Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

May 8, 2023 **BY EMAIL & REGISTRY PORTAL**

EA Modernization Project Team
Environmental Assessment Modernization Branch
Ministry of the Environment, Conservation & Parks
135 St Clair Ave West, 4th Floor
Toronto, ON M4V 1P5

RE: ERO 019-4219 (Project List Amendments), ERO 019-6693 (Municipal Class EA), and ERO 019-6705 (Improving Timelines for Comprehensive EAs)

These are the comments of Canadian Environmental Law Association (CELA) in relation to the three above-noted postings on the Environmental Registry.

Please note that these comments are endorsed and supported by the undersigned organizations and First Nations: Blue Dot Northumberland, Citizens Environment Alliance of Southwestern Ontario, Concerned Citizens' Committee of Tyendinaga and Environs, David Suzuki Foundation, Friends of the Attawapiskat River, Kebaowek First Nation, Legal Advocates for Nature's Defence, Ontario Headwaters Institute, Ontario Nature, Ontario Rivers Alliance, Seniors for Climate Action Now!, Sierra Club Canada, Simcoe County Greenbelt Coalition, and Williams Treaties First Nations (Alderville First Nation, Beausoleil First Nation, Curve Lake First Nation, Chippewas of Georgina Island First Nation, Hiawatha First Nation, Mississaugas of Scugog First Nation, and Rama First Nation)..

For the reasons set out below, CELA and other aligned organizations and First Nations conclude that the various environmental assessment (EA) proposals set out in these Registry notices are highly problematic, unsupported by persuasive evidence, and contrary to the public interest purpose of the *Environmental Assessment Act* (*EAA*), namely the betterment of Ontarians by providing for the protection, conservation, and wise management of the environment.

Accordingly, we collectively recommend that these current proposals should be withdrawn and re-considered by the Ontario government.

1. CELA's Background and Experience in EA Matters

Our detailed comments on various aspects of the Registry postings are set out below. These comments are based on CELA's decades-long experience under the *EAA*, including:

- representing clients in Individual EA processes for undertakings caught by Part II of the *EAA*

- representing clients in Class EA processes, including making requests for Part II orders (also known as "elevation" or "bump-up" requests)

• representing clients in judicial review applications, statutory appeals, and administrative hearings in relation to the *EAA*

• filing numerous law reform submissions on the *EAA* and regulations, including new or proposed regulatory exemptions for specific sectors, undertakings, or proponents

• participating in provincial advisory committees considering matters under the *EAA*

• conducting public education/outreach, and providing summary advice, to countless individuals, non-governmental organizations, Indigenous communities, and other persons interested in matters arising under the *EAA*

Accordingly, CELA has carefully considered the EA proposals in the above-noted Registry postings from the public interest perspective of our client communities, and through the lens of ensuring access to environmental justice.

2. ERO 019-4219 (Project List Amendments)

In July 2020, the controversial Bill 197 amendments to the *EAA* were enacted to enable the Ontario government to move to a project list approach for triggering the application of the statute. While Bill 197 was fast-tracked without any public consultation, CELA nevertheless raised serious concerns about the project list approach and the provincial government's unjustifiable decision to end the automatic application of the *EAA* to non-exempted public sector undertakings.[1]

CELA's concerns were confirmed in September 2020 when the Ontario government released its proposed list of designated projects[2] that would be subject to Comprehensive EAs under new Part II.3 of the *EAA* (which is still not in force almost three years after Bill 197 was passed). According to the Registry notice, this initial proposal was intended by the government to restrict the list to only projects which demonstrate the potential for the highest degree of environmental impact.

Notably, this 2020 list expressly included the following projects due to their "high degree" of environmental significance:

- intra-provincial railways greater than 50 km
- new/extended provincial freeways or municipal expressways greater than 75 km
- new 115 to 500 kilovolt transmission lines longer than 50 km

[1] See Blog: Bill 197 Update: Narrowing the Application of the Environmental Assessment Act - Canadian Environmental Law Association (cela.ca).
[2] See Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA) | Environmental Registry of Ontario.

- new transmission lines carrying greater than 500 kilovolts and longer than 2 km[3]

At the same time, this list omitted environmentally significant governmental policies, plans and programs as well as many types of major private sector projects that may adversely affect the environment or public health. CELA and numerous other groups therefore called upon the Ontario government to dramatically expand the nature and number of projects that would be subject to Part II.3 of the *EAA*.[4]

Unfortunately, when the provincial government released its draft designated projects regulation in November 2021, the list was again generally confined to a relatively small handful of undertakings that were already subject to Individual EA requirements under the *EAA*. Nevertheless, the draft regulation still included major transportation and electricity projects. In response, CELA and other groups supported the inclusion of such projects, but questioned whether the pre-existing project thresholds were stale-dated or required revisions.[5]

Despite its declared intention to keep certain transportation and electricity projects subject to Comprehensive EAs, the Ontario government inexplicably reversed its position in March 2023, and is now proposing to move such projects to less rigorous streamlined EA processes.[6] In particular, the Registry notice[7] proposes that:

- establishing a freeway or expressway of any length[8] will only be subject to the streamlined EA process set out in the Class EA for Provincial Transportation Facilities (MTO Class EA)

- establishing rail of any length by Ontario Northlands Transportation Commission will only be subject to the streamlined EA process set out in Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings)

- all transmission lines and transformer stations will only be subject to the streamlined EA process set out in the Class EA for Minor Transmission Facilities (MTF Class EA)

---

[3] The thresholds for electricity transmission lines were subsequently adjusted by the Ontario government in December 2021, but transmission lines > 345 kilovolts and >75 km would still be subject to Individual EA requirements: see Aligning Ontario's environmental assessment thresholds for transmission lines with federal requirements | Environmental Registry of Ontario.

[4] See Proposed Project List for Comprehensive Environmental Assessment - Canadian Environmental Law Association (cela.ca).

[5] See EAA Draft Project List Regulation - Canadian Environmental Law Association (cela.ca).

[6] See Moving to a project list approach under the Environmental Assessment Act | Environmental Registry of Ontario.

[7] This notice also proposes to subject certain waterfront projects to Comprehensive EA requirements but suggests that transitional exemptions will be applied to projects that have already been commenced under the Remedial Flood and Erosion Control Projects Class EA, or where a *Planning Act* application has been filed prior to March 10, 2023.

[8] These highways must meet the following criteria: (a) at least 2 lanes in each direction; (b) where travel in each direction is divided by a physical median strip; (c) where access to the highway is provided primarily by grade separated interchanges; and (d) where the posted speed for the highway is at least 80 km/hour.

The Registry notice describes the government's rationale for these sudden changes as follows:

> As part of modernizing the EA process, we are proposing changes that allow more projects to follow a streamlined EA process.
>
> These proposed changes will better align Ontario with other jurisdictions across Canada, including the federal government, who use project lists to determine the types of projects that must complete a comprehensive environmental assessment.
>
> Projects that are proposed to follow a streamlined process will continue to ensure environmental oversight and robust consultation prior to the project being able to proceed.

In response to such claims, CELA notes that the Registry notice fails to provide any environmental reasons or evidentiary support for the unprecedented proposal to subject major transportation and electricity projects to the least rigorous form of EA available under the *EAA*, namely streamlined EA processes. In our view, these simplified procedures do not entrench strong "environmental oversight" or "robust consultation" for these types of large-scale and environmentally significant projects for the reasons outlined below.

Similarly, the Registry notice suggests – without explanation or elaboration – that these changes will better "align" Ontario with the federal EA process. In our opinion, this is an erroneous suggestion since these types of major transportation and electricity projects are designated under, and subject to the prescriptive requirements of, the *Impact Assessment Act*, which is far more extensive and participatory than Ontario's streamlined EA processes. Accordingly, it is unclear how joint (or harmonized) federal/provincial EA processes for such projects can be established under the inter-jurisdictional cooperation provisions of the *EAA* and *IAA*, given that streamlined EA processes do not exist under the *IAA* and that Ontario's streamlined EA processes are not equivalent (or even similar) to the detailed impact assessment process under the federal statute.

Based on the statements contained in the Registry notice, we understand that the above-noted streamlined EA processes will likely be amended to include some further (but as-yet unspecified) notification, consultation, and documentation requirements. However, even if such amendments are made, it cannot be seriously contended that streamlined EA processes are as "robust", transparent, or participatory as Comprehensive EAs.

This is particularly true in relation to the critical need to evaluate the purpose, rationale, "alternatives to", and "alternative methods" for the above-noted transportation and electricity projects in an open, transparent, and accountable manner. Part II.3 of the *EAA* (not yet in force) clearly requires these EA considerations to be identified and assessed within Comprehensive EAs,[9] but currently there is no indication whether – or precisely how – these key considerations will be adequately incorporated into the above-noted streamlined EA processes if amended in due course.

We further note that the Bill 197 amendments to the *EAA* abruptly terminated the public's ability to request the Minister, on environmental grounds, to "bump up" (or "elevate") particularly

[9] See section 17.6 of the amended *EAA*.

significant or contentious projects from the Class EA process to the Individual EA process.[10] This unjustified constraint is now in effect, and it currently applies to the streamlined EA processes cross-referenced in the Registry notice. It is also entrenched in Part II.4 (Streamlined EAs) of the *EAA*, which is not yet in force.[11] In our view, the continuing absence of a credible "bump up" safety valve (based on unresolved environmental concerns raised by the public) in streamlined EA processes provides another reason why the above-noted transportation and electricity projects should remain subject to Comprehensive EA requirements.

Other procedural concerns about using streamlined EA processes for these major transportation and electricity projects include:

- while Part II.3 of the *EAA* enables the Minister to refer designated projects subject to Comprehensive EAs to the Ontario Land Tribunal for a public hearing and decision,[12] no such referral power exists for projects being processed under current Class EAs (or Streamlined EAs under Part II.4 of the *EAA*, which is also not in force at present)

- under streamlined EA processes, a proponent does not require a project-specific approval to proceed from the Minister or Cabinet

- upon completion of the prescribed steps of streamlined EA processes, the proponent may proceed with the project (provided that no bump-up requests on treaty/aboriginal grounds have been filed or granted)

- the provincial government proposed in February 2023 to amend the *EAA* to provide the Minster with discretionary authority to waive or alter the 30-day waiting period after the notice of completion (or notice of addendum) has been filed under Class EAs[13]

In addition, the proposed amendments to limit EAs for projects affecting Indigenous communities will create a regulatory landscape where Indigenous communities may not have access to necessary information to understand the potential adverse impacts on their constitutional rights and meaningfully participate in the consultation process. An overly streamlined process has the risk of ignoring adverse impacts on Aboriginal and treaty rights and puts unnecessary burdens on Indigenous communities to bump up projects to be able to exercise their constitutional rights.

More fundamentally, the nature, scale, socio-economic implications, and environmental significance of these major transportation and electricity projects makes them completely unsuitable for inclusion in streamlined EA processes. Under existing Part II.1 of the *EAA*, Class EAs have been developed to establish common planning procedures for defined categories of small-scale projects that recur frequently, pose moderate environmental risks, and are amenable to well-known mitigation measures.

---

[10] See section 16(6) of the *EAA*.
[11] See sections 17.31(7) to (9) of the *EAA*.
[12] See sections 17.16 and 17.17 of the *EAA*.
[13] See Providing Authority to Waive or Alter the 30-day Waiting Period for Class Environmental Assessment Projects | Environmental Registry of Ontario.

Accordingly, it is abundantly clear that the above-noted transportation and electricity projects do not fit properly within the limited parameters of streamlined EA processes for various reasons:

- these projects are not small-scale, minor, routine or environmentally benign in nature; instead, they are large-scale, lengthy, costly, and intrusive infrastructure projects

- these projects do not recur frequently; instead, these complex, contentious, and capital-intensive proposals (e.g., new 400 series provincial freeway) are relatively infrequent compared to the numerous municipal road extensions/widenings caught by the Municipal Class EA

- the direct, indirect, and cumulative impacts of such projects are not non-existent, negligible, or moderate; instead, the construction and operation of these massive linear projects typically involve significant site alteration, tree/vegetation clearing, habitat destruction or fragmentation, nuisance impacts to local communities, loss of prime agricultural lands, various types of water-crossings, and extensive post-construction maintenance

- the widespread impacts of such projects are not usually avoided by generic mitigation measures or best management practices; instead, they typically require carefully crafted site-specific *EAA* conditions to prevent, minimize or ameliorate adverse biophysical, ecological, and socio-economic effects that may be caused (or compounded) by these major projects at the local and regional level

Accordingly, CELA and the undersigned organizations and First Nations submit that it is inappropriate to force-fit or fast-track the above-noted transportation and electricity projects within the simplified requirements of streamlined EA processes. We therefore recommend that these major projects should remain fully subject to Comprehensive EA requirements for the purposes of environmental protection, public participation, and governmental accountability.

3. ERO 019-6693 (Municipal Class EA)

Despite the decades-long existence of the Municipal Class EA, the Registry notice states that "Ontario is proposing to evaluate the requirements for municipal road, water and wastewater projects that are currently subject to the Municipal Class Environmental Assessment (Municipal Class EA) that may also include requirements under other legislation."[14] However, the notice is couched in ambiguous terms and simply sets out broad options under consideration rather than precise measures that the provincial government is actually proposing to undertake in relation to the Municipal Class EA.

In particular, the notice advises that "Ontario is seeking feedback on changes that will improve timelines for completing low-risk infrastructure projects such as municipal roadways." However, no specific "improved" timelines are proposed within the notice, and there is no attempt to define

[14] See Evaluating municipal class environmental assessment requirements for infrastructure projects | Environmental Registry of Ontario.

"low-risk infrastructure projects" or provide a proposed list (or quantitative thresholds) of the kinds of infrastructure projects that fit within this so-called "low risk" category. The notice further states that "similar projects in municipalities led by other [private sector] proponents would have no EA requirements; the related regulation[15] would be revoked."

In relation to the notice's questionable and overbroad claim that "municipal roadways" are low-risk projects, CELA submits that the nature, extent, frequency, magnitude, and duration of environmental impacts is greatly dependent on the site-specific location, design, construction, and operation of the proposed roadway.

For example, a proposal to extend or widen a municipal road in an urbanized area may be "low risk" under certain circumstances, but the same proposal in a rural or greenfield setting (e.g., a new road through or near provincially significant wetlands, important woodlands, or habitat for species at risk) may indeed pose serious risks that should be identified, avoided, or mitigated in an appropriate EA process. In short, until an individual project is proposed at an actual location (and until the requisite studies are completed), it is often difficult to pre-determine the likelihood and significance of the potential impacts in advance on a purely hypothetical basis.

In CELA's view, this potentially variable range of environmental impacts is precisely why the Municipal Class EA properly takes a precautionary approach by including low, medium, and high-risk classes of projects in the attached schedules and establishing EA planning processes that are commensurate with the perceived risks.

CELA further observes that the current planning requirements in the Municipal Class EA are relatively streamlined and straightforward compared to Individual EAs. Therefore, CELA does not agree with the Registry notice's implicit assumption that it is too onerous or time-consuming for proponents to successfully get roadways (or other "low risk infrastructure projects") through the Municipal Class EA planning process. On this point, we note that the Registry notice does not attach any statistical information about how long it typically takes for infrastructure projects to successfully complete the prescribed steps of the Municipal Class EA, particularly since members of the public can no longer file "bump up" requests on environmental grounds, as discussed above.

The Registry notice also suggests that to "improve" timelines, Ontario "could" (not "will" or "proposes to") revoke the Municipal Class EA and "the Act and regulations would be amended as necessary," including "transition provisions" that would allow projects that have already "begun a Municipal Class EA process to withdraw from the process if certain notification requirements are met." Again, there is a paucity of detail in the Registry notice about whether Ontario intends to revoke the Municipal Class EA (in whole or in part), what kinds of *EAA* amendments and regulatory changes are needed if revocation is undertaken, and which notification requirements will be established to trigger the transitional "opt-out" provisions. In our view, the lack of specificity in the Registry notice undermines the ability of the public to meaningfully comment on Ontario's intentions regarding the Municipal Class EA.

[15] See O. Reg. 345/93: DESIGNATION AND EXEMPTION - PRIVATE SECTOR DEVELOPERS (ontario.ca).

The Registry notice goes on to suggest that even if the Municipal Class EA is revoked, some "high risk" municipal projects (e.g., expressways, transit, electricity, and waterfront projects) will continue to be subject to other processes under the *EAA.* In our view, this suggestion is misleading and unpersuasive since it fails to mention that these "other processes" are, in fact, the streamlined EA processes described in ERO 019-4219 for such projects, not the more rigorous Individual EAs/Comprehensive EAs.

Finally, the Registry notice indicates that the existence of other legislative or planning requirements for certain municipal projects negates the need to apply the Municipal Class EA to such projects:

> Depending on the project and location there may be other legislative, planning processes or authorizations required that would provide for the assessment of a project's impacts, consultation requirements, and any other conditions for proceeding (e.g., technical studies) outside of the Municipal Class EA process. Many municipalities prepare and update capital planning, asset management plans and Servicing Master Plans for infrastructure such as roads, water, and wastewater.
>
> Ontario is proposing to evaluate the need for *Environmental Assessment Act* requirements for municipal infrastructure projects under the Municipal Class EA process to reduce this type of duplication…

In response, CELA submits that the Registry notice is incorrect in asserting that there is "duplication" between the EA program and other planning, approvals, or asset management regimes. For example, no other provincial statute (including the *Planning Act*) requires proponents to identify need/purpose, consider alternatives, and systematically evaluate biophysical, ecological, or socio-economic impacts of proposed projects. In our view, this is precisely why EA requirements are not "duplicative" and do not constitute "red tape."

Similarly, regulatory statutes (e.g., *Environmental Protection Act*, *Ontario Water Resources Act*, etc.) tend to deal with technical details or discrete aspects of proposed projects (e.g., final design specifications). In contrast, only the *EAA* requires an upfront and comprehensive assessment of the environmental effects of an undertaking and its alternatives. Similarly, only the *EAA* addresses the "big picture" environmental planning questions that typically do not get asked or answered under regulatory statutes (e.g., capacity of renewable resources to meet the needs of present and future generations).

In her 2016 Annual Report, the provincial Auditor General also dispelled the myth that other regulatory requirements are duplicative of EA requirements:

> **4.1.3 Other Regulatory Processes No Substitute for Environmental Assessment**
>
> Private-sector projects may require other types of municipal, provincial, or federal approvals and permits to begin operations. However, even though many of these are also meant to protect the environment, we noted that, even collectively, they do not result in the same level of comprehensive evaluation as an environmental assessment… While many

> other regulatory approvals for private-sector projects—such as mines, quarries, manufacturing plants and refineries—consider the natural environment, they do not include all key elements of an environmental assessment. For example, while operators of chemical manufacturing plants must obtain an environmental approval from the Ministry to emit contaminants into the land, air and water, the approvals do not consider the social, cultural, and economic impacts of the emissions.[16]

In our view, the Auditor General's well-founded comments are equally applicable to municipal projects that may be subject to other legislative or planning requirements.

In conclusion, it is unclear to CELA and the undersigned organizations and First Nations why it is now suddenly necessary, at least according to the Ontario government, to revoke the Municipal Class EA in its entirety. This is particularly puzzling since the Ministry recently spent considerable time in reviewing and approving numerous amendments to the Municipal Class EA earlier this year.[17] Accordingly, CELA and the undersigned organizations and First Nations recommend that instead of revocation, the newly amended Municipal Class should be left intact, monitored during implementation, and subject to further amendments to address new or emerging issues.

4. ERO 019-6705 (Improving Timelines for Comprehensive EAs)

In March 2023, the Ontario government posted an information bulletin on the Registry to advise the public that it is continuing to consider various initiatives which may "improve" (i.e., reduce) timelines under the Comprehensive EA process.[18] However, this bulletin does not solicit public input on these initiatives, presumably because no specific proposals or further details are being advanced by the provincial government at present.

Instead, the bulletin merely reiterates some general ideas that were first raised four years ago in the Ministry's sparse 2019 discussion paper on EA modernization.[19] The bulletin further indicates that "Ontario intends to consult at a later date on the proposal for improving timelines for the comprehensive environmental assessment process." Accordingly, we question the need for, and the timing and utility of, this inconsequential Registry bulletin.

Nevertheless, the bulletin identifies four types of "improvements" that the Ministry still intends to pursue to ostensibly reduce Comprehensive EA timelines:

- developing sector-based Terms of Reference
- providing guidance for proponents
- updating the codes of practice

---

[16] See 3.06 Environmental Assessments (auditor.on.ca).
[17] See Notice of amendment: Municipal Class Environmental Assessment | Environmental Registry of Ontario. See also Cover amended 2007 FINAL.cdr (prod-environmental-registry.s3.amazonaws.com).
[18] See Improving timelines for comprehensive environmental assessments | Environmental Registry of Ontario.
[19] See Modernizing Ontario's Environmental Assessment Program--Discussion Paper (prod-environmental-registry.s3.amazonaws.com).

- improving internal review processes

Since the Ministry remains committed to these dubious, ineffective, and ill-conceived initiatives, then CELA finds it necessary to reiterate our concerns that were initially submitted in relation to the 2019 discussion paper.[20]

(i) Sector-Based Terms of Reference

We draw no comfort from the bulletin's assurance that "later this year, the ministry will begin working with Indigenous communities, various sectors, and partner ministries to develop a proposal for sector-based terms of reference(s) for further consultation." Alarmingly, there seems to be no express Ministry commitment to engage the public at large, non-governmental organizations, or other stakeholders about sector-based Terms of Reference, which are intended to serve as the road map (or enforceable benchmark) for the conduct and content of Individual EAs/Comprehensive EAs.

Moreover, the bulletin fails to identify which sectors are candidates for generic or templated Terms of Reference, and it overlooks the fact that the Minister is already empowered to approve Terms of Reference that "focus" (or scope out) EA content requirements that are otherwise mandatory under the *EAA*.[21] Given that this scoping power has been extensively used by the Minister since 1996 to reduce EA content requirements, CELA sees no compelling need to develop "sectoral" (or one-size-fits-all) terms of reference for projects whose potential impacts are significant enough to warrant Individual EAs/Comprehensive EAs.

We further note that generic "sector-based" Terms of Reference do not exist under the federal EA law. Instead, "Tailored Impact Statement Guidelines" (and related EA plans) are crafted with public and Indigenous input and issued by the Impact Assessment Agency of Canada on a case-by-case basis to provide project-specific direction on the information and studies required in the proponent's Impact Statement under the *IAA*.[22] Accordingly, CELA submits that Ontario's intention to promulgate sector-based Terms of Reference will not align with the federal EA process.

(ii) Guidance Materials for Proponents

The Registry bulletin vaguely states that "in the future, the ministry plans to update its guidance materials for proponents [and] help ensure that proponents are submitting a complete EA the first time," which "may include the development of completeness checklists prior to submitting an EA for review, or other types of guidance."

---

[20] See Modernizing Ontario's Environmental Assessment Program: Discussion Paper Environmental Registry No. 013-5101 - Canadian Environmental Law Association (cela.ca).
[21] See sections 6.1(3) and 17.4(2)(b) and (c) (not yet in force) of the *EAA*.
[22] See Phase 1: Planning - Canada.ca.

Surprisingly, despite raising concerns about the timeliness of Comprehensive EAs, the bulletin fails to refer to the existing timeframes under Ontario Regulation 616/98,[23] which establishes strict deadlines (measured in weeks, not months or years) for governmental decision-making in relation to Terms of Reference and Individual EAs under Part II of the *EAA*. Significantly, this regulation imposes no deadlines upon proponents when they are preparing and submitting EA documentation. In CELA's experience, prolonged delays in the Individual EA process are often proponent-related (e.g., filing deficient documentation, failing to respond to information requests, failing to move the EA process along in a timely manner,[24] etc.).

In these circumstances, it is doubtful that merely developing a checklist will effectively address or avoid such delays. Instead, we submit that it would be preferable to develop better regulatory direction on the timing and content of the proponent's EA documentation,[25] as has occurred under the federal EA legislation.[26] In short, we submit that the Individual EA/Comprehensive EA process needs more rule-based decision-making – and less "guidance" or "checklists" – to ensure effectiveness, efficiency, and accountability under the *EAA*.

(iii) Updating Codes of Practice

The Ministry's declared intention in the Registry bulletin to develop unspecified changes "later in 2023" to "update" the existing codes of practice (e.g., public and Indigenous consultation) is unlikely to materially improve consultation efforts under the *EAA* in Individual EAs/Comprehensive EAs or Class EAs/Streamlined EAs. For example, the current *EAA* imposes a mandatory duty upon proponents to "consult with such persons as may be interested" when Individual EAs and Terms of Reference are being prepared,[27] but the *EAA* is otherwise silent on what constitutes meaningful public/Indigenous participation.

Similarly, Regulation 334 under the Act does not prescribe a detailed set of procedural requirements or minimum standards for EA consultation programs. Accordingly, there have been countless complaints by Ontarians over the years about the lack of adequate consultation in Individual EAs and Class EA processes. Unfortunately, the Registry bulletin simply mentions updating the current suite of non-binding and unenforceable codes of practice and does not propose any specific legislative or regulatory measures to address the long-standing barriers to meaningful public and Indigenous engagement in Ontario's EA program (e.g., absence of intervenor funding).

---

[23] See O. Reg. 616/98: DEADLINES (ontario.ca).
[24] For example, CELA clients are currently involved in an Individual EA process for a proposed landfill where the Terms of Reference were approved in 2012 but virtually no steps have been taken to date by the proponent to conduct or complete the required Individual EA process. See Beechwood Road Environmental Centre New Landfill Footprint | ontario.ca.
[25] Section 2 of Regulation 334 (General) under the *EAA* merely specifies that the proponent's EA submission should include a summary, list studies and reports, and provide maps: see R.R.O. 1990, Reg. 334: GENERAL (ontario.ca).
[26] See the Information and Management of Time Limits Regulations under the *IAA*: SOR-2019-283.pdf (justice.gc.ca).
[27] See section 5.1 of the *EAA*.

(iv) Improving Internal EA Review Processes

The Registry bulletin states that "Ontario will work directly with partner ministries and other government review team members on the development of Memoranda of Understanding (MOU) [to] provide clear requirements for meeting regulated timelines and outline key areas of focus related to mandates." While this is a laudable objective, CELA notes that no statistical data or analysis has been provided in the bulletin to demonstrate that the current government review process itself has caused significant delay in EA processes despite the existence of governmental deadlines in Ontario Regulation 616/98.

In addition, this proposal appears to involve a closed-door exercise among ministry representatives with no opportunity for public input in relation to structuring and implementing the government review process. In our view, given the central importance of the government review of EA documentation, this proposal is not merely administrative in nature and the draft MOU should be subject to public review/comment via the Registry. It is also unclear to us how efficiencies can be gained in the government review process if current staffing levels or ministry budgets remain unchanged (or decreased in the future).

5. CONCLUSIONS AND RECOMMENDATIONS

For the foregoing reasons, CELA and the undersigned organizations and First Nations call upon the provincial government to withdraw and re-consider the fundamentally flawed proposals outlined in the three Registry notices. In our view, if Ontario is serious about implementing credible, robust, efficient, evidence-based, and participatory EA processes, then these proposals cannot proceed in their current form.

Accordingly, we recommend that the Ontario government should re-focus its *EAA* modernization program away from attempting to make EA processes faster, easier, less robust, or inapplicable to environmentally significant undertakings. Instead, the province must develop, with meaningful public and Indigenous consultation, the necessary EA reforms that have been advocated over the years by civil society, the Auditor General of Ontario, the former Environmental Commissioner of Ontario, and various stakeholders, academics, and practitioners. These long overdue reforms include:

- updating and improving the purposes and principles of the *EAA* to reflect a sustainability focus

- ensuring meaningful opportunities for public participation in Individual EAs/Comprehensive EA and Class EAs/Streamlined EAs

- establishing an accessible, comprehensive, and user-friendly online registry to contain all notices, records, information, decisions, and other documentation arising from Individual EAs/Comprehensive EAs and Class EAs/Streamlined EAs

- enhancing consultation requirements for engaging Indigenous communities in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent

- reinstating "proponent pays" intervenor funding legislation to facilitate public participation and Indigenous engagement

- restoring the public's ability to request "bump-ups" on environmental grounds

- entrenching a statutory climate change test to help *EAA* decision-makers to determine whether a project should be approved or rejected due to its greenhouse gas emissions, carbon storage implications, and other climate change considerations (e.g., increased wildfires, floods, extreme weather, heat islands, etc.)

- curtailing the ability of the Minister to approve Terms of Reference that narrow or exclude the consideration of a project's purpose, need, alternatives or other key factors in Individual EAs/Comprehensive EAs

- extending the application of the *EAA* to environmentally significant projects within the private sector (e.g., mines)

- requiring mandatory and robust assessment of cumulative effects under the *EAA*

- facilitating regional assessments under the *EAA* for sensitive, significant, or largely undeveloped geographic areas in the province

- ensuring strategic assessments of governmental plans, policies, and programs under the *EAA*

- referring Individual EA/Comprehensive EA applications to the Ontario Land Tribunal for a hearing and decision upon request from members of the public or Indigenous communities

- reducing the lengthy list of environmentally significant undertakings that have been exempted from the *EAA* by regulation, declaration orders, or legislative means

- removing section 32 of the *Environmental Bill of Rights* (*EBR*), which currently exempts from the *EBR*'s public participation regime any licenses, permits or approvals that implement undertakings that have been approved or exempted under the *EAA*.

We trust that our comments and recommendations will be duly considered as the Ontario government contemplates its next steps in EA modernization.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Richard D. Lindgren
Counsel

cc. Tyler Schulz, Assistant Auditor General/Commissioner of the Environment

These comments are supported by the following organizations and First Nations:

Michel Koostachin
Director
Friends of the Attawapiskat River

Kerrie Blaise
Founder and Legal Counsel
Legal Advocates for Nature's Defence

Andrew McCammon
Executive Director
Ontario Headwaters Institute

Linda Heron
Chair
Ontario Rivers Alliance

Margaret Prophet
Executive Director
Simcoe County Greenbelt Coalition

Chief Lance Haymond
Kebaowek First Nation

Jessica Murray
Ontario Director
Sierra Club Canada

Rachel Plotkin
Boreal Project Manager
David Suzuki Foundation

Ian Munro
Chair
Concerned Citizens of Tyendinaga and Environs

Dr. Anne Bell
Director of Conservation and Education
Ontario Nature

Derek Coronado
Coordinator
Citizens Environment Alliance of Southwestern Ontario

Faye McFarlane
Co-Lead
Blue Dot Northumberland

Lyba Spring and Nick De Carlo
Co-Chairs
Seniors for Climate Action Now!

Williams Treaties First Nations (Alderville First Nation, Beausoleil First Nation, Curve Lake First Nation, Chippewas of Georgina Island First Nation, Hiawatha First Nation, Mississaugas of Scugog First Nation, and Rama First Nation)