DEMOCRACY AND ENVIRONMENTAL ACCOUNTABILITY IN ONTARIO

for

The Environmental Agenda for Ontario Project

Publication No. 361

Prepared by:

Paul Muldoon, CELA
Mark Winfield, CIELAP

April 1999

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONMENT

130 SPADINA AVE. • SUITE 301 • TORONTO, ONTARIO • M5V 2L4
TEL: 416/960-2284 • FAX 416/960-9392 • www.cela.ca

SUMMARY

The past four years have witnessed an unprecedented dismantling of the mechanisms for ensuring the legal and political accountability of the provincial government for the decisions that it makes about Ontario's environment and natural resources. The exercise of power over these public goods and public resources has been increasingly separated from accountability to the public for the consequences of those decisions.

The Accountability of the Provincial Government to Ontarians

The extensive use of enabling legislation has marginalized the role of the Legislature by eliminating the need for the cabinet and bureaucracy to seek the approval of the public's elected representatives before taking action. At the same time, decision-making authority over public resources has been transferred to private entities not accountable to the public; freedom of information legislation weakened or undermined; the independence of adjudicative boards, commissions and tribunals eroded; independent advisory committees eliminated; commitments to aboriginal peoples abandoned; and environmental monitoring and reporting programmes drastically reduced. As a result, the exercise of power by the provincial government and its agents has been increasingly separated from accountability to the public for the consequences of these actions.

These measures not only threaten the protection of the province's environment, and the sustainable management of its natural resources, they also present a challenge to the basic principles of parliamentary democracy, responsible government and the rule of law. Similar changes have occurred to mechanisms for public participation in public policy decision-making, especially in the areas of environmental approvals and environmental assessment. Major legislative and institutional reforms are necessary to deal with this situation.

Public Participation in Decision-Making

Over the same period, opportunities for members of the public to participate in decisions about the environment and public resources have also been severely affected. Requirements for public hearings before the approval of major projects, such as landfills, for example, have been removed, while the expiry of the intervenor funding program has made it very difficult for citizens and communities to participate effectively when hearings are held. The weakening of *Environmental Assessment Act* has significant implications in terms of the degree to which the potential long-term costs and benefits of major projects and activities will be understood before they are approved.

Key Recommendations

1. An independent Commission should be established to conduct a review of the procedures, functions and structure of the Legislature, reporting within one year of its establishment. The Commission's mandate should recognize deliberation as the central function of the Legislature, and that other interests, including governmental convenience,

are secondary. In the interim, a procedure should be established to permit the Legislature to disallow proposals by the government to introduce, amend or repeal regulations. The use of omnibus legislation to make unrelated substantive amendments to more than one statute should be barred.

2. Legislation should be adopted to remove: crown immunity clauses; clauses stating that regulations can override the provisions of statutes; clauses exempting the making of regulations by the cabinet and other bodies from the requirements of the *Regulations Act*; clauses permitting the setting of tax rates by the Minister of Finance or cabinet, rather than the Legislature; provisions permitting the alteration of statutes without the approval of the Legislature; and clauses permitting the delegation of decision-making powers to persons who are not public entities or officials, from legislation enacted over the preceding five years.

3. Legislation should be adopted to apply the requirements of the *Environmental Bill of Rights, Ombudsman Act, Freedom of Information and Protection of Privacy Act, Audit Act, Environmental Assessment Act* and *French Language Services Act* to all private or non-governmental organizations to whom provincial governmental functions or decision-making authority have been delegated, and to corporations in which the Crown in Right of Ontario is the primary or sole shareholder.

4. The *Environmental Bill of Rights* model of a public registry, and notice and public comment period requirements should be extended to all proposals to introduce, amend or repeal regulations and major public policies through amendments to the *Regulations Act*.

5. The Regulatory Impact and Competitiveness Test, developed by the Red Tape Commission should be terminated, and a new evaluative policy for proposed regulations, programs and policies adopted by the government of Ontario. This new policy should emphasize the achievement of net gains to the social, environmental and economic sustainability of Ontario society.

6. Legislation should be adopted to require that all government advertising be reviewed by the Legislative Assembly's Integrity Commissioner to ensure that it is informational rather than partisan in nature.

7. The *Freedom of Information and Protection of Privacy Act*, and the *Municipal Freedom of Information and Protection of Privacy Act* should be amended to widen the application of the Acts, to reduce the scope of exemptions from their requirements, and to provide that the Information and Privacy Commissioner, rather than the heads of agencies, make determinations of when information requests can be rejected on the basis of their "frivolousness" or "vexatiousness."

8. Legislation should be adopted regarding appointments to regulatory agencies, boards and commissions. This should provide for the review of proposed appointments by a committee of the Legislature; require that terms for appointments be fixed, not at pleasure; create strict conflict of interest rules regarding appointments; and mandate the

establishment of independent advisory committees regarding appointments to regulatory tribunals.

9. The *Municipal Act* should be amended to strengthen the authority of local governments to deal with environmental matters.

10. The Government of Ontario should re-affirm its commitment to the 1991 Statement of Political Relationship with the province's First Nations and aboriginal peoples.

11. The *Business Corporations Act* should be amended to require that provincially incorporated firms provide information on their environmental performance in their Annual Reports to shareholders.

12. The *Occupational Health and Safety Act* should be amended to provide a right to refuse environmentally damaging work, similar to the existing right to refuse dangerous work.

13. The provincial government should commit to providing the public with a comprehensive state of the environment report for Ontario every two years. The province's major environmental and natural resources management statutes should be amended to require tabling of annual reports to the Legislature on the administration and enforcement of these Acts.

14. The *Environmental Assessment Act* (EAA) should be amended: (a) the Act should apply to all environme
(b) an exemption from the requirements of the EAA should only be granted pursuant to clearly articulated statutory criteria and after there has been public comment on the proposed exemption;
(c) exemption requests should be scrutinized by an independent body for a recommendation to the Minister; and
(e) all environmental assessments should be conducted pursuant to legislated criteria, which must include the purpose of, need for, and alternatives to the proposal.

15. The approval of a class EA must be carried out in accordance with that of a full individual EA. Class EA's must be limited by statute to minor activities that have insignificant, predictable, and mitigable impacts on the environment. Furthermore, there needs to be a statutory requirement to include a bump-up provision in all class EA's.

16. The EAA should be amended to add the following features: (a) a requirement for early and meaningful public consultation throughout the EA process, including timely notice provisions, free access to relevant information, and the provision of participant and intervenor funding where appropriate;
(b) a requirement for follow-up and effectiveness monitoring;
(c) a mechanism to evaluate government policies and programmes;
(d) inclusion of consideration of cumulative and synergistic effects; and
(e) the establishment of an independent advisory council to assist the Minister.

17. The government must ensure that there are adequate trained staff and resources to carry out environmental enforcement activities effectively. The investigations branch should resume publishing enforcement statistics on an annual basis.

18. Intervenor funding should be renewed to enable individuals and groups involved in environmental decision-making procedures to participate effectively.

19. The basic prohibition on pollution discharges without a permit should be maintained. Permits should only be issued if it can be demonstrated that there will be no adverse effect on the natural environment. Standardized approvals may be appropriate for activities that are simple and routine and have only very minor impacts on the natural environment and human health as long as an adequate auditing scheme is also put in place. The development of standardized approvals must be undertaken with full public participation.

21. Different government staff or a different department than the staff that made the original decision should carry out requests for review and investigation under the *Environmental Billl of Rights* . The Environmental Commissioner of Ontario should be able to undertake requests for review, requests for investigation, and to comment on proposals affecting legislation and regulations under its mandate.

22. With respect to the *Environmental Bill of Rights*: (a) The electronic registry should be improved by providing a wide range of searching options and ensuring that accurate precise summaries are included for each posting.
(b) The leave to appeal provisions should be clarified to better inform the public as to what information is required to satisfy the test. There should also be some provision for extending the 15-day deadline for filing the leave to appeal.
(c) The right to sue provisions of the EBR should be reviewed in order to determine whether the preconditions are too onerous. If so, they should be amended accordingly.

23. There should be ramifications for ministries that do not promulgate an instrument classification regulation under the EBR within 1 year.

Authors:

Mark Winfield is the director of research with the Canadian Institute for Environmental Law and Policy. He holds a doctorate in political science from the University of Toronto, and has published numerous articles and reports on environmental law and policy.

Paul Muldoon is the executive director of the Canadian Environmental Law Association, a public interest group whose mandate is to use and improve laws to protect the environment. He also teaches environmental law and policy at the University of Toronto and York University.

Acknowledgements:

The authors would like to thank Paul McCulloch who, while a student-at-law at the Canadian Environmental Law Association, provided research and insights into this chapter. The authors would also like to thank those who reviewed earlier drafts of this paper: Margaret Casey, Duff Conacher, Bob Gibson, Bruce Lofquist, and Bob Sexsmith.

TABLE OF CONTENTS

DEMOCRACY AND ENVIRONMENTAL ACCOUNTABILITY IN ONTARIO

PART 1 – GOVERNMENT POWER AND ACCOUNTABILITY IN ONTARIO

...the struggle for responsible government is a continuing one.

F.F.Schindler, Responsible Government in Ontario[1]

Introduction

In its March 1997 document *Our Future! Our Health!: A Statement of Concern*, the Ontario Environmental Protection Working Group, a coalition of some of the province's leading environmental organizations, identified a set of fundamental principles that should form the foundation of the province's environmental and natural resource management policies. These principles are presented in Box 1.[2]

PRINCIPLES FOR ONTARIO'S ENVIRONMENTAL AND NATURAL RESOURCE POLICIES

- Ontario's parks, forests, wildlife, air, public lands, and waterways constitute a public trust, which must be protected and conserved for the future benefit of all Ontarians.
- Governments have a fundamental role to play in the protection of these public goods, the protection and enhancement of ecological capital, and in ensuring the environmentally sustainable use of energy, land, material and energy resources. Governments, acting in the public interest, must ensure that economic activities are carried out in the context of ecological sustainability, and are socially desirable and economically viable (on a full cost accounting basis).
- Governments have a responsibility to provide and enforce environmental standards. On the basis of historical experience and current events, private actors cannot be relied upon to regulate their own use of public environmental resources. The marketplace alone cannot provide for the effective protection o public goods, such as public health and safety, clean air, water and land, the protection and conservation of biological diversity and the ecologically sustainable management if natural resources.
- Governments must be able to be held to account for their actions and the consequences of their laws and policies. State of the Environment Reporting and public access to information are the cornerstones of this accountability.
- Governments must ensure that those who will be affected by government decisions and policies have the right to participate in the decision and policy-making process.
- Governments must ensure that sufficient resources are provided to the agencies, boards and commissions mandated to protect Ontario's environment and natural

The events of the past few years have seriously challenged these principles. The province has witnessed the adoption of a series of measures, the effect of which has been to separate the exercise of power over the province's environment, natural resources and other public goods from accountability to the public for the consequences of those decisions.

There has also been dramatic erosion of the role of the Legislature, and its ability to oversee and limit the exercise of power by the cabinet and bureaucracy. In addition, a substantial portion of the provincial government's decision-making authority over the province's environment and natural resources has been transferred to private and semi-private entities.

These developments have been accompanied by significant losses of opportunities for public participation in decision-making. This has occurred through the direct removal of public participation mechanisms through legislative amendments, the elimination of mechanisms to facilitate and support public participation in public hearings and other formal decision-making processes, and the movement of decision-making responsibility over public resources to the private sector.

The Loss of Legal and Political Accountability for Decision-Making about Ontario's Environment and Natural Resources

Ensuring the accountability of the provincial government for the consequences of its decisions about the environment and natural resources has always presented significant challenges. The adoption of the *Environmental Assessment Act* in 1975, *Freedom of Information and Protection of Privacy Act* (FOIPPA) in 1987, the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) in 1989 and the *Environmental Bill of Rights* and creation of the Office of the Environmental Commissioner in 1993 have each contributed to the public's ability to hold the government to account for its environmental decisions and policies.

Significant gaps, however, remained. The province, for example, has never presented a comprehensive state of the environment report, and certain types of potentially important provincial government information remained exempt from the FOIPPA.

These problems have grown significantly worse over the past few years. The ability of the Legislature, the courts and, most importantly, the public to hold the government of Ontario to account for the consequences of the decisions that it makes about the province's environment and natural resources has been seriously eroded. This is the result of a range of measures undertaken by the provincial government, including the following:

The Extensive Use of Enabling Legislation

> *Parliamentarians, as elected representatives of the people, must not forfeit their responsibility to control ultimately what becomes law.*

Prof. Paul Thomas, University of Manitoba, to the Standing Committee on Regulations and Private Bills, Legislative Assembly of Ontario, April 1988.[3]

Concerns about the provincial government's growing use of enabling legislation, which permits the government to make regulations in relation to a given subject but provides no specific policy guidance or parameters with respect to the content of these regulations, have been expressed on numerous occasions over the past twenty years.[4] The combination of the provision of broad delegated authority, and weak legislative supervision of the use of this authority was seen to have rendered the government's formal accountability to the Legislature for regulation making a "dead letter."[5]

This problem has expanded enormously in Ontario over the past four years. In fact, virtually every provincial statute related to the environment and natural resources management has been amended to give the cabinet the authority to apply, amend, and repeal its requirements through regulations,[6] often through the use of omnibus legislation substantively amending dozens of statutes at once.[7] Many of the amendments also permit the delegation of responsibility for the administration and enforcement of key elements of these statutes to municipalities,[8] and even non-governmental actors.[9]

These provisions permit the Cabinet, and in some cases, individual Ministers to make major changes in public policy, and transfer the management and decision-making authority over public resources from public entities to the private sector without debate or agreement from the Legislature. In some cases, the clauses are so broad that they seem to permit the government to do almost anything it wants within the scope of the legislation without having to return to the Legislature for approval or additional authority.[10]

Similarly, the government has adopted legislation that permits certain taxation levels to be established by the cabinet or Minister of Finance, rather than by a vote of Legislature.[11] This violates a long-standing convention that tax rates be set by the Legislature through its approval of legislation to implement the province's annual budget.[12] The government has also enacted legislation that would permit the amendment of statutes without the approval of the Legislature.[13]

These measures constitute a serious attack on the principles of the rule of law, and of parliamentary democracy. At the core of these principles is the notion that the executive (i.e., the cabinet and bureaucracy) are only permitted to act within the boundaries of the authority provided to them by the elected members of the Legislature. These principles are undermined when the Legislature effectively grants the executive the power to determine the limits of its own authority. Yet this is what has happened in Ontario in recent years.

The Transfer of Public Policy Decisions-Making to Private Entities

One of the most important trends of the past few years has been the transfer of regulatory functions and decision-making authority related to the protection of the environment, public health and safety, and the management of public resources, to private and non-governmental agencies. The most dramatic example of such a transfer was the May 1997 movement of the public safety regulation responsibilities of the Ministry of Consumer and Commercial Relations, dealing with everything from upholstered furniture to elevators to underground storage tanks for gasoline, to a private, non-governmental entity called the Technical Standards and Safety Authority (TSSA). Representatives of the industries it is mandated to regulate dominate the Authority's Board of Directors.[14]

Other Ministries have followed similar paths. In the case of the Ministry of Natural Resources, a range of Ministry functions related to inspection, record keeping and enforcement have been effectively transferred to the forestry,[15] aggregates,[16] petroleum,[17] and commercial fisheries industries.[18] The Ministry of Northern Development and Mines has moved in the same direction with the administration of the mine closure provisions of the *Mining Act*.

One of the key consequences of these transfers is that the entities to whom these functions are assigned and their activities and the decisions that they make escape oversight by, and accountability to, the Legislature and its agents, such as the Environmental Commissioner, Ombudsman, Provincial Auditor, and Freedom of Information and Protection of Privacy Commissioner. The operations, activities and decisions of these entities are also freed of the requirements of the *Environmental Bill of Rights*, *Freedom of Information and Protection of Privacy Act*, *Ombudsman Act*, *Audit Act*, *Environmental Assessment Act*, *French Language Services Act* and other legislation that applies to agencies of the provincial government.

The transformation of the successor generation and services corporations to Ontario Hydro into private entities incorporated under the *Business Corporations Act* and held by the Crown in Right of Ontario through Bill 35, the *Electricity Competition Act* has had a similar effect. The Independent Market Operator and Electrical Safety Authority created through the Act escape the requirements of legislation that normally applies to public entities through the same means.

In addition to explicit transfers of management and decision-making responsibilities, there has been a widespread *de facto* delegation of decision-making over public resources to the private sector through the removal of approval requirements for a broad range of activities with respect to these resources. This has been particularly evident with respect to public lands and public waterways in Northern Ontario.[19] Again, these decisions made by private actors are subject to no meaningful accountability, review or public reporting mechanisms.

In other cases, advisory bodies whose membership consists overwhelming of representatives of particular economic or social interests have been given effective control over significant public resources. One of the clearest examples of this has been the role granted to the Game and Fish Advisory Board of the Ministry of Natural Resources. This body, whose membership is dominated by sport hunting and fishing interests, has been granted substantial influence over the Ministry's fish and wildlife management programs and budget.[20]

The Weakening of Freedom of Information Legislation

The passage of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) in 1987 marked a major step forward in strengthening the ability of Ontarians to hold their provincial government and its agencies to account for their actions and decisions. This Act has served as the model for legislation adopted by a number of other provinces.

A review of the FOIPPA completed by the Standing Committee on the Legislative Assembly in 1991, identified no major flaws or weaknesses in the Statute. The Committee did, however, recommend a number of changes to the Act, including the widening of the Act's application, and the strengthening of the limits on the exemptions to the Act.[21] These exemptions constrain public access to such things as cabinet records, policy advice to the government provided by public servants or consultants, documents affecting intergovernmental relations, and information affecting the "economic and other interests of Ontario."[22]

The Standing Committee conducted a review of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) in 1994. The MFIPPA, which was passed in 1989 and came into force in 1991, extended freedom of information and protection of privacy principles to more than 2500 local government institutions, including municipal corporations, school boards, public utilities commissions, hydro-electric commissions, transit commissions, police commissions, conservation authorities, boards of health and other local boards. The Committee's conclusions regarding the MFIPPA were similar to its findings with respect to the FOIPPA.[23]

No action was taken to implement the Standing Committee's 1991 recommendations regarding the FOIPPA and 1994 recommendations with respect to the MFIPPA prior to the June 1995 election.

The situation with respect to the FOIPPA and MFIPPA changed dramatically in January 1996, with the passage of Bill 26, the *Savings and Restructuring Act, 1996*. Schedule K of the Bill amended the Acts to permit the establishment of fees for appeals of access to information decisions, permit charges for the first two hours of search time in relation to access requests, allow heads of agencies to deny access to records on the basis that requests are "frivolous or vexatious" and permit the Lieutenant-Governor in Council to establish regulations for determining what constitutes a "frivolous or vexatious" request. Schedule O of the Act amended the FOIPPA to state that the provisions of the *Mining Act* regarding the confidentiality of financial information provided by mining companies with respect to financial security requirements related to mine closure prevailed over the FOIPPA.

These amendments to the Acts where strongly opposed by the Freedom of Information and Privacy Commissioner,[24] and by many members of the public and non-governmental organizations.[25] Although the new provisions of the Acts related to the establishment of standards for frivolous and vexatious requests have not been employed, a $25 fee for appeals of denied access requests has been implemented, and charges are being levied by agencies for the first two hours of search time in relation to requests. As most freedom of information requests require less than two hours of search time to fulfil, this means that charges are now being levied

for access to information that was previously free of charge. This is emerging as a significant barrier to public access to information.

The Red Tape Commission and the Cost-Benefit Tests for Actions to Protect Public Goods

In July 1996, the Ontario government adopted a "Less Paper/More Jobs" test for proposed new regulations.[26] A more formal "Regulatory Impact and Competitiveness" test for new regulations was adopted the following year. These policies established a strict cost-benefit test for all proposed new regulations.[27] Ontario is the only Canadian province to have adopted a formal cost-benefit requirement of this nature.[28] The use of such tests has been widely criticized as creating an unnecessary barrier to the adoption of measures needed to protect the environment and human health and safety.

In its 1988 report on the regulatory process in Ontario, the Legislature's Standing Committee on Regulations and Private Bills, for example, highlighted the administrative costs associated with such tests relative to their potential benefits.[29] In its May 1998 report on environmental law enforcement, the House of Commons Standing Committee on Environment and Sustainable Development stressed the failure of such tests to consider fully the environmental, health and social benefits associated with new environmental protection measures.[30]

The adoption of a formal costs-benefit test by the province is of particular concern when considered in combination with the Bill 76 amendments to the *Environmental Assessment Act* enacted in December 1996. As outlined in the second part of this paper, these substantially narrowed the potential scope of the environmental assessment process. In effect, the consideration of the implications of provincial undertakings for the long-term environmental, social and economic sustainability of Ontario society has been reduced at the same time that new barriers have been adopted to the establishment of measures to protect these public goods for the actions of private actors.

THE REGULATORY IMPACT AND COMPETITIVENESS TEST

- Regulatory action will be restricted to instances requiring intervention.
- The need and method of regulatory action will be assessed through comprehensive consultations undertaken early in the decision-making process, with all realistic alternatives being thoroughly explored.
- Implementation of the Regulatory Action will either enhance or be neutral to Ontario's competitiveness.
- The benefits of the proposed regulatory action must outweigh the risks of consequences of available alternatives or non-intervention.
- The regulatory action will be administered as efficiently as possible, minimizing procedures and the paper burden.
- All government legislation, regulations, policies and processes will be the subject of on-going review.

Source: Red Tape Commission, *Cutting the Red Tape Barriers to Jobs and Better Government*, January 1997.

The "More Jobs/Less Paper" and "Regulatory Impact and Competitiveness" tests were developed by the government's Red Tape Commission. The Commission is a committee of government MPP's established in the fall of 1995. It tabled extensive recommendations for the weakening of environmental regulations and

standards in January 1997.[31] The Commission has intervened on behalf of industrial interests to block the adoption of stronger environmental standards, even in the face of overwhelming evidence of the need for change.[32] In effect, the Commission, which has been mandated to act as the secretariat to the Cabinet Committee on Regulations,[33] has provided economic interests with a means of by-passing the normal Ministry policy development processes with respect to initiatives that they may oppose. The Commission has also attempted to intervene in prosecutions by the Ministry of the Environment on behalf of industrial defendants.[34]

The Weakening of the Independence of Agencies, Boards and Commissions

The independence and impartiality of many provincial agencies, boards and commissions charged with the protection of major environmental resources has been seriously eroded over the past few years. In the case of the Niagara Escarpment Commission, for example, appointments over the past two years have included individuals known to be hostile to the goal of the protection of the ecological integrity of the escarpment,[35] or who have had economic interests in its exploitation.[36]

Similar concerns have been raised regarding the impact of recent appointments on other regulatory and adjudicative bodies, including ones outside of the environmental field.[37] In light of these appointments, over the past year, both the Chief Justice of Ontario,[38] and the Ombudsman[39] have felt the need to make public statements regarding the need to ensure the independence and impartially of the province's adjudicative agencies.

The Elimination of Independent Advisory Committees

Over the past thirty years, a number of independent advisory committees were established to provide the government with advice in specific areas of public policy, including the environment. The advice and recommendations of these bodies to the government was also available to the public. They were often important sources of policy ideas and, on occasion, well-informed criticism of the policies of the government of the day.

Many of these independent bodies, including the Ontario Law Reform Commission,[40] Ontario Round Table on Environment and Economy,[41] the Environmental Assessment Advisory Committee, Advisory Committee on Environmental Standards, and the Municipal Industrial Strategy for Abatement (MISA) Advisory Committee[42] have been eliminated since 1995. This represents the loss of a significant public accountability mechanism for the government in the specialized areas of public policy addressed by such entities.

The Enactment of Crown Immunity Clauses

Crown immunity clauses have been incorporated into a number of key environmental statutes over the past four years.[43] Until 1995 the incorporation of such clauses into provincial legislation had been rare. Crown immunity clauses state that the provincial government cannot be sued by someone who is harmed as a result of a decision that it makes under specific provisions of those statutes. In effect, such clauses enable the government to escape legal responsibility for the negative consequences of its actions.

Election Finance

Controls on political party fund raising and campaign expenses were first adopted in Ontario through the 1975 *Election Finance Reform Act*. The Act established limits on both contributions and campaign expenditures. It was generally regarded as being successful and effective, particularly in limiting the ability of small numbers of very wealthy interests to influence the activities of candidates and parties, and thus of MPPs and government, through confidential donations of large sums of money to these political actors.[44]

The most significant weakness in the existing system was seen to be its failure to establish expenditure limits on non-party activities, such as advertising by interest groups during an election campaign. Such activities were seen as having the potential to undermine the expenditure limits on party campaign activities established by the Act.[45]

Amendments to the *Election Finances Act* were introduced by the government and enacted in June 1998.[46] These raised the expenditure limits on party election campaigns, and removed the limits on certain types of election spending, including polling, research and travel. The amendments were subject to widespread criticism that they would give the party with the largest financial resources an unfair advantage in the election campaign.[47]

Concerns have also been raised regarding the use of public funds by past and present governments for what has been seen by many to be political advertising outside of the electoral and party financing framework. To address this problem, proposals have been advanced to require that all government advertising be reviewed by the Legislative Assembly's Integrity Commissioner to ensure that it is informational, rather than partisan in nature.[48]

Balanced Budget Legislation

In December 1998, legislation was introduced to require that the Minister of Finance present a balanced budget to the Legislative Assembly each year. The proposed legislation would also bar increases in corporate or personal income taxes, the provincial sales tax, gasoline and fuel taxes, education taxes and the employer health tax unless the increases were approved through a referendum, or presented as part of a successful election platform.[49]

The legislation includes exemptions for emergencies and permits increases in the designated taxes for the purposes of "restructuring" of Crown agencies and certain other circumstances.[50] The proposed legislation died on the Order Paper in December 1998. However, it is expected to be reintroduced when the Legislature resumes in the spring of 1999. The proposed legislation appears intended to bind future governments to the fiscal policies of the current government, regardless of the outcomes of future elections. Its structure will also make it difficult to deal with changes in the province's economic and social circumstances, or to restructure the province's tax system to deal with new priorities.

Constraining Local Democracy: Municipal Governments and Conservation Authorities

One of the central features of the past few years has been the degree to which the provincial government has transferred responsibility for the delivery of programmes and their consequences to municipal governments, while retaining or even strengthening its own power to direct the actions of local agencies.

These transfers have included operational and financial responsibility for the delivery of sewer and water services,[51] public transit,[52] residential recycling programmes,[53] drinking water testing,[54] the regulation of septic systems,[55] the management of conservation lands,[56] and environmental protection in relation to land-use planning.[57] Typically, little or no resources have been provided by the province to assist municipalities in the delivery of these services. Indeed, the provincial support that had been provided in these areas has been withdrawn. At the same time, the province has proposed amendments to the *Municipal Act* to increase its ability to direct the activities of municipal governments.[58]

The provincial government has not hesitated to override important or innovative local environmental decisions in favour of particular economic or institutional interests. This has included disallowing an anti-idling by-law enacted by the former City of Toronto,[59] adopting a regulation to prevent municipalities from charging product manufacturers or importers for the costs of dealing with their products or packaging through municipal recycling programs,[60] blocking municipal efforts to protect ecologically sensitive areas from aggregates development,[61] and establishing barriers to the adoption of municipal by-laws to control the environmental and health impacts of agricultural operations.[62]

Finally, the province has forced the amalgamation of a number of municipalities against the clearly expressed wishes of their municipal councils and residents. The most prominent example of such action was the amalgamation of the six municipalities making up Metropolitan Toronto into a single City of Toronto.[63] In this case, opposition to the province's proposals was stated by all of the affected local councils, and by seventy-six per cent of Toronto residents who voted in a municipally sponsored referendum on the subject.[64]

Aboriginal Peoples

In 1991, the government of Ontario issued a Statement of Political Relationship with the province's aboriginal peoples. The Statement indicated the province's intention to deal with First Nations and aboriginal peoples on a government-to-government basis.

However, the past four years have witnessed a dramatic deterioration of relations between the provincial government and the aboriginal peoples of Ontario. The actions of the provincial government to end the occupation of Ipperwash Provincial Park by aboriginal protestors[65], the approach of the Ministry of Natural Resources to issues related to aboriginal fishing and hunting rights[66] and the "Lands for Life" land-use planing process in Northern Ontario[67] have each emerged as major points of conflict between the provincial government and aboriginal peoples.

The Elimination of Environmental Monitoring and Reporting Activities

The accountability of the provincial government for the consequences of its decisions has been further eroded by dramatic reductions in the province's environmental science, monitoring and reporting activities. In many cases, environmental information is simply no longer being gathered and made available to the public.

This was highlighted by the Minister of the Environment's March 1997 statement that the development of a "State of the Environment" Report for the province was not worth the effort and expenditure.[68] From the perspectives of good public policy making and public accountability, the Environmental Commissioner,[69] Provincial Auditor,[70] the International Joint Commission[71] and the North American Commission on Environmental Co-operation[72] have all expressed serious concerns about this trend.

The province has also terminated reporting on its own environmental activities. Among the most significant of these measures was the decision in 1995 to discontinue the publication of annual reports on the Ministry of the Environment's environmental law enforcement activities.

Public Participation in Decision-Making

The establishment of effective mechanisms for public participation in environmental and natural resources management decision-making has always been an important goal. In addition to ensuring that those who will be affected by environmental and natural resources management decisions have an opportunity to participate in those decisions, public participation processes are critically important accountability mechanisms. Effectively, these processes require the government to justify its decisions in open forums before the public or independent tribunals.

Substantial progress had been made in this area over the past thirty years through the enactment of statutes like the *Environmental Protection Act* in 1971, the *Environmental Assessment Act* in 1975, the *Intervenor Funding Project Act* in 1988 and the *Environmental Bill of Rights* in 1993. However, significant gaps remained in the public's ability to participate effectively in environmental decision-making in the province.

These problems have become significantly worse over the past few years. This has occurred in a number of ways. In some cases, statutory amendments have weakened or removed public participation requirements.[73] In others, Ministers have been granted expanded discretion on granting public hearings under such statutes as the *Environmental Protection* and *Environmental Assessment* Acts.[74] The removal of approval requirements, such as has taken place under the *Public Lands Act* and the *Lakes and Rivers Improvements Act,*[75] also removes the need for the posting of proposed approvals on the *Environmental Bill of Rights* electronic registry. The transfer of decision-making authority to non-governmental entities, such as the TSSA, has the potential to produce the same result. The expiry of the *Intervenor Funding Project Act* has emerged as a major barrier to effective public participation in public hearings.

The Overall Result

Ensuring the accountability of the provincial government for decisions that affect the environment has always presented significant challenges. Although substantial progress to improve the situation has occurred over the past thirty years, significant gaps remained. A similar series of developments had taken place with respect to public participation in decision-making.

These trends have been significantly reversed over the past four years. Public policy decisions about the management and fate of public resources, and with major implications for public health and safety, are now being made without adequate structures for public accountability for the consequences of those decisions. In effect, power is being exercised by the provincial government and private entities to which it has delegated its decision-making authority without corresponding mechanisms for responsibility and oversight. In many cases, the transfer of decision-making responsibilities and other functions seem designed to remove these activities from oversight by the Legislature, its agents, and the public at large.

The end result of these changes is growing evidence that the province's public resources are being managed for the benefit of private rather than public interests. At the same time, there has been a parallel erosion of opportunities for public participation in decision-making.

A Democracy Package for Ontario

Over the past few years, Canadian governments have claimed with increasing vehemence that they have no choice about the public policies that they pursue, pointing to the need for deficit reduction and the consequences of globalization and international trade liberalization. In reality, governments, including the government of Ontario, can and do continue to make micro and macro level choices all the time. They should not be allowed to escape responsibility for the consequences of these decisions. Nor should the private sector when it is granted decision-making authority over public resources by governments.

It is evident that accountability and responsibility for decision-making over public resources and other public goods have been seriously eroded in Ontario over the past few years. Major legislative and institutional reforms are necessary to deal with this situation.

The Legislature

> *(the House of Commons is) far more than a creature of the constitution; it is central to it and the single most important institution of our free and democratic* system of government.
> *Federal Court of Canada*, 1986[76]

As the assembly of the public's elected representatives, the Legislature stands at the centre of the accountability structure with respect to the management of the province's public goods, such as its environment and natural resources, and the protection of the health and safety of its residents. However, its role has been significantly weakened by the use of enabling legislation, while changes to its procedural rules have severely limited opportunities for debate on legislation.[77]

Over the past decade, a number of measures have been taken to strengthen the capacity of the federal House of Commons to oversee the activities of the federal government, and re-assert the ultimate responsibility of the cabinet and bureaucracy to Parliament.

In 1986, for example, the House of Commons Standing Orders were amended to give the House the power to disallow the repeal, amendment or establishment of regulations by Ministers or the cabinet.[78] In 1988, the Ontario Legislature's Standing Committee on Regulations and Private Bills made a recommendation that a similar power be established in Ontario.[79] Over the past four years, the establishment of such a mechanism is especially important in light of the extent of the use of enabling legislation, giving the cabinet and individual ministers the power to effectively amend legislation through regulations.

Recommendation:

1. The Rules of Procedure of the Legislature should be amended to permit the disallowance of the introduction, amendment or repeal of regulations, as per the 1988 recommendations of the Standing Committee on Regulations and Private Acts. The use of omnibus bills, making unrelated substantive amendments to more than one statute, should be barred.

At the federal level, the 1986 amendments to the House of Commons Standing Orders also provided the standing committees of the House with the power to initiate studies of matters within their jurisdiction, and to require that the government respond to their recommendations within a fixed time period.[80] Over the past decade the Standing Committees of the House of Commons have made extensive use of this power. The Standing Committee on the Environment and Sustainable Development has, over the past three years, for example, conducted studies on federal subsidies and tax incentives for environmentally destructive activities,[81] the regulation of biotechnology,[82] and the enforcement of federal environmental laws.[83] These studies have emerged as an important mechanism through which members of Parliament can investigate the activities of government agencies and the substantive details of specific public policies.

In Ontario, Standing Committees of the Legislature are limited to the review of proposed Legislation, and the review of departmental estimates.[84] Policy studies are only undertaken on rare occasions by specially established select committees of the Legislature within terms of reference agreed to by the government.[85] The establishment of a power of the Standing Committees of the Legislature to undertake independent studies could provide an important mechanism through which the Legislature could re-assert its authority over the government.

Recommendation:

2. Following the model of the House of Commons, the Rules of Procedure of the Legislature should be amended to permit the conduct of policy studies by standing committees of the Legislature, and to require the government to table responses to standing committee reports, when requested to do so by the committees.

Changes to the rules of procedure of the Legislature adopted over the past decade have severely limited opportunities for review and debate of legislation prior to its passage.[86] These changes have seriously undermined the key functions of the Legislature. Legislative debate is intended, among other things, to ensure that the public is informed of the content of the government's initiatives, and that members of the Legislature have the opportunity to consider the implications of the authority that the government is requesting before it is granted.

There has been no major review of the Legislature's rules and functions since the work of the Commission on the Legislature in the early 1970s. The Commission was established in 1972 and delivered five reports between 1973 and 1975.[87] Given the period of time that has passed since the original Commission's work, and the erosion of the effectiveness of the Legislature as a forum for accountability and debate over the past few years, consideration should be given to conducting a formal, independent review of the procedures, functions and structure of the Legislature as soon as possible.

Recommendation:

3. An independent commission should be established to conduct a review of the procedures, functions and structure of the Legislature.[88] The Commission should present its report and recommendations within one year of its establishment. Its mandate should recognize deliberation as the central function of the Legislature, and that other interests, including governmental convenience, are secondary.

Legislation and the Rule of Law

A central feature of the past four years has been the erosion of the principle of the rule of law in Ontario. The essence of this principle is that the executive (i.e. the Premier, Cabinet, individual ministers and the bureaucracy) can only act within the bounds of the authority granted to them by the elected members of the Legislature through the legislation that they enact.

Recommendation:

Two statutes should be adopted to address this problem:

4. A "Rule of Law Restoration Act" should be enacted to remove from legislation enacted over the past four years all:

    - crown immunity clauses;
    - clauses stating that regulations can override the provisions of statutes;
    - clauses exempting the making of regulations, guidelines or policies by the Lieutenant Governor in Council, Ministers and Agencies, Boards and Commissions from the requirements of the *Regulations Act*;
    - clauses permitting the setting of tax rates by the Minister of Finance or Lieutenant Governor in Council, rather than the Legislature;
    - legislation permitting the alteration of statutes, for any reason, without the approval of the Legislature; and
    - clauses permitting the delegation of decision-making powers to persons who are not public entities or officials.

5. A "Government Accountability Restoration Act" should be adopted to apply the requirements of the *Environmental Bill of Rights*, *Ombudsman Act*, *Freedom of Information and Protection of Privacy Act*, *Audit Act, Environmental Assessment Act* and *French Language Services Act* to all delegated regulatory organizations such as the Technical Standards and Safety Authority, other private or non-governmental organizations to whom provincial governmental functions or decision-making authority have been delegated, and corporations in which the Crown in Right of Ontario is the primary or sole shareholder. Provision should be made to enable responsible Ministers to give policy direction to these entities in a manner similar to section 10 of the *Power Corporation Act*.

Regulations and the Regulatory Process

The extent to which legislation has been amended over the past four years to provide enabling authority to the cabinet and, in some cases, even individual Ministers to make regulations dealing with virtually every matter within the scope of each statute requires significant changes to the regulatory process to ensure public accountability.

Currently, only proposed regulations or amendments to regulations dealing with matters affecting the environment are subject to requirements for public notice and a minimum public comment period of 30 days under the province's *Environmental Bill of Rights*. Amendments to the *Regulations Act* to require the provision of public notice and public comment periods on all proposals to introduce, amend or repeal regulations were recommended by the Legislature's Standing Committee on Regulations and Private Bills in 1988.[89] This has been required by statute in Quebec since 1986,[90] and by policy at the federal level since the late 1970's.[91]

Recommendation:

6. The *Environmental Bill of Rights* model of a public registry, and notice and public comment period requirements should be extended to all proposals to introduce, amend or repeal regulations and major public policies through amendments to the *Regulations Act*.

Cost/Benefit Tests, Resource Accounting and Subsidies for Environmentally Unsustainable Development

> *I am not persuaded that the massive process of evaluation, the cost benefit analysis of regulation and the whole bureaucracy that has been set up in the federal sphere is what the province needs at all.*
> Prof. Hudson Jarisch, University of Toronto, to the Standing Committee on Regulations and Private Bills, Legislative Assembly of Ontario, 1988.[92]

The "Regulatory Impact and Competitiveness" test for proposed new regulations adopted by the province in 1997 is inconsistent with the practices of other jurisdictions, and is a significant barrier to the adoption of new measures required to protect public safety, public health and the environment. It also fails to consider fully the environmental, health and social benefits associated with such measures. This more general problem with formal cost-benefit tests was highlighted by the House of Commons Standing Committee on the Environment and Sustainable Development in its May 1998 report on environmental law enforcement.[93]

At the same time, the government has failed to act on long-standing recommendations from the Environmental Assessment Advisory Committee[94] and other bodies[95] that environmental assessments of proposed government policies and programmes be conducted prior to their adoption. The federal cabinet adopted a policy requiring the environmental review of proposed programmes and policies in 1990.[96]

Recommendations:

7. The Red Tape Commission's "Regulatory Impact and Competitiveness" test for new regulations should be withdrawn.

8. A new policy regarding the introduction, amendment or repeal of major regulations, policies and programmes should be adopted by the Government of Ontario. This should emphasize the achievement of net gains to the social, economic and ecological sustainability of Ontario society.[97]

The government of Ontario has also failed to keep up with recent trends towards the more complete accounting of the state of natural resource stocks, and environmental liabilities and deficits in measuring the state of the province's economic, social and environmental health. At the federal level, the Office of the Auditor General, and the newly established Office of the Commissioner for Environment and Sustainable Development have tabled a number of reports on these types of matters over the past few years.[98]

Recommendation:

9. The *Audit Act* should be amended to include reporting on status, condition and management of the province's natural resources, and on environmental liabilities and environmental deficits in the mandate of the Provincial Auditor.

In addition, the province has failed to examine the potential negative environmental and health impacts of its subsidies, tax expenditures and similar programmes. The potential impacts of such programmes were highlighted by the House of Commons Standing Committee on the Environment and Sustainable Development in its December 1995 report on the subject.[99] The Land Transfer Tax Rebate programme, for example, provides a strong incentive for the purchase of newly constructed homes. These are typically in new subdivisions. Consequently, the programme, as currently structured, promotes urban sprawl, with its accompanying environmental and infrastructure costs.[100]

Recommendation:

10. The provincial government should establish an independent task force to review provincial subsidies, grants, tax incentives and other provincial fiscal programmes to identify barriers and disincentives to sound environmental practices.

Freedom of Information

> *The three main objectives of freedom of information legislation are to create openness in government, strengthen government accountability, and provide an opportunity for public participation.*
>
> Ann Cavoukian, Ph.D., *Ontario Information and Privacy Commissioner, Annual Report 1997.*

The implementation of the Bill 26 amendments to the FOIPPA and MFIPPA has resulted in significant economic barriers to public access to information held by provincial and local government agencies. The recommendations of the Standing Committee on the Legislative Assembly's 1991 and 1994 reviews of the Acts also remains unaddressed.

Recommendation:

11. Amend the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* to:

    - remove the authority of the heads of agencies to deny access to records on basis that requests are "frivolous and vexatious." This should be replaced with a provision permitting the Freedom of Information Commissioner to authorize an agency or

institution to disregard a request for access on the basis that the request is frivolous or vexatious;[101]

- provide that the first two hours of search time in response to an information request be without cost;

- provide that a fee of not more than $5 be levied when access decisions are appealed.

12. The FOIPPA should be amended to:

- limit the exemptions from the Act contained in sections 12 to 19 as recommended by the Standing Committee on the Legislative Assembly;[102] and

- place the onus on agencies denying access to a record on the basis of the exemptions provided in sections 13, 14, 15, 17, 18, 20 and 21 of the Act, that there is a "compelling public interest" in denying access.[103] The public interest override provision should be extended to section 12 (cabinet deliberations) of the Act.

The remaining recommendations made by the Standing Committee on the Legislative Assembly on the FOIPPA and MFIPPA should also be acted upon.

Finally, the exemption from the requirements of the FOIPPA provided through the Bill 26 amendments to the *Mining Act*, with respect to financial assurances and mine closure, should be removed from that Act.

Recommendation:

13. Section 145 of the *Mining Act*, as amended through Bill 26, should be deleted.

Appointments to Agencies, Boards and Commissions

A number of appointments to key agencies, boards and commissions charged with the protection of environmental resources, and the review of government environmental decisions have raised serious concerns over conflicts of interest and the qualifications of appointees.

Recommendation:

14. Legislation should be adopted regarding appointments to regulatory agencies, boards and commissions. This should provide that:

- proposed appointments, including those to quasi-judicial tribunals, be reviewed by a committee of the Legislature prior to their establishment;
- the terms for appointments should be fixed, not at pleasure, with removal only for cause;

- there be strict conflict of interest requirements forbidding the appointment to that body of individuals employed by, or who have represented, economic interests within the jurisdiction of a regulatory body within the past five years; and
- appointments of former ministers or officials of agencies within the jurisdiction of regulatory bodies be prohibited for five years after their departure from the agency; and
- independent advisory committees be established to provide nominations for appointments to regulatory tribunals, similar to the system that was been created for provincial court judges.[104]

Independent Advisory Bodies

The elimination of independent advisory bodies over the past few years has significantly weakened the processes for the development of legislation, regulations, policies and programmes related to the environment, natural resources management and other fields. Their removal has also reduced the capacity of the legislature and the public at large to hold the government to account for its actions and policies, particularly in complex areas of public policy, like environmental protection and law reform.

Recommendation:

15. The Minister of the Environment should establish the Environmental Council, provided for by Part VI of the *Environmental Protection Act*, to advise the Minister on the results of current research related to pollution and the natural environment, and other matters affecting the quality of the environment.

16. The Government of Ontario should establish an independent commission to inquire into and consider any matter relating to:
    - the reform of the law having regard to the statute law, the common law and judicial decisions;
    - the administration of justice;
    - judicial and quasi-judicial procedures under any Act; or
    - any subject referred to it by the Legislature or the Attorney-General.

Election Finance and Government Advertising

Major concerns have been raised regarding regarding recent changes to the *Election Finances Act* to reduce controls on election spending. The use of public funds by past and present governments for what has been seen by many to be partisan political advertising outside of the election and party financing framework has also emerged as a significant issue.

Recommendation:

17. Legislation should be adopted requiring that all government advertising be reviewed by the Legislative Assembly's Integrity Commissioner to ensure that it is informational, rather than partisan in nature. Party and election finance issues should be included in the mandate of the Commission on the Legislative Assembly proposed under Recommendation 3.

Strengthening Local Democracy

Despite their difficult relationship with the province over the past few years, local governments have demonstrated themselves to be a source of innovative programmes and initiatives to improve environmental quality in a wide range of areas. These have included water use and sewage treatment, waste management and recycling, energy efficiency, air quality and land-use. There are a number of measures that should be adopted by the province to strengthen the capacity of local governments to improve the health and environment of their residents.

Recommendation:

18. The *Municipal Act* should be amended to ensure openness in municipal government processes and the functional operation of municipal councils.[105]

19. The *Municipal Act* should be amended to expand the authority of municipal governments to act on environmental matters.[106] The Province should be prepared to provide support for such initiatives through the provision of information and technical assistance and support.

20. The *Municipal Act* should be amended to forbid amalgamation or dissolution of municipalities without the consent of the affected councils.

A PROVINCIAL CONSTITUTION

The concept of a formal, written provincial constitution has been proposed as a way of enshrining principles and institutions for democratic government in Ontario including such things as:

1. Requiring that taxation rates be set by the Legislature, not the Minister of Finance or cabinet;

2. Recognition that deliberation is the central function of the Legislature, and that other interests, including governmental convenience are secondary;

3. Recognition that Northern Ontario must have adequate representation in the province's governing structures; and

4. Protecting the autonomy of municipalities against dissolution or amalgamation against their will.

Source: R.Vipond, "To corral a runaway government," *The Globe and Mail*, December 10, 1997.

Aboriginal Peoples

The relationship between aboriginal peoples and the government of Ontario has deteriorated significantly over the past few years, particularly as a result of the Ipperwash incident, and the "Lands for Life" process.

Recommendation:

21. The Government of Ontario should re-affirm its commitment to its 1991 Statement of Political Relationship with the province's First Nations and aboriginal peoples.

Private Sector Accountability for Public Resource Management

> *As government backs away from the economy, then I think it's not unreasonable for the private sector to be more accountable.*
> Senator Michael Kirby, Chair, Senate Committee on Banking, Trade and Commerce, 1996[107]

The accountability of private sector actors to the public has not expanded in a manner that corresponds to their increased role in the management of the province's public resources. There are a number of measures that could be adopted to address this gap. Steps to improve public and community access to information about the environmental impacts of economic activities are described in a number of chapters of this document, including Waste Management, Air Quality, and Water.

In addition, consideration should be given to amending the *Business Corporations Act* to require that provincially incorporated firms include information on the environmental aspects of their operations in their annual reports. Amendments of this nature were raised as a possibility for federally incorporated firms through the relevant federal legislation by Industry Canada in its December 1997 Sustainable Development Strategy.[108] The United States Securities Exchange Commission, for its part, has established a publicly accessible electronic inventory of environmental and health and safety information on publicly traded companies in the United States.[109]

Recommendation:

22. The *Business Corporations Act* should be amended to require that provincially Incorporated firms provide in their Annual Reports to shareholders information on:

    - violations of federal, provincial or municipal laws related to the protection of the environment, public health, public safety, or occupational health and safety, including the disclosure of fines and penalties, compensation payments and out-of-court settlements, over the reporting year;

- releases or transfers of pollutants from any facilities owned or operated by the corporation over the reporting year;

- total amounts, composition and fate of hazardous wastes generated by all facilities owned or operated by the corporation over the reporting year;

- total amounts, composition and fate of non-hazardous municipal solid waste generated by all facilities owned or operated by the corporation over the reporting year;

- emergency planning and risk management; and

- existing and potential future environmental liabilities.

23. Following the model of the United States Securities Exchange Commission, the Ontario Securities Commission should establish an electronically accessible inventory of the foregoing information for publicly traded companies in Ontario.

Over the past few years, a number of organizations have sought to strengthen the ability of shareholders in corporations to submit proposals at annual meetings regarding the operation and management of the corporations of which they are partial owners. This has included the environmental and social dimensions of company activities. The current provisions of the *Business Corporations Act* have been identified as containing potential barriers to such initiatives.[110] Concerns have also been raised regarding the inability of contributors to public sector pension funds to influence the social, environmental or ethical character of investments made by fund trustees.

Recommendation:

24. The *Business Corporations Act* should be amended to facilitate the presentation of shareholder proposals regarding the governance of corporations incorporated in Ontario, in a manner consistent with the recommendations of the Canadian Friends Service Committee with respect to the *Canada Business Corporations Act*.[111]

25. Legislation should be enacted to permit the contributors to public sector pension funds to give policy direction to pension fund trustees regarding the character of the investments which they make.

Environmental management issues within facilities are often closely related to occupational health and safety matters. Workers have the potential to play a significant role in ensuring the environmentally sound conduct of economic activities. The 1993 *Environmental Bill of Rights* provided protection to employees who report suspected violations of environmental laws by their employers. The rights of workers with respect to environmental issues should be further strengthened in a number of ways.

Recommendation:

26. The *Occupational Health and Safety Act* should be amended to provide a right to refuse environmentally damaging work, and to require the establishment of joint employee/management workplace environment committees, similar to the existing requirements for joint health and safety committees.

The potential accountability of private sector actors for their environmental performance was weakened significantly by the adoption of a wide-ranging policy on audit privilege by the Ministry of Environment and Energy in November 1995.[112] The policy states that the Ministry will not request information from self-initiated evaluations by regulated entities, except in exceptional circumstances. The Ontario policy has been widely criticized as being excessively broad in terms of the information that it protects, to the point of having the potential to undermine ongoing environmental law enforcement activities and lead to a decline in compliance.[113]

Recommendation:

27. The Ministry of the Environment's Guideline and Policy on Access to Environmental Evaluations should be revised to significantly narrow the types of information covered by the policy and the protection from prosecutions provided through it.[114]

Environmental information and Community Right to Know

The erosion of environmental science and monitoring activities in Ontario, and the termination of many of the province's environmental reporting activities raise serious questions about the ability of the public to understand the state of the province's environment, and to evaluate the impact of government decisions regarding its protection. Communities have a fundamental right to know about activities that place their safety, health and environment at risk. A range of specific measures in this regard is proposed in the relevant chapters of this document. In addition to these steps, several wider cross-cutting measures should be considered.

Recommendations:

28. The provincial government should commit to providing a comprehensive state of the environment report for the province every two years. This should include information on environmental quality, the status of natural resources, including biological diversity. Reporting activities should be linked to the development of sustainability objectives and indicators by the provincial government.

29. The *Environmental Bill of Rights* should be amended to permit the Office of the Environmental Commissioner to comment on the adequacy of the provincial government's state of the environment reports, the sustainability objectives and indicators established by the provincial government, and the impact of government decisions on the state of the province's environment and natural resources.

30. The province's major environmental and natural resources management statutes should be amended to require tabling of annual reports to the Legislature on the administration and enforcement of these Acts.[115]

31. The provincial government should commit to major re-investments in the province's environmental and natural resources science and monitoring capacity. Needs related to the fulfillment of provincial obligations to other levels of government (federal, municipal, and international) should be a high priority in this regard.

PART 2 - DEMOCRATIC PRINCIPLES AND ACCOUNTABILITY WITHIN SPECIFIC STATUTES

Introduction

Part I of this chapter addressed the broad issues of democracy and political accountability dealing with topics such as the rule of law, the appointment process, and access to information. This Part is more specific in that it reviews the need to reform a number of important environmental laws to further the principles of access to decision-making and accountability. Recent legislative and policy changes have adversely affected the extent to which these principles may currently be realized. These changes have had profound impact on the ability and capacity of Ontarians to access decision-making processes to protect the environment. The details are outlined below, although some of the highlights include:

- The *Environmental Assessment Act* was amended, undermining one of its key requirements - to assess the need for and alternatives to new projects and plans before they are undertaken. Now, the minister and the proponent can negotiate as to what should be included in the assessment as opposed to following legislative requirements.[116]

- On April 1, 1996, the *Intervenor Funding Project Act* was not renewed which, in effect, repealed the Act. The Act provided a mechanism for the public to be funded while appearing before certain tribunals. Now, the public has to secure its own funds, often when other private interest parties are fully funded, to hire lawyers and experts.

- The *Environmental Protection Act* was amended to provide for "standardized approvals." Standardized approvals are not really approvals at all. Rather, small facilities will simply send in paperwork indicating that they comply with a general regulation. Hence, no one will know what the facility is doing and it will be difficult to monitor compliance with the regulation. Also, the facility would be exempt from the public notice and comment rights (along with other rights) provided by the *Environmental Bill of Rights*.[117]

- The *Environmental Bill of Rights* 1993, has not been amended, but a number of initiatives have weakened the implementation of the law.

Environmental Assessment

Environmental assessment (EA) is an environmental planning and decision-making procedure that analyzes proposed projects early on to identify and evaluate their environmental and social impacts. In the past, the rigor of the EA process has often helped to ensure that informed choices are made about proposed undertakings with the result being that environmentally unsound projects are rejected outright, and that other projects are carried out only under appropriate terms and conditions. Thus, the EA process plays an important role in holding governments accountable for their decisions to proceed with certain projects. It also enables those who will be affected by these projects to participate in the decision-making process.

Ontario's *Environmental Assessment Act*[118] (EAA) was first passed in 1975. The Act remained unchanged for over twenty years before being substantially amended in 1996.[119] Before being amended, Ontario's act was considered one of the most comprehensive in Canada because its legislated requirements forced a proponent to examine a broad range of factors in demonstrating that a proposal was environmentally sound, and most notably, whether there is a need for the project or whether there are alternatives to it. Now these legislated requirements may be varied on a project by project basis. The removal of this critical component means that Ontario can no longer uphold its claim of having one of the most comprehensive environmental assessment regimes.

The EAA only applies to public sector projects, those carried out by government agencies or crown corporations, and a few private sector projects that are specifically designated by regulation or Order-in-Council. Furthermore, many public sector projects are exempt from the requirements of the Act. However, those projects that are subject to the act require an EA approval before they may proceed.

The EA process is now a two-step procedure. The first step involves the proponent of the project submitting a proposal to the Minister of the Environment setting out the nature of the project and suggesting the scope of study that is appropriate in evaluating its environmental impacts. This new step is known as setting the terms of reference (TOR). Once approved, the TOR defines the range of factors that must be considered by the proponent in its EA study. While the Act lists specific criteria that should generally be considered in an EA, the Minister is empowered to vary these criteria on a case by case basis, including limiting what factors may apply. In effect, what goes into the environmental assessment document is negotiated between the minister and the proponent.

Once the proponent has completed the necessary research, studies and impact analysis of the project, it submits the EA document to the Minister for approval. The Minister may then either approve or reject the EA. Alternatively, the Minister may refer the matter to the EA Board to hold public hearings and make an independent decision on the merits of the proposal, or refer the matter to mediation. In either event, the Minister retains the power to overturn or alter a decision of the Board or Mediator as deemed appropriate.

Elements of an Effective EA Regime

EA became popularized in 1969 with the passing of the *National Environmental Policy Act* in the United States. Since that time, EA has been introduced into many different jurisdictions throughout North America and the world. Almost thirty years of experience has resulted in some degree of consensus as to what constitutes an effective EA regime.[120] The most important facets include:

- it is a mandatory and independent process;
- the process is applied universally to all projects unless specifically exempted from the requirements through an open and fair manner;
- the essential elements are considered, including a project's purpose, the need for the project, alternatives to the project, alternative methods of carrying out the project, an analysis of the environmental impacts of each of the alternatives, and mitigation measures;
- there are clear and prescribed criteria to guide decision-making at all stages of the process;
- members of the public have meaningful opportunities to participate throughout the various decision-making stages;
- the EA process is carried out in a timely and efficient manner; and
- monitoring and other follow-up activities are carried out to ensure that a proponent is complying with the terms and conditions of the decision.

Ontario's amended EA process fails to meet these minimum requirements. The particular weaknesses and deficiencies are outlined below.

Issues for EA Reform In Ontario

Application of the Act and Exemptions: The EAA does not apply to private sector proposals, except in rare instances when specific projects are designated by the Minister. Although the statute generally applies to all public sector projects, there is a broad list of exempted government agencies and projects. A particular public sector project may also be exempted from the requirements of the Act according to very broad and vague criteria and without public notice or comment requirements. Furthermore, the decision whether to exempt a project lies solely within the discretion of the Minister of the Environment.

For example, virtually all of the activities relating to the development of the nuclear industry in Ontario have been exempt from the EAA. These exemptions were not undertaken with full public consultation or the benefit of a broad public debate. More recently, the Taro landfill site, which is located in close proximity to the Niagara Escarpment, was granted an EA approval

without a hearing despite the fact that landfills have historically always been subject to a hearing and that there were numerous requests for a hearing in this case.[121]

Recommendation:

32. The *Environmental Assessment Act* should be amended in that:

> (a) the Act should apply to all environmentally significant public and private sector proposals;
>
> (b) an exemption from the requirements of the EAA should only be granted pursuant to clearly articulated statutory criteria and after there has been public comment on the proposed exemption; and
>
> (c) exemption requests should be scrutinized by an independent body for a recommendation to the Minister.

Essential Elements of an EA and the Terms of Reference: In the past, Ontario's EA Act mandated that a specific list of factors be examined in evaluating a proposal. This forced a proponent to demonstrate that a project was environmentally sound by considering: the need for and purpose of the project, alternatives to the project, alternative methods of carrying out the project, a detailed analysis of the environmental and social impacts of each of the alternatives, and means by which the environmental impacts could be mitigated. These essential elements are no longer required under the current act. As described above, each undertaking is evaluated according to its own, separate terms of reference (TOR), which establish the size and scope of the EA process. The contents of an EA listed in the Act are no longer binding and may be varied by the TOR. Thus, it is wide open for each proponent to define the scope of the project as they see fit.[122] Furthermore, the decision as to whether to approve the terms of reference lies solely within the discretion of the Minister of the Environment, again without reference to any criteria. The entire TOR process is thus arbitrary and inconsistent with the principles of accountability.

Recommendation:

33. All environmental assessments should be conducted pursuant to legislated criteria, which must include the purpose of, need for, and alternatives to the proposal. If Terms of Reference are to be developed, they should only be used to clarify the legislative criteria as it applies to that specific undertaking. The development of the Terms of Reference must involve public consultation.

EA Approval and Board Hearings: The decision as to whether to approve an undertaking under the EAA must be transparent and traceable. Under the current Act, the Minister is granted a broad range of discretion as to whether to approve an undertaking, refer the matter to mediation, or refer the approval, in whole or in part, to a hearing board with imposed timelines. The Minister may similarly deny a request to hold a hearing by a Board from a member of the public. Moreover, the Minister may unilaterally override the decision of a hearing Board. This broad range of discretion results in uncertainty and ambiguity and opens up the possibility of

arbitrary decisions being made. In contrast, the decision should be follow an open and fair process, with reasons based upon clearly articulated criteria.

The discretion embodied in the Minister is illustrated by two recent EA proposals: the Adams Mine Landfill and the Quinte West Landfill. The Adams Mine Landfill is a megaproject, projected to involve 20 million tonnes of garbage, which is to be shipped by rail over 600 kilometres and dumped into an abandoned mine pit in Northern Ontario. Despite the enormous implications this proposal has on waste reduction initiatives and energy use, the hearing was limited in scope to one narrow issue - whether the hydraulic containment system was adequate to protect the surrounding groundwater. There was never any public debate as to the need for this project or alternatives to it. By contrast, the Quinte West Landfill, which, although environmentally significant, is a modest proposal in comparison to the Adams Mine project, has been subjected to a full scale hearing involving all the traditional issues. This inconsistent application of the Act undermines its credibility and effectiveness.

Recommendation:

34. Decisions as to whether to approve the undertaking, refer the matter to mediation, refer the matter to a hearing board, or alter the board decision should be made with reference to clearly articulated criteria.

Public Consultation and Independent Review: Although the EAA currently provides for public consultation, the requirement is very generally worded.[123] Neither the Minister nor the Assessment Board is explicitly required to consider the extent or effectiveness of the proponent's consultation in approving the EA, suggesting that there are no ramifications to the proponent if meaningful consultation is not carried out. Public participation should be clearly stipulated to require early and meaningful consultation throughout the EA process, require timely and appropriate notice provisions well before all key decision-making points, ensure free access to all relevant information, and provide for participant and intervenor funding (discussed in more detail elsewhere in this paper).

Recommendation:

35. Early and meaningful public consultation must be required throughout the EA process, including timely notice provisions, free access to relevant information, and the provision of participant and intervenor funding where appropriate. There must be ramifications for the proponent in terms of receiving an approval if effective public participation is not provided for.

Timely and Efficient Decision Making: In the past, some environmental assessment processes have taken an inordinate amount of time to complete, although some delays may be attributed to a proponent's own activities. Realistic and fair timelines should be implemented to ensure that the EA process proceeds in a timely manner. At the same time, it must be recognized that a thorough and comprehensive review is a fundamental part of an environmental assessment. This review requires adequate time to be conducted effectively, which may include a hearing in many instances.

Recommendation:

36. Realistic timelines that are fair to all parties and allow for a thorough and comprehensive review of the EA should be implemented to ensure that the EA process proceeds in a timely manner.

Class Environmental Assessments: A class environmental assessment provides a streamlined approval process for those activities that are similar in nature and occur frequently, such as minor road widenings or sewage treatment plant expansions. The class EA process is only appropriate for those activities that can be characterized as minor and have insignificant, predictable, and mitigable impacts on the natural environment. However, the EAA does not restrict a class EA approval to these types of projects. Furthermore, there needs to a be a statutory requirement to include a "bump-up" provision to enable a class EA to be turned into a full scale individual EA in those situations where the environmental impacts of a proposal do not meet the class EA criteria. Finally, the initial approval of the class EA must comply with all the requirements for an individual EA.

Recommendation:

37. The approval of a class EA must be carried out in accordance with that of a full individual EA. Class EA's must be limited by statute to minor activities that have insignificant, predictable, and mitigable impacts on the environment. Furthermore, there needs to be a statutory requirement to include a "bump-up" provision in all class EA's.

Taking EA the Next Step: An effective EA process would include additional features that have never been included in or properly practised under the EAA. It would require follow-up and effectiveness monitoring to ensure that the proponent is complying with the approval. It would also provide for a mechanism of applying the EA process to government policies and programmes that may have significant implications for the natural environment. A further important requirement is the need to address cumulative and synergistic effects during the analysis stage. Finally, there is a need to maintain a degree of objectivity throughout the process. An independent advisory council, much like the former Environmental Assessment Advisory Committee consisting of individuals with experience in the field of EA, should be constituted to advise the Minister when appropriate.

Recommendation:

38. The EAA should be amended to add the following features:
    (a) a requirement for follow-up and effectiveness monitoring;
    (b) a mechanism to evaluate government policies and programs;
    (c) inclusion of consideration of cumulative and synergistic affects; and
    (d) the establishment of an independent advisory council to assist the Minister.

Intervenor Funding

Intervenor funding provides funds to individuals and groups so that they can participate effectively in decision-making processes. The funding is generally spent to hire scientific and legal experts to assist participants with their case and cover other disbursements. This levels the playing field to some extent, ensuring that one side is not restrained from presenting its arguments fully simply due to a lack of financial resources. The cost of intervenor funding is usually borne by the proponent.

Experience demonstrates that intervenor funding ensures the integrity and soundness of the decision-making processes. It also increases efficiency. With proper resources, parties are able to scope or settle issues in dispute at the pre-hearing stage, or even settle upon agreed-to conditions of approval, dispensing with the need for a hearing altogether. In those instances when a hearing is necessary, represented parties enable the process to run more smoothly and provide decision-makers with the information they need to make a best decision in the public interest.

Ontario previously had an *Intervenor Funding Project Act*, but it expired in April of 1996 and was not renewed. However, the Act only provided funding in limited situations, such as matters before the Environmental Assessment Board, the Ontario Energy Board and the Consolidated Hearings Board.

Recommendation:

39. Intervenor funding should be renewed to enable individuals and groups involved in environmental decision-making procedures to participate effectively. Funding should be borne by the proponent and should apply to a variety of decision-making processes, and at least to the Environmental Assessment Board, the Environmental Appeal Board, the Ontario Energy Board, the Ontario Municipal Board, the Consolidated Hearings Board, among others.

Environmental Approvals

The primary means of regulating pollution control in Ontario is through issuance of permits under environmental legislation such as the *Environmental Protection Act* and the *Ontario Water Resources Act*. These statutes contain a general prohibition clause that restricts certain activities unless the actor acquires the necessary permit first. The permits are only issued if the actor can demonstrate that their operation will comply with predetermined standards. Penalties and sanctions back the permit provisions if an operator fails to obtain a permit or breaches its conditions.

To be effective, the permit system depends upon proper standards being set. Standards must be set in an objective and open manner to ensure that pollution discharges will not adversely affect the environment and human health. They should also be based upon sound science and the precautionary principle. Furthermore, standards should reflect the needs of sensitive populations in our society, such as the elderly, aboriginal peoples, children, and wildlife.

The government must adequately scrutinize applications for permits. Proposals that have the potential to adversely affect the environment must be given strict terms and conditions to ensure that these effects are mitigated, or the proposal must be rejected outright. Furthermore, this review process plays an important proactive role in identifying potential means of further reducing pollution output.

In certain limited circumstances, it may be appropriate to dispense with the licensing system and employ a "permit by rule" or "standardized approval" process. This system entails exempting operators from obtaining a permit if they can demonstrate that their operation falls within prescribed standards. The onus shifts from the government to the operator to ensure that the operation complies with the standard. However, standardized approvals are only appropriate for activities that are simple and routine and have only very minor impacts on the natural environment and human health. Furthermore, there must be an adequate auditing system in place, backed by necessary sanctions, to ensure that operators are meeting the prescribed standards.

Limited experience with some laws and regulations that have incorporated the "permit-by-rule" has already provided an indication of the potential problems with this approach. For example, some 3Rs regulations exempt recyclers from obtaining an approval if they meet the prescribed conditions. It was this regulation that applied to Plastimet Inc. in Hamilton. There, over 400 tonnes of PVC plastic caught on fire, burning for four days and spreading toxic chemicals into the environment. Similarly, there have been numerous occurrences of unregulated tire dumps catching on fire.

Standardized approvals were a main thrust behind Bill 57, a bill to amend the *Environmental Protection Act*. The amendments allow for the development of a more comprehensive standardized approval regime for air, water and waste approvals, although the implementing regulations have yet to be promulgated. Potentially, hundreds, if not thousands, of approvals would no longer be required. Moreover, because those approvals would no longer be required, the requirements under the *Environmental Bill of Rights* that otherwise would be required would no longer apply.

Recommendation:

40. The basic prohibition on pollution discharges without a permit should be maintained. Permits should only be issued if it can be demonstrated that there will be no adverse effect on the natural environment. Standards must be set in a fair and open manner, on the basis of sound science and the precautionary principle, and reflect the needs of sensitive populations, especially children.

The government must scrutinize applications for pollution permits adequately to ensure there will be no adverse effect to the environment. Standardized approvals may be appropriate for activities that are simple and routine and have only very minor impacts on the natural environment and human health as long as an adequate auditing scheme is also put in place. The development of standardized approvals must be undertaken with full public participation.

Environmental Monitoring, Compliance, and Enforcement

A law is of little value unless it is enforced. There must be a realistic threat that a potential violator will risk prosecution if we are to ensure that operators comply with the law. One study indicates that the primary motivating factor behind companies implementing environmental protection measures is to comply with environmental regulations.[124]

Government inspectors, abatement officers, investigators, and prosecutorial staff are all needed to carry out enforcement activities. The government must ensure that there is adequate trained staff and resources to carry out these activities. The public must also be able to access information regarding compliance with environmental laws.

Recommendation:

41. The government must ensure that there is adequate trained staff and resources to carry out environmental enforcement activities effectively. The investigations branch should resume publishing enforcement statistics on an annual basis.

Environmental Bill of Rights

The *Environmental Bill of Rights* (EBR) was passed in 1993, giving the people of Ontario the right and the tools to become involved in government decisions that affect the environment. The provisions of the EBR increase government accountability and ensure the public's right to participate in environmental decision-making. Some of the key rights include:

- the right to receive notice of proposed decisions (such as new approvals, policies, regulations and statutes) through the environmental registry and have the opportunity to voice one's concerns about those proposed decisions;

- the right to apply to have existing approvals, policies, statutes and regulations reviewed to determine whether there is a need to update them;

- the right to request leave to appeal the granting of certain instruments;

- the right to apply for an investigation if the person thinks someone is violating an environmental statute;

- the right to sue in civil courts for a breach of an environmental law; and

- the right to blow the whistle on an employer without the threat of reprisal.

Also, the EBR established the Office of the Environmental Commissioner of Ontario, an independent agency that monitors the government's environmental performance and reports directly to the Legislature.

The Environmental Commissioner's Office: The Environmental Commissioner's Office is vital to ensuring that the spirit of the EBR is followed by the various government ministries. The ECO is akin to an environmental ombudsman. In order to be effective, the ECO office must maintain a degree of independence from the government. It must also be given sufficient financial and human resources to carry out its mandate effectively.

Recommendation:

42. The Environmental Commissioner's Office should be maintained and continue to report directly to the legislature. The ECO must be given sufficient funding and resources to carry out its mandate effectively.

The Environmental Registry: An important aspect of the EBR is the Environmental Registry. The registry is an electronic service that provides access to information regarding environmentally significant activities by the government, including notice of all proposed laws, regulations, and policies, and publication of all environmental approvals that are designated, such as certificates of approval issued under the EPA. The registry thus provides an important conduit for the public to obtain information on environmental decision-making.

The registry is currently an internet based service. It lists all laws, policies, and approvals. Despite its clear benefits and vast improvement over the practices prior to the EBR, the registry can be improved. The brief summary that is included with each posting is too abbreviated to be of much use to most users. The registry needs to be made more user friendly by providing means of searching postings by geographic location, type of instrument, and type of proponent. Very significant proposals could also be flagged and brought to the attention of users in a variety of ways.

Recommendation:

43. While the environmental registry provides an invaluable service, it could be improved by providing a wide range of searching options and ensuring that accurate precise summaries are included for each posting.

Requests for Review and Investigations: Two essential elements of the EBR are the request for review and request for investigation provisions, which force the government to address a citizen's concerns with a perceived environmental problem. These instruments are being compromised in that there is no requirement that the government staff or agency that conducts the review or investigation is different from the one that made the original decision.

Furthermore, the ECO depends upon concerned citizens to bring issues to its attention before being able to take any action. In some instances, a concerned citizen may fail to raise the issue, either out of fear of becoming involved or lack of connection to the issue. The ECO's mandate should be expanded to enable it to undertake requests for review, requests for investigations, and to comment on proposals affecting legislation and regulations under its mandate in appropriate circumstances.

Recommendation:

44. Requests for review and investigation should be carried out by different government staff or a different department than the staff that made the original decision.

The Environmental Commissioner of Ontario should be able to undertake requests for review, requests for investigation, and to comment on proposals affecting legislation and regulations under its mandate.

Leave to Appeal Provisions of the EBR: The EBR allows a citizen to appeal a decision by a government official where that decision may be unreasonable. Prior to the EBR, only the applicant for an approval had the right to appeal the decision of the governmental agency to a tribunal, such as the Environmental Appeal Board. Under the EBR, a citizen can ask a tribunal for leave or permission to appeal, and if successful, can then appeal the matter.

The test for getting leave is quite onerous, which explains why there have only been three successful attempts under these provisions of the law. These provisions would be significantly improve if there was better clarity as to the test that is required and the kind of information that must be put forth to satisfy the test. In addition, the 15-day deadline for appeal is too short.

Recommendation:

45. The leave to appeal provisions should be clarified to better inform the public as to what information is required to satisfy the test. There should be also some provision for extending the 15-day deadline for filing the leave to appeal.

The Right to Sue: Other instruments under the EBR enable citizens to take action when they have good reason to believe that the environment is being threatened. The EBR creates a remedy that enables a citizen to go to court to obtain a remedy for potential environmental harm, including an injunction where appropriate. Unfortunately, these provisions have not been used with great success since the EBR was proclaimed in 1994.

The provisions include a set of onerous preconditions that must be met before they may be utilized. Experience appears to be demonstrating that these preconditions are too onerous, dissuading citizens from enforcing their rights. These provisions should be reviewed to determine whether the preconditions should be made less onerous in order to encourage citizens to use them more often.

Another provision ensures that a barrier to lawsuits, the old public nuisance rule, no longer applies. The public nuisance rule stated that when a community is affected by an environmental matter as a whole, then no one individual could sue (since the wrong was being committed against the community, not individuals, and as such, only governments could sue). Only two court actions have been initiated using these provisions.

Recommendation:

46. The right to sue provisions of the EBR should be reviewed in order to determine whether the preconditions are too onerous. If so, they should be amended accordingly.

Instrument Classification Regulations: The EBR was phased in over a period of four years. While the Act only applied to the Ministry of the Environment at first, it now applies to several ministries. However, until those ministries promulgate an instrument classification regulation that sets out which provisions of which acts under their jurisdiction will apply to the Act, the scope of the EBR remains extremely limited. Some ministries have been unreasonably slow in developing the required regulations, while others have not included all the required provisions in their proposed regulation. For example, the Ministry of Natural Resources was subject to the EBR on April 1, 1996, and has still failed to pass an instrument classification regulation for statutes under its jurisdiction.[125] This outcome is unacceptable as it leaves the citizens of Ontario without the right to exercise important rights under the Act.

Recommendation:

47. There should be ramifications for ministries that do not promulgate an instrument classification regulation within 1 year. After an extended period of time, the Minister of the Environment should be empowered to impose a classification regulation upon a delinquent Ministry.

Five Year Review of the EBR: The EBR was enacted in late 1993. Hence, it has been five years since it has been in force. In some respects, the law has worked well and in others, it has not. One of the unique features of the law is that it was drafted by a task force representing different interests in society with very clear terms of reference.

For its five-year review, there should be a workshop, with sufficient research, to assess the strengths and weaknesses of the law. This workshop should be sponsored by the ECO. In light of the findings of the workshop, there should be intense consultation, with equal representation from the non-government groups, to assess if the EBR should be updated and what are the most appropriate changes. Terms of reference should be drawn up with the specific mandate to strengthen, and not dilute, the EBR.

Recommendation:

48. The ECO should sponsor a workshop, with appropriate research, assessing the EBR in terms of the past five years. Terms of reference should then be drawn up giving a mandate to a committee made up of equal representatives of public interest groups to strengthen the EBR in accordance with the general findings of the ECO workshop.

SUMMARY OF RECOMMENDATIONS

1. The Rules of Procedure of the Legislature should be amended to permit the disallowance of the introduction, amendment or repeal of regulations, as per the 1988 recommendations of the Standing Committee on Regulations and Private Acts. . The use of omnibus bills, making substantive amendments to more than one statute, should be barred.

2. Following the model of the House of Commons, the Rules of Procedure of the Legislature should be amended to permit the conduct of policy studies by standing committees of the Legislature, and to require the government to table responses to standing committee reports, when requested to do so by the committees.

3. An independent commission should be established to conduct a review of the procedures, functions and structure of the Legislature. The Commission should present its report and recommendations within one year of its establishment. Its mandate should recognize deliberation as the central function of the Legislature, and that other interests, including governmental convenience, are secondary.

4. A "Rule of Law Restoration Act" should be enacted to remove from legislation enacted over the past four years all:
   - crown immunity clauses;
   - clauses stating that regulations can override the provisions of statutes;
   - clauses exempting the making of regulations, guidelines or policies by the Lieutenant Governor in Council, Ministers and Agencies, Boards and Commissions from the requirements of the *Regulations Act*;
   - clauses permitting the setting of tax rates by the Minister of Finance or Lieutenant Governor in Council, rather than the Legislature;
   - legislation permitting the alteration of statutes, for any reason, without the approval of the Legislature; and
   - clauses permitting the delegation of decision-making powers to persons who are not public entities or officials.
   - from legislation enacted over the past four years.

5. A "Government Accountability Restoration Act" should be adopted to apply the requirements of the: *Environmental Bill of Rights*; *Ombudsman Act*; *Freedom of Information and Protection of Privacy Act*; *Audit Act; Environmental Assessment Act;* and *French Language Services Act* to all delegated regulatory organizations such as the Technical Standards and Safety Authority, other private or non-governmental organizations to whom provincial governmental functions or decision-making authority have been delegated, and corporations in which the Crown in Right of Ontario is the primary or sole shareholder. Provision should be made to enable responsible Ministers to give policy direction to these entities in a manner similar to section 10 of the *Power Corporation Act*. **Check Section**

.

6. The *Environmental Bill of Rights* model of a public registry, and notice and public comment period requirements should be extended to all proposals to introduce, amend or repeal regulations and major public policies through amendments to the *Regulations Act*.

7. The Red Tape Commission's Regulatory Impact and Competitiveness test for new regulations should be withdrawn.

8. A new policy regarding the introduction, amendment or repeal of major regulations, policies and programmes should be adopted by the Government of Ontario. This should emphasize the achievement of net gains to the social, economic and ecological sustainability of Ontario society.

9. The *Audit Act* should be amended to include reporting on status, condition and management of the province's natural resources, and on environmental liabilities and environmental deficits in the mandate of the Provincial Auditor.

10. The provincial government should establish an independent task force to review provincial subsidies, grants, tax incentives and other provincial fiscal programmes to identify barriers and disincentives to sound environmental practices.

11. Amend the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* to:
    - remove the authority of the heads of agencies to deny access to records on basis that requests are "frivolous and vexatious." This should be replaced with a provision permitting the Freedom of Information Commissioner to authorize an agency or institution to disregard a request for access on the basis that the request is frivolous or vexatious;
    - provide that the first two hours of search time in response to an information request be without cost;
    - provide that a fee of not more than $5 be levied when access decisions are appealed.

12. The FOIPPA should be amended to:
    - limit the exemptions from the Act contained in sections 12 to 19 as recommended by the Standing Committee on the Legislative Assembly; and
    - place the onus on agencies denying access to a record on the basis of the exemptions provided in sections 13, 14, 15, 17, 18, 20 and 21 of the Act, that there is a "compelling public interest" in denying access. The public interest override provision should be extended to section 12 (cabinet deliberations) of the Act.

13. Section 145 of the *Mining Act*, as amended through Bill 26, should be deleted.

14. Legislation should be adopted regarding appointments to regulatory agencies, boards and commissions. This should provide that:

- proposed appointments, including those to quasi-judicial tribunals, be reviewed by a committee of the Legislature prior to their establishment;
- the terms for appointments should be fixed, not at pleasure, with removal only for cause;
- there be strict conflict of interest requirements forbidding the appointment to that body of individuals employed by, or who have represented, economic interests within the jurisdiction of a regulatory body within the past five years;
- appointments of former ministers or officials of agencies within the jurisdiction of regulatory bodies be prohibited for five years after their departure from the agency; and
- independent advisory committees be established to provide nominations for appointments to regulatory tribunals, similar to the system that was been created for provincial court judges.

15. The Minister of the Environment should establish the Environmental Council, provided for by Part VI of the *Environmental Protection Act*, to advise the Minister on the results of current research related to pollution and the natural environment, and other matters affecting the quality of the environment.

16. The Government of Ontario should establish an independent commission to inquire into and consider any matter relating to:
    - the reform of the law having regard to the statute law, the common law and judicial decisions;
    - the administration of justice;
    - judicial and quasi-judicial procedures under any Act; or
    - any subject referred to it by the Legislature or the Attorney-General.

17. Legislation should be adopted requiring that all government advertising be reviewed by the Legislative Assembly's Integrity Commissioner to ensure that it is informational, rather than partisan in nature. Party and election finance issues should be included in the mandate of the Commission on the Legislative Assembly proposed under Recommendation 3.

18. The *Municipal Act* should be amended to ensure openness in municipal government processes and the functional operation of municipal councils.

19. The *Municipal Act* should be amended to expand the authority of municipal governments to act on environmental matters. The Province should be prepared to provide support for such initiatives through the provision of information and technical assistance and support.

20. The *Municipal Act* should be amended to forbid amalgamation or dissolution of municipalities without the consent of the affected councils.

21. The Government of Ontario should re-affirm its commitment to its 1991 Statement of Political Relationship with the province's First Nations and aboriginal peoples.

22. The *Business Corporations Act* should be amended to require that provincially incorporated firms provide in their Annual Reports to shareholders information on:
    - violations of federal, provincial or municipal laws related to the protection of the environment, public health, public safety, or occupational health and safety, including the disclosure of fines and penalties, compensation payments and out-of-court settlements, over the reporting year;
    - releases or transfers of pollutants from any facilities owned or operated by the corporation over the reporting year;
    - total amounts, composition and fate of hazardous wastes generated by all facilities owned or operated by the corporation over the reporting year;
    - total amounts, composition and fate of non-hazardous municipal solid waste generated by all facilities owned or operated by the corporation over the reporting year;
    - emergency planning and risk management; and
    - existing and potential future environmental liabilities.

23. Following the model of the United States Securities Exchange Commission, the Ontario Securities Commission should establish an electronically accessible inventory of the foregoing information for publicly traded companies in Ontario.

24. The *Business Corporations Act* should be amended to facilitate the presentation of shareholder proposals regarding the governance of corporations incorporated in Ontario, in a manner consistent with the recommendations of the Canadian Friends Service Committee with respect to the *Canada Business Corporations Act*.

25. Legislation should be enacted to permit the contributors to public sector pension funds to give policy direction to pension fund trustees regarding the character of the investments which they make.

26. The *Occupational Health and Safety Act* should be amended to provide a right to refuse environmentally damaging work, and to require the establishment of joint employee/management workplace environment committees, similar to the existing requirements for joint health and safety committees.

27. The Ministry of the Environment's Guideline and Policy on Access to Environmental Evaluations should be revised to significantly narrow the types of information covered by the policy and the protection from prosecutions provided through it.

28. The provincial government should commit to providing a comprehensive state of the environment report for the province every two years. This should include information on environmental quality, the status of natural resources, including biological diversity. Reporting activities should be linked to the development of sustainability objectives and indicators by the provincial government.

29. The *Environmental Bill of Rights* should be amended to permit the Office of the Environmental Commissioner to comment on the adequacy of the provincial government's state of the environment reports, the sustainability objectives and indicators

established by the provincial government, and the impact of government decisions on the state of the province's environment and natural resources.

30. The province's major environmental and natural resources management statutes should be amended to require tabling of annual reports to the Legislature on the administration and enforcement of these Acts.

31. The provincial government should commit to major re-investments in the province's environmental and natural resources science and monitoring capacity. Needs related to the fulfillment of provincial obligations to other levels of government (federal, municipal, and international) should be a high priority in this regard.

32. The Environmental Assessment Act should be amended in that:

(a) the Act should apply to all environmentally significant public and private sector proposals;

(b) an exemption from the requirements of the EAA should only be granted pursuant to clearly articulated statutory criteria and after there has been public comment on the proposed exemption; and

(c) exemption requests should be scrutinized by an independent body for a recommendation to the Minister.

33. All environmental assessments should be conducted pursuant to legislated criteria, which must include the purpose of, need for, and alternatives to the proposal. If Terms of Reference are to be developed, they should only be used to clarify the legislative criteria as it applies to that specific undertaking. The development of the Terms of Reference must involve public consultation.

34. Decisions as to whether to approve the undertaking, refer the matter to mediation, refer the matter to a hearing board, or alter the board decision should be made with reference to clearly articulated criteria.

35. Early and meaningful public consultation must be required throughout the EA process, including timely notice provisions, free access to relevant information, and the provision of participant and intervenor funding where appropriate. There must be ramifications for the proponent in terms of receiving an approval if effective public participation is not provided for.

36. Realistic timelines that are fair to all parties and allow for a thorough and comprehensive review of the EA should be implemented to ensure that the EA process proceeds in a timely manner.

37. The approval of a class EA must be carried out in accordance with that of a full individual EA. Class EA's must be limited by statute to minor activities that have

insignificant, predictable, and mitigable impacts on the environment. Furthermore, there needs to be a statutory requirement to include a "bump-up" provision in all class EA's.

38. The EAA should be amended to add the following features:

(a) a requirement for follow-up and effectiveness monitoring;
(b) a mechanism to evaluate government policies and programmes;
(c) inclusion of consideration of cumulative and synergistic affects; and
(d) the establishment of an independent advisory council to assist the Minister.

The government must ensure that there is adequate trained staff and resources to carry out environmental enforcement activities effectively. The investigations branch should resume publishing enforcement statistics on an annual basis.

39. Intervenor funding should be renewed to enable individuals and groups involved in environmental decision-making procedures to participate effectively. Funding should be borne by the proponent and should apply to a variety of decision-making processes, and at least to the Environmental Assessment Board, the Environmental Appeal Board, the Ontario Energy Board, the Ontario Municipal Board, the Consolidated Hearings Board, among others.

40. The basic prohibition on pollution discharges without a permit should be maintained. Permits should only be issued if it can be demonstrated that there will be no adverse effect on the natural environment. Standards must be set in a fair and open manner, on the basis of sound science and the precautionary principle, and reflect the needs of sensitive populations, especially children.

The government must scrutinize applications for pollution permits adequately to ensure there will be no adverse affect to the environment. Standardized approvals may be appropriate for activities that are simple and routine and have only very minor impacts on the natural environment and human health as long as an adequate auditing scheme is also put in place. The development of standardized approvals must be undertaken with full public participation.

41. The government must ensure that there is adequate trained staff and resources to carry out environmental enforcement activities effectively. The investigations branch should resume publishing enforcement statistics on an annual basis.

42. The Environmental Commissioner's Office should be maintained and continue to report directly to the legislature. The ECO must be given sufficient funding and resources to carry out its mandate effectively.

43. While the environmental registry provides an invaluable service, it should be improved by providing a wide range of searching options and ensuring that accurate precise summaries are included for each posting.

44. Requests for review and investigation should be carried out by different government staff or a different department than the staff that made the original decision.

    The Environmental Commissioner of Ontario should be able to undertake requests for review, requests for investigation, and to comment on proposals affecting legislation and regulations under its mandate.

45. The leave to appeal provisions should be clarified to better inform the public as to what information is required to satisfy the test. There should be also some provision for extending the 15-day deadline for filing the leave to appeal.

46. The right to sue provisions of the EBR should be reviewed in order to determine whether the preconditions are too onerous. If so, they should be amended accordingly.

47. There should be ramifications for ministries that do not promulgate an instrument classification regulation within one year. After an extended period of time, the Minister of the Environment should be empowered to impose a classification regulation upon a delinquent Ministry.

48. The ECO should sponsor a workshop, with appropriate research, assessing the EBR in terms of the past five years. Terms of reference should then be drawn up giving a mandate to a committee made up of equal representatives of public interest groups to strengthen the EBR in accordance with the general findings of the ECO workshop.

ENDNOTES

[1]F.F. Schindler, Responsible Government in Ontario, (Toronto: University of Toronto Press, 1969), pg.viii.

[2]D.Macdonald, R.Nadarajah, and M.Winfield, Our Future Our Health! A Statement of Concern by Ontario Environmental Organizations (Toronto: Ontario Environmental Protection Working Group, March 1997), pp.13-14.

[3]Quoted in Standing Committee on Regulations and Private Bills, Second Report (Toronto: Legislative Assembly of Ontario, 1988), pg.66.

[4]Castrilli and Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context: Exploring the Possibilities for Reform (Toronto: ECO, 1996), pg.7.

[5]Ibid.

[6]See, for example: Bill 26 (the *Savings and Restructuring Act, 1996*) amendments to the *Public Lands Act*, the *Lakes and Rivers Improvements Act*, and the *Forest Fires Prevention Act*; the Bill 57 (*Environmental Approvals Process Improvements Act, 1997*) amendments to the *Environmental Protection Act* and the *Ontario Water Resources Act*; and the Bill 76 (the *Environmental Assessment Process Consultation and Improvements Act, 1996*) amendments to the *Environmental Assessment Act.*

[7] .See for example, Bill 26, *The Savings and Restructure Act, 1996*, and Bill 25, *The Red Tape Reduction Act, 1998.*

[8]See Bill 57 (*Environmental Approvals Process Improvements Act, 1997*) amendments to the *Environmental Protection Act* and the *Ontario Water Resources Act.*

[9]See for example, the Bill 66 (the *Red Tape Reduction (Ministry of the Environment and Energy) Act* amendments to the *Pesticides Act*; the Bill 120 (the *Red Tape Reduction (Ministry of Northern Development and Mines) Act, 1997*) amendments to the mine closure provisions of the *Mining Act.*

[10]See for example, the Bill 57 (the *Environmental Approvals Process Improvements Act, 1997*) amendments to the *Environmental Protection Act* and the *Ontario Water Resources Act.*

[11]The most prominent example of such a measure is Bill 160, *An Act to Reform the Education System, 1997*, Division B, s.257.12 with respect to education property tax levels. The Bill also provides for the allocation of funds appropriated by the legislation by the Lieutenant-Governor in Council (Division A, s.234).

[12]G.White, The Ontario Legislature: A Political Analysis (Toronto: University of Toronto Press, 1989), pp.142-152.

[13]See Bill 25, *The Red Tape Reduction Act, 1998*, Schedule C: "Statute and Regulation Revision Act, 1998." See also "Submission by the Canadian Environmental Law Association to the Standing Committee on the Administration of Just, Legislative Assembly of Ontario Re: Bill 25, Red Tape Reduction Act, 1998" (Toronto: CELA, October 19, 1998).

[14]For a detailed discussion of the TSSA see M.Winfield and G.Jenish, Ontario's Environment and the 'Common Sense Revolution:' A Second Year Report (Toronto: CIELAP, 1997), pp.114-124.

[15]Open Doors - Ontario's Environmental Bill of Rights: Annual Report 1997 (Toronto: Environmental Commission of Ontario, April 1998), pp.37-45.

[16]See Bill 52, *The Aggregate and Petroleum Resources Statue Law Amendment Act, 1996.*

[17]Ibid.

[18]M.Winfield and G.Jenish, Ontario's Environment and the Common Sense Revolution: A Third Year Report (Toronto: CIELAP, June 1998), pp.99-100.

[19]This is a result of the implementation of the Bill 26 (*Savings and Restructuring Act, 1996*) amendments to the *Public Lands Act* and the *Rivers and Lakes Improvements Act.*

[20]Winfield and Jenish, Ontario's Environment and the CSR: A Second Year Report, pp.90-91.

[21]Standing Committee on the Legislative Assembly, Review of the Freedom of Information and Protection of Privacy Act, 1987 (Toronto: Legislative Assembly of Ontario, December 1991).

[22]*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Ch.F.41. ss.12-23.

[23]Standing Committee on the Legislative Assembly, Report on the Municipal Freedom of Information and Protection of Privacy Act, 1989 (Toronto: Legislative Assembly of Ontario, 1994).

[24]Letter Re: Bill 26, Savings and Restructuring Act, 1995, (Schedules K and O (*Mining Act* amendments)) from Tom Wright, Freedom of Information and Privacy Commissioner to Jack Carroll, MPP, Chair, Standing Committee on General Government, December 18, 1998. The Commissioner also raised concerns regarding Schedules F (*Independent Health Facilities Act* amendments), G (*Ontario Drug Benefit Act* amendments), H (*Health Insurance Act*). See Letter Re: Bill 26, *Savings and Restructuring Act, 1995*, from Tom Wright, Freedom of Information and Privacy Commissioner to Jack Carroll, MPP, Chair, Standing Committee on General Government, December 21, 1996.

[25]Canadian Institute for Environmental Law and Policy Submission to the Standing Committee on General Government Re: Bill 26, The Savings and Restructuring Act, 1996 (Toronto: CIELAP, December 1995).

[26]J.Rusk, "Ontario to fight red tape with controls on regulations," The Globe and Mail, July 18, 1996.

[27]Red Tape Commission, Cutting the Red Tape Barriers to Jobs and Better Government (Toronto: Cabinet Office, January 1997), pg.17-18.

[28]J.Castrilli and M.Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context: An Exploration of the Possibilities for Reform (Toronto: Environmental Commissioner of Ontario, October 1996), pp.33-38.

[29]Standing Committee on Regulations and Private Bills, Second Report (Toronto: Legislative Assembly of Ontario, 1988), pp.12-16.

[30]Standing Committee on Environment and Sustainable Development The Public Interest Must Come First (Ottawa: House of Commons, May 1998), Recommendation 22. For detailed critiques of cost/benefit tests, see Castrilli and Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context, note 329.

[31]Red Tape Commission, Cutting the Red Tape Barriers to Jobs and Better Government (Toronto: Cabinet Office, January 1997).

[32]Specific instances are under investigation through FOI requests.

[33]Letter to all Ministers from Frank Sheehan, Chair, Red Tape Commission, dated June 16, 1997.

[34] M.Mittelsteadt, "Red tape boss asked ministry to lift charge against landfill firm," The Globe and Mail, November 7, 1998.

[35]Winfield and Jenish, Ontario's Environment and the CSR: A Second Year Report, pg.31.

[36]In February 1998, the past president of the Aggregate Producers Association of Ontario was appointed to the Commission. Aggregate extraction is seen as a major threat to the integrity of the escarpment. T.Boyle, "Opposition criticizes appointments," The Toronto Star, April 16, 1998.

[37]I.Urquhart, "Power play beneath the surface," The Toronto Star, January 24, 1998.

[38]Ibid.

[39]Letter to Agency Reform Commission, Re: Regulatory and Adjudicative Agency Reform Consultation from R.L. Jamieson, Ombudsman, November 14, 1997.

[40]L.Hurst, "Clear-cut mandate," The Toronto Star, June 15, 1996.

[41]Dissolved September 12, 1995.

[42]Ministry of Environment and Energy, "Minister Sunsets Three Committees," Media Release, September 29, 1995.

[43]See, for example, ss.5 and 8 of the Bill 57, *the Environmental Approvals Improvement Act, 1997*, amending the *Environmental Protection Act* and the *Ontario Water Resources Act*, respectively.

[44]D.Johnson, "The Ontario Party and Campaign Finance System," in F.Leslie Seidle, Provincial Party and Election Finance in Canada, (Ottawa: Royal Commission on Electoral Reform and Party Financing, 1991), pg.80.

[45]Ibid., pg. 81.

[46]Bill 36, *An Act to Amendment the Election Act and the Election Finances Act, and to Make Related Amendments to Other Statutes, 1998* (Royal Assent June 26, 1998).

[47]R.Mackie, "Tories easing election-spending laws," The Globe and Mail, June 10, 1998.

[48]I. Urquhart, "Liberal's curb on ads worth a look," The Toronto Star , February 6, 1999. See also "Ads paid with tax funds," The Globe and Mail, March 27, 1999.

[49] .Bill 99, *The Balanced Budget and Taxpayer Protection Act, 1998*.

[50] Ibid, s.7(1).

[51]See Bill 107 (the *Sewerage and Water Services Improvements Act, 1997*). The termination of the Municipal Assistance Program which provided provincial capital grants for municipal sewer and water services was announced on April 11, 1996.

[52]See Winfield and Jenish, Ontario's Environment and the 'Common Sense Revolution: A Third Year Report, pp.109- 110.

[53]The termination of provincial funding for curbside recycling programs was announced November 29, 1995.

[54]ECO, Annual Report 1996, pp.17-20.

[55]See Bill 107, the *Water and Sewerage Services Improvements Act, 1997*, and Bill 152, the *Service Improvement Act, 1997*.

[56]Winfield and Jenish, Ontario's Environment and the CSR; A Second Year Report, pp.29-30.

[57]See Bill 20, *The Land-Use Planning and Protection Act, 1996*.

[58]Press Release "Draft Municipal Act Released for Consultation," February 11, 1998.

[59]M.Winfield and G.Jenish, Ontario's Environment and the 'Common Sense Revolution:' A First Year Report (Toronto: CIELAP, 1996), pg.62.

[60]Regulation 352/97.

[61]Winfield and Jenish, Ontario's Environment and the CSR: A Second Year Report, pg.103.

[62]See Bill 146, *The Farming and Food Production Protection Act, 1998*.

[63]See Bill 103, *The City of Toronto Act, 1997*.

[64]See, for example, M.Campbell, I. Ross, G.Abbate, and M.Grange, "Metro voters reject amalgamation," The Globe and Mail, March 4, 1997.

[65]See M.Mittelstaedt, "Ipperwash computer records missing," The Globe and Mail, September 17, 1998.

[66]T.Claridge, "Ontario appeal court rejects aboriginal-hunting ruling," The Globe and Mail, June 11, 1997; "Manitoulin Indians drop hunting appeals," The Globe and Mail, September 19, 1998.

[67]R.Mackie, "Fight for Northern Ontario escalating," The Globe and Mail, August 5, 1998.

[68]ECO, Annual Report 1997 Supplement, pg.13.

[69]ECO, Annual Report 1996; ECO, Annual Report 1997.

[70]Provincial Auditor, 1997 Annual Report of the Provincial Auditor of Ontario (Toronto: Queen's Printer, 1997).

[71]8th Biennial Report on Great Lakes Water Quality (Washington, D.C. and Ottawa: International Joint Commission, 1997); The IJC and the 21st Century (Washington, D.C. and Ottawa: International Joint Commission, 1997).

[72]Continental Pollutant Pathways (Montreal: North American Commission for Environmental Co-Operation, 1997).

[73]See, for example, Bill 20, the *Land Use Planning and Protection Act, 1996* amendments to the *Planning Act*.

[74]See Bill 57, *Environmental Approvals Process Improvements Act, 1997*.

[75]See Bill 26, the *Savings and Restructuring Act, 1996*, Schedule N. See also Ministry of Natural Resources - Press Release and Fact Sheets: "New Regulations Guide Activities on Crown Land," November 5, 1996.

[76]*House of Commons v. Canada (Labour Relations Board)* (1986, 27 D.L.R. (4th 481 at p.494 (F.C.A.).

[77]See, for example, Re: changes to the rules of procedure under the NDP G.White "The Legislature: Central Symbol of Ontario Democracy," in G.White ed., The Government and Politics of Ontario (Toronto: University of Toronto Press, 1997), pg.81; under the Progressive Conservatives: "Tory rule changes are anti-democratic" (editorial) The Toronto Star, June 20, 1997; and I.Urquhart, "Closure has disarmed opposition," The Toronto Star, December 18, 1997.

[78]See J.Castrilli and M.Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context: Exploring the Possibilities for Reform (Toronto: Environmental Commissioner of Ontario, October 1996), pg.25.

[79]Standing Committee on Regulations and Private Bills, Second Report, (Toronto: Legislative Assembly of Ontario, 1988), Recommendation 9.

[80]House of Commons, Standing Order 108.

[81]Standing Committee on Environment and Sustainable Development, Keeping a Promise: Towards a Sustainable Budget (Ottawa: House of Commons, 1995).

[82]Standing Committee on Environment and Sustainable Development, The Regulation of Biotechnology: A Matter of Public Confidence (Ottawa: House of Commons, November 1996).

[83]A.MacIlroy, "Ottawa fails on environment: report," The Globe and Mail, May 23, 1998.

[84]See G.White, The Ontario Legislature, ch.6.

[85]See for example, Report of the Select Committee on Ontario Hydro Nuclear Affairs (Toronto: Legislative Assembly of Ontario 1st Session, 36th Parliament, 1997).

[86]See note 65.

[87]White, The Ontario Legislature, pp.226-229.

[88]The Commission should include the rules of procedure, roles of committees, representation (including the number of members, design of ridings to reflect roughly equal number of voters, municipal boundaries, ecological boundaries, and allowance for representation in far North) and party and electoral financing.

[89]Standing Committee on Regulations and Private Bills, Second Report, Recommendation 1.

[90]Castrilli and Winfield, The Ontario Regulation and Policy-Making Process in a Comparative Context, pg.33.

[91]Ibid., pp.22-24.

[92]Prof. Hudson N. Jarisch, Faculty of Law, University of Toronto, Testimony to the Standing Committee on Regulations and Private Bills, Legislative Assembly of Ontario, March 24, 1988, pg.T-6.

[93]Standing Committee on Environment and Sustainable Development, Enforcing Canada's Pollution Laws: The Public Interest Must Come First! (Ottawa: House of Commons, May 1998), Recommendation 22.

[94]Environmental Assessment Advisory Committee, Reforms to the Environmental Assessment Program (Toronto: Ministry of the Environment, 1991).

[95]R.B. Gibson and B.Savan, Environmental Assessment in Ontario (Toronto: Canadian Environmental Law Research Foundation, 1986).

[96]R.Northey, The 1995 Annotated Canadian Environmental Assessment Act and EARP Guidelines Order (Toronto: Carswell, 1994), pp.585-589.

[97]This could include such factors as the maintenance or enhancement of ecosystem integrity and the preservation of valued ecosystem components, strengthening renewable resource activities, and the enhancement of other aspects of the economic, cultural, social, educational, and health base for long-term community well-being.

[98]See, for example, Report of the Auditor General of Canada to the House of Commons/Chapter 22 Federal Contaminated Sites - Management Information on Environmental Costs and Liabilities (Ottawa: Minister of Public Works and Government Services, November 1996); Report of the Commissioner of the Environment and Sustainable Development to the House of Commons 1998 (Ottawa: Minister of Public Works and Government Services Canada, 1998).

[99]Standing Committee on Environment and Sustainable Development, Keeping A Promise: Towards a Sustainable Budget (Ottawa: House of Commons, December 1995).

[100]Winfield and Jenish, Ontario's Environment and the Common Sense Revolution: A Third Year Report pp.22-23.

[101]See Standing Committee on the Legislative Assembly, Report on the MFIPPA, Recommendation 133.

[102]Standing Committee on the Legislative Assembly, Review of the FOIPPA, Recommendations 5-21.

[103]See the comments of the Freedom of Information and Protection of Privacy Commissioner, quoted in Standing Committee on the Legislative Assembly, Report on FOIPPA, pp.35-36.

[104]J.Swaigen and D. Estrin, eds., Environment on Trial: A Guide to Ontario Environmental Law and Policy (Toronto: Emond-Montgomery Publications Ltd. and the Canadian Institute for Environmental Law and Policy, 1993), pg.16.

[105]This would include such things as permitting the delegation of decision-making authority to committees of council of community Councils in the City of Toronto.

[106] for revisions to the *Municipal Act* released by the Province in February 1998, for example, proposed to give municipalities authority to enact by-laws in the areas of: health, safety, protection and well-being of people and the protection of properties; public utilities; waste management; highways, including parking and traffic on highways; transportation systems, such as transit, airports and ferries; the natural environment; culture, parks, recreation and heritage, economic development; nuisance, noise, odour, vibration, illumination and dust; drainage and flood control; structures including fences and signs; parking; and animals. However, the province's proposals would also impose a number of significant constraints on municipal action. See Ministry of Municipal Affairs, Press Release "Draft Municipal Act Released for Consultation," February 11, 1998.

[107]Quoted in J.Geddes, "Tougher insider laws urged," The Financial Post, February 7, 1996.

[108]Industry Canada, Industry Strategy Sustainable Development Strategy (Ottawa: December 1997), section 3.1.1. "Marketplace Rules and Services."

[109]See www.investorguide.com/EdGAR.htm.

[110]M.Jantzi Research Associates Inc. Response to Industry Canada's Canada Business Corporations Act Supplement to Discussion Paper: Proposals for Technical Amendments July 1996: Part XII "Shareholder Proposals" (Toronto: Canadian Friends Service Committee, August 1996), pg.6.

[111]M.Jantzi Research Associates Inc. Response to Industry Canada's Canada Business Corporations Act Supplement to Discussion Paper: Proposals for Technical Amendments July 1996: Part XII "Shareholder Proposals."

[112]Ministry of Environment and Energy, Policy and Guideline on Access to Environmental Evaluations (Toronto, November 1995).

[113], Voluntary Measures to Ensure Environmental Compliance, (Montreal: North American Commission on Environmental Cooperation, 1997), pp.62-63. See also R.Nadarajah, "Comment on the Ministry of Environment and Energy's draft Policy and Guideline on Access to Environmental Evaluations" (Toronto: Canadian Environmental Law Association, March 1995).

[114]North American Commission on Environmental Cooperation report highlights section 70 of the Nova Scotia *Environmental Protection Act, 1995* as a potential model for the granting of immunity from prosecution on the basis of the voluntary submission of information obtained through a environmental audit of environmental site specific assessment of non-compliance. Voluntary Measures to ensure Environmental Compliance, pp.59-60, 62-63.

[115]This would include: the *Environmental Protection Act*; the *Ontario Water Resources Act*, the *Environmental Assessment Act*; the *Pesticides Act*; the *Crown Forest Sustainability Act*; the *Public Lands Act*; the *Lakes and Rivers Improvements Act*; the *Fish and Wildlife Conservation Act*; the *Mining Act*; the *Aggregate Resources Act*; the *Petroleum Resources Act*; the *Provincial Parks Act*; and the *Planning Act*.

[116]See: Rick Lindgren, Submissions of the CELA to the Standing Committee on Social Development Regarding Bill 76 (CELA, July 1996).

[117]Nadarajah, Comments on MoE's Proposal for Standardized Approval Regulations and Approval Exempting Regulations (CELA, March 1998).

[118] 1990, c.E.18.

[119]Bill 76 [need full cite]

[120]See: ...need good cites [see EA paper]

[121]Taro Aggregates East Quarry Landfill EA, EA file No. PR-TA 02.

[122]Proposals that pose a significant threat to the environment may in fact be evaluated on the basis of a very narrow range of factors, whereas less significant proposals may be subject to a wide ranging environmental assessment, depending upon the TOR in each case. Compare Adams mine to Quinte. [perhaps a sidebox]

[123]For instance, see sections 5.1, 6((3), and 6.1(2)e, which basically state that the proponent shall consult "such persons as may be interested" and must provide "a description of the consultations by the proponent and the results of the consultation".

[124]KPMG, Canadian Environmental Management Survey, 1994 (KPMG, 1994).

[125]As of June 21, 1998.