

Bill 66: Legal Review & Advocacy Update

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Canadian
Environmental Law
Association

EQUITY. JUSTICE. HEALTH.

Queen's University is Situated on Traditional Anishinaabe and Haudenosaunee Territory.

Disclaimer

- This presentation contains legal information about land use and environmental policy and, specifically, Bill 66.
- The contents do not constitute legal or other professional advice and must not be relied on as such.
- If legal advice related to specific circumstances is required, please seek competent legal counsel.

About CELA

- Non-profit, public interest organization established in 1970
- Core funding from Legal Aid Ontario; specialty legal aid clinic
- Services: litigation (clients meet eligibility criteria), law reform, public legal education

Two Legal Systems

- Indigenous (ancient and contemporary)
 - Innu, Mi'kmaq, Cree, Anishinabek, Haudenosaunee, Dakota, Métis, Blackfoot, Shuswap, Salish, Haida, Dene and Inuit
- Dominant (contemporary)
 - European “common law” and “civil law” (Québec)

Legislation v Regulation

- All Legislators (MPPs)
- Legislative Process
 - First Reading
 - (Standing Committee)
 - Second Reading
 - (Standing Committee)
 - Third Reading
 - Royal Assent
- Publicly available details; debate/hearings
- Delegated authority
- Expressly provided in empowering legislation
- Assigned to Minister(s) and/or Cabinet
- Rarely public access until made (& published)
- Notice/Comment for environmental regulations on ERO

Key Features of Ontario's Land Use Planning Regime

- “Policy-led” planning system
- Municipal: “major role” in decision-making
- Province: identifies provincial interests
- Legal standard(s) for decision-making:
 - “consistent with” (v “have regard to”) Provincial Policy Statement
 - “conform with” or “not conflict with” provincial plans (eg, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan)
- Conflicts favour provincial plans

Clean Water Act, 2006

- Purpose: “protect existing and future sources of drinking water”
- Source Protection Plans
- Legal standard(s):
 - “conform with” significant threat policies and designated Great Lakes policies
 - “have regard to” other policies
- Conflicts favour “greatest protection”



Ontario's Open for Business Action Plan

- Purpose: “creating and protecting jobs”
- Target: “reduce regulatory red tape” by 25% by 2020
- “... will introduce one high-impact burden reduction bill each fall and spring throughout its mandate.” (Chapter I, Ontario's Plan for the People, p38)
- Two omnibus bills (Bill 57 & Bill 66, Fall 2018)



What is Bill 66? (1)

- Proposed: Restoring Ontario's Competitiveness Act, 2018
- By: Minister of Economic Development, Job Creation and Trade
- First Reading: 6 Dec 2018
- Intent: “eliminate red tape and burdensome regulation”

What is Bill 66? (2)

- Schedule 5: proposed elimination *Toxics Reduction Act, 2009*
- Schedule 10: proposed addition of “open-for-business planning by-law” tool to *Planning Act*
- ERO Notices (013-4125, 013-4234, 013-4235, 013-4239, 013-4293) closed 20 Jan 2019
- Legislative process continues (~ 19 Feb 2019)

Schedule 5 & related proposal

- Proposed: repeal *Toxics Reduction Act, 2009* on 31 Dec 2021
- In the meantime, propose regulatory amendments
 - No reviews of existing toxics reductions plans
 - Exempt certain facilities going forward
 - Maintain annual reporting for existing

Schedule 10 & related proposals

- Proposed: create new open-for-business planning tool

What will an open-for-business planning by-law be used for?

- “prescribed purpose”

To pass an open-for-business planning by-law, a municipality will be required do two things:

- Get Minister of Municipal Affairs and Housing's written approval, which may include conditions
- Meet the “prescribed criteria”

How will a municipality request Minister's approval

- Municipal council resolution, including any “prescribed information”

Is an open-for-business planning limited to the Greater Golden Horseshoe or to the Greenbelt?

- NO
- Will be available everywhere in Ontario that *Planning Act* applies

Will NOT apply to an open-for-business planning by-law (1)

- Consistent with 2014 Provincial Policy Statement
- Conform with Official Plan
- Rules related to making by-laws (eg, public notice & hearing, appeal to Local Planning Appeal Tribunal)
- Any existing holding provision by-law

Will NOT apply to an open-for-business planning by-law (2)

- Any increased density provision by-law
- Conform with significant threats policies & designated Great Lakes policies associated with approved drinking water source protection plans; Have regard for other drinking water source protection plan policies

Will NOT apply to an open-for-business planning by-law (3)

- Conform with designated policies in geographically-focused initiatives; Have regard for other policies in geographically focused initiatives (none exist to date)
- Conform with 2017 Greenbelt Plan
- Conform with designated policies in Lake Simcoe Protection Plan; Have regard for other policies in Lake Simcoe Protection Plan

Will NOT apply to an open-for-business planning by-law (4)

- Consistent with transit policy statement (none exist to date)
- Conform with 2017 Oak Ridges Moraine Conservation Plan
- Not pass conflicting by-law (eg, with Parkway Belt West)

Will NOT apply to an open-for-business planning by-law (5)

- Conform with 2017 Growth Plan for Greater Golden Horseshoe & 2011 Growth Plan for Northern Ontario
- Consistency with “zero waste” policy statements

Will NOT apply to an open-for-business planning by-law (6)

- Any “prescribed provision”
 - Will give Cabinet power to exempt from any other provisions, without Legislature’s oversight, by making regulation

Geographic location is determinative

- Some of the provincial plans apply only to a specific area/region (eg, Greenbelt, Lake Simcoe, drinking water source protection plans)
- Municipality's location (not the municipality themselves) determines which of the “non application” provisions are relevant

What does “prescribed” mean?

- If “prescribed”, then set out later in regulation
- ERO notices provide information about government thinking on conditions/process:
 - Details about employment opportunity
 - Demonstrate for “new major employment use” (jobs threshold)
 - Identify uses; can’t have “residential, commercial or retail as the primary use”

Additional changes to development processes

- No site control plan application
- No notice until after passed
- Comes into force on 20th day after passes, unless Minister otherwise specifies a later date

#StopBill66 Advocacy (1)

- Facebook Live Panel (Dec 7)
- CELA legal analysis
 - Annotated excerpts (Dec 13)
 - Lessons from Walkerton (Dec 16)/Briefing Note (Dec 17)
- Opinion pieces (Dec-Jan)

#StopBill66 Advocacy (2)

- Municipal resolutions
- Resources: toolkit, postcards, lawn signs, etc
- Workshops/Community meetings
- Submissions/Petitions
 - Residents
 - Municipalities
 - Planners
 - Farmers
 - Conservation/Environmental organizations

Minister Clark Tweets

“... our Government for the People has listened to the concerns raised by MPPs, municipalities and stakeholders with regards to Schedule 10 of Bill 66 and when the legislature returns in February, we will not proceed with Schedule 10 of the Bill.” (Jan 23)

Kingston (1)

- City Staff send “high-level” comments by ERO deadline
- City Staff Report Number 19-039 (presented to Council)
- Lintner/Harmer “deputations”
 - Inconsistent with Kingston’s commitments to sustainability & engagement
 - Concern about planning and related *Endangered Species Act* 10-year Review

Kingston (2)

- Resolution (unanimous) includes:
 - Endorsement of City Staff Report
 - Council does not support proposed changes to *Planning Act*
 - Distribute Report + Resolution to Ministers/local MPPs
 - Council will not support any legislation that doesn't adhere to *Clean Water Act*, *Great Lakes Protection Act*, *Cataraqui Source Protection Plan*
 - Communicate to Minister of the Environment, Conservation and Parks that Council rejects Schedule 5 (elimination of *Toxics Reduction Act*)



YOUR Role in Public Policy

- “We are all public policy”
- Be informed
- Make your voice heard
- Exercise your rights under the *Environmental Bill of Rights, 1993*
- Make presentations to local, provincial, federal governments

www.cela.ca/healthy-great-lakes

The screenshot shows a web browser window with the URL www.cela.ca/healthy-great-lakes. The page features the CELA logo (a stylized 'C' with a leaf, 'e' with a sun, 'L' with a house, and 'a' with a water drop) and the text "Canadian Environmental Law Association" with the tagline "EQUITY. JUSTICE. HEALTH.". A navigation menu includes links for HOME, ABOUT CELA, BLOG, E-BULLETIN, FRANÇAIS, LIBRARY, ARCHIVE, and CONTACT US. On the right, there is a search bar and a subscription form for the monthly e-Bulletin. The main content area is titled "Healthy Great Lakes" and includes a sub-header "Seeking robust, holistic, well-implemented public policy and engaged Great Lakes - St Lawrence River citizenry". The text discusses water quantity and quality issues, mentioning Ontario's *Great Lakes Protection Act, 2015*. A sidebar on the left lists various sections: News, Publications, Our Services, Frequently Asked Questions, CELA in the Courts, Access to Environmental Justice, Water Sustainability, and Pollution and Health. An aerial photograph of the Great Lakes basin is shown on the right side of the main content area.