

Trashing Environmental Protection - Ontario's Four Part Strategy

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Public health, the economy and our children's future depend on a clean environment. In numerous polls a huge majority of citizens say they support strong environmental laws. For example, in June of 1996, found that an overwhelming majority of Canadians feel that, despite government cutbacks and debts, environmental laws should be made stricter. Yet, Ontario's government is undermining the entire environmental protection regime. A four-part strategy is apparent and includes: dismantling environmental laws; weakening the role of government; shutting out the public; and privatizing natural resources.

This strategy is occurring at a time when the very concept of "the public interest" is under attack by neo-conservative voices and the corporate world. One of the important aspects of this attack is de-regulation, or elimination of public interest laws, including environmental protection. De-regulation is an international trend, as evident in the trade agreements of recent years, such as the North American Free Trade Agreement, and the General Agreement on Tariffs and Trade.

WEAKER LAWS

In Ontario, environmental de-regulation is in full swing. In less than two years, the Harris government has implemented major rollbacks in environmental rules and citizens' rights in thirteen laws: *Aggregate Resources Act, Conservation Authorities Act, Environmental Assessment Act, Environmental Protection Act, Freedom of Information and Protection of Privacy Act, Game and Fish Act, Intervenor Funding Project Act, Lakes and Rivers Improvement Act, Municipal Act, Mining Act, Ontario Water Resources Act, Planning Act and Public Lands Act.*

In general, the many changes to these statutes have served to greatly reduce the government's role in 1) monitoring pollution or resource use, 2) issuing permits for polluting activities or resource extraction activities, 3) enforcing environmental laws, and 4) ensuring democratic access to decision-making.

The names of these laws may not immediately suggest how the environment will be affected by legal rollbacks. However, taken together with numerous additional changes to regulations and policies, every aspect of environmental protection is at risk. Controls have been weakened on air pollution, water pollution, pesticides, waste disposal and recycling, urban sprawl, energy use and climate change, pit and quarry operations, natural heritage and biodiversity protection, mining and forestry.

For example, with weaker rules, Ontario will experience more air and water pollution including increased releases of toxic chemicals. Pulp mills will no longer be required to phase out highly toxic organochlorines.

A decision to eliminate the Ontario Waste Management Corporation was not accompanied by any new powers to regulate the reduction, reuse, and recycling of hazardous wastes.

Mining companies will no longer have to obtain government approval for mine closure plans, a move that will worsen the already serious problem of toxic runoff from abandoned mine sites.

The lifting of the ban on municipal waste incinerators opens the door to new incinerators that generate toxic air emissions and large amounts of toxic residual ash that must be landfilled.

Proposals to weaken landfill standards and changes to the environmental assessment planning process may well contribute to a legacy of toxic groundwater from landfills for decades into the future.

Groundwater and surface water are further threatened by the loss of sound land use planning tools to protect wetlands, rivers and streams, and groundwater recharge areas from inappropriate development.

Air pollution will increase with the automobile dependence that inevitably accompanies more urban sprawl. Citizens can expect to see more roads, more traffic and more traffic accidents (and continued burgeoning social costs associated with those accidents). We will face more severe smog events and a continuation of the alarming trend of increased hospital admissions for respiratory problems during smog events, especially among children. With more urban sprawl, public transit continues to be too costly and inefficient.

Efforts to counteract climate change are undermined by automobile-dependent urban sprawl and the removal of energy efficiency requirements from the Building Code.

Natural heritage protection has been seriously undermined in built-up areas and in southern rural areas. It has been similarly undermined across the vast northern reaches of the province through deregulation of forestry, mining, and wildlife management.

Everyone will be at greater risk of exposure to pesticide residues because testing for these residues has been eliminated.

VOLUNTARISM AND SELF-REGULATION

A common thread running through the many changes to Ontario's environmental laws is the replacement of legal controls with "voluntarism" and "self-regulation". Under the guise of streamlining, government involvement in monitoring, issuing permits, and enforcing violations is being removed in many significant areas. It is noteworthy that, in cases where government oversight of polluting or potentially polluting activities has been eliminated, laws have also been changed to prevent citizens from suing the government for taking inadequate regulatory action.

Akin to the fox in charge of the chicken coop, the move to replace laws with voluntary programs raises serious concerns for the public. There are specific problems with various voluntary approaches. Three concerns are common to all of these approaches and arise from erosion of the rule of law. First, there is a lack of fair and consistent decision-making. Voluntary programs applying only to some sectors or to some businesses within a sector lack the equal and consistent standards characteristic of laws. Larger businesses with more resources (funds, lawyers and technical advisors) will have an edge over smaller businesses.

Second, there is a lack of accountability. Without a legal standard, there is nothing to enforce. Without mandatory reporting requirements, little relevant information will be available as evidence of problems.

Third, there is a lack of public participation. The elimination of a regulatory process removes due process from the public. It is a hallmark of public interest reform groups in Canada that citizens have achieved a steady increase in rights to be involved in decisions with significant social, consumer, and environmental impacts. De-regulation and self-regulation remove these hard-won rights of public involvement in legal processes, so fundamental to our democratic legal system.

The vast majority of voluntary pollution prevention agreements concluded to date have been negotiated behind closed doors.

WEAKENING THE ROLE OF GOVERNMENT

Ontario's overhaul of environmental laws and regulations is being accompanied by huge cuts to staff, budgets and programs concerned with environmental protection. Success in government in Ontario is now measured almost exclusively in terms of serving private, corporate interests.

The Ontario government's job, program and budget cuts have hit very hard in the Ministry of Environment and Energy (MOEE - 31% of staff laid off) and the Ministry of Natural Resources (MNR - 40% of staff to be laid off). With the numerous moves to industry self-regulation, layoffs are frequently in the areas of monitoring, inspection, approvals or permitting, and enforcement. Funding has been cut to a broad range of environmental protection programs, particularly those administered by municipalities (e.g., the blue box curbside recycling program, hazardous waste programs, urban public transit, energy conservation, Conservation Authorities, etc.).

SHUTTING OUT THE PUBLIC

Changed laws, budget and program cuts also mean that hard-won citizen rights are being lost in five significant ways. First, as noted, environmental laws are being changed in ways that serve to cut off or greatly constrain public access to information and to environmental decision-making. Second, the public consultation on these legal changes frequently has been a farce. For example, in the summer months of 1996 the government held brief consultations on environmentally significant changes to four laws and over 80 regulations. Third, the move to "voluntarism" or "self-regulation" of polluters and resource extraction industries has little or no room for public involvement. Fourth, elimination of modest funding to environmental organizations, particularly the Ontario Environment Network and its caucuses, cripples a democratic and cost-effective consultative relationship between the Ontario government and concerned citizens across the province. Fifth, the elimination of key environmental advisory committees has removed important avenues for public input to government decision-making.

PERPETUATING INEQUALITY

A clear pattern is emerging. Ontario is conducting a complete overhaul of environmental rules to

suit the exclusive interests of corporate Canada including polluters, land developers and resource extraction industries. It is likely that the impacts of environmental de-regulation will be disproportionately felt by the poor, non-English speaking minorities, people on fixed incomes, native people and regions of the Province that have long been disadvantaged, particularly the north. Pollution and polluting industries have often affected such segments of Ontario society more than others. The barriers of poverty, language, distance, lack of time and resources, will be made worse by a loss of legal tools to protect the environment and the loss of citizens' rights to obtain information and participate in environmental decision making.

For example, with the removal of rational land use planning controls, the poor or those on fixed incomes will be hit hardest by reduced public transit and increased property taxes and/or user fees that must pay for the well-known inefficiencies of urban sprawl. Industry self-regulation of mining and forestry will perpetuate and indeed accelerate the pattern of northern "boom and bust" development. The historical drain of northern resource wealth may create some short term gain but long term sustainability of jobs and northern-based, value-added industries is a more remote idea than ever. The clear bias towards unregulated resource extraction in the north will also increase conflicts over native rights and continue to marginalize native people from control over the management of natural resources.

PRIVATIZING NATURAL RESOURCES

Finally, with weaker laws, an emaciated civil service and a loss of public rights, the fourth part of the Ontario government's anti-environmental strategy is the privatization of natural resources. The privatization of forest management (on Crown lands, i.e., over 85% of Ontario's land mass) is nearly complete. Changes to the *Fish and Game Act* have effectively privatized fish and wildlife management and downgraded this work from conservation of biodiversity to production of game species. New powers for municipalities to dissolve Conservation Authorities and sell these public lands jeopardizes 50 years worth of land conservation efforts. The potential for this privatization of public recreational lands could impact on millions of people (often low income) who rely upon Conservation Authorities for recreation. Also in line for privatization or public-private "partnering" is management of numerous provincial parks on a cost-recovery basis. The pressure to generate revenues could result in intensified use of parks or the introduction of inappropriate commercial activities, both of which could result in environmental harm.

An early focus on quickly privatizing Ontario Hydro apparently hit enough public opposition that plans are now on the back burner. Undaunted, proposals are now on the front burner that

will facilitate the privatization, by municipalities, of water and sewer services. In January of 1997, the government announced a massive restructuring of the means by which public services are delivered. The Province intends to take over, from municipalities, the entire budget for education. In exchange, municipalities will take over the funding of numerous services, including sewer and water. Also transferred to municipalities will be responsibility for inspection and enforcement of noise and odour complaints and for monitoring, inspection and enforcement of rules governing the over one million septic systems in Ontario. Whether municipalities have the resources, the expertise or, in some cases, even the inclination, to take on these new tasks, is an open question.

It is unclear whether municipal property tax revenues will cover the new range of services. Many predict that the cost of the new set of services will outstrip municipal budgets, if not immediately, certainly over the longer term. Even before this new set of changes was announced, environmentalists predicted higher municipal costs due to the relaxing of controls on urban sprawl. If costs do outstrip revenues, given the difficulty of raising municipal property taxes, it seems highly likely that municipalities will embrace the notion of privatizing any number of public services.

Will Ontario repeat the water woes of Britain? Since privatization of water and sewer services in 1989, the British public has faced a litany of problems including extreme water shortages, water rationing, and alarming increases in dysentery and other public health problems. The cost of water has increased in some cases by over 100%. Low income people have had their water shut off for weeks at a time while annual salaries for water company executives have been in excess of \$1 million. Ontario is extremely vulnerable to similar effects of privatization. With weaker laws and huge cuts to programs for controlling water pollution, Ontario also has no water conservation policy and no regulatory body to control the practices of private utilities.

STRATEGIES FOR CHANGE

In less than two years, both the dizzying pace and the huge volume of environmental deregulation has been formidable. Environmental groups, such as the Canadian Environmental Law Association, have been highly critical of both the negative impacts and the lack of public consultation.

In responding to these criticisms, the Minister of Environment and Energy and the Premier have said that the government is simply eliminating duplication and getting rid of useless regulations.

However, it is clear that a few positive proposals for change are overshadowed by obvious attempts to weaken environmental protection rules across the board. In defending the changes, the government is also clinging to the dubious argument that environmental regulations kill jobs. But, rigorous studies have proven that, on the contrary, environmental regulation promotes innovation and a company's competitive advantage. Environmental protection may in fact increase jobs, particularly in manufacturing, transportation, communications and utilities.

Not only is the government on shaky ground on the jobs vs. environment front but it knows from public opinion polling that both environmental deregulation and water privatization are overwhelmingly unpopular with the public. Nor was this anti-environmental agenda contained in the so-called "Common Sense Revolution". It is also clear that the many changes affecting environmental protection have occurred so quickly that the vast majority of the public is unaware of them. Environmentalists have focused on public education and this work continues. Part of this effort has included the building and/or strengthening of alliances with the labour movement, health advocates, and the broader social justice community.

The common cause among these sectors is increasingly evident. The agenda of corporate globalization, de-regulation and privatization is undermining basic features of democracy and the role of government as a guardian of the public interest. The task for the environmental movement is to continue to reveal the environmental dimensions of this onslaught and ensure this information is part of the educational and advocacy efforts of the broader social justice community.

One step along this path was taken with the organization of the "Law for the Public Interest" conference held in November of 1996. Sponsored by environmental, labour and health organizations, this conference addressed deregulation in these three sectors. The conference provided both the detailed analyses of changes (in background papers) and an opportunity to build the framework for working together.

Another large task is monitoring and reporting on the impacts of regulatory changes and any privatization initiatives. Much of what environmentalists have said about the impacts of de-regulation has involved making predictions on the basis of what can be expected from such wholesale weakening of the rules. The hard evidence will come in the form of future environmental damage. This monitoring task is severely constrained by the removal of significant government monitoring responsibilities and the lack of resources in the, mostly voluntary, environmental movement. Nevertheless, a number of initiatives exist that can assist

with this work.

Finally, the option of simply turning back the clock and reversing many of these changes may not be possible or even desirable in some cases. Environmentalists and allies in the social justice community must develop a "reconstruction" agenda that provides the humanistic, sustainable alternative to the nihilism that we currently face. That work is just beginning.

The Canadian Environmental Law Association is a non-profit, public interest organization that uses existing laws to protect the environment. It advocates environmental law reforms. CELA is also a legal aid clinic and will take legal action on behalf of citizens or groups that would otherwise be unable to afford legal assistance.

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