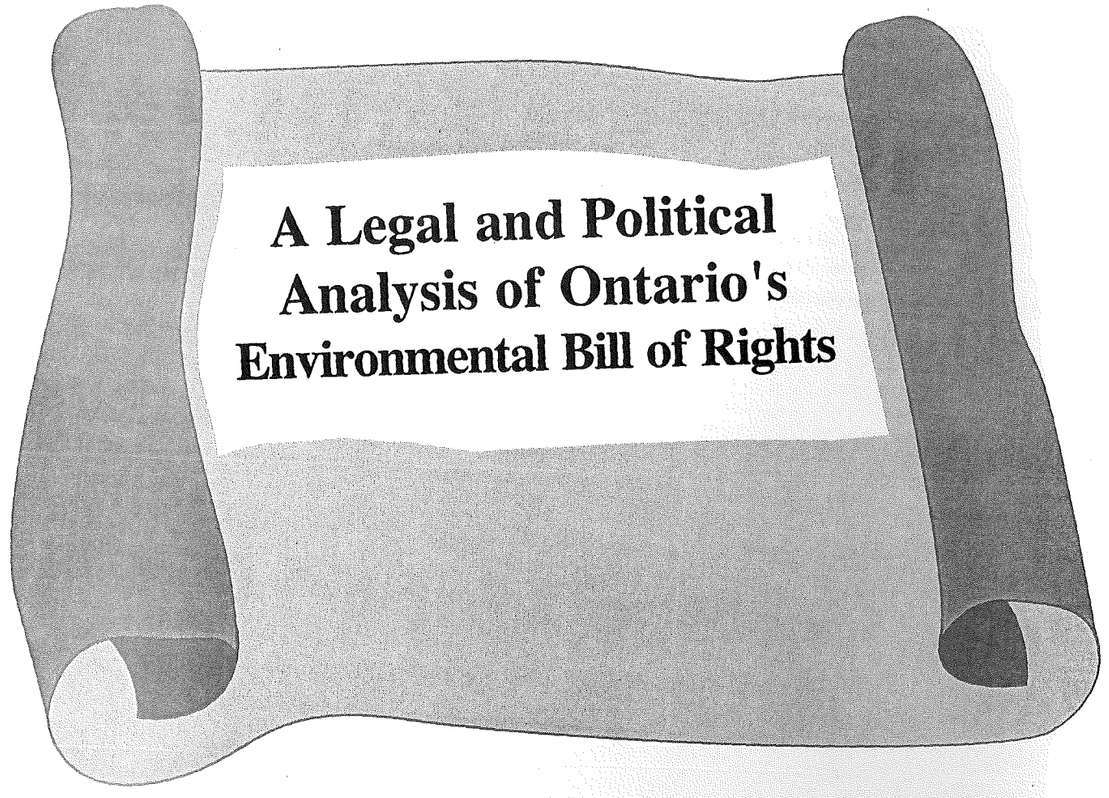
ACHIEVING THE HOLY GRAIL?



CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

ACHIEVING THE HOLY GRAIL?

A LEGAL AND POLITICAL ANALYSIS OF ONTARIO'S ENVIRONMENTAL BILL OF RIGHTS

Mark S. Winfield, Ph.D.
Director of Research

Glenna J. Ford, LL.B.
Research Associate

Gordon P. Crann, LL.B.
Research Associate

Canadian Institute for Environmental Law and Policy
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Founded in 1970, the Canadian Institute for Environmental Law and Policy (CIELAP) is an independent, not-for-profit professional research and educational organization committed to environmental law and policy analysis and advancement. CIELAP's research is intended to assist government, industry, public interest groups and individuals in their decision-making, and to promote the principles of sustainability, including the protection of health, natural environment, and well-being of present and future generations.

For more information about this publication or about CIELAP contact the:

Canadian Institute for Environmental Law and Policy
517 College Street, Suite 400
Toronto, Ontario
M6G 4A2

tel: (416) 923-3529
fax: (416) 923-5949
E-mail: CIELAP@Web.apc.org

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I. INTRODUCTION

The concept of an environmental bill of rights has been central to the environmental law reform agenda in Ontario for the past two decades. In this context, the enactment of an *Act Respecting Environmental Rights in Ontario*[1] by the Ontario Legislature in December 1993 represents a major achievement for Ontario's environmental movement. The Environmental Bill of Rights (EBR) has been described "as the most important piece of environmental legislation enacted in Ontario since the *Environmental Assessment Act* of 1975."[2]

1) Origins of the Environmental Bill of Rights Concept

Common-Law Environmental "Rights"

Prior to the enactment of provincial environmental protection statutes in the 1950's, 60's and 70's, the common law provided a number of potential grounds on which someone affected by environmental damage might obtain redress, in the forms of either injunctions or awards of compensatory damages. These causes of common law actions might be described as a kind of environmental "rights." Among the most important of the common law causes of action were: *nuisance*, which was based on the unreasonable or unnecessary interference with the enjoyment of property; *riparian rights*, which protected downstream owners of property bordering on water bodies from interference with the flow or quality of water by upstream users; *trespass*, which was founded on the unauthorized entry into or damage to property; and *strict liability*, which made individuals responsible for the damage done by the escape of dangerous materials from their property.[3]

However, these common law "rights" suffer from a number of limitations. Each of the causes of action arises from the common-law right of property owners to the enjoyment of their property. This means that an individual's own property must be affected in order to have "standing" to seek relief through the courts. Secondly, litigation is potentially expensive, and losing plaintiffs in Canada can be faced with paying not only their own legal costs, but those of the defendants as well.[4]

Notwithstanding these limitations prior to the Second World War, Canadian courts, unlike their U.S. counterparts, generally were prepared to uphold common-law rules and rights, even in the face of growing demands of industry to use the environment as a sink

for its wastes.[5] However, as the pace of industrialization intensified in the post-war period, the strong defence of common law environmental property rights by the courts began to be perceived as a potentially significant barrier to industrial development. This was especially true in light of a number of successful actions by riparian landholders in Ontario against new industrial and municipal facilities in the late 1940's and early 1950's.[6]

In response to these developments in 1956 and 1957, statutes[7] were enacted by the government of Premier Leslie Frost establishing the Ontario Water Resources Commission, and granting it authority over the use of water resources in the province and the maintenance of their quality.[8] The approval of the Commission was required before a work which removed water from a water body or discharged materials into it could be constructed or operated.[9] Such approval established "statutory authorization" for the discharge of pollutants from the facilities in question, and thereby provided a defense against common-law actions related to any damage which the pollutants might cause.[10]

Environmental Regulation and Environmental Rights

The *Water Resources Commission Act* approach of severely limiting the potential for private common law actions to curb pollution, and replacing them with a statutory regime for approval and regulation provided the basic model for the development of environmental regulatory systems by provincial governments throughout Canada in the 1960's and 70's. The structure appeared to create a means of facilitating further industrial development, while permitting a degree of public control over environmental pollution. In Ontario, the process of establishing regulatory control over the activities of industry, culminated with the passage in 1971 of a comprehensive environmental protection statute, the *Environmental Protection Act*,[11] encompassing discharges to the land, air and water.

In fulfilling its regulatory functions in relation to pollution control, the Ontario Water Resources Commission's successor, the Ministry of the Environment,[12] continued the close working relationships originally established by the Commission with the waste-generating industries it was to regulate. Participation in standard-setting processes was limited to representatives of the Ministry and the affected industries. Negotiations between officials and industry representatives were central in the determination of global emission and effluent standards and of specific abatement requirements for individual plants. In addition, negotiation was adopted as the Ministry's primary means of securing compliance with the terms and conditions of environmental approvals. Prosecution was seen as a measure of last resort and regarded as a potentially hostile action that would discourage subsequent cooperation on the part of the industry concerned, and harden adversarial attitudes.[13]

The quality of environmental protection that emerged from this "accommodative,"[14] and "bipartite bargaining"[15] policy style on the part of the Ontario government was widely regarded as unsatisfactory. The new environmental non-

governmental organizations that had begun to emerge in Ontario in the late 1960's and early 1970's were particularly vocal in this regard. However, organizations such as Pollution Probe, founded in 1967, and the Canadian Environmental Law Association (CELA) and Canadian Environmental Law Research Foundation (CELRF), both established in 1970, found themselves virtually excluded from the environmental policy and decision-making process. In this context, an environmental bill of rights appeared to offer environmental advocates a potential means of ensuring access to environmental decision-making to non-industrial interests, through the establishment of a legally guaranteed-right of participation in the making of regulations, granting of approvals and enforcement of environmental laws.

The U.S. Experience: Administrative Procedure, Action Forcing Statutes and "Citizen Suits"

In formulating its responses to the environment ministry's approach to the implementation of its regulatory statutes, Ontario's environmental community was strongly influenced by the recent successes of American environmental groups in using the courts to obtain access to environmental decision-making processes within the United States government. The U.S. *Administrative Procedure Act*, originally enacted in 1946, was particularly important in this regard.[16] The Act required formal public notice and comment periods for "rulemaking," adjudication procedures and provided that "a person suffering legal wrong because of agency action within the meaning of a relevant statute is entitled to judicial review thereof."[17] .

In addition, many of the U.S. federal environmental statutes enacted in the late 1960's and early 1970's, including the *National Environmental Policy Act*, the *Clean Water Act*, the *Clean Air Act* and *Endangered Species Act* contained public participation requirements of their own. Furthermore, in stark contrast to the structure of Canadian environmental statutes that provided broad authority to the environment ministers and cabinets to take action to protect the environment, the U.S. legislation included "action-forcing" provisions requiring the executive branch to undertake particular actions within set time-frames. In addition, in the U.S. statutes, citizens were authorized to pursue civil actions, or "citizen-suits," to obtain court orders that would bring government agencies and private firms into compliance with regulatory requirements.[18] In many cases, these provisions were enacted by the U.S. Congress for the deliberate purpose of requiring regulatory agencies to include a wider range of stakeholders in their decision-making processes than they had in the past.[19]

The significance of these provisions was enhanced by the general willingness of U.S. courts to set aside administrative decisions not only on issues of jurisdiction and natural justice, but also where a decision was not based on sufficient "substantive evidence." This approach was in sharp contrast to the Canadian experience, where judges did not attempt to review cases on the basis of the facts, but rather focused almost exclusively on issues or errors of law.[20] Finally, the U.S. courts were much more open to granting "public interest standing" to individuals or groups that had not suffered

some special or particular damage as a result of the activities in question.[21]

Substantive Environmental Rights

In addition to the establishment of procedural rights of participation in environmental decision-making, Canadian environmental groups and environmental law reform advocates also envisioned a substantive right to environmental quality. Such a right would create judicially enforceable remedies for environmental damage caused by government agencies or private actors in cases where courts found that the right had been infringed.[22] A substantive right was regarded as necessary to counterbalance the property and economic development rights of industrial interests.[23] Proponents of the right argued that effective protection of the environment required the legal recognition of "public rights" which, like private property rights, could not be left safely "to some bureaucrat to vindicate when, and if, he determines them to be consistent with the public interest."[24]

A substantive environmental right of this nature would go beyond a revival of the traditional common-law environmental causes of action. In particular, the common law requirement of demonstrating individual damage would be eliminated, and a substantive right to environmental quality would belong to every citizen. The effect would be to introduce a "public trust doctrine" into environmental protection, under which the interests of every citizen are recognized in law.[25] This would counterbalance the "structural" power enjoyed by business interests in the policy-making process by virtue of their control over economic investment.[26]

2) The Evolution of the EBR Concept in Ontario

In addition to the provisions of U.S. federal statutes providing citizen access to the courts, a number of states, beginning with Michigan in 1970,[27] enacted environmental bills of rights, either as parts of specialized environmental legislation or, in the case of Pennsylvania, as amendments to their state constitutions.[28] The essential elements of an environmental bill of rights for Ontario first were formally articulated in 1974 by the Canadian Environmental Law Association (CELA) and the Canadian Environmental Law Research Foundation (CELRF) in their publication Environment on Trial.[29] The proposal included provisions for environmental impact studies, access to government information, relaxed standing rules to permit citizens to defend the environment in courts and tribunals, limits on cost awards in cases of unsuccessful citizen actions, and expanded access to judicial review of administrative actions.

The CELA/CELRF proposal was further refined in the 1978 second edition of Environment on Trial to include requirements for public participation in the setting of environmental standards, the establishment of an office of an environmental ombudsman,

provisions for class actions, limits on agency discretion, and provisions placing the burden of proof on the polluter.[30] The concept of an environmental bill of rights was adopted by both the Liberal and New Democratic Party opposition during the extended period of Progressive Conservative minority government between 1975 and 1981.[31] The Liberal leader, Dr. Stuart Smith, first introduced a bill as a private members' measure in December 1979,[32] and the New Democratic Party Environment Critic, Marion Bryden, followed with an *Environmental Magna Carta Act* in 1980.[33] Despite the minority government situation, the passage of both of these bills was 'blocked' by government members through procedural means.[34]

Environmental bills of rights were introduced as private members' bills on a number of occasions by Liberal and New Democratic members in the aftermath of the Progressive Conservatives' re-election as a majority government in 1981.[35] None of these bills was enacted. The 1985 election resulted in a Liberal minority government, supported by the New Democrats. The New Democratic Party Environment Critic Ruth Grier introduced private members' bills on two occasions during this period.[36] Again, neither bill was enacted. A further bill from Ms. Grier was introduced following the 1987 election, which had resulted in a Liberal majority government. This bill received second reading in December 1987,[37] but, was not returned to the House following referral to committee. Ms. Grier introduced a final, unsuccessful, private members' bill in 1989.[38] A private members' bill regarding standing in environmental cases also was introduced by Margaret Marland, the Progressive Conservative Environment Critic, in 1990.[39]

Although it failed to enact a complete environmental bill of rights during its minority and majority periods between 1985 and 1990, the Liberal government of David Peterson did move forward on a number of the other aspects of the bill first proposed by CELA and CELRF in the 1970's. The passage of the *Freedom of Information and Protection of Privacy Act* in 1987,[40] the *Intervenor Funding Project Act* in 1988,[41] the *Municipal Freedom of Information and Protection of Privacy Act* in 1989,[42] and the increased application of the 1975 *Environmental Assessment Act*, were particularly significant in this regard.

The Liberal government also adopted a much more aggressive approach to the enforcement of environmental laws than its predecessor. This was especially evident in the enactment of the *Environmental Statute Law Enforcement Amendment Act* in 1986,[43] which increased the enforcement powers and penalties available under the *Environmental Protection Act*, *Ontario Water Resources Act*, and the *Pesticides Act*, and in the creation of an Investigation and Enforcement Branch within the Ministry of the Environment.[44]

In addition to these developments in Ontario, a series of judicial decisions beginning in the mid-1970's began to relax the traditional barriers to "standing" for environmental interests. The Supreme Court of Canada's decisions of *Thorson v. A.G. Canada*[45] in 1974 and *Findlay v. Minister of Finance of Canada*[46] in 1986 were particularly important in establishing "public interest standing" for individuals or groups

that had not suffered some "special" (usually economic) damage as a result of the alleged activities. Both the celebrated *Oldman Dam*[47] and *Rafferty-Alameda Dam*[48] environmental assessment cases were argued in the courts on the basis of the post-*Findlay* standing rules.[49]

3) The Development of Bill 26, The Environmental Bill of Rights

The enactment of an environmental bill of rights was a central component of the New Democratic Party's environmental policy platform during the September 1990 election campaign.[50] Ms. Grier was appointed Minister of the Environment following the Party's unexpected election victory. The formation of a 25-member Advisory Committee on the Environmental Bill of Rights to assist the new Minister in developing a bill, was announced in December 1990. The committee included representatives of the provincial government, municipalities, and business, labour and environmental organizations.

The advisory committee met on a number of occasions in the spring of 1991, and reached consensus on a number of principles for an Environmental Bill of Rights. However, there was no agreement on how these principles should be implemented.[51] Subsequently, in October 1991, a smaller, multi-stakeholder, Task Force on the Environmental Bill of Rights was appointed to draft a bill. The Task Force included individuals representing the Ontario Chamber of Commerce, Business Council on National Issues, Canadian Manufacturer's Association, Pollution Probe, Canadian Environmental Law Association, the Ministry of the Environment's Legal Services Branch, and a lawyer in private practice. The Task Force was co-chaired by the Deputy Minister of the Environment and a lawyer from the Attorney-General's Office.

Political vs. Judicial Accountability

The key policy debate in the development of the Ontario Environmental Bill of Rights, related to the appropriate roles of political and judicial forms of accountability in environmental policy and decision-making. Strong supporters of the concept of a legally-entrenched right to environmental quality argued that such a right was necessary to protect the environment from trade-offs between long-term environmental quality and short-term economic or political gains.[52] At the same time, an accompanying emphasis on formalized decision-making processes stressed the role of the courts in ensuring that all interests were adequately taken into account in the formulation and implementation of public policy.[53]

In response, opponents of the concept of an environmental bill of rights argued that the judicially enforceable procedural requirements, and action-forcing and citizen suit provisions that have provided the model for much of the content of proposed Canadian environmental bills of rights, all were developed in the institutional context of the U.S. separation of powers system of government. Within this structure, when members of

Congress do not trust the executive branch to implement their policies, they enact explicit statutes to force executive agencies to comply with their legislative intent.[54] The U.S. environmental statutes of the late 1960's and early 1970's provide particularly strong examples of Congress enlisting the support of the courts to ensure that the implementation of its legislation by the executive, as they were drafted by Democratic, reformist Congresses during the conservative Republican Nixon administration.

In parliamentary systems such as Canada's, the merging of the legislative and executive branches through the cabinet means that, except in minority government situations, the cabinet belongs to the same party as the majority coalition in the legislature. Consequently, the problem of ensuring that executive actions reflect the preferences of the majority of the legislature is not seen as a major issue.[55] Rather, "action-forcing" statutes and other "legalistic"[56] elements of U.S. environmental law are considered alien to the institutional structure of Canadian governments, and viewed as unnecessarily fettering executive discretion in the pursuit of the government's policy goals.[57]

Even stronger objections have been raised to the notion of a legally-enforceable right to environmental quality. In rejecting the concept of legally-entrenched environmental rights during the development of the *Canadian Environmental Protection Act* in 1987, the then federal Minister of the Environment, Thomas McMillan, argued that such rights would be subject to interpretation, and:[58]

> "inevitably, the interpretation is going to come from the courts, not from politicians who are accountable to the people. We would, in effect, abdicate to the courts decisions affecting the environment, and the courts are not accountable."

The Minister concluded that:[59]

> "I am not sure it is in the public interest, and I am sure it is not in the environment's interest, to have law unduly made by judges as opposed to politicians who can be held accountable at the ballot box and in other democratic ways...
> (T)he committee should reflect long and hard before it embraces with undue haste the principle of an environmental bill of rights that simply takes a whole area of public policy, puts it in the laps of the courts, and tells the judiciary to sort it out."

McMillan's comments reflected the view widely-held within government that providing judges with the type of explicit policy role that substantive environmental rights would create, would conflict fundamentally with the principles of parliamentary, responsible government. In the classical model of the cabinet-parliamentary system, the executive is granted wide discretion by parliament and held to account for the consequences of its

actions through political means, particularly the actions and criticisms of the legislative opposition parties, interest groups and the media, rather than through the courts.[60]

However, institutional arguments of this nature now appear to carry far less weight with public opinion than may have been the case in the past. This is especially true in the context of the adoption of the *Canadian Charter of Rights and Freedoms* in 1982 and the increasing tendency of Canadians to define their citizenship in terms of the judicially enforceable rights that the Charter provides.[61] The degree to which the existing institutional structure has permitted Canadian governments to implement policies on such issues as free trade and the goods and services tax, in the absence of public consensus has undermined further public confidence in the effectiveness of traditional mechanisms of political accountability.[62]

The potential consequences of increasing the role of the courts in formulating the substantive content of environmental policy through a substantive right to environmental quality, do raise a number of other serious issues. Concerns often have been expressed that judicial intervention in the policy process is anti-democratic, or at least non-democratic. When non-elected judges second-guess the policy decisions of elected legislatures affecting the distribution of risks, costs and benefits within Canadian society, such criticism has substantial validity. Alternatively, judicial interventions to ensure that the essential democratic values of fair procedure and equality are respected can be seen as supportive of, and even essential to, democratic government.[63]

On a less theoretical level, critics on the left and right ends of the political spectrum argue with increasing frequency that the enhanced policy-making role of the courts resulting from the adoption of the Charter may, in fact, be strengthening the influence of major economic interests on public policy.[64] This is as a result of the greater economic resources available to such interests to pursue legal actions relative to those typically available to individuals and non-governmental organizations.[65] In addition, as the courts become less reticent to challenge executive discretion, business interests may find it easier to question pro-environmental decisions.[66]

Rigourous procedural requirements, such as those contained in the U.S. *Administrative Procedure Act*, may provide additional opportunities for economic interests to block or delay the implementation of policies or regulations that they regard unfavourably.[67] Indeed, it has been noted that many U.S. environmental agencies now avoid formal rule-making due to the concern that after years of effort and the expenditure of substantial public resources, a new rule may be struck down by the courts on judicial review.[68] This outcome has produced what has been described as the "ossification" of environmental decision-making in the U.S.[69]

The Enactment of the Ontario Environmental Bill of Rights

The Environmental Bill of Rights Task Force's efforts to achieve consensus on these issues were reflected in its July 1992 report.[70] In its report, the Task Force chose to propose a structure that strongly emphasized political, as opposed to judicial, accountability mechanisms. This was particularly evident in the absence of a substantive right to environmental quality from the Task Force's recommendations, and in its proposal for the creation of an Office of the Commissioner of the Environment, who would report directly to the Legislature, to ensure that the bill's procedural requirements for public participation in environmental decision-making are met.[71]

A supplementary report by the Task Force in response to public comments received on its initial report was delivered in December 1992.[72] Subsequently, Bill 26, *An Act Respecting Environmental Rights in Ontario*, was introduced by Ms. Grier's successor as Minister of the Environment and Energy, the Hon. C.J.(Bud) Wildman on May 31, 1993. The bill closely followed the Task Force's recommendations in structure and approach. Bill 26 was, under somewhat acrimonious circumstances, the subject of public hearings by the Legislature's Standing Committee on General Government in October 1993.[73] It received Third Reading and Royal Assent on December 14 of that year and was proclaimed in force February 15, 1994.

The Ontario *Environmental Bill of Rights* is a complex and challenging piece of legislation, consisting of eight parts. The first deals with the bill's definitions and purposes. The second establishes a registry of environmental decisions, requires ministries to develop "statements of environmental values" and establishes a regime for public participation in government decision-making. Part III of the Bill creates the Office of the Environmental Commissioner to oversee the Bill's implementation. Parts IV and V permit citizens to request reviews of laws, regulations, policies and instruments, and to request investigations of suspected violations of environmental laws respectively. Part VI establishes a right to sue to prevent, halt or seek the remediation of environmental harm to a public resource and removes some limitations on standing in cases of public nuisance causing environmental harm. Part VII protects employees who report environmental wrongdoing from employer reprisals. Part VIII of the bill contains a number of general provisions and, perhaps most importantly, a 'privative' clause,[74] which attempts to insulate all decisions made under the bill, except for those covered by certain aspects of Part II, from judicial review.

On the surface, these provisions seem to provide extensive public rights to environmental protection. However, these "rights" are subject to very significant limitations and qualifications. Indeed, upon closer examination, it becomes apparent that there is less to the Ontario *Environmental Bill of Rights* than initially meets the eye.

II. GOALS, PURPOSES AND DEFINITIONS

1) Preamble

The EBR's preamble acknowledges that a common goal of the people of Ontario is, "the protection, conservation and restoration of the natural environment for the benefit of present and future generations." Government is given "the primary responsibility of achieving this goal."

The preamble also recognizes that the people have "a right to a healthful environment." This responsibility is shared with all people of Ontario, who "should have the means to ensure that it is achieved in an effective, timely, and open and fair manner." However, this is the only reference to such a substantive right in the Bill. As it appears in the preamble rather than the EBR itself, it constitutes merely an aid to the legal interpretation of the EBR and is not legally enforceable.[75]

2) Purposes

The purposes of the EBR, set out in section 2 to the Bill, attempt to define the preamble's broad goals more concretely. The overall purposes of the legislation are:

a) to protect, conserve and, where reasonable, restore the integrity of the environment;
b) to provide for the sustainability of the environment; and
c) to protect the right to a healthful environment.[76]

These purposes include:

1. the prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment;
2. the protection and conservation of biological, ecological and genetic diversity;
3. the protection and conservation of natural resources, including plant and animal life and ecological systems;
4. the encouragement of the wise management of natural resources, including plant and animal life and ecological systems; and
5. the identification, protection and conservation of ecologically sensitive areas or processes.[77]

The Bill is to achieve these purposes by providing:

a) means by which residents of Ontario may participate in environmental decision-making by the Ontario government;
b) increased accountability of the government of Ontario for its environmental decisions;
c) increased access to the courts by Ontario residents for the protection of the environment; and
d) enhanced protection of employees who take action in respect of environmental harm.[78]

3) Definitions

Section 1 of the EBR defines a number of important terms. The "environment" is defined as "the air, land, water, plant life, animal life, and ecological systems of Ontario." In other words, the natural environment. "Air" and "land" are defined to exclude any land or air enclosed in buildings, chimneys, stacks, or other structures. These definitions are narrower than those employed in the *Environmental Assessment Act*, reflecting the lack of consensus on a broader approach within the EBR Task Force,[79] and difficulties inherent in attempting to draft strong legislation through a multi-stakeholder process.

The definitions section also defines a number of other key terms used in the Bill. Environmental "harm," which provides the basis for civil actions under s.84 of the Bill, is defined as "any contamination or degradation and includes harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation."[80] "Instruments" are defined as documents of legal effect issued under an Act, and include permits, licences, approvals, authorizations, directions or orders issued under an Act. Regulations are explicitly excluded from the definition of "instruments."[81] "Policies" are defined as programs, plans or objectives. The definition also includes guidelines or criteria for making decisions about the issuance, amendment or revocation of instruments.[82]

4) Conclusions

The EBR's commitment to the right of Ontarians to a "healthful environment" is limited to a statement of legislative intent, rather than a substantive and legally enforceable right. This approach reflects the reluctance of the EBR Task Force to open the substantive content of environmental policy to the possibility of judicial review. Rather, the focus of the Bill is procedural, and it has few elements, except for the creation of the Office of the Environmental Commissioner, and the requirement that prescribed ministries develop "Statements of Environmental Values," intended to effect directly the substance of the province's environmental policies.

The Bill does provide however, through its purposes section, the clearest statement of a definition of environmental sustainability seen so far in Ontario environmental legislation. This includes explicit references to pollution prevention, the protection of biodiversity and ecologically significant areas, and the conservation of natural resources, including plant and animal life, and ecological systems. This is an important step forward in giving the highly flexible terms "sustainable development," and "environmental sustainability" some specific and substantive meaning, and linking them to requirements for public participation in environmental decision-making.

III. POLITICAL ACCOUNTABILITY AND THE ENVIRONMENTAL BILL OF RIGHTS: STATEMENTS OF ENVIRONMENTAL VALUES AND THE OFFICE OF THE ENVIRONMENTAL COMMISSIONER

1) Introduction

The Ontario *Environmental Bill of Rights* is an unusual piece of legislation, in that notwithstanding its title, the EBR contains no explicit statement of substantive environmental "rights," and even the procedural rights it establishes are of limited legal enforceability. This is very much a product of the EBR Task Force's decision to emphasize mechanisms of political, as opposed to judicial, accountability in the bill which it developed.

The two most important manifestations of this approach taken by the Task Force were the requirement that ministries that are prescribed as being subject to the Bill's provisions develop "Statements of Environmental Values," indicating how each agency intends to implement the Bill's provisions, and the creation of an Office of the Environmental Commissioner. The Commissioner's Office, in particular, was explicitly conceived of by the Task Force as a replacement for a judicial accountability structure for the environmental decisions made by the government.[83]

2) Statements of Environmental Values

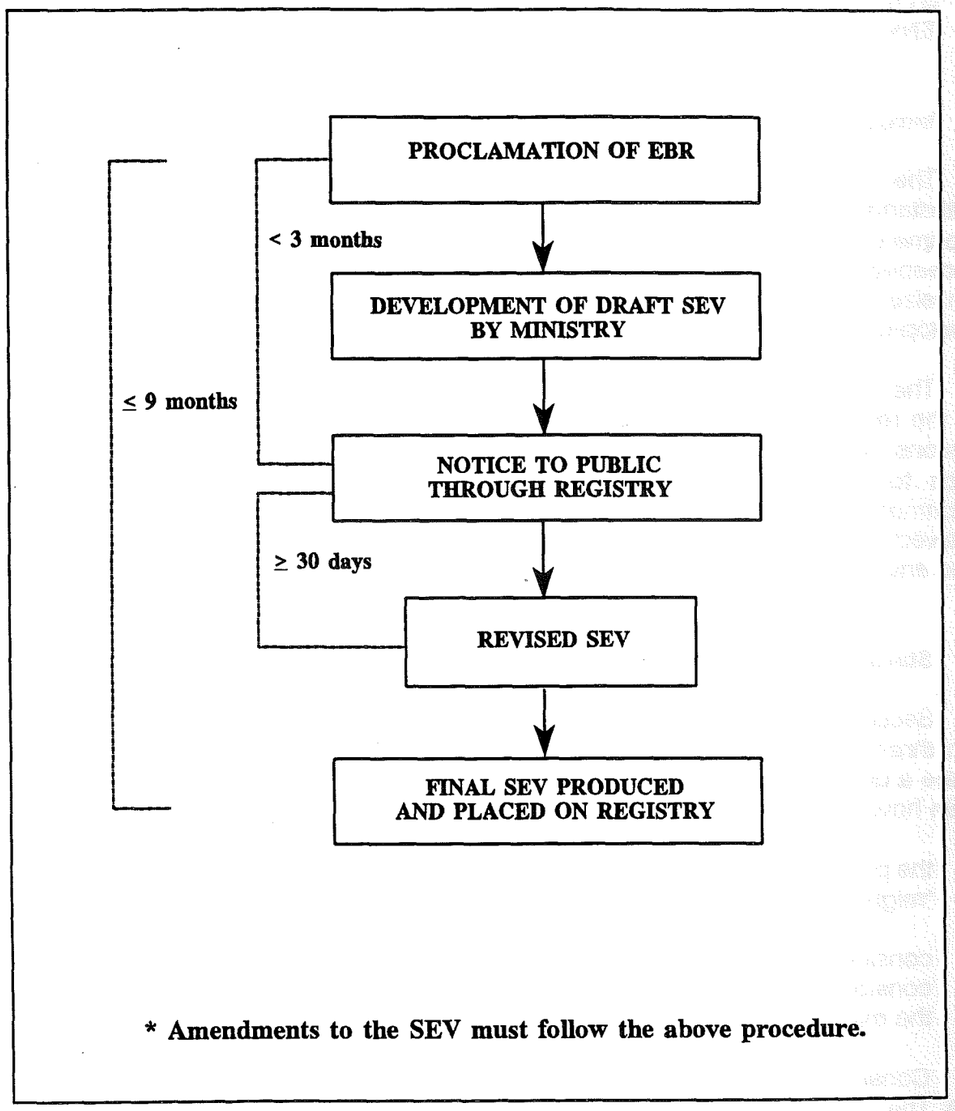
Section 7 of the EBR provides that the minister of each prescribed ministry shall, within three months of the date on which Part II of the EBR applies to the ministry, prepare a draft Ministry Statement of Environmental Values (SEV). The statements must explain how:[84]

a) the purposes of the EBR are to be applied when the ministry makes decisions that "might significantly affect the environment," and

b) consideration of the purpose of the EBR should be integrated with other considerations, including social, economic and scientific considerations, as part of the ministry's decision-making.

Considerable attention is given by the Bill to the process for developing Ministry SEVs. The minister is required, no later than three months after the day when Part II of the EBR applies to the ministry, to give notice to the public that he or she is developing the Ministry SEV.[85] Such notice is to be given on the Environmental Registry and by any other means which the minister considers appropriate.[86] The contents of the notice are specified in extensive detail, including requirements for invitations to members of the

Figure 3.1 Statement of Environmental Values Development Process



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

public to submit written comments on the draft statement, and to provide descriptions of any additional participation rights that the minister feels are appropriate in the SEV development process.[87]

The minister cannot finalize the SEV until at least thirty days after the notice is given.[88] The minister may extend this period to permit more informed public consultation on the statement if he of she believes it is appropriate to do so.[89] A detailed list of factors which the minister shall consider when deciding how long the notice period should be is provided in the Bill. These include the level of complexity of the matters on which comments are invited, and the level of public interest expressed in these matters.[90]

The minister must finalize the SEV and give notice to the public of its finalization within nine months of the day on which Part II of the EBR applies to the ministry.[91] Section 10 of the EBR gives the minister the power to amend the SEV periodically by following the procedures set out in sections 7 to 9 of the Bill.

The EBR requires that the minister take "every reasonable step" to ensure that the Ministry SEV is considered whenever the ministry makes decisions that might significantly affect the environment.[92] However, this requirement is not generally thought to be judicially enforceable.[93] Rather, the primary means of ensuring that the commitments made in a ministry's SEV are met is through the Environmental Commissioner's annual reports to the Legislature regarding ministry compliance.[94]

The SEVs were intended to instill an "environmental ethic" into the decision-making process of each of the ministries covered by the EBR.[95] They are the Bill's primary instrument for affecting the substantive content of decision-making, as opposed to the decision-making process itself.

During the Standing Committee of General Government's hearings on the Bill, a number of witnesses suggested that the SEV provisions of the Bill be restructured to define their purposes and content more effectively. The Conservation Council of Ontario, for example, proposed that the SEV provisions of the Bill be replaced by requirements that agencies develop environmental strategic plans, which would include explicit commitments to specific actions within set time-frames.[96] However, these proposals were not adopted by the Committee.

The lack of clarity in the provisions of the Bill relating to the SEVs was reflected in the draft statements released by the fourteen ministries prescribed for the purposes of the EBR in May 1994.[97] Notwithstanding considerable efforts within the affected agencies to develop their statements, the draft statements were regarded widely as a major disappointment. The draft SEVs were often vague, and in some cases, appeared to commit agencies to "business as usual." Environmental groups and various environmental professional organizations, in particular, declared themselves

"underwhelmed" by the draft statements.[98]

Environmental organizations appear to have expected the Statements to provide specific commitments from the affected ministries regarding how they would operationalize the EBR's purposes of promoting pollution prevention, biodiversity protection, natural resources conservation, wise management of natural resources and the protection of ecologically sensitive areas or processes in their operations and activities. The officials charged with drafting the statements, on the other hand, understood their task in terms of providing generalized statements of commitment to the EBR's purposes,[99] and many stressed the importance of the Bill's reference to the "integration" of these environmental purposes with economic, social and scientific considerations.

Final versions of the ministry SEVs were released in November 1994, as required by the EBR. The final statements included some minor revisions to the May 1994 drafts. In response, the Environmental Commissioner stated that:

> "While the current SEVs provide a good foundation for environmental decision-making that complies with the EBR, some elements need further attention."[100]

As a result, each of the ministries agreed to participate in a one-year review of the SEVs, ending on November 15, 1995. During this period the ministries are to work with the Environmental Commissioner's Office and the public to refine each SEV.

3) The Office of the Environmental Commissioner

The Office of the Environmental Commissioner is the EBR's institutional centrepiece. It is the principle manifestation of the Task Force's goal of replacing judicial accountability with political accountability as the primary means of ensuring that governments adhere to the requirements of the EBR.[101] The establishment of an independent body to review and assess government policies and programs with respect to their effects on the environment is not unprecedented in Canada. Institutions of this nature are seen as an effective means of enhancing political accountability for decision-making in complex policy fields, such as environmental protection.[102]

The Environment Conservation Authority of Alberta (1970-1977) provided a highly successful model for such an agency,[103] and federal government has recently indicated its intention to act on the House of Commons Standing Committee on the Environment and Sustainable Development's proposal for the creation of a federal environmental commissioner's office.[104] In addition, the Ontario Round Table on the Environment and Economy presented a proposal for the creation of an Office of the Commissioner of

Sustainability in its September 1992 report Restructuring for Sustainability. What is unusual about the Ontario Commissioner's Office is that its function is primarily to oversee and, to a certain degree, administer, the implementation of the *procedural* aspects of the EBR, as opposed to the traditional role of such agencies of providing independent *substantive* policy and program reviews and advice.

Mandate and Institutional Structure

The Environmental Commissioner is to be appointed by the Legislative Assembly as an Officer of the Assembly for a five-year term, with the possibility of reappointment for a further term or terms.[105] Eva Ligeti, a Professor of Legal Administration at Seneca College of Applied Arts and Technology, was appointed as Ontario's first Environmental Commissioner in May 1994.

The functions of the Environmental Commissioner are to:

a) review implementation of the EBR and compliance by ministries with its requirements;
b) at the request of a minister, provide guidance to the ministry on how to comply with the EBR, including:
   i) how to develop a Ministry SEV; and
   ii) how to ensure that the Ministry SEV is considered whenever decisions that might significantly affect the environment are made by the ministry;
c) at the request of a minister, assist the minister in providing educational programs about the EBR;
d) provide educational programs to the public about the EBR;
e) provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided by the EBR;
f) review the use of the Environmental Registry;
g) review the exercise of discretion by ministers under the EBR;
h) review recourse to rights in the EBR;
i) review the receipt, handling and disposition of applications for review under Part IV and applications for investigations under Part V of the EBR;
j) review ministry plans and priorities for conducting reviews under Part IV of the EBR;
k) review of the use of the right of action in section 84, defenses in section 85, and reliance on the public nuisance action in section 103; and
l) review recourse to the procedure under Part VII of the EBR for complaints about employer reprisals.[106]

The Environmental Commissioner must submit annual reports to the Legislative Assembly. These reports shall include:

a) a report on the work of the Environmental Commissioner and whether the ministries cooperated with the Environmental Commissioner's requests for information;
b) a summary of information gathered from performing the functions set out in section 57, (with particular emphasis on ministry compliance with the commitments made in their SEV's).
c) a list of all of the proposals for which notice has been given under sections 15,16, or 22 during the period covered by the report; and
d) any information prescribed by regulations made under the EBR or deemed appropriate by the Environmental Commissioner.[107]

The Commissioner also may submit special reports to the Legislature at any time he or she feels it is necessary to do so.[108] In the event that a ministry fails to comply with the requirements of the EBR regarding the development of a SEV, the Commissioner must make a report to the Legislative Assembly as soon as is reasonably possible.[109] The latter provision reflects the assumption that the provisions of the Bill relating to the development of SEVs are not judicially enforceable.

In addition to these reporting functions, the Commissioner is assigned a number of administrative duties by the EBR. The most significant of these is the receipt and forwarding to the appropriate ministries of requests for reviews of statutes, regulations, and policies made by members of the public under Part IV of the Bill, and requests for investigations made under Part V.

The Commissioner's Office also has some limited investigative powers. In particular, the Commissioner has the authority to examine any person on oath, and may require the production of documents or other things from these persons.[110]

Potential Effectiveness

The Office of the Environmental Commissioner was intended to be an instrument of enhanced political accountability and its mandate can be interpreted widely or narrowly in this context. On the surface, the capacity of the Commissioner's Office to address substantive policy issues appears to be limited. The Office has no clear mandate to review specific environmental decisions or investigate complaints, and seems to be restricted to reporting on the degree to which the procedural requirements of the EBR are followed in such situations.

Similarly, the Office's mandate to review the effects of the statutes, regulations, policies and programs of prescribed ministries on the environment appears limited to assessing the degree to which decision-making involving such instruments and activities

considers the Ministry's SEV. Furthermore, although the SEVs are the cornerstone of the EBR's political accountability structures, the Commissioner has no direct mandate to comment publicly on the adequacy of Ministry SEVs once they have been finalized, or to recommend changes in the statements from time to time. In many ways, the Office appears to be intended to carry out reactive, auditing functions, as opposed to a more pro-active activities.

On the other hand, however, the Commissioner's mandate to review ministers' exercises of "discretion" under the EBR could be subject to a very broad interpretation regarding the content of ministerial decisions. The review of the implementation of ministry SEVs could also be read as opening the door to comment on the substance of ministry policies and activities affecting the environment. Nor is the Office explicitly prohibited from commenting publicly on the content of environmental policy.

A wider interpretation of the Commission's mandate would be more consistent with the role envisioned for the Office by many stakeholders involved in the EBR drafting process. During the development of the EBR, a number of environmental non-governmental organizations argued for a more direct and pro-active substantive policy review mandate for the Environmental Commissioner's Office.[111] This would follow the model of the highly successful models of the Alberta Environment Conservation Authority,[112] the New Zealand Environmental Commissioner's Office,[113] and the approach taken by the House of Commons Standing Committee on the Environment and Sustainable Development in its May 1994 report on the concept of a federal Environmental Commissioner or Auditor-General's Office.[114]

In addition to the peculiar nature of its mandate, the Ontario Commissioner's Office has the potential to suffer from further problems that are likely to constrain its effectiveness as an instrument of political accountability. In particular, the Office's significant administrative and reporting functions, especially in relation to the handing of requests for reviews and investigations, and public education responsibilities, may leave limited time or resources available for it to fulfil its substantive process and policy review functions.[115]

Unfortunately, if the Commissioner's Office limits itself to technical reports on the flow of EBR-related paper through the Office and the affected ministries it is unlikely to draw significant public and media attention. This would greatly reduce the possibility that its efforts would have a substantial effect on the behavior of government agencies regarding the environment. A wider and more pro-active interpretation of the Office's mandate will be necessary to achieve significant improvements in both the process and substance of environmental decision-making in Ontario.

IV. THE EBR SYSTEM FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

1) Introduction

Each year the government of Ontario makes many environmentally significant decisions in the forms of policies, Acts, regulations and approvals. Most of these decisions traditionally have been made with little or no public consultation. Formal participation in decision-making usually has been limited to representatives of the relevant ministry and the proponent of an undertaking. Members of the public typically have had no right to participate in, or even to be informed of, environmentally significant decisions by the provincial government.

It is for these reasons that the concept of establishing formal requirements for public participation in environmental decision-making, similar to those found in American environmental and administrative statutes has been a central component of proposals for an environmental bill of rights in Ontario over the years.[116] The Part II of the EBR attempts to provide a structure to ensure that the public's voice is heard in environmental decision-making, while avoiding the extensive litigation which has characterized administrative procedures in the United States. To this end, the EBR establishes minimum requirements and procedures that must be met before prescribed ministries can make environmentally significant decisions.

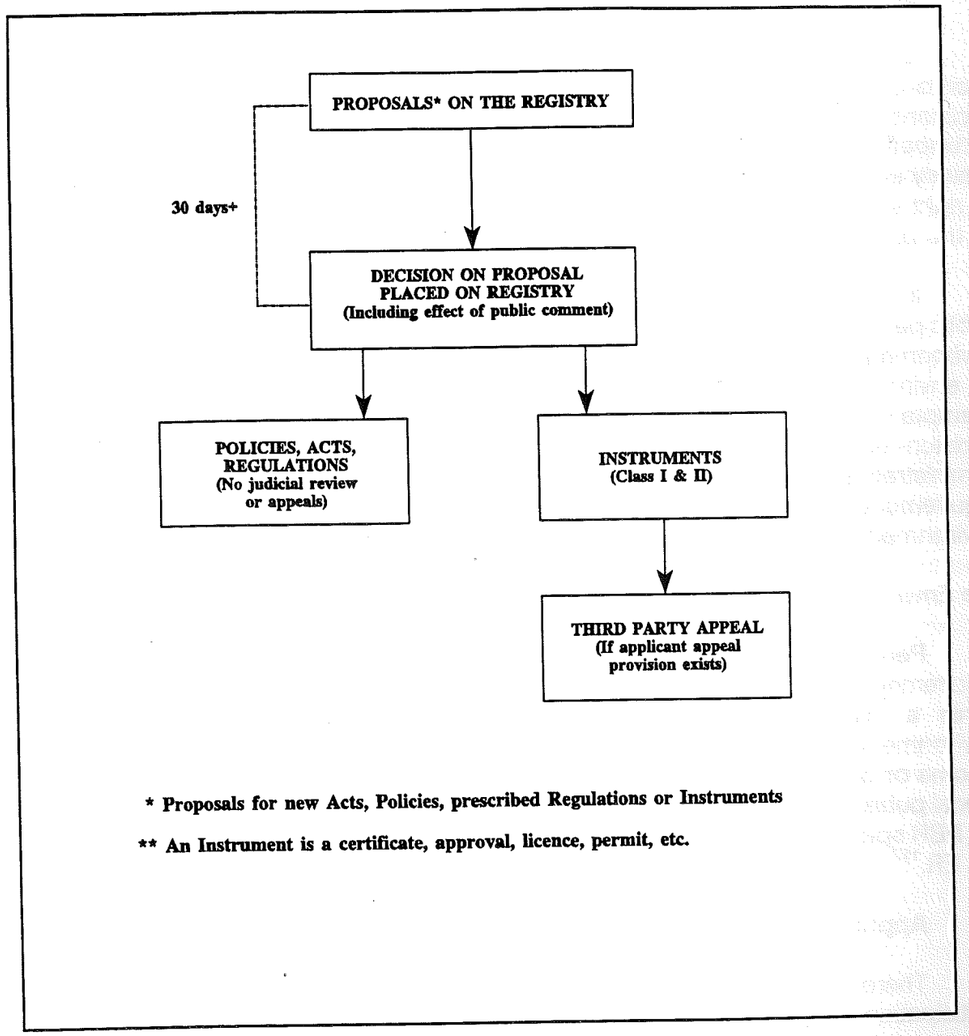
The Environmental Registry

Perhaps the most important element of the EBR's public participation regime is the requirement for the provision of immediate notice to the public of proposed activities within a ministry which could potentially affect the environment by way of the Environmental Registry (ER). This is an electronic bulletin board accessible to those with a home or office computer and modem via an existing network (InterNet, GONet), or at a local public or university library or provincial government facility. To ensure consistency, the EBR specifies minimum standardized information requirements for notices placed on the ER.[117]

2) Applicability of the EBR Public Participation System

There are four types of proposed decisions that are subject to the public participation regime of Part II: policies; Acts; regulations; and instruments.[118] Notice of proposals for these types of decisions must be given on the ER, and are required to include a brief description of the proposal, a statement of the manner and time within which members of the public may participate in the decision-making process, information on where and when individuals may review written information about the proposal, and an address to which members of the public may direct written comments on the proposal.[119] Specific procedures exist for each of these different types of proposals.

Figure 4.1 The EBR Public Participation Regime for new Acts, Regulations under prescribed Acts, and prescribed Instruments



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

Failure to comply, "in a fundamental way" with the public notice and comment requirements of the EBR does not invalidate the new Act, policy, regulation or instrument. However, such failure in relation to an instrument may be judicially reviewed.[120] This provision is the one exemption provided to the "privative" clause contained in s.118 of the EBR which otherwise exempts decision-making related to the EBR from judicial review. Applications for judicial review with respect to compliance with the requirements of Part II of the Bill, must be made no later than twenty-one days after the day on which the minister gives notice of a decision on the proposal.[121]

Policies and Acts

Policies and Acts are treated identically for the purposes of Part II. There are two criteria which must be satisfied before a minister must give notice of a proposal for a policy or Act. The first criteria (which also applies to proposals for regulations and instruments) is that the proposal "could have a significant effect on the environment." The EBR requires that ministers consider the following factors to determine whether a proposal, if implemented, could have a significant effect on the environment:

1) the extent and nature of the measures that might be required to mitigate or prevent any harm to the environment;
2) the geographic extent, whether local, regional or provincial, of any harm to the environment;
3) the nature of the public and private interests involved in the decision; and
4) any other matter that the minister considers relevant.[122]

The second criteria, which is only applicable to policies and Acts, requires ministers to consider whether the public should have an opportunity to comment on the proposal before its implementation. It could be argued that, in light of the philosophy and principles of the EBR, the section creates an implicit presumption in favour of public participation. However, ministers are granted wide discretion in this regard, although the exercise of this discretion is subject to oversight by the Environmental Commissioner.[123]

Once a decision is made to place a proposal for a policy or Act on the ER, comments are received for a minimum of 30 days.[124] These comments are reviewed and must be considered in the decision-making process by the ministry.[125] Once a decision is made to implement a proposal, the minister must give notice to that effect on the ER, or by any other means the minister considers appropriate. The notice must include a brief explanation of the effect, if any, of public participation on the decision-making.[126] The entire file is left on the ER for 30 days before it is sent to archives.

Regulations

The procedure for public participation in proposals for regulations is similar to that for policies and Acts. However, there are several important differences. As with policies and Acts, Part II applies to proposals for regulations that could have a significant effect on the environment.[127] In determining significance, the minister must consider the same factors as for policies and Acts, although no general discretion is granted to the minister to determine whether the public should have an opportunity to comment, as is the case with policies and Acts. The public must be permitted a minimum of 30 days to comment on the proposal. The minister must also consider allowing a longer period in accordance with the factors set out in the EBR.[128]

The second important difference between proposals for regulations and those for policies and Acts is the possibility of inclusion of a Regulatory Impact Statement (RIS) in the notice for a regulation. The minister may include a RIS in a notice of a proposal for a regulation on the ER if he or she considers it necessary to do so, to permit more informed public consultation on the proposal.[129] A RIS is required to include the following:

a) a brief statement of the objectives of the proposal;
b) a preliminary assessment of the environmental, social and economic consequences of implementing the proposal; and
c) an explanation of why the environmental objectives, if any, of the proposal would be more appropriately achieved by making, amending or revoking a regulation.[130]

These provisions are similar to the federal government's requirements for publication of a Regulatory Impact Analysis Statement in the *Canada Gazette* prior to the promulgation of new regulations. However, the federal procedure includes the development of detailed cost-benefit analyses of regulatory proposals and, unlike the EBR process, is mandatory for all new regulations.

Instruments

An instrument is defined for the purposes of the EBR as a licence, permit, certificate of approval, control order or other legal authorization issued under an Act prescribed for the purposes of the EBR.[131] Not all instruments are issued as a result of an application being submitted by an applicant. Some types of orders are issued on the initiative of the relevant ministry, and existing instruments may be amended by a ministry without an application being submitted by an applicant. The requirements of Part II of the EBR apply regardless of whether a proposal for a prescribed instrument is under consideration as a result of the government's or an applicant's actions.

The notification requirements for an instrument are based on the classification of the instrument. Each instrument, except for those deemed to be environmentally insignificant, is classified, through regulations made under the EBR,[132] as Class I, II, or III to specify a mandated level of notice and public participation. In the event that a member of the public requires additional information about an application, that person may ask to view parts of the documents in question at the regional office or the issuing office of the ministry responsible for the proposal.

3) Classification of Instruments

Class I

Class I instruments are those instruments made under prescribed statutes for which formal public hearings are neither mandatory nor available at the discretion of the responsible minister prior to the issuance of the instrument.[133] An example of such an instrument would be the granting of a certificate of approval for air or noise emissions from a facility, under the *Environmental Protection Act*.

A minimum of 30 days' notice must be provided on the ER for a Class I instrument. This is the minimum EBR notice and comment requirement. However, an instrument classified as Class I by regulation may be "bumped-up" to a Class II instrument if the minister considers that it is advisable to do so for the purposes of protecting the environment.[134] In this case, the public participation rights will be greatly enhanced, as described below.

Class II

Class II instruments are those instruments for which a formal public hearing may be held at the discretion of the minister, prior to their issuance.[135] A minimum of 30 days notice must be provided on the ER for Class II instruments.[136] Licences to operate gravel pits or quarries issued under the *Aggregate Resources Act*[137] would be examples of Class II instruments, as public hearings can be held before the Ontario Municipal Board prior to the granting of such licences at the discretion of the Minister of Natural Resources.[138] The EBR also requires that *additional* notice be provided for such proposals. This must include one of the following:

1) news release;
2) notice through the local, regional or provincial news media;
3) door to door flyers;
4) signs;
5) mailings to the public;
6) actual notice to community leaders and community representatives;
7) actual notice to community organizations, including environmental

organizations; notice on the ER for longer than 30 days; and

8) any other means of notice that would facilitate more informed public participation in decision-making on the proposal.[139]

If an applicant for an instrument is aware of public concerns regarding a particular proposal, the applicant is encouraged by the MoEE to provide public notice or opportunities for consultation prior to the submission of the application.[140] In this way, public concerns can be addressed at the outset and the proposal modified, as required, prior to submission.

Once notice of a Class II proposal is given both on the ER, and by at least one additional method,[141] members of the public may indicate that they have concerns about the proposal. Under such circumstances, the minister shall *consider* enhancing the right of individuals to participate in decision-making on the proposal by providing for one or more of the following:

1) opportunities for oral representation by members of the public to the minister or a person or body designated by the minister;
2) public meetings;
3) mediation among persons with different views on issues arising out of the proposal; or
4) any other process that would facilitate more informed public participation in the decision-making on the proposal.[142]

In the event that the minister decides to enhance the public participation rights by providing for one or more of the options outlined above, notice will be given to the public on the ER. The applicants also will be advised. Finally, where a decision is made under any Act to hold a hearing to decide whether or not to implement a Class II proposal for an instrument, the proposal is deemed to be a Class III proposal for the purposes of the EBR.

Class III

Class III instruments are defined as those for which a public hearing is required under a statute prior to their issuance, even if the act provides for the exercise of ministerial discretion not to hold a hearing.[143] An example of such an instrument would be the granting of a certificate of approval for the operation of a waste management system for hazardous or liquid industrial wastes under the *Environmental Protection Act*.[144] As with Class I and II instruments, a minimum of 30 days' notice must be provided on the ER for Class III instruments. In addition, a formal hearing on the application must be held.

4) Exceptions to the EBR Public Participation Requirements

There are four broad types of exceptions from the public participation requirements of the EBR.

Emergency Situations

The EBR recognizes that there may be situations where the public participation requirements of Part II are impractical because of an emergency situation. Specifically, the EBR provides that the requirement of public notice of proposals for policies, Acts, regulations or instruments does not apply where, in the minister's opinion, the delay involved in giving notice to the public, in allowing time for public response to the notice, or in considering the response to the notice would result in:

a) danger to the health or safety of any person;
b) harm or serious risk of harm to the environment; or
c) injury or damage or serious risk thereof to any property.[145]

If a decision is made to rely on the emergency exception and dispense with the public participation requirements, the minister must give notice of the decision, with reasons, to both the public and the Environmental Commissioner as soon as possible after the decision is made.[146]

Equivalent Public Participation has Already Taken Place

Section 30 of the EBR provides that the requirement for public notice of proposals for policies, Acts, regulations or instruments does not apply where, in the opinion of the minister, the environmentally significant aspects of a proposal have already been considered in a process of public participation that was substantially equivalent to the requirements of the EBR. In order for this exception to be granted, the following criteria must be met:

a) the public notice was province-wide;
b) the public had an opportunity to comment; and
c) the comments were considered in the proposal.[147]

As with emergencies, when using this exception, the minister must give notice of the decision, with reasons, to the public and the Environmental Commissioner as soon as possible after the decision is made.

Proposals for Instruments to Implement an Environmental Assessment Act or Public Tribunal Decision

The EBR also provides that the notification requirements for instruments do not apply where, in the opinion of the minister, the issuance, amendment or revocation of the instrument would be a step towards implementing an undertaking or other project approved by:

a) a decision made by a tribunal under an Act after affording an opportunity for public participation; or
b) a decision made under the *Environmental Assessment Act* (EAA).[148]

The intent of this exception is to ensure that public participation processes are not duplicated. However, the effect of this provision in relation to the *Environmental Assessment Act* is to exempt *all* provincial and municipal public sector undertakings from the public participation requirements of the EBR, as all public sector undertakings are either reviewed under the EAA, or exempted from it, except that notice would have to be provided for orders-in-council granting public sector exemptions from the EAA.[149]

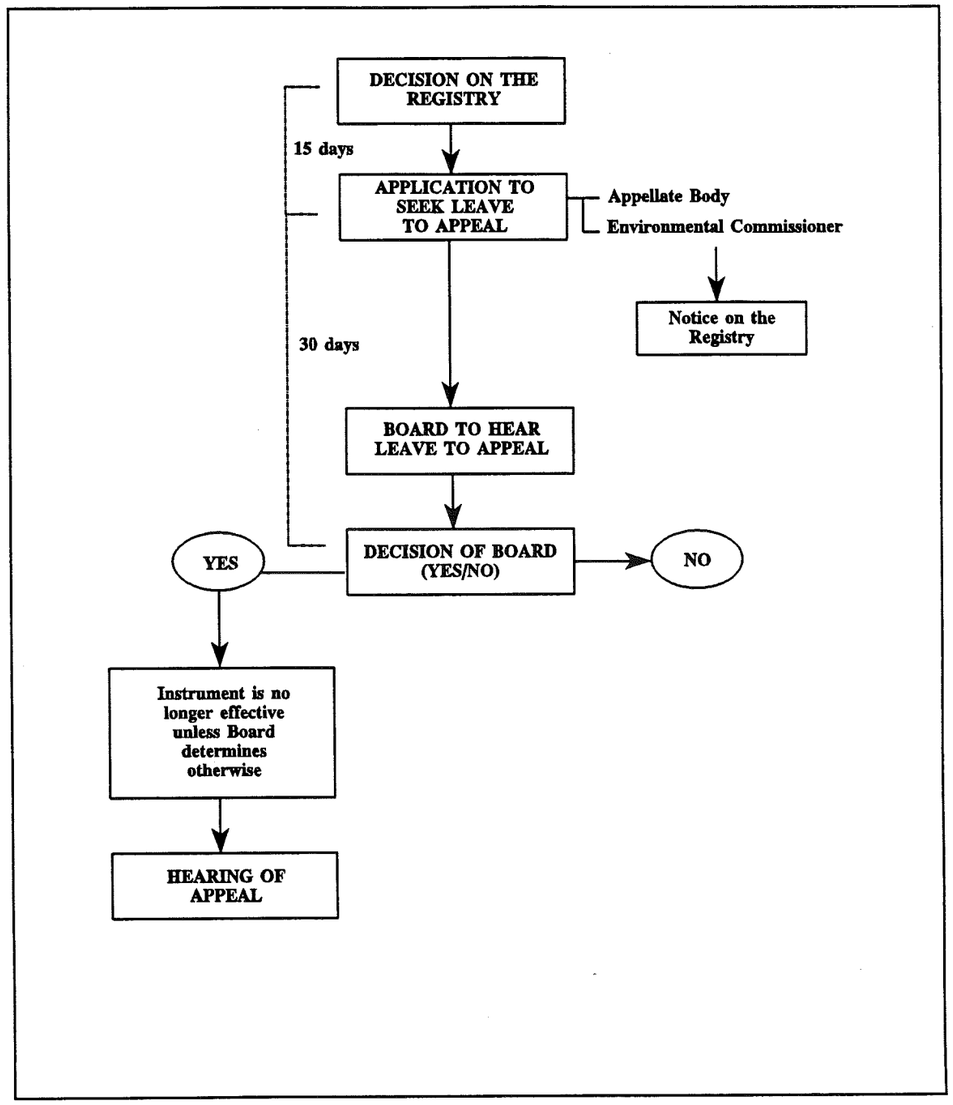
Environmentally Insignificant Amendments or Revocations

The EBR does not require that a minister give notice of a proposal to amend or revoke an instrument if the minister considers that the potential effect of the amendment or revocation on the environment is insignificant.[150] For its part, the Ministry of Environment and Energy has suggested that the types of proposals that could fall under this exception might include amendments to correct typing, name or ownership changes, minor revisions where there will not be any impact on the environment, or requests for revocations of approvals where a process, system or equipment will no longer be used.[151] However, the determination of "environmental insignificance" is entirely at the discretion of the responsible minister. The only oversight on exemptions of this nature, provided for by the EBR, is through the Environmental Commissioner's mandate to review Ministers' exercises of discretion in relation to the Bill.[152]

5) Right of Third Party Appeal under the EBR

Part II of the EBR also establishes a new procedure whereby certain individuals can appeal decisions made under proposals for Class I or II instruments.[153] Once notice of a decision with regard to a proposal for such an instrument is placed on the ER, an individual may seek leave to appeal the decision if the following conditions are satisfied:

Figure 4.2 The Public Appeals Procedure for Class I and II Instruments



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

a) an appeal process already exists for that instrument under another Act; and
b) the person seeking leave to appeal "has an interest" in the decision.[154]

The effect of these provisions is to permit third parties to appeal environmental decisions in any situation where those subject to a decision (e.g. the applicant for a certificate or approval) have a right to appeal the decision. Subsection 38(3) provides that any person who has exercised his or her right to comment on a proposal constitutes evidence that the person has an interest in the decision.

On the surface, these provisions represent a significant step forward in public participation in environmental decision-making in Ontario. In the past, under many Ontario environmental laws, including the *Environmental Protection Act*, only those having a direct interest in a decision, such as the applicant for an approval, or the person subject to a control order, have had the right to appeal a decision to an appellate body.

However, the EBR appeal provisions are subject to a very significant limitation. Leave-to-appeal will only be granted if:

a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision: and
b) the decision in respect of which an appeal is sought could result in significant harm to the environment.[155]

This is an extremely stringent test for granting leave to third party appeals. Indeed, several commentators have noted that the test establishes a "virtually insurmountable" barrier to third party appeals of environmental decisions.[156]

The relevant appellate body is responsible for deciding whether leave-to-appeal will be granted. If leave is given, the appeal will be heard by the appellate body, in accordance with the current procedures of the body. Notice of appeals of Class I and II instruments will appear on the environmental registry as well, so that the public may participate in the appeal hearings.

Where leave-to-appeal is granted, the decision under appeal is stayed until the disposition of the appeal, unless the appellate body granting leave, orders otherwise.[157] Notice of applications for appeal must be provided to the Environmental Commissioner by the appellant. The Commissioner will place the notice of appeal on the environmental registry.[158]

Instructions on how to appeal decisions subject to the EBR are provided on the approval issued to instrument holders. If members of the public wish to participate in the

appeal, they will have to contact the relevant appellate body.[159] In the case of decisions made by the Ministry of Environment and Energy, the ministry has indicated that if the ministry and the instrument holder are negotiating the appeal, members of public who have advised the Environmental Appeal Board that they wish to participate in the appeal may be given the opportunity to participate in the discussions.[160] Where the appeal cannot be resolved through negotiations between the parties involved, appeal proceedings will have to be conducted before the Environmental Appeal Board.[161]

6) Conclusions and Implications for Environmental Decision-Making

The EBR's provisions for public participation in environmental decision-making are remarkably complex, especially in relation to the actual improvements in opportunities for public participation in decision-making which they provide. Indeed, understanding the elements of the system created by the Bill presents a significant challenge to professionals in the field, to say nothing of the situation of the ordinary citizens whose participation in decision-making the EBR is intended to facilitate.

The EBR's provisions also grant ministers a great deal of discretion in their application, particularly with respect to what constitutes an "environmentally significant" decision. At the same time, surprisingly, the Bill does not permit ministers to provide formal hearings in situations where there currently are no provisions for such hearings, as is the case for granting approvals for air emissions under the *Environmental Protection Act*.

Furthermore, despite their complexity, failure to comply with the public notice and comment requirements of the EBR does not invalidate the new Act, policy, regulation or instrument, except that such failure in relation to an instrument may be appealed or judicially reviewed.[162] The only sanction otherwise available for exemptions of "environmentally significant" decisions from the Bill's requirements, or for failures to follow those requirements fully, is in form of a negative comment from the Environmental Commissioner in his or her annual report or in a special report.

The EBR's provisions for the possibility of third party appeals of environmental decisions opens the possibility of a new avenue for public participation in decision-making. However, this opening is effectively nullified by the establishment in the Bill of an extremely stringent test for leave-to-appeal, which seems likely only to be overcome in extraordinary circumstances.

Notwithstanding these limitations, the public participation regime created by the EBR may prove to be the most significant aspect of the Bill. The EBR's basic notice and comment requirements, in combination with the environmental registry, should provide members of the public with a comprehensive window on environmental decision-making in the province, unlike any which has existed before. The potential long-term effects of

these requirements on environmental decision-making in the province should not be underestimated.

It remains unclear, however, to what extent the public participation provisions of the EBR will be applied beyond the Ministry of Environment and Energy. The Bill has been strongly resisted by other ministries of the Ontario government, particularly Natural Resources and Municipal Affairs. This is reflected, in part, in the extended timetables for the application of the EBR's provisions to their decision-making processes. Indeed, there is a possibility that, as was the case with the *Environmental Assessment Act*, these agencies will be provided with ongoing extensions of their exemptions from the EBR's requirements.[163] Ultimately, the extent of the EBR's application will be a function of the government of the day's commitment to the principles of public participation in decision-making which the Bill is intended to implement.

V. REQUESTS FOR REVIEWS OF LAWS, REGULATIONS AND POLICIES THROUGH THE EBR[164]

1) Introduction

A formalized procedure for requesting reviews of existing laws, regulations, and policies has been a long-standing component of proposals for environmental bills of rights in Canada.[165] A procedure for this purpose is set out in Part IV of the EBR.

2) Circumstances under which a Request for Review can be Made

All ministry decisions establishing Acts, policies, regulations and instruments are subject to a request for a review, except where:[166]

(1) the ministry responsible for the decision is not prescribed by regulation as being subject to Part IV of the EBR;[167]
(2) the Act, regulation or instrument is not prescribed by regulation as being subject to Part IV of the EBR;[168] or
(3) the decision was made in the last five years and in a manner consistent with the intent and purpose of Part II of the EBR.[169]

In practice, these three grounds should have the effect of significantly limiting use of the request for review process. The request for review process became applicable to decisions made by the Ministry of Environment and Energy on January 1, 1995. Additional ministries will become subject to the request for review process in later years.[170]

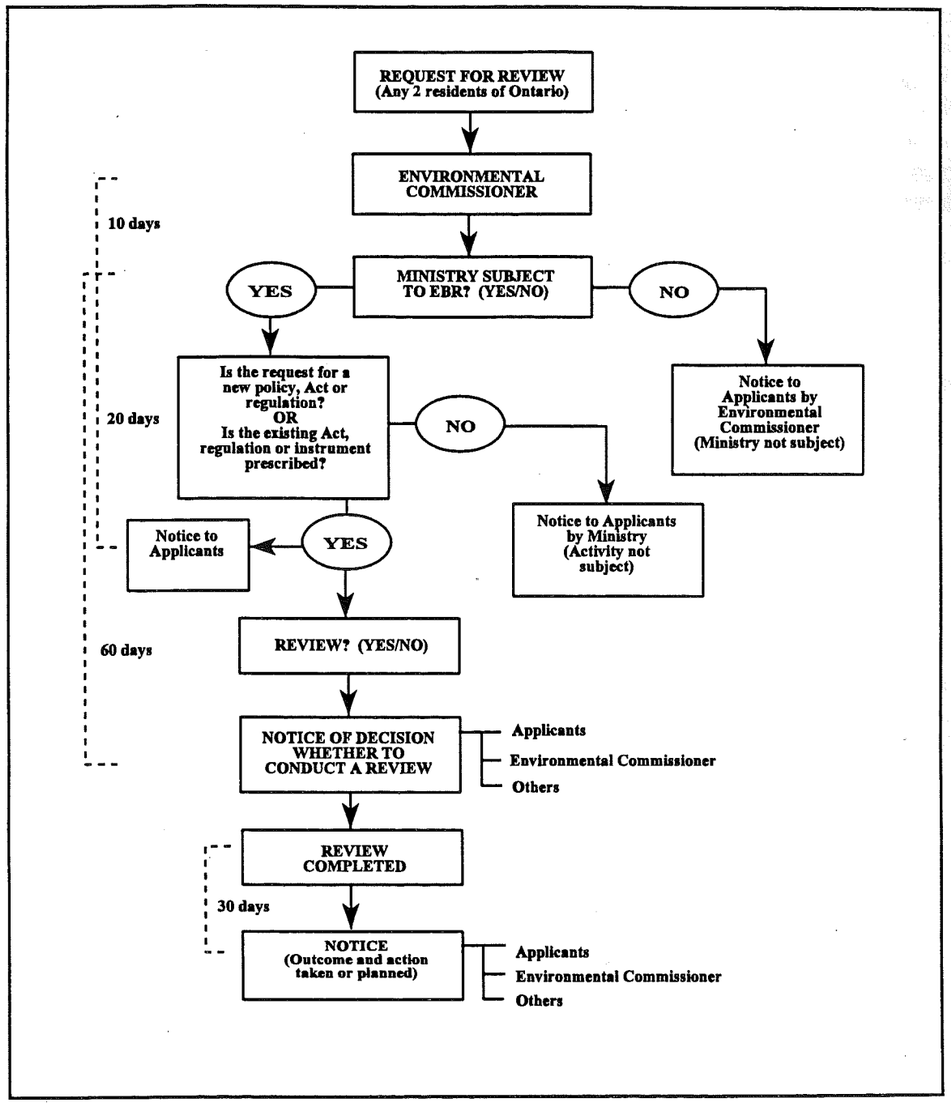
3) Steps to Request a Review

If the threshold criteria outlined above are met, the review process will consist of four steps. These are as follows.

Step 1: Application To Environmental Commissioner

Two persons resident in Ontario must make the application for review.[171] They

Figure 5.1 The EBR Request for Review Process



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

are required to complete a form provided by the office of the Environmental Commissioner that includes:

(a) the names and addresses of the applicants;
(b) an explanation of why the review should be undertaken to protect the environment;
(c) a summary of the evidence supporting the application; and
(d) the identity of the Act, policy, regulation or instrument to be reviewed.[172]

The names and addresses of the applicants, or any other personal information about them, are protected from public disclosure.[173]

Step 2: Referral Of Request To Appropriate Minister(s)

Within ten days of receiving the application for review, the Environmental Commissioner must refer the application to the appropriate minister(s).[174] Where the appropriate minister(s)' ministry is not prescribed as being subject to Part IV of the EBR, the Environmental Commissioner still must refer the application to the minister(s), but also must give notice to the applicant that the ministry is not subject to the right to review.[175]

Where the appropriate ministry is prescribed, the minister must determine whether the decision identified by the application is subject to the right to review.[176] Where the minister determines that the decision is not subject to the right to review, the minister must notify the applicant.[177] If the minister believes his/her ministry is not the appropriate ministry, s/he may, with the Environmental Commissioner's consent, return the application to the Commissioner for referral to the appropriate ministry.[178]

Where the minister for the appropriate ministry receives an application for review of a decision subject to the right to review, the minister must acknowledge receipt of the application within twenty days.[179] In addition, where the application involves a review of an instrument, the minister must give notice to any person with a direct interest in the instrument.[180] Such notice must contain a description of the application for review.[181]

Step 3: Minister Decides Whether Review In Public Interest

The minister must then determine, in a preliminary manner, whether "the public interest warrants a review" of the matter raised in the application.[182] Subsection 67(2) of the EBR lists the following factors the minister may consider in making his/her determination:

(a) the Ministry Statement of Environmental Values;
(b) the potential for harm to the environment if the review is refused;

(c) whether the matters sought to be reviewed are otherwise subject to periodic review;
(d) any relevant social, economic, scientific or other evidence;
(e) any submission from a person with a direct interest in review of an instrument;
(f) the resources required to conduct the review; and
(g) any other relevant matter.

In addition, where review of an *existing* Act, policy, regulation or instrument is applied for, the minister may consider:

(a) to what extent the public had an opportunity to participate in the development of the Act, policy, regulation or instrument; and
(b) how recently the Act, policy, regulation or instrument was made, passed or issued.[183]

Section 68 of the EBR requires the minister not to review a decision made within the last five years that was consistent with the EBR's public participation process,[184] unless there is social, economic, scientific or other evidence to suggest that a failure to undertake the review could result in significant harm to the environment.[185]

Step 4: Decision By Minister On Review

Within sixty days of receiving the application for review, the minister must decide whether to undertake the review and provide a brief statement of his/her reasons to the applicants, the Environmental Commissioner, and any other person who might be directly affected by the decision.[186]

If the minister decides to undertake a review, then the rights to notice and comment discussed above must be complied with.[187] The review must be completed "within a reasonable time".[188] Finally, upon completion of the review, the minister must give notice of the outcome of the review to those persons who received notice of the decision to undertake the review.[189] The notice must state what action has been, or is to be taken as a result of the review.[190]

4) Requests for Reviews of the Need for Future Decisions

Part IV of the EBR also includes a right to review the need for future decisions for proposed Acts, policies and regulations. There is no right to review decisions involving proposed instruments.[191] Therefore, if a person believes that a new instrument is required to protect the environment, s/he must apply to review the need for a new Act or regulation that could provide for this instrument.

The threshold issues are the same as under the right to review existing decisions, except that proposed instruments cannot be reviewed directly and the third ground for refusing a review because the decision was made within the last five years, is not available. Similarly, the same four steps must be completed to request a review as under the right to review existing decisions, except that in deciding whether the public interest warrants a review of the decision, the Minister cannot consider the two factors listed in subsection 67(3). Again, the scope and timing of implementation are the same as under the right to review existing decisions.

5) Conclusions

The request for review provisions of the EBR are remarkably complex, particularly given that their only apparent advantage over the pre-EBR approach of requesting policy reviews through correspondence with the minister in question is the requirement for a response within sixty days. However, even this standard is not legally enforceable. Rather, the applicant would have to complain to the Environmental Commissioner in the hope that he or she might admonish the minister responsible for their failure to reply within the time-frame established by the EBR.

The actual effect of the request for review process on the content environmental policy is likely to be limited. The process established by the EBR permits ministers to determine whether their own ministry's statutes, regulations, policies and instruments warrant review. Similarly, if a review is established, the ministry in question will, in effect, conduct a review of itself. Consequently, it is unlikely that reform initiatives that would not have emerged otherwise from the ministry in question will arise as a result of an EBR request for review.

During the development of the EBR, a number of environmental non-governmental organizations noted the potential conflict of interest inherent in the EBR's request for review structure, and proposed alternative models to both the EBR Task Force and the Legislature's Standing Committee on General Government. These would have permitted the Environmental Commissioner to conduct independent reviews of statutes, regulations, instruments, policies and programs in response to requests from members of the public. Such a structure would have provided for more complete and objective reviews and strengthened the substantive policy role of the Environmental Commissioner's Office.[192] However, these proposals were not incorporated into the final text of the EBR.

VI. REQUESTS FOR INVESTIGATIONS OF LEGAL NON-COMPLIANCE

1) Introduction

The right to request an investigation is set out in Part V of the EBR. This element of the EBR permits two Ontario residents to apply for an investigation of another person's suspected non-compliance with a prescribed Act, regulation or instrument.[193] The EBR's provisions in this regard are similar to those of the federal *Canadian Environmental Protection Act* (CEPA) enacted in 1988, allowing any two residents of Canada, eighteen years of age or older who are of the opinion that an offense has been committed under CEPA, to apply to the Minister of the Environment for an investigation of the alleged offense.[194] Among other things, the existence of the EBR provisions will permit the Ontario government to enter into "equivalency" agreements with the federal government regarding the operation of federal regulations made under CEPA in Ontario.[195]

2) Circumstances under which a Request for Investigations can be Made

Investigations may be requested into the compliance of private sector actors and federal, provincial and municipal government agencies, with the provisions of the Acts prescribed for the purposes of the EBR and with any regulations made, or instruments issued, under those Acts. Requests for investigations of compliance relating to instruments and regulations that are not prescribed for the purposes of the EBR may be refused by the minister responsible for the administration of the Act in question.

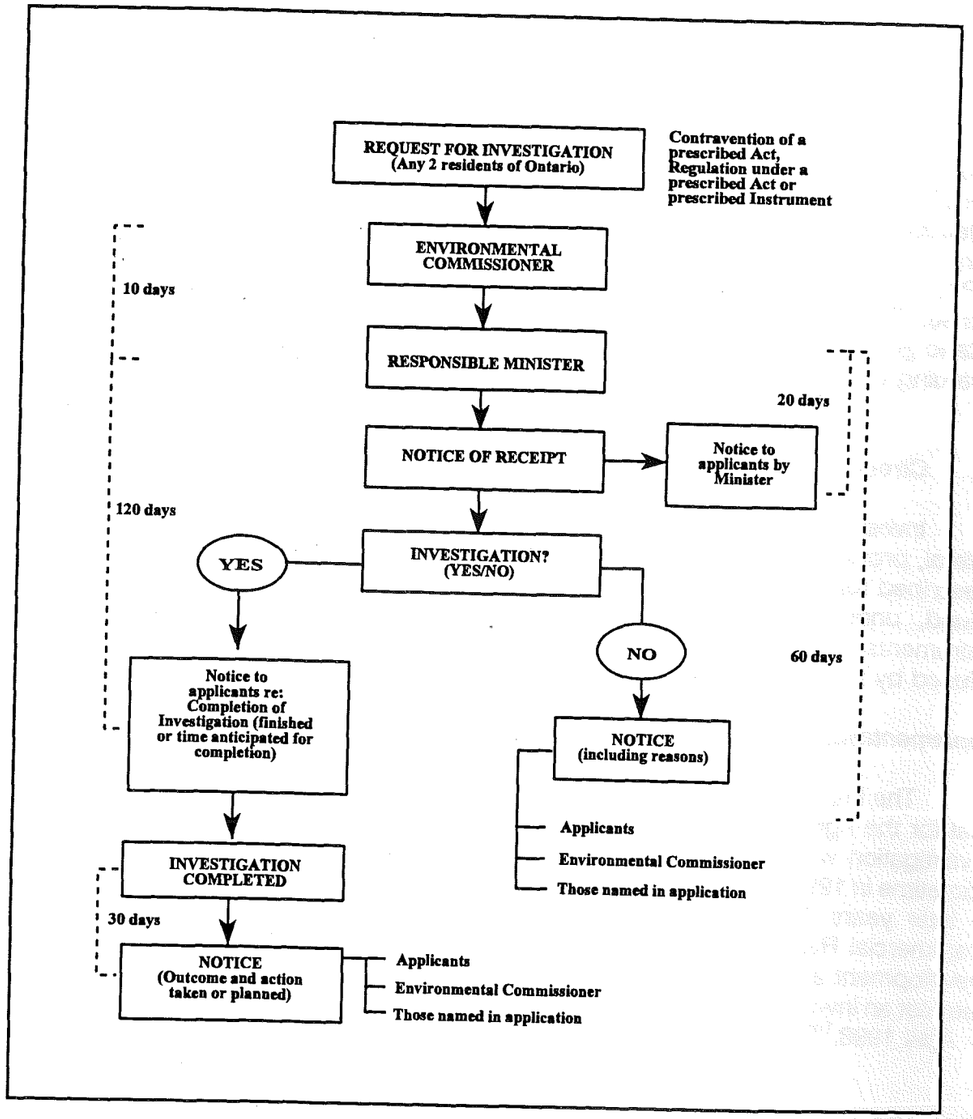
Implementation: Scope and Timing

The implementation schedule for the right to request an investigation is ahead of that for the right to review. The government has indicated that the right to request an investigation will apply to decisions made by the Ministry of Environment and Energy sometime in 1994, with additional ministries subject to the right to request an investigation in later years. The Ministry of Agriculture and Food, the Ministry of Consumer and Commercial Relations, the Ministry of Natural Resources and the Ministry of Northern Development and Mines, for example, are scheduled to become subject to the right to request an investigation in April 1996. The Ministry of Municipal Affairs will become subject in April 1998.[196]

3) Steps to Request an Investigation

The process of requesting an investigation consists of three steps. These are as follows.

Figure 6.1 The EBR Process for Requesting an Investigation of Legal Compliance



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

Step 1: Application To Environmental Commissioner

Two persons resident in Ontario must make the application for review.[197] These residents are required to complete a form provided by the Office of the Environmental Commissioner that includes:

(a) the names and addresses of the applicants;
(b) a statement of the nature of the alleged contravention;
(c) the names and addresses of each person alleged to have been involved in the commission of the contravention;
(d) a summary of the evidence supporting the application;
(e) the names and addresses of each person who might be able to give evidence about the alleged contravention, with a summary of their evidence;
(f) descriptions of any documents or other material that should be considered in the investigation;
(g) where reasonable, a copy of the documents referred to in (f);
(h) details of any previous contacts with the office of the Environmental Commissioner or any ministry regarding the alleged contravention; and
(i) a sworn or solemnly affirmed statement by each applicant that s/he believes that the facts alleged in the application are true.[198]

The names and addresses of the applicants, or any other personal information about them, is protected from public disclosure.[199]

Step 2: Referral Of Request To Appropriate Minister(s)

Within ten days of receiving the application for an investigation, the Environmental Commissioner must refer the application to the appropriate minister(s) of the prescribed ministries.[200] The minister must acknowledge receipt of the application within twenty days.[201]

Step 3: Minister Decides Whether To Investigate

Following the receipt of the request, the minister responsible for the Act in question must determine whether to conduct an investigation in response to the request. Within sixty days of receiving the application for investigation, the minister must either give notice that the investigation is not required or commence the investigation,[202] except where there is an ongoing investigation concerning the same matter.[203]

Investigation Procedure

If the minister decides to undertake an investigation, then the minister must complete the investigation within one hundred and twenty days of receiving the application, or notify the applicants in writing of the additional time required to finish the investigation.[204] Upon completion of the investigation, the minister must give notice of the outcome of the investigation to those persons who received notice of the decision to undertake the investigation.[205] The notice must state what action has been or is to be taken as a result of the investigation.[206]

Refusal to Investigate

Subsections 77(2) and (3) of the EBR provide the minister with the following four grounds for refusing to undertake an investigation:

(a) the application is frivolous or vexatious;
(b) the alleged contravention is not serious enough to warrant an investigation;
(c) the alleged contravention is not likely to cause harm to the environment; or
(d) the requested investigation would duplicate an ongoing or completed investigation.

Where the minister refuses to investigate, s/he must give notice of this decision, including a brief statement of the reasons for refusal, to the applicants, to each person alleged in the application to have been involved in the contravention for whom an address is given in the application; and the Environmental Commissioner.[207]

4) Conclusions

Predicting the likely effectiveness of the request for investigation provisions of the EBR is difficult. The process may provide a useful means of drawing attention to failures, on the part of the provincial government, to enforce its environmental statutes and regulations.

It is important to note that the request for investigation process is not restricted to allegations of environmental wrongdoing by private sector actors. The provisions apply to the actions of public sector agencies as well. Indeed, such bodies may be the target of a significant proportion of the requests for investigation received by the Environmental Commissioner.

Unfortunately, the structure of the EBR's provisions may lead to situations in which ministers are asked to investigate the activities of their own ministries or crown agencies

within their portfolios. The Minister of Environment and Energy, for example, might be asked to investigate discharges from a sewage treatment plant operated by the Clean Water Corporation under the *Ontario Water Resources Act*, or the Minister of Natural Resources may be asked to review the activities of his or her ministry on Crown lands, under the *Public Lands Act*. Vigourous action in relation to alleged wrongdoing by other ministries and provincial agencies also seems unlikely.

The potential effectiveness of the request for investigation process in relation to public sector actors was questioned during the development of the EBR. A number of environmental non-governmental organizations suggested that the Commissioner's Office might have been given the capacity to conduct investigations of alleged violations of environmental statutes and regulations, itself, under such circumstances.[208] However, these proposals were not incorporated into the EBR.

In the event of a refusal to investigate an alleged contravention, the applicant would appear to have two options. The first would be to ask the Environmental Commissioner to review the minister's decision as part of the Commissioner's mandate to "review the receipt, handling and disposition of ... applications for investigation under Part V."[209] This could result in an exercise of the Commissioner's power to submit a "special report" to the Legislature, if the Commissioner concludes that the refusal of the minister to conduct an investigation was inappropriate.

The second option available to the applicant would be to commence legal proceedings using the statutory cause of action in Section 84 of the Act. Unfortunately, as will be described in detail in the following section of this paper, the new cause of action suffers from a number of substantive and procedural constraints, which may act as significant deterrents to prospective litigants. In addition, and perhaps even more importantly, the high costs of litigation and the limited financial resources of most environmental non-governmental organizations, community groups and individual citizens, must be factored into their decision-making processes. In this context, approaching the Environmental Commissioner in the hope of obtaining political redress, may prove to be more attractive option than the pursuit of legal actions.

However, success in this regard will depend largely upon the Commissioner's interpretation of the scope of her mandate. In particular, it will be a function of whether the Commissioner chooses to restrict herself to criticism of ministers for their failures to follow the *procedural* requirements of the EBR, or to challenge ministers from time to time on the *substance* of their decisions regarding the dispensation of requests for investigations as part of the Office's mandate to review the exercise of ministerial "discretion." A primarily procedural focus would seem unlikely to meet the expectations which have been placed on the Commissioner's Office.

VII. THE RIGHT TO SUE TO PROTECT A PUBLIC ENVIRONMENTAL RESOURCE

1) Introduction

> "On one hand, environmental decision making should be undertaken in a transparent, open fashion to allow the inclusion of affected interests without the formality and expense of court actions. On the other hand, there have to be guaranteed environmental rights for citizens, with adequate access to the courts, to ensure that citizens have recourse to them in appropriate situations."[210]

Part VI of the EBR, which contains the right to sue provisions, is perhaps the most controversial component of the Act, as it establishes what are potentially the most important substantive rights provided by the Bill. This part of the EBR increases public access to the courts to protect the environment in two key ways:

1) the public is given a new right of action to enforce environmental laws; and
2) the standing barrier in public nuisance actions is removed.

However, as will be discussed below, a number of constraints are placed on access to the courts. This reflects the Task Force's decision to restrict access to the courts to "the control option of last resort."[211]

2) The Role of Citizen Suits in Environmental Law Enforcement

i) Origins of the Citizen Suit Concept

The public generally has two means of directly enforcing environmental laws where the government fails to do so. Under such circumstances, a citizen has the option of pursuing a private prosecution, or an action through a statutorily-created "citizen suit." A private prosecution is a "quasi-criminal" proceeding in which a citizen may prosecute the party alleged to have caused harm to the environment. A number of Canadian environmental statutes include provisions explicitly permitting private prosecutions, including, the Yukon *Environment Act*,[212] the North West Territory *Environmental Rights Act,*[213] and the federal *Fisheries Act*.[214]

Private prosecutions have met with some success in Canada, particularly under the federal *Fisheries Act*,[215] and the mere threat of a conduct of private prosecution has, on occasion, prompted governments to act to enforce their environmental laws.[216] However, private prosecutions also suffer from a number of limitations as a means of ensuring environmental law enforcement. As in any criminal proceeding, the burden of proof on a party bringing a private prosecution is "beyond a reasonable doubt." In

addition, in some jurisdictions, such as British Columbia, the provincial Attorney General must approve and conduct all prosecutions.[217] Even where this is not the case, the Attorney-General may exercise his or her right to take over the conduct of the prosecution, and then fail to pursue the matter further.[218]

A "citizen suit," on the other hand, is a *civil* action in which a private party has a statutory cause of action to seek relief in the civil courts to enforce the provisions of a statute. As such, a citizen suit may have some advantages over a private prosecution. In a civil suit, the emphasis is on compensation rather than deterrence, and in some instances this may be a more appropriate approach. Furthermore, the consent of the Attorney General generally is not required to pursue a citizen suit. Perhaps even more importantly, the burden of proof in a citizen suit is the civil one of "on a balance of probabilities," which is a lesser onus than the criminal burden of "beyond a reasonable doubt." Both private prosecutions and civil suits are costly to bring. However, the costs' rules of civil actions, under which an award of costs can be made against an unsuccessful plaintiff, do not apply in criminal or quasi-criminal proceedings, such as private prosecutions.[219]

As with many new developments in Canadian law, precedents for citizen suit provisions in environmental statutes may be found in American legislation. In the 1970s, the United States Congress enacted a number of statutes permitting citizen suits, beginning with Section 3304 of the 1970 *Clean Air Act*. Such provisions now are contained in most U.S. federal environmental statutes.[220] They generally allow citizens, upon giving notice to the government, to act as "private attorney generals," taking court action against environmental offenders and obtaining civil penalties such as injunctions and fines.

Those in favour of citizen suit provisions argue that they enable citizens to enforce legislation where the government fails to do so. As such, they are a powerful tool in environmental protection. At the same time, citizen suits have been criticized as being expensive and invasive of the executive branch of government, having the potential to upset the balance of power between the regulators and the regulated, and to lead to uneven statutory enforcement.[221]

In addition, some commentators have argued that one of the key reasons for the statutory creation of such actions in U.S. legislation is that the American political structure is based on the separation of powers between the executive and the legislative branches of government. Within this structure, legislatures cannot guarantee that the executive branch will carry out their legislative intent. In other words, the executive cannot be trusted to implement legislature's laws, and safeguards such as citizen suit provisions, therefore must be built into legislation.[222]

In contrast to the American model, the Canadian political system is based on a tradition of "responsible government," in which the executive and legislative branches of

government are fused. Consequently, Canadian legislatures do not have the same institutional mistrust of the executive as their American counterparts. Accordingly, they generally have not enacted legislation creating citizen suits, despite arguments in favour of doing so from the Canadian environmental community.[223] As a result, actions relating to statutory regulations and violations in Canada must be supported by elected officials.[224]

Given these considerations, the appropriateness of "citizen suits" in the institutional context of the Canadian system of government has been the subject of considerable debate. On one hand, citizen suits have been described as an extreme example of the "legalist" public philosophy in action - they take the role of law enforcement away from the Attorney-General acting for the state and give it to private citizens.[225] However, others argue that such suits are an important component of public participation in environmental protection and are necessary to ensure that the enforcement of environmental laws is maintained.[226]

ii) Citizen Suits in Canada

In addition to Ontario, three other Canadian jurisdictions have enacted environmental statutes containing citizen suit provisions.

Northwest Territories

In November 1990, the Northwest Territories became the first Canadian jurisdiction to enact an environmental bill of rights with the passing into law of the *Environmental Rights Act*. The Act creates a right to a healthful environment, a right to protect the natural environment and a public trust obligation by the government. It also gives residents the right to initiate a private prosecution against any person violating specific territorial acts and regulations relating to the release of contaminants into the environment and the right to commence a civil action for damages or an injunction against a person releasing a contaminant into the environment.[227] Fines paid by polluters may be diverted to citizens to cover the costs of the prosecution. There has been no litigation to date under this Act.

Yukon Territory

The Yukon Territory followed the Northwest Territories in 1992, with the enactment of the *Environment Act* which includes various environmental rights provisions in Part I of this Act. The Act provides every resident with the right to a healthful natural environment and "a remedy adequate to protect the natural environment and the public trust."[228] Adults and corporate persons resident in the Yukon are given standing to commence an action against any person impairing or likely to impair the environment and against the government for failure to protect the public trust,[229] as well as the right to commence a private prosecution for an offence under the Act.[230] A court may order that a portion

of any fine imposed be directed to a resident to defray legal costs relating to the prosecution. However, the civil suit provision is subject to regulations that have not yet been enacted. The entire act is currently under review and the broad environmental rights provisions may be narrowed as a result of this process.

Quebec

The *Environment Quality Act*[231] creates a right to "a healthy environment and to its protection, and to the protection of living species inhabiting it," to the extent permitted by the Act. The Act provides for the remedy of an injunction prohibiting any act or operation which interferes or might interfere with the exercise of these rights, subject to the existence of a "depollution programme negotiated with the government."[232] Standing is given to residents frequenting the immediate vicinity of an alleged contravention of the Act.[233]

The Federal Government and Other Provinces

At the federal level, the *Canadian Environmental Protection Act* permits "any person who has suffered loss or damage" as a result of a CEPA infraction to seek injunctive relief in court or sue for damages.[234] However, no action has even been taken under these provisions. A number of environmental non-governmental organizations recommended that a full citizen suit provision be added to CEPA during the House of Commons Standing Committee on Environment and Sustainable Development's five year review of the Act in the fall of 1994.[235]

The Alberta *Environmental Protection and Enhancement Act* of 1992 contains a provision similar to the existing CEPA provisions.[236] A citizen suit provision is under consideration as part of the proposed *Nova Scotia Environment Act*. Citizen suits have also been considered under the proposed Saskatchewan *Charter of Environmental Rights and Responsibilities*, and *British Columbia Environmental Protection Act*, although it seems unlikely that they will be enacted.

iii) Costs: A Barrier to Civil Actions to Protect the Environment

Legislation in Canada that permits citizen suits generally does not make special provision for awarding costs to litigants bringing such actions to protect the environment in the *civil* courts.[237] As a result, citizens bringing such civil actions are left to the normal rules of costs recovery. In Canada, losers in litigation may be ordered to pay for the costs of their opponents. In the U.S., by contrast, losing litigants are not responsible for the costs of the winners. In fact, many American environmental statutes provide for payment of the legal fees of successful litigants.[238]

The Canadian approach creates a very real disincentive for NGOs, community

interest groups and individual citizens to bring actions. Even with an increase in legislation creating citizen suits, in the absence of different cost provisions or intervenor funding the widespread use of these actions likely will be limited in Canada even where provisions permitting such actions exist.

3) The EBR "Citizen Suit" Provision: The New Right of Action to Protect a Public Environmental Resource

Subsection 84(1) of the EBR creates the following new statutory cause of action:

> "where a person has contravened or will imminently contravene an Act, regulation or instrument prescribed for the purposes of Part V and the actual or imminent contravention has caused or will imminently cause significant harm."

Any person resident in Ontario may bring a court action against the person alleged to be in contravention or imminent contravention in respect of the harm and is entitled to judgment if successful.

"Harm" is defined in the EBR as "any contamination or degradation and includes harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation" to a public resource.[239] This is considered to be a wider category than an "adverse effect" under the *Environmental Protection Act*.[240] A "Public Resource" is defined as:[241]

(a) air;
(b) water, not including water in a body of water the bed of which is privately owned and on which there is no public right of navigation;
(c) unimproved public land;
(d) any parcel of public land that is larger than five hectares and is used for:
  (i) recreation;
  (ii) conservation;
  (iii) resource extraction;
  (iv) resource management; or
  (v) a purpose similar to one mentioned in subclauses (i) to (iv); and
(e) any plant life, animal life or ecological system associated with any air, water or land described in clauses (a) to (d).

It is important to note that the new cause of action *applies only to a contravention of a prescribed law, or instrument or regulation made under a prescribed law, that occurs after the EBR has come into force, and the contravention must involve significant*

environmental harm to a public resource. The right of action is limited further in that a plaintiff may only bring an action in court after several procedural steps have been taken. These steps are as follows.

i) Bringing An EBR Lawsuit: The Procedural Steps

Step 1: Request for Investigation

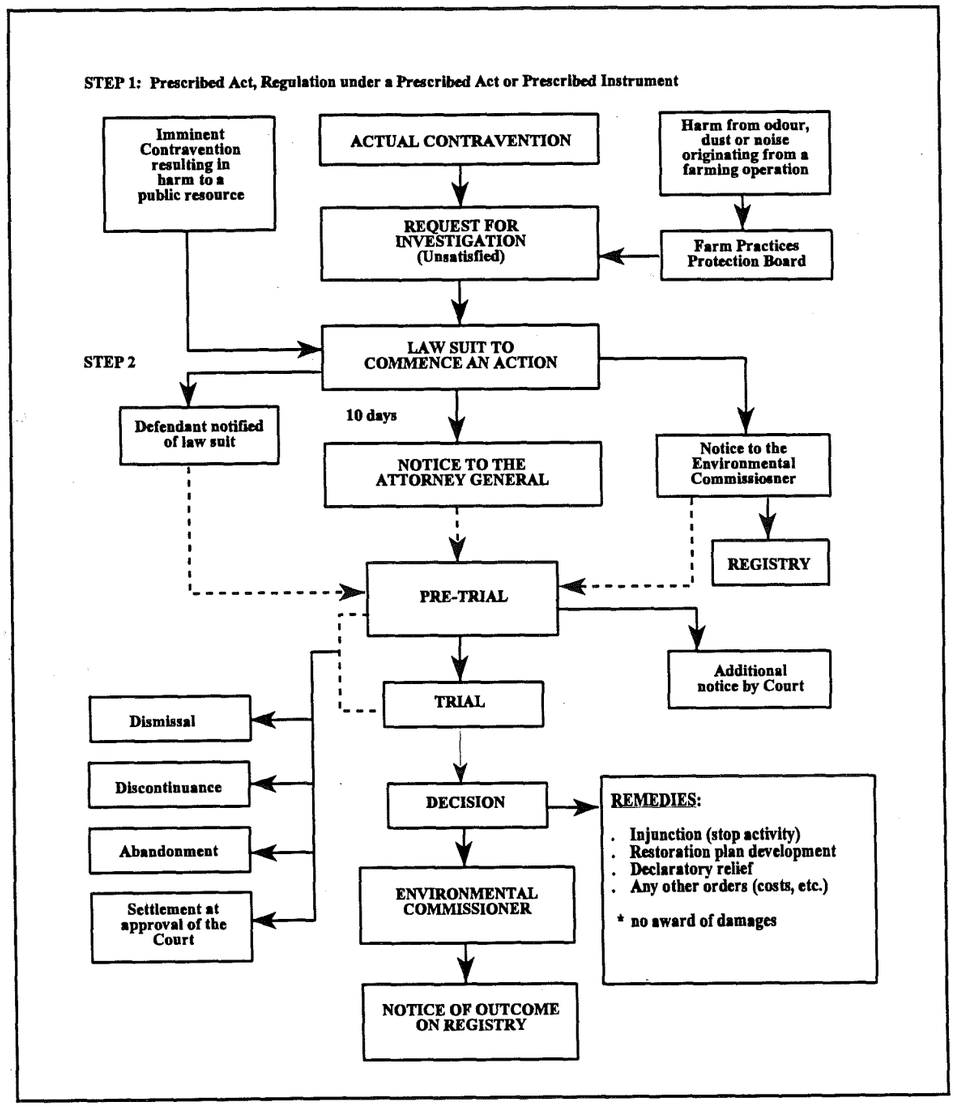
The first step to bringing a section 84 lawsuit is that the plaintiff must have made an application under Part V of the EBR for investigation of an alleged contravention of a prescribed statute, regulation or instrument, and the plaintiff must have not received a response in a reasonable time or have received a response that was not reasonable.[242] Where the actual or imminent harm to a public resource results from noise, odour or dust from agricultural operations, the plaintiff first must apply to the Farm Practices Protection Board for a hearing under section 5 of the *Farm Practices Protection Act* to determine whether the noise, odour and dust results from a normal farming practice, in which case the farmer is protected.[243] However, neither of these procedures must be undertaken where the delay from compliance, "would result in significant harm or serious risk of significant harm to a public resource".[244]

Step 2: Statement of Claim

Once Step 1 has been completed, the plaintiff proceeds to Step 2 by serving its statement of claim on the defendant(s). Within ten days of serving the statement of claim on the first defendant, the plaintiff also must serve the statement of claim on the Attorney General of Ontario. The Attorney General may present evidence and make submissions, appeal-from-a-judgment and present evidence and make submissions in an appeal-from-a-judgment. [245] Notice of the action also must be given to the public through the Environmental Registry by delivery of the notice to the Environmental Commissioner, who must promptly place the notice on the Registry.[246]

Within thirty days after the close of pleadings, the plaintiff must make a motion to the court for directions relating to such notice, as the plaintiff is required to give notice to the public by any other means ordered by the court.[247] The court also has the power to require a party other than the plaintiff to give notice and permit any person to participate in the action, as a party or otherwise, so as to protect the private and public interests involved in the action.[248] There is a two-year limitation period commencing on the day of the discovery by the plaintiff of the harm to the public resource.[249]

Figure 7.1 The EBR Citizen Suit Process



* From Canadian Institute for Environmental Law and Policy Environmental Bill of Rights Course Reference Guide, March 1994.

ii) The Tools for Defending an EBR Lawsuit: Stays; Dismissals; and Settlements

The plaintiff's failure to follow any of the required steps or procedures in bringing an EBR lawsuit, such as the failure to meet a limitation period, may be a potential defence in an EBR action. In addition, there are a number of specific defences available to a defendant in an EBR lawsuit.

Once served, the defendant(s) or the Attorney General can seek a stay or dismissal of the proceedings on the grounds that to continue the action in the courts is not in the public interest. On such a motion, the court may look at "environmental, economic and social concerns", and consider:

(a) whether the issues raised by the proceeding would be better resolved by another process;
(b) whether there is an adequate government plan to address the public interest issues raised by the proceeding; and
(c) any other relevant matter.[250]

The defendant(s) or the Attorney-General also may take steps to have the plaintiff discontinue, abandon or settle the action prior to trial. Provision is made in the legislation for the discontinuance and abandonment of a section 84 action with the approval of the court, on terms that the court considers appropriate.[251] Settlements of section 84 actions are not binding unless approved by the court. However, court approved settlements bind all past, present and future residents of Ontario.[252]

Where a section 84 action is proposed to be dismissed, discontinued, abandoned or settled, the court may order any party to give any notice considered necessary to provide fair and adequate representation of the private and public interests, including an order for the costs of the notice.[253] Such notice is necessary as the doctrines of *res judicata*[254] and *issue estoppel*[255] will apply to prevent future litigation of civil claims once a particular harm has been dealt with by the court.

The burden of proof in the action is on the plaintiff to prove the contravention or imminent contravention on a balance of probabilities.[256] A defendant will have a defence where:

(1) the defendant satisfies the court that he or she exercised due diligence in complying with the Act, regulation or instrument;

(2) the act or omission alleged to be a contravention is authorized by statute, regulation or instrument; or

(3) the defendant satisfies the court that she or he complied with an interpretation of the instrument that the court considers

reasonable."[257]

In addition, Subsection 85(4) provides that "this section shall not be interpreted to limit any defence otherwise available."

The defences created by these legislative provisions are unusually broad. In particular, Subsection 85(3) appears to extend the common law defence of due diligence (set out in Subsection 85(1)) to a defence in which a defendant only need demonstrate that he or she acted on a reasonable interpretation of an instrument. The effect of such language is to provide a defendant in an EBR lawsuit with defences against which it may be very difficult to succeed.

iii) Remedies

Where the plaintiff is successful, the court may:

(a) grant an injunction against the contravention;
(b) order the parties to negotiate a restoration plan in respect of harm to the public resource resulting from the contravention and to report to the court on the negotiations within a fixed time;
(c) grant declaratory relief; and
(d) make any other order, including an order as to costs, that the court considers appropriate. [258]

No award of damages may be made, and the order also must be consistent with the *Farm Practices Protection Act*.[259]

Restoration Plans

When ordered by the court, a restoration plan, "to the extent that to do so is reasonable, practical and ecologically sound", shall make provision for:

(a) the prevention, diminution or elimination of the harm;
(b) the restoration of all forms of life, physical conditions, the natural environment and other things associated with the public resource affected by the contravention; and
(c) the restoration of all uses, including enjoyment, of the public resource, affected by the contravention.[260]

With the defendant's consent, the plan also may provide for:

(a) research into and development of technologies to prevent, decrease or eliminate harm to the environment;

(b) community, education or health programs; and
(c) the transfer of property by the defendant so that the property becomes a public resource.[261]

These options were established to provide a means of addressing situations in which the environmental damage caused by the defendant's action is irreparable. The court may not order negotiation of a restoration plan if adequate restoration has already been achieved or ordered by law.[262]

iv) Practical Implications: Opening the "Floodgates" to Litigation?

Many stakeholders, particularly those representing business interests, expressed concern that these provisions would open the "floodgates" to litigation and result in many frivolous lawsuits. However, there is little evidence to support the "floodgates" argument in other jurisdictions that permit citizens suits, such as Michigan (under the *Michigan Environmental Protection Act*)[263] and at the federal level in the United States. In addition, EBR plaintiffs will have no financial incentive to sue as the court cannot make monetary awards to them.[264]

Furthermore, according to the Ontario government, a number of procedural safeguards exist to prevent excessive litigation using the provisions of the EBR:

> "Frivolous complaints can be screened out at several points in the process. The applicants must make a sworn statement that they believe the facts alleged in the application are true. Where the applicant knowingly makes false allegations, criminal action may be taken. The relevant ministry is not obligated to investigate where complaints are deemed frivolous or not serious enough, or where failure to investigate is not likely to cause harm to the environment. In addition, ministries are not required to duplicate ongoing or completed investigations."[265]

Beyond these procedural requirements, perhaps the most significant hurdle to public interest litigants will be an economic one. Unlike those who appear before various environmental tribunals, such as the Environmental Assessment Board, the Ontario Energy Board and the Consolidated Hearing Board, public interest plaintiffs bringing EBR lawsuits in the courts cannot apply for funding under the *Intervenor Funding Project Act*.[266] This Act established a scheme to provide intervenors who meet certain criteria with funds. The funding was extended in March 1992 for four years, but nothing was done to reform the party-and-party costs rule that, "often makes access to the courts prohibitively costly."[267]

Moreover, section 84 actions cannot be commenced as class proceedings as provided for under the *Class Proceedings Act, 1992*.[268] A class proceeding allows one

or more persons to bring a lawsuit on behalf of many people seeking redress for widespread harm or injury. The *Amendment to Law Society Act*,[269] establishes a fund to which plaintiffs can apply for financial assistance in bringing these lawsuits.

With respect to class proceedings, the EBR Task Force on the Ontario Environmental Bill of Rights observed that:

> "Aside from increasing access to the justice system, economizing on judicial and legal resources, and allowing otherwise uneconomical claims to achieve redress, a class action procedure has also been seen as a method of deterring illegal or unlawful behaviour by ensuring that those who carry on activities which may cause widespread harm may be called to account."[270]

In addition, the Task Force stated that it saw, "the class proceedings reform as an integral part of an Environmental Bill Rights."[271] Given these statements, it is surprising that the EBR does not allow a lawsuit under the new right of action to be brought as a class proceeding.

Following the normal rules of costs for civil litigation, the costs of an action brought under the EBR will be awarded in the cause, although the court, "may consider any special circumstance, including whether the action is a test case or raises a novel point of law."[272] Earlier proposed environmental bills of rights included stronger provisions to reduce plaintiffs' exposure to costs awards against them.[273] The business community strongly opposed such requirements, arguing that they would dramatically increase the cost of dealing with environmental issues and that the threat of costs was needed to deter frivolous litigation.[274]

In summary, the experience in other jurisdictions with environmental rights legislation does not support a conclusion that the EBR's new right of action will lead to a wave of environmental litigation. In addition, the lack of intervenor funding, the prohibition against class proceedings and the threat of costs are likely to have a chilling effect on citizens seeking to bring section 84 lawsuits to protect the environment.

4) Public Nuisance Causing Environmental Harm

In light of the limitations placed on the new cause of action in the EBR, the Bill's removal of certain legal barriers to bringing an action in public nuisance cases acquires greater significance. A public nuisance is "an inconvenience or interference caused to the public generally, or part of the public, which does not affect the interests of individuals in land".[275] The public nuisance standing rule is that a "private individual cannot seek a remedy for public nuisance without the consent of the Attorney General unless he can show that he has suffered a harm, or possesses an interest, that distinguishes him from

the rest of the public".[276]

The EBR removes this limitation by providing that:

> "No person who has suffered or may suffer a direct economic loss or direct personal injury as a result of a public nuisance that caused harm to the environment shall be barred from bringing an action without the consent of the Attorney General in respect of the loss or injury only because the person has suffered or may suffer direct economic loss or direct personal injury of the same kind or to the same degree as other persons."[277]

Without such a provision, an individual only could sue for losses caused by a public nuisance without the consent of the Attorney-General, if the individual had suffered "special" or "unique" harm or possessed an interest different from or greater than the rest of the public. As the Task Force on the Ontario Environmental Bill of Rights remarked:

> "The court's interpretation of the public nuisance rule created the unusual outcome that numerous individual members of a community could suffer inconvenience or interference and be denied access to the courts to complain about it, simply because they had all suffered the same level or kind of inconvenience or interference. It also seemed anachronistic to the Ontario Law Reform Commission that a politician, the Attorney General, should be required to give permission in order for residents who had suffered such a loss to use Ontario's courts."[278]

The Supreme Court of Canada has decided that the public nuisance standing rule should not apply to constitutional challenges or to challenges to certain forms of administrative action.[279] Instead, the courts have developed a discretionary approach to standing, which does not extend to civil claims. The EBR Task Force, however, was of the view that the standing barrier was outdated and should be removed to provide citizens with more flexible tools for environmental protection, although it recommended an incremental and cautious approach to reform in this area.[280]

Notwithstanding the EBR reforms, the pursuit of environmental public nuisance actions remains subject to some limitations. While a plaintiff under the EBR no longer must show damage above and beyond the damage suffered by others, the plaintiff is still required to demonstrate a direct economic loss or personal injury. This requirement may continue to prevent many from bringing a public nuisance action. In addition, as is the case with litigating on the basis of the new cause of action, the costs of bringing an action for public nuisance also may act as a powerful deterrent,[281] although the provisions of the *Class Proceedings Act* do apply to EBR public nuisance actions. Farmers continue to be protected against public nuisance actions by provisions contained in the *Farm Practices Protection Act*.[282]

VIII. THE RIGHT TO "BLOW THE WHISTLE" ON EMPLOYERS

Part VII of the EBR is intended to enhance the protection of employees from employer reprisals, if they use the EBR to "blow the whistle" on their employers. Specifically, the legislation enables employees to file a complaint with the Ontario Labour Relations Board where an employer has taken reprisals against the employee on a prohibited ground.[283]

A reprisal is considered to have taken place when an employer has "dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass an employee."[284] For the purposes of the EBR, the employer is considered to have taken a reprisal on a prohibited ground if the reprisal was taken against an employee who:

(a) participated in decision-making about a ministry statement of environmental values, a policy, an Act, a regulation or an instrument as provided in Part II;
(b) applied for a review under Part IV or an investigation under Part V;
(c) complied with or sought enforcement of a prescribed Act, regulation or instrument;
(d) gave information to an appropriate authority for the purposes of an investigation, review or hearing related to a prescribed policy, Act, regulation or instrument; or
(e) gave evidence in a proceeding under the EBR or a prescribed Act.[285]

The protection given to whistleblowers only applies where the information is provided to "an appropriate authority." This may be interpreted as including only government agencies - *no protection would be available to an employee who had reported to a third party such as the media or an non-governmental organization*. However, protection would be available if the employee were subpoenaed to give evidence in a private prosecution or an EBR citizen suit. Where a collective bargaining agreement is in place, the grievance procedures in the agreement would have to be followed prior to the filing of a complaint with the Labour Relations Board.

In an inquiry by the Ontario Labour Relations Board, the onus is on the employer to prove that a reprisal was not taken on a prohibited ground.[286] This is an important change from the existing provisions of the *Environmental Protection Act*, which placed the burden of proof on the "whistleblowing" employee to demonstrate that he or she had been disciplined or dismissed for "whistleblowing."

If it determines that a reprisal for whistleblowing did take place, the Ontario Labour Relations Board may order an employer to:

(1) cease doing the act or acts complained of;
(2) rectify the act or acts complained of; or
(3) reinstate the employee, with or without compensation, or provide compensation for loss of earnings or other employment benefits.[287]

These provisions contain a number of improvements over the existing provisions of section 174 of the *Environmental Protection Act* (EPA). In particular, they provide broader protection, in that the EPA only shields employees complying with the EPA, the *Environmental Assessment Act*, the federal *Fisheries Act*, the *Ontario Water Resources Act* and the *Pesticides Act* and regulations pursuant to these statutes. In contrast, the EBR provisions apply to activities relating to all of the statutes prescribed for the purposes of the Bill. The reversal of the onus in "whistleblowing" situations also represents a significant gain for employees.

The EBR's provisions were originally intended to replace the provisions of section 174 of the EPA. However, it was pointed out in submissions from labour and environmental non-governmental organizations to the Standing Committee on General Government that this would have diminished the employee rights which exist under the EPA provisions. The reason for this is that the EPA provisions may have created an offence with the words "no person shall" with respect to the taking of reprisals against "whistleblowers." The proposed EBR provision did not contain such language.[288] Consequently, the Committee amended the Bill so that the EBR's whistleblower protection provisions exist in parallel to, rather than replace, those of the EPA.

The EBR does not grant employees the right to refuse work, or to refuse to harm the environment, although further study in this area was recommended by the EBR Task Force.[289] Similar discussions are being held at the federal level in the context of the Standing Committee on Environment and Sustainable Development's review of the *Canadian Environmental Protection Act*.[290]

IX. CONCLUSIONS

1) The EBR as a Paradox

The Ontario *Environmental Bill of Rights* is a peculiar and paradoxical piece of legislation. Notwithstanding its title, the EBR grants members of the public no explicit substantive environmental rights, and even the procedural rights which the Act provides are subject to very significant limitations. In many places the EBR creates new means for the public to participate in environmental decision-making, but then effectively neutralizes these opportunities by placing severe constraints on their use.

The EBR, for example, requires that affected ministries develop Statements of Environmental Values (SEVs), explaining how the EBR's environmental purposes are to be applied in ministry decision-making. However, the Bill also states that the SEVs must explain how these purposes are to be "integrated" with "social, economic and scientific considerations."[291] Similarly, the EBR provides for third party appeals of environmental decisions, but creates as well a virtually insurmountable leave test for the granting of such third party appeals. The pattern is repeated with the EBR's citizen suit provisions which allow for civil actions to protect public environmental resources from harm, but at the same time establish a range of procedural barriers to the initiation of such actions, provide defendants with an extraordinary defence, and explicitly prohibit the pursuit of EBR actions as class proceedings.

In addition to these specific limitations, the EBR also suffers from a serious weakness in its overall structure in that it is "phase-shifted" in terms of the appropriate roles for political and judicial accountability mechanisms. The role of the courts and judicial accountability in ensuring procedural fairness in the decision-making processes of democratic societies is widely accepted, as is the appropriateness of using political means of oversight and accountability in relation to the substantive content of public policy decisions.[292]

The EBR however, uses an instrument of *political* accountability - the Office of the Environmental Commissioner - as its principal means of attempting to guarantee procedural fairness, while providing very limited mechanisms for affecting the substance of environmental policy. This is especially evident in the absence of an explicit substantive policy review mandate for the Commissioner's Office and in the presence of a "privative" clause insulating all of the EBR, except for certain elements of Part II, from judicial review. The latter leaves the courts with a very limited role to play in ensuring procedural fairness through the Bill's application.

2) The EBR Development Process

These contradictions are largely the result of the process used by the government of Ontario to develop the EBR. This was in itself a paradox, as it employed a multipartite bargaining structure to develop what normally has been characterized as an instrument of a legalist public philosophy. While the multipartite model emphasizes cooperative bargaining between government and all of the relevant stakeholders in a policy area, legalism stresses formalized, adversarial relations among stakeholders, and gives a prominent role to the courts in the supervision of interest group conflict.[293]

The multipartite character and consensus-based mandate of the EBR Task Force are reflected in the EBR's contradictory elements. The requirement for consensus effectively granted the business and bureaucratic interests on the Task Force a veto over the Bill's contents. At the same time, the environmental non-governmental organization representatives on the Task Force found themselves in the difficult position of having to choose between working within this framework, or withdrawing from the process altogether. However, the latter option could have resulted in there being no EBR at all, as the government might not have acted on the issue in the face of the opposition from business interests and within the provincial bureaucracy. This concern was especially acute in light of the government's reversals on other key election commitments, such as the implementation of public auto insurance in the province.[294]

The decision to adopt a multipartite bargaining process provided the government with a number of advantages. By involving all of the major stakeholders in reaching a consensus on the contents of an EBR, the government was able to develop and enact the Bill with a minimum expenditure of political capital. Not only were the most important potential sources of criticism co-opted into the process of developing the Bill but, even if the process had failed to achieve consensus, the government would have been provided with a justification for inaction. Similarly, had the government chosen to act in the face of such disagreement, the opportunity it provided to stakeholders to participate in the development of an EBR would have minimized any potential challenges by them to the legitimacy of the outcome.[295]

However, there is also a serious drawback with this approach from the government's perspective, in that if consensus is achieved, the final product may be seen as inviolable. Any attempt by the government to amend the result is likely to lead to severe criticism, and threaten the legitimacy of the entire initiative.[296] Unfortunately, but perhaps inevitably, the EBR created by the Task Force process was extremely complex ("byzantine" in the words of one commentator), in places contradictory, and fell short of the expectations of many as the centrepiece environmental initiative of a government elected on an explicitly pro-environmental platform. However, intervention to strengthen the EBR could have been interpreted as undermining the success of the multi-stakeholder process.

3) The Long-Term Effects of the Bill on Environmental Decision-Making

In practice, three aspects of the Bill seem likely to have major effects on environmental policy-making in Ontario: the removal of the standing barrier in public nuisance actions; the establishment of an environmental registry and public participation regime; and the creation of the Office of the Environmental Commissioner.

The EBR's partial removal of the traditional limitations on the pursuit of common-law public nuisance actions should not be underestimated. It may, in fact, prove to be a more significant development than the new cause of action to protect a public environmental resource introduced by the Bill. A number of significant barriers to bringing actions using the EBR's citizen suit provisions exist, including the complex procedural requirements, very wide defences available, and prohibition against class proceedings and funding available under the *Class Proceedings Act* fund. Public nuisance actions, on the other hand, are not subject to the same procedural requirements as EBR citizen suits. In addition, the *Class Proceedings Act* applies to public nuisance actions, which could significantly reduce the potential financial burden on citizens pursuing such actions. Plaintiffs using either cause of action, however, are subject to the potential costs of both initiating the action and in the event of an adverse cost award.

Secondly, the EBR's requirements for public participation in environmental decision-making will provide important new points of access for Ontario citizens to these processes in the province. The information provided through the environmental registry will be particularly important in this regard. If fully implemented it will provide, for the first time, a comprehensive picture of environmentally significant activities and decisions in the province to both the public and the provincial government itself.

In addition, the requirements of public notice and comment periods for significant environmental decisions are likely to result in more open and accountable decision-making processes than currently exist. This is true especially for agencies, such as the Ministries of Natural Resources, Transportation and of Northern Development and Mines, whose policy development processes historically have been characterized by closed relationships with traditional clientele groups.

The third critical aspect of the EBR is the creation of the Office of the Environmental Commissioner. Indeed, the success or failure of the legislation will depend, to a great degree, on how the Environmental Commissioner chooses to approach her mandate. An excessively legalistic or bureaucratic approach will be an invitation to failure and may even present barriers to public participation in environmental decision-making beyond those which already exist. This is of particular concern given the complexity of the EBR's request for review and request for investigation procedures. The possibility is especially important as members of the public may turn to the Commissioner, in the hope of obtaining political redress for poor environmental decision-making by government, and thereby avoid the complex and potentially expensive path of bringing court actions under

the EBR.

The expectations placed on the Commissioner's Office are significant. The Office was intended to be an instrument of political accountability. This implies a duty on the part of the Commissioner to make public, facts that the government of the day may prefer to remain hidden and, when necessary, to be openly critical of government actions and policies. This will require the Commissioner to take a broad reading of the Office's mandate, particularly in relation to the review of ministerial discretion and the implementation of ministry SEVs.

At the same time, in fulfilling of the goals the Office the Commissioner must weigh the need to have political impact against the requirement to uphold the Office's credibility and integrity, and to maintain a careful balance of these factors. However, if the EBR is to achieve its stated purposes of enhancing political accountability for environmental decision-making, and ensuring public participation in those decisions, the Commissioner will have to meet these challenges.

4) The Implications of the Ontario EBR for future Environmental Law Reform

Despite its significant limitations, the EBR provides some important directions for future environmental law reform in Canada. Its elements create a number of potential means of reconciling the roles of political and legal accountability mechanisms in environmental decision-making, which traditionally have been regarded in Canada as contradictory and almost mutually exclusive options in public policy decision-making.

The concepts of a public registry of significant environmental decisions and legally established requirements for public notice and comment periods in relation to such decisions are particularly important in this context. The provision of information about the nature and consequences of public policy decisions is a fundamental requirement for the effective functioning of political accountability mechanisms and such structures seem essential to ensuring that members of the public have the information necessary to hold government decision-makers accountable for their choices.

At the same time, the EBR's approach to decision-making procedures has the advantage of establishing basic requirements for public notice and comment periods, without opening the door to the "ossification" of decision-making which has resulted from the application of formal administrative procedure requirements in the United States. The avoidance of an open-ended invitation to judicial review of the substance of administrative decisions, such as that contained in U.S. *Administrative Procedure Act*, is particularly important in this regard.

The concept of an independent body, such as the Environmental Commissioner's Office to review, assess and report on the impact of government policies and programs

on the environment substantively, also is gaining increasing acceptance. Such agencies have significant potential to enhance political accountability for decision-making in complex policy fields such as the environment. This potential is reflected in the federal government's indication of its intention to establish an Environmental Commissioner's Office in late 1994.

The citizen suit concept included in the EBR is less well accepted in Canada. However, it seems likely to become a necessity if the effective enforcement of environmental laws is to be achieved, particularly as traditional accountability mechanisms in this area have failed to bring about significant improvements in enforcement efforts in most Canadian jurisdictions. The need to provide strengthened opportunities for citizen enforcement actions is further reinforced by the resource constraints presently being imposed on environmental protection agencies throughout Canada.

In the end, each of these elements: minimum public participation requirements for decision-making; provisions for the independent evaluation of the effects of public policies on the environment; and mechanisms which enable citizens to ensure the enforcement of environmental laws and regulations, will be necessary for achieving an environmentally sustainable future for present and future generations of Canadians.

ENDNOTES

1.*An Act Respecting Environmental Rights in Ontario*, S.O. 1993, ch. 28.

2.The Hon. R.Rae, Premier of Ontario, speech to Canadian Institute for Environmental Law and Policy/Ontario Ministry of Environment and Energy Environmental Bill of Rights Course, March 30, 1994.

3.For a detailed description of these causes of action see J. Swaigen and D. Estrin, Environment on Trial: A Guide to Ontario Environmental Law and Policy (3rd ed.) (Toronto: Canadian Institute for Environmental Law and Policy and Emond-Montgomery Publishers, 1993) ch. 6.

4.T. Schrecker, "Of Invisible Beasts and the Public Interest: Environmental Cases and the Judicial System," in R. Boardman, ed., Canadian Environmental Policy: Process (Toronto: Oxford University Press, 1992), pp. 87-88.

5.See J. Nedelski, "Judicial Conservatism in an Age of Innovation: Comparative Perspectives on Canadian Nuisance Law 1880-1930," in D. Flaherty, ed., Essays in the History of Canadian Law vol 1, (Toronto: University of Toronto Press, 1981), pp. 295-312.

6.See in particular, *McKie v. K.V.P. Ltd*. (1949) S.C.R. 698, *Stephens v. Richmond Hill* (1954) 4 D.L.R. 572, and *Burgess v. Woodstock*, (1955), 4 D.L.R. 615.

7.The *Ontario Water Resources Commission Act*, S.O. 1956, and the *Ontario Water Resources Commission Act*, S.O. 1957.

8.*Ontario Water Resources Commission Act*, 1957, s.16.

9.Ibid., s.31(1).

10.The defense of "statutory authorization posits that those whose activities are closely circumscribed by statute should not be civilly liable for the inevitable consequences of those activities, provided that the operator is not negligent. See. D.P. Emond, "Environmental Law and Policy: A Retrospective Examination of the Canadian Experience," in I. Bernier and A. Lajoie, Consumer Protection, Environmental Law and Corporate Power (Toronto: University of Toronto Press, 1985), pp. 116-117.

11.S.O., 1971.

12.Established in 1971 through the consolidation of the Ontario Water Resources Commission and elements of the Departments of Energy and Resources Management and of Health.

13.M.S. Winfield, "The Ultimate Horizontal Issue: The Environmental Policy Experiences of Ontario and Alberta 1971-1993," Canadian Journal of Political Science, XXVII:1, March 1994, p. 132.

14.On "accommodative" regulation see R. Brickman, R. Jasanoff and T. Ilgen, Controlling Chemicals: The Politics of Regulation in Europe and the United States (Ithaca: Cornell University Press, 1985).

15.See G. Hoberg, "Environmental Policy: Alternative Styles," in M. Atkinson, ed., Governing Canada: Institutions and Public Policy (Toronto: Harcourt, Brace Javanich Canada Inc. 1993), pp. 314-316.

16.See generally T.T. Smith, "Public Participation in Environmental Law-making and Decision-making in the U.S," in First North American Conference on Environmental Law: Phase II Proceeding (Washington, Mexico City, Toronto: Environmental Law Institute, Fundacion Mexicana para la Educacion Ambiental, Canadian Institute for Environmental Law and Policy, 1994), pp. 92-106.

17.*Administrative Procedure Act*, s.10(a), 5 U.S.C. 702.

18.On "citizen suits" see generally, G. Block, "Public Participation in Environmental Enforcement," North American Conference: Phase II Proceedings, pp.143-153.

19.See generally G. Hoberg, Pluralism by Design: Environmental Policy and the American Regulatory State (New York: Praeger, 1992). See also M.W. McCann and H.Silverstein, "Social Movements and the American State: Legal Mobilization as a Strategy for Democratization," in G.Albo, D.langille, and L. Panitch, A Different Kind of State? Popular Power and Democratic Administration (Toronto: Oxford University Press, 1993), pp.131-143.

20.M. Howlett, "The Judicialization of Canadian Environmental Policy 1989-1990: A Test of the Canada-U.S. Convergence Thesis," Canadian Journal of Political Science XXVII: March 1994, pp. 120-121.

21.Ibid.

22.P. Muldoon, "The Fight for an Environmental Bill of Rights," Alternatives, Vol.15, (1988) p.35.

23.B. Heidenreich and M. Winfield, "Sustainable Development, Public Policy and the Law," in Estrin and Swaigen, Environment on Trial (3rd. ed), p.xxxvi.

24.J. Sax, Defending the Environment: A Strategy for Citizen Action (New York: Random House, 1970), pp. 58-60.

25.Schrecker, "Of Invisible Beasts," pp. 98-99.

26.Hoberg, "Environmental Policy," pp.315-316.

27.See the *Michigan Environmental Protection Act*, Mich Comp Laws Ann 961.1201-1207.

28.*Pennsylvania State Constitution*, Article 1, Section 27.

29.D. Estrin and J. Swaigen, eds., Environment on Trial: A Citizen's Guide to Ontario Environmental Law (Toronto: Canadian Environmental Law Association, Canadian Environmental Law Research Foundation and the new press, 1974), ch. 16.

30.D. Estrin and J. Swaigen, Environment on Trial: A Handbook of Ontario Environmental Law (Toronto: Canadian Environmental Research Foundation, 1978), ch. 21.

31.For a detailed discussion of environmental politics in Ontario during this period see M. Winfield, The Ultimate Horizontal Issue: Environmental Politics and Policy in Ontario and Alberta 1971-1992 (Toronto: Ph.D. Thesis, Department of Political Science, University of Toronto, 1992), esp. ch.3.

32.The *Ontario Environmental Bill of Rights Act*, (Bill 185, 3rd. Sess, 31st. Legislature, 1979).

33.Bill 91, 4th. Sess, 31st. Legislature, 1980.

34.See Winfield, Ultimate Horizontal Issue, p. 58, note 46.

35.See Bill 134, 2nd Sess., 32nd Legislature, 1981 (Dr. Smith); Bill 96, 2nd Sess., 32nd Legislature 1982 (Mr. Elston).

36.Bill 192, 1st. Sess., 33rd Legislature, 1986; Bill 9, 2nd. Sess., 33rd. Legislature, 1987.

37.Bill 13, 1st. Sess., 34th Legislature, 1987.

38.Bill 12, 2nd Sess., 34th Legislature, 1989.

39.Bill 231, 2nd Sess., 34th Legislature, 1990.

40.RSO 1990, c.F-31.

41.RSO 1990, c.I-13.

42.RSO 1990, c.M.56.

43.S.O. 1986, Ch.68.

44.For a general discussion of environmental policy and politics in Ontario during this period see Winfield, The Ultimate Horizontal Issue, ch.4.

45.(1975) 1 S.C.R. 138.

46.(1986) 2 S.C.R. 607.

47.*Friends of the Oldman River v. Canada (Minister of Transport)* 7 C.E.L.R, (ns) 1992).

48.*Canadian Wildlife Federation Inc. v. Canada (Minister of Environment)*, 3 C.E.L.R. (ns) 1989.

49.For a detailed discussion of the evolution of this issue see Howlett, "The Judicialization of Canadian Environmental Policy," pp. 114-118.

50.Agenda for the People (Toronto: Ontario New Democratic Party, 1990).

51.P. Muldoon, "Environmental Bill of Rights," in Swaigen, ed., Environment on Trial (3rd. ed.), p. 801.

52.Muldoon, "The Fight for an Environmental Bill of Rights," p. 35.

53.Hoberg, "Environmental Policy: Alternative Styles," p. 331.

54.Brickman, Jasanoff and Ilgen, Controlling Chemicals: the Politics of Regulation in Europe and the United States, esp. ch.3.

55.Hoberg, "Environmental Policy," p. 337.

56.Hoberg defines legalism in terms of three key elements: formal administrative procedures, with widespread access to information and rights to participation for all affected interests; access to the courts for pro-regulatory interest groups; and non-discretionary governmental duties, enforceable in court. Hoberg, "Environmental Policy," p. 324.

57.Ibid., p. 337.

58.The Hon. T. McMillan, in Minutes of Proceedings and Evidence House of Commons Legislative Committee on Bill C-74, 33rd Parl., 2nd. Sess, 24-25 November 1987, p. 25.

59.Ibid., Feb. 3, 1988, pp. 14-16.

60.For a classical articulation of this view see, for example, S.L. Sutherland, "The Public Service and Policy Development," in Atkinson, ed., Governing Canada, pp. 81-113.

61.A Cairns, "The Past and Future of the Canadian Administrative State," in University of Toronto Law Journal, (1990) 40, pp. 319-61.

62.H. Bakvis and D. Macdonald, "The Canadian Cabinet: Organization, Decision-Rules, and Policy Impact," in Atkinson, Governing Canada, p. 76.

63.I. Green, "The Courts and Public Policy," in Atkinson, ed., Governing Canada, p. 203.

64.See for example, M. Mandel, The Charter of Rights and the Judicialization of Canadian Politics (Toronto: Hall and Thompson, 1989) and R. Knopf and T.L. Morton, Charter Politics (Toronto: Nelson Canada, 1992).

65.P. McCormack, "Party Capability Theory and Appellate Success in the Supreme Court of Canada," Canadian Journal of Political Science XXVI:3, September 1993, pp. 523-540.

66.Hoberg, "Environmental Policy," p. 333.

67.D. Vogel, National Styles of Regulation: Environmental Policy in Great Britain and the United States (Ithaca: Cornell University Press, 1986), pp. 191-192.

68.For example, in 1965, 1975 and 1984-85, reviewing courts upheld only 43.9% of agency rules. Peter H. Schuck and E.Donald Elliot, "To the Chevron Station: An empirical study of federal administrative law," (1990), Duke Law Journal, p.1022. See also: Thomas O. McGarity "Some Thoughts on 'De-ossifying' the Rulemaking Process. (1992), Duke Law Journal, p.1385; Richard J. Pierce, Jr., "Seven Ways to De-Ossify Agency Rulemaking," (1995), p. 59; and Paul R.Verkuil, "Comment: Rulemaking Ossification - A Modest Proposal," (1995), 47 Administrative Law Review, p.453.

69.Shuck and Elliot, "To the Chevron Station," p.1022.

70.Task Force on the Ontario Environmental Bill of Rights, Report (Toronto: Queen's Printer for Ontario, 1992).

71.For a detailed discussion of the debates within the Task Force see Muldoon, "Environmental Bill of Rights," pp. 802-805.

72.Task Force on the Environmental Bill of Rights, Supplementary Recommendations (Toronto: Ministry of Environment and Energy, 1992).

73.See Official Report of Debates, Standing Committee on General Government, October 21, 1993, G-463 - 475.

74.*Environmental Bill of Rights* (EBR), s.118.

75.See the *Interpretation Act* R.S.O., ch I-11, s.8. See also D.Saxe, The Ontario Environmental Protection Act Annotated, (Aurora: Canada Law Book Inc., December 1994), Volume 3, pp. EBR 12-12.1.

76.EBR, s.2(1).

77.Ibid., s.2(2).

78.Ibid., s.2(3).

79.EBR Task Force, Report, p.20.

80.EBR s.1(1).

81.Ibid.

82.Ibid.

83.M.G. Cochrane, former chair, Task Force on the Ontario Environmental Bill of Rights, "Consensus, History and Overview of the Environmental Bill of Rights: Environmental Decision-Making -Joint Responsibility, Public Participation and Political Accountability," presentation to CIELAP/MOEE Environmental Bill of Rights Course, March 29, 1994.

84.EBR, ss.7(a) and (b).

85.Ibid., s.8(1).

86.Ibid., s.8(2).

87.Ibid., s.8(3).

88.Ibid., s.8(4).

89.Ibid., s.8(5).

90.Ibid., s.8(6).

91.Ibid., s.9.

92.Ibid., s.11.

93.It has been argued that as the "privative" clause contained in s.118 of the EBR does not apply to the provisions of Part II of the Bill with respect to an "instrument," if a SEV is considered an "instrument" for the purposes of the Bill, then ministerial failure to develop an SEV and to carry out the requirement that its contents be "considered" in decision-making, may be subject to judicial review.

94.EBR., s.58(2)(b).

95.EBR Task Force, Report, pp. 23-24.

96.D. Macdonald and C. Winter, Presentation to the Standing Committee on General Government Regarding Bill 26: The Environmental Bill of Rights (Toronto: Conservation Council of Ontario, October 1993).

97.Draft Statements of Environmental Values For 14 Government Ministries (Toronto: Ministries of: Agriculture, Food and Rural Affairs; Consumer and Commercial Relations; Culture, Tourism and Recreation; Economic Development and Trade; Environment and Energy; Finance; Health; Housing; Labour; Municipal Affairs; Natural Resources; Northern Development and Mines; Transportation, and the Management Board Secretariat, May 1994).

98.See for example, Submission on the Statements of Environmental Values Under the Environmental Bill of Rights (Toronto: Canadian Environmental Law Association, Canadian Institute for Environmental Law and Policy, CLEAN, Northwatch, Pollution Probe and the Wetlands Preservation Group of West Carleton, August 1994), and C.Winter, A Review of the 14 Draft Statements of Environmental Values (Toronto: Conservation Council of Ontario, August 1994)

99.Personal communication, Bob Shaw, Environmental Bill of Rights Office, Ontario Ministry of Environment and Energy, September 14, 1994.

100.E.Ligeti, Environmental Commissioner of Ontario, "An open letter to the Public from the Environmental Commissioner's Office," November 1994.

101.EBR Task Force, Report, pp.65-70.

102.P.S. Elder, "The Participatory Environment in Alberta," Alberta Law Review Vol. 12, 1974, p. 411.

103.On the Alberta Environment Conservation Authority see Elder, "The Participatory Environment in Alberta," and C.D. Hunt, "Environmental Protection and the Public," Alternatives, 8:1, 1978.

104.Standing Committee on the Environment and Sustainable Development, The Commissioner of the Environment and Sustainable Development (Ottawa: House of Commons, 1994); and the Hon. S.Copps, Deputy Prime Minister and Minister of the Environment, "Response to the First Report of the Standing Committee on the Environment and Sustainable Development (Commissioner of the Environment and Sustainable Development)," October 1994.

105.EBR, s.49(3).

106.Ibid., s.57.

107.Ibid., s.38.

108.Ibid., s.58(4).

109.Ibid., s.58(5).

110.Ibid., s.60.

111.See for example, M. Winfield, Submission to the Standing Committee on General Government Regarding Bill 26: An Act Respecting Environmental Rights in Ontario (Toronto: Canadian Institute for Environmental Law and Policy, 1993).

112.See the *Environment Conservation Act*, S.A. 1970, s.7.

113.On the New Zealand Commissioner see Marion B. Sanson, "Assisting in the Resolution of Environmental Issues - the Role of New Zealand's Parliamentary Commissioner for the Environment," Journal of Environmental Law and Practice, Vol.4, No.2, May 1993, pp.222-234.

114.Standing Committee on Environment and Sustainable Development, The Commissioner of the Environment and Sustainable Development.

115.Several submissions argued for a reduction in these functions to facilitate a more active role. See, for example, Winfield, Submission to the Standing Committee on General Government Regarding Bill 26..

116.Estrin and Swaigen, Environment on Trial, (2nd. ed.) ch. 21.

117.As of the end of June 1995, 6,300 user accounts had been established on the Registry, and there had been 12,000-14,000 user sign-ons. Ontario Environment Network, EBR Registry Update, June 1995.

118.Public participation rights apply to all of the Acts prescribed by the Implementation Regulation (Ontario Regulation. 73/94), as well as the regulations made pursuant to those prescribed Acts.

119.EBR., s.27.

120.Ibid., s.37.

121.Ibid., s.118(3).

122.Ibid., s.14.

123.Canadian Environmental Defence Fund, *Environmental Bill of Rights Workshop Papers* (January 22, 1994), p.16.

124.EBR, s. 15(1). This subsection does not apply to a policy or Act that is predominantly administrative or financial in nature (s.15(2)).

125.Ibid., s.35(1).

126.Ibid., s.36.

127.EBR, s.16(1). Part II does not apply to regulations that are predominantly financial or administrative in nature. (s.16(2)).

128.EBR, s.17.

129.Ibid., s.27(4).

130.Ibid., s.27(5).

131.Ibid., s.1(1).

132.See *Ontario Regulation* 681/94, which classifies proposals for instruments into Class I, II or III.

133.EBR, s.20(2)(10).

134.Ibid., s.26(1).

135.Ibid., 20(2)(8).

136.However, for a Class II proposal, a minister must consider allowing more than 30 days' notice in order to permit more informed public consultation on the proposal. When considering the amount of notice to be given, the minister must address the factors listed in s. 8(6): see s.23. If the minister decides to provide additional time for public comment, the extended period will be indicated on the notice that is put on the ER and the applicant will be advised of the extension by the ministry.

137.RSO 1990, c.A.8.

138.See generally J.Swaigen, "Pits and Quarries," in Estrin and Swaigen, Environment on Trial (3rd. ed.), 749-755.

139.EBR, s.28(1). In determining what means of giving additional notice are appropriate, the minister must consider the factors set out in section 14 (s.28(2)).

140.The Requirements of the Environmental Bill of Rights for Prescribed Instruments (Toronto: Ontario Ministry of Environment and Energy, November, 1994), p.6.

141.As required by s.28 of the EBR.

142.EBR, s.24(1).

143.Ibid., 20(2)(8).

144.S.30(1).

145.Ibid., s.29(1).

146.Ibid., s.29(2).

147.MoEE, Requirements, p.12.

148.EBR, s.32.

149.*Environmental Assessment Act*. s.29.

150.EBR, s.22(3).

151.MoEE, Requirements of the Environmental Bill of Rights, pp.13-14.

152.EBR, s.57.

153.There is no procedure for appealing decisions made on proposals for Class III instruments, as a full hearing already will have been held.

154.EBR, s.38(1).

155.Ibid., s.41

156.J.Swaigen, Chair, Ontario Environmental Appeal Board, "The Role of Appellate Bodies under the EBR," Environmental Bill of Rights Course: Proceedings (Toronto: Canadian Institute for Environmental Law and Policy, March 1994).

157.Ibid., s.42(1).

158.EBR, s.47(3).

159.MoEE, Requirements, p.30.

160.Ibid.

161.Ibid.

162.EBR, s.37.

163.On the history of the application of the *Environmental Assessment Act* in Ontario see, for example, R.Northey and J.Swaigen, "Environmental Assessment," in Estrin and Swaigen, Environment on Trail (3rd.), pp.194-196.

164. For a more detailed discussion of this topic, see R. Northey, "The Right to a Review and the Right to an Investigation" in P. Muldoon, R. Northey, G. Crann and G. Ford, *Environmental Bill of Rights Workshop "Putting the New Regime Into Practice".*

165.See, for example, Estrin and Swaigen, Environment on Trial (2nd ed.), ch. 21.

166. EBR., s.61(1).

167. Ibid., s.63(1).

168. Ibid., s.63(2).

169. Ibid., s.68(1).

170.For example, the Ministry of Agriculture and Food, the Ministry of Consumer and Commercial Relations, the Ministry of Natural Resources and the Ministry of Northern Development and Mines are scheduled to become subject to the right of review in April 1996; and the Ministry of Municipal Affairs will become subject in April 1998. See *O.Reg* 73/94.

171. EBR., s. 61(1).

172. Ibid., s.61(3).

173. Ibid., s.72.

174. Ibid., s. 62(1).1.

175. Ibid., s.62(1).2.

176. Subsection 63(2)(a) applies only to Acts, regulations and instruments.

177. EBR., s.63(3).

178. Ibid., s.64(1).

179. Ibid., s.65.

180. Ibid., s.66(1).

181. Ibid., s.66(2).

182. Ibid., s.67(1).

183. Ibid., s.67(3).

184. Ibid., s.68(1).

185. Ibid., s.68(2).

186. Ibid., s.70.

187. Ibid., s.73.

188. Ibid., s.69(1).

189. Ibid., s.71(1).

190. Ibid., s.71(2).

191. Ibid., s.61(2).

192. Winfield, Submission to the Standing Committee on General Government Regarding Bill 26.

193.EBR, s.74.

194.*Canadian Environmental Protection Act*, S.C. 1988, s.108. The request for investigation provisions of CEPA appear to have been rarely used, and no prosecutions are known to have occurred as a result of a requested investigation. See K. Clark and B. Rutherford, "CEPA and Environmental Law Enforcement," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, 1994).

195.On equivalency agreements and CEPA see B.Rutherford and K.Clark, "The Constitution, Harmonization and CEPA," in M. Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, September 1994).

196.For the complete implementation schedule, see *Ontario Regulation* 73/94.

197.EBR., s.74(1).

198.Ibid., ss.74(2), (3) and (4)

199.Ibid., s.80.

200.Ibid., s.75.

201.Ibid., s.76.

202.Ibid., s.78(3).

203.Ibid., 78(2).

204.Ibid., s.79(1).

205.Ibid., s.80(1).

206.Ibid., s.80(2).

207.Ibid., 78(1).

208.See, for example, M. Winfield, A Submission to the Ontario Environmental Bill of Rights Task Force, (Toronto Canadian Institute for Environmental Law and Policy, October 1992).

209.EBR, s.57(b)(i).

210.Muldoon and Swaigen, "Environmental Bill of Rights", p.803.

211.Ministry of the Environment News Release, "Environment Minister Ruth Grier releases draft Environmental Bill of Rights" (July 8, 1992).

212.S.Y.T. 1991 - ch.5.

213.R.S.N.W.T. 1988, c.83 (suppl.).

214.RSC 1985, c.F-14.

215.See, for example, L. Nowlan, "Public Participation in Enforcement of Environmental Standards in British Columbia," in First North American Conference on Environmental Law: Phase II Proceedings (Toronto, Washington D.C., Mexico City: Canadian Institute for Environmental Law and Policy, Environmental Law Institute and Fundacion Mexicana para la Educacion Ambiental, 1994), p. 114.

216.See, for example, R. Gibson, Control Orders and Industrial Pollution in Ontario, (Toronto: Canadian Environmental Law Research Foundation, 1983), p. 71. See also Estrin and Swaigen, Environment on Trial (2nd ed.) p. 35.

217.The *Crown Counsel Act*, S.B.C. 1991, c.10, s.2(a) requires that the Criminal Justice Branch of the Ministry of the Attorney-General must approve and conduct all prosecutions.

218.For a detailed discussion of private prosecutions, see J. Swaigen, "Private Prosecutions," in Swaigen, Environment on Trial (3rd ed.), pp. 827-831.

219.The general in civil suits is that "costs follow the cause," meaning that the loser pays the costs of the winner. However, such an award is only for "party and party," as opposed to "solicitor and client" costs. The former are set by tariff and typically amount to one-half to two-thirds of the actual legal fees incurred.

220.Citizen suit provisions are contained in the *Clean Water Act*, *Endangered Species Act*, *Surface Mining Control and Reclamation Act*, *Marine Protection Research and Sanctuaries (Ocean Dumping) Act*, *Deepwater Port Act*, *Safe Drinking Water Act*, *Noise Control Act*, *Energy Policy and Conservation Act*, *Outer Continental Shelf Lands Act*, and the *Superfund Amendment and Reauthorization Act of 1986*. The most notable exception in this regard is the *Federal Insecticide, Fungicide and Rodenticide Act* On citizen suits in the U.S. see generally J.G. Miller and the Environmental Law Institute, Citizen Suits: Private Enforcement of Federal Pollution Control Laws (Washington, D.C.: Environmental Law Institute, 1987) and Hoberg, "Environmental Policy," p. 341.

221.Greg Block, "Public Participation in Environmental Enforcement," First North American Conference on Environmental Law Phase II, Proceedings, (Washington, Mexico City and Toronto: Environmental Law Institute, Fundacion Mexicana para la educacion ambiental, Canadian Institute for Environmental law and Policy 1994), pp. 143-148

222.Howlett, "The Judicialization of Canadian Environmental Policy, 1980-1990," p. 118.

223.Ibid., p. 124

224.Ibid., p. 116.

225.Hoberg, "Environmental Policy," p. 331.

226.Muldoon, "The Fight for an Environmental Bill of Rights,"

227.*Environmental Rights Act*, ss.5 and 6.

228.*Environment Act*, ss.6 and 7.

229.Ibid., s.8.

230.Ibid., s.19. This provision only applies to persons over the age of 19.

231.R.S.Q., c-Q-2.

232.*Environmental Quality Act*, ss.19.1 and 19.2.

233.Ibid., s.19.3.

234.CEPA, ss.131, 136(1) and (2).

235.See, for example, M.Winfield, ed., Reforming the Canadian Environmental Protection Act: A Submission to the Standing Committee on Environment and Sustainable Development (Toronto: Canadian Institute for Environmental Law and Policy, 1994).

236.*Environmental Protection and Enhancement Act*, Ch.E-13-3, s.205.

237.The legislative provisions in the Northwest Territories and the Yukon Territory provide for the diversion of fines from a *private* prosecution to defray litigation costs.

238.Hoberg, "Environmental Policy," p. 341.

239.EBR s.84(1).

240.Saxe, Ontario E.P.A. Annotated, p.EBR-13.

241.Ibid., s.82.

242.Ibid., s.84(2).

243.Ibid., s. 84(4).

244.Ibid., s.84(6).

245.Ibid., ss. 86(1) and (2).

246.Ibid., ss. 87(1) and (2).

247.Ibid., s.87(3).

248.Ibid., ss.87(5), 88(1) and 89.

249.Section 102 of the EBR provides that:

(1) No person shall bring an action under section 84 in respect of a contravention that caused harm after the earliest of;

(a) the second anniversary of the day on which the person bringing the action first knew;

(i) that the harm had occurred;

(ii) that the harm was caused by the contravention;

(iii) that the contravention was that of the person against whom the action is brought; and

(iv) that, having regard to the nature of the harm, an action under section 84 would be an appropriate means to seek to address it;

(b) the second anniversary of the day on which a reasonable person with the abilities and in the circumstances of the person seeking to bring the action first ought to have known of the matters referred to in clause (a); and

(c) the second anniversary of the day on which public notice of an action in respect of the contravention and the harm was given under section 87.

(2) Despite subsection (1), if clause (1)(a) or (b) applies to establish the

limitation period under subsection (1), a person may bring the action after the end of that period, to the extent permitted by subsections (3) and (4).

(3) If the person bringing the action applied under section 74 for an investigation of the contravention before the end of the period established under subsection (1) by the application of clause (1)(a) or (b), the person may bring the action within 120 days after the day on which the person received a notice under section 78 or 80 in respect of the contravention.

(4) If the person bringing the action applied under section 5 of the Farm Practices Protection Act with respect to the harm before the end of the period established under subsection (1) by the application of clause (1)(a) or (b), the person may bring the action within 120 days after the day on which the Farm Practices Protection Board disposed of the application.

250.EBR, s.90.

251.Ibid., s.91(1).

252.Ibid., ss.91(2) and (3).

253.Ibid., ss.88 and 91(4).

254.*Res judicata* literally means a thing or matter settled by judgment. The rule according to *res judicata* is that a final judgment rendered by a court of competent jurisdiction on the merits of a case is conclusive as to the rights of the parties and between them constitutes an absolute bar to a later action involving the same claim.

255.*Issue estoppel* is a bar or impediment in which the final adjudication of a *material issue* by a court of competent jurisdiction on the merits binds the parties in any subsequent proceedings between or among them. In other words, once a particular issue has been litigated, it cannot be relitigated in a future action between the parties, regardless of whether the claim or cause of action, purpose or subject matter is the same.

256.EBR s.84(8).

257.Ibid., s.85.

258.Ibid., s.93(1).

259.Ibid., ss.93(2) and (3).

260.Ibid., s.95(2).

261.Ibid., s.95(3).

262.Ibid., s.94.

263.For a more extensive discussion of the MEPA experience to 1985, see: D.K. Stone, "The *Michigan Environmental Protection Act*: Bringing Citizen-Initiated Environmental Suits into the 1980s" (1985), 12 Ecology Law Quarterly 271.

264.EBR, s.93(2).

265.Task Force on the Environmental Bill of Rights, The Environmental Bill of Rights: Response to Public Comment. (Toronto: Ontario Ministry of Environment and Energy, 1993), p.15.

266.R.S.O. 1990, c. I.13.

267.Muldoon and Swaigen, "Environmental Bill of Rights," in Estrin and Swaigen, Environment on Trial (3rd. ed.,), p.800.

268.EBR s.84(7).

269.S.O. 1992, c. 7.

270.Environmental Bill of Rights Task Force Report, p.88.

271.Ibid., p.90.

272.EBR, s.100.

273.Estrin and Swaigen, Environment on Trial, (2nd ed.), pp. 460-462.

274.Muldoon and Swaigen, "Environmental Bill of Rights," in Estrin and Swaigen, eds., Environment on Trail (3rd. ed.), p.812.

275.EBR Task Force, Report, p.91.

276.Ontario Law Reform Commission, Report on the Law of Standing (Toronto: Ministry of the Attorney General, 1989) p.10.

277.EBR, s.103(1).

278.EBR Task Force, Report, p.92.

279.*Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.

280.EBR Task Force, Report, pp.92-93.

281.Canadian Bar Association - Ontario, Submission to the Minister of the Environment on the Proposed Environmental Bill of Rights (Toronto: CBA, November 1992), p.32.

282.EBR, s.103(2).

283.Ibid., s.105(1).

284.Ibid., s.105(2).

285.Ibid., s.105(3). The Act are those administered under the 14 ministries set out in *Ontario Regulation* 73/94.

286.EBR, s.109.

287.Ibid., s.110(2).

288.On this issue see CBA - Ontario, Submission to the Minister of the Environment on the Proposed Environmental Bill of Rights, pp.32-33.

289.Ontario MoEE, The Environmental Bill of Rights: Response to Public Comment, p.19.

290.See C. Rolfe and W. Andrews, Ensuring Meaningful Public and Worker Involvement in Environmental Protection under CEPA (Vancouver: West Coast Environmental Law Association, 1994).

291.EBR, ss.7(a) and (b).

292.See generally Green, "The Courts and Public Policy."

293.See generally G. Hoberg, "Environmental Policy."

294.On the record of the Rae government in general see T.Walkom, Rae Days: The Rise and Follies of the NDP (Toronto: Key Porter Books Ltd. 1994).

295.On these general features of multi-stakeholder bargaining processes see Hoberg, "Environmental Policy," p.321, and M.Howlett, "The Round Table Experience: Representing and legitimacy in Canadian Environmental Policy Making," Queen's Quarterly 97 (1990), pp.580-601.

296.Ibid.

About the Authors

Mark Winfield is Director of Research at the Canadian Institute for Environmental Law and Policy. He holds a Ph.D. in Political Science from the University of Toronto and has written extensively on environmental law and policy issues. Dr. Winfield coordinated the workshop faculty and curriculum at the CIELAP\MOEE two-day course, "Ontario's Environmental Bill of Rights: Principles, Practice and Process," held on March 29-30, 1994. He is also an instructor in the Division of the Environment, Faculty of Arts and Science, University of Toronto.

Glenna Ford is an environmental consultant with GreenWare Environmental Systems Inc. in Toronto, Ontario and a research associate with the Canadian Institute for Environmental Law and Policy. She writes and lectures on a wide variety of environmental law and policy issues, including Ontario's *Environmental Bill of Rights*, environmental liabilities for remediating contaminated land, lender liability, solid waste management and environmental management systems. In 1994, Glenna co-authored and presented the following two papers on *Ontario's Environmental Bill of Rights: A Practical Introduction*, delivered at the Canadian Bar Association- Ontario 1994 Institute of Continuing Legal Education conference "Recent Developments in Environmental Law" on January 29, 1994, and *The Right to Sue: Bringing and Defending an Environmental Bill of Rights Lawsuit*, delivered at the Canadian Environmental Defence Fund conference "Environmental Bill of Rights Workshop: Putting the New Regime Into Practice" on January 22, 1994. She also was a workshop faculty member at the CIELAP\MOEE two-day course, "Ontario's Environmental Bill of Rights: Principles, Practice and Process," held on March 29-30, 1994.

Gordon Crann received B.A.(Geography), M.A.(Public Administration) and LL.B., all from the University of Toronto. He is a former East York Councillor (1978-85) and former Toronto Star political columnist (1986-87). Mr Crann practised with Lang Michener from his call to the Bar of Ontario in 1991 until August 1994, when he set up his own firm Gordon Crann and Associates, focusing on environmental and municipal law, plus government relations. He is currently president of the Canadian Environmental Defence Fund, Executive Member of the Canadian Bar Association - Ontario's Environmental Law Section and Member of Canada Trust's Friends of the Environment Foundation Advisory Board (Downtown Toronto Chapter). He has published numerous articles and spoken extensively at, or chaired conferences on environmental and municipal law, including Ontario's Environmental Bill of Rights. Mr Crann was also a workshop faculty member at the CIELAP\MOEE two-day course, "Ontario's Environmental Bill of Rights: Principles, Practice and Process," held on March 29-30, 1994.

APPENDIX I

3RD SESSION, 35TH LEGISLATURE, ONTARIO
42 ELIZABETH II, 1993

Bill 26

(Chapter 28
Statutes of Ontario, 1993)

An Act respecting Environmental Rights in Ontario

The Hon. B. Wildman
Minister of Environment and Energy

1st Reading	May 31, 1993
2nd Reading	September 30, 1993
3rd Reading	December 14, 1993
Royal Assent	December 14, 1993

Printed by the Legislative Assembly of Ontario

3e SESSION, 35e LÉGISLATURE, ONTARIO
42 ELIZABETH II, 1993

Projet de loi 26

(Chapitre 28
Lois de l'Ontario de 1993)

Loi concernant les droits environnementaux en Ontario

L'honorable B. Wildman
Ministre de l'Environnement et de l'Énergie

1re lecture	31 mai 1993
2e lecture	30 septembre 1993
3e lecture	14 décembre 1993
Sanction royale	14 décembre 1993

Imprimé par l'Assemblée législative de l'Ontario

An Act respecting Environmental Rights in Ontario

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Loi concernant les droits environnementaux en Ontario

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Preamble

The people of Ontario recognize the inherent value of the natural environment.

The people of Ontario have a right to a healthful environment.

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.

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.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I
DEFINITIONS AND PURPOSES

Definitions

1.—(1) In this Act,

"air" means open air not enclosed in a building, structure, machine, chimney, stack or flue; ("air")

"environment" means the air, land, water, plant life, animal life and ecological systems of Ontario; ("environnement")

"harm" means any contamination or degradation and includes harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation; ("atteinte")

"instrument", except as otherwise provided under clause 121 (1) (c), means any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, direction or order issued under an Act, but does not include a regulation; ("acte")

"land" means surface land not enclosed in a building, land covered by water (which, for greater certainty, includes wetland) and all subsoil; ("terre")

"policy" means a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments but does not include an Act, a regulation or an instrument; ("politique")

"prescribed" means prescribed by the regulations under this Act; ("prescrit")

"registry" means the environmental registry established under section 5; ("registre")

"regulation", except as otherwise provided under clause 121 (1) (c), has the same meaning as in the *Regulations Act*; ("règlement")

"water" means surface water and ground water. ("eau")

Préambule

La population de l'Ontario reconnaît la valeur inhérente de l'environnement naturel.

La population de l'Ontario a droit à un environnement sain.

La population de l'Ontario a comme objectif commun la protection, la préservation et la restauration de l'environnement naturel au profit des générations présentes et futures.

Même si la réalisation de cet objectif incombe avant tout au gouvernement, la population doit avoir des moyens de veiller à ce qu'il soit réalisé en temps opportun et de manière efficace, ouverte et équitable.

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

PARTIE I
DÉFINITIONS ET OBJETS

Définitions

1 (1) Les définitions qui suivent s'appliquent à la présente loi.

«acte» Sauf disposition contraire prévue à l'alinéa 121 (1) c), s'entend de tout document à effet juridique qui est délivré en vertu d'une loi, notamment un permis, une licence, une approbation, une autorisation, une directive, un ordre, une ordonnance ou un décret, à l'exclusion toutefois d'un règlement. («instrument»)

«air» Air libre qui n'est pas contenu dans un bâtiment, un ouvrage, une machine, une cheminée, un corps ou un conduit de cheminée. («air»)

«atteinte» Toute contamination ou dégradation, notamment toute atteinte causée par le rejet de solides ou de liquides, le dégagement de gaz, d'odeurs ou de chaleur, ou l'émission de sons, de vibrations ou de radiations. («harm»)

«eau» S'entend des eaux de surface et des eaux souterraines. («water»)

«environnement» L'air, la terre, l'eau, les végétaux et les animaux ainsi que les écosystèmes de l'Ontario. («environment»)

«politique» S'entend d'un programme, d'un plan ou d'un objectif et, en outre, des lignes directrices ou des critères à observer pour prendre des décisions sur la délivrance, la modification ou la révocation d'actes. Sont toutefois exclus de la présente définition les lois, les règlements et les actes. («policy»)

«prescrit» Prescrit par les règlements pris en application de la présente loi. («prescribed»)

«registre» Le registre environnemental établi aux termes de l'article 5. («registry»)

«règlement» Sauf disposition contraire prévue à l'alinéa 121 (1) c), s'entend d'un règlement au sens de la *Loi sur les règlements*. («regulation»)

«terre» S'entend des terrains de surface non enclavés dans un bâtiment, des terrains immergés (lesquels comprennent, pour plus de précision, les terres marécageuses) et de tout le sous-sol. («land»)

Proposals for policies, Acts

(2) For the purposes of this Act, a proposal to make, pass, amend, revoke or repeal a policy or Act is a proposal for a policy or Act.

Propositions de politiques ou de lois

(2) Pour l'application de la présente loi, une proposition visant l'élaboration, l'adoption, la modification, la révocation ou l'abrogation d'une politique ou d'une loi constitue une proposition de politique ou de loi.

Proposals for regulations

(3) For the purposes of this Act, a proposal to make, amend or revoke a regulation is a proposal for a regulation.

Propositions de règlements

(3) Pour l'application de la présente loi, une proposition visant la prise, la modification ou l'abrogation d'un règlement constitue une proposition de règlement.

Proposals for instruments

(4) For the purposes of this Act, a proposal to issue, amend or revoke an instrument is a proposal for an instrument.

Propositions d'actes

(4) Pour l'application de la présente loi, une proposition visant la délivrance, la modification ou la révocation d'un acte constitue une proposition d'acte.

Classification of proposals for instruments

(5) For the purposes of this Act, a proposal for an instrument is a Class I, II or III proposal if it is classified as a Class I, II or III proposal, as the case may be, by the regulations under this Act.

Classification des propositions d'actes

(5) Pour l'application de la présente loi, une proposition d'acte constitue une proposition de catégorie I, II ou III si elle est classée comme proposition de catégorie I, II ou III, selon le cas, par les règlements pris en application de la présente loi.

Interpretation: implementation of proposals

(6) For the purposes of this Act,

(a) a proposal for a policy is implemented when the person or body with authority to implement the proposal does so;

Interprétation : mise en oeuvre des propositions

(6) Pour l'application de la présente loi :

a) une proposition de politique est mise en oeuvre lorsque la personne ou l'or-

(b) a proposal for an Act is implemented when the bill that would implement the proposal receives third reading in the Legislative Assembly; and

(c) a proposal for a regulation is implemented when the regulation that would implement the proposal is filed with the Registrar of Regulations in accordance with the *Regulations Act*.

Same

(7) For the purposes of this Act, a decision whether or not to implement a proposal for an instrument is made when the person or body with statutory authority to issue, amend or revoke the instrument does so.

Purposes of Act

2.—(1) The purposes of this Act are,

(a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;

(b) to provide sustainability of the environment by the means provided in this Act; and

(c) to protect the right to a healthful environment by the means provided in this Act.

Same

(2) The purposes set out in subsection (1) include the following:

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

Same

(3) In order to fulfil the purposes set out in subsections (1) and (2), this Act provides,

(a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;

ganisme ayant compétence pour mettre en oeuvre la proposition le fait;

b) une proposition de loi est mise en oeuvre lorsque le projet de loi visant à la mettre en oeuvre reçoit la troisième lecture à l'Assemblée législative;

c) une proposition de règlement est mise en oeuvre lorsque le règlement visant à la mettre en oeuvre est déposé auprès du registrateur des règlements conformément à la *Loi sur les règlements*.

Idem

(7) Pour l'application de la présente loi, la décision de mettre en oeuvre ou non une proposition d'acte est prise lorsque la personne ou l'organisme ayant la compétence légale pour délivrer, modifier ou révoquer l'acte le fait.

Objets de la Loi

2 (1) Les objets de la présente loi sont les suivants :

a) protéger, préserver et, lorsque cela est raisonnable, rétablir l'intégrité de l'environnement par les moyens prévus par la présente loi;

b) assurer la pérennité de l'environnement par les moyens prévus par la présente loi;

c) protéger le droit à un environnement sain par les moyens prévus par la présente loi.

Idem

(2) Les objets énoncés au paragraphe (1) comprennent ce qui suit :

1. Prévenir, réduire et éliminer l'utilisation, la production et l'émission de polluants qui présentent un danger déraisonnable pour l'intégrité de l'environnement.
2. Protéger et préserver la diversité biologique, écologique et génétique.
3. Protéger et préserver les ressources naturelles, notamment les végétaux, les animaux et les écosystèmes.
4. Favoriser la gestion judicieuse de nos ressources naturelles, notamment les végétaux, les animaux et les écosystèmes.
5. Identifier, protéger et préserver les zones ou processus écologiquement fragiles.

Idem

(3) Pour réaliser les objets énoncés aux paragraphes (1) et (2), la présente loi :

a) prévoit des moyens permettant aux résidents de l'Ontario de prendre part aux décisions importantes sur le plan environnemental du gouvernement de l'Ontario;

(b) increased accountability of the Government of Ontario for its environmental decision-making;

(c) increased access to the courts by residents of Ontario for the protection of the environment; and

(d) enhanced protection for employees who take action in respect of environmental harm.

PART II
PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING

General

Purpose of Part II

3.—(1) This Part sets out minimum levels of public participation that must be met before the Government of Ontario makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments.

Same

(2) This Part shall not be interpreted to limit any rights of public participation otherwise available.

Application of Part II

4. Provisions of this Part apply in relation to ministries as prescribed.

The Environmental Registry

Registry

5.—(1) An environmental registry shall be established as prescribed.

Cost of registry

(2) The cost of establishing and operating the registry shall not be imposed on a municipality within the meaning of the *Municipal Act*.

Purpose of registry

6.—(1) The purpose of the registry is to provide a means of giving information about the environment to the public.

Same

(2) For the purposes of subsection (1), information about the environment includes, but is not limited to, information about,

(a) proposals, decisions and events that could affect the environment;

(b) actions brought under Part VI; and

(c) things done under this Act.

Ministry Statement of Environmental Values

Ministry statement of environmental values

7. Within three months after the date on which this section begins to apply to a ministry, the minister shall prepare a draft ministry statement of environmental values that,

b) accroît l'obligation qu'a le gouvernement de l'Ontario de rendre des comptes à l'égard de sa prise de décisions sur le plan environnemental;

c) accroît l'accès des résidents de l'Ontario aux tribunaux dans le but de protéger l'environnement;

d) protège davantage les employés qui prennent des mesures à l'égard d'atteintes à l'environnement.

PARTIE II
PARTICIPATION DU PUBLIC À LA PRISE DE DÉCISIONS GOUVERNEMENTALES

Dispositions générales

Objet de la partie II

3 (1) La présente partie énonce les exigences minimales en matière de participation du public qui doivent être observées avant que le gouvernement de l'Ontario ne prenne des décisions sur certains types de propositions de politiques, de lois, de règlements et d'actes qui sont importantes sur le plan environnemental.

Idem

(2) La présente partie n'a pas pour effet de limiter tout droit de participation du public qui existe par ailleurs.

Champ d'application de la partie II

4 Les dispositions de la présente partie s'appliquent aux ministères, selon ce qui est prescrit.

Le registre environnemental

Registre

5 (1) Un registre environnemental doit être établi, selon ce qui est prescrit.

Coût du registre

(2) Le coût de l'établissement et du fonctionnement du registre ne doit pas être à la charge d'une municipalité au sens de la *Loi sur les municipalités*.

Objet du registre

6 (1) L'objet du registre est de fournir un moyen de donner au public des renseignements sur l'environnement.

Idem

(2) Pour l'application du paragraphe (1), les renseignements sur l'environnement comprennent notamment des renseignements sur ce qui suit :

a) des propositions, des décisions et des événements qui pourraient avoir des incidences sur l'environnement;

b) des actions intentées en vertu de la partie VI;

c) des choses faites en vertu de la présente loi.

Déclaration ministérielle sur les valeurs environnementales

Déclaration ministérielle sur les valeurs environnementales

7 Dans les trois mois qui suivent la date à laquelle le présent article commence à s'appliquer à un ministère, le ministre prépare un

(a) explains how the purposes of this Act are to be applied when decisions that might significantly affect the environment are made in the ministry; and

(b) explains how consideration of the purposes of this Act should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry.

Public participation in statement

8.—(1) After the draft ministry statement of environmental values is prepared and not later than three months after the day on which this section begins to apply to a ministry, the minister shall give notice to the public that he or she is developing the ministry statement of environmental values.

Means of giving notice

(2) Notice under this section shall be given in the registry and by any other means the minister considers appropriate.

Contents of notice

(3) Notice given under this section in the registry shall include the following:

1. The text of the draft statement prepared under section 7 or a synopsis of the draft.
2. A statement of how members of the public can obtain copies of the draft statement.
3. A statement of when the minister expects to finalize the statement.
4. An invitation to members of the public to submit written comments on the draft statement within a time specified in the notice.
5. A description of any additional rights of participation in the development of the statement that the minister considers appropriate.
6. An address to which members of the public may direct,
   i. written comments on the draft statement,
   ii. written questions about the draft statement, and
   iii. written questions about the rights of members of the public to participate in developing the statement.

projet de déclaration ministérielle sur les valeurs environnementales qui explique :

a) d'une part, comment il doit être tenu compte des objets de la présente loi lorsque sont prises au ministère des décisions susceptibles d'influer considérablement sur l'environnement;

b) d'autre part, comment allier les objets de la présente loi avec d'autres considérations, notamment d'ordre social, économique et scientifique, qui entrent en ligne de compte dans le processus décisionnel du ministère.

Participation du public

8 (1) Une fois préparé le projet de déclaration ministérielle sur les valeurs environnementales et au plus tard trois mois après le jour où le présent article commence à s'appliquer à un ministère, le ministre avise le public qu'il est en train d'élaborer la déclaration ministérielle sur les valeurs environnementales.

Moyens de donner l'avis

(2) L'avis prévu au présent article est donné dans le registre ainsi que par tout autre moyen que le ministre juge approprié.

Contenu de l'avis

(3) L'avis donné dans le registre aux termes du présent article comprend ce qui suit :

1. Le texte du projet de déclaration préparé aux termes de l'article 7 ou un résumé de celui-ci.
2. Des précisions quant à la façon dont les membres du public peuvent se procurer des exemplaires du projet de déclaration.
3. L'indication du moment où le ministre compte rédiger la version définitive de la déclaration.
4. Une invitation aux membres du public à soumettre des observations par écrit sur le projet de déclaration dans le délai précisé dans l'avis.
5. L'énoncé de tout autre droit de participation à l'élaboration de la déclaration que le ministre juge approprié.
6. L'adresse à laquelle les membres du public peuvent faire parvenir ce qui suit :
   i. des observations par écrit sur le projet de déclaration,
   ii. des questions par écrit sur le projet de déclaration,
   iii. des questions par écrit sur leurs droits de participer à l'élaboration de la déclaration.

7. Any information prescribed by the regulations under this Act.
8. Any other information that the minister considers appropriate.

Time for public comment

(4) The minister shall not finalize the ministry statement of environmental values until at least thirty days after giving the notice under this section.

Same

(5) The minister shall consider allowing more than thirty days between giving the notice under this section and finalizing the statement in order to permit more informed public consultation on the statement.

Same

(6) In considering how much time ought to be allowed under subsection (5), the minister shall consider the following factors:

1. The complexity of the matters on which comments are invited.
2. The level of public interest in the matters on which comments are invited.
3. The period of time the public may require to make informed comment.
4. Any private or public interest, including any governmental interest, in resolving the matters on which comments are invited in a timely manner.
5. Any other factor that the minister considers relevant.

Notice of final statement

9.—(1) Within nine months after the day on which this section begins to apply to a ministry, the minister shall finalize the ministry statement of environmental values and give notice of it to the public.

Means of giving notice

(2) Notice under this section shall be given in the registry and by any other means the minister considers appropriate.

Contents of notice

(3) The notice shall include a brief explanation of the effect, if any, of comments from members of the public on the development of the statement and any other information that the minister considers appropriate.

Amending the statement

10.—(1) The minister may amend the ministry statement of environmental values from time to time.

Same

(2) Sections 7 to 9 apply with necessary modifications to amendments of the statement.

7. Les renseignements prescrits par les règlements pris en application de la présente loi.
8. Les autres renseignements que le ministre juge appropriés.

Délai pour les observations du public

(4) Le ministre ne peut rédiger la version définitive de la déclaration ministérielle sur les valeurs environnementales avant que trente jours au moins ne se soient écoulés après que l'avis prévu au présent article a été donné.

Idem

(5) Le ministre étudie la possibilité d'impartir un délai supérieur à trente jours entre le moment où est donné l'avis prévu au présent article et celui où est rédigée la version définitive de la déclaration, en vue de permettre une consultation d'un public mieux renseigné sur la déclaration.

Idem

(6) Pour déterminer le délai qui pourrait être imparti aux termes du paragraphe (5), le ministre tient compte des facteurs suivants :

1. La complexité des questions au sujet desquelles des observations sont sollicitées.
2. L'intérêt que suscitent dans le public les questions au sujet desquelles des observations sont sollicitées.
3. Le délai dont le public peut avoir besoin pour présenter des observations éclairées.
4. Tout intérêt privé ou public, y compris tout intérêt gouvernemental, en ce qui concerne le règlement en temps opportun des questions au sujet desquelles des observations sont sollicitées.
5. Tout autre facteur que le ministre juge pertinent.

Avis de déclaration définitive

9 (1) Dans les neuf mois qui suivent le jour où le présent article commence à s'appliquer à un ministère, le ministre rédige la version définitive de la déclaration ministérielle sur les valeurs environnementales et en donne avis au public.

Moyens de donner l'avis

(2) L'avis prévu au présent article est donné dans le registre ainsi que par tout autre moyen que le ministre juge approprié.

Contenu de l'avis

(3) L'avis comprend une brève explication de tout effet qu'ont pu avoir les observations des membres du public sur l'élaboration de la déclaration, ainsi que tout autre renseignement que le ministre juge approprié.

Modification de la déclaration

10 (1) Le ministre peut modifier de temps à autre la déclaration ministérielle sur les valeurs environnementales.

Idem

(2) Les articles 7 à 9 s'appliquent, avec les adaptations nécessaires, aux modifications qu'il est projeté d'apporter à la déclaration.

Effect of statement

11. 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.

PROPOSALS — GENERAL

Interpretation: more than one ministry considering proposal

12. For the purposes of sections 15, 16 and 22, where a proposal is under consideration in more than one ministry, "ministry" means the ministry with primary responsibility for the proposal and "minister" has a corresponding meaning.

Fundamental changes in a proposal

13. For the purposes of sections 15, 16 and 22, the question of whether a proposal has been so fundamentally altered as to become a new proposal is in the sole discretion of the minister.

Factors in determining effect of proposal on environment

14. In determining, under section 15 or 16, whether a proposal for a policy, Act or regulation could, if implemented, have a significant effect on the environment, a minister shall consider the following factors:

1. The extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from a decision whether or not to implement the proposal.
2. The geographic extent, whether local, regional or provincial, of any harm to the environment that could result from a decision whether or not to implement the proposal.
3. The nature of the private and public interests, including governmental interests, involved in the decision whether or not to implement the proposal.
4. Any other matter that the minister considers relevant.

PROPOSALS FOR POLICIES, ACTS AND REGULATIONS

Proposals for policies and Acts

15.—(1) If a minister considers that a proposal under consideration in his or her ministry for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.

Effet de la déclaration

11 Le ministre prend toutes les mesures raisonnables pour veiller à ce qu'il soit tenu compte de la déclaration ministérielle sur les valeurs environnementales chaque fois que sont prises au ministère des décisions susceptibles d'influer considérablement sur l'environnement.

PROPOSITIONS — DISPOSITIONS GÉNÉRALES

Interprétation : étude de la proposition par plus d'un ministère

12 Pour l'application des articles 15, 16 et 22, si une proposition est à l'étude dans plus d'un ministère, le terme «ministère» s'entend du ministère qui a la responsabilité première de la proposition et celui de «ministre» a un sens correspondant.

Changements fondamentaux apportés à une proposition

13 Pour l'application des articles 15, 16 et 22, le ministre a l'entière discrétion pour établir si une proposition a été fondamentalement modifiée au point de devenir une nouvelle proposition.

Facteurs permettant de déterminer l'effet d'une proposition sur l'environnement

14 Pour déterminer, aux termes de l'article 15 ou 16, si une proposition de politique, de loi ou de règlement pourrait, si elle était mise en oeuvre, avoir un effet considérable sur l'environnement, un ministre tient compte des facteurs suivants :

1. La portée et la nature des mesures qui pourraient être requises pour atténuer ou empêcher toute atteinte à l'environnement que pourrait entraîner la décision de mettre en oeuvre ou non la proposition.
2. L'étendue géographique, qu'elle soit locale, régionale ou provinciale, de toute atteinte à l'environnement que pourrait entraîner la décision de mettre en oeuvre ou non la proposition.
3. La nature des intérêts privés et publics, y compris les intérêts gouvernementaux, qui sont mis en cause par la décision de mettre en oeuvre ou non la proposition.
4. Toute autre question qu'il juge pertinente.

PROPOSITIONS DE POLITIQUES, DE LOIS ET DE RÈGLEMENTS

Propositions de politiques et de lois

15 (1) Si un ministre juge qu'une proposition de politique ou une proposition de loi à l'étude dans son ministère pourrait avoir, si elle était mise en oeuvre, un effet considérable sur l'environnement et s'il juge que le public devrait avoir la possibilité de présenter des observations sur la proposition avant sa mise en oeuvre, il fait tout ce qui est en son pouvoir pour donner avis de la proposition au public au moins trente jours avant sa mise en oeuvre.

Exception

(2) Subsection (1) does not apply to a policy or Act that is predominantly financial or administrative in nature.

Proposals for regulations

16.—(1) If a minister considers that a proposal under consideration in his or her ministry for a regulation under a prescribed Act could, if implemented, have a significant effect on the environment, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.

Exception

(2) Subsection (1) does not apply to a regulation that is predominantly financial or administrative in nature.

Additional time for public comment on proposals for policies, Acts, regulations

17.—(1) The minister shall consider allowing more than thirty days between giving notice of a proposal under section 15 or 16 and implementation of the proposal in order to permit more informed public consultation on the proposal.

Same

(2) In considering how much time ought to be allowed under subsection (1), the minister shall consider the factors set out in subsection 8 (6).

How to give notice under s. 15 or 16

18. Notice under section 15 or 16 shall be given in accordance with section 27.

CLASSIFYING PROPOSALS FOR INSTRUMENTS

Minister to develop regulation to classify instrument proposals

19. Within a reasonable time after this section begins to apply to a ministry, the minister for the ministry shall prepare a proposal for a regulation to classify proposals for instruments as Class I, II or III proposals for the purposes of this Act and the regulations under it.

Interpretation

20.—(1) In this section, "implementation decision" means a decision whether or not to implement a proposal for an instrument.

Steps to develop regulation to classify instrument proposals

(2) In developing a proposal under section 19 for a regulation to classify proposals for instruments as Class I, II or III proposals, the minister shall take the following steps:

1. Review all Acts prescribed for the purposes of section 16 and administered by the minister for the ministry and list all provisions of those Acts that permit implementation decisions to be made.
2. Exclude from the list compiled in step 1 all provisions that permit implementation decisions to be made on review of or appeal from an earlier implementation decision made under an Act.

Exception

(2) Le paragraphe (1) ne s'applique pas aux politiques ou lois à caractère principalement financier ou administratif.

Propositions de règlements

16 (1) Si un ministre juge qu'une proposition de règlement en application d'une loi prescrite, qui est à l'étude dans son ministère pourrait, si elle était mise en oeuvre, avoir un effet considérable sur l'environnement, il fait tout ce qui est en son pouvoir pour donner avis de la proposition au public au moins trente jours avant sa mise en oeuvre.

Exception

(2) Le paragraphe (1) ne s'applique pas aux règlements à caractère principalement financier ou administratif.

Prorogation du délai pour les observations du public sur les propositions de politiques, de lois et de règlements

17 (1) Le ministre étudie la possibilité d'impartir un délai supérieur à trente jours entre le moment où est donné l'avis de proposition prévu à l'article 15 ou 16 et celui où est mise en oeuvre la proposition, en vue de permettre une consultation d'un public mieux renseigné sur la proposition.

Idem

(2) Pour déterminer le délai qui pourrait être imparti aux termes du paragraphe (1), le ministre tient compte des facteurs énoncés au paragraphe 8 (6).

Façon de donner l'avis prévu à l'art. 15 ou 16

18 L'avis prévu à l'article 15 ou 16 est donné conformément à l'article 27.

CLASSIFICATION DES PROPOSITIONS D'ACTES

Élaboration par le ministre d'un règlement visant à classer les propositions d'actes

19 Dans un délai raisonnable après que le présent article commence à s'appliquer à un ministère, le ministre responsable du ministère prépare une proposition de règlement visant à classer les propositions d'actes comme propositions de catégorie I, II ou III pour l'application de la présente loi et des règlements pris en application de celle-ci.

Interprétation

20 (1) Dans le présent article, le terme «décision à l'égard de la mise en oeuvre» s'entend de la décision de mettre en oeuvre ou non une proposition d'acte.

Étapes de l'élaboration d'un règlement visant à classer les propositions d'actes

(2) Aux fins de l'élaboration, aux termes de l'article 19, d'une proposition de règlement visant à classer les propositions d'actes comme propositions de catégorie I, II ou III, le ministre prend les mesures suivantes :

1. Examiner toutes les lois prescrites pour l'application de l'article 16 et administrées par le ministre responsable du ministère, et dresser la liste de toutes les dispositions de ces lois qui permettent la prise de décisions à l'égard de la mise en oeuvre.
2. Exclure de la liste dressée à l'étape 1 toutes les dispositions qui permettent la prise de décisions à l'égard de la mise en oeuvre lors de l'examen ou de l'appel d'une décision à l'égard de la

3. Consider each provision remaining on the list after step 2 to identify the provisions under which an implementation decision could be made that could have a significant effect on the environment.

4. Consider each provision identified in step 3 and identify and describe each type of proposal for an instrument about which an implementation decision could be made under the provision that the minister considers should be classified as a Class I, II or III type of proposal because of the potential for implementation decisions about proposals of that type to have a significant effect on the environment.

5. In determining whether a decision could have a significant effect on the environment for the purposes of steps 3 and 4, consider,

   i. the extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from the decision,

   ii. the geographic extent, whether local, regional or provincial, of any harm to the environment that could result from the decision,

   iii. the nature of the private and public interests, including governmental interests, involved in the decision, and

   iv. any other matter that the minister considers relevant.

6. Classify each type of proposal for an instrument identified in step 4 as a Class I, II or III type of proposal, in accordance with steps 7 to 10.

7. Classify a type of proposal as a Class II type of proposal if the minister considers that the public notice and public participation requirements of sections 23 to 25 ought to apply to it because of the level of risk and extent of potential harm to the environment involved.

8. Classify a type of proposal as a Class II type of proposal if an Act provides for the exercise of discretion on whether a hearing should be held before an implementation decision is made on a proposal of the type, but does not require the hearing to be held if the discretion is not exercised.

mise en oeuvre prise antérieurement aux termes d'une loi donnée.

3. Étudier chaque disposition qui reste sur la liste, une fois l'étape 2 accomplie, en vue de déterminer les dispositions en vertu desquelles pourrait être prise une décision à l'égard de la mise en oeuvre qui pourrait avoir un effet considérable sur l'environnement.

4. Étudier chaque disposition déterminée à l'étape 3 et déterminer et décrire chaque type de proposition d'acte au sujet de laquelle pourrait être prise, en vertu de la disposition, une décision à l'égard de la mise en oeuvre et que le ministre juge devrait être classée comme type de proposition de catégorie I, II ou III en raison de la possibilité que les décisions à l'égard de la mise en oeuvre au sujet de propositions de ce type aient un effet considérable sur l'environnement.

5. Pour déterminer si une décision pourrait avoir un effet considérable sur l'environnement aux fins des étapes 3 et 4, tenir compte de ce qui suit :

   i. la portée et la nature des mesures qui pourraient être requises pour atténuer ou empêcher toute atteinte à l'environnement que pourrait entraîner la décision,

   ii. l'étendue géographique, qu'elle soit locale, régionale ou provinciale, de toute atteinte à l'environnement que pourrait entraîner la décision,

   iii. la nature des intérêts privés et publics, y compris les intérêts gouvernementaux, qui sont mis en cause par la décision,

   iv. toute autre question que le ministre juge pertinente.

6. Classer chaque type de proposition d'acte identifié à l'étape 4 comme type de proposition de catégorie I, II ou III, conformément aux étapes 7 à 10.

7. Classer un type de proposition comme type de proposition de catégorie II s'il juge que les exigences en matière d'avis au public et de participation de celui-ci que prévoient les articles 23 à 25 devraient s'appliquer à ce type de proposition en raison du niveau de risque et de la portée de toute atteinte éventuelle à l'environnement qui sont en cause.

8. Classer un type de proposition comme type de proposition de catégorie II si une loi prévoit l'exercice d'un pouvoir discrétionnaire quant à la tenue d'une audience avant qu'une décision à l'égard de la mise en oeuvre ne soit prise sur une proposition de ce type, mais qu'elle n'exige pas la tenue de l'audience si le pouvoir discrétionnaire n'est pas exercé.

9. Classify a type of proposal as a Class III type of proposal if an Act requires hearings to be held to determine whether or not proposals of the type should be implemented, even if the Act provides for the exercise of discretion not to hold a hearing.

10. Classify a type of proposal for an instrument as a Class I type of proposal if it has not been classified as a Class II or III type of proposal in steps 7 to 9.

11. Prepare a proposal for a regulation that would classify proposals of each type identified in step 4 as Class I, II or III proposals in accordance with steps 7 to 10.

9. Classer un type de proposition comme type de proposition de catégorie III si une loi exige la tenue d'audiences pour déterminer si des propositions de ce type devraient être mises en oeuvre ou non, même si la loi prévoit l'exercice du pouvoir discrétionnaire de ne pas tenir d'audience.

10. Classer un type de proposition d'acte comme type de proposition de catégorie I s'il n'a pas déjà été classé comme type de proposition de catégorie II ou III aux étapes 7 à 9.

11. Préparer une proposition de règlement qui classerait les propositions de chaque type identifié à l'étape 4 comme propositions de catégorie I, II ou III, conformément aux étapes 7 à 10.

Amending regulations to classify instrument proposals

21.—(1) A minister shall from time to time review the regulations that classify proposals for instruments as Class I, II or III proposals and that relate to Acts administered by the minister for the ministry and shall prepare proposals to amend the regulations as the minister considers advisable.

Modification des règlements visant à classer les propositions d'actes

21 (1) Tout ministre examine, de temps à autre, les règlements qui classent les propositions d'actes comme propositions de catégorie I, II ou III et qui se rapportent aux lois administrées par le ministre responsable du ministère, et prépare des propositions visant à modifier ces règlements comme il le juge utile.

Same

(2) Section 20 applies with necessary modifications to proposals prepared under this section.

Idem

(2) L'article 20 s'applique, avec les adaptations nécessaires, aux propositions préparées aux termes du présent article.

PROPOSALS FOR INSTRUMENTS

PROPOSITIONS D'ACTES

Public notice of proposals for instruments

22.—(1) The minister shall do everything in his or her power to give notice to the public of a Class I, II or III proposal for an instrument under consideration in his or her ministry at least thirty days before a decision is made whether or not to implement the proposal.

Avis des propositions d'actes donné au public

22 (1) Le ministre fait tout en son pouvoir pour donner au public avis de toute proposition d'acte de catégorie I, II ou III qui est à l'étude dans son ministère, au moins trente jours avant que la décision de mettre en oeuvre ou non la proposition ne soit prise.

Interpretation

(2) For the purposes of subsection (1), a proposal for an instrument is under consideration in a ministry if,

(a) it is possible that a decision whether or not to implement the proposal will be made under an Act by the minister for the ministry or by a person employed in the ministry; or

(b) it is possible that a decision whether or not to implement the proposal will be made under an Act administered by the minister for the ministry.

Interprétation

(2) Pour l'application du paragraphe (1), une proposition d'acte est à l'étude dans un ministère si, selon le cas :

a) il se peut que la décision de mettre en oeuvre ou non la proposition soit prise aux termes d'une loi par le ministre responsable du ministère ou par une personne employée au ministère;

b) il se peut que la décision de mettre en oeuvre ou non la proposition soit prise aux termes d'une loi administrée par le ministre responsable du ministère.

Exception

(3) Despite subsection (1), the minister need not give notice of a proposal to amend or revoke an instrument if the minister considers that the potential effect of the amend-

Exception

(3) Malgré le paragraphe (1), le ministre n'est pas obligé de donner avis d'une proposition visant à modifier ou à révoquer un acte s'il juge négligeable l'effet potentiel de la

ment or revocation on the environment is insignificant.

How to give notice

(4) Notice under this section shall be given in accordance with section 27.

Additional time for public comment on Class II proposals

23.—(1) A minister required to give notice under section 22 of a Class II proposal for an instrument shall consider allowing more than thirty days between giving the notice and the decision whether or not to implement the proposal in order to permit more informed public consultation on the proposal.

Same

(2) In considering how much time ought to be allowed under subsection (1), the minister shall consider the factors set out in subsection 8 (6).

Enhanced public participation for Class II proposals

24.—(1) A minister required to give notice under section 22 of a Class II proposal for an instrument shall also consider enhancing the right of members of the public to participate in decision-making on the proposal by providing for one or more of the following:

1. Opportunities for oral representations by members of the public to the minister or a person or body designated by the minister.
2. Public meetings.
3. Mediation among persons with different views on issues arising out of the proposal.
4. Any other process that would facilitate more informed public participation in decision-making on the proposal.

Same

(2) In exercising his or her discretion under subsection (1), the minister shall consider the factors set out in section 14.

Additional notice of Class II proposals

25. A minister required to give notice under section 22 of a Class II proposal for an instrument shall give additional public notice of the proposal in accordance with section 28.

Class I proposal to be treated as Class II proposal

26.—(1) A minister may treat a Class I proposal for an instrument under consideration in his or her ministry as if it were a Class II proposal if the minister considers that it is advisable to do so for the purpose of protecting the environment.

Class II proposal to be treated as Class III proposal

(2) If a decision is taken under any Act to hold a hearing to decide whether or not to implement a Class II proposal for an instrument, the proposal shall, for the purposes of this Act, be deemed to be a Class III proposal.

modification ou de la révocation sur l'environnement.

Façon de donner l'avis

(4) L'avis prévu au présent article est donné conformément à l'article 27.

Prorogation du délai pour les observations du public sur les propositions de catégorie II

23 (1) Tout ministre qui doit, aux termes de l'article 22, donner avis d'une proposition d'acte de catégorie II étudie la possibilité d'impartir un délai supérieur à trente jours entre le moment où est donné l'avis et celui où est prise la décision de mettre en oeuvre ou non la proposition, en vue de permettre une consultation d'un public mieux renseigné sur la proposition.

Idem

(2) Pour déterminer le délai qui pourrait être imparti aux termes du paragraphe (1), le ministre tient compte des facteurs énoncés au paragraphe 8 (6).

Participation accrue du public dans le cas des propositions de catégorie II

24 (1) Tout ministre qui doit, aux termes de l'article 22, donner avis d'une proposition d'acte de catégorie II étudie également la possibilité de renforcer le droit de participation des membres du public à la prise de décisions sur la proposition en prévoyant une ou plusieurs des mesures suivantes :

1. La possibilité pour les membres du public de présenter des déclarations orales au ministre ou à une personne ou un organisme que celui-ci désigne.
2. La tenue de réunions publiques.
3. La médiation entre les personnes qui ont des points de vue différents sur les questions que soulève la proposition.
4. Tout autre processus qui faciliterait la participation d'un public mieux renseigné à la prise de décisions sur la proposition.

Idem

(2) Lorsqu'il exerce le pouvoir discrétionnaire que lui confère le paragraphe (1), le ministre tient compte des facteurs énoncés à l'article 14.

Avis supplémentaire des propositions de catégorie II

25 Tout ministre qui doit, aux termes de l'article 22, donner avis d'une proposition d'acte de catégorie II donne au public un avis supplémentaire de la proposition conformément à l'article 28.

Proposition de catégorie I traitée comme une proposition de catégorie II

26 (1) Tout ministre peut traiter une proposition d'acte de catégorie I qui est à l'étude dans son ministère comme une proposition de catégorie II, s'il juge utile de le faire en vue de protéger l'environnement.

Proposition de catégorie II traitée comme une proposition de catégorie III

(2) S'il est décidé, aux termes d'une loi, de tenir une audience pour décider s'il y a lieu de mettre en oeuvre ou non une proposition d'acte de catégorie II, cette proposition est réputée, pour l'application de la présente loi, une proposition de catégorie III.

Class III proposal to be treated as Class II proposal

(3) If a decision is taken under any Act not to hold a hearing before deciding whether or not to implement a Class III proposal for an instrument, the proposal shall, for the purposes of this Act, be deemed to be a Class II proposal.

How to Give Notice of Proposals

Means of giving notice of proposals

27.—(1) Notice of a proposal under section 15, 16 or 22 shall be given in the registry and by any other means the minister giving the notice considers appropriate.

Contents of notice of proposals

(2) Notice of a proposal given under section 15, 16 or 22 in the registry shall include the following:

1. A brief description of the proposal.
2. A statement of the manner by which and time within which members of the public may participate in decision-making on the proposal.
3. A statement of where and when members of the public may review written information about the proposal.
4. An address to which members of the public may direct,
   i. written comments on the proposal, and
   ii. written questions about the rights of members of the public to participate in decision-making on the proposal.
5. Any information prescribed by the regulations under this Act.
6. Any other information that the minister giving the notice considers appropriate.

Rights of participation

(3) A statement under paragraph 2 of subsection (2) shall include a description of the following rights of public participation in decision-making on the proposal:

1. The right to submit written comments in the manner and within the time specified in the notice.
2. Any additional rights of public participation provided under section 24.
3. Any additional rights of public participation prescribed by the regulations under this Act.
4. Any additional rights of public participation that the minister giving the notice considers appropriate.

Regulatory impact statement

(4) The minister shall include a regulatory impact statement in a notice of a proposal

Proposition de catégorie III traitée comme une proposition de catégorie II

(3) S'il est décidé, aux termes d'une loi, de ne pas tenir d'audience avant de décider s'il y a lieu de mettre en oeuvre ou non une proposition d'acte de catégorie III, cette proposition est réputée, pour l'application de la présente loi, une proposition de catégorie II.

Façon de donner avis des propositions

Moyens de donner avis des propositions

27 (1) L'avis de proposition prévu à l'article 15, 16 ou 22 est donné dans le registre ainsi que par tout autre moyen que le ministre qui donne l'avis juge approprié.

Contenu de l'avis de proposition

(2) L'avis de proposition donné dans le registre aux termes de l'article 15, 16 ou 22 comprend ce qui suit :

1. Un bref exposé de la proposition.
2. Une déclaration quant à la manière dont les membres du public peuvent participer à la prise de décisions sur la proposition et quant au délai dans lequel ils peuvent y participer.
3. L'indication du lieu et du moment où les membres du public peuvent examiner des renseignements écrits sur la proposition.
4. L'adresse à laquelle les membres du public peuvent faire parvenir ce qui suit :
   i. des observations par écrit sur la proposition,
   ii. des questions par écrit sur leurs droits de participer à la prise de décisions sur la proposition.
5. Les renseignements prescrits par les règlements pris en application de la présente loi.
6. Les autres renseignements que le ministre qui donne l'avis juge appropriés.

Droits de participation

(3) La déclaration visée à la disposition 2 du paragraphe (2) comprend un énoncé des droits suivants de participation du public à la prise de décisions sur la proposition :

1. Le droit de soumettre des observations par écrit de la manière et dans le délai précisés dans l'avis.
2. Les autres droits de participation du public prévus à l'article 24.
3. Les autres droits de participation du public prescrits par les règlements pris en application de la présente loi.
4. Tout autre droit de participation du public que le ministre qui donne l'avis juge approprié.

Étude d'impact du règlement

(4) Le ministre joint une étude d'impact du règlement à l'avis de proposition donné

given under section 16 in the registry if the minister considers that it is necessary to do so in order to permit more informed public consultation on the proposal.

Same

(5) A regulatory impact statement shall include the following:

1. A brief statement of the objectives of the proposal.
2. A preliminary assessment of the environmental, social and economic consequences of implementing the proposal.
3. An explanation of why the environmental objectives, if any, of the proposal would be appropriately achieved by making, amending or revoking a regulation.

Means of giving additional notice of Class II proposals

28.—(1) The additional notice of Class II proposals required by section 25 shall be given by such means as the minister considers appropriate, including at least one of the following means:

1. News release.
2. Notice through local, regional or provincial news media, such as television, radio, newspapers and magazines.
3. Door to door flyers.
4. Signs.
5. Mailings to members of the public.
6. Actual notice to community leaders and political representatives.
7. Actual notice to community organizations, including environmental organizations.
8. Notice on the registry in addition to the notice required by section 22.
9. Any other means of notice that would facilitate more informed public participation in decision-making on the proposal.

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(2) In determining what means of giving notice are appropriate under subsection (1), the minister shall consider the factors set out in section 14.

PROPOSALS — EXCEPTIONS

ception: ergencies

29.—(1) Sections 15, 16 and 22 do not apply where, in the minister's opinion, the delay involved in giving notice to the public, in allowing time for public response to the notice or in considering the response to the notice would result in,

dans le registre aux termes de l'article 16 s'il juge nécessaire de le faire en vue de permettre une consultation, sur la proposition, d'un public mieux renseigné.

Idem

(5) L'étude d'impact du règlement comprend ce qui suit :

1. Un bref exposé des objectifs de la proposition.
2. Une évaluation préliminaire des conséquences de la mise en oeuvre de la proposition pour l'environnement, la société et l'économie.
3. Un exposé des raisons pour lesquelles un moyen approprié d'atteindre les objectifs de la proposition sur le plan environnemental, s'il en est, serait de prendre, de modifier ou d'abroger un règlement.

Moyens de donner un avis supplémentaire des propositions de catégorie II

28 (1) L'avis supplémentaire qui est exigé par l'article 25 pour les propositions de catégorie II est donné par tout moyen que le ministre juge approprié, y compris au moins l'un des moyens suivants :

1. Le communiqué de presse.
2. L'avis émis dans les médias d'information locaux, régionaux ou provinciaux, tels que la télévision, la radio, les journaux et les magazines.
3. La distribution de porte à porte de dépliants.
4. L'affichage.
5. Les envois postaux aux membres du public.
6. L'avis effectivement remis aux leaders communautaires et aux représentants politiques.
7. L'avis effectivement remis aux organismes communautaires, y compris les organismes environnementaux.
8. L'avis placé dans le registre en plus de l'avis qu'exige l'article 22.
9. Tout autre moyen de donner l'avis qui faciliterait une participation d'un public mieux renseigné à la prise de décisions sur la proposition.

Idem

(2) Pour déterminer quels moyens de donner un avis sont appropriés aux termes du paragraphe (1), le ministre tient compte des facteurs énoncés à l'article 14.

PROPOSITIONS — EXCEPTIONS

Exception : situations d'urgence

29 (1) Les articles 15, 16 et 22 ne s'appliquent pas lorsque, selon le ministre, le laps de temps lié au fait de donner un avis au public, au fait d'accorder un délai à celui-ci pour qu'il y réponde ou au fait d'étudier sa réponse entraînerait, selon le cas :

(a) danger to the health or safety of any person;

(b) harm or serious risk of harm to the environment; or

(c) injury or damage or serious risk of injury or damage to any property.

Same

(2) If a minister decides under subsection (1) not to give notice of a proposal under section 15, 16 or 22, the minister shall give notice of the decision to the public and to the Environmental Commissioner.

Same

(3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate.

Exception: other processes

30.—(1) Sections 15, 16 and 22 do not apply where, in the minister's opinion, the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument,

(a) have already been considered in a process of public participation, under this Act, under another Act or otherwise, that was substantially equivalent to the process required in relation to the proposal under this Act; or

(b) are required to be considered in a process of public participation under another Act that is substantially equivalent to the process required in relation to the proposal under this Act.

Same

(2) If a minister decides under subsection (1) not to give notice of a proposal under section 15, 16 or 22, the minister shall give notice of the decision to the public and to the Environmental Commissioner.

Same

(3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate.

Means of giving notice

31. Notice to the public under section 29 or 30 shall be given in the registry and by any other means the minister considers appropriate.

Exception: instruments in accordance with statutory decisions

32.—(1) Section 22 does not apply where, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking or other project approved by,

a) un danger pour la santé ou la sécurité de quiconque;

b) une atteinte ou un grave risque d'atteinte à l'environnement;

c) un préjudice ou des dommages à des biens, ou un grave risque de préjudice ou de dommages à des biens.

Idem

(2) Si un ministre décide, aux termes du paragraphe (1), de ne pas donner l'avis de proposition prévu à l'article 15, 16 ou 22, il donne avis de sa décision au public ainsi qu'au commissaire à l'environnement.

Idem

(3) L'avis prévu au paragraphe (2) est donné dans les meilleurs délais raisonnables après la prise de la décision et comprend un bref exposé des motifs de la décision du ministre et tout autre renseignement sur celle-ci qu'il juge approprié.

Exception : autres processus

30 (1) Les articles 15, 16 et 22 ne s'appliquent pas lorsque, selon le ministre, les aspects d'une proposition de politique, de loi, de règlement ou d'acte qui sont importants sur le plan environnemental :

a) soit ont déjà été étudiés dans le cadre d'un processus de participation du public prévu par la présente loi, une autre loi ou autrement, qui était essentiellement équivalent au processus exigé par la présente loi en ce qui concerne la proposition;

b) soit doivent être étudiés dans le cadre d'un processus de participation du public prévu par une autre loi, qui est essentiellement équivalent au processus exigé par la présente loi en ce qui concerne la proposition.

Idem

(2) Si un ministre décide, aux termes du paragraphe (1), de ne pas donner l'avis de proposition prévu à l'article 15, 16 ou 22, il donne avis de sa décision au public ainsi qu'au commissaire à l'environnement.

Idem

(3) L'avis prévu au paragraphe (2) est donné dans les meilleurs délais raisonnables après la prise de la décision et comprend un bref exposé des motifs de la décision du ministre et tout autre renseignement sur celle-ci qu'il juge approprié.

Moyens de donner avis

31 L'avis au public prévu à l'article 29 ou 30 est donné dans le registre ainsi que par tout autre moyen que le ministre juge approprié.

Exception : actes conformes aux décisions rendues en vertu de lois

32 (1) L'article 22 ne s'applique pas lorsque, selon le ministre, la délivrance, la modification ou la révocation d'un acte favoriserait la réalisation d'une entreprise ou d'un autre projet autorisés par l'une des décisions suivantes :

(a) a decision made by a tribunal under an Act after affording an opportunity for public participation; or

(b) a decision made under the *Environmental Assessment Act*.

Same

(2) Section 22 does not apply where, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking that has been exempted by a regulation under the *Environmental Assessment Act*.

Same

(3) A decision about a class of undertaking is a decision within the meaning of subsection (1) and an exemption for a class of undertaking is an exemption within the meaning of subsection (2).

Exception: budget proposals

33.—(1) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, form part of or give effect to a budget or economic statement presented to the Assembly.

Same

(2) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, change,

(a) a policy that forms part of a budget or economic statement presented to the Assembly; or

(b) a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Assembly.

MINISTERIAL ROLE AFTER GIVING NOTICE OF A PROPOSAL

Appointment of mediator

34.—(1) A minister may appoint a mediator to assist in the resolution of issues related to a proposal for an instrument of which notice has been given under section 22.

Same

(2) A minister shall not make an appointment under subsection (1) without the consent of the person applying for the instrument or the person who would be subject to the instrument, as the case may be.

Minister to consider comments

35.—(1) A minister who gives notice of a proposal under section 15, 16 or 22 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.

Same

(2) For the purposes of subsection (1), a comment on the legislative or regulatory framework within which the decision whether or not to implement a proposal for an instrument is to be made is not a comment relevant to the proposal for the instrument.

a) une décision rendue par un tribunal en vertu d'une loi après que le public a eu la possibilité de participer au processus;

b) une décision rendue en vertu de la *Loi sur les évaluations environnementales*.

Idem

(2) L'article 22 ne s'applique pas lorsque, selon le ministre, la délivrance, la modification ou la révocation d'un acte favoriserait la réalisation d'une entreprise qui a été exemptée par un règlement pris en application de la *Loi sur les évaluations environnementales*.

Idem

(3) Toute décision au sujet d'une catégorie d'entreprises constitue une décision au sens du paragraphe (1) et toute exemption d'une catégorie d'entreprises constitue une exemption au sens du paragraphe (2).

Exception : propositions budgétaires

33 (1) Un ministre n'est pas obligé de donner avis, aux termes de l'article 15, 16 ou 22, d'une proposition qui, si elle était mise en oeuvre, ferait partie d'un budget ou d'un exposé économique présentés à l'Assemblée ou y donnerait effet.

Idem

(2) Un ministre n'est pas obligé de donner avis, aux termes de l'article 15, 16 ou 22, d'une proposition qui, si elle était mise en oeuvre, modifierait :

a) soit une politique qui fait partie d'une déclaration budgétaire ou économique présentée à l'Assemblée;

b) soit un projet de loi, une loi, un règlement ou un acte qui donne effet à une déclaration budgétaire ou économique présentée à l'Assemblée.

RÔLE DU MINISTRE APRÈS AVOIR DONNÉ UN AVIS DE PROPOSITION

Nomination d'un médiateur

34 (1) Tout ministre peut nommer un médiateur pour faciliter le règlement des questions relatives à une proposition d'acte dont il a été donné avis aux termes de l'article 22.

Idem

(2) Le ministre ne procède pas à la nomination visée au paragraphe (1) sans le consentement de la personne qui présente la demande d'acte ou de la personne qui serait assujettie à l'acte, selon le cas.

Étude des observations par le ministre

35 (1) Tout ministre qui donne l'avis de proposition prévu à l'article 15, 16 ou 22 prend toutes les mesures raisonnables pour veiller à ce qu'il soit tenu compte de toutes les observations pertinentes en ce qui concerne la proposition qui sont reçues dans le cadre du processus de participation du public décrit dans l'avis de proposition, lorsque sont prises au ministère les décisions portant sur la proposition.

Idem

(2) Pour l'application du paragraphe (1), toute observation sur le cadre législatif ou réglementaire dans lequel doit être prise la décision de mettre en oeuvre ou non une proposition d'acte ne constitue pas une observation pertinente en ce qui concerne la proposition d'acte.

Notice of implementation of proposals for policies, Acts, regulations

36.—(1) As soon as reasonably possible after a proposal for a policy, Act or regulation in respect of which notice was given under section 15 or 16 is implemented, the minister shall give notice to the public of the implementation.

Notice of decision on proposals for instruments

(2) As soon as reasonably possible after a decision is made whether or not to implement a proposal for an instrument in respect of which notice was given under section 22, the minister shall give notice to the public of the decision.

Means of giving notice

(3) Notice under this section shall be given in the registry and by any other means the minister considers appropriate.

Contents of notice

(4) The notice shall include a brief explanation of the effect, if any, of public participation on decision-making on the proposal and any other information that the minister considers appropriate.

Effect of failure to comply

37. Failure to comply with a provision of this Part does not affect the validity of any policy, Act, regulation or instrument, except as provided in section 118.

APPEALS OF DECISIONS ON CLASS I AND CLASS II INSTRUMENT PROPOSALS

Right to seek leave to appeal a decision on an instrument

38.—(1) Any person resident in Ontario may seek leave to appeal from a decision whether or not to implement a proposal for a Class I or II instrument of which notice is required to be given under section 22, if the following two conditions are met:

1. The person seeking leave to appeal has an interest in the decision.

2. Another person has a right under another Act to appeal from a decision whether or not to implement the proposal.

Same

(2) For greater certainty, subsection (1) does not permit any person to seek leave to appeal from a decision about a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33.

Same

(3) For the purposes of subsection (1), the fact that a person has exercised a right given by this Act to comment on a proposal is evidence that the person has an interest in the decision on the proposal.

Avis de mise en oeuvre des propositions de politiques, de lois et de règlements

36 (1) Dans les meilleurs délais raisonnables après qu'une proposition de politique, de loi ou de règlement dont il a été donné avis aux termes de l'article 15 ou 16 a été mise en oeuvre, le ministre donne avis au public de la mise en oeuvre.

Avis de décision sur les propositions d'actes

(2) Dans les meilleurs délais raisonnables après la prise d'une décision de mettre en oeuvre ou non une proposition d'acte dont il a été donné avis aux termes de l'article 22, le ministre donne avis au public de la décision.

Moyens de donner l'avis

(3) L'avis prévu au présent article est donné dans le registre ainsi que par tout autre moyen que le ministre juge approprié.

Contenu de l'avis

(4) L'avis comprend une brève explication de l'effet qu'a eu, le cas échéant, la participation du public sur la prise de décisions au sujet de la proposition et les autres renseignements que le ministre juge appropriés.

Effet du défaut de se conformer

37 Le défaut de se conformer à toute disposition de la présente partie n'a pas pour effet d'invalider quelque politique, loi, règlement ou acte que ce soit, sauf comme le prévoit l'article 118.

APPEL DES DÉCISIONS PORTANT SUR LES PROPOSITIONS D'ACTES DE CATÉGORIE I ET DE CATÉGORIE II

Droit de demander l'autorisation d'interjeter appel d'une décision portant sur un acte

38 (1) Toute personne qui réside en Ontario peut demander l'autorisation d'interjeter appel d'une décision de mettre en oeuvre ou non une proposition d'acte de catégorie I ou II dont il doit être donné avis aux termes de l'article 22, si les deux conditions suivantes sont réunies :

1. La personne qui demande l'autorisation d'interjeter appel a un intérêt dans la décision.

2. Une autre personne a le droit, en vertu d'une autre loi, d'interjeter appel d'une décision de mettre en oeuvre ou non la proposition.

Idem

(2) Il est entendu que le paragraphe (1) n'a pas pour effet de permettre à quiconque de demander l'autorisation d'interjeter appel d'une décision au sujet d'une proposition à laquelle l'article 22 ne s'applique pas en raison de l'application de l'article 29, 30, 32 ou 33.

Idem

(3) Pour l'application du paragraphe (1), le fait qu'une personne a exercé tout droit, conféré par la présente loi, de faire part de ses observations sur une proposition consti-

Further rights of appeal

(4) Any person who, by virtue of this Part, is a party to an appeal about a proposal has rights of appeal from an appellate decision about the proposal equivalent to those of any other party to the appeal.

Same

(5) For the purposes of subsection (4), an appellate decision about a proposal is not limited to a decision whether or not to implement the proposal but includes, for example, the following kinds of decisions:

1. An order to an earlier decision-maker to make a new decision about the proposal.

2. An order varying an earlier decision about the proposal.

3. An order to set aside an earlier decision about the proposal.

Appellate body

39.—(1) Subject to the regulations under this Act, the application for leave to appeal and the appeal shall be heard by the appellate body that would hear an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1).

Same

(2) For example, an appeal on a question of law from a decision to issue an instrument relates to the same proposal as and is of a similar nature to an appeal on a question of law from a decision not to issue the instrument.

Time for appeal

40. An application for leave to appeal under subsection 38 (1) shall not be made later than the earlier of,

(a) fifteen days after the day on which the minister gives notice under section 36 of a decision on the proposal; and

(b) fifteen days after the day on which notice relating to the proposal is given under section 47.

Leave test

41. Leave to appeal a decision shall not be granted unless it appears to the appellate body that,

(a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and

tue une preuve qu'elle a un intérêt dans la décision portant sur la proposition.

Droits d'appel additionnels

(4) Quiconque est partie, en vertu de la présente partie, à un appel portant sur une proposition a des droits d'appel d'une décision rendue en appel à l'égard de la proposition qui équivalent à ceux de toute autre partie à l'appel.

Idem

(5) Pour l'application du paragraphe (4), la décision rendue en appel à l'égard d'une proposition s'entend non seulement de la décision de mettre en oeuvre ou non la proposition, mais également, par exemple, des types de décisions suivants :

1. L'arrêté, l'ordre ou l'ordonnance enjoignant à l'auteur d'une décision antérieure de prendre une nouvelle décision au sujet de la proposition.

2. L'arrêté, l'ordre ou l'ordonnance modifiant une décision antérieure au sujet de la proposition.

3. L'arrêté, l'ordre ou l'ordonnance annulant une décision antérieure au sujet de la proposition.

Organisme d'appel

39 (1) Sous réserve des règlements pris en application de la présente loi, la requête en autorisation d'appel et l'appel sont entendus par l'organisme d'appel qui entendrait l'appel relatif à la même proposition et de nature semblable, interjeté par une personne visée à la disposition 2 du paragraphe 38 (1).

Idem

(2) Par exemple, l'appel, portant sur une question de droit, d'une décision de délivrer un acte se rapporte à la même proposition que l'appel, portant sur une question de droit, d'une décision de ne pas délivrer l'acte, et est de nature semblable à cet appel.

Délai d'appel

40 La requête en autorisation d'appel prévue au paragraphe 38 (1) ne peut être présentée passé celui des délais suivants qui expire le premier :

a) quinze jours après le jour où le ministre donne avis, aux termes de l'article 36, de la décision portant sur la proposition;

b) quinze jours après le jour où l'avis relatif à la proposition est donné aux termes de l'article 47.

Critère d'autorisation

41 L'autorisation d'interjeter appel d'une décision ne doit pas être accordée sauf s'il appert à l'organisme d'appel que :

a) d'une part, il y a de bonnes raisons de croire qu'aucune personne raisonnable n'aurait pu prendre une telle décision en tenant compte du droit pertinent et des politiques gouvernementales élaborées en vue de guider les décisions de ce genre;

(b) the decision in respect of which an appeal is sought could result in significant harm to the environment.

Automatic stay if leave granted

42.—(1) The granting of leave under section 41 to appeal a decision stays the operation of the decision until the disposition of the appeal, unless the appellate body that granted the leave orders otherwise.

Same

(2) Subsection (1) applies despite any provision in or under any other Act.

No appeal from leave decision

43. There is no appeal from a decision whether or not to grant an application for leave to appeal.

Grounds for appeal decision

44. The appellate body shall make its determination in an appeal under this Part on grounds similar to those that would apply to an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1).

Powers on appeal

45. The appellate body has similar powers on an appeal under this Part to those the appellate body would have on an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1).

Procedure

46. The appellate body hearing an application for leave to appeal or an appeal under this Part may follow procedures similar to those the appellate body would follow on an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1), or may vary those procedures as appropriate.

Public notice of appeals under other Acts

47.—(1) A person who exercises a right under another Act to appeal from or to seek leave to appeal from a decision whether or not to implement a proposal for a Class I or II instrument of which notice is required to be given under section 22 shall give notice to the public in the registry of the appeal or application for leave to appeal.

Same

(2) For greater certainty, subsection (1) does not require any person to give notice to the public of an application or appeal respecting a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33.

Delivery of notice

(3) The notice required by subsection (1) shall be given by delivering it to the Environ-

b) d'autre part, la décision dont il est demandé appel pourrait entraîner une atteinte considérable à l'environnement.

Sursis de plein droit en cas d'octroi de l'autorisation

42 (1) L'octroi de l'autorisation d'interjeter appel d'une décision, aux termes de l'article 41, a pour effet de surseoir à l'application de la décision jusqu'à ce que l'appel soit tranché, sauf arrêté, ordre ou ordonnance contraire de l'organisme d'appel qui a accordé l'autorisation.

Idem

(2) Le paragraphe (1) s'applique malgré les dispositions de toute autre loi ou prévues par toute autre loi.

Aucun appel des décisions sur les requêtes en autorisation

43 Il ne peut être interjeté appel des décisions qui font droit ou non aux requêtes en autorisation d'appel.

Motifs de la décision rendue en appel

44 L'organisme d'appel rend sa décision dans le cas d'un appel interjeté en vertu de la présente partie en se fondant sur des motifs semblables à ceux qui s'appliqueraient dans le cas d'un appel relatif à la même proposition et de nature semblable, interjeté par une personne visée à la disposition 2 du paragraphe 38 (1).

Pouvoirs en cas d'appel

45 Dans le cas d'un appel interjeté en vertu de la présente partie, l'organisme d'appel a des pouvoirs semblables à ceux qu'il aurait dans le cas d'un appel relatif à la même proposition et de nature semblable, interjeté par une personne visée à la disposition 2 du paragraphe 38 (1).

Procédure

46 L'organisme d'appel qui est chargé d'entendre une requête en autorisation d'appel ou un appel prévus à la présente partie peut suivre une procédure semblable à celle qu'il suivrait dans le cas d'un appel relatif à la même proposition et de nature semblable, interjeté par une personne visée à la disposition 2 du paragraphe 38 (1), ou peut modifier cette procédure comme il le juge approprié.

Avis au public des appels interjetés en vertu d'autres lois

47 (1) Quiconque exerce un droit en vertu d'une autre loi pour interjeter appel ou demander l'autorisation d'interjeter appel d'une décision de mettre en oeuvre ou non une proposition d'acte de catégorie I ou II dont il doit être donné avis aux termes de l'article 22 donne un avis de l'appel ou de la requête en autorisation d'appel au public dans le registre.

Idem

(2) Il est entendu que le paragraphe (1) n'a pas pour effet d'exiger de toute personne qu'elle donne au public un avis d'une requête ou d'un appel à l'égard d'une proposition à laquelle l'article 22 ne s'applique pas en raison de l'application de l'article 29, 30, 32 ou 33.

Remise de l'avis

(3) L'avis exigé par le paragraphe (1) est donné par remise au commissaire à l'environ-

mental Commissioner, who shall promptly place it on the registry.

Same

(4) Delivery of the notice to the Environmental Commissioner shall be made no later than the earlier of,

(a) two days after the day on which the application was made or the appeal commenced; and

(b) the end of the time period within which the application could be made or the appeal could be commenced.

Content of notice

(5) The notice shall include the following:

1. A brief description of the decision in respect of which an appeal is sought, sufficient to identify the decision.

2. A brief description of the grounds for the application for leave to appeal or for the appeal.

3. Any information prescribed by the regulations under this Act.

Appellate body not to proceed without notice

(6) The appellate body hearing the application for leave to appeal or the appeal shall not proceed with the application or appeal until fifteen days after notice is given to the public in the registry in accordance with this section, unless the appellate body considers it appropriate to proceed sooner.

Participation in application or appeal

(7) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the application or appeal, the appellate body may permit any person to participate in the application or appeal, as a party or otherwise.

Same

(8) In reaching a determination under subsection (7), the appellate body shall have regard to the intent and purposes of this Act.

Existing rights of appeal not affected

48. Nothing in this Part shall be interpreted to limit a right of appeal otherwise available.

PART III
THE ENVIRONMENTAL COMMISSIONER

Environmental Commissioner

49.—(1) There shall be an Environmental Commissioner who is an officer of the Assembly.

Appointment

(2) The Lieutenant Governor in Council shall appoint the Environmental Commissioner on the address of the Assembly.

Term of office

(3) The Environmental Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms.

nement, qui le place sans tarder dans le registre.

Idem

(4) La remise de l'avis au commissaire à l'environnement doit se faire au plus tard à l'expiration de celui des délais suivants qui expire le premier :

a) deux jours après le jour où la requête a été présentée ou l'appel interjeté;

b) le délai dans lequel la requête pouvait être présentée ou l'appel interjeté.

Contenu de l'avis

(5) L'avis comprend ce qui suit :

1. Un bref énoncé de la décision dont il est demandé appel, qui est suffisant pour indiquer de quelle décision il s'agit.

2. Un bref exposé des motifs de la requête en autorisation d'appel ou des motifs de l'appel.

3. Les renseignements prescrits par les règlements pris en application de la présente loi.

Avis requis avant la tenue d'une audience par l'organisme d'appel

(6) L'organisme d'appel qui est chargé d'entendre la requête en autorisation d'appel ou l'appel ne doit pas ce faire avant que quinze jours ne se soient écoulés après que l'avis a été donné au public dans le registre conformément au présent article, sauf s'il juge approprié de commencer plus tôt.

Participation à la requête ou à l'appel

(7) Pour assurer une représentation équitable et adéquate des intérêts privés et publics, y compris les intérêts gouvernementaux, qui sont en cause dans la requête ou l'appel, l'organisme d'appel peut permettre à quiconque de participer à la requête ou à l'appel en tant que partie ou à un autre titre.

Idem

(8) Pour prendre une décision en vertu du paragraphe (7), l'organisme d'appel tient compte de l'intention et des objets de la présente loi.

Aucune incidence sur les autres droits d'appel

48 La présente partie n'a pas pour effet de limiter tout droit d'appel qui existe par ailleurs.

PARTIE III
LE COMMISSAIRE À L'ENVIRONNEMENT

Commissaire à l'environnement

49 (1) Est créé le poste de commissaire à l'environnement dont le titulaire doit être un fonctionnaire de l'Assemblée.

Nomination

(2) Le lieutenant-gouverneur en conseil nomme le commissaire à l'environnement sur adresse de l'Assemblée.

Mandat

(3) Le commissaire à l'environnement occupe son poste pendant un mandat de cinq ans, qui est renouvelable.

Removal

(4) The Lieutenant Governor in Council may remove the Environmental Commissioner for cause on the address of the Assembly.

Nature of employment

(5) The Environmental Commissioner shall not do any work or hold any office that interferes with the performance of his or her duties as Commissioner.

Salary of Environmental Commissioner

50.—(1) The Environmental Commissioner shall be paid a salary within the range of salaries paid to deputy ministers in the Ontario civil service.

Same

(2) The salary of the Environmental Commissioner, within the salary range referred to in subsection (1), shall be determined and reviewed annually by the Board of Internal Economy.

Pension of Environmental Commissioner

51. The Environmental Commissioner is a member of the Public Service Pension Plan.

Oath of office

52. Before commencing the duties of his or her office, the Environmental Commissioner shall take an oath, to be administered by the Speaker of the Assembly, that he or she will faithfully and impartially exercise the functions of his or her office.

Temporary appointment

53.—(1) If the Environmental Commissioner dies, resigns or is unable or neglects to perform the functions of his or her office while the Assembly is not in session, the Lieutenant Governor in Council may appoint a temporary Environmental Commissioner to hold office for a term of not more than six months.

Same

(2) A temporary Environmental Commissioner shall have the powers and duties of the Environmental Commissioner and shall be paid the remuneration and allowances fixed by the Lieutenant Governor in Council.

Staff

54.—(1) Subject to the approval of the Board of Internal Economy, the Environmental Commissioner may employ such employees as the Commissioner considers necessary for the efficient operation of his or her office and may determine their remuneration, which shall be comparable to the remuneration for similar positions or classifications in the public service of Ontario, and their terms of employment.

Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,

(a) cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits;

Révocation

(4) Le lieutenant-gouverneur en conseil peut, sur adresse de l'Assemblée, révoquer le commissaire à l'environnement pour un motif valable.

Nature de l'emploi

(5) Le commissaire à l'environnement ne doit faire aucun travail ni occuper de charge qui nuisent à l'exercice de ses fonctions de commissaire.

Traitement du commissaire à l'environnement

50 (1) Le commissaire à l'environnement reçoit un traitement qui se situe dans l'échelle des traitements versés aux sous-ministres de la Fonction publique de l'Ontario.

Idem

(2) Le traitement du commissaire à l'environnement, qui se situe dans l'échelle des traitements visée au paragraphe (1), est fixé et, chaque année, réexaminé par la Commission de régie interne.

Pension du commissaire à l'environnement

51 Le commissaire à l'environnement est un participant du Régime de retraite des fonctionnaires.

Serment d'entrée en fonction

52 Avant d'entrer en fonction, le commissaire à l'environnement prête, devant le président de l'Assemblée, le serment d'exercer avec loyauté et impartialité les fonctions inhérentes à sa charge.

Intérim

53 (1) Si le commissaire à l'environnement décède ou démissionne, ou qu'il est empêché ou néglige de remplir les fonctions inhérentes à sa charge lorsque l'Assemblée ne siège pas, le lieutenant-gouverneur en conseil peut nommer un commissaire à l'environnement intérimaire dont la durée du mandat ne doit pas dépasser six mois.

Idem

(2) Le commissaire à l'environnement intérimaire a les pouvoirs et fonctions du commissaire à l'environnement et reçoit la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil.

Personnel

54 (1) Sous réserve de l'approbation de la Commission de régie interne, le commissaire à l'environnement peut employer les personnes qu'il juge nécessaires pour assurer le bon fonctionnement de son bureau et fixer leur rémunération, qui doit être comparable à celle versée pour des postes ou catégories semblables dans la fonction publique de l'Ontario, ainsi que leurs conditions de travail.

Avantages sociaux

(2) S'appliquent aux employés du bureau du commissaire à l'environnement, les avantages sociaux applicables aux fonctionnaires de l'Ontario en ce qui concerne :

a) les crédits de vacances et de congés de maladie pour assiduité cumulatifs, ainsi que la rétribution qui se rattache à ces crédits;

(b) plans for group life insurance, medical-surgical insurance or long-term income protection; and

(c) the granting of leave of absence,

apply to the employees of the office of the Environmental Commissioner.

Same

(3) Where the benefits referred to in subsection (2) are provided for in regulations under the *Public Service Act*, the Environmental Commissioner, or any person authorized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under the regulations.

Pensions

(4) The employees of the office of the Environmental Commissioner are members of the Public Service Pension Plan.

Budget

55. The Board of Internal Economy may from time to time issue directives to the Environmental Commissioner with respect to the expenditure of funds and the Environmental Commissioner shall follow the directives.

Audit

56. The accounts and financial transactions of the office of the Environmental Commissioner shall be audited annually by the Provincial Auditor.

Functions

57. In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental Commissioner to,

(a) review the implementation of this Act and compliance in ministries with the requirements of this Act;

(b) at the request of a minister, provide guidance to the ministry on how to comply with the requirements of this Act, including guidance on,

(i) how to develop a ministry statement of environmental values that complies with the requirements of this Act and is consistent with other ministry statements of environmental values, and

(ii) how to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry;

b) les régimes d'assurance-vie collective, d'assurance de frais médicaux et chirurgicaux ou de protection du revenu à long terme;

c) l'octroi de congés autorisés.

Idem

(3) Lorsque les avantages sociaux visés au paragraphe (2) sont prévus par les règlements pris en application de la *Loi sur la fonction publique*, le commissaire à l'environnement ou toute personne autorisée par écrit par ce dernier peut exercer les pouvoirs et fonctions que ces règlements confèrent à un ministre, à un sous-ministre ou à la Commission de la fonction publique.

Pensions

(4) Les employés du bureau du commissaire à l'environnement sont des participants du Régime de retraite des fonctionnaires.

Budget

55 La Commission de régie interne peut, de temps à autre, donner au commissaire à l'environnement des directives en ce qui concerne les dépenses et ce dernier doit s'y conformer.

Vérification

56 Le vérificateur provincial vérifie, chaque année, les comptes et les opérations financières du bureau du commissaire à l'environnement.

Fonctions

57 Outre les autres fonctions qu'il doit remplir aux termes de la présente loi, le commissaire à l'environnement a les fonctions suivantes :

a) examiner la façon dont la présente loi est mise en application et la façon dont les exigences de celle-ci sont observées par les ministères;

b) à la demande d'un ministre, fournir des conseils à son ministère sur la façon d'observer les exigences de la présente loi, notamment sur ce qui suit :

(i) la façon d'élaborer une déclaration ministérielle sur les valeurs environnementales qui soit conforme aux exigences de la présente loi et qui soit compatible avec les autres déclarations ministérielles sur les valeurs environnementales,

(ii) la façon de veiller à ce qu'il soit tenu compte de la déclaration ministérielle sur les valeurs environnementales chaque fois que sont prises au ministère des décisions susceptibles d'influer considérablement sur l'environnement;

(c) at the request of a minister, assist the ministry in providing educational programs about this Act;

(d) provide educational programs about this Act to the public;

(e) provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided in this Act;

(f) review the use of the registry;

(g) review the exercise of discretion by ministers under this Act;

(h) review recourse to the rights provided in sections 38 to 47;

(i) review the receipt, handling and disposition of applications for review under Part IV and applications for investigation under Part V;

(j) review ministry plans and priorities for conducting reviews under Part IV;

(k) review the use of the right of action set out in section 84, the use of defences set out in section 85, and reliance on section 103 respecting public nuisance actions; and

(l) review recourse to the procedure under Part VII for complaints about employer reprisals.

Annual report

58.—(1) The Environmental Commissioner shall report annually to the Speaker of the Assembly who shall lay the report before the Assembly as soon as reasonably possible.

Same

(2) The annual report shall include,

(a) a report on the work of the Environmental Commissioner and on whether the ministries affected by this Act have co-operated with requests by the Commissioner for information;

(b) a summary of the information gathered by the Environmental Commissioner as a result of performing the functions set out in section 57 including, for greater certainty, a summary of information about compliance with ministry statements of environmental values gathered as a result of the review carried out under clause 57 (a);

c) à la demande d'un ministre, aider son ministère à fournir des programmes d'éducation concernant la présente loi;

d) fournir au public des programmes d'éducation concernant la présente loi;

e) fournir des conseils et de l'aide aux membres du public qui désirent participer à la prise de décisions sur une proposition, comme le prévoit la présente loi;

f) examiner la façon dont le registre est utilisé;

g) examiner la façon dont les ministres exercent leurs pouvoirs discrétionnaires en vertu de la présente loi;

h) examiner la façon dont on se prévaut des droits prévus aux articles 38 à 47;

i) examiner la façon dont les demandes d'examen prévues à la partie IV et les demandes d'enquête prévues à la partie V sont reçues, traitées et réglées;

j) examiner les plans et priorités des ministères en ce qui concerne la tenue d'examens aux termes de la partie IV;

k) examiner l'utilisation qui est faite du droit d'action prévu à l'article 84, l'utilisation qui est faite des moyens de défense prévus à l'article 85 et le recours à l'article 103 en ce qui concerne les actions pour nuisance publique;

l) examiner le recours à la procédure prévue à la partie VII en ce qui concerne les plaintes à l'égard des représailles exercées par un employeur.

Rapport annuel

58 (1) Le commissaire à l'environnement présente chaque année un rapport au président de l'Assemblée, qui le fait déposer devant l'Assemblée dans les meilleurs délais raisonnables.

Idem

(2) Le rapport annuel comprend les éléments suivants :

a) un rapport sur les travaux du commissaire à l'environnement et sur la question de savoir si les ministères visés par la présente loi ont collaboré avec le commissaire lorsqu'il leur a demandé des renseignements;

b) un résumé des renseignements recueillis par le commissaire à l'environnement dans l'exercice des fonctions énoncées à l'article 57, y compris, pour plus de précision, un résume des renseignements au sujet de l'observation des déclarations ministérielles sur les valeurs environnementales qui sont recueillis au cours de l'examen effectué en vertu de l'alinéa 57 a);

(c) a list of all proposals of which notice has been given under section 15, 16 or 22 during the period covered by the report but not under section 36 in the same period;

(d) any information prescribed by the regulations under this Act; and

(e) any information that the Environmental Commissioner considers appropriate.

Same

(3) The first report under subsection (1) shall be submitted in the first half of 1996 and shall cover the period beginning on the day this Act receives Royal Assent and ending on December 31st, 1995.

Special reports

(4) The Environmental Commissioner may make a special report to the Speaker of the Assembly at any time on any matter related to this Act that, in the opinion of the Commissioner, should not be deferred until the annual report, and the Speaker shall lay the report before the Assembly as soon as reasonably possible.

Report on ministry statement of environmental values

(5) If the Environmental Commissioner considers that a minister has failed to comply with section 7, 8 or 9 respecting a ministry statement of environmental values, the Commissioner shall, as soon as reasonably possible, report to the Speaker of the Assembly who shall lay the report before the Assembly as soon as reasonably possible.

Special assignments

59. The Environmental Commissioner shall perform special assignments as required by the Assembly, but such assignments shall not take precedence over the other duties of the Commissioner under this Act.

Examination on oath or affirmation

60.—(1) The Environmental Commissioner may examine any person on oath or solemn affirmation on any matter related to the performance of the Commissioner's duties under this Act and may in the course of the examination require the production in evidence of documents or other things.

Same

(2) For the purposes of an examination under subsection (1), the Commissioner has the powers conferred on a commission under Part II of the *Public Inquiries Act* and the Part applies to the examination as if it were an inquiry under that Act.

Delegation

(3) The Environmental Commissioner may authorize in writing any person or group of

c) la liste des propositions dont avis a été donné aux termes de l'article 15, 16 ou 22 au cours de la période visée par le rapport, mais non aux termes de l'article 36 pendant la même période;

d) les renseignements prescrits par les règlements pris en application de la présente loi;

e) les autres renseignements que le commissaire à l'environnement juge appropriés.

Idem

(3) Le premier rapport prévu au paragraphe (1) est soumis au cours du premier semestre de 1996 et vise la période commençant le jour où la présente loi reçoit la sanction royale et se terminant le 31 décembre 1995.

Rapports spéciaux

(4) Le commissaire à l'environnement peut présenter, à n'importe quel moment, au président de l'Assemblée un rapport spécial sur toute question ayant trait à la présente loi qui, selon le commissaire, ne devrait pas être différée jusqu'au rapport annuel. Le président dépose ensuite ce rapport devant l'Assemblée dans les meilleurs délais raisonnables.

Rapport sur la déclaration ministérielle sur les valeurs environnementales

(5) Si le commissaire à l'environnement juge qu'un ministre ne s'est pas conformé à l'article 7, 8 ou 9 en ce qui concerne une déclaration ministérielle sur les valeurs environnementales, il présente, dans les meilleurs délais raisonnables, un rapport au président de l'Assemblée qui le dépose ensuite devant l'Assemblée dans les meilleurs délais raisonnables.

Projets spéciaux

59 Le commissaire à l'environnement s'acquitte des projets spéciaux dont le charge l'Assemblée. Toutefois, ces projets ne doivent pas l'emporter sur les autres fonctions que doit remplir le commissaire aux termes de la présente loi.

Interrogatoire sous serment ou affirmation solennelle

60 (1) Le commissaire à l'environnement peut interroger quiconque sous serment ou affirmation solennelle sur toute question ayant trait à l'exercice des fonctions du commissaire aux termes de la présente loi et peut, dans le cadre de cet interrogatoire, exiger que soient produits en preuve des documents ou autres choses.

Idem

(2) Aux fins d'un interrogatoire prévu au paragraphe (1), le commissaire dispose des mêmes pouvoirs que ceux qui sont conférés à une commission en vertu de la partie II de la *Loi sur les enquêtes publiques*, laquelle partie s'applique à l'interrogatoire comme s'il s'agissait d'une enquête menée aux termes de cette loi.

Délégation

(3) Le commissaire à l'environnement peut autoriser par écrit des personnes ou des

persons to exercise the Commissioner's powers under this section.

PART IV
APPLICATION FOR REVIEW

Application for review

61.—(1) Any two persons resident in Ontario who believe that an existing policy, Act, regulation or instrument of Ontario should be amended, repealed or revoked in order to protect the environment may apply to the Environmental Commissioner for a review of the policy, Act, regulation or instrument by the appropriate minister.

Same

(2) Any two persons resident in Ontario who believe that a new policy, Act or regulation of Ontario should be made or passed in order to protect the environment may apply to the Environmental Commissioner for a review of the need for the new policy, Act or regulation by the appropriate minister.

Same

(3) An application under subsection (1) or (2) shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

(a) the names and addresses of the applicants;

(b) an explanation of why the applicants believe that the review applied for should be undertaken in order to protect the environment; and

(c) a summary of the evidence supporting the applicants' belief that the review applied for should be undertaken in order to protect the environment.

Same

(4) In addition, an application under subsection (1) shall clearly identify the policy, Act, regulation or instrument in respect of which a review is sought.

Referral to minister

62.—(1) Within ten days of receiving an application for review, the Environmental Commissioner shall do the following:

1. Refer the application to the minister or ministers for the ministry or ministries that the Environmental Commissioner considers appropriate to review the matters raised in the application.

2. Where an application is referred to a minister for a ministry not prescribed for the purposes of this Part, give notice to the applicants in accordance with subsection (2).

Referral to ministry not prescribed for this Part

(2) A notice under paragraph 2 of subsection (1) shall,

groupes de personnes à exercer les pouvoirs que lui attribue le présent article.

PARTIE IV
DEMANDE D'EXAMEN

Demande d'examen

61 (1) Deux personnes qui résident en Ontario et qui croient qu'une politique, une loi, un règlement ou un acte de l'Ontario devrait être modifié, abrogé ou révoqué en vue de protéger l'environnement peuvent demander au commissaire à l'environnement de faire examiner par le ministre compétent la politique, la loi, le règlement ou l'acte en question.

Idem

(2) Deux personnes qui résident en Ontario et qui croient qu'une politique, une loi ou un règlement de l'Ontario devrait être adopté ou pris en vue de protéger l'environnement peuvent demander au commissaire à l'environnement de charger le ministre compétent d'examiner si la politique, la loi ou le règlement en question est nécessaire.

Idem

(3) La demande visée au paragraphe (1) ou (2) est rédigée selon la formule fournie à cette fin par le bureau du commissaire à l'environnement et comprend les renseignements suivants :

a) les nom et adresse des auteurs de la demande;

b) les raisons pour lesquelles les auteurs de la demande croient que l'examen demandé devrait être effectué en vue de protéger l'environnement;

c) un résumé des preuves sur lesquelles s'appuient les auteurs de la demande pour croire que l'examen demandé devrait être effectué en vue de protéger l'environnement.

Idem

(4) En outre, la demande visée au paragraphe (1) indique clairement la politique, la loi, le règlement ou l'acte dont l'examen est demandé.

Renvoi à un ministre

62 (1) Dans les dix jours suivant la réception d'une demande d'examen, le commissaire à l'environnement prend les mesures suivantes :

1. Il renvoie la demande au ministre responsable du ministère ou aux ministres responsables des ministères qu'il juge compétents pour examiner les questions soulevées dans la demande.

2. Si la demande est renvoyée au ministre responsable d'un ministère non prescrit pour l'application de la présente partie, il donne un avis aux auteurs de la demande conformément au paragraphe (2).

Renvoi à un ministère non prescrit pour l'application de la présente partie

(2) L'avis prévu à la disposition 2 du paragraphe (1) :

(a) name the ministry or ministries to which the application has been referred;

(b) identify any ministry named under clause (a) that is not prescribed for the purposes of this Part; and

(c) explain that the obligations set out in sections 65 to 72 apply only in relation to ministries prescribed for the purposes of this Part.

Application of ss. 65 to 72

63.—(1) Subject to subsection (2) and section 64, the obligations set out in sections 65 to 72 apply where a minister receives an application for review from the Environmental Commissioner for consideration in a ministry that is prescribed for the purposes of this Part.

Same

(2) The obligations in sections 65 to 72 do not apply in relation to an application for,

(a) a review of an existing Act, regulation or instrument other than a prescribed Act, regulation or instrument;

(b) a review of the need for a new exemption under the *Environmental Assessment Act*.

Same

(3) A minister who determines under subsection (2) that sections 65 to 72 do not apply in relation to an application for review shall give notice of the determination to the applicants.

Forwarding applications to more appropriate ministries

64.—(1) A minister who has received an application from the Environmental Commissioner for review in his or her ministry and who believes that his or her ministry is not an appropriate ministry to review matters raised in the application may, with the consent of the Commissioner, return the application to the Commissioner to be forwarded under section 62 to another ministry if appropriate.

Same

(2) A minister who has returned an application in accordance with subsection (1) has no obligations in relation to the application under sections 65 to 72.

Acknowledgment of receipt

65. A minister who receives an application for review from the Environmental Commissioner shall acknowledge receipt to the applicants within twenty days of receiving the application from the Commissioner.

Notice to persons with direct interest

66.—(1) A minister who receives an application for review from the Environmental Commissioner in respect of an instrument shall also give notice that the application has been made to any person who the minister

a) nomme le ou les ministères auxquels la demande a été renvoyée;

b) indique tout ministère nommé aux termes de l'alinéa a) qui n'est pas prescrit pour l'application de la présente partie;

c) explique que les obligations énoncées aux articles 65 à 72 ne s'appliquent qu'aux ministères prescrits pour l'application de la présente partie.

Application des art. 65 à 72

63 (1) Sous réserve du paragraphe (2) et de l'article 64, les obligations énoncées aux articles 65 à 72 s'appliquent lorsqu'un ministre reçoit une demande d'examen du commissaire à l'environnement qui doit être étudiée dans un ministère qui est prescrit pour l'application de la présente partie.

Idem

(2) Les obligations énoncées aux articles 65 à 72 ne s'appliquent pas à l'égard de l'une ou l'autre des demandes suivantes :

a) la demande d'examen d'une loi, d'un règlement ou d'un acte en vigueur autre qu'une loi, un règlement ou un acte prescrits.

b) la demande d'examen de la nécessité d'une nouvelle exemption aux termes de la *Loi sur les évaluations environnementales*.

Idem

(3) Le ministre qui établit, aux termes du paragraphe (2), que les articles 65 à 72 ne s'appliquent pas à l'égard d'une demande d'examen en avise les auteurs de la demande.

Transmission des demandes à des ministères plus compétents

64 (1) Le ministre qui a reçu du commissaire à l'environnement une demande d'examen dans son ministère et qui croit que son ministère n'est pas le ministère compétent pour examiner les questions soulevées dans la demande peut, avec le consentement du commissaire, retourner la demande à ce dernier pour qu'il la renvoie, aux termes de l'article 62, à un autre ministère, si cela est approprié.

Idem

(2) Le ministre qui a retourné une demande conformément au paragraphe (1) n'est assujetti à aucune des obligations prévues aux articles 65 à 72 relativement à la demande.

Accusé de réception

65 Le ministre qui reçoit une demande d'examen du commissaire à l'environnement en accuse réception aux auteurs de la demande au plus tard vingt jours après qu'il l'a reçue.

Avis donné aux personnes directement intéressées

66 (1) Le ministre qui reçoit du commissaire à l'environnement une demande d'examen au sujet d'un acte en donne également avis à toute personne qui, selon lui, devrait recevoir l'avis parce qu'elle pourrait être

considers ought to get the notice because the person might have a direct interest in matters raised in the application.

Same

(2) A notice under subsection (1) shall include a description of the application for review.

Preliminary consideration

67.—(1) The minister shall consider each application for review in a preliminary way to determine whether the public interest warrants a review in his or her ministry of matters raised in the application.

Same

(2) In determining whether the public interest warrants a review, the minister may consider,

(a) the ministry statement of environmental values;

(b) the potential for harm to the environment if the review applied for is not undertaken;

(c) the fact that matters sought to be reviewed are otherwise subject to periodic review;

(d) any social, economic, scientific or other evidence that the minister considers relevant;

(e) any submission from a person who received a notice under section 66;

(f) the resources required to conduct the review; and

(g) any other matter that the minister considers relevant.

Same

(3) In addition, in determining whether the public interest warrants a review of an existing policy, Act, regulation or instrument applied for under subsection 61 (1), the minister may consider,

(a) the extent to which members of the public had an opportunity to participate in the development of the policy, Act, regulation or instrument in respect of which a review is sought; and

(b) how recently the policy, Act, regulation or instrument was made, passed or issued.

Review of recent decisions

68.—(1) For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II.

Exception

(2) Subsection (1) does not apply where it appears to the minister that,

directement intéressée par les questions soulevées dans la demande.

Idem

(2) L'avis prévu au paragraphe (1) comprend une description de la demande d'examen.

Étude préliminaire

67 (1) Le ministre étudie chaque demande d'examen de façon préliminaire en vue d'établir si un examen dans son ministère des questions soulevées dans la demande est justifié dans l'intérêt public.

Idem

(2) Pour établir si l'examen est justifié dans l'intérêt public, le ministre peut tenir compte des éléments suivants :

a) la déclaration ministérielle sur les valeurs environnementales;

b) les risques d'atteinte à l'environnement si l'examen demandé n'est pas effectué;

c) le fait que les questions dont l'examen est demandé font par ailleurs l'objet d'un examen périodique;

d) toute preuve d'ordre social, économique, scientifique ou autre qu'il juge pertinente;

e) toute observation d'une personne qui a reçu l'avis prévu à l'article 66;

f) les ressources exigées pour effectuer l'examen;

g) toute autre question qu'il juge pertinente.

Idem

(3) En outre, pour établir si l'examen d'une politique, d'une loi, d'un règlement ou d'un acte en vigueur qui est demandé en vertu du paragraphe 61 (1) est justifié dans l'intérêt public, le ministre peut tenir compte des questions suivantes :

a) dans quelle mesure les membres du public ont eu la possibilité de participer à l'élaboration de la politique, de la loi, du règlement ou de l'acte dont l'examen est demandé;

b) à quand remonte l'adoption de la politique ou de la loi, la prise du règlement ou la délivrance de l'acte.

Examen de décisions récentes

68 (1) Pour l'application du paragraphe 67 (1), un ministre ne doit pas établir qu'est justifié dans l'intérêt public l'examen d'une décision prise au cours des cinq années précédant la date de la demande d'examen si cette décision a été prise d'une manière qu'il juge conforme à l'intention et à l'objet de la partie II.

Exception

(2) Le paragraphe (1) ne s'applique pas lorsqu'il appert au ministre que :

(a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and

(b) the evidence was not taken into account when the decision sought to be reviewed was made.

a) d'une part, il existe des preuves d'ordre social, économique, scientifique ou autre qui indiquent que le fait de ne pas examiner la décision pourrait entraîner une atteinte considérable à l'environnement;

b) d'autre part, il n'a pas été tenu compte de ces preuves lorsque la décision dont l'examen est demandé a été prise.

Duty to review

69.—(1) A minister who determines that the public interest warrants a review under section 67 shall conduct the review within a reasonable time.

69 (1) Tout ministre qui établit que l'examen visé à l'article 67 est justifié dans l'intérêt public doit effectuer cet examen dans un délai raisonnable.

Obligation d'examiner

Priorities for reviews

(2) A minister may develop plans and set priorities for the reviews required to be conducted under this Part in his or her ministry.

(2) Tout ministre peut élaborer des plans et fixer des priorités en ce qui concerne les examens qui doivent être effectués dans son ministère aux termes de la présente partie.

Plans et priorités relatifs aux examens

Notice of decision whether to review

70. Within sixty days of receiving an application for review under section 61, the minister shall give notice of his or her decision whether to conduct a review, together with a brief statement of the reasons for the decision to,

(a) the applicants;

(b) the Environmental Commissioner; and

(c) any other person who the minister considers ought to get the notice because the person might be directly affected by the decision.

70 Dans les soixante jours suivant la réception d'une demande d'examen visée à l'article 61, le ministre donne avis de sa décision d'effectuer ou non un examen, ainsi qu'un bref exposé des motifs de celle-ci, aux personnes suivantes :

a) les auteurs de la demande;

b) le commissaire à l'environnement;

c) toute autre personne qui, selon lui, devrait recevoir l'avis parce qu'elle pourrait être directement touchée par la décision.

Avis de décision sur la demande d'examen

Notice of completion of review

71.—(1) Within thirty days of completing a review applied for under section 61, the minister shall give notice of the outcome of the review to the persons mentioned in clauses 70 (a) to (c).

71 (1) Dans les trente jours suivant l'achèvement de l'examen demandé en vertu de l'article 61, le ministre donne avis des résultats de l'examen aux personnes visées aux alinéas 70 a) à c).

Avis d'achèvement de l'examen

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the review.

(2) L'avis visé au paragraphe (1) indique quelles mesures, le cas échéant, le ministre a prises ou envisage de prendre par suite de l'examen.

Idem

No disclosure of personal information about applicants

72. A notice under section 66, 70 or 71 shall not disclose the names or addresses of the applicants or any other personal information about them.

72 L'avis prévu à l'article 66, 70 ou 71 ne doit pas divulguer les nom et adresse des auteurs de la demande, ni aucun autre renseignement personnel à leur sujet.

Non-divulgation de renseignements personnels sur les auteurs de la demande

Application of Act to proposals resulting from review

73. The provisions of this Act apply to a proposal for a policy, Act, regulation or instrument under consideration in a ministry as a result of a review under this Part in the same way that they apply to any other proposal for a policy, Act, regulation or instrument.

73 Les dispositions de la présente loi s'appliquent à toute proposition de politique, de loi, de règlement ou d'acte qui est à l'étude dans un ministère par suite d'un examen effectué aux termes de la présente partie de la même manière qu'elles s'appliquent à toute autre proposition de politique, de loi, de règlement ou d'acte.

Application de la Loi aux propositions résultant de l'examen

PART V
APPLICATION FOR INVESTIGATION

PARTIE V
DEMANDE D'ENQUÊTE

Application for investigation

74.—(1) Any two persons resident in Ontario who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Commissioner for an investigation of the alleged contravention by the appropriate minister.

74 (1) Deux personnes qui résident en Ontario et qui croient qu'il y a eu contravention à une loi, à un règlement ou à un acte prescrits peuvent demander au commissaire à l'environnement de faire mener par le ministre compétent une enquête sur la contravention reprochée.

Demande d'enquête

Same

(2) An application under this section shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

(2) La demande visée au présent article est rédigée selon la formule fournie à cette fin par le bureau du commissaire à l'environnement et comprend les renseignements suivants :

Idem

(a) the names and addresses of the applicants;

(b) a statement of the nature of the alleged contravention;

(c) the names and addresses of each person alleged to have been involved in the commission of the contravention, to the extent that this information is available to the applicants;

(d) a summary of the evidence supporting the allegations of the applicants;

(e) the names and addresses of each person who might be able to give evidence about the alleged contravention, together with a summary of the evidence they might give, to the extent that this information is available to the applicants;

(f) a description of any document or other material that the applicants believe should be considered in the investigation;

(g) a copy of any document referred to in clause (f), where reasonable; and

(h) details of any previous contacts with the office of the Environmental Commissioner or any ministry regarding the alleged contravention.

a) les nom et adresse des auteurs de la demande;

b) l'indication de la nature de la contravention reprochée;

c) les nom et adresse de chaque personne qui aurait été impliquée dans la commission de la contravention, dans la mesure où ces renseignements sont connus des auteurs de la demande;

d) un résumé des preuves à l'appui des allégations des auteurs de la demande;

e) les nom et adresse de chaque personne qui pourrait être en mesure de témoigner au sujet de la contravention reprochée, ainsi qu'un résumé des preuves qu'elle pourrait donner, dans la mesure où ces renseignements sont connus des auteurs de la demande;

f) une description de tout document ou autre chose dont il faudrait tenir compte dans le cadre de l'enquête, selon les auteurs de la demande;

g) une copie de tout document visé à l'alinéa f), lorsque cela est raisonnable;

h) les détails de toute communication antérieure avec le bureau du commissaire à l'environnement ou avec tout ministère au sujet de la contravention reprochée.

Statement of belief

(3) An application under this section shall also include a statement by each applicant or, where an applicant is a corporation, by a director or officer of the corporation, that he or she believes that the facts alleged in the application are true.

(3) La demande visée au présent article comprend également une déclaration de chacun des auteurs de la demande ou, lorsqu'un auteur de la demande est une personne morale, une déclaration d'un administrateur ou dirigeant de la personne morale portant qu'il tient pour véridiques les faits allégués dans la demande.

Déclaration de conviction

Same

(4) The statement referred to in subsection (3) shall be sworn or solemnly affirmed before a commissioner for taking affidavits in Ontario.

(4) La déclaration visée au paragraphe (3) est faite sous serment ou sous affirmation solennelle devant un commissaire aux affidavits en Ontario.

Idem

Referral to minister

75. Within ten days of receiving an application under section 74, the Environmental Commissioner shall refer it to the minister responsible for the administration of the Act under which the contravention is alleged to have been committed.

75 Dans les dix jours suivant la réception d'une demande visée à l'article 74, le commissaire à l'environnement la renvoie au ministre chargé de l'administration de la loi à laquelle il y aurait eu contravention.

Renvoi au ministre

Acknowledgment of receipt

76. The minister shall acknowledge receipt of an application for investigation to the applicants within twenty days of receiving

76 Le ministre accuse réception de la demande d'enquête aux auteurs de la

Accusé de réception

the application from the Environmental Commissioner.

Duty to investigate

77.—(1) The minister shall investigate all matters to the extent that the minister considers necessary in relation to a contravention alleged in an application.

Same

(2) Nothing in this section requires a minister to conduct an investigation in relation to a contravention alleged in an application if the minister considers that,

(a) the application is frivolous or vexatious;

(b) the alleged contravention is not serious enough to warrant an investigation; or

(c) the alleged contravention is not likely to cause harm to the environment.

Same

(3) Nothing in this section requires a minister to duplicate an ongoing or completed investigation.

Notice of decision not to investigate

78.—(1) If the minister decides that an investigation is not required under section 77, the minister shall give notice of the decision, together with a brief statement of the reasons for the decision, to,

(a) the applicants;

(b) each person alleged in the application to have been involved in the commission of the contravention for whom an address is given in the application; and

(c) the Environmental Commissioner.

Same

(2) A minister need not give notice under subsection (1) if an investigation in relation to the contravention alleged in the application is ongoing apart from the application.

Same

(3) A notice under subsection (1) shall be given within sixty days of receiving the application for investigation.

Time required for investigation

79.—(1) Within 120 days of receiving an application for an investigation in respect of which no notice is given under section 78, the minister shall either complete the investigation or give the applicants a written estimate of the time required to complete it.

Same

(2) Within the time given in an estimate under subsection (1), the minister shall either complete the investigation or give the applicants a revised written estimate of the time required to complete it.

Same

(3) Subsection (2) applies to a revised estimate given under subsection (2) as if it were an estimate given under subsection (1).

demande au plus tard vingt jours après qu'il l'a reçue du commissaire à l'environnement.

Obligation d'enquêter

77 (1) Le ministre enquête sur toutes les questions dans la mesure où il le juge nécessaire relativement à une contravention qui est reprochée dans la demande.

Idem

(2) Le présent article n'a pas pour effet d'exiger d'un ministre qu'il mène une enquête relativement à une contravention qui est reprochée dans une demande s'il juge, selon le cas, que :

a) la demande est frivole ou vexatoire;

b) la contravention reprochée n'est pas suffisamment grave pour justifier une enquête;

c) la contravention reprochée ne portera vraisemblablement pas atteinte à l'environnement.

Idem

(3) Le présent article n'a pas pour effet d'exiger d'un ministre qu'il répète une enquête qui est en cours ou terminée.

Avis de la décision de ne pas enquêter

78 (1) S'il décide qu'une enquête n'est pas requise aux termes de l'article 77, le ministre donne un avis de la décision, ainsi qu'un bref exposé des motifs de celle-ci, aux personnes suivantes :

a) les auteurs de la demande;

b) chaque personne qui, d'après la demande, aurait été impliquée dans la commission de la contravention et dont une adresse est donnée dans la demande;

c) le commissaire à l'environnement.

Idem

(2) Le ministre n'est pas tenu de donner l'avis prévu au paragraphe (1) si une enquête relativement à la contravention qui est reprochée dans la demande est déjà en cours indépendamment de la demande.

Idem

(3) L'avis prévu au paragraphe (1) est donné dans les soixante jours suivant la réception de la demande d'enquête.

Délai nécessaire pour terminer l'enquête

79 (1) Dans les 120 jours suivant la réception d'une demande d'enquête à l'égard de laquelle aucun avis n'est donné aux termes de l'article 78, le ministre termine l'enquête ou donne aux auteurs de la demande une estimation par écrit du délai nécessaire pour la terminer.

Idem

(2) Dans le délai donné dans l'estimation visée au paragraphe (1), le ministre termine l'enquête ou donne aux auteurs de la demande une nouvelle estimation par écrit du délai nécessaire pour la terminer.

Idem

(3) Le paragraphe (2) s'applique à une nouvelle estimation donnée aux termes du paragraphe (2) comme s'il s'agissait d'une estimation donnée aux termes du paragraphe (1).

Notice of completion of investigation

80.—(1) Within thirty days of completing an investigation, the minister shall give notice of the outcome of the investigation to the persons mentioned in clauses 78 (1) (a) to (c).

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the investigation.

No disclosure of personal information about applicants

81. A notice under section 78 or 80 shall not disclose the names or addresses of the applicants or any other personal information about them.

PART VI
RIGHT TO SUE

Harm to a Public Resource

Definitions

82. In this Part,

"court" means the Ontario Court (General Division) but does not include the Small Claims Court; ("tribunal")

"municipality" means a locality the inhabitants of which are incorporated; ("municipalité")

"public land" means land that belongs to,

(a) the Crown in right of Ontario,

(b) a municipality, or

(c) a conservation authority,

but does not include land that is leased from a person referred to in clauses (a) to (c) and that is used for agricultural purposes; ("terre publique")

"public resource" means,

(a) air,

(b) water, not including water in a body of water the bed of which is privately owned and on which there is no public right of navigation,

(c) unimproved public land,

(d) any parcel of public land that is larger than five hectares and is used for,

(i) recreation,

(ii) conservation,

(iii) resource extraction,

(iv) resource management, or

(v) a purpose similar to one mentioned in subclauses (i) to (iv), and

(e) any plant life, animal life or ecological system associated with any air, water

Avis d'achèvement de l'enquête

80 (1) Dans les trente jours suivant l'achèvement de l'enquête, le ministre donne un avis des résultats de celle-ci aux personnes visées aux alinéas 78 (1) a) à c).

Idem

(2) L'avis prévu au paragraphe (1) indique quelles mesures, le cas échéant, le ministre a prises ou envisage de prendre par suite de l'enquête.

Non-divulgation de renseignements personnels sur les auteurs de la demande

81 L'avis prévu à l'article 78 ou 80 ne doit pas divulguer les nom et adresse des auteurs de la demande, ni aucun autre renseignement personnel à leur sujet.

PARTIE VI
DROIT D'INTENTER UNE ACTION

Atteinte à une ressource publique

Définitions

82 Les définitions qui suivent s'appliquent à la présente partie.

«municipalité» Localité dont les habitants sont constitués en personne morale. («municipality»)

«ressource publique» S'entend de ce qui suit :

a) l'air,

b) l'eau, à l'exclusion de celle contenue dans un plan d'eau dont le lit ou le fonds est propriété privée et sur lequel il n'existe aucun droit public de navigation,

c) les terres publiques non aménagées,

d) toute parcelle de terre publique d'une superficie supérieure à cinq hectares qui est utilisée à l'une des fins suivantes :

(i) les loisirs,

(ii) la préservation,

(iii) l'extraction des ressources,

(iv) la gestion des ressources,

(v) une fin semblable à l'une de celles mentionnées aux sous-alinéas (i) à (iv),

e) tout végétal, animal ou écosystème ayant un rapport avec l'air, l'eau ou les terres décrits aux alinéas a) à d). («public resource»)

«terre publique» Terre qui appartient :

a) soit à la Couronne du chef de l'Ontario,

b) soit à une municipalité,

c) soit à un office de protection de la nature.

or land described in clauses (a) to (d). ("ressource publique")

Sont toutefois exclues de la présente définition les terres servant à des fins agricoles qui sont prises à bail à une personne visée aux alinéas a) à c). («public land»)

«tribunal» La Cour de l'Ontario (Division générale), à l'exclusion toutefois de la Cour des petites créances. («court»)

Application of ss. 84 to 102

83. Sections 84 to 102 apply only in respect of a contravention of an Act, regulation or instrument that occurs after the Act, regulation or instrument is prescribed for the purposes of Part V.

Champ d'application des art. 84 à 102

83 Les articles 84 à 102 ne s'appliquent qu'à l'égard des contraventions à une loi, à un règlement ou à un acte qui se produisent après que la loi, le règlement ou l'acte a été prescrit pour l'application de la partie V.

Right of action

84.—(1) Where a person has contravened or will imminently contravene an Act, regulation or instrument prescribed for the purposes of Part V and the actual or imminent contravention has caused or will imminently cause significant harm to a public resource of Ontario, any person resident in Ontario may bring an action against the person in the court in respect of the harm and is entitled to judgment if successful.

Droit d'action

84 (1) Lorsqu'une personne a contrevenu ou est sur le point de contrevenir à une loi, à un règlement ou à un acte prescrits pour l'application de la partie V et que cette contravention effective ou imminente a porté ou est sur le point de porter considérablement atteinte à une ressource publique de l'Ontario, toute personne qui réside en Ontario peut intenter contre cette personne une action relative à l'atteinte devant le tribunal et a droit à un jugement si elle obtient gain de cause.

Steps before action: application for investigation

(2) Despite subsection (1), an action may not be brought under this section in respect of an actual contravention unless the plaintiff has applied for an investigation into the contravention under Part V and,

Mesures préliminaires : demande d'enquête

(2) Malgré le paragraphe (1), une action ne peut pas être intentée en vertu du présent article pour une contravention qui s'est effectivement produite à moins que le demandeur n'ait demandé la tenue d'une enquête sur la contravention en vertu de la partie V et qu'il ne réponde à l'une des conditions suivantes :

(a) has not received one of the responses required under sections 78 to 80 within a reasonable time; or

a) il n'a pas reçu une des réponses exigées aux termes des articles 78 à 80 dans un délai raisonnable;

(b) has received a response under sections 78 to 80 that is not reasonable.

b) il a reçu une réponse aux termes des articles 78 à 80 qui n'est pas raisonnable.

Same

(3) In making a decision as to whether a response was given within a reasonable time for the purposes of clause (2) (a), the court shall consider but is not bound by the times specified in sections 78 to 80.

Idem

(3) Pour décider si une réponse a été donnée dans un délai raisonnable pour l'application de l'alinéa (2) a), le tribunal tient compte des délais précisés aux articles 78 à 80, sans toutefois être lié par ceux-ci.

Steps before action: farm practices

(4) Despite subsection (1), an action may not be brought under this section in respect of actual or imminent harm to a public resource of Ontario from odour, noise or dust resulting from an agricultural operation unless the plaintiff has applied to the Farm Practices Protection Board under section 5 of the *Farm Practices Protection Act* with respect to the odour, noise or dust and the Farm Practices Protection Board has disposed of the application.

Mesures préliminaires : pratiques agricoles

(4) Malgré le paragraphe (1), une action ne peut pas être intentée en vertu du présent article pour une atteinte effective ou imminente à une ressource publique de l'Ontario résultant d'une odeur, d'un bruit ou de la poussière causés par une exploitation agricole, à moins que le demandeur n'ait présenté une requête en ce qui concerne l'odeur, le bruit ou la poussière à la Commission de protection des pratiques agricoles en vertu de l'article 5 de la *Loi sur la protection des pratiques agricoles* et que la Commission de protection des pratiques agricoles n'ait statué sur la requête.

Same

(5) A person seeking to bring an action under this section in respect of harm from odour, noise or dust resulting from an agricultural operation is a person aggrieved by the odour, noise or dust within the meaning of subsection 5 (1) of the *Farm Practices Protection Act*.

Idem

(5) La personne qui veut intenter une action en vertu du présent article pour une atteinte résultant d'une odeur, d'un bruit ou de la poussière causés par une exploitation agricole est une personne lésée par l'odeur, le bruit ou la poussière au sens du paragraphe 5 (1) de la *Loi sur la protection des pratiques agricoles*.

When steps before action need not be taken

(6) Subsections (2) and (4) do not apply where the delay involved in complying with them would result in significant harm or serious risk of significant harm to a public resource.

Cas où les mesures préliminaires ne sont pas nécessaires

(6) Les paragraphes (2) et (4) ne s'appliquent pas lorsque le laps de temps nécessaire pour s'y conformer entraînerait une atteinte considérable ou un grave risque d'atteinte considérable à une ressource publique.

Action not a class proceeding

(7) An action under section 84 may not be commenced or maintained as a class proceeding under the *Class Proceedings Act, 1992*.

L'action ne constitue pas un recours collectif

(7) Toute action intentée en vertu de l'article 84 ne peut être introduite ni poursuivie en tant que recours collectif exercé en vertu de la *Loi de 1992 sur les recours collectifs*.

Burden of proof: contravention

(8) The onus is on the plaintiff in an action under this section to prove the contravention or imminent contravention on a balance of probabilities.

Fardeau de la preuve : contravention

(8) Dans une action intentée en vertu du présent article, il incombe au demandeur de prouver, en se fondant sur la prépondérance des probabilités, la contravention qui s'est produite ou qui est sur le point de se produire.

Other rights of action not affected

(9) This section shall not be interpreted to limit any other right to bring or maintain a proceeding.

Autres droits d'action non touchés

(9) Le présent article n'a pas pour effet de limiter tout autre droit d'introduire ou de poursuivre une instance.

Rules of court

(10) The rules of court apply to an action under this section.

Règles de pratique

(10) Les règles de pratique s'appliquent à toute action intentée en vertu du présent article.

Defence

85.—(1) For the purposes of section 84, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the defendant exercised due diligence in complying with the Act, regulation or instrument.

Défense

85 (1) Pour l'application de l'article 84, il n'y a pas contravention à une loi, à un règlement ou à un acte si le défendeur convainc le tribunal qu'il a fait preuve d'une diligence raisonnable pour se conformer à la loi, au règlement ou à l'acte.

Same

(2) For the purposes of section 84, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the act or omission alleged to be a contravention of the Act, regulation or instrument is authorized by an Act of Ontario or Canada or by a regulation or instrument under an Act of Ontario or Canada.

Idem

(2) Pour l'application de l'article 84, il n'y a pas contravention à une loi, à un règlement ou à un acte si le défendeur convainc le tribunal que l'action ou l'omission qui constituerait une contravention à la loi, au règlement ou à l'acte est autorisée par une loi de l'Ontario ou du Canada ou par un règlement ou un acte prévus par une loi de l'Ontario ou du Canada.

Same

(3) For the purposes of section 84, an instrument is not contravened if the defendant satisfies the court that the defendant complied with an interpretation of the instrument that the court considers reasonable.

Idem

(3) Pour l'application de l'article 84, il n'y a pas contravention à un acte si le défendeur convainc le tribunal qu'il s'est conformé à une interprétation de l'acte que le tribunal juge raisonnable.

Same

(4) This section shall not be interpreted to limit any defence otherwise available.

Idem

(4) Le présent article n'a pas pour effet de limiter tout moyen de défense qui existe par ailleurs.

Attorney General to be served

86.—(1) The plaintiff in an action under section 84 shall serve the statement of claim on the Attorney General not later than ten days after the day on which the statement of claim is served on the first defendant served in the action.

Signification au procureur général

86 (1) Dans une action intentée en vertu de l'article 84, le demandeur signifie la déclaration au procureur général au plus tard dix jours après le jour où la déclaration est signifiée au premier défendeur dans l'action à être signifié.

Right of Attorney General

(2) The Attorney General is entitled to present evidence and make submissions to the court in the action, to appeal from a judgment in the action and to present evi-

Droit du procureur général

(2) Le procureur général a le droit de présenter des preuves et des observations au tribunal dans l'action, d'interjeter appel d'un jugement rendu dans l'action et de présenter

dence and make submissions in an appeal from a judgment in the action.

Public notice of action

87.—(1) The plaintiff shall give notice of the action to the public in the registry and by any other means ordered by the court.

Same

(2) The plaintiff shall give notice in the registry under subsection (1) by delivering the notice to the Environmental Commissioner who shall promptly place it on the registry.

Same

(3) Within thirty days after the close of pleadings, the plaintiff shall make a motion to the court for directions relating to the notice under this section, including directions as to when the notice should be given.

Same

(4) The notice shall include any information prescribed by the regulations under this Act and any information required by the court.

Same

(5) The court may require a party other than the plaintiff to give the notice.

Costs

(6) The court may make any order for the costs of the notice that the court considers appropriate.

Notice to protect interests

88.—(1) At any time in the action, the court may order any party to give any notice that the court considers necessary to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action.

Same

(2) The court may make any order relating to the notice, including an order for the costs of the notice, that the court considers appropriate.

Participation in action

89.—(1) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action, the court may permit any person to participate in the action, as a party or otherwise.

Same

(2) Participation under subsection (1) shall be in the manner and on the terms, including terms as to costs, that the court considers appropriate.

Same

(3) No order shall be made under subsection (1) in an action after the court has made an order under section 93 in the action.

Same

(4) This section shall not be interpreted to limit the orders a court may make under the rules of court or otherwise.

des preuves et des observations dans l'appel d'un jugement rendu dans l'action.

Avis de l'action donné au public

87 (1) Le demandeur donne avis de l'action au public dans le registre ainsi que par tout autre moyen ordonné par le tribunal.

Idem

(2) Le demandeur donne l'avis dans le registre aux termes du paragraphe (1) en le remettant au commissaire à l'environnement, qui le place sans tarder dans le registre.

Idem

(3) Dans les trente jours suivant la clôture de la procédure écrite, le demandeur demande au tribunal, par voie de motion, des directives quant à l'avis prévu au présent article, y compris des directives quant au moment de le donner.

Idem

(4) L'avis comprend tout renseignement prescrit par les règlements pris en application de la présente loi et tout renseignement exigé par le tribunal.

Idem

(5) Le tribunal peut exiger qu'une partie autre que le demandeur donne l'avis.

Frais

(6) Le tribunal peut rendre toute ordonnance relative aux frais de l'avis qu'il juge appropriés.

Avis relatif à la protection des intérêts

88 (1) Le tribunal peut, à n'importe quel moment au cours de l'action, ordonner à une partie de donner tout avis qu'il juge nécessaire pour assurer une représentation équitable et adéquate des intérêts privés et publics, y compris les intérêts gouvernementaux, en cause dans l'action.

Idem

(2) Le tribunal peut rendre toute ordonnance relative à l'avis qu'il juge appropriée, y compris une ordonnance relative aux frais de l'avis.

Participation à l'action

89 (1) Pour assurer une représentation équitable et adéquate des intérêts privés et publics, y compris les intérêts gouvernementaux, qui sont en cause dans l'action, le tribunal peut permettre à quiconque de participer à l'action en tant que partie ou à un autre titre.

Idem

(2) La participation visée au paragraphe (1) se fait de la façon et aux conditions, y compris les conditions ayant trait aux dépens, que le tribunal juge appropriées.

Idem

(3) Aucune ordonnance ne doit être rendue en vertu du paragraphe (1) dans une action après que le tribunal a rendu une ordonnance en vertu de l'article 93 dans cette action.

Idem

(4) Le présent article n'a pas pour effet de limiter les ordonnances que le tribunal peut rendre en vertu des règles de pratique ou autrement.

Stay or dismissal in the public interest

90.—(1) The court may stay or dismiss the action if to do so would be in the public interest.

Same

(2) In making a decision under subsection (1), the court may have regard to environmental, economic and social concerns and may consider,

(a) whether the issues raised by the proceeding would be better resolved by another process;

(b) whether there is an adequate government plan to address the public interest issues raised by the proceeding; and

(c) any other relevant matter.

Discontinuance and abandonment

91.—(1) An action under section 84 may be discontinued or abandoned only with the approval of the court, on the terms that the court considers appropriate.

Settlement without court approval

(2) A settlement of an action under section 84 is not binding unless approved by the court.

Effect of settlement

(3) A settlement of an action under section 84 that is approved by the court binds all past, present and future residents of Ontario.

Notice: dismissal, discontinuance, abandonment or settlement

(4) In considering whether to dismiss an action under section 84 without a finding as to whether the plaintiff was entitled to judgment, whether for delay, for public interest reasons or for any other reason, or in considering whether to approve a discontinuance, abandonment or settlement of the action, the court shall consider whether notice should be given under section 88.

Interlocutory injunctions: plaintiff's undertaking to pay damages

92. In exercising its discretion under the rules of court as to whether to dispense with an undertaking by the plaintiff to pay damages caused by an interlocutory injunction or mandatory order, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law.

Remedies

93.—(1) If the court finds that the plaintiff is entitled to judgment in an action under section 84, the court may,

(a) grant an injunction against the contravention;

(b) order the parties to negotiate a restoration plan in respect of harm to the public resource resulting from the con-

Sursis ou rejet de l'action dans l'intérêt public

90 (1) Le tribunal peut surseoir à l'action ou la rejeter si cela est dans l'intérêt public.

Idem

(2) Pour rendre une décision en vertu du paragraphe (1), le tribunal peut tenir compte des préoccupations environnementales, économiques et sociales, ainsi que des facteurs suivants :

a) la question de savoir si les questions soulevées par l'instance seraient mieux résolues par un autre processus;

b) la question de savoir s'il existe un plan gouvernemental adéquat pour traiter des questions d'intérêt public soulevées par l'instance;

c) toute autre question pertinente.

Désistement

91 (1) Il ne peut y avoir désistement d'une action intentée en vertu de l'article 84 qu'avec l'approbation du tribunal et qu'aux conditions que celui-ci juge appropriées.

Homologation par le tribunal

(2) La transaction intervenue dans une action intentée en vertu de l'article 84 n'a force exécutoire que si elle est homologuée par le tribunal.

Effet de la transaction

(3) La transaction intervenue dans une action intentée en vertu de l'article 84 qui est homologuée par le tribunal lie tous les résidents passés, présents et futurs de l'Ontario.

Avis en cas de rejet, de désistement ou de transaction

(4) Lorsqu'il examine s'il y a lieu de rejeter une action intentée en vertu de l'article 84 sans qu'il ait été statué sur la question de savoir si le demandeur avait droit à un jugement, que ce soit pour cause de retard, pour des motifs d'intérêt public ou pour tout autre motif, ou lorsqu'il examine s'il y a lieu d'approuver le désistement de l'action ou d'homologuer la transaction intervenue dans celle-ci, le tribunal examine si un avis devrait être donné aux termes de l'article 88.

Injonctions interlocutoires : engagement du demandeur de payer des dommages-intérêts

92 Lorsqu'il exerce le pouvoir discrétionnaire que lui confèrent les règles de pratique pour déterminer s'il doit dispenser ou non le demandeur de l'engagement de payer des dommages-intérêts pour le préjudice découlant d'une injonction interlocutoire ou d'une ordonnance de faire interlocutoire, le tribunal peut tenir compte de toute circonstance particulière, y compris la question de savoir si l'action est une cause type ou soulève un nouveau point de droit.

Recours

93 (1) Si le tribunal conclut que le demandeur a droit à un jugement dans une action intentée en vertu de l'article 84, il peut :

a) accorder une injonction en cessation de la contravention;

b) ordonner aux parties de négocier un plan de restauration à l'égard des atteintes à la ressource publique

travention and to report to the court on the negotiations within a fixed time;

(c) grant declaratory relief; and

(d) make any other order, including an order as to costs, that the court considers appropriate.

Damages

(2) No award of damages shall be made under subsection (1).

Farm practices

(3) No order shall be made under this section that is inconsistent with the *Farm Practices Protection Act*.

When order to negotiate not to be made

94. The court shall not order the parties to negotiate a restoration plan if the court determines that,

(a) adequate restoration has already been achieved; or

(b) an adequate restoration plan has already been ordered under the law of Ontario or any other jurisdiction.

Restoration plans

95.—(1) This section applies to restoration plans negotiated by the parties and to restoration plans developed by the court under section 98.

Restoration plans: purposes

(2) A restoration plan in respect of harm to a public resource resulting from a contravention shall, to the extent that to do so is reasonable, practical and ecologically sound, provide for,

(a) the prevention, diminution or elimination of the harm;

(b) the restoration of all forms of life, physical conditions, the natural environment and other things associated with the public resource affected by the contravention; and

(c) the restoration of all uses, including enjoyment, of the public resource affected by the contravention.

Same

(3) A restoration plan may include provisions to address harm to a public resource in ways not directly connected with the public resource, including,

(a) research into and development of technologies to prevent, decrease or eliminate harm to the environment;

(b) community, education or health programs; and

(c) the transfer of property by the defendant so that the property becomes a public resource.

découlant de la contravention et de lui présenter un rapport sur les négociations dans un délai précis;

c) rendre un jugement déclaratoire;

d) rendre toute autre ordonnance, y compris une ordonnance relative aux dépens, qu'il juge appropriée.

Dommages-intérêts

(2) Aucuns dommages-intérêts ne doivent être accordés en vertu du paragraphe (1).

Pratiques agricoles

(3) Aucune ordonnance non conforme à la *Loi sur la protection des pratiques agricoles* ne doit être rendue en vertu du présent article.

Cas où le tribunal ne rend pas d'ordonnance de négocier

94 Le tribunal ne doit pas ordonner aux parties de négocier un plan de restauration s'il décide, selon le cas :

a) qu'une restauration adéquate a déjà été réalisée;

b) qu'un plan de restauration adéquat a déjà été ordonné en vertu de la loi de l'Ontario ou d'une autre autorité législative.

Plans de restauration

95 (1) Le présent article s'applique aux plans de restauration négociés par les parties et à ceux élaborés par le tribunal aux termes de l'article 98.

Plans de restauration : objets

(2) Tout plan de restauration à l'égard des atteintes à une ressource publique découlant d'une contravention doit, dans la mesure où cela est raisonnable, pratique et écologiquement sain, prévoir ce qui suit :

a) la prévention, la diminution ou l'élimination des atteintes;

b) la restauration de toutes les formes de vie, des conditions physiques, de l'environnement naturel et des autres éléments liés à la ressource publique touchée par la contravention;

c) la restauration de tous les usages, y compris la jouissance, de la ressource publique touchée par la contravention.

Idem

(3) Tout plan de restauration peut comprendre des dispositions qui traitent des solutions aux atteintes à une ressource publique par des moyens qui ne sont pas directement liés à celle-ci, notamment :

a) la recherche et le développement de technologies visant à prévenir, à diminuer ou à éliminer les atteintes à l'environnement;

b) des programmes communautaires ou des programmes d'éducation ou de santé;

c) la cession de biens par le défendeur de sorte qu'ils deviennent une ressource publique.

Same

(4) A provision under subsection (3) shall be included in a restoration plan only with the consent of the defendant.

Same

(5) A provision under clause (3) (c) shall be included in a restoration plan only with the consent of the defendant and the transferee.

Restoration plan: provisions for implementation

(6) A restoration plan may include provisions for monitoring progress under the plan and for overseeing its implementation.

Restoration plans: considerations

(7) When negotiating or developing a restoration plan in respect of harm, the negotiating parties or the court, as the case may be, shall consider,

(a) any orders under the law of Ontario or any other jurisdiction dealing with the harm; and

(b) whether, apart from the restoration plan, the harm has been addressed in the ways described in subsection (2).

Restoration plans: payments

(8) A restoration plan may provide for money to be paid by the defendant only if,

(a) the money is to be paid to the Minister of Finance;

(b) the money is to be used only for the purposes mentioned in subsections (2) and (3); and

(c) the Attorney General and the defendant consent to the provision.

Orders ancillary to order to negotiate

96. If the court orders the parties to negotiate a restoration plan, the court may,

(a) make any interim order that the court considers appropriate to minimize the harm; and

(b) make any order that the court considers appropriate,

(i) for the costs of the negotiations,

(ii) requiring a party to prepare an initial draft restoration plan for use in the negotiations,

(iii) respecting the participation of non-parties in the negotiations, and

(iv) respecting the negotiation process, including, on consent of the parties, an order concerning the use of a mediator, fact finder or arbitrator.

Idem

(4) Toute disposition prévue au paragraphe (3) n'est intégrée au plan de restauration qu'avec le consentement du défendeur.

Idem

(5) Toute disposition prévue à l'alinéa (3) c) n'est intégrée au plan de restauration qu'avec le consentement du défendeur et du cessionnaire.

Plans de restauration : dispositions de mise en oeuvre

(6) Tout plan de restauration peut comprendre des dispositions visant à surveiller les progrès accomplis dans le cadre du plan et à superviser sa mise en oeuvre.

Plans de restauration : considérations

(7) Lorsqu'elles négocient ou élaborent un plan de restauration à l'égard des atteintes, les parties aux négociations ou le tribunal, selon le cas, tiennent compte de ce qui suit :

a) toute ordonnance concernant les atteintes rendue en vertu de la loi de l'Ontario ou d'une autre autorité législative;

b) la question de savoir s'il a été traité, en dehors du plan de restauration, de solutions aux atteintes par les moyens énoncés au paragraphe (2).

Plans de restauration : paiements

(8) Le plan de restauration ne peut prévoir le paiement d'une somme d'argent par le défendeur que si les conditions suivantes sont réunies :

a) la somme doit être payée au ministre des Finances;

b) la somme doit être utilisée uniquement aux fins précisées aux paragraphes (2) et (3);

c) le procureur général et le défendeur consentent au paiement.

Ordonnances corrélatives

96 Si le tribunal ordonne aux parties de négocier un plan de restauration, il peut :

a) rendre toute ordonnance provisoire qu'il juge appropriée pour réduire les atteintes au minimum;

b) rendre toute ordonnance qu'il juge appropriée aux fins suivantes :

(i) traiter des frais des négociations,

(ii) exiger qu'une partie prépare une première ébauche de plan de restauration à utiliser dans les négociations,

(iii) traiter de la participation de tiers aux négociations,

(iv) traiter du processus de négociation, y compris, avec le consentement des parties, une ordonnance concernant le recours à un médiateur, un enquêteur ou un arbitre.

If parties agree on restoration plan

97.—(1) If the parties agree on a restoration plan within the time fixed by the court under clause 93 (1) (b) and the court is satisfied that the terms of the plan are consistent with section 95, the court shall order the defendant to comply with the plan.

Same

(2) For the purpose of determining whether an agreed plan is consistent with section 95, the court may,

(a) appoint one or more experts under the rules of court; and

(b) on consent of the parties, hear submissions or receive reports from any mediator, fact finder or arbitrator involved in the negotiation.

Court developed restoration plan

98.—(1) If the parties do not agree on a restoration plan or if the court is not satisfied that a plan agreed to by the parties is consistent with section 95, the court shall develop a restoration plan consistent with section 95 and, for the purpose, the court may,

(a) order the parties to engage in further negotiations for a restoration plan on the terms that the court considers appropriate;

(b) order one or more parties to prepare a draft restoration plan;

(c) appoint one or more persons to investigate and report back on any matter relevant to the development of a restoration plan;

(d) appoint one or more non-parties to prepare a draft restoration plan; and

(e) make any other order that the court considers appropriate.

Same

(2) The rules of court respecting court appointed experts apply with necessary modifications to the appointment of a person under clause (1) (c) or (d).

Order to implement

(3) The court shall order the defendant to comply with the restoration plan developed by the court.

Estoppel

99.—(1) The doctrines of cause of action estoppel and issue estoppel apply in relation to an action under section 84 as if all past, present and future residents of Ontario were parties to the action.

Exception

(2) Subsection (1) does not apply where an action under section 84 has been discon-

Cas où les parties conviennent d'un plan de restauration

97 (1) Si les parties conviennent d'un plan de restauration dans le délai fixé par le tribunal en vertu de l'alinéa 93 (1) b) et que celui-ci est convaincu que les conditions du plan sont conformes à l'article 95, le tribunal ordonne au défendeur de s'y conformer.

Idem

(2) Pour déterminer si un plan convenu est conforme à l'article 95, le tribunal peut :

a) nommer un ou plusieurs experts en vertu des règles de pratique;

b) avec le consentement des parties, entendre les observations ou recevoir les rapports de tout médiateur, enquêteur ou arbitre qui participe aux négociations.

Plan de restauration élaboré par le tribunal

98 (1) Si les parties ne parviennent pas à s'entendre sur un plan de restauration ou que le tribunal n'est pas convaincu que le plan convenu par les parties est conforme à l'article 95, le tribunal élabore un plan de restauration qui est conforme à l'article 95 et, à cette fin, il peut :

a) ordonner aux parties de procéder à des négociations supplémentaires en vue de l'élaboration d'un plan de restauration aux conditions qu'il juge appropriées;

b) ordonner à une ou plusieurs des parties de préparer une ébauche de plan de restauration;

c) nommer une ou plusieurs personnes pour enquêter sur toute question se rattachant à l'élaboration d'un plan de restauration et lui présenter un rapport à ce sujet;

d) nommer un ou plusieurs tiers pour préparer une ébauche de plan de restauration;

e) rendre toute autre ordonnance qu'il juge appropriée.

Idem

(2) Les règles de pratique relatives aux experts nommés par le tribunal s'appliquent, avec les adaptations nécessaires, à la nomination de personnes en vertu de l'alinéa (1) c) ou d).

Ordonnance de mise en oeuvre

(3) Le tribunal ordonne au défendeur de se conformer au plan de restauration élaboré par le tribunal.

Préclusion

99 (1) Les théories de la préclusion relative à la cause d'action et de celle relative à la question jugée s'appliquent à l'égard de toute action intentée en vertu de l'article 84 comme si tous les résidents passés, présents et futurs de l'Ontario étaient parties à l'action.

Exception

(2) Le paragraphe (1) ne s'applique pas lorsqu'il y a eu désistement ou rejet d'une

tinued, abandoned or dismissed without a finding as to whether the plaintiff was entitled to judgment.

Costs

100. In exercising its discretion under subsection 131 (1) of the *Courts of Justice Act* with respect to costs of an action under section 84 of this Act, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law.

Stay on appeal

101. The delivery of a notice of appeal from an order under this Act does not stay the operation of the order, but a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken may order a stay on terms that the judge considers appropriate.

Limitations

102.—(1) No person shall bring an action under section 84 in respect of a contravention that caused harm after the earliest of,

(a) the second anniversary of the day on which the person bringing the action first knew,

(i) that the harm had occurred,

(ii) that the harm was caused by the contravention,

(iii) that the contravention was that of the person against whom the action is brought, and

(iv) that, having regard to the nature of the harm, an action under section 84 would be an appropriate means to seek to address it;

(b) the second anniversary of the day on which a reasonable person with the abilities and in the circumstances of the person seeking to bring the action first ought to have known of the matters referred to in clause (a); and

(c) the second anniversary of the day on which public notice of an action in respect of the contravention and the harm was given under section 87.

Same

(2) Despite subsection (1), if clause (1) (a) or (b) applies to establish the limitation period under subsection (1), a person may bring the action after the end of that period, to the extent permitted by subsections (3) and (4).

Same

(3) If the person bringing the action applied under section 74 for an investigation

Dépens

100 Lorsqu'il exerce le pouvoir discrétionnaire que lui confère le paragraphe 131 (1) de la *Loi sur les tribunaux judiciaires* au sujet des dépens d'une action intentée en vertu de l'article 84 de la présente loi, le tribunal peut tenir compte de toute circonstance particulière, y compris la question de savoir si l'action est une cause type ou soulève un nouveau point de droit.

Sursis en cas d'appel

101 La remise d'un avis d'appel d'une ordonnance rendue en vertu de la présente loi n'a pas pour effet de surseoir à l'application de l'ordonnance. Toutefois, un juge du tribunal auquel une motion en autorisation d'appel a été présentée ou devant lequel un appel a été interjeté peut ordonner un sursis aux conditions qu'il juge appropriées.

Prescription

102 (1) Aucune personne ne peut intenter d'action en vertu de l'article 84 pour une contravention qui a causé une atteinte dès que se réalise l'un des événements suivants, selon celui qui se réalise en premier :

a) le deuxième anniversaire du jour où la personne qui intente l'action a appris les faits suivants :

(i) une atteinte est survenue,

(ii) l'atteinte a été causée par la contravention,

(iii) la contravention est le fait de la personne contre laquelle l'action est intentée,

(iv) étant donné la nature de l'atteinte, le fait d'intenter une action en vertu de l'article 84 serait un moyen approprié de tenter de prendre des mesures à l'égard de l'atteinte;

b) le deuxième anniversaire du jour où toute personne raisonnable possédant les capacités et se trouvant dans la situation de la personne qui cherche à intenter l'action aurait dû apprendre les faits visés à l'alinéa a);

c) le deuxième anniversaire du jour où l'avis de l'action pour la contravention et l'atteinte a été donné au public aux termes de l'article 87.

Idem

(2) Malgré le paragraphe (1), si l'alinéa (1) a) ou b) s'applique pour établir le délai de prescription aux termes du paragraphe (1), toute personne peut intenter l'action passé ce délai, dans la mesure permise par les paragraphes (3) et (4).

Idem

(3) Si la personne qui intente l'action a demandé, en vertu de l'article 74, la tenue

of the contravention before the end of the period established under subsection (1) by the application of clause (1) (a) or (b), the person may bring the action within 120 days after the day on which the person received a notice under section 78 or 80 in respect of the contravention.

Same

(4) If the person bringing the action applied under section 5 of the *Farm Practices Protection Act* with respect to the harm before the end of the period established under subsection (1) by the application of clause (1) (a) or (b), the person may bring the action within 120 days after the day on which the Farm Practices Protection Board disposed of the application.

Public Nuisance Causing Environmental Harm

Public nuisance causing environmental harm

103.—(1) No person who has suffered or may suffer a direct economic loss or direct personal injury as a result of a public nuisance that caused harm to the environment shall be barred from bringing an action without the consent of the Attorney General in respect of the loss or injury only because the person has suffered or may suffer direct economic loss or direct personal injury of the same kind or to the same degree as other persons.

Farm practices

(2) Subsection (1) shall not be interpreted to limit a right or defence available under the *Farm Practices Protection Act*.

PART VII
EMPLOYER REPRISALS

Definition

104. In this Part, "Board" means the Ontario Labour Relations Board.

Complaint about reprisals

105.—(1) Any person may file a written complaint with the Board alleging that an employer has taken reprisals against an employee on a prohibited ground.

Reprisals

(2) For the purposes of this Part, an employer has taken reprisals against an employee if the employer has dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass, the employee.

Prohibited grounds

(3) For the purposes of this Part, an employer has taken reprisals on a prohibited ground if the employer has taken reprisals because the employee in good faith did or may do any of the following:

d'une enquête sur la contravention avant l'expiration du délai établi aux termes du paragraphe (1) par l'effet de l'alinéa (1) a) ou b), elle peut intenter l'action dans les 120 jours qui suivent le jour où elle a reçu l'avis prévu à l'article 78 ou 80 à l'égard de la contravention.

Idem

(4) Si la personne qui intente l'action a présenté une requête, en vertu de l'article 5 de la *Loi sur la protection des pratiques agricoles*, à l'égard de l'atteinte avant l'expiration du délai établi aux termes du paragraphe (1) par l'effet de l'alinéa (1) a) ou b), elle peut intenter l'action dans les 120 jours qui suivent le jour où la Commission de protection des pratiques agricoles a statué sur la requête.

Nuisance publique portant atteinte à l'environnement

Nuisance publique portant atteinte à l'environnement

103 (1) Aucune personne ayant subi ou pouvant subir une perte économique directe ou des lésions corporelles directes par suite d'une nuisance publique qui a porté atteinte à l'environnement ne peut se voir interdire d'intenter une action relative à la perte ou aux lésions sans le consentement du procureur général pour le seul motif qu'elle a subi ou peut subir une perte économique directe ou des lésions corporelles directes du même genre ou du même degré que d'autres personnes.

Pratiques agricoles

(2) Le paragraphe (1) n'a pas pour effet de limiter tout droit ou moyen de défense qui existe déjà aux termes de la *Loi sur la protection des pratiques agricoles*.

PARTIE VII
REPRÉSAILLES EXERCÉES PAR UN EMPLOYEUR

Définition

104 Dans la présente partie, «Commission» s'entend de la Commission des relations de travail de l'Ontario.

Plainte pour représailles

105 (1) Toute personne peut déposer auprès de la Commission une plainte écrite selon laquelle un employeur aurait exercé des représailles contre un employé pour un motif illicite.

Représailles

(2) Pour l'application de la présente partie, un employeur a exercé des représailles contre un employé s'il l'a congédié, lui a infligé une peine disciplinaire, l'a pénalisé, contraint, intimidé ou harcelé, ou a tenté de le contraindre, de l'intimider ou de le harceler.

Motifs illicites

(3) Pour l'application de la présente partie, un employeur a exercé des représailles pour un motif illicite s'il les a exercées parce que l'employé a fait ou peut faire, de bonne foi, n'importe laquelle des choses suivantes :

1. Participate in decision-making about a ministry statement of environmental values, a policy, an Act, a regulation or an instrument as provided in Part II.
2. Apply for a review under Part IV.
3. Apply for an investigation under Part V.
4. Comply with or seek the enforcement of a prescribed Act, regulation or instrument.
5. Give information to an appropriate authority for the purposes of an investigation, review or hearing related to a prescribed policy, Act, regulation or instrument.
6. Give evidence in a proceeding under this Act or under a prescribed Act.

Labour relations officer

106. The Board may authorize a labour relations officer to inquire into a complaint.

Labour relations officer

107. A labour relations officer authorized to inquire into a complaint shall make the inquiry as soon as reasonably possible, shall endeavour to effect a settlement of the matter complained of and shall report the results of the inquiry and endeavours to the Board.

Inquiry by the Board

108. If a labour relations officer is unable to effect a settlement of the matter complained of, or if the Board in its discretion dispenses with an inquiry by a labour relations officer, the Board may inquire into the complaint.

Burden of proof

109. In an inquiry under section 108, the onus is on the employer to prove that the employer did not take reprisals on a prohibited ground.

Determination by the Board

110.—(1) If the Board, after inquiring into the complaint, is satisfied that the employer has taken reprisals on a prohibited ground, the Board shall determine what, if anything, the employer shall do or refrain from doing about the reprisals.

Same

(2) A determination under subsection (1) may include, but is not limited to, one or more of,

(a) an order directing the employer to cease doing the act or acts complained of;

(b) an order directing the employer to rectify the act or acts complained of; or

1. Participer à la prise de décisions à l'égard d'une déclaration ministérielle sur les valeurs environnementales, d'une politique, d'une loi, d'un règlement ou d'un acte selon ce que prévoit la partie II.
2. Demander un examen en vertu de la partie IV.
3. Demander une enquête en vertu de la partie V.
4. Se conformer à une loi, à un règlement ou à un acte prescrits, ou chercher à faire exécuter cette loi, ce règlement ou cet acte.
5. Donner des renseignements à une autorité compétente pour les besoins d'une enquête, d'un examen ou d'une audience se rapportant à une politique, à une loi, à un règlement ou à un acte prescrits.
6. Témoigner dans une instance introduite en vertu de la présente loi ou d'une loi prescrite.

Agent des relations de travail

106 La Commission peut autoriser un agent des relations de travail à enquêter sur une plainte.

Agent des relations de travail

107 L'agent des relations de travail qui est autorisé à enquêter sur une plainte fait son enquête dans les meilleurs délais raisonnables, s'efforce de régler la question qui fait l'objet de la plainte et présente à la Commission un rapport sur les résultats de son enquête et de ses démarches.

Enquête de la Commission

108 Si l'agent des relations de travail ne parvient pas à régler la question qui fait l'objet de la plainte ou que la Commission, à sa discrétion, choisit de ne pas faire mener une enquête par un agent des relations de travail, elle peut enquêter elle-même sur la plainte.

Fardeau de la preuve

109 Dans une enquête visée à l'article 108, il incombe à l'employeur de prouver qu'il n'a pas exercé de représailles pour un motif illicite.

Décision de la Commission

110 (1) Si la Commission est convaincue, au terme de l'enquête sur la plainte, que l'employeur a exercé des représailles pour un motif illicite, elle décide, s'il y a lieu, de ce que l'employeur doit faire ou s'abstenir de faire relativement aux représailles.

Idem

(2) La décision prévue au paragraphe (1) peut prévoir notamment une ou plusieurs des ordonnances suivantes :

a) une ordonnance enjoignant à l'employeur de cesser d'accomplir l'acte ou les actes qui font l'objet de la plainte;

b) une ordonnance enjoignant à l'employeur de réparer l'acte ou les actes qui font l'objet de la plainte;

(c) an order directing the employer to reinstate in employment or hire the employee, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount assessed by the Board against the employer.

Agreement to the contrary

111. A determination under section 110 applies despite a provision of an agreement to the contrary.

Failure to comply

112. If the employer fails to comply with a term of the determination under section 110 within fourteen days from the date of the release of the determination by the Board or from the date provided in the determination for compliance, whichever is later, the complainant may notify the Board in writing of the failure.

Enforcement of determination

113. If the Board receives notice in accordance with section 112, the Board shall file a copy of its determination, without its reasons, with the Ontario Court (General Division), and the determination may be enforced as if it were an order of the court.

Effect of settlement

114.—(1) If a complaint under section 105 has been settled, whether through the endeavours of the labour relations officer or otherwise, and the settlement has been put in writing and signed, a party to the settlement may file a written complaint with the Board alleging that another party to the settlement has failed to comply with the settlement.

Same

(2) Sections 106 to 108 and 110 to 113 and subsection (1) apply with necessary modifications with respect to a complaint alleging failure to comply with a settlement.

Act performed on behalf of employer

115. For the purposes of sections 105 to 114, an act that is performed on behalf of the employer shall be deemed to be the act of the employer.

Powers, etc., of the Board

116.—(1) The provisions of the *Labour Relations Act* and the regulations under it relating to powers, practices and procedures of the Board apply with necessary modifications to an inquiry by the Board into a complaint under section 105 or 114.

Application of provisions of *Labour Relations Act*

(2) Sections 108, 110, 111 and 112 of the *Labour Relations Act* apply with necessary modifications to an inquiry by the Board into a complaint under section 105 or 114.

c) une ordonnance enjoignant à l'employeur de réintégrer l'employé dans son emploi ou de l'engager, avec ou sans indemnisation, ou, pour tenir lieu d'engagement ou de réintégration dans l'emploi, de lui verser, pour sa perte de gains ou d'autres avantages rattachés à l'emploi, une indemnité fixée par la Commission.

Entente à l'effet contraire

111 La décision prévue à l'article 110 s'applique malgré toute disposition d'une entente à l'effet contraire.

Défaut de se conformer

112 Si l'employeur ne se conforme pas à une condition de la décision prise aux termes de l'article 110 dans un délai de quatorze jours à compter de la date à laquelle la Commission communique sa décision ou, si elle lui est postérieure, de la date fixée dans la décision pour s'y conformer, le plaignant peut en aviser par écrit la Commission.

Exécution de la décision

113 Si la Commission reçoit un avis conformément à l'article 112, elle dépose une copie de sa décision, sans les motifs, auprès de la Cour de l'Ontario (Division générale), et la décision peut être exécutée comme s'il s'agissait d'une ordonnance du tribunal.

Effet du règlement de la plainte

114 (1) Si une plainte déposée en vertu de l'article 105 a été réglée, que ce soit à la suite des démarches de l'agent des relations de travail ou d'une autre façon, et que le règlement de la plainte a été mis par écrit et signé, une partie au règlement peut déposer auprès de la Commission une plainte écrite selon laquelle une autre partie au règlement ne s'y serait pas conformée.

Idem

(2) Les articles 106 à 108 et 110 à 113 ainsi que le paragraphe (1) s'appliquent, avec les adaptations nécessaires, à toute plainte selon laquelle il y aurait défaut de se conformer au règlement d'une plainte.

Acte accompli au nom de l'employeur

115 Pour l'application des articles 105 à 114, tout acte qui est accompli au nom de l'employeur est réputé l'acte de l'employeur.

Pouvoirs, pratique et procédure de la Commission

116 (1) Les dispositions de la *Loi sur les relations de travail* et des règlements pris en application de cette loi qui ont trait aux pouvoirs, à la pratique et à la procédure de la Commission s'appliquent, avec les adaptations nécessaires, aux enquêtes de la Commission à l'égard des plaintes visées à l'article 105 ou 114.

Champ d'application de dispositions de la *Loi sur les relations de travail*

(2) Les articles 108, 110, 111 et 112 de la *Loi sur les relations de travail* s'appliquent, avec les adaptations nécessaires, aux enquêtes de la Commission à l'égard des plaintes visées à l'article 105 ou 114.

PART VIII
GENERAL

Delegation

117. A minister may authorize in writing any person or group of persons to exercise any of the minister's powers or duties under this Act.

No judicial review

118.—(1) Except as provided in section 84 and subsection (2) of this section, no action, decision, failure to take action or failure to make a decision by a minister or his or her delegate under this Act shall be reviewed in any court.

Exception

(2) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that a minister or his or her delegate failed in a fundamental way to comply with the requirements of Part II respecting a proposal for an instrument.

Same

(3) An application under subsection (2) shall not be made later than twenty-one days after the day on which the minister gives notice under section 36 of a decision on the proposal.

Protection from personal liability

119.—(1) Except in the case of an application for judicial review under section 118, no proceeding for damages or otherwise shall be commenced against a minister or an employee of a ministry for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Crown not relieved of liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by any agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort as if subsection (1) had not been enacted.

Crown bound

120. This Act binds the Crown.

Regulations

121.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter referred to in this Act as prescribed;

(b) deeming an organizational unit of government to be a ministry and a member of the Executive Council to be the minister for the ministry for the purposes of this Act and the regulations under it;

PARTIE VIII
DISPOSITIONS GÉNÉRALES

Délégation

117 Un ministre peut autoriser par écrit des personnes ou des groupes de personnes à exercer tout pouvoir ou toute fonction que lui attribue la présente loi.

Absence de révision judiciaire

118 (1) Sauf dans la mesure où le prévoient l'article 84 et le paragraphe (2) du présent article, aucune mesure ni décision que le ministre ou son délégué prend aux termes de la présente loi ne doit être révisée par un tribunal, pas plus que ne doit l'être le fait de ne pas prendre une telle mesure ou une telle décision.

Exception

(2) Toute personne qui réside en Ontario peut présenter une requête en révision judiciaire en vertu de la *Loi sur la procédure de révision judiciaire* pour le motif qu'un ministre ou son délégué ne s'est pas conformé pour l'essentiel aux exigences de la partie II en ce qui concerne une proposition d'acte.

Idem

(3) La requête visée au paragraphe (2) ne doit pas être présentée plus de vingt et un jours après le jour où le ministre donne avis, aux termes de l'article 36, d'une décision portant sur la proposition.

Immunité

119 (1) Sauf dans le cas d'une requête en révision judiciaire prévue à l'article 118, sont irrecevables les instances, notamment celles en dommages-intérêts, introduites contre un ministre ou un employé d'un ministère pour tout acte accompli de bonne foi dans l'exercice effectif ou censé tel d'une fonction ou d'un pouvoir que lui attribue la présente loi ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de bonne foi d'une telle fonction ou d'un tel pouvoir.

Responsabilité de la Couronne

(2) Malgré les paragraphes 5 (2) et (4) de la *Loi sur les instances introduites contre la Couronne*, le paragraphe (1) n'a pas pour effet de dégager la Couronne de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par un de ses mandataires ou préposés et la Couronne est responsable, en vertu de cette loi, d'un tel délit civil comme si le paragraphe (1) n'avait pas été adopté.

Couronne liée par la Loi

120 La présente loi lie la Couronne.

Règlements

121 (1) Le lieutenant-gouverneur en conseil peut, par règlement :

a) prescrire toute question que la présente loi mentionne comme prescrite;

b) prévoir qu'une unité organisationnelle du gouvernement est réputée un ministère et qu'un membre du Conseil exécutif est réputé ministre responsable du ministère pour l'application de la présente loi et des règlements pris en application de celle-ci;

(c) deeming a document or class of documents to be either an instrument or class of instruments or a regulation or class of regulations for the purposes of this Act and the regulations under it;

c) prévoir qu'un document ou une catégorie de documents est réputé soit un acte ou une catégorie d'actes, soit un règlement ou une catégorie de règlements pour l'application de la présente loi et des règlements pris en application de celle-ci;

(d) prescribing ministries and the provisions of Part II that apply in relation to each of them, for the purposes of section 4;

d) prescrire les ministères et les dispositions de la partie II qui s'appliquent à chacun d'eux, pour l'application de l'article 4;

(e) requiring a person or body to establish and operate the registry;

e) exiger d'une personne ou d'un organisme qu'il établisse et fasse fonctionner le registre;

(f) respecting the operation and use of the registry;

f) traiter du fonctionnement et de l'utilisation du registre;

(g) prescribing fees that may be charged in relation to use of the registry;

g) prescrire les droits qui peuvent être demandés relativement à l'utilisation du registre;

(h) relating to the giving of notice in the registry;

h) traiter de la manière de donner un avis dans le registre;

(i) prescribing the contents of classes of notice given in the registry;

i) prescrire le contenu des catégories d'avis donnés dans le registre;

(j) classifying proposals for instruments as Class I, II or III proposals, for the purposes of this Act and the regulations under it;

j) classer les propositions d'actes comme propositions de catégorie I, II ou III pour l'application de la présente loi et des règlements pris en application de celle-ci;

(k) specifying intervals at which reviews of regulations under subsection 21 (1) shall occur;

k) préciser les intervalles auxquels doivent être effectués les examens de règlements prévus au paragraphe 21 (1).

(l) providing for exemptions from Part II in respect of any class of proposal for a policy, Act, regulation or instrument including, but not limited to, exemptions for the purpose of expediting decision-making about proposals;

l) prévoir des exemptions de l'application de la partie II en ce qui concerne des catégories de propositions de politiques, de lois, de règlements ou d'actes, notamment en vue d'accélérer la prise de décisions à l'égard des propositions;

(m) providing for the notices required under Part II for two or more proposals relating to the same undertaking to be given together;

m) prévoir que les avis exigés aux termes de la partie II pour deux propositions ou plus se rapportant à la même entreprise sont donnés ensemble;

(n) providing for the public participation processes required under Part II for two or more proposals relating to the same undertaking to be undertaken together;

n) prévoir que les processus de participation du public exigés aux termes de la partie II dans le cas de deux propositions ou plus se rapportant à la même proposition se déroulent ensemble;

(o) respecting mediation under section 34, including but not limited to regulations respecting the costs of mediation, the confidentiality of representations made during mediation and the procedures to be followed in mediation;

o) traiter de la médiation prévue à l'article 34, notamment des frais de médiation, du caractère confidentiel des observations faites pendant la médiation et de la procédure à suivre au cours de celle-ci;

(p) clarifying, for the purposes of appeals under Part II,

p) préciser, aux fins des appels interjetés en vertu de la partie II, ce qui suit :

(i) what rights of appeal are equivalent,

(i) les droits d'appel qui sont équivalents,

(ii) what appeals are of a similar nature, and

(iii) what grounds for appeal and powers on appeal are similar;

(ii) les appels qui sont de nature semblable,

(iii) les motifs d'appel et les pouvoirs en cas d'appel qui sont semblables;

(q) providing for applications for leave to appeal under section 38 to be heard by one member of the appropriate appellate body, despite section 39 of this Act or any other provision in any Act or regulation;

q) prévoir l'audition par un membre de l'organisme d'appel compétent des requêtes en autorisation d'appel présentées en vertu de l'article 38, malgré l'article 39 de la présente loi ou toute autre disposition d'une loi ou d'un règlement;

(r) providing for applications for leave to appeal to be partly or wholly in writing, despite the provisions of the *Statutory Powers Procedure Act*;

r) prévoir la présentation par écrit, en partie ou en totalité, de toute requête en autorisation d'appel, malgré les dispositions de la *Loi sur l'exercice des compétences légales*;

(s) providing for stays pending decisions on applications for leave to appeal;

s) prévoir des sursis jusqu'à ce que soient rendues les décisions portant sur les requêtes en autorisation d'appel;

(t) providing for procedures for applications for leave to appeal and for appeals under Part II;

t) prévoir les procédures à suivre pour les requêtes en autorisation d'appel présentées en vertu de la partie II et les appels interjetés en vertu de cette partie;

(u) prescribing fees that may be charged in connection with applications for review under Part IV and applications for investigation under Part V.

u) prescrire les droits qui peuvent être demandés relativement aux demandes d'examen prévues à la partie IV et aux demandes d'enquête prévues à la partie V.

Classes

(2) A class described in the regulations under this Act may be described according to any characteristic and may be described to consist of or to include or exclude any specified member or thing whether or not with the same characteristics.

Catégories

(2) Une catégorie décrite dans les règlements pris en application de la présente loi peut être décrite selon n'importe quelle caractéristique et peut être décrite comme une catégorie se composant de tout membre ou de toute chose qui est précisé, ou incluant ou excluant tout membre ou toute chose qui est précisé, que le membre ou la chose ait ou non les mêmes caractéristiques.

General or specific regulations

(3) Regulations under this Act may be general or specific in nature.

Portée des règlements

(3) Les règlements pris en application de la présente loi peuvent avoir une portée générale ou particulière.

Acts, regulations and instruments of Canada

(4) The authority in this Act to prescribe an Act, regulation or instrument includes the authority to prescribe an Act of Canada, a regulation of Canada or an instrument of Canada.

Lois, règlements et actes du Canada

(4) Le pouvoir de prescrire une loi, un règlement ou un acte que confère la présente loi comprend le pouvoir de prescrire une loi du Canada, un règlement du Canada ou un acte du Canada.

Provisions of Act, regulations

(5) The authority in this Act to prescribe an Act or regulation includes the authority to prescribe one or more provisions of the Act or regulation.

Dispositions de lois et de règlements

(5) Le pouvoir de prescrire une loi ou un règlement que confère la présente loi comprend le pouvoir de prescrire une ou plusieurs dispositions de cette loi ou de ce règlement.

122.—(1) Subsections (2) and (3) apply only if Bill 99 (*An Act to revise the Limitations Act*, introduced on November 25th, 1992) receives Royal Assent.

122 (1) Les paragraphes (2) et (3) ne s'appliquent que si le projet de loi 99 (intitulé *Loi révisant la Loi sur la prescription des actions* et déposé le 25 novembre 1992) reçoit la sanction royale.

(2) On the later of the day this section comes into force and the day section 18 of Bill

(2) Le jour où le présent article entre en vigueur ou, s'il lui est postérieur, le jour où

99 comes into force, the Schedule to Bill 99 is amended by adding the following item:

l'article 18 du projet de loi 99 entre en vigueur, l'annexe du projet de loi 99 est modifiée par adjonction de l'entrée suivante :

Environmental Bill of Rights, 1993	section 102

Droits environnementaux de 1993, Charte des	article 102

(3) On the later of the day this section comes into force and the day section 18 of Bill 99 comes into force, section 102 of this Act is amended by adding the following subsections:

(3) Le jour où le présent article entre en vigueur ou, s'il lui est postérieur, le jour où l'article 18 du projet de loi 99 entre en vigueur, l'article 102 de la présente loi est modifié par adjonction des paragraphes suivants :

Same

(5) A limitation period established under this section in respect of an action conflicts with and is in place of any limitation period set out in Bill 99 (*An Act to revise the Limitations Act*, introduced on November 25th, 1992), other than a limitation period set out in section 18 of that Bill.

Idem

(5) Un délai de prescription établi aux termes du présent article dans le cas d'une action est incompatible avec tout délai de prescription fixé par le projet de loi 99 (intitulé *Loi révisant la Loi sur la prescription des actions* et déposé le 25 novembre 1992), à l'exclusion d'un délai de prescription fixé par l'article 18 de ce projet de loi, et s'y substitue.

Same

(6) Subsection 18 (3) of Bill 99 (*An Act to revise the Limitations Act*, introduced on November 25th, 1992) does not apply to postpone or suspend a limitation period established under subsection (1) of this section by the application of clause (1) (c) of this section.

Idem

(6) Le paragraphe 18 (3) du projet de loi 99 (intitulé *Loi révisant la Loi sur la prescription des actions* et déposé le 25 novembre 1992) ne s'applique pas aux fins du report ou de la suspension d'un délai de prescription établi aux termes du paragraphe (1) du présent article par l'effet de l'alinéa (1) c) du présent article.

Commencement

123. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Entrée en vigueur

123 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Short title

124. The short title of this Act is the *Environmental Bill of Rights, 1993*.

Titre abrégé

124 Le titre abrégé de la présente loi est *Charte des droits environnementaux de 1993*.

APPENDIX II

Publications under the Regulations Act
Publications en vertu de la Loi sur les règlements

1994—03—12

ONTARIO REGULATION 73/94
made under the
ENVIRONMENTAL BILL OF RIGHTS, 1993

Made: February 16, 1994
Filed: February 21, 1994

GENERAL

PART I
APPLICATION OF ACT

APPLICATION OF PART II OF ACT – PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING

1. The provisions of Part II of the *Environmental Bill of Rights, 1993*, except section 15 and sections 19 to 26, apply in relation to the following ministries:

1. Ministry of Agriculture and Food
2. Ministry of Consumer and Commercial Relations
3. Ministry of Culture, Tourism and Recreation
4. Ministry of Economic Development and Trade
5. Ministry of Environment and Energy
6. Ministry of Finance
7. Ministry of Health
8. Ministry of Housing
9. Ministry of Labour
10. Management Board of Cabinet
11. Ministry of Municipal Affairs
12. Ministry of Natural Resources
13. Ministry of Northern Development and Mines
14. Ministry of Transportation O. Reg. 73/94, s. 1.

2. Section 15 of the *Environmental Bill of Rights, 1993* applies in relation to each ministry mentioned in Column I of the following Table, beginning on the date mentioned opposite the ministry in Column II of the Table:

TABLE

	COLUMN I	COLUMN II
1.	Ministry of Agriculture and Food	April 1, 1995
2.	Ministry of Consumer and Commercial Relations	April 1, 1995
3.	Ministry of Culture, Tourism and Recreation	April 1, 1995
4.	Ministry of Economic Development and Trade	April 1, 1995
5.	Ministry of Environment and Energy	August 15, 1994
6.	Ministry of Finance	April 1, 1995
7.	Ministry of Health	April 1, 1995
8.	Ministry of Housing	April 1, 1995
9.	Ministry of Labour	April 1, 1995
10.	Management Board of Cabinet	April 1, 1995
11.	Ministry of Municipal Affairs	April 1, 1995
12.	Ministry of Natural Resources	April 1, 1995
13.	Ministry of Northern Development and Mines	April 1, 1995
14.	Ministry of Transportation	April 1, 1995

O. Reg. 73/94, s. 2.

3. Each Act mentioned in Column I of the following Table is prescribed for the purposes of section 16 of the *Environmental Bill of Rights, 1993*, beginning on the date mentioned opposite the Act in Column II of the Table:

TABLE

	COLUMN I	COLUMN II
1.	Aggregate Resources Act	April 1, 1996
2.	Conservation Authorities Act	April 1, 1996
3.	Crown Timber Act	April 1, 1996
4.	Endangered Species Act	April 1, 1996
5.	Energy Efficiency Act	November 15, 1994
6.	Environmental Assessment Act	November 15, 1994
7.	Environmental Bill of Rights, 1993	November 15, 1994
8.	Environmental Protection Act	November 15, 1994
9.	Game and Fish Act	April 1, 1996
10.	Gasoline Handling Act	April 1, 1996
11.	Lakes and Rivers Improvement Act	April 1, 1996
12.	Mining Act	April 1, 1996
13.	Niagara Escarpment Planning and Development Act	November 15, 1994
14.	Ontario Waste Management Corporation Act	November 15, 1994
15.	Ontario Water Resources Act	November 15, 1994
16.	Pesticides Act	November 15, 1994
17.	Petroleum Resources Act	April 1, 1996
18.	Planning Act	April 1, 1998
19.	Provincial Parks Act	April 1, 1996

	COLUMN I	COLUMN II
20.	Public Lands Act	April 1, 1996
21.	Waste Management Act, 1992	November 15, 1994

O. Reg. 73/94, s. 3.

4. Sections 19 to 26 of the *Environmental Bill of Rights, 1993* apply in relation to each ministry mentioned in Column I of the following Table, beginning on the date mentioned opposite the ministry in Column II of the Table:

TABLE

	COLUMN I	COLUMN II
1.	Ministry of Consumer and Commercial Relations	April 1, 1996
2.	Ministry of Environment and Energy	November 15, 1994
3.	Ministry of Municipal Affairs	April 1, 1998
4.	Ministry of Natural Resources	April 1, 1996
5.	Ministry of Northern Development and Mines	April 1, 1996

O. Reg. 73/94, s. 4.

APPLICATION OF PART IV OF ACT – APPLICATION FOR REVIEW

5. Each ministry mentioned in Column I of the following Table is prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*, beginning on the date mentioned opposite the ministry in Column II of the Table:

TABLE

	COLUMN I	COLUMN II
1.	Ministry of Agriculture and Food	April 1, 1996
2.	Ministry of Consumer and Commercial Relations	April 1, 1996
3.	Ministry of Environment and Energy	February 1, 1995
4.	Ministry of Municipal Affairs	April 1, 1998
5.	Ministry of Natural Resources	April 1, 1996
6.	Ministry of Northern Development and Mines	April 1, 1996

O. Reg. 73/94, s. 5.

6.—(1) Each Act mentioned in Column I of the Table to section 3 of this Regulation is prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*.

(2) Despite subsection (1), the *Game and Fish Act* is not prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*. O. Reg. 73/94, s. 6.

7.—(1) A regulation made under an Act that is prescribed by section 6 of this Regulation is prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*, beginning on the date on which the Act under which it is made is prescribed for the purposes of Part IV.

(2) For the purposes of subsection (1), a regulation made under an Act includes a regulation made under the Act before the date on which the Act is prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*.

(3) Despite subsection (1), a provision of a regulation made on or before November 15, 1994 under section 29 or clause 39 (f) of the *Environmental Assessment Act* is not prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*. O. Reg. 73/94, s. 7.

8.—(1) An instrument is prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993* if a proposal for the instrument would be a Class I, II or III proposal for the purposes of the Act.

(2) Despite subsection (1), an approval of an undertaking issued on or before November 15, 1994 under the *Environmental Assessment Act* is not prescribed for the purposes of Part IV of the *Environmental Bill of Rights, 1993*. O. Reg. 73/94, s. 8.

APPLICATION OF PART V OF ACT – APPLICATION FOR INVESTIGATION

9. Each Act mentioned in Column I of the following Table is prescribed for the purposes of Part V of the *Environmental Bill of Rights, 1993*, beginning on the date mentioned opposite the Act in Column II of the Table:

TABLE

	COLUMN I	COLUMN II
1.	Aggregate Resources Act	April 1, 1996
2.	Conservation Authorities Act	April 1, 1996
3.	Crown Timber Act	April 1, 1996
4.	Endangered Species Act	April 1, 1996
5.	Energy Efficiency Act	August 15, 1994
6.	Environmental Assessment Act	August 15, 1994
7.	Environmental Protection Act	August 15, 1994
8.	Fisheries Act (Canada)	April 1, 1996
9.	Game and Fish Act	April 1, 1996
10.	Gasoline Handling Act	April 1, 1996
11.	Lakes and Rivers Improvement Act	April 1, 1996
12.	Mining Act	April 1, 1996
13.	Ontario Water Resources Act	August 15, 1994
14.	Pesticides Act	August 15, 1994
15.	Petroleum Resources Act	April 1, 1996
16.	Provincial Parks Act	April 1, 1996
17.	Public Lands Act	April 1, 1996
18.	Waste Management Act, 1992	August 15, 1994

O. Reg. 73/94, s. 9.

10.—(1) A regulation made under an Act that is prescribed by section 9 of this Regulation is prescribed for the purposes of Part V of the *Environmental Bill of Rights, 1993*, beginning on the date on which the Act under which it is made is prescribed for the purposes of Part V.

(2) For the purposes of subsection (1), a regulation made under an Act includes a regulation made under the Act before the date on which the Act is prescribed for the purposes of Part V of the *Environmental Bill of Rights, 1993*. O. Reg. 73/94, s. 10.

11. An instrument is prescribed for the purposes of Part V of the *Environmental Bill of Rights, 1993* if a proposal for the instrument would be a Class I, II or III proposal for the purposes of the Act. O. Reg. 73/94, s. 11.

APPLICATION OF PART VII OF ACT – EMPLOYER REPRISALS

12.—(1) Each Act mentioned in Column I of the Table to section 3 of this Regulation is prescribed for the purposes of paragraphs 4, 5 and 6 of subsection 105 (3) of the *Environmental Bill of Rights, 1993*.

(2) A regulation or instrument made under an Act mentioned in Column I of the Table to section 3 of this Regulation is prescribed for the purposes of paragraphs 4 and 5 of subsection 105 (3) of the *Environmental Bill of Rights, 1993*.

(3) For the purposes of subsection (2), a regulation or instrument made under an Act includes a regulation or instrument made under the Act before this Regulation comes into force. O. Reg. 73/94, s. 12.

PART II
MISCELLANEOUS

ENVIRONMENTAL REGISTRY

13. The Minister of Environment and Energy shall establish the registry. O. Reg. 73/94, s. 13.

14. A notice given in the registry shall be left in the registry for sixty days or such other period of time as the registrar considers appropriate. O. Reg. 73/94, s. 14.

EXEMPTIONS FROM PART II OF ACT

15.—(1) The requirements of Part II of the *Environmental Bill of Rights, 1993* do not apply in relation to a proposal to make, amend or revoke an official plan under the *Planning Act*.

(2) This section is revoked on April 1, 1998. O. Reg. 73/94, s. 15.

REGULATIONS AND INSTRUMENTS

16. An order made under section 29 of the *Environmental Assessment Act* shall be deemed to be a regulation for the purposes of the *Environmental Bill of Rights, 1993* and the regulations made under it. O. Reg. 73/94, s. 16.

11/94

ONTARIO REGULATION 74/94
made under the
HIGHWAY TRAFFIC ACT

Made: February 17, 1994
Filed: February 21, 1994

Amending Reg. 608 of R.R.O. 1990
(Restricted Use of Left Lanes by Commercial Motor Vehicles)

Note: Since January 1, 1993, Regulation 604 has been amended by Ontario Regulation 442/93. There are no prior amendments.

1. Schedule 1 to Regulation 608 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:

Schedule 1

HIGHWAY NO. 401

1. That part of the King's Highway known as No. 401 lying between a point situate at its intersection with the centre line of the King's Highway known as Nos. 35 and 115 in the Town of Newcastle in The Regional Municipality of Durham and a point situate at its intersection with the centre line of the King's Highway known as No. 8 in the City of Cambridge in The Regional Municipality of Waterloo.

2. That part of the King's Highway known as No. 401 lying between a point situate at its intersection with the centre line of the King's Highway known as No. 403 in the Township of East Oxford in the County of Oxford and a point situate at its intersection with the centre line of the roadway known as Wellington Road in the City of London in the County of Middlesex. O. Reg. 74/94, s. 1.

GILLES POULIOT
Minister of Transportation

Dated at Toronto on February 17, 1994

11/94

ONTARIO REGULATION 75/94
made under the
HIGHWAY TRAFFIC ACT

Made: February 16, 1994
Filed: February 21, 1994

Amending Reg. 619 of R.R.O. 1990
(Speed Limits)

Note: Since January 1, 1993, Regulation 619 has been amended by Ontario Regulations 20/93, 63/93, 136/93, 206/93, 277/93, 306/93, 474/93, 488/93, 520/93, 661/93, 725/93, 895/93, 932/93 and 25/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

1. Paragraph 17 of Part 2 of Schedule 21 to Regulation 619 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:

District of Algoma—	17. That part of the King's Highway known as No. 17 in the Territorial District of Algoma lying between a point situate 470 metres measured westerly from its intersection with the roadway known as Lake Huron Drive in the hamlet of Desbarats in the Township of Johnson and a point situate 790 metres measured easterly from its intersection with the King's Highway known as No. 638 and the roadway known as Church Street in the Township of Macdonald.
Twps. of Johnson and Macdonald	

2.—(1) Paragraph 4 of Part 3 of Schedule 63 to the Regulation is revoked.

(2) Paragraphs 5 and 12 of Part 3 of Schedule 63 to the Regulation are revoked and the following substituted:

Regional Municipality of Haldimand-Norfolk—	5. That part of the King's Highway known as No. 59 in the Township of Norfolk in The Regional Municipality of Haldimand-Norfolk lying between a point situate 270 metres measured northerly from its intersection with the centre line of the roadway known as Milne Street and a point situate thirty metres measured southerly from its intersection with the centre line of the roadway known as South Street.
Twp. of Norfolk	

. . . . . .

Regional Municipality of Haldimand-Norfolk—	12. That part of the King's Highway known as No. 59 in the Township of Norfolk in The Regional Municipality of Haldimand-Norfolk lying between a point situate 135 metres measured northerly from its intersection with the centre line of the roadway known as William Street and a point situate at its intersection with the southerly limit of the west junction of the King's Highway known as No. 3 and No. 59.
Twp. of Norfolk	

(3) Paragraphs 1 and 4 of Part 4 of Schedule 63 to the Regulation are revoked.

(4) Paragraphs 4 and 5 of Part 5 of Schedule 63 to the Regulation are revoked.