

# Appendix A:

## List of Recommendations

### The Right to a Healthy Environment

1. The *EBR* should be amended to state that every person residing in Ontario has a right to a healthy environment. The right to a healthy environment should be broadly defined to include, but not limited to, the right to environmental quality that protects human health, ecological health, and environmental sustainability.
2. The right to a healthy environment should be enforceable against both government and private actors.

### Environmental Protection Actions

3. The *EBR* should be amended to allow a person to commence an environmental protection action in a court of competent jurisdiction against a person who contravenes any provision in a provincial Act, regulation or instrument that causes or is likely to cause significant harm to the environment.
4. The *EBR* should provide that every person residing in Ontario has the right to commence an environmental protection action regardless of whether they are directly affected by the matter.
5. Once the plaintiff establishes a *prima facie* case of significant harm to the environment, or the likelihood of significant harm to the environment, the onus is on the defendant to prove that their action or inaction, did not, or is not likely to result in significant harm to the environment.
6. Compliance with an instrument or a standard should not be recognized as a statutory defence to a RTHE action.
7. The remedies for an environmental protection action should include injunctive relief, declaratory relief, the issuance of an order to negotiate a restoration plan, and any other order the court considers appropriate, but not monetary damages.

8. There should be a one-way costs rule for a plaintiff who brings an environmental protection action.
9. Costs in an environmental protection action should be awarded against the plaintiff only if the court is of the opinion that the action is frivolous, vexatious, or otherwise misused.
10. The *EBR* should be amended to allow a person to bring a judicial review application of a government ministry decision that violates the right to a healthy environment and that causes or is likely to cause significant harm to the environment.

### Environmental Justice

11. The *EBR* should be amended to:
  - a. Include “environmental justice” in the *EBR*’s purpose section and provide a broad definition of the term.
  - b. Require government ministries to consider whether a proposed environmentally significant Act, regulation, policy, or instrument will cause a community to suffer disproportionate exposure to environmental and health hazards.
  - c. Make specific efforts to reach out to the community and provide for enhanced public comment rights.
  - d. Require government ministries to report regularly on their progress in addressing environmental justice in Ontario.
12. The Environment Ministry should make efforts to gather and combine demographic, geospatial, and environmental data to identify communities within the province that may face disproportionate exposure to environmental and health hazards.

## The Purpose of the *EBR*

13. The *EBR*'s purpose section should be updated to reflect other important environmental principles including, but not limited to, the polluter pays principle, the precautionary principle, the environmental justice principle, and the principle of intergenerational equity.

## Ensuring Public Participation and Public Accountability

### Statements of Environmental Values

14. The *EBR* should require that the provincial government establish a comprehensive and coordinated government-wide strategy describing how the purposes of the *EBR* will be integrated into the environmental decision-making process and to provide periodic progress reports.
15. Ministry SEVs should identify specific goals and targets describing how the purposes of the *EBR* will be considered and applied in the government decision-making process, including an implementation strategy for meeting the targets.
16. Government ministries should provide an annual progress report on their actions and results in meeting the commitments established in their SEVs.
17. The *EBR* should impose a specific duty on ministers to undertake a periodic public review of their SEVs at least every five years to revise and update them as deemed appropriate.
18. Government ministries should be required to explain how SEVs were considered and applied when environmentally significant decisions are made in relation to policies, Acts, regulations, and instruments.
19. The information referenced in recommendation 18 should be included in the notice of decision posted on the Registry pursuant to section 36 of the *EBR*.
20. Section 11 of the *EBR* should be amended to specify that government ministers are required to consider and apply their ministry's SEV when environmentally significant decisions are made in relation to policies, Acts, regulations and instruments.

## Office of the Environmental Commissioner

21. There should be a separate stand-alone Office of the Environmental Commissioner.
22. The Environmental Commissioner should be appointed as an independent officer of the legislature and be accountable directly to the legislature.
23. The Environmental Commissioner should only be removable from office by the legislature for cause.
24. The *EBR* should be amended to provide that the Environmental Commissioner has the authority to comment on:
  - a. Proposed government bills, regulations, policies and instruments as they relate to the environment.
  - b. The implementation of government laws, regulations, policies and instruments as they relate to the environment.
  - c. The province's progress in addressing energy conservation, the reduction of greenhouse gas emissions, and environmental sustainability more broadly.
25. Government ministries should provide written responses to the Environmental Commissioner's special and annual reports within a specified timeline.
26. The *EBR* should be amended to require the Environmental Commissioner review the receipt, handling, and disposition of applications for review and applications for investigation.
27. The *EBR* should be amended to provide that the Environmental Commissioner may provide educational programs about the *EBR* to the public; and provide advice and assistance to the public on how to participate in government environmental decision-making processes.
28. The Environmental Commissioner should have the power to access information and records from government ministries that the Environmental Commissioner thinks are necessary to perform their duties under the *EBR*.
29. The Environmental Commissioner should have the power to examine any person under oath on any matter relevant to the *EBR*.

30. It should be an offence for a person: (i) to obstruct the Environmental Commissioner in the performance of their duties under the *EBR*; (ii) to conceal or destroy a document the Environmental Commissioner has requested; (iii) or to make a false statement to, or mislead, or to attempt to mislead the Environmental Commissioner in the performance of their duties under the *EBR*.
31. Any person convicted who knowingly commits an offence under the *EBR* should be liable to a fine or imprisonment for a term of not more than one year, or both.
32. The *EBR* should be amended to require government ministries provide electronic links to proposed instruments and supporting documentation.
33. The *EBR* should be amended to require government ministries to provide electronic links to the text of proposed policies, Acts and regulations once they are approved for public consultation.

### Access to Information

34. The *EBR* should be amended to recognize the public's right to reasonable and timely access to information.
35. The public should be allowed to seek a fee waiver of all or part of *FIPPA* fees where the information requested relates to the environment.
36. A government-wide policy should be developed and implemented to ensure proactive disclosure of environmental information.

### Application for Review

37. Section 61(2) of the *EBR* which allows a review of the need for a new policy, Act or regulation should be extended to apply to instruments.

## Streamlining Processes, Reducing Uncertainty, and Clarifying the Law

### Leave to Appeal

38. Government ministries should be required to post an information notice of the decision to undertake a review to consider or reconsider a policy, Act, regulation and instrument and provide the public with an opportunity to provide comments during the review process.
39. Section 38 of the *EBR* establishing a standing requirement to commence a leave to appeal application should be deleted.
40. Section 41 of the *EBR* establishing a leave to appeal test for third parties should be deleted.
41. The deadline for filing an application for leave to appeal should be extended from 15 to 20 days.
42. The use of site-specific standards and the technical standards should be subject to third-party appeal rights under the *EBR*.
43. The EASR regime should be subject to notice and comment and third-party appeal rights under the *EBR*.

### Judicial Review and Remedies

44. Section 118(1) of the *EBR* should be amended to recognize judicial review of an administrative decision that violates the right to a healthy environment and that causes or is likely to cause significant harm to the environment.
45. Section 118(2) of the *EBR* should be extended to apply to Acts and regulations.
46. Section 37 of the *EBR* which limits the remedies available on a judicial review should be revoked.

### Paramountcy

47. The *EBR* should be amended to include a provision that provides that if there is conflict between the public participation rights under the *EBR* and another statute, the statute that provides the greatest level of public participation governs to the extent of the conflict.

## Exceptions to the *EBR*

48. The *EBR* should be amended to require the minister post notice of a proposal to rely on s.30 for public comment.
49. Section 30(2) of the *EBR* should be amended to require that the minister give reasons explaining: (i) how the scope and content of the alternate public participation process is substantially equivalent to the public participation process prescribed by the *EBR*; and (ii) whether and to what extent the environmentally significant aspects of the proposal were or will be considered by the alternate public participation process.
50. Section 32(1)(a) of the *EBR* should be amended to require that it only apply where a tribunal has considered: (i) the potential environmental impacts from the proposed instrument that is the subject of the exception; (ii) the mitigative measures to address the potential and actual environmental impacts; and (iii) the technical details of the equipment and technology that will be used to implement the mitigative measures.
51. The *EBR* should be amended to require the minister provide notice of a proposal to rely on the section 32(1)(a) exception.
52. The *EBR* should be amended to require the minister post notice of a decision to rely on the s. 32(1)(a) decision. The notice of decision should provide reasons, including that the minister has reviewed the prior proceedings, the scope and content of the opportunities for public participation in the prior proceedings, and that the exception meets the requirements in s.32(1)(a).
53. Section 32(1)(b) of the *EBR* be revoked.
54. Section 32(2) of the *EBR* be revoked.

## Public Nuisance

55. The provincial government should evaluate whether *EBR* s. 103 has improved access to justice for environmental claims and whether additional reforms are required.

## Harm to Public Resource

56. Section 84 of the *EBR* establishing a statutory cause of action for harm to a public resource should be deleted.

## Other Legal Strategies to Promote Environmental Accountability

57. Further research and analysis is necessary to determine if the public trust doctrine should be incorporated into the *EBR*.
58. Further research and analysis is necessary to determine if the rights of nature should be incorporated into the *EBR*.