Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

SUBMISSIONS BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION TO THE GOVERNMENT OF ONTARIO REGARDING BILL 140 (*BUILDING ONTARIO FASTER ACT, 2026*) ERO NOTICE NO. 026-1109

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November 17, 2026

If we want environmental law reforms that will strike a more equitable balance between the meek and the aggressive, the rich and the poor, the preservers and the destroyers, we must look to the legislatures as well as the courts… Whether we have an environmental bill of rights or a patchwork quilt of symbolic gestures will determine whether our laws are intended to protect the environment or pay lip service to it.

- *John Swaigen, Environmental Rights in Canada, November 24, 1980*

PART I. INTRODUCTION

These are the comments[1] of the Canadian Environmental Law Association (CELA) to the Government of Ontario regarding omnibus Bill 140 (*Building Ontario Faster Act, 2026*).[2]

For the reasons described below, CELA is strongly opposed to Bill 140's proposed amendments to the *Environmental Assessment Act* (Schedule 7), *Environmental Bill of Rights, 1993* (Schedule 8), and *Environmental Protection Act* (Schedule 9).

Collectively and individually, these regressive amendments propose to remove important rights that Ontario residents, non-governmental organizations, municipalities, and First Nations have used for years to safeguard the environment, protect human health, and participate meaningfully in environmentally significant decision-making by the provincial government.

If enacted, these Schedules in Bill 140 will likely lead to more environment pollution, additional degradation or depletion of natural resources, and increased risks to public health and safety throughout the province. Similarly, these Schedules will erode public participation rights and decrease transparency and accountability in Ontario's environmental decision-making.

Accordingly, CELA calls upon the Ontario government to immediately withdraw Schedules 7, 8, and 9 of Bill 140.

[1] These comments should be read in conjunction with CELA's previous Bill 140 submissions that were sent to the Ontario government on November 3, 2026: Comments on Bill 140, the Proposed Building Ontario Faster Act, 2026 - Canadian Environmental Law Association.
[2] Bill 140, Building Ontario Faster Act, 2026 - Legislative Assembly of Ontario.

(a) CELA Background

Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. With funding from Legal Aid Ontario, CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in judicial and administrative proceedings. CELA also works on environmental legal education and reform initiatives.

Since our inception, CELA's casework, law reform, and public education/outreach activities have focused on entrenching effective and enforceable environmental rights in legislation. For example, CELA has advocated for the enactment of the *Environmental Bill of Rights, 1993* (*EBR*) since the 1970s.

In 1991-92, CELA was a member of the Environment Minister's multi-stakeholder Task Force that crafted and consulted upon the *EBR* prior to its passage by the Ontario Legislature in 1993. After the *EBR* was proclaimed in force in 1994, CELA has frequently used all the rights-based tools available under the *EBR* of behalf of our clients. In addition, we provide public legal education and summary advice to numerous Ontarians about how to use the *EBR* in a timely and effective manner.

Over the decades, CELA's work has also included numerous matters under the other two environmental laws that Bill 140 proposes to amend, namely the *Environmental Assessment Act* (*EAA*) and the *Environmental Protection Act* (*EPA*).

(b) Overview of Schedules 7, 8, and 9 of Bill 140

Bill 140 was introduced for First Reading in the Ontario Legislature on October 27, 2026. After receiving Second Reading, Bill 140 was referred to the Standing Committee on the Interior for consideration. The deadline for filing public submissions with the Committee is November 17, 2026.

Notice of Bill 140 was also posted on the Environmental Registry of Ontario (ERO) and triggered the minimum 30-day public comment period under the *EBR* that ends on November 26, 2026.

The legislative summary that accompanied Bill 140 describes the Schedule 7 amendments to the *EAA* as follows:

> *The Schedule amends the Environmental Assessment Act to repeal section 17.5 respecting municipal support for landfilling sites.*

Similarly, the legislative summary describes the Schedule 8 amendments to the *EBR* as follows:

> *The Schedule amends the Environmental Bill of Rights, 1993.*
>
> *The Schedule amends the purposes of the Act and repeals sections 7 to 11 of the Act respecting statements of environmental values. The Schedule also provides that the notice*

and comment requirements in sections 15 and 16 of the Act do not apply to certain proposals that are subject to the Modernizing Ontario for People and Businesses Act, 2020 if specified conditions are met.

The Schedule amends the factors to be considered in determining the period for public comment on proposals under the Act and makes various amendments to update language in the Act.

The Schedule repeals Parts IV to VI of the Act, including provisions respecting applications for review, applications for investigation and environmental protection actions. The Schedule also amends the reprisal provisions in section 105 of the Act.

The Schedule includes a transitional provision respecting reprisals. The Schedule authorizes the Lieutenant Governor in Council to make regulations respecting transitional matters arising from the enactment of the Schedule and provides that such regulations may have a retroactive effect. A provision respecting compensation is also added.

The Schedule makes a consequential amendment to the Resource Recovery and Circular Economy Act, 2016 and contains commencement provisions, some of which are retroactive to the first reading of the Building Ontario Faster Act, 2026.

Finally, the legislative summary describes the Schedule 9 amendments to the *EPA* as follows:

The Schedule amends the Environmental Protection Act.

The definitions of "renewable energy generation facility" and "renewable energy project" in subsection 1 (1) are replaced so that, for the purposes of applying those definitions, "renewable energy source" includes prescribed biomass.

Sections 2 to 6 repeal sections 142.1 and 142.2 of the Act and related provisions respecting applications to the Ontario Land Tribunal in relation to renewable energy approvals. The repeals are deemed to have come into force retroactively on the day the Building Ontario Faster Act, 2026 received first reading.

CELA has carefully considered Schedules 7, 8, and 9 from the public interest perspective of our client communities, and on the basis of our decades-long experience with the *EBR, EAA* and *EPA*. Our overall conclusion is that the Ontario Legislature must not enact any of these Schedules, as described below in more detail. In short, building Ontario faster under Bill 140 does not necessarily mean building Ontario better. Accordingly, these Schedules must be immediately withdrawn from Bill 140.

PART II – CELA'S GENERAL COMMENTS ON BILL 140

CELA is highly concerned about all of the environmental amendments proposed in Bill 140. However, our greatest concern arises from the unjustifiable attempt in Schedule 8 to effectively eviscerate the most important tools available to Ontario residents under the *EBR*.

In our view, the proposed changes to the *EBR* are unjustifiable and fail to recognize the important environmental and societal benefits that will be lost by repealing and removing fundamental *EBR* rights.

To illustrate this point, it is instructive to review the original public policy reasons for enacting the *EBR* in the first place, and to review examples where the public exercise of *EBR* rights has led to better environmental outcomes, meaningful public participation, and enhanced governmental accountability for environmental decision-making.

(a) Evolution of the *EBR*

As noted by a leading commentator:

> *Enacting specific environmental rights legislation allows for the most comprehensive articulation of the substantive and procedural elements of the right to a healthy environment, including mechanisms and processes for ensuring access to information, participation in environmental governance, and access to justice (through both judicial and non-judicial avenues)*.[3]

In Ontario, the origin and intent of the *EBR* can be traced back to the public and parliamentary debates that accompanied various private members' bills that had been proposed in the late 1970s and 1980s to establish an *EBR* regime in the province.[4]

In 1990, the Ontario government established a multi-stakeholder advisory committee which reached a consensus that an *EBR* was needed in Ontario. In 1991, the Ontario's Environment Minister established a Task Force on the *EBR*, which included CELA and Pollution Probe as well as representatives from industry and government. In 1992, the Task Force released its findings, conclusions and recommendations in a detailed final report, which also contained a proposed *EBR*.

The Task Force report explained the public interest need to enact the *EBR* in Ontario as follows:

> *The starting point for the Task Force's discussions about an Environmental Bill of Rights was an acceptance of the obvious public concern about protecting the environment. While a variety of protections are already available in the law of Ontario, it was thought that these protections were not sufficient to meet the needs of a modern society such as that which we now enjoy in Ontario…*
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> *In designing an Environmental Bill of Rights, the issue then became, how to provide the public with the means to hold government accountable for the decisions it makes in meeting its primary responsibility for environmental protection. With greater accountability, public confidence in the quality of government decision-making should increase.*

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[3] David R. Boyd, "Essential Elements of an Effective Environmental Bill of Rights" (2015), 27 JELP 201, at page 213.

[4] Generally, see Paul Muldoon & Richard Lindgren, *The Environmental Bill of Rights: A Practical Guide* (Toronto: Emond-Montgomery, 1995), pages 7 to 11.

> *Increased government accountability for environmental decision-making, however, is only part of the potential value of an Environmental Bill of Rights. The Task Force also recommends that the very purposes of the Environmental Bill of Rights be integrated in environmental decision-making by government…*
>
> *The public wants and needs to be involved in significant decisions about our environment. The Task Force hopes that this report and the draft Environmental Bill of Rights is the beginning of a process that achieves that goal.*[5]

The Task Force report went on to identify significant gaps in the then-existing legal framework that warranted the enactment of the *EBR*.[6] Among other things, the report highlighted the following shortcomings in the pre-*EBR* regime that impaired Ontarians' ability to protect the environment and ensure government accountability: (a) no legal right to a healthful environment; (b) no legal right to participate in governmental decision-making about the environment; (c) no legal right to compel the government to enforce environmental laws or investigate offences; and (d) no legal right to sue to protect public resources.

The Task Force report and draft *EBR* was subject to another round of public consultation, and the Task Force released a supplementary report in late 1992.

In 1993, the Ontario government introduced the *EBR* in the form of Bill 26, which was subject to public hearings by a legislative committee. After the completion of the committee hearings (in which no substantive amendments were made), the *EBR* received Third Reading and Royal Assent in December 1993 with all-party support.

Notably, during legislative debate on the *EBR*, all three political parties praised the new "landmark" legislation, and certainly did not characterize it as "duplicative" red tape (as the current provincial government now claims in its rationale for Bill 140).

For example, when the *EBR* was introduced for First Reading, NDP Minister of the Environment Bud Wildman correctly proclaimed that:

> *The bill is a victory for all Ontarians.* ***It will open up the environmental decision-making to greater public scrutiny; it will give greater certainty to business by creating a consistent and predictable process for obtaining environmental approvals; it will give to the public information it needs to get involved; and above all, it will protect the environment to a greater degree than ever before…***
>
> *The Environmental Bill of Rights is a landmark piece of legislation in Ontario, in Canada and in North America.* ***It meets the needs of the public, industry, environmental groups and government. It is based on a consensus of business representatives and environmental representatives. The consensus is an important building block in the creation of a sustainable economy in Ontario and it will set a new and higher standard***

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[5] Report of the Task Force on the Ontario Environmental Bill of Rights (1992), pages ii to vi.
[6] Ibid, Chapter 2.

> ***for environmental protection, both for now and for years to come in Ontario*** (emphasis added).[7]

During Second Reading debate, Minister Wildman pointed to the "unique" public policy process – and the collaboration between business and environmental sectors – that resulted in the consensus-based *EBR*:

> ***For the first time that I'm aware of in almost 18 years of serving in this Legislature, we had a situation where a piece of legislation, which has now come before us as Bill 26, was essentially drafted by the participants from the various groups across the province: environmental groups, industry, business, as well as government.***
>
> *This is a unique process, as I indicated.* ***I don't know of many other situations where a task force has been set up representing a diversity of opinion and that the legislation was drafted specifically based on its recommendations, and then subsequent to the drafting of the legislation the task force had the opportunity to comment and to indicate that it accepted the legislation and thought it was appropriate and said it would support the legislation*** (emphasis added).[8]

During Second Reading debate, Progressive Conservative MPP David Tilson commended the government for using a consensus-based approach to drafting the *EBR*, and endorsed the stated purposes of the *EBR*:

> ***[A]all of us want to create something that will give each Ontario citizen the right to a clean environment. There's no question that's what the present NDP government is trying to do, and I think it can be commended for that…***
>
> *Finally, we came to July 1992 and the task force released its report, in which all parties believed that the development of the bill was as it should be, and from my observations, there's general consensus about the workability of this bill.* ***I too, like the member for Mississauga North, think the Progressive Conservative Party certainly agrees in principle with the Environmental Bill of Rights. The name alone, whoever thought it up -- of course anyone is going to agree with an Environmental Bill of Rights; we all want a clean environment…***
>
> *Mr. Wildman, the current minister, introduced the legislation which essentially mirrors the draft bill that was put forward by the task force in July 1992, I believe it was.* ***The overall intention is to provide the residents of Ontario with the necessary mechanisms to protect the environment when the government fails to do so.***
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> ***The fundamental principles which provide the foundation for the Environmental Bill of Rights include that, "The people of Ontario recognize the inherent value of the natural environment"… and the preamble has been read, and of course we all do. "The***

[7] Hansard Transcript 1993-May-31 | Legislative Assembly of Ontario.
[8] Hansard Transcript 1993-Aug-03 | Legislative Assembly of Ontario.

> ***people of Ontario have a right to a healthy environment." Well, how can you oppose that? Of course, we all do. "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." Of course we support that. How can anyone not support that? Finally, "While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner"*** (emphasis added).[9]

In addition, Liberal MPP Stephen Offer expressed support for the *EBR*, its underlying principles, and the entrenchment of legal rights that the public can use to protect the environment and ensure government accountability:

> ***[I]n principle I will be in support of the legislation. I believe the people of this province deserve a framework of protection, I believe the people of this province deserve a framework of expectation as to what their government can and should do in terms of the environment sphere, and I believe it is absolutely important that there be ensconced in legislation a form of accountability****, accountability to those who will require to use different areas of the legislation today and in the future…*
>
> *The legislation has a long path. It is the subject matter of various discussions at various points in time. I think those who took part in the task force, and I do not speak to the government at this time, I speak to those people who took part in the task force around the Environmental Bill of Rights:* ***Pollution Probe, the Canadian Environmental Law Association, the business council, the Canadian Manufacturers' Association, the Ontario Chamber of Commerce and the ministry, but most importantly, the individuals who have seen the need to be part of a process and have been ready, willing and able to signify their commitment in time and effort which resulted in the bill as we now have it…***
>
> ***The Environmental Bill of Rights allows individuals who are dissatisfied with the actions of the government to take issue with the government, to sort of let them in on this decision-making..., I will say in principle that I like that, where people can question government, push government, make certain that government is accountable to them as it should be*** (emphasis added)**.[10]**

Given this non-partisan support, the *EBR* was proclaimed into force in 1994 and the various components of the *EBR* were phased in over time. The *EBR* has remained in force through successive provincial governments, and the *EBR* has been largely unchanged over the past three decades (aside from the controversial 2018 amendment that abolished the office of the independent Environmental Commissioner of Ontario under Part III of the *EBR*).

In light of this chronology, it is unfortunate and unacceptable that Bill 140 is now proposing to repeal the consensus-based *EBR* that literally took years to develop and that enjoys the support of

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[9] Hansard Transcript 1993-Sept-27 | Legislative Assembly of Ontario.
[10] Hansard Transcript 1993-Sept-27 | Legislative Assembly of Ontario.

multiple sectors, interest groups, members of the public, and civil society throughout Ontario. In this regard, Bill 140's proposed repeal of key *EBR* tools appears to be driven solely by ideological considerations rather than any persuasive evidence-based reasons for removing *EBR* rights that continue to be exercised by Ontario residents in order to achieve the threefold purpose of the *EBR*: environmental protection, public participation, and government accountability.

This is not to say that the *EBR* must remain in its original 1993 version in perpetuity. To the contrary, the *EBR* can and should be modernized and strengthened. Fortunately, the Law Commission of Ontario's seminal 2024 report on *EBR* reform offers the Ontario Legislature an excellent blueprint for improving – not repealing – the current suite of *EBR* tools, as discussed below.

(b) *EBR* Success Stories over the Past Three Decades

Several independent observers – such as former Environmental Commissioners of Ontario (ECO), the Auditor General of Ontario, and the Law Commission of Ontario (LCO) – have documented numerous real-life examples where members of the public have used their *EBR* rights to help achieve the above-noted purposes of the *EBR*.

For example, to commemorate the *EBR* on its 20th anniversary, the ECO published a booklet which reviewed various *EBR* case studies and found that the *EBR* has played an important role in environmental protection, public participation, and government accountability:

> ***Over the past 20 years, Ontarians have been able to use the EBR and its tools as a catalyst for important new environmental laws and policies***. *For the past 14 years of my appointment as Commissioner, I have been privileged to see an ongoing dialogue unfold between the public and the government ministries entrusted with the stewardship of our common natural environment. Thousands of people use the Environmental Registry each year to comment on government initiatives, ranging from technical compliance rules to sweeping policies on land use. Communities and individuals have also had input into site-specific permits and licences, commenting on concerns such as local air and water quality, habitat protection, and noise.* ***Ontarians have also used EBR applications and appeals to convince the government to overhaul legislation, change approvals, and bring in new environmental protections***. *We, as Ontarians, can be proud and celebrate how the EBR has contributed to improved environmental protection and conservation in our province. I urge all Ontarians to exercise their EBR rights, and to keep exploring new avenues towards protecting, conserving and restoring our natural environment* (emphasis added).[11]

Similarly, in its 2024 report on the current *EBR*, the LCO described a number of success stories involving the public use of their rights under the *EBR*, particularly in relation to the third-party appeal rights under Part II of the *EBR*:

[11] ECO, *The Environmental Bill of Rights at 20: Your Environment, Your Rights* (2015), page 3.

> *An early evaluation of the EBR's impact on the formulation of environmental law and policy found that it had "provided members of the public with a comprehensive window on environmental decision making in the province, unlike any which existed before."*
>
> ***The Environmental Commissioner further noted that the public has helped improve a broad range of environmental decisions*** *including plans for provincial parks, regulations for managing waste pharmaceuticals, the Mining Act, guidelines for transit planning, as well as specific decisions such as the issuance of permits to withdraw water.* ***There have also been notable examples of improvement in environmental protection due to the EBR's leave-to-appeal provision. These include the revocation of approvals granted to landfill sites; restrictions on water-taking by a multinational company; and the prevention of the burning of tires, plastic and other wastes at a cement plant****. The EBR's request for investigation provision has resulted in a prosecution under the Environmental Protection Act against a company for noise and particulate emissions.* *In addition,* ***the Auditor General has noted that the EBR's "application for review process has been successfully used by Ontarians to prompt ministries to improve environmental laws and policies.****" These include "rules for rehabilitating aggregates pits and quarries, the development of a provincial agricultural soil health strategy, improved sewage management in provincial parks, and an end to the hunting of snapping turtles, an at-risk species*."[12]

In addition, the Auditor General's 2025 report under the *EBR* affirmed the importance of the legislation to Ontarians:

> *The EBR gives Ontarians rights to participate in the government's environmental decision-making with the goal of making better decisions for the environment.*
>
> ***When members of the public contribute to environmental decision-making, their input can improve the quality of decisions and outcomes for the environment by providing information and perspectives that can help decision-makers minimize environmental risks****. Public participation can also lead to greater transparency for government decision-making, greater public awareness of issues and acceptance of decisions, and better implementation of decisions* (emphasis added).[13]

The Auditor General's 2025 report went on to provide recent examples of *EBR* success stories:

> ***We found several examples in 2024-25 where the public used the EBR's tools to achieve better environmental outcomes****. For example:*
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> - *The Environment Ministry took action in response to two applications for investigation. In one case, the Ministry ordered a mining company to prevent water contamination originating from its tailings facility. In the other case, the Ministry*

[12] A New Environmental Bill of Rights for Ontario: Final Paper, pages 23 to 24 (endnotes omitted).
[13] Performance Audit: Operation of the Environmental Bill of Rights, 1993 (2025), page 8.

ensured that proper approvals were in place for sewage works related to the severance and development of three private lots.

- ***A First Nation successfully obtained leave to appeal the issuance of a water-taking permit for a mining company, using an appeal right that would not exist without the EBR***.
- *Members of the public and other stakeholders submitted tens of thousands of comments on government proposals through the Registry. In some cases, the public's input led to changes, such as improvements to waste diversion in Far North communities and the enhanced monitoring of private wells that might be affected by a local aggregate operation* (emphasis added).[14]

Similarly, a leading environmental law textbook[15] has identified numerous instances where the public legal rights entrenched in the *EBR* have led to better environmental outcomes, particularly at the local level.

(c) Ontario's Unpersuasive Rationale for Schedule 8

The Registry notice[16] regarding Bill 140 makes a number of sweeping and unsubstantiated claims that the *EBR* is "duplicative", constitutes useless "red tape", and contains "seldom-used" provisions. CELA is compelled to refute these ill-conceived arguments, based on our decades-long experience and successful usage of *EBR* rights on behalf of our clients.

The EBR is not "Duplicative"

First, the province's claim that the *EBR* is "duplicative" is without merit and should be given no credence. In short, the governmental duties and responsibilities established under the *EBR* are not found in any other provincial environmental laws.

For example, the public's third-party appeal right under the *EBR* is not contained in the *EPA, EAA*, *Ontario Water Resources Act*, or other environmental statutes in Ontario. Therefore, if the *EBR* appeal right is eliminated by Bill 140, then concerned residents will have no other statutory right of appeal. Instead, they will likely be forced to go to court if they want to challenge potentially harmful environmental approvals through judicial review applications or other legal proceedings, which are costly and time-consuming.

Second, if Bill 140 is enacted, the provincial government purports to address "duplication" by posting notice of Acts, regulations, and policies on the business-centric Ontario Regulatory Registry (ORR) instead of the *EBR* Registry. This proposal is not an adequate substitute because the mandatory *EBR* provisions and obligations about public notice and comment are not replicated in the ORR regime.

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[14] Ibid.

[15] Paul Muldoon and Julie Williams (eds), *An Introduction to Environmental Law and Policy in Canada (4th ed.),* Toronto: Emond, 2025, at pages 369 to 381.

[16] Proposed amendments to the Environmental Bill of Rights, 1993 and related amendments to the Environmental Protection Act | Environmental Registry of Ontario.

Under Part III of the *EBR*, for example, the Auditor General of Ontario plays an important oversight role when annually reviewing and reporting on whether these kinds of proposals were properly placed on the Registry as required by law, and whether decisions on these proposals duly considered the environmental principles set out in ministries' "Statements of Environmental Values" under the *EBR* (which Bill 140 also proposes to abolish, as discussed below).

In addition, the *EBR* requires that Ministers "shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry."[17] Similarly, the *EBR* requires that the final decision notice must be posted on the Registry with an explanation of how public input was considered during the decision-making process.[18] In our view, it appears that these mandatory *EBR* safeguards are not reflected adequately or at all in the ORR regime.

The ERO notice for Bill 140 also argues that Ontarians can report environmental incidents to the Environment Ministry's Spill Action Centre (SAC) instead of using *EBR* applications for investigation. Again, this non-legislative reporting option is not an acceptable substitute for the current investigation provisions in Part V of the *EBR*, as described below.

First, the SAC is primarily intended for the reporting of spilled pollutants (i.e. sudden, unanticipated or accidental discharge of contaminants into the environment), rather than other forms of environmental problems (i.e. proponent non-compliance with approval conditions or proponent failure to obtain a required approval).

Second, the *EBR* expressly establishes clear timing and reporting obligations upon the government if an application for investigation is filed, but none of these important procedural requirements are triggered if someone merely phones or emails the SAC or a local office of the Environment Ministry.

As described below, the result of the Bill 140 proposal is that the Ministry response (if any) to a complaint filed with the SAC or Ministry office is discretionary and uncertain, as compared to the prescriptive provisions of Part V of the *EBR*. In addition, the Auditor General routinely scrutinizes and reports upon the Ministry's handling of *EBR* investigation requests for accountability purposes.

Accordingly, the loss of Part V of the *EBR* (and other *EBR* tools) effectively returns Ontario to the pre-*EBR* era, despite the fact that the *EBR* was specifically enacted to address systemic gaps that existed in the province's environmental law framework prior to 1993, especially in relation to public participation and government accountability.

On this point, CELA notes that the most important (and most used) legal rights under the *EBR* (i.e. mandatory public notice/comment on environmentally significant proposals; third-party appeals of instruments; applications for review or investigation, etc.) did not exist in provincial legislation before 1993 and were therefore unavailable to Ontario residents prior to the *EBR*. Accordingly,

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[17] *EBR*, section 35.
[18] *EBR*, section 36(4).

CELA submits that the current provincial government has offered no persuasive public interest reasons or a compelling environmental rationale for repealing *EBR* rights and ushering in a return to the deficient environmental law regime from a long-gone era.

The EBR is not "Red Tape"

CELA notes that Bill 140 was introduced by Ontario's Minister of Red Tape Reduction, not the Environment Minister who actually administers the *EBR, EAA*, and *EPA*.

However, the *EBR* is a bedrock environmental law in Ontario, and is not useless "red tape" as claimed by the Ontario government. To the contrary, the *EBR* contains essential environmental safeguards and fundamental legal rights which must be maintained and enhanced in order to ensure sustainability and provide public access to environmental justice.

Moreover, the government's "red tape" claim appears to be premised on the long-discredited "jobs vs the environment" argument that claims environmental regulation is "red tape" that unduly constrains economic growth and development. To the contrary, it is well-recognized that a strong economy depends on a healthy environment. In short, good sustainable jobs can be created in Ontario without sacrificing the environment and removing essential legislative guardrails such as the *EBR*.

The Need to Fix "Seldom Used" EBR Tools and to Promote EBR Usage

The ERO notice indicates that Schedule 8 of Bill 140 is intended to remove – and not replace – "seldom-used procedural rights to commence civil actions for harm to a public resource."

CELA acknowledges that the public's legal rights under Part VI of the *EBR* (i.e. civil actions to protect public resources or to address public nuisances causing environmental harm) have rarely been used by Ontario residents to date.

As described below, however, the main explanation for the limited use of the section 84 right to sue is the *EBR*'s imposition of extraneous steps and other legal constraints that undermine the efficacy of this right. This situation was correctly summarized by the LCO in its 2024 report on the *EBR*:

> *These limitations, coupled with the high costs of litigation and the possibility of adverse costs if an action is unsuccessful, are likely to deter potential plaintiffs from pursuing section 84 litigation. Perhaps not surprisingly, section 84 litigation has rarely been commenced in Ontario. The Environmental Commissioner has expressed concern about the strict test for bringing a s.84 action but has cautioned that given "the current architecture of the Act, any potential amendment to the action in harm to a public resource in s.84 will be very complex and necessarily lead to other changes in related sections of the EBR."* ***The LCO believes that incorporating a statutory cause of action for the right***

> ***to a healthy environment into the EBR is far preferable to rectifying the deficiencies with section 84****. As a result, we recommend this section be deleted* (emphasis added).[19]

Accordingly, LCO recommendations 3 and 4 provide that the current right to sue in the *EBR* should be replaced by a more focused "environmental protection action" that will help to achieve environmental protection and governmental accountability through the civil courts:

> *3. The EBR should be amended to allow a person to commence an environmental protection action in a court of competent jurisdiction against a person who contravenes any provision in a provincial Act, regulation or instrument that causes or is likely to cause significant harm to the environment.*
>
> *4. The EBR should provide that every person residing in Ontario has the right to commence an environmental protection action regardless of whether they are directly affected by the matter.*[20]

In our view, if the Ontario government is genuinely concerned about public non-use of the Part VI right to sue, then it should amend the *EBR* in the manner recommended by the LCO, rather than simply repeal sections 82 to 103 of the *EBR* and leave Ontarians with no statutory right to sue to protect the environment under the *EBR*.

At the same time, in order to ensure increased public usage of a revised right to sue (and other *EBR* rights), it is long overdue for the Ontario government to comply with its legal duty under the *EBR* to undertake public education programs about the *EBR*.[21] On this point, the most recent Auditor General's report under the *EBR* was again critical of the Environment Ministry's ongoing failure or refusal to deliver any public education programs about the *EBR* and how to use it:

> *Since 2019, the [Environment] Ministry has been responsible for providing public education programs to the public about the EBR.* ***In our past audit reports, we found that the Ministry has done little to fulfill this obligation****.*
>
> *We found that, in 2024-25, the Environment Ministry did not take any action to provide educational programs to the public about the EBR…*
>
> ***The Environment Ministry continues to not provide educational programs about the EBR to the public, which it has a legal obligation to do*** (emphasis added).[22]

In our experience, the public usage of *EBR* tools has slowly decreased in recent years after the ECO office was terminated in 2018. Prior to that time, the ECO had been extremely active in educating the public on using the *EBR*, but the Environment Ministry has not kept these programs running and functional.

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[19] A New Environmental Bill of Rights for Ontario | Final Report – Law Commission of Ontario, page 104 (endnotes omitted).
[20] Ibid, page 63.
[21] *EBR*, section 2.1.
[22] Performance Audit: Operation of the Environmental Bill of Rights, 1993 (2025), page 21.

PART III – CELA'S SPECIFIC COMMENTS ON BILL 140

It is beyond the scope of these comments to respond to all of the objectionable amendments proposed in Schedules 7, 8, and 9 of Bill 140. Instead, this submission will focus on the amendments of greatest concern to CELA at present.

(a) Schedule 7 of Bill 140

Schedule 7 of Bill 140 proposes to repeal section 17.5 of the *EAA*, which currently requires proponents of large landfill projects to obtain written support (i.e. municipal council resolutions) from municipalities in which the projects are proposed.

This important provision was inserted into the *EAA* by the provincial government in 2020, and it provides municipalities with much-needed leverage for safeguarding the local environment and residents' health and safety when faced with proposals to build or expand large landfills within their communities.

For example, CELA has been involved in a case where section 17.5 of the *EAA* properly resulted in the termination of a controversial proposal to construct a large landfill in a worked-out quarry in southwestern Ontario. Citing unresolved environmental concerns about the proposal, the local municipalities refused to provide their written consent, and the private landfill proponent eventually withdrew the environmental assessment application.

Notably, the municipalities in Oxford County recently released a statement opposing the proposed repeal of section 17.5 of the *EAA*.[23] In response to municipal pushback, the Environment Minister has suggested that Ontario will not force landfills upon unwilling municipalities. If Ontario intends to honour this commitment, then it is imperative that section 17.5 be left intact and unchanged.

Accordingly, CELA concludes that Schedule 7's proposed elimination of section 17.5 of the *EAA* will unjustifiably deprive municipalities of an important legal tool for addressing landfill proposals and their adverse environmental impacts. Schedule 7 should be withdrawn from Bill 140.

(b) Schedule 8 of Bill 140

Amendments to Part I of the EBR

Schedule 8 proposes to amend Part 1 of the *EBR*, which sets out the public interest purposes and principles which underpin the interpretation and application of the legislation.

For example, Schedule 8 proposes to amend the *EBR* by removing an existing purpose that directs government to, "where reasonable, restore the environment." The ERO notice for Bill 140 provides no environmental rationale for this amendment. However, in many areas of Ontario, the natural environment is already contaminated or degraded from past or ongoing activities and facilities.

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[23] Statement from Oxford's municipalities concerning Ontario's proposed actions to address landfill capacity - Oxford County.

Accordingly, CELA submits that the *EBR* should still seek to undertake restoration "where reasonable", which is an important qualifier that was originally proposed by the *EBR* Task Force report.

In addition, Schedule 8 proposes to remove the current provision in the *EBR* which states that to fulfil the purposes of the Act, the *EBR* provides for "increased access to the courts by residents of Ontario for the protection of the environment." Increased public access to the courts was a central component of the *EBR* Task Force's vision for protecting the environment and enhancing government accountability. The ERO notice for Bill 140 provides no public interest reasons for departing from the *EBR* Task Force's well-founded position that public access to the courts is necessary and appropriate in the environmental context. In fact, since the ERO notice indicates that the Part VI rights to sue are "seldom used," it is unclear why these rights are being abolished under Bill 140 if they are not resulting in numerous proceedings that are unduly tying up governmental or judicial resources.

More fundamentally, it is a critical aspect of environmental justice that members of the public have access to the courts to protect their environment and health. As discussed below, Schedule 8's corresponding proposal to wholly remove – but not replace – the existing legal rights in Part VI of the *EBR* must be withdrawn.

Amendments to Part II of the EBR

Schedule 8 proposes extensive and alarming amendments to virtually all of the important components of the mandatory public notice/comment regime that currently exists under Part II of the *EBR*.

First, Schedule 8 proposes to wholly remove the Statement of Environmental Values (SEV) provisions in sections 7 to 11 of the *EBR*. SEVs, which were developed and amended with public input over time, are significant documents that establish important core principles that must be considered in provincial decisions that can significantly impact the environment. While there is still room for improvement in the current suite of SEVs under the *EBR*, CELA submits that the SEV mechanism should be retained within the *EBR*.

For example, the Environment Ministry's SEV outlines several key environmental principles and commitments that should be considered during ministry decision-making on Acts, regulations, policies, and instruments.[24] In fact, the Ministry has been expressly required by the *EBR*[25] to consider the principles in the SEV, such as adopting an ecosystem approach, considering the cumulative effects of its decisions, assessing the potential effects of its decisions on current and future generations, using a precautionary and science-based approach, implementing pollution prevention, and applying the polluter pays principle.

Second, the government's proposal to place notice of legislation, regulations, and policies on the Ontario Regulatory Registry instead of the *EBR* registry is unacceptable for several reasons. For

[24] Statement of Environmental Values : Ministry of the Environment and Climate Change | Environmental Registry of Ontario.
[25] *EBR*, section 11.

example, eliminating SEVs means that prescribed ministries will no longer be required by law to consider or apply the environmental principles and commitments contained in SEVs when they are posting proposals on the Regulatory Registry and making decisions about Acts, regulations, and policies.

In particular, Schedule 8 would virtually eliminate mandatory public notice/comment opportunities under the *EBR* in relation to legislation, regulations, and policies that may significantly impact the environment. CELA submits that sections 15 and 16 of the *EBR* should be maintained in their current form for the purposes of environmental protection as well as transparency and accountability for government decision-making.

The practical effect of the proposed amendments in Schedule 8 is that there are no apparent Acts, regulations, or policies that will be subject to public notice/comment pursuant to sections 15 and 16 of the *EBR*. This is because all "instruments," as defined very broadly in the *Modernizing Ontario for People and Businesses Act*, will be exempted from *EBR* posting requirements if Bill 140 is enacted. Therefore, any analysis of proposed Acts, regulations, and policies under this "red tape reduction" legislation will invariably focus on reducing or offsetting "direct compliance costs" for regulated entities, and means that government officials are no longer expressly required to analyze identify, evaluate, and mitigate or avoid adverse environmental impacts pursuant to the *EBR*.

Accordingly, as discussed above, the ERO notice/comment provisions on proposed Acts, regulations and policies are not adequately replaced by perfunctory notices posted on Ontario's Regulatory Registry. There are no mandatory law-based timelines under the Regulatory Registry to post proposals for comments before decisions are made, and the focus of this limited comment opportunity is not on significant environmental effects or risks to human health and safety. Unlike the *EBR*, there also appears to be no enforceable duty under the auspices of the Regulatory Registry for the provincial government to take public input into account, or to post decision notices which explain how public input influenced the decision-making process.

Third, Schedule 8 proposes to wholly eliminate sections 38 to 48 of the *EBR*, which are the provisions that currently enable members of the public, First Nations and communities to seek leave (permission) to appeal Class I or II instruments to the Ontario Land Tribunal. It is CELA's understanding that notice of prescribed approvals will still be placed on the ERO, but the critically important third-party appeal right will no longer be available to Ontario residents. This proposal is arguably the most significant and egregious *EBR* amendment in Schedule 8, and it will greatly impede environmental protection and government accountability if Bill 140 is enacted.

For example, Class I and Class II instruments prescribed by an *EBR* regulation[26] encompass a broad range of environmental permits, licences, and approvals, many of which can have significant environmental impacts within local communities. These prescribed instruments include permits to take water, approvals for municipal drinking water systems, *EPA* and *Ontario Water Resources Act* orders, and environmental compliance approvals for discharges of air contaminants or wastewater, sewage works, and landfills.

[26] O. Reg. 681/94 CLASSIFICATION OF PROPOSALS FOR INSTRUMENTS | ontario.ca.

However, if Schedule 8 is enacted, there will no longer be an avenue for Ontarians to seek administrative relief from the Tribunal, even where Class I or Class II instruments will have significant environmental or health effects on members of the public, First Nations, or other communities. Instead, interested or aggrieved parties will likely be forced to go to court to challenge harmful or unreasonable environmental decision-making in relation to the issuance or amendment of environmental approvals.

It is beyond dispute that the current *EBR* leave-to-appeal provisions, and an ability to challenge a Class I or Class II decision by the Environment Ministry, have been used by individuals, First Nations, and communities for decades. They are the primary way for Ontario residents to challenge, or seek the revocation of, fundamentally deficient or potentially harmful project approvals, but they also provide a significant opportunity to impose better terms and conditions in approvals. In this regard, CELA has assisted Ontarians in exercising their third-party appeal right in numerous cases over the past three decades, including (but not limited to) the following situations.

For example, in the very first case where leave-to-appeal was granted under the *EBR*, CELA represented a citizens' group that was opposed to a proposal by the Environment Ministry to authorize the re-opening of a dormant landfill in southwestern Ontario. The group's hydrogeologist raised numerous concerns about the site's potential adverse impacts upon groundwater and surface water. After the Ministry issued amendments to the existing landfill approval, the citizens' group obtained leave from the former Environmental Appeal Board to appeal the amendments.[27] The net result was the Ministry eventually decided to revoke the entire approval and ordered the private proponent to properly clean up and close the site permanently. This positive outcome would not have possible without the EBR's third-party appeal right.

More recently, CELA used the leave-to-appeal provisions in 2025 on behalf of our client Grassy Narrows First Nation to challenge a water-taking permit issued for exploratory activities at a proposed gold mine in northwestern Ontario. The Ontario Land Tribunal made the following findings:

> *Given the potential for methylmercury production and the release of contaminants as a result of the proposed water takings under the Permit, the Tribunal finds that it appears that there is a threat of serious environmental impacts. In circumstances where even a small amount of contamination can cause significant health and environmental harm, the use of monitoring and after-the-fact adaptive management measures have reduced value. The conditions imposed under the Permit are not, in the view of the Tribunal, sufficient to eliminate the risk of causing significant harm to the environment*.[28]

After granting Grassy Narrows First Nation leave to appeal, the Tribunal ultimately issued an order revoking the permit on consent of all parties, including the mining company that was issued the permit. Without the *EBR* third-party appeal provisions in place, the serious environmental and

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[27] *Barker v. Ontario*, [1996] O.E.A.B. No. 27 (Ont. Env. App. Bd.).
[28] 2025 CanLII 21796 (ON LT) | Grassy Narrows First Nation v Ontario (Environment, Conservation and Parks) | CanLII.

human health concerns of the downstream First Nation about mining-related activities could not have been raised with, or resolved by, the independent Tribunal.

Similarly, the *EBR* third-party appeal right was successfully used by CELA clients to obtain more stringent conditions in an approval issued under the *EPA* for a large landfill near Napanee, Ontario. The Environment Ministry had issued amendments to the approval that governed the closed site, but leave to appeal under the *EBR* was granted by the Environmental Review Tribunal on the grounds that the Ministry decision appeared to be unreasonable and could result in significant environmental harm. After conducting an appeal hearing, the Tribunal allowed the residents' appeal and imposed several new and more protective conditions in the approval to strengthen monitoring, reporting and contingency plan requirements, especially in relation to groundwater and surface water contamination.[29]

Another *EBR* appeal example is a CELA case involving a proposal by a cement manufacturing facility to burn used tires, plastics, and other waste materials as part of an "alternative fuels" strategy. CELA's clients and other community members successfully utilized the *EBR* leave-to-appeal provisions to raise their concerns about the impacts of the proposal on the local community. In granting leave to appeal, the Tribunal made the following finding:

> *The Tribunal finds that the kinds of contaminants to be emitted from the Lafarge kiln from the use of both traditional and waste-derived fuels are potentially hazardous to the environment and human health. Their toxicity and impact depend upon their level of emissions, concentrations, and total loading in the environment*.[30]

The Tribunal's leave decision under the *EBR* was subsequently upheld by the Divisional Court.[31] Notably, the two *EPA* approvals issued to the cement company were ultimately revoked by the Director with the concurrence of the Tribunal and the hearing parties. This important and precedent-setting case would not have been possible but for the successful exercise of our clients' third-party appeal right under the *EBR*.

For the foregoing reasons, CELA submits that the existing leave-to-appeal provisions must be maintained – not repealed – under the *EBR*. As a longer-term reform, CELA agrees with the LCO recommendation[32] that the *EBR* leave test[33] should be deleted so that Ontarians can file appeals against approval decisions as of right, just like the proponents' automatic right to appeal Ministry decisions to the Tribunal.

Amendments to Part IV of the EBR

Bill 140, Schedule 8, clause 13 proposes to repeal Part IV of the *EBR* in its entirety. This will remove the current provisions which allow members of the public to formally request that government ministries review existing legislation, regulations, policies and instruments to protect

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[29] 2015 CanLII 86925 (ON ERT) | CCCTE v Ontario (Environment and Climate Change) | CanLII.
[30] *Dawber v. Ontario (Ministry of the Environment)*, [2007] O.E.R.T.D. No. 25).
[31] 2008 CanLII 30290 (ON SCDC) | Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal) | CanLII.
[32] A New Environmental Bill of Rights for Ontario: Final Paper (2024), page 95.
[33] *EBR*, section 41.

the environment. Although prior to the *EBR*, Ontario residents could write to the appropriate minister and ask for consideration or reconsideration of a policy, Act, regulation, or instrument, there was no standardized process for doing so. Moreover, there were no statutory requirements requiring government ministries to respond to such requests from the public.

Enactment of the *EBR* established a uniform, predictable review process for making a request for review.[34] The *EBR* also ensured government accountability by requiring that the minister give notice within sixty days of his or her decision to conduct the review and mandating that the review be conducted within a reasonable time.[35]

Local residents, communities, and First Nations have used this important *EBR* tool for decades to bring the attention of the provincial government to unacceptable pollution and inadequate environmental permits and approvals. Applications for review have also sometimes been the impetus for important legal reform.

CELA clients, for example, relied on the application for review provision, in revoking an outdated approval that was issued by the Environment Ministry to the ED-19 dump located in eastern Ontario. The landfill was never built despite being approved two decades earlier and the proponent wanted to sell the site to a private waste disposal company. CELA filed an *EBR* application for review on behalf of residents and requested revocation of the unused approval. The residents were concerned that opening the landfill would adversely impact public health, well water quality and wildlife habitat. The application for review was granted, and the Environment Ministry revoked the approval in 2020.

The Auditor General of Ontario has noted other instances of where application for review have improved environmental protection in Ontario. These include changes that improved the rehabilitation of aggregate pits and quarries under the *Aggregate Resources Act*, improvement in sewage management in provincial parks, and an end to the hunting of snapping turtles, which is listed as a Species of Special Concern.[36]

The application for review provision in the *EBR* has played an important role in ensuring environmental protection and government accountability in Ontario. CELA therefore recommends that clause 13 of Schedule 8 not be adopted.

Amendments to Part V of the EBR

Bill 140, Schedule 8, clause 13 proposes to wholly repeal Part V of the *EBR,* eliminating applications for investigation. Members of the public, First Nations and communities have used these provisions to bring alleged contraventions of legislation, regulations and instrument to the attention of the responsible minister.

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[34] *EBR*, s. 61(1) and s. 61(3)
[35] *EBR*, s.70 and s. 69(1)
[36] Office of the Auditor General of Ontario, Annual Report 2022, *Operation of the Environmental Bill of Rights, 1993* at 10.

For example, community members raised concerns unsuccessfully for almost 30 years with municipal and provincial governments about the noise and particulate emissions impacts of a nearby business operation, but no action was taken to address the complaints. In response, CELA filed an *EBR* application for investigation on behalf of two residents which led the Environment Ministry to ultimately investigate the matter and lay charges. Subsequently, the company was convicted and fined.

More recently, the Auditor General of Ontario has noted other successful outcomes from applications for investigation. One case resulted in the Environment Ministry ordering a mining company to prevent water contamination from its tailing ponds.[37] In another case, the Environment Ministry ensured that proper approvals for sewage works were put in place for the development of three private lots.[38]

Prior to the *EBR*, members of the public could request an investigation, but there was no guidance on what type of information should be submitted along with the request. Moreover, there was no statutory duty for the government to respond to such requests from the public.

The *EBR* establishes a uniform, standardized process for submitting an application for investigation. It also provides guidance on the type of information that should be included with an application.[39] Furthermore, it establishes timelines and important accountability mechanisms on how government ministries should respond to applications for investigation.

The responsible minister, for example, must acknowledge the request for investigation within twenty days of receipt of the application.[40] Furthermore, the *EBR* imposes a duty on the minister to undertake an investigation unless the application is frivolous and vexatious; the alleged contravention is not serious enough to warrant an investigation; or the alleged contravention is not likely to cause harm to the environment.[41] If the minister decides not to undertake the investigation, the minister must provide notice to the applicant, any party alleged to have been involved in the contravention, and the auditor general.[42] The notice must be provided within sixty days of receiving the application for investigation.[43]

Applications for investigation, like the applications for review, have played an important role in ensuring environmental protection and ensuring government accountability in Ontario. CELA, therefore, recommends that clause 13 of Schedule 8 not be adopted

Amendments to Part VI of the EBR

Right to Sue to Protect Public Resource Should be Replaced with a Comparable Right

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[37] Office of the Auditor General of Ontario, *Operation of the Environmental Bill of Rights, 1993*(2025) online: Performance Audit: Operation of the Environmental Bill of Rights, 1993 at 8.
[38]Office of the Auditor General of Ontario, *Operation of the Environmental Bill of Rights,1993* (2025) online: Performance Audit: Operation of the Environmental Bill of Rights, 1993 at 8.
[39] *EBR*, s. 74(2).
[40] *EBR*, s. 74(5).
[41] *EBR*, s. 77(2).
[42] *EBR*, s. 78(1).
[43] *EBR*, s. 78(3).

Bill 140, Schedule 8, clause 13 would wholly eliminate the current right for Ontario residents to bring a court action to protect public resources under s. 84 of the *EBR*.

Section 84 provides that an Ontario resident may commence a court action to address a contravention of an Act, regulation, or instrument that caused or will imminently cause significant harm to a public resource. Public resource is defined under the *EBR* as the air, water, public lands, and wildlife.[44]

Section 84 imposed procedural hurdles, including the requirement that a plaintiff must first file a request for investigation with the appropriate government ministry before commencing an action.[45]

The *EBR* also provides a defendant with several defences, including an interpretation of the instrument that the court considers reasonable. Legal commentators have noted that the inclusion of this defence was somewhat unusual given that a mistake of law or a reasonable but mistaken interpretation of the law has not generally been recognized as a defense by the courts.[46]

These factors, along with the high cost of litigation and the risk of an adverse costs award if an action is unsuccessful, has meant that section 84 has rarely been used. In a 2024 report on the *EBR*, the Law Commission of Ontario, recommended incorporating a statutory cause of action to a healthy environment as preferable to attempting to rectify the deficiencies with section 84.[47]

Unfortunately, Bill 140 simply deletes the right to bring a section 84 action but does not replace it with a comparable right to protect Ontario's public resources. CELA recommends that section 84 of the *EBR* be replaced with a comparable right to protect public resources in Ontario.

Section 103 Public Nuisance Actions Should be Maintained.

Bill 140, Schedule 8, clause 13 proposes to eliminate the reforms that liberalized the rules for bringing an action in public nuisance that caused harm to the environment. Prior to the *EBR,* bringing a public nuisance action required a plaintiff to either obtain consent from the Attorney General or prove that the damages suffered were different in kind or degree from those sustained by the general public.

Section 103 of the *EBR* removed these requirements. Consequently, under the *EBR*, a plaintiff who has suffered direct economic loss or personal injury is not barred from bringing an action simply because the plaintiff has not suffered "special damages" Moreover, consent from the Attorney General is no longer required.

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[44] *EBR*, s. 82.
[45] *EBR*, s 84(2).
[46] Joseph F. Castrilli, "Environmental Rights; Statutes in the United States and Canada; Comparing the Michigan and Ontario experience" (1998) Villanova Environmental Law Journal 349, online: Environmental Rights Statutes in the United States and Canada: Comparing the Michigan and Ontario Experiences.
[47] Law Commission of Ontario, *A New Environmental Bill of Rights for Ontario,* Final Paper, March 2024. https://lco-cdo.org/wp-content/uploads/2025/11/LCO-Environmental-Accountability-Final-Paper.pdf at 104,

Bill 140 will eliminate the incremental reforms that were made by the *EBR* to the law of public nuisance. This, in turn, will significantly undermine Ontarians ability to commence court actions to protect public resources when governments fail to act. CELA recommends that section 103 of the *EBR* be maintained.

Schedule 8 Seeks to Restrict Liability

Bill 140, Schedule 8, clause 16 proposes to restrict liability arising from the repeal of most of the *EBR*. It does this by precluding compensation for the enactment of Schedule 8 or any regulation to deal with transitional matters.

The inclusion of clause 16 is a clear indication that the government is concerned about potential liability for any ensuing harm that may occur if Schedule 8 and transitional regulations are adopted.

If clause 16 is adopted, it would prevent access to justice for Ontarians for any harm they may suffer due to the repeal of the core components of the *EBR*. CELA therefore recommends clause 16 of Schedule 8 not be adopted.

Transition Provisions in Schedule 8 are too Broad

Bill 140, Schedule 8, clause 17(1.3) provides for broad authority on transitional matters, including allowing for regulations to be "effective with reference to a period before it is filed." This clause will allow the government to retroactively terminate matters that are currently ongoing under the *EBR*. This potentially includes any ongoing *EBR* processes at the Ontario Land Tribunal, and applications for investigation and applications for review which have been filed with the appropriate minister.

CELA is of the firm view that it would be extremely unfair to terminate matters which Ontarians have undertaken in reliance of their existing rights under the *EBR* to protect the environment. CELA therefore recommends that all existing legal processes, applications for review, and applications for investigation under the *EBR* be allowed to be determined on their merits.

(c) Schedule 9 of Bill 140

Schedule 9 proposes to repeal third-party appeal rights under the *EPA*, which currently enable residents, citizens' groups, and other persons to appeal the issuance of Renewable Energy Approvals (REA) to the independent Ontario Land Tribunal for a public hearing and decision (i.e. uphold, vary, or revoke the REA).

This third-party appeal right has existed in the *EPA* since 2009, and it can be used as of right by an appellant without first seeking leave (permission) to appeal to the Tribunal. If a REA appeal is filed, then the appellant must demonstrate that carrying out the renewable energy project (i.e. a large solar facility or wind farm) in accordance with the REA will cause: (a) serious harm to human health; or (b) serious and irreversible harm to plant life, animal life, or the natural environment.

Despite the stringent appeal test, the value of this third-party appeal right under the *EPA* was demonstrated in relation to the issuance of a REA for a wind farm located in Prince Edward County. Appeals were filed by local residents' groups and after the completion of Tribunal hearings and related court proceedings, the Ministry's decision to issue the REA was ultimately revoked on the grounds that there would be harm to a species at risk (i.e. Blanding's turtle).[48]

Schedule 9 also proposes to amend the Act's definitions of "renewable energy project" and "renewable energy generation facility" to include prescribed types of bio-mass (i.e. organic material) used for energy production purposes, such as energy-from-waste incinerators.

In CELA's view, the proposed elimination of existing REA appeal rights and the amended definitions under the *EPA* pave the way for burning organic material rather than diverting this valuable resource from disposal. Schedule 9 should be withdrawn from Bill 140.

PART IV – CONCLUSION AND RECOMMENDATION

For the foregoing reasons, CELA concludes that Bill 140 improperly proposes to strip away long-standing public participation rights, reduce environmental protection, and decrease governmental accountability for its decisions affecting the environment.

Accordingly, CELA strongly urges the Ontario government to immediately withdraw Schedules 7, 8 and 9 of Bill 140. Taken together, these three Schedules represent one of the most anti-environment laws that CELA has observed in Ontario in recent decades.

CELA is particularly opposed to the attempt in Schedule 8 to eviscerate the *EBR*. Before the *EBR* was enacted in 1993, environmentally significant decision-making was largely confined to closed-door discussions between government officials and private proponents. The public, First Nations and local communities had no legal right to participate in environmental decision-making by government, and had no legal right to hold government accountable for such decision-making. These significant deficiencies in the pre-existing legal framework were addressed by the passage of the landmark *EBR*, which has been used for the past three decades by Ontarians to protect themselves and their communities from environmental harm.

Viewed in this light, Schedule 8 of Bill 140 is an unacceptable and unjustifiable proposal to turn back the clock, remove essential environmental safeguards, and deprive Ontarians of the most important *EBR* tools that are currently available in law.

November 17, 2026

[48] See, for example, 2015 ONCA 269 (CanLII) | Prince Edward County Field Naturalists v. Ostrander Point GP Inc. | CanLII and 2016 CanLII 35406 (ON ERT) | Prince Edward County Field Naturalists v Ontario (Environment and Climate Change) | CanLII.