, water consumption, and waste generation. These include: monitoring and reducing the Ministry’s carbon footprint, promoting energy and water conservation in ministry outreach and educational activities, and supporting government-wide greening and sustainability initiatives.</p> |
|  | <p style="text-align: center;"><b>7. Climate Change</b></p> <p>The climate is changing and people across the province are experiencing impacts.</p> <p>The Ministry of the Environment, Conservation and Parks will work with</p>   |

individuals, businesses, communities, municipalities, non-governmental organizations and Indigenous communities to identify the threats from climate change to Ontario's environment and evaluate opportunities to advance the province's core climate change goals while fostering a prosperous economy and society in Ontario.

In doing so, the Ministry of the Environment, Conservation and Parks will endeavour to reduce greenhouse gas emissions in line with the government's greenhouse gas emission reduction target and enhance Ontario's resilience to a changing climate by improving our understanding of how climate change will impact Ontario, helping Ontarians prepare for those impacts, building partnerships to improve local climate resilience and endeavouring to ensure that climate mitigation and resilience are reflected in relevant policies and programs.

The Ministry of the Environment, Conservation and Parks will endeavour to work with other ministries to support the integration of climate change considerations into government decision making.