

April 17, 2020

Premier Doug Ford
Legislative Building
Queen's Park
Toronto, ON M7A 1A1

cc Ministry of Environment Conservation and Parks
Ministry of Natural Resources and Forestry
Ministry of Northern Development and Mines
Ministry of Indigenous Affairs
Ministry of Municipal Affairs and Housing
Ontario Commissioner of the Environment

via email

Dear Premier Ford:

We, the undersigned organizations, appreciate the province's COVID-19 response efforts to protect the health and well-being of Ontarians. We are concerned, however, that your government's recent regulation under the *Environmental Bill of Rights* (EBR) inappropriately suspends key rights of the people of Ontario under the EBR. In our view, this regulation is overreaching in its effects and hinders the public's ability to engage in governmental decision-making in order to safeguard our environment.

In particular, Ontario's new regulation exempts all governmental proposals from key requirements under Part II of the EBR until 30 days after the emergency declaration on COVID-19 has ended.¹ First, the regulation exempts any proposal to make, amend or revoke environmental laws, regulations, policies or instruments (e.g. licences, permits and approvals) from mandatory public notice and comment requirements under the EBR. Inexplicably, this exemption is not limited to measures related to COVID-19. In effect, this overbroad exemption means that for the duration of the regulation, residents of Ontario, including Indigenous community members, will not have knowledge of, nor a means to participate in, provincial decisions which may have significant effects on the environment.

Second, the regulation exempts Ministers and government decision-makers from having to consider their respective commitments to protect the environment, as set out in their Statements of Environmental Values (SEVs) under the EBR.² The abrupt removal of the legal obligation for ministries to consider their SEVs is an unjustified change in Ontario's environmental decision-making that will clearly undermine governmental accountability for such decisions.

Although unprecedented and devastating in so many ways, the COVID-19 pandemic should not diminish or eliminate the ability of Ontarians to engage in matters of environmental importance or profound public

¹ Environmental Registry of Ontario (ERO No. 019-1599), *Temporarily exempting proposals from the application of the Environmental Bill of Rights*, online: <https://ero.ontario.ca/notice/019-1599>

² O Reg 115/20: Temporary Exemptions Relating to Declared Emergency

interest. In our collective view, environmental protection and public participation are not luxuries that should be indefinitely suspended for the duration of the province's emergency declaration. To the contrary, meaningful public participation – and full compliance with SEVs – is essential for ensuring sound and credible environmental decision-making by the Ontario government.

We therefore request the province to undertake the following steps:

1. Ontario Regulation 115/20 under the EBR should be repealed forthwith. In the event that a time-sensitive measure is necessary to address COVID-19, then the Ontario government should exercise its authority under section 29 of the EBR to exempt the specific proposal from public participation obligations imposed by law. In our collective view, it is neither onerous nor time-consuming for the Ontario government to post information notices on the Registry from time to time if the section 29 power is being invoked in relation to COVID-19 matters.

In the alternative, O Reg 115/20 should be revised so that its application is restricted to governmental proposals that have a factual connection to COVID-19 and not *all* matters under Part II of the EBR.

2. All legislative and regulatory reforms including amendments or repeals related to Ontario's environmental laws should be deferred until 30 days following the cessation or withdrawal of the provincial emergency declaration issued in March 2020 in relation to COVID-19.
3. All public comment periods that are currently running under the EBR should be extended so that they close 30 days following the cessation or withdrawal of the provincial emergency declaration issued in March 2020 in relation to COVID-19.
4. All provincial decisions on currently proposed policies, acts, regulations and instruments under Part II of the EBR should be deferred until 30 days following the cessation or withdrawal of the provincial emergency declaration issued in March 2020 in relation to COVID-19.

These two latter recommendations coincide with COVID-19 actions being taken by other judicial and administrative decision-makers, who have chosen *not* to do away with legislated timelines for notice and public participation, but rather defer or extend timelines in light of the circumstances. For example, courts in Ontario have suspended their regular operations,³ are adjourning hearings and allowing limitation periods to run,⁴ and tribunals are permitting the late filing of appeals and introducing transition periods, whereby appeals will be accepted following the lifting of the provincial Emergency Order.⁵

In closing, we collectively ask that Ontario implement its COVID-19 emergency response in ways which prevent undue harm to our environment and uphold public participation rights. Anything less deprives Ontarians of their right to a healthful environment for the benefit of present and future generations.

³ Superior Court of Justice, Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings – Update (2 April 2020)

⁴ O Reg. 73/20 Order Under Subsection 7.1(2) of the Act

⁵ Tribunals Ontario, Environment & Land Division, "Assessment Review Board – COVID-19 Policy," online: <https://elto.gov.on.ca/contact/assessment-review-board/>

Sincerely,

[insert signatories]



Canadian Environmental Law Association

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