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Environmental Law
Association**
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Making the Links in Southeastern Ontario: CELA's Toolkit for Environmental Action

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Introduction

Canadian Environmental Law Association (CELA) is a specialty legal aid clinic funded by Legal Aid Ontario. CELA focuses on environmental justice, equity and health.

Low-income communities across the province withstand the worst of environmental pollution and degradation. Access to environmental justice demands that communities are able to access information about the pollution that affects them and participate in decision-making. It also requires that low-income communities not be disproportionately burdened by pollution and that low-income communities can access the environmental benefits of government programs.

This toolkit intends to serve communities in Southeastern Ontario, as determined by Legal Aid Ontario. Southeastern region includes the area from Peterborough to Pembroke; Ottawa to Cornwall and along the St Lawrence/Lake Ontario in between. This area includes the following counties/regions:

- Prescott & Russell
- Stormont, Dundas & Glengarry
- Leeds & Grenville
- Ottawa
- Lanark
- Frontenac
- Renfrew
- Lennox & Addington
- Hastings
- Peterborough
- Prince Edward
- Haliburton
- Northumberland

We hope this toolkit provides communities with more information about the air, water and land pollution in their local environments, and with ideas for ways to participate in the ongoing decisions that affect their quality of life.

Please note that the information contained within is current to April 30, 2023 and does not reflect changes to laws, regulations, policies since that date.

PART I: ENVIRONMENTAL HEALTH ISSUES IN SOUTHEASTERN ONTARIO

A BRIEF INTRODUCTION

Chapter 1: Access to Clean Drinking Water and Water Contamination

Water pollution in Southeastern Ontario waterways remains a real and critical concern. Contamination jeopardizes access to safe water, and the health of fish and aquatic mammals. Its insidious burden is also disproportionately borne by Indigenous communities.

In 2010, the United Nations General Assembly explicitly recognized the human right to water and sanitation, acknowledging that "clean drinking water and sanitation are essential to the realization of all human rights."¹ And yet in 2020, the UN Special Rapporteur on Human Rights and Toxics recognized "rights to safe water do not appear to be directly actionable under Canadian law."²

Unfortunately, in Ontario tragedy is what galvanized lawmakers to pursue drinking water reform. On the banks of the Saugeen River in the municipality of Brockton lies the town of Walkerton, home to Ontario's most infamous and tragic water crisis.

In May 2000, heavy rains swept cow manure off agricultural fields and harmful E-Coli bacteria into a drinking water intake well. Five thousand people drank the contaminated water, resulting in over 2,300 people falling severely ill and the deaths of seven. The tragic events that transpired in this community resulted in a provincial inquiry that led to the introduction of new laws strengthening drinking water protections in Ontario.³

The Walkerton Inquiry

In June 2000, following public outrage over the lack of transparency and accountability for the events that transpired in the community, the province launched a public inquiry, the Walkerton Inquiry, to investigate the cause of the contamination and the state of drinking water protections in Ontario.

The inquiry was driven by a desire to determine the adequacy of the laws, policies, practices, resources, and institutional mechanisms in place to protect drinking water in the province.

After its conclusion in the summer of 2001, Justice O'Connor who presided over the inquiry, published a two-part report in 2002 outlining the causes of the tragedy and providing recommendations to ensure the safety of drinking water in Ontario.

¹ United Nations Department of Economic and Social Affairs. (2014). "The human right to water and sanitation." *United Nations*. Online: https://www.un.org/waterforlifedecade/human_right_to_water.shtml.

² United Nations Human Rights Office of the High Commissioner. "Special Rapporteur on toxics and human rights". (2023). *United Nations*. Online: <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights#:~:text=Marcos%20A.,human%20rights%20and%20the%20environment>.

³ Mutis, J. (28 May 2020). "Blog: Walkerton's Drinking Water Protection Legacy." *Canadian Environmental Law Association*. Online: <https://cela.ca/walkerton-video-series-legal-legacy/>.

Ultimately, from his 121 recommendations for improving Ontario's drinking water protections, our provincial framework for drinking water access and safety arose.⁴

Among several important laws that were introduced or revised, two key pieces of legislation that continue to govern Ontario's drinking water framework emerged from this inquiry:

- *Safe Drinking Water Act, 2000* (SDWA)⁵
- *Clean Water Act, 2006* (CWA)⁶

Read about CELA's casework during the two-year Walkerton Inquiry from 2000-2002, and subsequent work thereafter, by clicking [here](#).⁷

Multi-Barrier Approach to Clean Drinking Water

Through the Walkerton Inquiry, Ontario adopted a multi-barrier approach for our clean drinking water regime, an integrated system of procedures, processes, and tools that collectively prevent or reduce the contamination of drinking water from the source to tap to reduce risks to public health.⁸

The most commonly known process used to regulate drinking water is through source water protection plans. These plans contain a series of locally-developed policies that protect existing and future sources of municipal drinking water. They are implemented by municipalities, source protection authorities, local health boards, the province, and other entities.

The CWA governs the preparation, approval, and implementation of source water protection plans in prescribed areas of Ontario, protecting sources of municipal drinking water such as lakes, rivers, and aquifers.⁹ The Act only applies where there is an existing Conservation Authority designated by the province. Each source protection area/region is overseen by one of the 19 multi-stakeholder, community-based groups Source Protection Committee, which identify and implement action plans dealing with threats.

These committees represent business, public, municipal, and Indigenous interests, having developed 38 local source protection plans, protecting nearly 450 municipal drinking water systems in Ontario. While

⁴ Barnes, C. (Aug 2022). "Safe Drinking Water for All: a status update on Walkerton's legacy, 20 years after release of Inquiry Reports." *Canadian Environmental Law Association*. Online: <https://cela.ca/safe-drinking-water-for-all-20-years-after-the-walkerton-inquiry-reports/>.

⁵ *Safe Drinking Water Act, 2002*, SO 2002, c 32.

⁶ *Clean Water Act, 2006*, SO 2006, c 22.

⁷ Canadian Environmental Law Association. (2023). "Casework: The Walkerton Inquiries." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-the-walkerton-inquiry/>.

⁸ Canadian Environmental Law Association. (2023). "Law Reform: Safe Drinking Water for All." *Canadian Environmental Law Association*. Online: <https://cela.ca/law-reform-safe-drinking-water-for-all/>.

⁹ Government of Ontario. (2023). "Source protection plans." *Government of Ontario*. Online: <https://www.ontario.ca/page/source-protection#section-3>.

these plans may seem sufficient, they only provide enforceable protection for sources of drinking water that supply municipal drinking water systems.

However, many rural and Indigenous communities are not covered by these plans, **leaving many Ontarians without access to safe, clean drinking water.**

In response to this inadequate protection, CELA has launched the Safe Drinking Water for All campaign to ensure equitable access to clean, safe drinking water for all residents of Ontario. **Click [here](#) to learn more.**¹⁰

Source Water Protection Plans in Southeastern Ontario

Currently, source water protection plans cover the following regions in Southeastern Ontario¹¹:

- Cataraqui Region
- Central Lake
- Crowe Valley
- Ganaraska Region
- Kawartha-Haliburton Region
- Lower Trent
- Mississippi Valley
- Otonabee-Peterborough Region
- Quinte Region
- Raisin-South
- Rideau Valley

If you are interested in knowing whether your region is protected by a source protection plan, you can view a map outlining all the source protection authorities by the province. Click [here](#).¹²

For those communities that are not covered by source water protection plans, the Ministry of the Environment has released a "Best practices for source water protection" guide on their website that helps communities learn how to manage risks and identify actions that they can take to protect their drinking water sources. [Click here to learn more.](#)¹³

¹⁰ Canadian Environmental Law Association. (2023). "Law Reform: Safe Drinking Water for All." *Canadian Environmental Law Association*. Online: <https://cela.ca/law-reform-safe-drinking-water-for-all/>.

¹¹ Conservation Ontario. (2023). "Source Protection Plans and Resources". *Conservation Ontario*. Online: <https://conservationontario.ca/conservation-authorities/source-water-protection/source-protection-plans-and-resources>.

¹² Government of Ontario. (2023). "Source Protection Information Atlas." *Ministry of the Environment, Conservation and Parks*. Online: <https://www.lioapplications.lrc.gov.on.ca/SourceWaterProtection/index.html?viewer=SourceWaterProtection.SWPViewer&locale=en-CA>.

¹³ Government of Ontario. (2023). "Best practices for source water protection." *Ontario*. Online: <https://www.ontario.ca/document/best-practices-source-water-protection#section-1>.

In August 2022, 20 years after publication of the Walkerton Inquiry reports, CELA prepared a report that assessed the status of the 121 recommendations made by Justice O'Connor and evaluates whether the recommendations continue to be implemented effectively or if there have been any failures to meet the original objectives. [Click here to read more.](#)¹⁴

Drinking Water Advisories

Water advisories remain concentrated on First Nation reserves across Ontario. Work remains to complete the federal promise to end all long-term drinking water advisories in First Nations by March 2021.¹⁵

Advisories themselves can be "boil water advisories," where water must be boiled for at least 1 minute before drinking, cooking, or "do not consume advisories," where tap water should not be used for any purpose. The most stringent advisory is a "do not use," where water should not be used for any purpose.

In a recent announcement from Canada, there was an agreement in principle to settle Class Action Litigation for \$8 billion with over 250 First Nations who had experienced drinking water advisories lasting at least a year. More information is available [here](#).¹⁶

Community-Based Source Water Planning

In 2019, CELA produced a source water protection toolkit for First Nations in partnership with the Chippewas of the Thames First Nation, Munsee-Delaware First Nation, and Oneida Nation of the Thames. The toolkit proposes legal and policy tools to address concerns from community members, whose historical use and enjoyment of the Thames River had been diminished because of threats from industrial discharges and spills, sewage overflows, and the impact of phosphorus loading and pesticide use. This work followed toolkits developed previously with Pays Plat First Nation and Grassy Narrows First Nation.

To access CELA's Source Water Toolkit for Indigenous communities click [here](#).¹⁷

¹⁴ Barnes, C. (Aug 2022). "Safe Drinking Water for All: a status update on Walkerton's legacy, 20 years after release of Inquiry Reports." *Canadian Environmental Law Association*. Online: <https://cela.ca/safe-drinking-water-for-all-20-years-after-the-walkerton-inquiry-reports/>.

¹⁵ Goldfinger, D. (5 May 2021). "Trudeau's promise to improve First Nations drinking water years behind schedule: federal government." *Global News*. Online: <https://globalnews.ca/news/7836421/first-nations-water-trudeau-broken-promises/#%3A~%3Atext%3DIt%20estimated%20that%20the%20federal%2Csome%20of%20the%20affected%20nations>.

¹⁶ Government of Canada. (2023). "Water in First Nations communities." *Indigenous Services Canada*. Online: <https://www.sac-isc.gc.ca/eng/1100100034879/1521124927588>.

¹⁷ Canadian Environmental Law Association. (December 2014). *Canadian Environmental Law Association*. Online: <https://cela.ca/wp-content/uploads/2019/07/FNSP-Toolkit.pdf>.

The project relied upon both traditional knowledge and practices, and Western science-based water quality studies. As Wilson et al., have recognized:

There is growing acknowledgment that the material dimensions of water security alone are inadequate; we also need to engage with a broader set of hydrosocial relationships. Indeed, more holistic approaches are needed to explain Indigenous peoples' relationships to water including the use of traditional water sources.¹⁸

Two-eyed seeing also encourages "a useful re- articulation of water security frameworks." This is also explored in the paper and multimedia project "Water Teachings: Water is Community" available [here](#).¹⁹

Click [here](#) to explore Ontario water advisories on WaterToday's interactive map.²⁰



Map is courtesy of [WaterToday](#).

Red tags : Do Not Consume Advisory

Yellow tags : Boil Water Advisory

Blue tags : Blue-Green Algae Advisory

¹⁸ Wilson et al. (26 March 2019). "Water is Medicine: Reimagining Water Security through Tr'ondëk Hwëch'in Relationships to Treated and Traditional Water Sources in Yukon, Canada." *Water*. Online:

<https://open.library.ubc.ca/media/stream/pdf/52383/1.0378033/3>.

¹⁹ Antone, Mia. (2019). "Water is Community." *Water Teachings*. Online: <https://www.waterteachings.com/water-is-community>.

²⁰ Water Today. (2023). "Advisories for Ontario." *Water Today*. Online: <https://www.watertoday.ca/maptest4.asp?province=8&province=8>.

Chapter 2: Air Pollution and Exemptions from Standards

Site-specific standards allow for emissions greater than the provincial standards. Currently, there is one (1) site-specific standard for air emissions in Southeastern Ontario.²¹

Human reactions to air pollution range from short-term health effects such as asthma and skin rashes to long term effects including bronchitis, emphysema, lung disease and cancer. Vulnerable populations – such as children, the elderly and people with respiratory diseases – may suffer more extreme effects from exposure to air pollution.²² In addition to its adverse effects on human health, air pollution impacts crops, animals, and water pollution.²³ The degradation of air quality also has social and economic consequences, such as the morbidity impacts of air pollution.²⁴

Human activities are responsible for the majority of air emissions. In the absence of smoking or other indoor pollution, industry emissions and urban vehicle emissions are main sources of exposure to air pollutants.

Ontario has prescribed air emission standards under O Reg 419/05 Air Pollution - Local Air Quality, under the *Environmental Protection Act* (available [here](#)).²⁵ However, not all emissions from polluters conform to these standards. In fact, Ontario also has "[site-specific standards](#)" for facilities that "face(s) challenges in meeting a required air standard."²⁶

Bath, Ontario

To note: the data presented below is based on publicly reported emissions data; gaps in data may exist due to errors, deficient methods of reporting or a lack of oversight. Additionally, site specific standard-holding facilities are not the only facilities that routinely over-emit.

²¹ Government of Ontario. (2022). "Ontario Power Generation Inc." *Environmental Registry of Ontario*. Online: <https://ero.ontario.ca/notice/019-5142>.

²² World Health Organization. (2018). "How air pollution is destroying our health." *World Health Organization*. Online: <https://www.who.int/news-room/spotlight/how-air-pollution-is-destroying-our-health>.

²³ Government of Canada. (2012). "Air pollution: effects on wild animals." *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/air-pollution/quality-environment-economy/ecosystem/wild-animals.html>.

²⁴ Hunt, A, et al. (19 January 2016). "Social Costs of Morbidity Impacts of Air Pollution." *OECD Environment Working Papers No. 99*. Page 5. Online: <https://doi.org/10.1787/5jm55j7cq0lv-en>.

²⁵ O Reg 419/5. Online: <https://www.ontario.ca/laws/regulation/050419>.

²⁶ Government of Ontario. (February 2017). "Guide to Requesting a Site-specific Standard." *Government of Ontario*. Online: <https://www.ontario.ca/page/rules-air-quality-and-pollution#section-2>.

Ontario Power Generation has received a conditional site-specific standard approval for its Lennox Generating System in Bath, Ontario.²⁷ The site-specific standards are noted in the table below:

Contaminant	Averaging Period	Current Air Standard ($\mu\text{g}/\text{m}^3$)	Future Air Standard ($\mu\text{g}/\text{m}^3$)	Requested Site-Specific Standard ($\mu\text{g}/\text{m}^3$)
Sulphur dioxide (SO_2)	1-hour	690	100	2026 (First five years of the approval)
Sulphur dioxide (SO_2)	1-hour	690	100	1430 (Remaining five years of the approval)
Oxides of nitrogen (NO_x)	1-hour	400	N/A	839
Sulphuric acid (H_2SO_4)	24-hour	5	N/A	7.6 (First five years of the approval)
Sulphuric acid (H_2SO_4)	24-hour	5	N/A	5.4 (Remaining five years of the approval)

To learn more about the Lennox Generating Station site-specific standard, click [here](#).²⁸

Case Study: Ecology Ottawa's Breathe Easy Campaign

[Ecology Ottawa's Breathe Easy Campaign](#) (Breathe Easy) is a citizen science initiative run in cooperation with Ecology Ottawa. Breathe Easy studied air emissions throughout Ottawa, Ontario.²⁹

Breathe Easy looks to promote air quality education through a learning-by-doing approach. They are cooperating with local organizations, including the Ottawa Hospital Research Institute and Peace and Environmental Resource Centre. Breathe Easy is collaborating with the Canadian Environmental Network to promote and explore the intersectionalities between air quality, our health, and the climate.

²⁷ Government of Ontario. (2022). "Ontario Power Generation Inc." *Environmental Registry of Ontario*. Online: <https://ero.ontario.ca/notice/019-5142>.

²⁸ McClenaghan, T. (15 September 2022). "Webinar: Information Session Regarding Application for a Site-Specific Air Pollution Standard at Lennox Generating Station." *Canadian Environmental Law Association*. Online: <https://cela.ca/webinar-information-session-regarding-application-for-a-site-specific-air-pollution-standard-at-lennox-generating-station/>.

²⁹ Ecology Ottawa. (2021). "Ecology Ottawa's Breathe Easy Campaign." Online: <https://www.ecologyottawa.ca/breatheeasy>.

In 2021, Breathe Easy monitored 46 locations across Ottawa for Particulate Matter 2.5 (PM2.5), with the aim of having a robust geo-spatial representation across the city. PM2.5 impacts health and exposure can worsen existing health conditions.³⁰

The air quality data collected was analyzed against socio-economic demographics within neighbourhoods, including population density and affluence. The analysis looks at the links between neighbourhood demographics and air quality, increasing the equity lens of our monitoring program.

The results of the data analysis showed **that populations in lower income neighbourhoods are subject to elevated levels of contaminant concentrations and therefore elevated levels of environmental health risk**. Air quality worsens with income in a more significant way than any other factor. This is a demonstration of environmental inequity within the city.

To read Breathe Easy's full 2021 Report, click [here](#).³¹

³⁰ Government of Canada. (14 April 2021). "Fine particulate matter." *Government of Canada*. Online: <https://www.canada.ca/en/health-canada/services/air-quality/indoor-air-contaminants/fine-particulate-matter.html>.

³¹ Ecology Ottawa. (2021). "Breathe Easy 2021: Findings from a citizen science project monitoring air quality in Ottawa." Online: https://assets.nationbuilder.com/ecologyottawa/pages/6222/attachments/original/1669231386/Breathe_Easy_Report_2021%283%29%281%29.pdf?1669231386.

Chapter 3: Eastern Ontario Transportation Plan

The Government of Ontario created regional Task Forces plan to address transportation shortcomings.

In April 2022, a draft Eastern Ontario Transportation Plan was released, entitled "Connecting the East: A draft transportation plan for eastern Ontario" (Plan).³² The Plan proposes dozens of actions that the government and municipalities will take to improve transportation and access throughout the eastern Ontario region.



The bulk of the Plan's recommendations centre around expanding existing highways. The Plan does not propose many larger-scale public transportation projects to improve access to public transportation for individuals.

³² Government of Ontario. "Connecting the East: A draft transportation plan for eastern Ontario." *Government of Ontario*. Online: <https://www.ontario.ca/files/2022-04/mto-eastern-ontario-transport-plan-en-2022-04-21.pdf>.

Facts about the Eastern Ontario Transportation Network



1,140 km
of 400 series highways



Over 2,300 km of cycling routes
as part of the province-wide cycling network



4 intercommunity bus companies



1 international airport
and 15 municipal airports



3 major ports
and 11 ferry services



Passenger and freight rail services
provided by VIA Rail, CN and CP

Case Study: Ottawa's Light Rail Train (LRT) System

OC Transpo

The Ottawa-Carleton Regional Transit Commission, known as OC Transpo, is Ottawa's public transit agency. OC Transpo operates both bus and light rail train services in Canada's National Capital Region.

Background

2001 marked the beginning of the LRT in Ottawa. What is now known as Line 2, or the Trillium Line, first opened to riders on October 15th, 2001.³³ The original Trillium line was an eight-kilometre diesel light-rail service running North-South, servicing 5 stations.³⁴ The city outgrew its existing infrastructure and eventually made steps to expand the LRT system throughout the city.

LRT Expansion

The LRT was proposed as a means to address the downtown traffic congestion and to create a pedestrian and cycling friendly downtown core.

Traffic congestion in downtown Ottawa was exacerbated by the number of public transit busses operating in the core. The LRT expansion was proposed to mitigate traffic congestion by offering an alternative means of transportation into the downtown core. The LRT line replaced several bus routes, meaning fewer busses were contributing to the downtown traffic.³⁵

Infrastructure Ontario also explains that the LRT system will reduce greenhouse gas emissions by replacing busses with the LRT. The City of Ottawa expects that the LRT expansion will result in a reduction of over 110 thousand tonnes of GHGs per year by 2048.³⁶

Expansion Stage 1: Complete

The LRT line was expanded in 2013. It was at that time that construction began on the new Confederation Line, or Line 1. The Confederation Line has 12.5 kilometres of rail and runs east to west

³³ Egan, Kelly. (6 May 2020). "The original O-Train, a \$26.4M pilot, and the runaway train it spawned". *Ottawa Citizen*. Online: <https://ottawacitizen.com/news/local-news/egan-the-original-o-train-a-26-4m-pilot-and-the-lrt-whopper-it-spawned>.

³⁴ OC Transpo. (n.d.). "O-Train Line 2." *OC Transpo*. Online: <https://www.octranspo.com/en/our-services/bus-o-train-network/service-types/o-train-line-2>.

³⁵ Government of Ontario. (n.d.). "Ottawa Light Rail Transit - Confederation Line and Highway 417 Widening Project." *Government of Ontario*. Online: <https://www.infrastructureontario.ca/Ottawa-Light-Rail-Transit/>.

³⁶ City of Ottawa. (2023). "Stage 2 Light Rail Transit Project." *City of Ottawa*. Online: <https://ottawa.ca/en/planning-development-and-construction/major-projects/stage-2-light-rail-transit-project/overview>.

through Ottawa. Line 1 was completed and opened its doors to passengers in 2019. Electric trains run on the Confederation Line, unlike the diesel trains on the Trillium Line.³⁷

Expansion Stage 2: In Progress

Stage 2 of the expansion focuses on expanding the existing Confederation and Trillium Lines. The Confederation Line is being extended both in the east and the west, and the Trillium Line is being extended in the south. The expanded LRT will service 24 new stations, totalling 41 stations throughout the city.³⁸

Once Stage 2 is complete, the LRT system will bring 77% of Ottawa residents within five kilometres of rail.³⁹ Stage 2 is projected to be completed by 2026, however, there have been delays throughout the construction, so it is uncertain that the 2026 projection will be met.⁴⁰

Expansion Stage 3: Proposed

There is a proposed third stage in the expansion. Stage 3, if approved and funded, would further extend existing lines, extending to the Barrhaven region.⁴¹ To keep up to date on the status of the LRT expansion, [click here](#).

³⁷ OC Transpo. (n.d.). "O-Train Line 1." *OC Transpo*. Online: <https://www.octranspo.com/en/our-services/bus-o-train-network/service-types/o-train-line-1>.

³⁸ City of Ottawa. (2022). "2022 Construction on the O-Train South Extension." *City of Ottawa*. Online: <https://ottawa.ca/en/planning-development-and-construction/major-projects/stage-2-light-rail-transit-project/project-updates#section-c5362f71-e08a-45cc-acf9-0e2df0527d7c>.

³⁹ City of Ottawa. (2023). "Stage 2 Light Rail Transit Project." *City of Ottawa*. Online: <https://ottawa.ca/en/planning-development-and-construction/major-projects/stage-2-light-rail-transit-project/overview>.

⁴⁰ Porter, K. (1 November 2021). "Western Stage 2 LRT construction now 17 months behind." *CBC News*. Online: <https://www.cbc.ca/news/canada/ottawa/stage-2-lrt-update-fedco-november-2022-1.6636609#>.

⁴¹ Chianello, J. (3 November 2020). *Government of Ontario*. Online: <https://www.cbc.ca/news/canada/ottawa/barrhaven-lrt-3b-elevated-via-crossings-1.5786219>.



Importance of Rural Community Public Transportation

CELA authored a report in November 2022, which explains the importance of public transportation in rural communities.⁴² The report features recommendations for municipalities to take into account when drafting public transportation networks in the rural areas of that municipality. Lack of public transportation in rural communities harms minorities.⁴³ Low-income, racialized, and indigenous people in rural areas without access to adequate public transportation are required to travel long distances to access essential services like doctors, schools, employment and groceries. Using a private vehicle is very expensive, and not always a feasible option. To read about CELA’s recommendations, view the report [here](#).⁴⁴

⁴² Abid, R. (8 November 2022). “Recommendations for Municipalities Focus: Transportation for Rural Communities.” *Canadian Environmental Law Association*. Online: https://cela.ca/wp-content/uploads/2022/11/1504_Rural_transportation_Report.pdf.

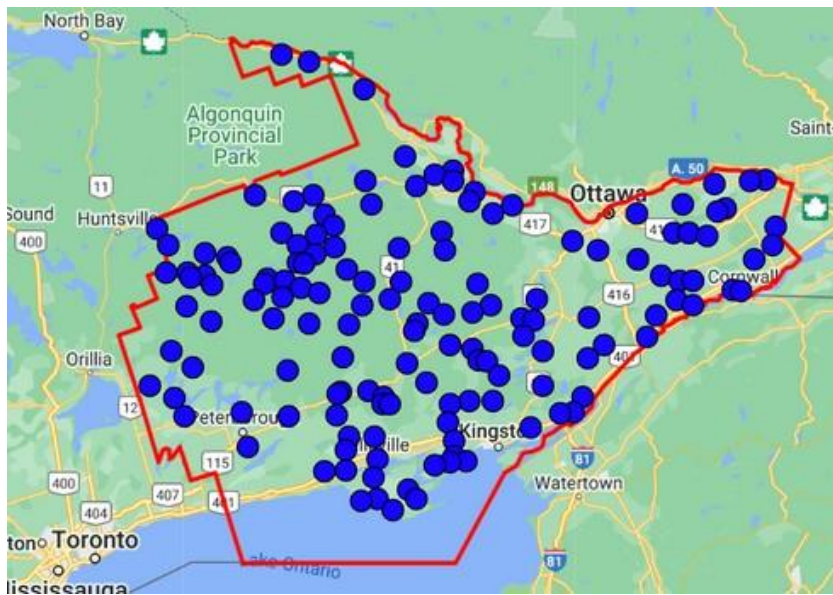
⁴³ Abid, R. (8 November 2022). “Recommendations for Municipalities Focus: Transportation for Rural Communities.” *Canadian Environmental Law Association*. Page 2. Online: https://cela.ca/wp-content/uploads/2022/11/1504_Rural_transportation_Report.pdf.

⁴⁴ Abid, R. (8 November 2022). “Recommendations for Municipalities Focus: Transportation for Rural Communities.” *Canadian Environmental Law Association*. Online: https://cela.ca/wp-content/uploads/2022/11/1504_Rural_transportation_Report.pdf.

Chapter 4: Landfill Sites and Environmental Compliance Approvals

Landfill sites are spaces to dispose of waste. They are primarily used to manage waste materials that are not reused or recycled by burying or covering them with soil in a designated area.

To determine where landfill sites in a particular region are located, the provincial government provides a map of all approved sites in the province, which can be found by [clicking on this link](#).⁴⁵



Each of the blue dots on the map represent one of the 149 Landfill Sites in Eastern Ontario.

In Southeastern Ontario, there are **149 approved landfill sites**. This represents almost 25% of the 620 landfill sites in Ontario as a whole.⁴⁶

Additional information in the more comprehensive dataset includes details on the landfill's fill rates, estimated remaining capacity, engineering designs, and reporting and monitoring details. The dataset was last updated on April 14, 2022.

Information about each approved site is listed on the website, including its:

- Environmental Compliance Approval (ECA) number
- Ministry of the Environment, Conservation (MECP) region
- MECP district
- Client name (the owner and operator of the site)
- Site name

⁴⁵ Government of Ontario. (2023). "Landfill sites map." *Government of Ontario*. Online: <https://www.ontario.ca/page/landfill-sites-map>.

⁴⁶ Government of Ontario. (2023). "Landfill sites map." *Government of Ontario*. Online: <https://www.ontario.ca/page/landfill-sites-map>.

- Site address
- Site municipality
- Operation status (open/closed)

When it comes to landfill sites, or waste disposal sites, some potential hazards include:⁴⁷

- Contamination of the ground and surface water;
- Methane gas production and migration into the air;
- Leachate (liquid or rainwater containing contaminate from travelling through waste)⁴⁸ production and migration;
- Land subsidence due to waste settling and decomposition; and
- Other hazards

According to Ontario's Waste Management Association, the remaining space available in **Ontario's landfills will be exhausted by 2032**, sounding alarm bells for us to rethink how we deal with our waste.⁴⁹

Environmental Compliance Approvals (ECAs)

ECAs and Landfills

Owners and operators of landfill sites must apply for environmental permissions through an ECA for their site's air, noise, waste, and sewage emissions and discharges.⁵⁰ These sites must meet specific conditions set out in the ECA and may be subject to an inspection by the Ministry. Businesses engaging in specific routines and lower-risk activities must self-register online in the Environmental Activity and Sector Registry (EASR) and are not required to obtain an ECA.⁵¹

When applications for an ECA are made, they are classified as a Class II proposal under the *Environmental Bill of Rights*. Thus, applications must be posted for a **minimum of 30 days** on the Environmental Registry for public comment.⁵²

⁴⁷ Government of Ontario. (2023). "C-5 Registration on Title of Certificates of Approval for Waste Disposal Sites: Potential Hazards from Waste Disposal Sites (2.0)." *Government of Ontario*. Online: <https://www.ontario.ca/page/c-5-registration-title-certificates-approval-waste-disposal-sites#section-2>.

⁴⁸ Government of Canada. (10 March 2021). "Municipal solid waste management in Canada." *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/municipal-solid/environment.html>.

⁴⁹ Ontario Waste Management Association. (2021). "Landfills." *Waste to Resource Ontario*. Online: <https://www.owma.org/cpages/landfills>.

⁵⁰ Government of Ontario. (4 November 2022). "Environmental Compliance Approval." *Government of Ontario*. Online: <https://www.ontario.ca/page/environmental-compliance-approval#section-0>.

⁵¹ Government of Ontario. (4 November 2022). "Environmental Compliance Approval." *Government of Ontario*. Online: <https://www.ontario.ca/page/environmental-compliance-approval#section-0>.

⁵² Government of Ontario. (4 November 2022). "Environmental Compliance Approval." *Government of Ontario*. Online: <https://www.ontario.ca/page/environmental-compliance-approval#section-0>.

Community Action Against Landfills

Vulnerable and low-income populations are more likely to find landfills and other hazardous waste sites situated near their homes. These areas have fewer resources to oppose the placement of these facilities. This makes them an easier target for landfill placement than higher-income areas.⁵³

For nearly 50 years, CELA has represented clients in numerous battles across Ontario in relation to existing or proposed landfills to safeguard public health and the environment.

CELA's Landfill Work in Southeastern Ontario

CELA represented clients in Eastern Ontario in their successful efforts to obtain the revocation of two 1998 approvals for a proposed municipal landfill that was never built. Since these approvals had no expiry dates, the proponent proposed to sell the undeveloped site almost two decades later to a private waste disposal company.

CELA was retained in 2017 to pursue our clients' outstanding concerns about the landfill's potential impacts on public health, well water quality, and wildlife habitat.⁵⁴

In 2019, Ontario's Environment Minister revoked the approval under the *Environmental Assessment Act* after our clients had filed a revocation request under the Act. CELA also filed an *Environmental Bill of Rights* Application for Review of the landfill's approval under the *Environmental Protection Act*, and the Environment Ministry revoked this approval in 2020.⁵⁵

In addition, CELA represented our clients in a public hearing before the Environmental Review Tribunal (and a subsequent appeal to them to the Minister) in relation to this matter.

For further information about this case, [click here](#).⁵⁶

⁵³ United Nations. (6 June 2019). "End-of-visit statement by the United Nations Special Rapporteur on toxics and human rights, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019." *United Nations*. Online: <https://www.ohchr.org/en/statements/2019/06/end-visit-statement-united-nations-special-rapporteur-toxics-and-human-rights>.

⁵⁴ Canadian Environmental Law Association. (2019). "Casework: Outdated Landfill Approvals Revoked for ED-19 Dump." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-outdated-landfill-approvals-revoked-ed-19-dump/>.

⁵⁵ Canadian Environmental Law Association. (2019). "Casework: Outdated Landfill Approvals Revoked for ED-19 Dump." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-outdated-landfill-approvals-revoked-ed-19-dump/>.

⁵⁶ Canadian Environmental Law Association. (2019). "Casework: Outdated Landfill Approvals Revoked for ED-19 Dump." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-outdated-landfill-approvals-revoked-ed-19-dump/>.

Chapter 5: Aggregates, Pits and Quarries

Aggregates

Aggregates refer to sand, gravel, crushed stone and other types of grain or fragments of rock. Aggregates are used to build and maintain physical infrastructure such as roads, buildings, and sewer systems.⁵⁷ Aggregates are typically mined from pits and quarries.⁵⁸ Aggregates are non-renewable. Aggregates in Ontario are regulated through the *Aggregate Resources Act* (ARA). The purpose of the ARA is not only to regulate aggregate but also to “minimize adverse impact on the environment in respect of aggregate operations.”⁵⁹

Pits and Quarries

Pits

Pits are a mean of excavation for the purpose of extracting sand, clay, marl, earth, shale, gravel, stone or other rock. Pits are open to the air. Coal, oil sands or ammonite shell and any associated infrastructure are not excavated from pits. Pits do not include quarries.⁶⁰

Quarries

Quarries are a mean of excavation for the purpose of “working, recovering and extracting stone, limestone, sandstone, dolostone, marble, granite, construction materials.” Quarries are open to the air. Coal, oil sands or ammonite shell and any associated infrastructure are not excavated from quarries. Quarries do not include pits.⁶¹

⁵⁷ Government of British Columbia. (n.d.). “Land use - aggregates and quarry materials.” *Government of British Columbia*. Online: <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/crown-land-uses/aggregates-quarry-materials#>; Feick, K. (n.d.). “Aggregate.” *University of Waterloo*. Online: <https://uwaterloo.ca/earth-sciences-museum/resources/detailed-rocks-and-minerals-articles/aggregate>.

⁵⁸ Government of Ontario. (22 July 2019). “Find Pits and Quarries.” *Government of Ontario*. Online: <https://www.ontario.ca/page/find-pits-and-quarries>.

⁵⁹ *Aggregate Resources Act*, RSO 1990, c A-8, s 2.

⁶⁰ Government of Canada. (12 May 2017). “Pits and quarries reporting guide.” *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/report/pits-quarries-guide.html>.

⁶¹ Government of Canada. (12 May 2017). “Pits and quarries reporting guide.” *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/report/pits-quarries-guide.html>.

Where Are They Located?

Ontario has a mapping tool that helps you locate where pits and quarries are in your region.⁶² You can find details on:⁶³

- All licensed pits and quarries in a chosen area [on Crown or private lands in Ontario]
- Licensee or permittee name and address Approval types (license or permit)
- The size of licensed or permitted areas
- The operation type (pit, quarry or both)
- The maximum annual tonnage limit
- The NDMNRF district responsible for the area

In Southeastern Ontario, there are currently 495 licensed pits and/or quarries.

⁶² Government of Ontario. (2022). "Pits and Quarries Online." *Ministry of Northern Development, Mines, Natural Resources and Forestry*. Online:
https://www.lioapplications.lrc.gov.on.ca/Pits_And_Quarries/index.html?viewer=Pits_and_Quarries.Pits_and_Quarries&locale=en-CA.

⁶³ Government of Ontario. (19 September 2022). "Find Pits and Quarries." *Government of Ontario*. Online:
<https://www.ontario.ca/page/find-pits-and-quarries>.

Area	Authorized Aggregate Sites	Pits	Quarries	Both
Belleville	14	12	2	0
Amherstview	0	0	0	0
Bancroft	45	39	1	5
Madoc	23	11	10	2
Marmora	12	11	1	0
Napanee	10	5	3	2
Picton	15	9	5	1
Trenton	16	16	0	0
Tweed	16	15	0	1
Coburg	0	0	0	0
Bewdley	2	2	0	0
Brighton	7	7	0	0
Campbellford	9	8	0	1
Colborne	26	26	0	0
Area	Authorized Aggregate Sites	Pits	Quarries	Both
Cornwall	37	15	18	4
Alexandria	1	1	0	0
Williamsburg	2	0	2	0
Hawkesbury	10	9	1	0
Kingston	20	8	11	1
Ottawa	49	31	17	1
Perth	16	15	1	0
Brockville	5	4	0	1
Sharbot Lake	8	7	0	1
Peterborough	19	15	4	0
Renfrew	28	23	1	4
Arnprior	11	11	0	0
Barry's Bay	11	11	0	0
Deep River	9	8	0	1
Pembroke	63	59	1	3
TOTAL	495	389	78	28

Environmental Concerns About Aggregates

Community groups have raised a number of issues as a result of living near increasing aggregate activity, including issues about:⁶⁴

- Noise & Vibration
- Water
- Dust/Air Quality
- Traffic & Safety
- Agricultural Lands
- Property Values
- Archeology & Heritage
- Impacts on the Natural Environment
- Visual Impacts

Regulating Mining & Excavation Activities

Ontario's *Aggregate Resources Act* (ARA) provides a regulatory framework for the management of Ontario's pits and quarries and manages the rehabilitation of land upon which aggregate has been excavated.⁶⁵

CELA has represented clients at quarry hearings at the Ontario Land Tribunal on issues stemming from the impacts of aggregate operations on the conservation of water resources, reduced quality of local drinking water, and the protection of local air quality, wildlife habitat, and ecosystems.⁶⁶

Ontario Changes the ARA

In 2019, Ontario amended the ARA such that municipal bylaws cannot, within areas specified in regulation, be used to prevent aggregate operators from excavating below water tables, to protect groundwater. In response to the omnibus bill in which these amendments were made (and which also included changes to several other environmental laws), CELA prepared submissions for the Standing Committee on General Government. [You can read CELA's submissions here.](#)⁶⁷

In May 2020, CELA filed a letter to the Ministry of Natural Resources and Forestry (MNRF) regarding proposed changes to Regulation 244/97 and Provincial Standards under ARA. These changes sought to "reduce the regulatory burden" on the aggregate industry and expedite the process to start and expand

⁶⁴ Gravel Watch Ontario. (n.d.) "Impacts". *Gravel Watch Ontario*. Online: <http://www.gravelwatch.org/>.

⁶⁵ *Aggregate Resources Act*, RSO 1990, c A-8, s 2.

⁶⁶ Canadian Environmental Law Association. (2014-2020). "Casework: Citizens Against Melrose Quarry." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-citizens-against-melrose-quarry/>.

⁶⁷ Lindgren, R. (27 November 2019). "Bill 132 – *Better for People, Smarter for Business Act*, 2019 Environmental Registry No. 019-0774." *Canadian Environmental Law Association*. Online: <https://cela.ca/wp-content/uploads/2019/11/1306-Bill-132-Submission-from-the-Canadian-Environmental-Law-Association.pdf>.

aggregate operations in Ontario. The province has further cut the budget of the MNRF to reduce monitoring, enforcement & compliance of these operations.⁶⁸

Read CELA's letter to the Ministry of Natural Resources [here](#).⁶⁹

⁶⁸ Lindgren, R. (15 May 2020). "Proposed Regulation Amendments Under the Aggregate Resource Act Favour Producers Over Local Residents." *Canadian Environmental Law Association*. Online: <https://cela.ca/proposed-regulation-amendment-aggregate-resource-act/>.

⁶⁹ Lindgren, R. (15 May 2020). "Proposed Regulation Amendments Under the Aggregate Resource Act Favour Producers Over Local Residents." *Canadian Environmental Law Association*. Online: <https://cela.ca/wp-content/uploads/2020/05/CELA-letter-to-MNRF-May-15-2020.pdf>.

Chapter 6: Food Insecurity and Traditional Foods

Food Insecurity

The Government of Canada defines food insecurity as, "the inability to acquire or consume an adequate diet quality or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so. Household food insecurity is often linked with the household's financial ability to access adequate food."⁷⁰

Food insecurity is an issue affecting many communities throughout Ontario, especially rural and/or remote and indigenous communities. The Ottawa Public Health Unit has indicated that 1 in 6 Ontario households face food insecurity as of 2019.⁷¹

Factors that Contribute to Food Insecurity

Household income is a main marker of the likelihood that a household is food insecure. The higher the household income, the less likely that the household is food insecure. Food insecure households are also highly affected by the inflation of prices for necessities, as stagnant wages cannot keep up with the rising food costs.⁷²

Food Insecurity and Off-Reserve Indigenous Peoples

National data indicates that the highest rates of food insecurity are among off-reserve Indigenous Peoples.⁷³

To learn more about food insecurity in Ontario, [click here](#).⁷⁴

⁷⁰ Government of Canada. (18 February 2022). "Household food insecurity in Canada: Overview." *Government of Canada*. Online: <https://www.canada.ca/en/health-canada/services/food-nutrition/food-nutrition-surveillance/health-nutrition-surveys/canadian-community-health-survey-cchs/household-food-insecurity-canada-overview.html>.

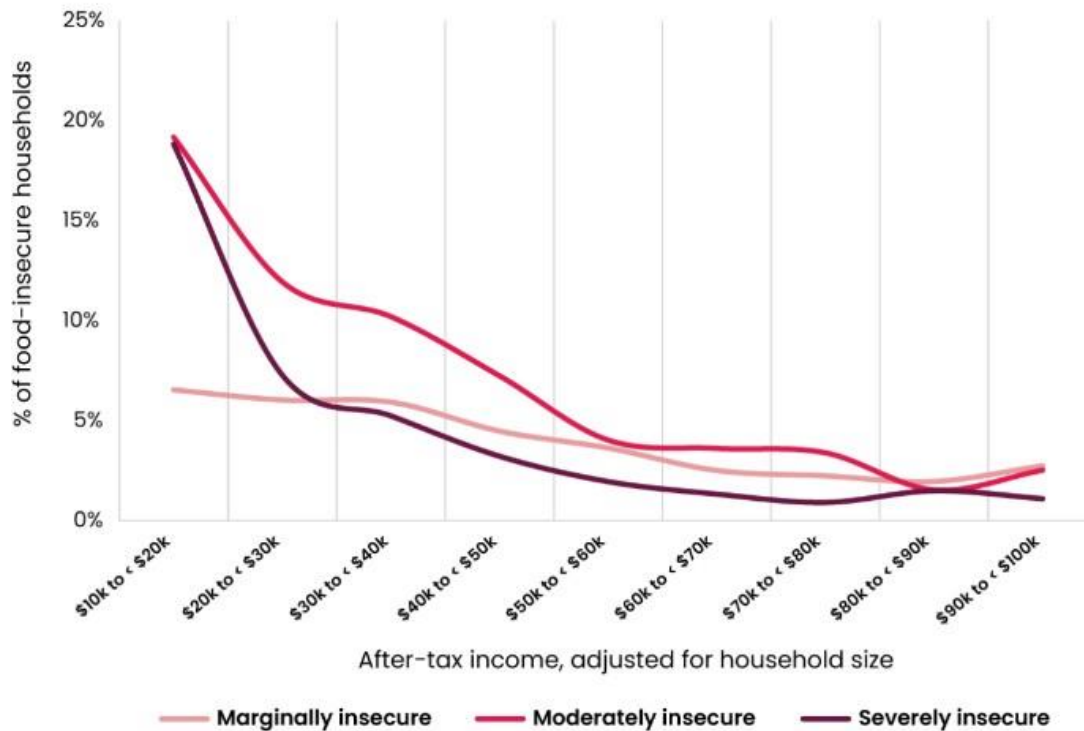
⁷¹ City of Ottawa. (16 December 2022). "Food Insecurity and the Nutritious Food Basket." *Ottawa Public Health*. Online: <https://www.ottawapublichealth.ca/en/public-health-topics/food-insecurity.aspx#Food-insecurity-in-Ottawa-and-Ontario>.

⁷² Proof. (2022). "Who are most at risk of household food insecurity?" *University of Toronto*. Online: <https://proof.utoronto.ca/food-insecurity/who-are-most-at-risk-of-household-food-insecurity/>.

⁷³ City of Ottawa. (2021). "Populations most affected by food insecurity." *Ottawa Public Health*. Online: <https://www.ottawapublichealth.ca/en/public-health-topics/food-insecurity.aspx#Populations-most-affected-by-food-insecurity>.

⁷⁴ City of Ottawa. (2021). "Food insecurity in Ottawa and Ontario." *Ottawa Public Health*. Online: <https://www.ottawapublichealth.ca/en/public-health-topics/food-insecurity.aspx#Food-insecurity-in-Ottawa-and-Ontario>.

Food insecurity by household income



Data Source: Statistics Canada, Canadian Income Survey (CIS) 2020.

From *Household Food Insecurity in Canada, 2021* by Tarasuk, Li, & Fafard St-Germain, 2022.

Toxic Exposures in Traditional Foods

Indigenous communities face unique issues in relation to food insecurity. Many indigenous communities and people rely heavily on harvesting traditional foods, through hunting, fishing, and gathering. The Assembly of First Nations (AFN) explains that traditional foods include foods such as wild meats, fish species, bird species, plants species, and berries.⁷⁵ Access to traditional foods is especially important for both cultural and health reasons.

⁷⁵ Assembly of First Nations. (March 2007). "Traditional Foods: Are they Safe for First Nations Consumption?" *Environmental Stewardship Unit*. Page 2. Online: https://www.afn.ca/uploads/files/env/traditional_foods_safety_paper_final.pdf.

When traditional food is available, levels of toxins from industry are an increasing concern, as per the AFN.⁷⁶ Generally, the higher up the food chain a species is, the more the toxins accumulate. Toxins of particular concern are mercury, cadmium, arsenic, and lead.⁷⁷

In addition to human rights implications, the contamination of traditional foods has resulted in unaddressed health impacts to Indigenous communities. For example, in the case of Asubpeeschoseewagong First Nation (Grassy Narrows First Nation), analysis of fish led researchers to conclude that there was "an association between long-term Hg (mercury) exposure from freshwater fish consumption and premature mortality."⁷⁸

Traditional Foods and Food Insecurity

Food insecurity in relation to traditional food is a growing concern. Land degradation caused by industrial activity and climate-induced change has reduced the availability of healthy traditional foods. Human Rights Watch's recent "[The Climate Crisis and First Nations' Right to Food in Canada](#)" report outlines the climate crisis' impact on First Nations food security, responses of community resilience in the face of crisis, and the federal government's failure to address climate change and food poverty.⁷⁹

Community Action: Feed Ontario

The unfortunate reality of food security issues, as Feed Ontario puts it, is that "hunger exists in every corner of Ontario." Feed Ontario is the province's largest collective of hunger-relief organizations, working with provincial food banks, industry, and local communities, to end hunger and poverty.

⁷⁶ Assembly of First Nations. (March 2007). "Traditional Foods: Are they Safe for First Nations Consumption?" *Environmental Stewardship Unit*. Page 4. Online: https://www.afn.ca/uploads/files/env/traditional_foods_safety_paper_final.pdf.

⁷⁷ Assembly of First Nations. (March 2007). "Traditional Foods: Are they Safe for First Nations Consumption?" *Environmental Stewardship Unit*. Page 4. Online: https://www.afn.ca/uploads/files/env/traditional_foods_safety_paper_final.pdf.

⁷⁸ Philibert, A, et al. (2020). "Mercury exposure and premature mortality in the Grassy Narrows First Nation community: a retrospective longitudinal study." *The Lancet Planetary Health*, 4:4. DOI: [https://doi.org/10.1016/S2542-5196\(20\)30057-7](https://doi.org/10.1016/S2542-5196(20)30057-7); United Nations. (6 June 2019). "End-of-visit statement by the United Nations Special Rapporteur on toxics and human rights, Baskut Tuncak on his visit to Canada, 24 May to 6 June 2019." *United Nations*. Online: <https://www.ohchr.org/en/statements/2019/06/end-visit-statement-united-nations-special-rapporteur-toxics-and-human-rights>.

⁷⁹ Human Rights Watch. (2020). "'My Fear is Losing Everything': The Climate Crisis and First Nations' Right to Food in Canada." *Human Rights Watch*. Online: <https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada>.

To find information on food banks and social assistance use, housing, and poverty, in specific regions of Southwest Ontario, you can use their Food Bank Calculator to track the status of food security and related issues throughout the region. You can do so by [clicking this link](#).⁸⁰

Indigenous Food Sovereignty

There is a growing food sovereignty movement in Canada. The Indigenous Food Systems Network describes food sovereignty as, "a specific policy approach to addressing the underlying issues impacting Indigenous peoples and their ability to respond to their own needs for healthy, culturally adapted Indigenous foods."⁸¹

Indigenous Food Sovereignty works to reconcile Indigenous food and cultural values with colonial laws and policies. It provides a restorative framework for policy reform in forestry, fisheries, rangeland, environmental conservation, health, agriculture, and rural and community development.

To learn more about Indigenous food insecurity and food sovereignty, [click here](#).⁸²

⁸⁰ Feed Ontario. (2023). "How does hunger impact your community?" Feed Ontario. Online: <https://feedontario.ca/hunger-in-my-riding/>.

⁸¹ Indigenous Food Systems Network. (n.d.). "Indigenous Food Sovereignty." *Indigenous Food Systems Network*. Online: <https://www.indigenousfoodsystems.org/food-sovereignty>.

⁸² Indigenous Food Systems Network. (n.d.). "Indigenous Food Sovereignty." *Indigenous Food Systems Network*. Online: <https://www.indigenousfoodsystems.org/food-sovereignty>.

Chapter 7: Nuclear Energy and Waste

Nuclear Power in Southeastern Ontario

Southeastern Ontario is home to two of Canada's four operational nuclear generating stations (NGS):⁸³

- Pickering Generating Station in Pickering, Ontario, and
- Darlington Generating Station in Clarington, Ontario

Pickering NGS

Ontario Power Generation (OPG) owns and is licensed to operate the Pickering NGS, located in the city of Pickering. The Pickering NGS accounts for about 14% of Ontario's electricity.⁸⁴

OPG currently holds a 10-year operating licence for the Pickering NGS, which expires on August 31, 2028. However, the current licence does not allow operations beyond December 31, 2024.

At the time of writing, OPG is seeking approval for an extension of commercial operations beyond 2024.

Darlington NGS

OPG owns and is licensed to operate the Darlington NGS, located in the municipality of Clarington. The Darlington NGS is responsible for 20% of Ontario's electricity.⁸⁵

OPG currently holds a 10-year operating licence for the Darlington NGS, which expires on November 30, 2025.

Nuclear Waste in Southeastern Ontario

Producing nuclear energy inevitably creates nuclear waste. Under section 2 of *the Nuclear Safety and Control Act*, radioactive waste in Canada is defined as, "any material (liquid, gaseous or solid) that contains a radioactive nuclear substance for which no further use is foreseen".⁸⁶ Radioactive waste is hazardous because it emits radioactive particles, which, if not properly managed, can be a risk to human and environmental.⁸⁷

⁸³ Canadian Nuclear Safety Commission. (n.d.). "Nuclear power plants." *Government of Canada*. Online: <https://www.cnsccsn.gc.ca/eng/reactors/power-plants/index.cfm>.

⁸⁴ Canadian Nuclear Safety Commission. (25 October 2022). "Pickering Nuclear Generating Station." *Government of Canada*. Online: <https://www.cnsccsn.gc.ca/eng/reactors/power-plants/nuclear-facilities/pickering-nuclear-generating-station/index.cfm>.

⁸⁵ Canadian Nuclear Safety Commission. (12 January 2023). "Darlington Nuclear Generating Station." *Government of Canada*. Online: <https://www.cnsccsn.gc.ca/eng/reactors/power-plants/nuclear-facilities/darlington-nuclear-generating-station/index.cfm>.

⁸⁶ *Nuclear Safety and Control Act*, SC 1997, C 9. S 2.

⁸⁷ United States Environmental Protection Agency. (11 July 2022). "Radioactive Waste." *United States Government*. Online: <https://www.epa.gov/radtown/radioactive-waste>.

In Canada, the Canadian Nuclear Safety Commission (CNSC) is responsible for the regulatory oversight of the management of radioactive waste, including handling, processing, transport, storage and disposal of that waste.⁸⁸

The CNSC's regulatory framework consists of laws passed by Parliament, as well as licences and regulatory documents issued and/or used by the CNSC to regulate the nuclear industry. The current Canadian nuclear waste policy is outdated and Canada committed to updating it.⁸⁹ Canada has run a consultation on a new framework, and civil society has encouraged broad consultation and provided advice on an alternative framework.⁹⁰ Civil society is also urging Canada to explicitly ban reprocessing of nuclear waste as part of that new framework.⁹¹

There are four general classes of nuclear waste in Canada: low-level radioactive waste, intermediate-level radioactive waste, high-level radioactive waste, and uranium mine and mill tailings. As nuclear waste is radioactive and therefore harmful for humans, it must be safely managed and stored in accordance with legislative and regulatory standards.⁹²

Nuclear waste is being stored at several locations in southeastern Ontario, including in Ottawa, Port Hope, and Peterborough. For a complete list of nuclear waste storage facilities in Canada, [click here](#).

Case Study: Canadian Nuclear Laboratories' Application for a Near Surface Disposal Facility

What is a Near Surface Disposal Facility

A Near Surface Disposal Facility (NSDF) is a engineered disposal facility for low-level radioactive waste.⁹³

Canadian Nuclear Laboratories' Chalk River Laboratories

Canadian Nuclear Laboratories (CNL) is contracted by the Atomic Energy of Canada Limited (AECL) to manage and operate AECL sites and facilities. CNL is also contracted to carry out AECL's mandate to

⁸⁸ Canadian Nuclear Safety Commission. (11 January 2022). "Radioactive Waste." *Government of Canada*. Online: <http://nuclearsafety.gc.ca/eng/waste/index.cfm>.

⁸⁹ Natural Resources Canada. (2022). "Your Views on the Draft Policy for Radioactive Waste Management and Decommissioning." *Government of Canada*. Online: <https://www.rncanengagenrcan.ca/en/content/your-views-draft-policy-radioactive-waste-management-and-decommissioning>.

⁹⁰ Nuclear Waste Watch. (2022). "Radioactive Waste Policy Review." *Nuclear Waste Watch*. Online: <https://nuclearwastewatch.weebly.com/radioactive-waste-policy-review.html>.

⁹¹ Nuclear Waste Watch. (2022). "Reprocessing." *Nuclear Waste Watch*. Online: <https://nuclearwastewatch.weebly.com/reprocessing.html>.

⁹² Canadian Nuclear Safety Commission. (11 January 2022). "Radioactive Waste." *Government of Canada*. Online: <http://nuclearsafety.gc.ca/eng/waste/index.cfm>.

⁹³ Canadian Nuclear Safety Commission. (11 July 2022). "Proposed nuclear facility – Near Surface Disposal Facility." *Government of Canada*. Online: <https://www.cnsccsn.gc.ca/eng/reactors/research-reactors/nuclear-facilities/chalk-river/near-surface-disposal-facility.cfm>.

enable nuclear science and technology and to protect the environment by fulfilling the government of Canada's radioactive waste and decommissioning responsibilities.⁹⁴

CNL operates the Chalk River Laboratories (CRL). CRL is located in Deep River, Ontario, **on the traditional unceded territory of the Algonquins of Ontario.**

Chalk River Laboratories' NSDF

CNL is seeking to revitalize the CRL site. In order to do so many buildings on the site need to be decommissioned and environmental remediation needs to take place. CNL is applying for a NSDF at CRL to store demolition and remediation radioactive waste.⁹⁵ Further, the NSDF would be a semi-permanent storage place for legacy waste already being held at the CRL site.⁹⁶

The NSDF would be a mound, built at near- surface level, consisting of disposal cells with a base liner and cover as well as systems to collect leachate, detect leaks and monitor the environment. The NSDF would have an expected operating life of at least 50 years.⁹⁷

The proposed NSDF would be located immediately adjacent to the Ottawa River, a drinking source for millions of Canadians.

NSDF Application and Approval Process

In order to receive the required licenses and approvals to construct and operate the NSDF, CNL must adhere to the application process imposed by CNSC.

Part of the application process requires the proponent, CNL, to have meaningful public engagement opportunities, Indigenous consultation, and public hearings.⁹⁸

The CNSC posted a timeline of the key milestones in the application process, which can be viewed [here](#).⁹⁹

⁹⁴ Canadian Nuclear Safety Commission. (4 December 2019). "Chalk River Laboratories." *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/reactors/research-reactors/nuclear-facilities/chalk-river/index.cfm>.

⁹⁵ Canadian Nuclear Laboratories. (n.d.). "Near Surface Disposal Facility." *Atomic Energy of Canada Limited*. Online: <https://www.cnl.ca/environmental-stewardship/near-surface-disposal-facility-nsdf/>.

⁹⁶ Canadian Nuclear Laboratories. (n.d.). "Near Surface Disposal Facility." *Atomic Energy of Canada Limited*. Online: <https://www.cnl.ca/environmental-stewardship/near-surface-disposal-facility-nsdf/>.

⁹⁷ Canadian Nuclear Safety Commission. (11 July 2022). "Proposed nuclear facility – Near Surface Disposal Facility." *Government of Canada*. Online: <https://www.cnsccsn.gc.ca/eng/reactors/research-reactors/nuclear-facilities/chalk-river/near-surface-disposal-facility.cfm>.

⁹⁸ Canadian Nuclear Safety Commission. (11 July 2022). "Licensing and regulatory process." *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/resources/news-room/nsdf-media-kit.cfm#sec2>.

⁹⁹ Canadian Nuclear Safety Commission. (11 July 2022). "Timeline of key milestones." *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/resources/news-room/nsdf-media-kit.cfm#sec3>.

The CNSC held various comment periods for public engagement since 2016. Two public hearings have taken place, one in February 2022 and the other in May-June 2022.

Members of the public were able to make both written and verbal submissions at the public hearing. There is an indication that [some level of consultation occurred](#) with the Algonquins of Ontario.¹⁰⁰

In July 2022, over a month after the public hearings concluded, the CNSC sought additional information regarding Indigenous consultation for CNL's application for to construct an NSDF.

At the time of writing, the CNSC has not issued its final decision regarding the NSDF approvals.

CELA'S Intervention at the CNSC Public Hearing

The CNSC held a public hearing in May-June 2022 regarding the proposed NSDF. CELA was an intervenor at the hearing. To view CELA's submissions, click [here](#).¹⁰¹ To view all submissions from all intervenors, click [here](#).¹⁰² Additional information about CELA's involvement in this case is available [here](#).

Indigenous Opposition to the Project

Lack of Meaningful Consultation

The CRL site is located on the unceded traditional territory of the [Algonquins of Ontario](#). [Ten Algonquin](#) communities comprise the Algonquins of Ontario.¹⁰³ Two of these communities, Mitchikanibikok Inik, Algonquins of Barriere Lake and the Algonquins of Pikwàkanagàn First Nations (AOPFN), submitted to the CNSC that the CNL did not engage in meaningful consultation with the First Nations.¹⁰⁴

¹⁰⁰ Canadian Nuclear Safety Commission. (11 April 2022). "Written submission from Algonquins of Ontario In the Matter of the Canadian Nuclear Laboratories (CNL)." *Algonquins of Ontario*. Page 7. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-98.pdf>

¹⁰¹ Canadian Environmental Law Association. (2022). "Written submission from the Canadian Environmental Law Association In the Matter of the Canadian Nuclear Laboratories." *Canadian Nuclear Safety Commission*. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-104.pdf>.

¹⁰² Canadian Nuclear Safety Commission. (2022). "May 30 to June 3, 2022 Public Hearing." *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/index.cfm#hearing-20220530-20220603:~:text=hearing%20in%20writing-,May%2030%20to%20June%203%2C%202022%20Public%20Hearing,-Application%20from%20the>.

¹⁰³ Algonquins of Ontario. (n.d.). "Who are the Algonquins of Ontario?" *Algonquins of Ontario*. Online: <http://www.tanakiwin.com/algonquins-of-ontario/who-are-the-algonquins-of-ontario/>.

¹⁰⁴ Canadian Nuclear Safety Commission. (11 April 2022). "Written submission from the Algonquins of Pikwàkanagàn First Nation In the Matter of the Canadian Nuclear Laboratories (CNL)." *Algonquins of Pikwàkanagàn First Nation*. Page 16. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-109.pdf>; Canadian Nuclear Safety Commission. (11 April 2022). "Written submission from the Mitchikanibikok Inik, Algonquins of Barriere Lake In the Matter of the Canadian Nuclear Laboratories (CNL)." *Algonquins of Barriere Lake*. Page 2. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-139.pdf>.

Interference with Section 35 Constitutional Rights

In their submissions to the CNSC, the Mitchikanibikok Inik also highlighted that the NSDF may interfere with their section 35 Aboriginal rights to harvest, gather, hunt, fish and engage in cultural and spiritual activities on the lands that surround the proposed project.¹⁰⁵

The AOPFN underlined how CNL did not seek their Free, Prior, and Informed consent, and that they do not consent to the project.¹⁰⁶

To read more about Section 35 Constitutional Rights, go to **Chapter 21** of this Toolkit.

¹⁰⁵ Canadian Nuclear Safety Commission. (11 April 2022). "Written submission from the Mitchikanibikok Inik, Algonquins of Barriere Lake In the Matter of the Canadian Nuclear Laboratories (CNL)." *Algonquins of Barriere Lake*. Page 3. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-139.pdf>.

¹⁰⁶ Canadian Nuclear Safety Commission. (11 April 2022). "Written submission from the Algonquins of Pikwàkanagàn First Nation In the Matter of the Canadian Nuclear Laboratories (CNL)." *Algonquins of Pikwàkanagàn First Nation*. Page 2. Online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-109.pdf>.

Chapter 8: Bill 23: More Homes Built Faster Act and Land Use Planning

Overview

On November 28, 2022, Bill 23 (*More Homes Built Faster Act, 2022*) received royal assent. Bill 23 marks one of the largest changes to land use planning and environmental protections that CELA has seen in decades.

Key Changes

Conservation Authorities: Conservation Authorities are an important watershed-based governmental authority which seeks to protect the source water of communities and protect against flooding and other natural hazards. Bill 23 amends the *Conservation Authority Act* and diminishes the role of conservation authorities across the province.¹⁰⁷ Conservation authorities' mandate has been narrowed. With respect to permits, pollution and the conservation of land may no longer be considered.¹⁰⁸ The Bill also restricts a Conservation Authority's ability to comment on development and planning applications unless it relates to natural hazards.¹⁰⁹ Southeastern Ontario has 8 conservation authorities who are all affected by Bill 23 and related proposals: Cataraqui Region, Crowe Valley, Lower Trent, Mississippi Valley, Quinte, Raisin Region, Rideau Valley, and South Nation.¹¹⁰ For more information about changes to Ontario's conservation authorities, [click here](#).¹¹¹

Public Participation Rights: Bill 23 diminishes public participation in land use planning decisions by amending the *Planning Act*. The amendments remove the requirement that approval authorities hold a public meeting in respect of a proposed subdivision.¹¹² Further, the public, meaning third parties who

¹⁰⁷ Association of Municipalities of Ontario. (2 November 2022). "Unpacking Bill 23 – More Homes Built Faster Act, 2022." *Association of Municipalities of Ontario*. Online: <https://www.amo.on.ca/advocacy/health-human-services/unpacking-bill-23-more-homes-built-faster-act-2022>.

¹⁰⁸ Legislative Assembly of Ontario. (28 November 2022). "Bill 23 An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022." *Government of Ontario*. Page i. Online: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf.

¹⁰⁹ Castrilli, J. (4 November 2022). "CELA's preliminary analysis of the proposed amendments in Schedule 2 of Bill 23, as reflected in ERO Number 019-6141." *Canadian Environmental Law Association*. Page 1. Online: https://cela.ca/wp-content/uploads/2022/11/Draft_Bill_23_Sch_2_11NOV2022.pdf.

¹¹⁰ Conservation Ontario. (n.d.). "Find a Conservation Authority." *Government of Ontario*. Online: <https://conservationontario.ca/conservation-authorities/find-a-conservation-authority>.

¹¹¹ Castrilli, J. (4 November 2022). "CELA's preliminary analysis of the proposed amendments in Schedule 2 of Bill 23, as reflected in ERO Number 019-6141." *Canadian Environmental Law Association*. Online: https://cela.ca/wp-content/uploads/2022/11/Draft_Bill_23_Sch_2_11NOV2022.pdf.

¹¹² Bell, A. (10 November 2022). "Bill 23 – What You Need to Know." *Ontario Nature*. Online: <https://ontarionature.org/bill-23-what-you-need-to-know-blog/>.

are not part of the application, can no longer appeal a minor variance and consent decision.¹¹³ These changes mean that the public cannot voice their concerns regarding decisions of Committees of Adjustment on consents and severances. However, the government reversed some of the more worrisome changes in the Bill and restored the rights of the public to participate in, and appeal important land use decisions that will affect them and their community including decisions regarding zoning and Official Plans. CELA was very pleased that the advocacy by ourselves and many others meant that communities retain the ability to participate in these very important land use decisions.¹¹⁴

Wetland Protections: The Ontario Wetland Evaluation System (OWES) is a points system designed to recognize provincially significant wetlands, which are in turn protected by the Provincial Policy Statement, 2020.¹¹⁵ MNRF will no longer providing an oversight role for wetland evaluation.¹¹⁶ It will also be much to meet the point threshold for provincially significant wetlands as wetland complexes are no longer recognized, and points are no longer provided for a wetland providing reproductive habitat for endangered or threatened species, or migration, feeding or hibernation habitat for endangered or threatened species.¹¹⁷ Conserving wetlands is important to mitigate flooding.¹¹⁸ Research has shown that indigenous communities are disproportionately exposed to flooding risks.¹¹⁹

¹¹³ Legislative Assembly of Ontario. (28 November 2022). "Bill 23 An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022." *Government of Ontario*. Page iii. Online: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf.

¹¹⁴ Canadian Environmental Law Association. (February 2023). "Impact of Bill 23 on Planning Act Third-Party Appeal Rights." *Canadian Environmental Law Association*. Online: <https://cela.ca/fact-sheet-impact-of-bill-23-on-planning-act-third-party-appeal-rights/>.

¹¹⁵ Government of Ontario. (2 February 2023). "Wetlands evaluation." *Government of Ontario*. Online: <https://www.ontario.ca/page/wetlands-evaluation>.; Government of Ontario. (2020). "Provincial Policy Statement, 2020." *Government of Ontario*. Page 50. Online: <https://files.ontario.ca/mmah-provincial-policy-statement-2020-accessible-final-en-2020-02-14.pdf>.

¹¹⁶ Legislative Assembly of Ontario. (28 November 2022). "Bill 23 An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022." *Government of Ontario*. Section 16. Online: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf.

¹¹⁷ Ontario Natural Farmers Union. (24 November 2022). "Joint Response to Proposed Changes to Ontario Wetland Evaluation System." *Ontario Natural Farmers Union*. Online: <https://nfuontario.ca/joint-response-to-proposed-changes-to-ontario-wetland-evaluation-system-ero-019-6160/>.

¹¹⁸ Feltmate, B., Hutter, A., Noudrak, N. (July 2017). "When the Big Storms Hit: the Role of Wetlands to Limit Urban and Rural Flooding Damage." *University of Waterloo, Impact Centre on Climate Adaptation*. Page 15. Online: <https://www.intactcentreclimateadaptation.ca/wp-content/uploads/2017/07/When-the-Big-Storms-Hit.pdf>.

¹¹⁹ Chakraborty, L. et al. (10 December 2021). "Leveraging Hazard, Exposure, and Social Vulnerability Data to Assess Flood Risk to Indigenous Communities in Canada." *International Journal of Disaster Risk Science volume 12*. Page 835. Online: <https://link.springer.com/article/10.1007/s13753-021-00383-1>.

PART II: GETTING INVOLVED

Chapter 9: The Importance of Public Participation

Citizens in addition to federal, provincial, municipal, and Indigenous governments have a critical role to play in the oversight and protection of environmental health.

For instance, at the local or municipal level, citizens can provide input on matters such as land use planning or municipal by-laws. At the provincial level, citizens can provide input into law reform matters, such as changes to [endangered species laws](#)¹²⁰, [environmental rights](#)¹²¹, or [environmental assessment](#)¹²². At the federal level, the public can also provide recommendations to modernize existing laws from [impact assessment](#)¹²³ to [environmental protection](#)¹²⁴ in line with the principles of environmental justice.

Public participation is especially crucial ["The Importance of Public Participation" by Tori Chai](#) participation¹²⁵:

- Enhances the democratic legitimacy of environmental decisions
- Manages social conflict by minimizing the conflicts that arise during a project, and lead to greater accountability and effectiveness in decision making
- Is an effective means (or sometimes the only means) through which local concerns, values, and traditional knowledge are raised.

¹²⁰ Blaise, K. (16 June 2020). "Proposed amendment to a regulation under the Endangered Species Act, 2007 relating to forest operations in Crown forests." *Canadian Environmental Law Association*. Online: https://cela.ca/wp-content/uploads/2020/06/Submission-from-CELA-ERO-No.-019-1620_June16_2020.pdf.

¹²¹ Canadian Environmental Law Association. (16 June 2020). "Media Release: Ontario restores fundamental environmental rights law." *Canadian Environmental Law Association*. Online: <https://cela.ca/ontario-restores-fundamental-environmental-rights-law/>.

¹²² Government of Ontario. (5 July 2021). "Consultation in Ontario's environmental assessment process." *Government of Ontario*. Online: <https://www.ontario.ca/page/consultation-ontarios-environmental-assessment-process>.

¹²³ Government of Canada. (26 April 2021). "Public Participation in Impact Assessment." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/public-participation-impact-assessment-fact-sheet.html>.

¹²⁴ Castrilli, J. (15 April 2021). "Long Awaited Amendments to CEPA: The Good, The Bad, and the Ugly on Chemicals and Environmental Rights." *Canadian Environmental Law Association*. Online: <https://cela.ca/blog-long-awaited-amendments-to-cepa-the-good-the-bad-and-the-ugly-on-chemicals-and-environmental-rights/>.

¹²⁵ Chai, T. (1 April 2016). "The Importance of Public Participation." *York University, Environmental Justice and Sustainability Clinic*. Online: <https://ejclinic.info.yorku.ca/2016/04/the-importance-of-public-participation/#%3A~%3Atext%3DPublic%20participation%20has%20been%20an%2Cdecision%2Dmaking%20for%20several%20decades.%26text%3DIt%20helps%20to%20produce%20more%2Cthe%20environment%20and%20natural%20resources>.

- Helps to produce more accurate results that better suit the needs of a community.

Public participation is also enshrined in [international environmental law](#). Here, the principle of public participation consists of three elements: (1) participation in decision-making processes on environmental issues, (2) access to environmental information, and (3) access to administrative and judicial proceedings.¹²⁶

Public participation often takes the form of public comment periods and consultation. On a personal level, environmental decisions and industry can have a large impact on your life and health. Participating in environmental decisions and advocacy is a helpful way to enact positive change in your community.

At CELA, we continue to advocate for greater community engagement and accountability in environmental decision-making. This is crucial, as even the strongest of environmental laws are near meaningless if they are not enforced.

¹²⁶ van Bekhoven, J. (30 September 2016). "Public Participation as a General Principle in International Environmental Law: Its Current Status and Real Impact." *National Taiwan University Law Review*, Volume 11. Pages 229-230. Online <https://papers.ssrn.com/abstract=2962181>.

Chapter 10: Environmental Bill of Rights and the Environmental Registry of Ontario

The Environmental Bill of Rights

Ontario's *Environmental Bill of Rights* (EBR) was proclaimed into force on February 15, 1994. Its goals are "to protect, conserve and restore the integrity of the environment, to provide sustainability of the environment, and to protect the right of Ontario residents to a healthful environment."¹²⁷

Among other things, the EBR entitles Ontarians to:¹²⁸

- Receive notice of, and file comments on, governmental proposals to make, amend, repeal or revoke environmental laws, regulations, policies, or instruments (e.g. licences, permits or approvals).
- Seek leave (aka permission) to appeal government decisions regarding instruments to an independent appellate body.
- File applications for (1) an investigation of suspected environmental offences under Ontario legislation or (2) an application for the review of an outdated, incomplete, or ineffective environmental law framework.
- Commence civil actions to protect natural resources or to address public nuisances causing environmental harm.

Violation of the Environmental Bill of Rights

The EBR also figures prominently in CELA's litigation, including that against Bill 197 (*COVID- 19 Economic Recovery Act, 2020*) which denied members of the public their legal right to be notified and consulted on environmentally significant legislative amendments. The amendments in Bill 197 included controversial changes to the *Environmental Assessment Act*, the *Environmental Bill of Rights*, and the *Planning Act*.¹²⁹

On September 3, 2021, the Ontario Divisional Court held that the Government of Ontario broke the law when it failed to comply with the public consultation requirements of Ontario's *Environmental Bill of Rights*.¹³⁰ However, the Court found the changes to the *Environmental Assessment Act* were lawful due

¹²⁷ Government of Ontario. (n.d.). "Statement of Environmental Values : Ministry of the Environment and Climate Change." *Ministry of the Environment and Climate Change*. Online: <https://ero.ontario.ca/page/sevs/statement-environmental-values-ministry-environment-and-climate-change>.

¹²⁸ *Environmental Bill of Rights*, SO 1993, c 28.

¹²⁹ Canadian Environmental Law Association. (2021). "Casework: Judicial Review of Bill 197 - COVID-19 Economic Recovery Act, 2020." *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-judicial-review-of-bill-197-covid-19-economic-recovery-act-2020/>.

¹³⁰ *Greenpeace Canada (2471256 Canada Inc.) v. Ontario (Minister of the Environment, Conservation and Parks)*, 2021 ONSC 4521 at para 94. Online: <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc4521/2021onsc4521.html?resultIndex=1>.

to a “statutory exception” in Bill 197, which retroactively exempted the changes from the consultation requirements of the EBR.¹³¹

For updates on this case, read [here](#).¹³²

A more detailed guide to EBR rights is available [here](#), courtesy of The Environmental Commissioner of Ontario.¹³³

Read more on CELA's efforts for Law Reform of the EBR by [clicking here](#).¹³⁴

The Environmental Registry of Ontario (ERO)

The *Environmental Bill of Rights* requires that a Registry be established.¹³⁵ The Environmental Registry of Ontario (ERO) was therefore created. The purpose of the ERO is to, "provide a means of giving information about the environment to the public." The ERO is a website where the public can consult and take part in provincial government decision-making that might affect the environment.

ERO postings relate to changes regarding:

- Acts
- Regulations
- Policies
- Instruments

Most notices on the ERO are in the proposal stage. That means that the government is proposing to change or make a new act, regulation, policy or The Environmental Registry of Ontario.

The Environmental Registry of Ontario (ERO) has all of the postings regarding permits, approvals, and open consultation periods. This is an important website to bookmark to stay up-to-date on developments and environmental impacts. Each posting contains information on the public comment period.

¹³¹ *Greenpeace Canada (2471256 Canada Inc.) v. Ontario (Minister of the Environment, Conservation and Parks)*, 2021 ONSC 4521 at paras 55-59. Online: <https://www.canlii.org/en/on/onsc/doc/2021/2021onsc4521/2021onsc4521.html?resultIndex=1>.

¹³² Canadian Environmental Law Association. (2020-2021). “Casework: Judicial Review of Bill 197 - COVID-19 Economic Recovery Act, 2020.” *Canadian Environmental Law Association*. Online: <https://cela.ca/casework-judicial-review-of-bill-197-covid-19-economic-recovery-act-2020/>.

¹³³ Government of Ontario. (10 May 2013). “Ontario’s Environmental Bill of Rights and You: A guide to exercising your right to participate in environmental decision making in Ontario.” *Environmental Commissioner of Ontario*. Online: <https://www.energy.gov/sites/prod/files/2015/06/f22/OEBRG.pdf>.

¹³⁴ Canadian Environmental Law Association. (2017-2022). “Law Reform: Ontario's Environmental Bill of Rights.” *Canadian Environmental Law Association*. Online: <https://cela.ca/law-reform-ontarios-environmental-bill-of-rights/>.

¹³⁵ *Environmental Bill of Rights*, SO 1993, c 28, s 5.

The ERO consultation process

The ERO publishes Notices of changes to acts, regulations, policies, and instruments that will affect the environment. Notices typically go through three consultation steps: (1) proposal, (2) review, and (3) decision.¹³⁶

Proposal Stage

The Notice will propose a change to an act, regulation, policy or instrument.

During the proposal stage, the public has an opportunity to submit comments regarding the proposed change. This is called the comment period. The comment period is open for a minimum of 30 days. Each Notice has information on how to participate in the comment period.

Review Stage

In the Review stage, the government will review and take into consideration the comments received during the proposal stage. The Review stage informs the Decision stage.

Decision Stage

In this stage, the Government will make a decision regarding the proposal. In their decision, the government explains how comments were taken into consideration, the number of comments received, and the final decision on what the government is going to do. The final decisions are posted to the ERO.

Appealing a Decision

The EBR allows for appeals of decisions regarding instruments, in some instances. When a Decision is posted to the ERO, it will indicate whether the decision is appealable and, if so, how the public can go about their appeal. It is always useful to confirm with a lawyer to confirm whether a particular decision is appealable.¹³⁷

Navigating the Environmental Registry of Ontario (ERO)

The ERO [website](https://ero.ontario.ca) allows users to view Notices, Proposals, and Decisions.¹³⁸ The website is accessible to the public. When you first visit the ERO website, this is what the home page looks like:

¹³⁶ Government of Ontario. (n.d.). "The Environmental Registry consultation process." *Government of Ontario*. Online: <https://ero.ontario.ca/page/consultation-process>.

¹³⁷ Government of Ontario. (n.d.). "The Environmental Registry consultation process." *Government of Ontario*. Online: <https://ero.ontario.ca/page/consultation-process>.

¹³⁸ Government of Ontario. (n.d.). "Environmental Registry of Ontario." *Government of Ontario*. Online: <https://ero.ontario.ca/index.php/>.



I am looking for:



all new postings in the last 7 days



all instruments (permits, approvals, etc.) posted in the last 7 days



View consultations on our map

How to use the ERO

Quick Links

Upon visiting the site, there are several options to view new postings and instruments posted within the last 7 days. The launch page also allows you to view the locations of ongoing postings on a map.



To filter your searches to the Southwestern region of Ontario, you can use several different variations of search terms, such as:

- Southeast Ontario
- Southeastern Ontario
- “Southeast” & “Ontario”

General Search Tool

You can search for other information not provided in the Quick Links by doing a general search. To do a search, users can enter a keyword, phrase or ERO number in order to filter the postings. The tool is not case-sensitive. There are currently over 7300 matters undergoing public consultation.

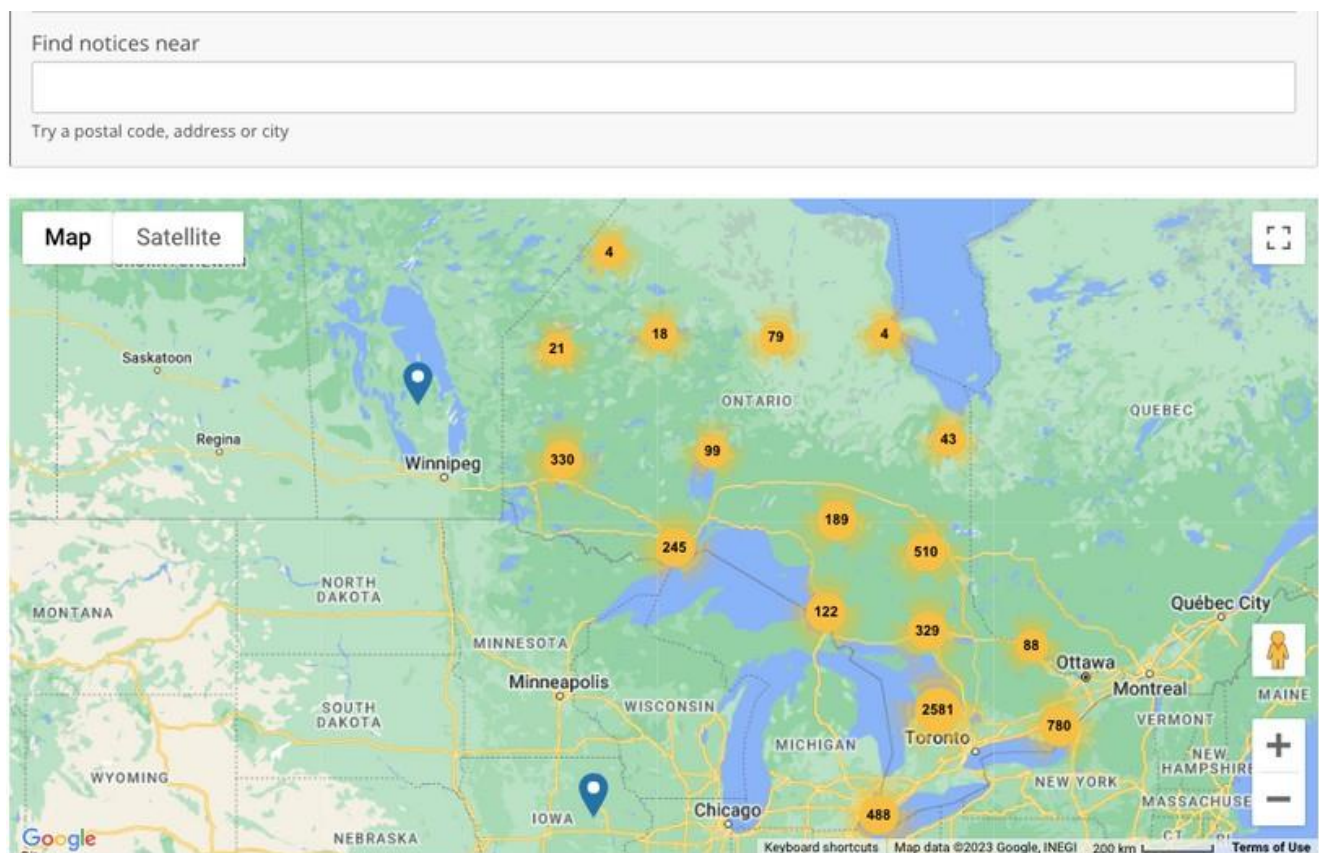


Searches can further be filtered by:

- Date Range
- Comment Period
- Notice Types
- Notice Stages
- Posted By (Specific Ministry)
- The Act Being Considered
- Instrument Type

Similar searches can be done for the ERO's archive.

The Map



The map is another tool on the ERO website allows you to search for **instrument notices**. The location pins reflect the approximate area where environmental notice or consultation activity is taking place. You may filter by looking for all notices, those open for comment, or with a decision.

For Southeastern Ontario, the most effective search term you can use to find instrument notices is by using your general or exact community location (i.e. searching for all notices in Pembroke, Ontario, or putting in an exact address).

How to Sign Up For Alerts

For a more personalized experience while using the ERO, you can [register for an account](#) on the website and sign up to receive **email notifications for specific keywords** when they appear on the registry.¹³⁹ For instance, you can sign up to receive alerts about any new notice posted that includes the words “Southeastern Ontario.”

You can also customize your notification preferences to receive news on consultations that you wish to follow or general news from the ERO. Simply open up a notice, scroll to the bottom and click “Follow this notice” to do so.

¹³⁹ Government of Ontario. (n.d.). “Create new account.” *Government of Ontario*. Online: <https://ero.ontario.ca/user/register>.

Chapter 11: Duty to Consult and Section 35 Constitutional Rights

[Section 35](#) of the [Constitution of Canada](#) recognizes and affirms 'Aboriginal and treaty rights.'¹⁴⁰ Flowing from this, the Crown has an obligation and legal duty to consult and accommodate Aboriginal (First Nations, Inuit, and Métis) peoples.¹⁴¹

This duty arises “when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it.”¹⁴²

This can be visualized below, in the diagram below, courtesy of Olthius Kleer Townshend LLP.¹⁴³



“Low End” Consultation	“High End” Consultation	Consent
<ul style="list-style-type: none"> • Adequate notice • Disclose relevant information • Give enough time to respond • Discuss issues raised, and try to address concerns raised 	<ul style="list-style-type: none"> • Negotiate how consultations should proceed (exchange info, meetings) • Site visits, researching, studies • Provide for participation in the decision-making process • Fund First Nation participation • Accommodate by mitigating harm or negotiating benefits 	<ul style="list-style-type: none"> • Where the right is proven, consent is required (<i>Tsilhqot’in Nation v. British Columbia</i>, 2014 SCC 44)

The scope of the Crown's duty to accommodate is based on:¹⁴⁴

- (1) The Crown’s knowledge, actual or constructive, of a potential Aboriginal claim or right;
- (2) Contemplated Crown conduct;
- (3) The potential that the contemplated conduct may adversely affect an Aboriginal claim or right.

¹⁴⁰ *Constitution Act*, 1982, section 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹⁴¹ Government of Ontario. (9 December 2021). “Government of Canada and the duty to consult.” *Government of Canada*. Online: <https://www.rcaanc-cirnac.gc.ca/eng/1331832510888/1609421255810>.

¹⁴² *Haida Nation v British Columbia* (Minister of Forests), 2004 SCC 73 at para 35.

¹⁴³ Olthius Kleer Townshend LLP. (2017). A Primer on the Constitutional Duty to Consult. *Olthius Kleer Townshend LLP*. <http://www.oktlaw.com/wp-content/uploads/2017/03/OKT-Primer-on-Consultation-v2.pdf>.

¹⁴⁴ *Haida Nation v British Columbia* (Minister of Forests), 2004 SCC 73 at headings.

The degree or extent of consultation owed depends on:¹⁴⁵

- (1) The strength of the claim to particular rights;
- (2) The potential harm that could be caused to those existing or asserted rights

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) references Indigenous peoples' right to free, prior, and informed consent (FPIC).

Article 32(2) relates to the development of resources and often arises in the duty to consult context. It states that:¹⁴⁶

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

Canada has also recently adopted The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) with the royal assent of Bill C- 15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.¹⁴⁷

The adoption of Bill C-15 and UNDRIP has not been interpreted in Canadian courts to allow for Indigenous Peoples to veto an unwanted project. In fact, many have criticized Article 46 of UNDRIP as "a backdoor," as it provides for qualifications and limitations.¹⁴⁸ However, it does mean that the Crown must seek to obtain Indigenous consent in good faith in all situations where the rights of Indigenous peoples may be affected; not just in a situation with proven rights.¹⁴⁹ This is wider than the duty to consult and accommodate, which only requires Indigenous consent in situations where they hold rights established in Canadian/settler law.

In Ontario, the Ministry of Indigenous Affairs is involved in the duty to consult process. They have an email for "thoughts about the current consultation process and your ideas to improve it." The email is dutytoconsult@ontario.ca.

¹⁴⁵ *Haida Nation v British Columbia* (Minister of Forests), 2004 SCC 73 at headings.

¹⁴⁶ United Nations. (13 September 2007). "United Nations Declaration on the Rights of Indigenous Peoples." *United Nations*. Article 32(2) at page 23. Online: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

¹⁴⁷ Parliament of Canada. (21 June 2021). "An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples." *Government of Canada*. Online: <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/royal-assent>.

¹⁴⁸ Brown, L. (27 September 2017). "Canada's treatment of Indigenous Rights." *The McGill Daily*. Online: <https://www.mcgilldaily.com/2017/09/canadas-treatment-of-indigenous-rights/>.

¹⁴⁹ United Nations. (13 September 2007). "United Nations Declaration on the Rights of Indigenous Peoples." *United Nations*. Article 32(2) at page 29. Online: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

Federally, the responsible ministry is the Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Contact information for CIRNAC is available [here](#).¹⁵⁰

The UN Handbook for Parliamentarians on implementing UNDRIP distinguishes between situations in which UNDRIP requires a government to seek consent and when it requires that consent be obtained.¹⁵¹

Requires a government to seek consent:

Resource development projects, legislation affecting Indigenous peoples, and administrative measures related to Indigenous lands, territories, natural resources, and sacred sites in accordance with the UNDRIP and the jurisprudence of international human rights treaty bodies.¹⁵²

Requires that consent be obtained:

When Indigenous peoples are subject to relocation and in cases of storage or disposal of toxic waste on Indigenous lands or territories, as well as with regards to matters "of fundamental importance for the rights, survival, dignity, and well-being of indigenous peoples."¹⁵³

In the future, we will see how UNDRIP impacts case law in the Canadian judicial system.

Following the passing of Bill C-15, Canada is tasked with developing an action plan for achieving the objectives of UNDRIP by June 2023. Initial funding was available for Indigenous peoples, governments, and organizations to participate in the consultation, cooperation, and engagement process.

According to the Canadian government, "The consultation, cooperation and engagement process will be broad, inclusive and distinctions-based. It will include consultations and cooperation with First Nations, Inuit, and Métis rights holders, including modern treaty signatories, self-governing nations and historic treaty partners, as well as with national and regional Indigenous representative organizations. It will also

¹⁵⁰ Government of Canada. (9 July 2022). "Contact Crown-Indigenous Relations and Northern Affairs Canada." *Government of Canada*. Online: <https://www.rcaanc-cirnac.gc.ca/eng/1603225519672/1603310558983>.

¹⁵¹ United Nations. (8 September 2015). "Implementing the UN Declaration on the Rights of Indigenous Peoples: Handbook for Parliamentarians." *United Nations Department of Economic and Social Affairs*. Online: <https://www.un.org/esa/socdev/publications/Indigenous/Handbook/EN.pdf>.

¹⁵² United Nations. (8 September 2015). "Implementing the UN Declaration on the Rights of Indigenous Peoples: Handbook for Parliamentarians." *United Nations Department of Economic and Social Affairs*. Page 28. Online: <https://www.un.org/esa/socdev/publications/Indigenous/Handbook/EN.pdf>.

¹⁵³ United Nations. (8 September 2015). "Implementing the UN Declaration on the Rights of Indigenous Peoples: Handbook for Parliamentarians." *United Nations Department of Economic and Social Affairs*. Page 29. Online: <https://www.un.org/esa/socdev/publications/Indigenous/Handbook/EN.pdf>.

include engagement with Indigenous women, youth, Elders, persons with disabilities, 2SLGBTQQA+ persons, as well as urban and other Indigenous organizations and groups.”¹⁵⁴

To read the more, click [here](#).¹⁵⁵

¹⁵⁴ Government of Canada. (19 April 2022). “Engagement on an action plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.” *Government of Canada*. Online: <https://www.justice.gc.ca/eng/declaration/engagement/form/index.html>.

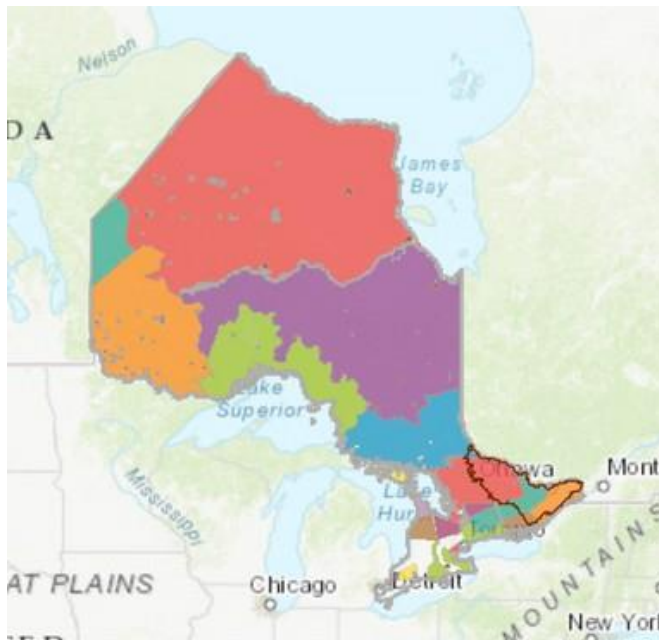
¹⁵⁵ Government of Canada. (19 April 2022). “Engagement on an action plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.” *Government of Canada*. Online: <https://www.justice.gc.ca/eng/declaration/engagement/form/index.html>.

Chapter 12: Inherent and Treaty Rights

All Indigenous Peoples in Canada hold inherent rights, such as the right to self-government, rights to the land, and the right to practice their own culture and customs.¹⁵⁶ These rights stem from Indigenous stewardship and relationships to their lands and are not derived from colonial or Crown-based laws.

Some Indigenous Peoples also have treaty rights, and their existence is based on treaties signed between First Nations and the Crown.

To find out what treaty applies to the land that you live on, click [here](#) for an interactive map.¹⁵⁷ You can search this map by treaty, reserve, or address. The linked webpage also offers a short history of each treaty in Ontario.



Specific rights negotiated during treaty signing are protected under section 35 of the Canadian Constitution, however, they can be subject to some government infringement. The extent to which a right can be infringed has been set out by the Supreme Court of Canada, in cases including *R v. Sparrow*.¹⁵⁸

¹⁵⁶ Government of Canada. (1 March 2023). "The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government." *Government of Canada*. Online: <https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>.

¹⁵⁷ Government of Ontario. (13 January 2022). "Map of Ontario treaties and reserves." *Government of Ontario*. Online: <https://www.ontario.ca/page/map-ontario-treaties-and-reserves>.

¹⁵⁸ *R v Sparrow*, 1990, 1 SCR 1075.

Some treaties were recorded using a wampum belt. One of the best-known examples of this is the Two Row Wampum Belt (Guswentá) treaty between the Haudenosaunee and the Dutch. From the Oneida Nation, “In one row is a ship with our White Brothers’ ways; in the other a canoe with our ways. Each will travel down the river of life side by side. Neither will attempt to steer the other’s vessel.” This treaty has not been respected by the government, but Indigenous and settler efforts to live by the principle of the Two Row Wampum continue.¹⁵⁹

¹⁵⁹ Onondaga Nation. (n.d.). “Two Row Wampum – Gaswéñdah.” *Onondaga Nation*. Online: <https://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswentá/>.

Chapter 13: The Federal Impact Assessment Act

The Federal *Impact Assessment Act* (IAA) sets out the legislative authority for the Impact Assessment Agency of Canada (the Agency) to require and conduct Impact Assessments (IA) for proposed projects.¹⁶⁰

An IA is a planning and decision-making tool used to assess the potential positive and negative effects of proposed projects. Impact assessments consider a wide range of factors and propose measures to mitigate projects' adverse effects.¹⁶¹

Canada's environmental assessment process

Federal environmental assessments, known as impact assessments (IAs), are overseen by the Impact Assessment Agency of Canada (the Agency) under the *Impact Assessment Act*. Only a handful of large-scale projects listed in the Project List regulation or by Ministerial order require an IA.

The Act allows for members of the public and Indigenous communities to:

- Request a proposed project to be "designated" for an IA if it doesn't fall on the Project List regulation. Learn more [here](#).¹⁶²
- Request a regional assessment to study the effects of existing and future activities carried out in a region
- Request a strategic assessment of any government of Canada policy or plan relevant to IA. Learn more [here](#).¹⁶³

The Agency then screens the project and determines whether, on a case-by-case, an IA is necessary for a specific project. If the Agency decides to conduct an IA, the process is comprised of five steps - each providing some opportunity for the public and Indigenous engagement. The five steps are detailed here, and in more detail through the links below.¹⁶⁴

¹⁶⁰ *Impact Assessment Act*, SC 2019, c 28, s 1.

¹⁶¹ Government of Canada. (5 October 2022). "Basics of Impact Assessments." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/basics-of-impact-assessments.html>.

¹⁶² Government of Canada. (19 May 2022). "Operational Guide: Designating a Project under the Impact Assessment Act." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html#%3A~%3Atext%3DA%20request%20to%20designate%20a%20project%20must%20be%20sent%20to%2C.acee%40canada.ca>.

¹⁶³ Government of Canada. (9 November 2022). "Operational Guide: Requesting a Regional or Strategic Assessment under the Impact Assessment Act." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/requesting-regional-strategic-assessment-iaa.html>.

¹⁶⁴ Government of Canada. (14 February 2022). "Impact Assessment Process Overview." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html>

1. Planning¹⁶⁵
2. Impact Statement¹⁶⁶
3. Impact Assessment¹⁶⁷
4. Decision Making¹⁶⁸
5. Post Decision¹⁶⁹



Photo of the 5 stages courtesy of the [Impact Assessment Agency of Canada](https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase1.html).

¹⁶⁵ Government of Canada. (14 February 2022). "Phase 1: Planning." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase1.html>.

¹⁶⁶ Government of Canada. (14 February 2022). "Phase 2: Impact Statement." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase2.html>.

¹⁶⁷ Government of Canada. (14 February 2022). "Phase 3: Impact Assessment." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase3.html>.

¹⁶⁸ Government of Canada. (14 February 2022). "Phase 4: Decision Making." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase4.html>.

¹⁶⁹ Government of Canada. (14 February 2022). "Phase 5: Post Decision." *Government of Canada*. Online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase5.html>.

Find a Project and Comment Online

To learn more about ongoing IAs or upcoming comment opportunities on projects near you, you can search the Canadian Impact Assessment Registry [here](#).¹⁷⁰ Each project has its own page where you can find information about the stage of assessment, funding opportunities to facilitate participation, or how members of the general public and/or Indigenous peoples are invited to comment. There are dozens of IAs in progress in southeastern Ontario. To view these projects on a map, [click here](#).¹⁷¹

¹⁷⁰ Government of Canada. (2022). "Canadian Impact Assessment Registry." *Government of Canada*. Online: <https://iaac-aeic.gc.ca/050/evaluations/index?culture=en-CA>.

¹⁷¹ Government of Canada. (2022). "Interactive Assessment Map." *Government of Canada*. Online: <https://iaac-aeic.gc.ca/050/evaluations/atlas>.

Chapter 14: The Provincial Environmental Assessment Act

Various changes to environmental assessment continue to be proposed and implemented in Ontario. Information in this chapter reflects the situation at the time of writing.

EAs in Ontario

Environmental assessment (EA) is about 'looking before you leap' so that the impacts of a proposed project on human, ecological, economic, and social systems are considered prior to project development. Done well, the EA process can help to eliminate, or at the very least, reduce potential impacts on the environment from a proposed project. It is also a tool to prevent disproportionate impacts on at-risk communities and ecosystems, and ensure the public voice is heard in an accountable, decision-making process before any work begins. This precautionary approach enables informed decisions on whether a project should be approved (or not), and whether terms or conditions should be imposed to safeguard the public interest.

Ontario's *Environmental Assessment Act* is the legislative authority for the Ministry of the Environment, Conservation and Parks (MECP) to require and conduct EAs.

Environmental assessments are required in order for everything to work well together. Protections need to be enforced and in place so that people and the environment are protected and that industry, etc. can work cohesively.

Class EAs

A class environmental assessment sets out a standardized planning process for classes or groups of activities. It applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed. Class EAs are streamlined, meaning they follow a self-assessment/decision-making process and do not require involvement from the Ministry of the Environment, Conservation, and Parks.¹⁷²

However, the project proponent must still consult with the public, Indigenous communities, and government agencies. Examples of Class EAs include provincial transportation facilities and waterpower projects.

Individual EAs

Individual assessments are generally for large-scale and complex projects, which have the potential for significant environmental effects.¹⁷³ They also require approval by the Ministry of the Environment,

¹⁷² Government of Ontario. (29 June 2022). "Class Environmental Assessments: Approved Class EA Information." *Government of Ontario*. Online: <https://www.ontario.ca/page/class-environmental-assessments-approved-class-ea-information>.

¹⁷³ Government of Ontario. (6 June 2022). "Individual Environmental Assessments." *Government of Ontario*. Online: <https://www.ontario.ca/page/preparing-environmental-assessments#section-2>.

Conservation, and Parks. Individual EAs also require consultation with the public, Indigenous communities and government agencies.

Find a Project and Comment Online

You can view projects on the Ontario Environmental assessments page. Public consultation (including with Indigenous peoples) is mandatory for all projects undergoing EAs.¹⁷⁴

For projects proposed near you, it is important to check both provincial and federal systems. If the project doesn't appear, consider requesting a designation (discussed above). If a project is subject to both processes, Canada and Ontario's legislation allows a joint (harmonized) assessment.

Duty to Consult and EAs: Gitanyow Case Study (courtesy of Maria Lucas, former CELA LLP student)

Despite Indigenous law having been largely excluded from the legal construction and operation of the duty to consult, Indigenous peoples have used their laws to influence the duty to consult in the environmental assessment (EA) context. The duty to consult is often carried out through EAs, as EAs evaluate local environmental impacts of proposed development projects and operate to mitigate these impacts on Indigenous communities who already disproportionately bear the burden of industrial development.

One example of this is led by the Gitanyow (BC).¹⁷⁵ In early 2021, they released the Gitanyow Wilp Sustainability Assessment Process (GWSAP), which is an Indigenous legal instrument that sets out requirements for fully Indigenous-led assessment of projects in Gitanyow Lax'yip (territory) based on the Gitanyow's own laws. The GWSAP aims to protect and restore the Gitanyow Lax'yip for present and future generations and upholds the decision-making authority of each Wilp (House Group) to determine what activities are permitted in their respective Lax'yip.

The GWSAP requires all actors (e.g. companies, Crown governments) to follow Gitanyow strategic direction, such as the Gitanyow Lax'yip Land Use Plan, and prohibits proposed projects from accessing the Lax'yip without the consent of the impacted Wilp. The GWSAP will parallel provincial and federal environmental assessment processes. Both levels of government were consulted during the development of the GWSAP. Furthermore, both levels of government have recently acknowledged Indigenous-led environmental assessment processes in their new environmental assessment legislation.¹⁷⁶

¹⁷⁴ Government of Ontario. (6 June 2022). "Environmental assessments." *Government of Ontario*. Online: <https://www.ontario.ca/page/environmental-assessments#:~:text=Find%20an%20EA,Declaration%20order%20projects>.

¹⁷⁵ Gitanyow Hereditary Chiefs. (5 February 2021). "Gitanyow Hereditary Chiefs Launch One-Year Pilot Of Wilp Sustainability Assessment Process." *Gitanyow Hereditary Chiefs*. Online: <https://www.gitanyowchiefs.com/news/gitanyow-hereditary-chiefs-launch-one-year-pilot-of-wilp-sustainability-ass>.

¹⁷⁶ Gitanyow Hereditary Chiefs. (2021). "Gitanyow Ayookxw for Wilp Sustainability Assessment." *Gitanyow Hereditary Chiefs*. Online: [https://www.gitanyowchiefs.com/images/uploads/constitution/2020-11-12_Wilp_Sustainability_Assessment_Process_\(pilot_phase\).pdf](https://www.gitanyowchiefs.com/images/uploads/constitution/2020-11-12_Wilp_Sustainability_Assessment_Process_(pilot_phase).pdf).

Chapter 15: Accessing Pollution Data

The [National Pollutant Release Inventory](#) (NPRI) is Canada's main pollutant release and transfer inventory.¹⁷⁷ It is mandated under the *Canadian Environmental Protection Act* and is publicly accessible. It is published by Environment and Climate Change Canada and includes annual reporting from companies in manufacturing, chemical products, primary metals, transportation equipment, rubber products, pulp and paper, food products, wood products, textiles, mineral products, and electrical equipment.¹⁷⁸

Whether companies are mandated to report depends on a number of reporting requirements. These requirements include: where employees work a total of $\geq 20\,000$ hours (the employee threshold), and where there are 10+ full-time employees.¹⁷⁹

NPRI data is publicly available [here](#)¹⁸⁰, or through clicking "[Pollution data and reports](#)"¹⁸¹ on the main page. You can search by NPRI ID, company name, substance, and industry type, among others. Often, postal code is the most reliable search term.

However, NPRI data alone has important limitations:

- CELA and other NGOs have argued that the threshold levels for reporting are too high and that more pollutants should be included in the registry.¹⁸²
- Smaller facilities are also often not included, as with mobile sources such as cars, trucks, and construction equipment.
- There is a real updating backlog. Currently, the data is only current through 2021.

¹⁷⁷ Government of Canada. (25 November 2022). "National Pollutant Release Inventory." *Government of Canada*. Online: <https://www.canada.ca/en/services/environment/pollution-waste-management/national-pollutant-release-inventory.html>.

¹⁷⁸ Government of Canada. (14 August 2018). "Frequently asked questions: National Pollutant Release Inventory." *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/frequently-asked-questions.html>.

¹⁷⁹ Government of Canada. (13 December 2018). "Reporting requirements fact sheet: National Pollutant Release Inventory." *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/report/requirements-fact-sheet.html>.

¹⁸⁰ Government of Canada. (10 February 2023). "National Pollutant Release Inventory: tools and resources." *Government of Canada*. Online: <https://www.canada.ca/en/environment-climate-change/services/national-pollutant-release-inventory/tools-resources-data.html>.

¹⁸¹ Government of Canada. (25 November 2022). "National Pollutant Release Inventory." *Government of Canada*. Online: <https://www.canada.ca/en/services/environment/pollution-waste-management/national-pollutant-release-inventory.html>.

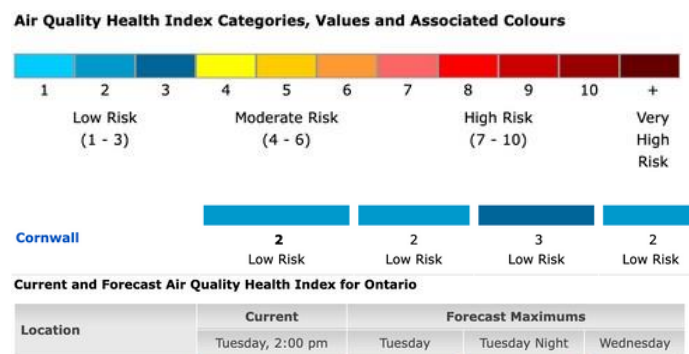
¹⁸² Canadian Environmental Law Association. (4 June 2021). "NGO comments to Changes to the National Pollutant Release Inventory substance list for 2022." *Canadian Environmental Law Association*. Online: https://cela.ca/wp-content/uploads/2021/06/NGO-submission-NPRI_June-4-2021.pdf.

- Provincial guidelines and limits on substances are also not provided for comparisons, nor are the health impacts of each pollutant. The provincial standards for a certain chemical or pollutant is also often in the form of a rate (i.e., µg/m³) that makes direct comparisons with NPRI reporting unworkable.

Other limitations are outlined in a CELA presentation [here](#).¹⁸³ Note: This presentation references Pollution Watch, which was a useful tool that is no longer available.

At your community level, you may also wish to monitor your local air quality. Ontario produces an [Air Quality Health Index \(AQHI\)](#) that is updated hourly, although you are additionally able to access archived data. The data is available on a map, or in a table by city/town. This data explains the health risk of outdoor activity.¹⁸⁴

The following is an example from January 10th, 2023 at 2:00 pm EST in Cornwall, Ontario.



Images courtesy of [Air Quality Health Index \(AQHI\)](#).

Another useful resource is the catalogue of Environmental Compliance Reports available [here](#). For each year, there are reports on companies that exceed emissions limits in multiple categories, such as air emissions, and industrial sewage.

Finally, see **Chapter 17** of this toolkit for information on Freedom of Information requests when the information that you are seeking is not publicly available.

¹⁸³ Griffin, R. (11 February 2021). "Accessing NPRI and Pollution Watch Data." *Canadian Environmental Law Association*. Online: <https://cela.ca/wp-content/uploads/2019/08/NPRI-Presentation.pdf>.

¹⁸⁴ Ontario Government. (2023). "Air Quality Health Index (AQHI)." *Ministry of Environment, Conservation and Parks*. Online: <http://www.airqualityontario.com/aqhi/index.php>.

NPRI Search Example

Example search of "Cornwall" under "Community"

There were 14 results. The first result is BASF Canada Inc.

NPRI ID	GHGRP ID	Year	Company	Facility	City	Province	NAICS	Report type
28	-	2021	BASF Canada Inc.	CORNWALL SITE	Cornwall	Ontario	325190	NPRI Inventory

Next, click the "Substances" tab to view substance release data:

Summary									
Filter items <input type="text"/>									
Substance	CAS number	Units ¹	Releases				Disposals and Transfers		
			Air	Water	Land	Total ²	On-site disposals ³	Off-site disposals	Off-s treatment
PM2.5 - Particulate Matter <= 2.5 Micrometers	NA - M10	tonnes	0.55	-	-	0.55	-	-	-

This indicates that the BASF Canada Inc. Cornwall Site released 0.55 tonnes of PM2.5 into the air in 2021.

Images courtesy of the National Pollutant Release Inventory.

Chapter 16: Appealing Land Use Planning Decisions

As was discussed in **Chapter 8** of this toolkit, Bill 23 (*More Homes Built Faster Act, 2022*) changed how land use planning decisions are made throughout the province.

Before Bill 23 received Royal Assent, the Ontario legislature wanted the Bill to eliminate third party appeals for all land use decisions. However, such amendments were not wholly approved. There are now limits on third party appeals for "minor" decisions. There are still opportunities for public appeals relating to official plans or official plan amendments and zoning by-laws or zoning by-law amendments.¹⁸⁵

It is crucial that you are involved and make comments to your municipality or local planning board either in person or in writing to secure appeal rights to the [Ontario Land Tribunal](#) (OLT).¹⁸⁶

The OLT is an independent adjudicative tribunal which hears and decides appeals relating to land use planning and development, heritage conservation and municipal governance.¹⁸⁷ Prior to the OLT, the Local Planning Appeal Tribunal (LPAT) and the former Ontario Municipal Board (OMB) conducted hearings and made decisions on land use planning issues.

Issues that the OLT deals with include those identified in statutes such as the [Planning Act](#),¹⁸⁸ [Aggregate Resources Act](#),¹⁸⁹ [Heritage Act](#),¹⁹⁰ [Municipal Act](#), [Development Charges Act](#)¹⁹¹ and [Expropriations Act](#).¹⁹² This includes planning appeals, zoning by-laws, and aggregate resource issues.

¹⁸⁵ Legislative Assembly of Ontario. (28 November 2022). "Bill 23 An Act to amend various statutes, to revoke various regulations and to enact the Supporting Growth and Housing in York and Durham Regions Act, 2022." *Government of Ontario*. Online: https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2022/2022-11/b023ra_e.pdf.

¹⁸⁶ Ontario Land Tribunal. (2023). "Ontario Land Tribunal." Government of Ontario. Online: <https://olt.gov.on.ca/>.

¹⁸⁷ Government of Ontario. (17 May 2022). "Ontario Land Tribunal." *Government of Ontario*. Online: <https://www.ontario.ca/document/citizens-guide-land-use-planning/ontario-land-tribunal>.

¹⁸⁸ *Planning Act*, RSO, 1990, c P-13.

¹⁸⁹ *Aggregate Resources Act*, RSO 1990, c A-8.

¹⁹⁰ *Ontario Heritage Act*, RSO 1990, c O-18.

¹⁹¹ *Development Charges Act*, 1997, SO, 1997, c 27.

¹⁹² *Expropriations Act*, RSO 1990, c E-26.

The OLT has produced an [appeal guide](#), which lays out the steps for filing an objection or appeal, and participating in a hearing event, among other things.¹⁹³ To check on the status of cases, visit the "E-Status" section of the OLT website, available [here](#).¹⁹⁴

The OLT's Rules of Practice and Procedure is available [here](#).¹⁹⁵

For more assistance, the [Citizen Liaison Office](#) provides citizens help in understanding and navigating the OLT process.¹⁹⁶ The office has a website with quick links and FAQs, as well as an email address: OLT.CLO@ontario.ca. However, the Citizen Liaison Office cannot assist with content questions, or competition of forms. This is something that legal counsel may be needed to assist with.

¹⁹³ Ontario Land Tribunal. (16 February 2023). "Appeal Guide." *Government of Ontario*. Online: https://olt.gov.on.ca/wp-content/uploads/2023/02/Appeal_Guide_2023.pdf.

¹⁹⁴ Ontario Land Tribunal. (2023). "Case Status." *Government of Ontario*. Online: <https://jus-olt-prod.powerappsportals.com/en/e-status/>

¹⁹⁵ Ontario Land Tribunal. (1 June 2021). "Rules Of Practice and Procedure." *Government of Ontario*. Online.: <https://olt.gov.on.ca/wp-content/uploads/2023/02/OLT-Rules-June-2021-ENG.pdf>.

¹⁹⁶ Ontario Land Tribunal. (n.d.). "Citizen Liaison." *Government of Ontario*. Online: <https://olt.gov.on.ca/citizen-liaison/>.

Chapter 17: Freedom of Information Access Requests

In some circumstances, you may not have access to the information you need to fully respond to an environmental issue. In these cases, you can make use of access to information legislation in order to access this information. This step should come after contacting the appropriate government department and asking the contact person to provide you with the information. You can also contact the [Freedom of Information and Privacy Coordinator](#) for the relevant department and ask if the information is available without a formal request.¹⁹⁷

If this is not successful, then you may wish to proceed with filing a Freedom of Information request to the appropriate government office.

Municipal access requests:

- Governing statute: [Municipal Freedom of Information and Protection of Privacy Act](#).¹⁹⁸
- Guides differ by municipality. As an example: [Freedom of Information \(Kingston\)](#).¹⁹⁹

Provincial access requests:

- Governing statute: [Freedom of Information and Protection of Privacy Act](#).²⁰⁰
- [Guide to making a Freedom of Information request \(Ontario\)](#).

In order to determine to whom you should address your request, you can contact the relevant ministry and request the name of the FOI and Privacy Coordinator.

Federal access requests:

- Governing Statute: [Access to Information Act](#).²⁰¹
- Guide: [Make an Access to Information or Personal Information Request](#).²⁰²

¹⁹⁷ Government of Ontario. (9 March 2023). "Whom to Contact." Government of Ontario. Online: <https://www.ontario.ca/document/freedom-information-and-protection-privacy-manual#>.

¹⁹⁸ *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M-56.

¹⁹⁹ City of Kingston. (n.d.). "Freedom of Information." *City of Kingston*. Online: <https://www.cityofkingston.ca/city-hall/freedom-of-information>.

²⁰⁰ *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F-31.

²⁰¹ *Access to Information Act*, RS, 1985, c A-1.

²⁰² Government of Canada. (17 March 2023). "Make an access to information or personal information request." *Government of Canada*. Online: <https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/request-information.html>.

Your FOI request must be made by using either the published form or by writing a letter. When you file a request for information, there is a \$5 application fee (whether you file with the municipal, provincial, or federal government).

If your request for information is denied, the department must provide you with notice of that decision in writing. For municipal and provincial requests, you have a right to appeal the decision to the Information and Privacy Commissioner of Ontario. You can find information about how to make an appeal on the [IPC's website](#).²⁰³

²⁰³ Information and Privacy Commissioner of Ontario. (n.d.). "Filing an Appeal." *Government of Ontario*. Online: <https://www.ipc.on.ca/access-individuals/filing-an-appeal/>.

Chapter 18: Regulatory Nuclear Licensing Hearings

The [Canadian Nuclear Safety Commission](#) (CNSC) is an independent, quasi-judicial administrative tribunal and court of record.²⁰⁴ It was established in 2000 under the [Nuclear Safety and Control Act](#) (NSCA).²⁰⁵ The CNSC has over 800 employees that review applications for licences according to regulatory requirements, and make recommendations to the CNSC on licensing and compliance under the NSCA.²⁰⁶ There is room for public participation in hearings.

The CNSC must function in a way that aligns with the purposes set out in the NSCA. According to section 3:²⁰⁷

(3) The purpose of this Act is to provide for

(a) the limitation, to a reasonable level and in a manner that is consistent with Canada’s international obligations, of the risks to national security, the health and safety of persons and the environment that are associated with the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information; and

(b) the implementation in Canada of measures to which Canada has agreed respecting international control of the development, production and use of nuclear energy, including the non-proliferation of nuclear weapons and nuclear explosive devices.

As a tribunal, the CNSC has statutory powers (i.e., they only have the powers which have been given to them through statute), which are set out in section 9 of the NSCA.²⁰⁸ The licensing powers are also granted by statute and set out in section 24 of the NSCA.²⁰⁹

There are three themes that emerge from the NSCA licensing parameters: protecting human health, the environment, and upholding international obligations. When making a licensing decision, the CNSC must

²⁰⁴ Canadian Nuclear Safety Commission. (20 December 2021). “The Commission.” *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/the-commission/index.cfm>.

²⁰⁵ *Nuclear Safety and Control Act*, SC 1997, c 9.; Canadian Nuclear Safety Commission. (29 December 2022). “History of the Canadian Nuclear Safety Commission.” *Government of Canada*. Online: [https://nuclearsafety.gc.ca/eng/about-us/history/index.cfm#:~:text=On%20May%2031%2C%202000%2C%20the,Commission%20\(CNSC\)%20was%20established](https://nuclearsafety.gc.ca/eng/about-us/history/index.cfm#:~:text=On%20May%2031%2C%202000%2C%20the,Commission%20(CNSC)%20was%20established).

²⁰⁶ McClenaghan, T., Blaise, K. & Roussel, K.A. (7 February 2022). “Intervening at a Canadian Nuclear Safety Commission (CNSC) Hearing.” *Canadian Environmental Law Association*. Slide 10. Online: https://cela.ca/wp-content/uploads/2022/01/Intervening_CNSC_Hearing_Slides.pdf.

²⁰⁷ *Nuclear Safety and Control Act*, SC 1997, c 9, s 3.

²⁰⁸ *Nuclear Safety and Control Act*, SC 1997, c 9, s 9.

²⁰⁹ *Nuclear Safety and Control Act*, SC 1997, c 9, s 24.

conform to the purposes of the *NSCA*, the objects of the commission set out in the *NSCA* and the licensing parameters.

The public can participate in a CNSC Hearing by becoming an intervenor.²¹⁰ Intervenors are members of the public or organizations who has an interest or expertise in the matter and who have requested the opportunity to present information on the subject of the proceeding. Depending on the hearing, intervenor submissions may be written or written and oral. When submitting an intervention, it is important to focus on:²¹¹

- (1) Why is it important?
- (2) What's the key issue?
- (3) What are the facts?

As an intervenor is important to tell a story with your intervention and to make specific recommendations (which may include questions). To find out more about being an intervenor, click here for CELA's Resource Guide for Intervening at a Canadian Nuclear Safety Commission Hearing.

What's it like during a hearing?

As CELA reflected upon in a three-part blog series from the hearing room, *the Nuclear Safety and Control Act* requires, per subsection 40(5)²¹², that there be an "opportunity to be heard" at a public hearing when a request is made for licence, or a request to renew that licence. [Click here](#) for the first part of the blog series.²¹³ [Click here](#) for the second part of the blog series.²¹⁴ [Click here](#) for the third and final part of the blog series.²¹⁵

²¹⁰ Canadian Nuclear Safety Commission. (20 December 2021). "Participate in a public Commission hearing." *Government of Canada*. Online: <https://nuclearsafety.gc.ca/eng/the-commission/hearings/participate/index.cfm>.

²¹¹ McClenaghan, T., Blaise, K. & Roussel, K.A. (7 February 2022). "Intervening at a Canadian Nuclear Safety Commission (CNSC) Hearing." *Canadian Environmental Law Association*. Slide 27. Online: https://cela.ca/wp-content/uploads/2022/01/Intervening_CNSC_Hearing_Slides.pdf.

²¹² *Nuclear Safety and Control Act*, SC 1997, c 9, ss 40(5).

²¹³ Canadian Environmental Law Association. (10 May 2022). "Blog: Hearing For 'First Ever' 25-Year Nuclear Power Plant Licence Commences in Saint John, New Brunswick." *Canadian Environmental Law Association*. Online: <https://cela.ca/blog-hearing-for-first-ever-25-year-nuclear-power-plant-licence-commences-in-saint-john-new-brunswick/>.

²¹⁴ Canadian Environmental Law Association. (12 May 2022). "Blog: Questions of Trust, Safety and Public Engagement Central to Day Two of Nuclear Licensing Hearing for Point Lepreau Nuclear Power Plant." *Canadian Environmental Law Association*. Online: <https://cela.ca/blog-questions-of-trust-safety-and-public-engagement-central-to-day-two-of-nuclear-licensing-hearing-for-point-lepreau-nuclear-power-plant/>.

²¹⁵ Canadian Environmental Law Association. (12 May 2022). "Blog: Climate Change Concerns Breezed Over on Final Day of Nuclear Licensing Hearing for Point Lepreau Nuclear Power Plant." *Canadian Environmental Law Association*. Online: <https://cela.ca/blog-climate-change-concerns-breezed-over-on-final-day-of-nuclear-licensing-hearing-for-point-lepreau-nuclear-power-plant/>.

In general, during a licensing hearing, public intervenors are typically given 10 minutes to address the Canadian Nuclear Safety Commission.²¹⁶ There is no opportunity to cross-examine, ask questions of the proponent or CNSC Staff. There is no qualification of experts or ability for experts, which may be retained by intervenors, to question staff or statements made by the proponent.

Following a 10-minute oral presentation opportunity, it is usual for the Commissioners to ask follow-up questions of clarification to both CNSC Staff and the licensee. There is not, however, a requirement that the intervenor have a chance to respond or weigh in. We recommend using the “raise hand” function in Zoom or raising your hand in person, should you wish to respond to what is said.

The Commission does not conduct pre-hearing conferences, which is common in many tribunal settings, where all parties and intervenors can weigh in on the issues to be heard during the hearing. This means, the Commission often makes statements throughout the hearing as to what is within or out of scope. We encourage intervenors to not feel limited by these comments and again, speak to the mandate of the Commission, which is the protection of the environment and public health as set out in section 9 of the *Nuclear Safety and Control Act*.²¹⁷

²¹⁶ McClenaghan, T., Blaise, K. & Roussel, K.A. (7 February 2022). “Intervening at a Canadian Nuclear Safety Commission (CNSC) Hearing.” *Canadian Environmental Law Association*. Slide 32. Online: https://cela.ca/wp-content/uploads/2022/01/Intervening_CNSC_Hearing_Slides.pdf.

²¹⁷ *Nuclear Safety and Control Act*, SC 1997, c 9, s 9.

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