



Alarming Reduction in Environmental Transparency and Accountability:
Government proposes eliminating the Office of the Environmental Commissioner of Ontario
17 November 2018

Introduction

On 15 November 2018, the Ontario government issued its Fall Economic Statement and introduced [Bill 57, the proposed Restoring Trust, Transparency and Accountability Act, 2018](#). Bill 57 is omnibus legislation and includes 45 schedules which, if passed as drafted, will amend various statutes including the *Environmental Bill of Rights, 1993*. Bill 57 passed first reading on division, with 68 votes for and 37 against. As Bill 57 goes through the legislative process, there will be debates on all aspects of the bill, including the proposed elimination of the Office of the Environmental Commissioner of Ontario (ECO). If Bill 57 passes as drafted, the changes will come into effect on May 1, 2019 (or earlier by an Order in Council). What does Bill 57 mean for environmental transparency and accountability in Ontario? Contrary to the title of Bill 57, the proposed changes to the *Environmental Bill of Rights, 1993* will reduce transparency and accountability regarding environmental issues in Ontario and, ultimately, weaken the public's trust in government. This Brief summarizes the difference between the current situation and the proposed changes, as relates to four aspects: independence, duties, reporting, and oversight.

Independence

Currently, the ECO is an independent officer of the Legislature. The ECO is selected by an all-party committee of the Legislature and appointed by Cabinet. The ECO can only be removed from office for cause by Cabinet with the Legislature's approval.

Under Bill 57, the **ECO's independence will be eliminated**; a new Commissioner of the Environment position will be created and that Commissioner will be a public service employee appointed by the Auditor General.

Duties

Currently, the ECO has a number of duties related to environmental oversight in Ontario, including:

- reviewing compliance with the *Environmental Bill of Rights, 1993* (EBR)
- assisting government ministries with educational programs about the EBR
- providing educational programs to the public about the EBR
- assisting and advising the public about exercising EBR rights
- reviewing all aspects of the EBR
 - exercises of discretion by ministries
 - third-party appeal and other rights
 - handling of applications for review and investigation
 - ministry plans and priorities for conducting reviews

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- use of the right of action (harm to a public resource)
- use of defences (due diligence, reasonableness, etc.)
- reliance on public interest standing for public nuisance actions
- employer reprisals

Under Bill 57, the Environment Minister will have limited education duties – assisting government ministries with educational programs about the EBR, providing educational programs to the public about the EBR, and providing general information about public participation in decision-making. **All other duties of review are to be eliminated.** Although the Auditor General will be required to appoint a Commissioner of the Environment, that position has no legislated duties at all (only those given to the Commissioner at the discretion of the Auditor General).

Reporting

Currently, the ECO reports regularly to the Legislature and the public in three separate annual reports: environmental protection, energy conservation, and greenhouse gas emissions. As well, the ECO has discretion to issue special reports, which alert the Legislature and the public about critical environmental issues (such as species at risk). The annual environmental protection report must contain information about on all aspects of the EBR and the ECO's duties, including:

- ECO work, including ministry cooperation
- Summary of information gathered under duties, particularly compliance with ministry Statements of Environmental Values
- All proposals on Environmental Registry
- Any information prescribed in regulations
- Any information the ECO considers appropriate

Under Bill 57, the Auditor General will be required to **submit only one narrowly scoped report annually** to the Legislature and public (which may be folded in with the regular annual report of the Auditor General) and only need include information about:

- Progress on energy conservation activities
- Progress on reducing greenhouse gas emissions
- Any information the Auditor General considers appropriate

Oversight

Currently, the ECO receives and reviews all Applications for Review and Applications for Investigation. Before forwarding to the relevant ministry or ministries, the ECO ensures that the Applications meet the requirements of the *Environmental Bill of Rights, 1993*. This ensures that there is arms-length oversight of the process and that ministry resources are not engaged unless Applications are complete. Further, the ECO reports annually (as described above) on all Applications and the outcomes.

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Under Bill 57, the Applications will go directly to the relevant ministry or ministries and **there will no longer be a requirement for public reporting on the outcomes.**

Summary

To sum up, under Bill 57:

- (i) the independent Office of the Environmental Commissioner of Ontario will be eliminated
- (ii) to the extent that there will be an appointment of Commissioner of the Environment under the employ of the Auditor General, that Commissioner will have no legislated duties (only those that the Auditor General directs) and those duties will no longer require review of implementation of and compliance with the *Environmental Bill of Rights, 1993*; the Environment Minister will have some very general education duties
- (iii) there will no longer be public reporting regarding the implementation of and compliance with the *Environmental Bill of Rights, 1993*, no special reports, and no separate reports related to energy conservation and greenhouse gas emissions; rather, there will be just one narrowly scoped report that can be folded in with the Auditor General's annual report
- (iv) there will no longer be independent oversight of, nor the requirement to report on outcomes related to, Applications for Review and Applications for Investigation under the *Environmental Bill of Rights, 1993*

These dramatic changes will not improve environmental transparency and accountability. If anything, these changes will erode the public's trust in the Ontario government's environmental performance.

See attached summary table for additional details related to the current provisions under the *Environmental Bill of Rights, 1993* and the proposed changes under Bill 57.

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Role/Responsibility	Currently in EBR	Proposed in Bill 57
Independence	Environmental Commissioner of Ontario is a officer of the Legislative Assembly (s49(1)), appointed by Lieutenant Governor in Council “on the address of the Assembly” (s49(2)) – all party committee interviews and selects ECO	Commissioner of the Environment an employee of and appointed by the Auditor General, and may (subject to the Auditor General’s direction) fulfill the Auditor General’s duties Auditor General remains officer of the Legislative Assembly; however, rather than appointed by Lieutenant Governor in Council “on the address of the Assembly”, will be appointed directly, by order of the Legislative Assembly
	Environmental Commissioner of Ontario appointed on 5 year terms (renewable) (s49(3))	Auditor General continues to be appointed on one 10 year term (nonrenewable)
	Environmental Commissioner of Ontario can only be removed by cause “on the address of the Assembly” (s49(4))	Auditor General can be removed for cause and/or suspended by order of the Legislative Assembly (currently only can be removed by cause “on the address of the Assembly”)
Duties	<p>Environmental Commissioner of Ontario (s57): Reviews implementation/compliance of EBR Provides guidance on complying with EBR (including on developing and ensuring consideration of Statement of Environmental Values) Assists a ministry (upon the minister’s request) with educational programs about the EBR Providing educational programs about EBR to public Advise/Assist members of the public about how to participate in decision-making about proposals on Environmental Registry</p> <p>Review: use of the Environmental Registry, exercises of discretion by ministries, third-party appeal and other rights, handling of applications for review and investigation, ministry plans and priorities for conducting reviews, use of the right of action (harm to a public resource), use of defences (due diligence, reasonableness, etc.), reliance on public interest standing for public nuisance actions, and employer reprisals</p>	<p>Environment Minister:</p> <p>Assists a ministry (upon the minister’s request) with educational programs about the EBR Providing educational programs about EBR to public</p> <p>Provide general information to the public about participating in decision-making under the EBR</p>

Role/Responsibility	Currently in EBR	Proposed in Bill 57
Annual Report	<p>Environmental Commissioner of Ontario reports annually to the Legislative Assembly (s58) on:</p> <ul style="list-style-type: none"> • ECO work, including ministry cooperation • Summary of information gathered under duties, particularly compliance with ministry Statements of Environmental Values • All proposals on Environmental Registry • Any information prescribed in regulations • Any information the ECO considers appropriate <p>Annual Report required to be separate from other reports (s58.3)</p>	<p>Auditor General reports annually to the Legislative Assembly on:</p> <ul style="list-style-type: none"> • Progress on energy conservation activities • Progress on reducing greenhouse gas emissions • Any information the Auditor General considers appropriate <p>Annual Report under EBR may be included with the Auditor General’s annual report prepared pursuant to the <i>Auditor General Act</i>.</p>
Special Reports	<p>Environmental Commissioner of Ontario is empowered to make special reports to the Legislative Assembly (s58(4)) – bringing important issues (including species at risk) to the attention of the Legislative Assembly and the public</p>	<p>Will be eliminated</p>
Report on failure to comply re Statement of Environmental Values	<p>Environmental Commissioner of Ontario is empowered to report on a ministry’s failure to comply with requirements for creation (with adequate public consultation) of a Statement of Environmental Values (s58 (5))</p>	<p>Will be eliminated</p>
Energy Conservation Reports	<p>Environmental Commissioner of Ontario is required to report annually to the Legislative Assembly regarding “progress of activities in Ontario to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels” (s58(1)) – report required to be separate from other reports (s58.3)</p>	<p>Will be eliminated</p>

Role/Responsibility	Currently in EBR	Proposed in Bill 57
Greenhouse Gas Emissions Reports	Environmental Commissioner of Ontario is required to report annually to the Legislative Assembly regarding “progress of activities in Ontario to reduce emissions of greenhouse gases” (58.2(1)) – report required to be separate from other reports (s58.3)	Will be eliminated
Special Assignments from Legislative Assembly	Environmental Commissioner is required to perform any special assignments that are required by the Legislative Assembly, so long as the other duties are not interfered with (s59)	Will be eliminated
Applications for Review; Applications for Investigation	Applications are sent to the Environmental Commissioner of Ontario, who ensures that the applications meet the requirements of the EBR before sending on to the appropriate ministry or ministries	Applications will go directly to the ministry or ministries