



# A NEW *ENVIRONMENTAL* *BILL OF RIGHTS* FOR ONTARIO

Executive Summary

March 2024



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO



## About The Law Commission of Ontario

The LCO is Ontario's leading law reform agency. The LCO provides independent, balanced, and authoritative advice on complex and important legal policy issues. Through this work, the LCO promotes access to justice, evidence-based law reform and public debate.

LCO reports are a practical and principled long-term resource for policymakers, stakeholders, academics, and the general public. LCO's reports have led to legislative amendments and changes in policy and practice. They are also frequently cited in judicial decisions, academic articles, government reports and the media.

A Board of Governors, representing a broad cross-section of leaders within Ontario's justice community, guides the LCO's work.

More information about the LCO, projects, and reports/publications is available at [www.lco-cdo.org](http://www.lco-cdo.org).



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

## Authors and Contributors

**Ramani Nadarajah**, Counsel

**Nye Thomas**, Executive Director

**Sue Gratton**, Counsel

**Laura Caruso**, Executive Officer

**Noor Malik**, Project and Web Coordinator

## Advisory Committee

**Julie Abouchar**, Partner at Willms & Shier Environmental Lawyers LLP (Certified Specialist in Environmental Law and Indigenous Legal issues)

**Susan Chiblow**, Assistant Professor at the School of Environmental Sciences, University of Guelph

**Lisa DeMarco**, CEO & Senior Partner at Resilient LLP

**Jula Hughes**, Dean & Professor at Bora Laskin Faculty of Law, Lakehead University

**Richard Lindgren**, Lawyer at Canadian Environmental Law Association (CELA)

**Heather McLeod Kilmurray**, Associate Professor at the Centre of Environmental Law and Global Sustainability, University of Ottawa, Faculty of Law

**Cherie Metcalf**, Associate Professor at Queen's University, Faculty of Law and the Department of Economics

**Ian Miron**, Lawyer at Ecojustice Canada

**Lori Mishibinijima**, Program Manager & Special Adviser Indigenous & Reconciliation Initiatives, Osgoode Hall Law School, York University

**Paul Muldoon**, Past Vice-Chair at the Ontario Environmental Review Tribunal

**Rodney Northey**, Partner at Gowling WLG (Certified Specialist in Environmental Law)

**Alexandria Pike**, Partner at Davies Ward Phillips & Vineberg LLP

**Dayna Scott**, Associate Professor at Osgoode Hall Law School & the Faculty of Environmental and Urban Change, York University; York Research Chair in Environmental Law & Justice in the Green Economy

## Disclaimer

The opinions or points of view expressed in the LCO's research, findings and recommendations do not necessarily represent the views of LCO Advisory Committee members, funders (Law Foundation of Ontario, Osgoode Hall Law School, Law Society of Ontario) or supporters (Law Deans of Ontario, York University).

## Citation

Law Commission of Ontario, *Executive Summary, A New Environmental Bill of Rights for Ontario*, (Toronto: 2024).

## Contact

Law Commission of Ontario  
2032 Ignat Kaneff Building  
Osgoode Hall Law School, York University  
4700 Keele Street Toronto, Ontario, Canada M3J 1P3

Tel: (416) 650-8406

Toll-Free: 1 (866) 950-8406

Email: [LawCommission@lco-cdo.org](mailto:LawCommission@lco-cdo.org)

Web: [www.lco-cdo.org](http://www.lco-cdo.org)

X: [@LCO\\_CDO](https://twitter.com/LCO_CDO)

## Funders

The LCO is funded by the Law Foundation of Ontario, Law Society of Ontario, and Osgoode Hall Law School.



Barreau  
de l'Ontario





# 1. Introduction

This is the Executive Summary of the Law Commission of Ontario's (LCO) *A New Environmental Bill of Rights for Ontario: Final Report*.<sup>1</sup>

The focus of this project is the *Environmental Bill of Rights, 1993 (EBR)*, a ground-breaking piece of legislation that transformed environmental decision-making in Ontario.<sup>2</sup>

The *EBR* was proclaimed in February 1994 and was hailed as “one of the most comprehensive environmental access laws in Canada.”<sup>3</sup> The *EBR* established a legal framework for environmental accountability that largely remains in place in Ontario. The Act established important mechanisms to improve public participation, transparency, and government accountability for environmental decision-making.

Several important and far-reaching choices underpin the *EBR*. Most notably, the *EBR* established a “political accountability” model for provincial environmental decision-making that was ground-breaking when it was adopted. This model emphasized public disclosure and citizen participation as the most effective means to increase accountability for the provincial government's environmental decision-making.

Over the years, many commentators and studies have concluded that the *EBR*'s political accountability model is no longer effective. Changes in *EBR* policies and practices have also effectively insulated or sheltered many significant provincial environmental decisions from important accountability requirements. Nor has the *EBR* been updated to account for important contemporary environmental priorities, including the right to a healthy environment, environmental justice, the need to address climate change, and the need to promote Indigenous reconciliation. Moreover, the existing regime is failing to respond effectively to the

environmental challenges which threaten the health and well-being of Ontario residents.

The LCO project is the first comprehensive, independent review of the *EBR* since it was enacted.

Broadly speaking, this project considers how well Ontario's *EBR* is working; whether and how the *EBR* should be updated to reflect contemporary environmental priorities, issues, and accountability strategies; and how to amend the *EBR* to improve its procedures and clarify its application.

The LCO's *A New Environmental Bill of Rights for Ontario: Final Report* concludes an intensive two-year research and consultation process on environmental accountability issues in Canada and internationally. The LCO has concluded that major law reforms are needed to ensure environmental accountability in Ontario. Our consultations and analysis have led us to make more than 50 recommendations to amend the *EBR* and related policies. Taken together, the LCO's recommendations represent an ambitious but necessary three-part law reform strategy that would:

Update the *EBR* to reflect contemporary environmental accountability principles and priorities by:

- Incorporating a right to a healthy environment into the *EBR*.
- Establishing a right for residents to commence environmental protection actions.
- Incorporating environmental justice principles and practices into the *EBR*.
- Updating the purposes of the *EBR*.

Improve public participation in provincial environmental decision-making by:

- Improving Statements of Environmental Values.
- Enhancing the role of the Commissioner of the Environment (Environmental Commissioner).
- Improving Ontarian's access to environmental information.
- Improving environmental data collection and transparency.

Update and clarify *EBR* procedures by:

- Updating rules for standing and judicial review.
- Clarifying *EBR* exceptions.
- Eliminating the *EBR* statutory cause of action for harm to a public resource.

If enacted, these reforms would re-establish Ontario's leadership on environmental accountability issues; promote stronger provincial environmental laws, policies, and decision-making; improve public accountability and participation; improve Ontario's ability to address the impacts and harms of climate change; and improve environmental outcomes across the province.

Importantly, the great majority of our recommended law reforms are based on existing precedents, practices, and legal accountability strategies. For example, our recommendation that Ontario adopt a statutory "right to a healthy environment" (RTHE) is grounded in both the current *EBR* and the widespread adoption of the RTHE across the globe. Adopting a legally enforceable RTHE would be a structural and far-reaching reform to the *EBR*. Most of our proposals are more modest in scope and will improve the operation and efficiency of the *EBR* for the benefit of all parties.

A complete list of LCO recommendations is included in Appendix A.



## 2. The LCO's Environmental Accountability Project

This report was prepared by the LCO following extensive legal and public policy research on environmental accountability issues in Canada and internationally. The LCO also organized dozens of consultations, meetings, and events with individuals and groups representing a broad cross-section of environmental perspectives in Ontario, including our project Advisory Committee.

The project's consultations and research were based on issues and questions set out in the LCO's Environmental Accountability Consultation Paper.<sup>4</sup>

Readers should note that the analysis and recommendations in this report do not necessarily represent the views of the LCO's Environmental Accountability Advisory Committee, its funders (Law Foundation of Ontario, Law Society of Ontario, Osgoode Hall Law School), or supporters (Law Deans of Ontario, Ministry of the Attorney General).



### 3. The Environmental Bill of Rights

The *EBR* was hailed as “one of the most comprehensive environmental access to justice laws in Canada.”<sup>5</sup> The Act transformed environmental accountability in Ontario and established a legal framework that largely remains in place.

The *EBR* states that prescribed ministries are required to:

- Develop and implement “Statement of Environmental Values” (SEVs) that explain how ministries will consider the *EBR* when making decisions that may significantly affect the environment.
- Notify and consult the public when developing or changing policies, statutes, regulations, and instruments that may significantly affect the environment.
- Respond to applications for review of laws, policies, regulations, or instruments.
- Investigate alleged contraventions of environmental laws, regulations, or approvals.

The *EBR* also:

- Established the Office of the Environmental Commissioner of Ontario to act as a “watchdog” to oversee the operation and implementation of the *EBR*.
- Established the Environmental Registry of Ontario (Registry).
- Established the right to seek leave to appeal certain decisions posted on the Registry.
- Created limited rights to bring actions for public nuisance and harm to a public resource.



### 4. Catalysts for Law Reform

In broad terms, the *EBR* is based on a “political accountability” or “public participation” model. This model emphasizes transparent environmental decision-making and citizen participation to ensure accountability for provincial environmental decision-making. However, the *EBR* limits the public’s right to challenge environmental decisions in court. It also restricts a court’s remedial powers to address non-compliance with the Act.

There are many issues and factors justifying a comprehensive review of the *EBR*:

#### Eroding *EBR* Protections and Growing Accountability Gaps

Important processes and institutions created by the *EBR* have been eroded over the last 30 years. Many reports, court decisions, and analyses have documented consistent *EBR* non-compliance by government ministries, erosion of *EBR* public participation rights, and the downgrading of the role of the Environmental Commissioner.<sup>6</sup>

#### Urgent Need to Reduce the Risk and Impact of Climate Change

The *EBR* was developed and enacted before climate change became an urgent, if not transcendent, public policy priority. The 2023 Ontario Provincial Climate Change Impact Assessment (PCCIA) stated that:

*Climate change is one of the greatest challenges of our time...These changes are causing unprecedented impacts, transforming ecosystem structure and function, damaging infrastructure,*

*disrupting business operations, and imposing harm to human health and well-being.*

*Physical climate impacts and risks to human, natural and built systems in Ontario are driven by average annual warming temperature and extreme heat, drought, changes to intensity and frequency of precipitation and other climate variables. Avoiding or reducing the worst impacts of human-induced climate change requires action on parallel fronts: rapid and deep reductions in greenhouse gas emissions and proactive and planned measures to adapt to current and imminent future changes. **While there are adaptation efforts underway to address these impacts, the rapid pace of climate change requires large scale, accelerated action in all facets of our society and economy.**<sup>7</sup> [Emphasis added.]*

---

It is not clear whether the *EBR* is adequate to meet the challenge of climate change and other pressing environmental issues facing the province.

## **The Right to a Healthy Environment and Other Contemporary Environmental Accountability Strategies**

In the early 1990's, the *EBR*'s political accountability model was ground-breaking. Since then, many new and more far-reaching environmental accountability strategies have emerged, including the "right to a healthy environment", environmental justice, and the rights of nature. In most cases, these strategies represent fundamental shifts away from the *EBR*'s political accountability model to more robust forms of legal accountability.

Jurisdictions in Canada and around the world are adopting these strategies to address climate change and prevent environmental harms.<sup>8</sup> It is time to consider whether these strategies should be incorporated into the *EBR*.

## **Reconciliation, Indigenous Legal Orders, and the Disproportionate Impact of Climate Change on Indigenous Communities**

The Task Force that developed the *EBR* did not have Indigenous representation. Nor does the *EBR* explicitly identify Indigenous issues as a factor to be considered in environmental accountability or the need to engage with Ontario's Indigenous communities.

The *EBR* also predates important developments in the relationship between the Crown and Canada's Indigenous peoples, including but not limited to the Truth and Reconciliation Commission and the Government of Canada's 2021 enactment of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

Finally, it is widely acknowledged that climate change and environmental degradation have had a disproportionate impact on Ontario's Indigenous communities.<sup>9</sup>

## **New Standards of Public Administration and Evidence-Based Policymaking**

The expectations of public administration and public accountability are much higher in 2024 than they were in 1993. For example, Ontario's environmental data collection and data transparency appears to lag other jurisdictions, particularly the United States. As a result, there is a need to consider whether reforms are needed to better support evidence-based policymaking on environmental initiatives.



## 5. Indigenous Environmental Accountability

The *EBR* was developed more than 30 years ago without Indigenous representation on its founding Task Force. Nor does the *EBR* require provincial environmental decision-makers to consider Indigenous issues or consult with Ontario's Indigenous communities. This is a major gap that must be addressed in any contemporary assessment of environmental accountability in Ontario.

This report does not consider Indigenous environmental issues in depth. Rather, the LCO has established a dedicated Indigenous Environmental Accountability Project to explore Indigenous rights, perspectives, and traditions as a possible source of environmental rights, as well as the disproportionate impact of environmental harm on Indigenous peoples in Ontario and elsewhere. This project will begin in the spring of 2024. Project details will be posted on the LCO's website.



## 6. Right to a Healthy Environment

### Introduction

The right to a healthy environment (RTHE) has emerged as a major global strategy to promote environmental protection, address climate change, reduce environmental harms, increase citizen participation in environmental decision-making, and improve environmental accountability.

The first formal international recognition of the RTHE was in the Stockholm Declaration adopted by the United Nations Conference on the Human Environment in 1972.<sup>10</sup> Since then, at least 150 states have recognized the RTHE at the national or regional level by various means.<sup>11</sup>

In July 2022, the United Nations General Assembly adopted a resolution declaring the "right to a clean, healthy and sustainable environment as a human right."<sup>12</sup> The resolution was approved by 161 UN members (including Canada, the United States, Great Britain, countries in the European Union, Australia, and Japan), zero votes against, and eight abstentions (including China and the Russian Federation).<sup>13</sup>

There are many legal definitions of the RTHE. According to the United Nations, however, the RTHE is generally understood to include both substantive and procedural elements:<sup>14</sup>

Substantive elements include a right to:

- Clean air.
- A safe and stable climate.
- Access to safe water and adequate sanitation.
- Healthy and sustainably produced food.
- Non-toxic environments in which to live, work, study and play.
- Healthy biodiversity and ecosystems.



Procedural elements include a right to:

- Access to information.
- Participate in decision-making.
- Access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.

Research demonstrates that recognition of the RTHE can improve environmental decision-making and outcomes.<sup>15</sup> Research also demonstrates that simple recognition does not necessarily produce benefits or improve environmental outcomes.<sup>16</sup> This is because, in the words of John Knox, the former United Nations Special Rapporteur on human rights and the environment, "... not all recognitions are equal."<sup>17</sup> For example, there is an important distinction between legal recognition of a RTHE and recognition of the RTHE as a legally enforceable right.

## The RTHE in Canada

The RTHE is referenced in the *EBR*'s preamble, which states: "The people of Ontario have a right to a healthful environment." This provision is not legally enforceable and does not provide for a substantive right to a healthy environment in Ontario.

The RTHE has been statutorily recognized in several provinces, territories, and by the federal government. The most significant and recent recognition of the RTHE was in June 2023, when the Parliament of Canada passed Bill S-5, *Strengthening Environmental Protection for a Healthier Canada Act*, the first major amendments to the *Canadian Environmental Protection Act, 1999, (CEPA)* since it was enacted.<sup>18</sup> Whether Bill S-5 established a "right" to a healthy environment is a matter of substantial debate. The amendments were widely criticized for their failure to amend *CEPA*'s s.22 remedial provisions.<sup>19</sup>

## Should Ontario Adopt a Statutory RTHE?

A central question in this project is whether Ontario should adopt a statutory RTHE, and, if so, what substantive or procedural protections should be included.

Most LCO stakeholders favoured recognition of some form of the RTHE in the *EBR*. These views reflect a general acknowledgement that the *EBR* must be strengthened to address current environmental challenges. Many stakeholders also commented on how the RTHE has become an international standard to address climate change and promote environmental accountability in treaties, agreements, and legislation across the world.

The LCO agrees. In our view, statutory recognition of the RTHE addresses many of the catalysts driving *EBR* reform and will help Ontario:

- Promote stronger provincial environmental laws, regulations, policies, and standards.
- Improve public accountability for environmentally significant decision-making.
- Improve public participation in Ontario's environmental decision-making.
- Improve *EBR* implementation and enforcement.
- Address pressing environmental issues such as climate change.

To achieve these benefits, it will be important to ensure that RTHE principles and standards are infused throughout the provincial government's environmental decision-making processes, including in legislation, regulations, provincial policies and standards, and decisions respecting individual approvals/licences.

The LCO believes that the *EBR* should be amended to include both substantive and procedural RTHE provisions. Both elements are necessary to ensure environmental protection and improve environmental accountability in Ontario. RTHE substantive provisions should include the right to environmental quality that protects human health, ecological health,

and environmental sustainability. RTHE procedural provisions should build on the many procedural requirements already included in the *EBR*. These provisions need to be improved, however, to address several shortcomings, including the lack of effective remedial provisions.

## Is the RTHE Too Vague?

There are concerns that a statutory RTHE is too vague to be enforceable, or that it may lead to legal uncertainty for governments and private actors. The Ontario Chamber of Commerce, for example, has stated that uncertainty about government environmental policies is “one of the main barriers that deters the private sector from making major investments.”<sup>20</sup>

“Vagueness” in a statutory definition of a RTHE can and should be mitigated. Fortunately, there is already an important Canadian precedent to address this issue. *CEPA* s. 2(1) provides an extensive list of issues that the federal government must consider when implementing *CEPA*. In this manner, the statute provides important legal guidance about how the *CEPA* RTHE should be implemented. Furthermore, as Professor David Boyd notes, the scope and content of the RTHE will evolve through legislation, litigation, jurisprudence, and the development of scientific knowledge.<sup>21</sup>

## Economic Impact

A related concern is that a statutory RTHE will harm the economy. Opponents of statutory recognition argue that it could or will harm the economy, reduce private investments, undermine competitiveness, and lead to fewer jobs.<sup>22</sup>

The LCO agrees that any reform that could negatively impact the provincial economy must be considered carefully, even in the context of climate change. Based on our review, the LCO concludes that:

- There is nothing in the literature assessing the impact of the RTHE indicating these types of outcomes. Indeed, some observers have suggested that the establishment of a RTHE has strengthened progress on sustainable development, even in the context of a heavily resource export-oriented economy.<sup>23</sup>

- The RTHE has been recognized internationally and within Canada, including in Quebec, Yukon the Northwest Territories and Nunavut.
- Recent *CEPA* amendments adopted a limited form of the RTHE at the federal level in Canada, establishing a federal environmental legal baseline.
- The RTHE, like other rights, is not absolute and does not necessarily mean “pollution-free air, pure water and pristine ecosystems.”<sup>24</sup>

Finally, it is important to note that the economic impact of climate change on the private sector in Ontario has been widely studied and recognized. The Ontario Chamber of Commerce recently released a comprehensive analysis discussing the challenges and opportunities for Ontario in the global green economy. According to the Ontario Chamber of Commerce,

---

*Climate change has costly implications for both residents and businesses in Ontario...*

*For primary sectors such as agriculture and forestry, these impacts are direct...*

*In Ontario, extreme weather events are disproportionately affecting Northern and Indigenous communities...*

*There are also ways in which the climate crisis impacts businesses across all sectors, including the physical damage inflicted on transportation, electricity, telecommunication, and other infrastructure...*

*Insurance providers, faced with increased risk of weather-related events and claims, have no option but to price that risk within premiums...*

*Flooding is the most widespread natural disaster across Canada and the lead driver of rising catastrophic insurable losses...*

*Climate change affects shipping costs as well, which has broad consequences for supply chains...*

*Finally, the socioeconomic impacts of climate change – on public health, social stability, and resource availability – represents a serious threat to the underpinnings of society and business prosperity...<sup>25</sup>*



## 7. Environmental Protection Actions

### Should the RTHE Apply to the Private Sector?

An important question is whether the RTHE should only apply to government or extend to the private sector.

There is a view that the private sector should not be subject to a RTHE since the primary objective of the *EBR* is to ensure government environmental accountability. The LCO disagrees, for the following reasons:

- Limiting the RTHE to governments would not address the source of most pollution in Ontario.
- Many federal and provincial environmental statutes (including the *EBR*) already apply to private actors.
- The economic impact of climate change on the private sector in Ontario is widely recognized.

In the LCO's view, the best way to assess the potential impact of the RTHE on a private sector project, economic sector, or potential investment is on an evidence-based, case-by-case basis through comprehensive consultations, regulations, licensing, or litigation.

It is important to note that private sector activity will in many respects be governed by RTHE principles irrespective of whether the RTHE applies to the private sector or not. This is because the RTHE will apply to a wide range of government environmental decision-making, including legislation, regulations, provincial policies and standards, and decisions respecting individual approvals/licences, etc.

Finally, the LCO notes that the impact of the RTHE on the private sector will be limited by the LCO's proposed limits on environmental protection actions and the practical realities of initiating such actions.

Simply incorporating a RTHE into the *EBR* will be insufficient to improve environmental accountability in Ontario. Experience demonstrates that a RTHE is likely to be largely symbolic and ineffective unless it can be enforced through legal processes, such as an environmental citizen suit.

### Environmental Citizen Suits in the United States

All major U.S. federal environmental statutes authorize citizen suits.<sup>26</sup> Citizen suits take many forms, but the basic idea is that citizens should be allowed to challenge government or private sector actions which cause or are likely to cause environmental harm. Citizen suit provisions also often include procedural provisions facilitating access to justice and strong remedial provisions.

### Justification and Criticisms

In the U.S., environmental citizen suits were created to address the perceived shortcomings of government enforcement, including limited budgets, practical constraints on government monitoring and enforcement, and political or institutional barriers. Citizen suits were also viewed as a form of democratic empowerment.<sup>27</sup>

Critics of environmental citizen suits, including business representatives and some academics, expressed concerns that citizen suits would encourage meritless environmental litigation.<sup>28</sup> Critics also argued that citizen suits would disrupt government regulatory activity, delay or frustrate economic development, potentially allow environmental organizations to

“highjack” environmental enforcement and disrupt the government/industry cooperation needed for successful environmental governance. Critics were particularly concerned about the impact of citizen suits on the private sector.<sup>29</sup>

## Empirical Record and Practical Experience

Empirical studies of U.S. environmental citizen suits demonstrate that citizen suit advocates and critics were both mistaken: Across the U.S., researchers have concluded that environmental citizen suits have neither fulfilled their potential, nor realized their critic’s worst fears.<sup>30</sup> Key findings include:

- Citizen suit provisions did not open the floodgates to environmental lawsuits; the number of citizen suits are relatively low.<sup>31</sup>
- The great majority of citizen suits are filed against the federal government, not private entities or to challenge specific licensing decisions or permits.<sup>32</sup>
- The complexity and cost of environmental litigation strongly influence the type of suits filed.<sup>33</sup>
- Environmental plaintiffs must use citizen suits strategically and triage cases carefully.<sup>34</sup>

## Environmental Citizen Suits in Canada

Canadian environmental statutes also include limited forms of citizen suit provisions, including s. 84 of the *EBR* and section 22 of *CEPA*. However, unlike American environmental statutes, the provisions in the *EBR* and *CEPA* have been ineffective. Section 84 of the *EBR* has been rarely used and *CEPA* s. 22 has not been utilized since it was adopted in 1999.

## Analysis

The LCO has concluded that an effective *EBR* citizen suit provision could improve environmental accountability in Ontario, improve access to justice, and help address the pressing environmental challenges facing the province. Neither *EBR* s. 84 nor *CEPA* s. 22 are sufficient to meet these objectives.

An appropriate *EBR* citizen suit provision must strike a careful balance: On the one hand, citizen suits must be accessible and effective. On the other hand, the *EBR* should not undermine legitimate environmental decision-making. Environmental citizen suits should not become a mechanism for unnecessarily challenging or frustrating government environmental decision-making or private sector activities. Potential plaintiffs, defendants, and the public are entitled to have reasonable and settled expectations about what is permitted by the *EBR* and what is not.

## Standing

Citizen suit provisions in Canadian provincial and federal statutes often include broad standing rules to promote access to environmental rights. For example, legislation in Quebec, Yukon, the Northwest Territories and Nunavut provide that persons not directly impacted by environmental harms have the right to commence a RTHE action.<sup>35</sup> The standing rules in *CEPA* are similar.<sup>36</sup>

The LCO supports the *CEPA* standing requirements, subject to one caveat. Prior to bringing an action under *CEPA*, a person must request the Federal Environment Minister investigate the matter. An action can only be undertaken if the Minister has failed to undertake an investigation and report in a reasonable time, or the Minister’s response to the investigation was unreasonable. There is a similar requirement in s. 84(2) of the *EBR*.

The LCO does not believe the *EBR* should include an investigation precondition requirement. This requirement frustrates access to justice and creates an onerous procedural barrier to commence an environmental protection action.

## Cause of Action

The term “significant harm to the environment” is the basis for a cause of action in many Canadian environmental statutes, including s. 22 of *CEPA* and s. 84 of the *EBR*.

Many environmental advocates believe the “significant harm to the environment” cause of action test is too onerous.<sup>37</sup> The LCO disagrees. We believe that the “significant harm to the environment” test should remain the legal threshold for commencing an environmental protection action under the *EBR*. The “significant harm to the environment” test is already included in the *EBR*. Consequently, there is existing jurisprudence defining the term. The LCO also believes a “significant harm” threshold will ensure *EBR* environmental protection actions are targeted to serious and legitimate cases.

## Reverse Onus

Reverse onus provisions are a feature of many regulatory regimes and have been included in statutes that provide for a RTHE action. In these regimes, once a plaintiff establishes a *prima facie* case of significant harm to the environment, the onus shifts to the defendant to establish due diligence or to prove that their action or inaction did not cause significant harm to the environment. Reverse onus provisions in environmental suits are justified because the defendant is usually in control of most legally-relevant information. Reverse onus provisions in public interest statutes are also sometimes justified on access to justice principles as a way of addressing the financial imbalance between the parties.

## Defences to Environmental Citizen Suits in Ontario

A key consideration is what types of defences should be afforded against environmental protection actions. Practically speaking, the most controversial and consequential issue is whether the statutory authorization defence should be extended to instruments (such as an environmental compliance approval, permit or licence) and regulatory standards.

Yukon, the Northwest Territories and Nunavut have extended the statutory authorization defence to instruments and regulatory standards. For example, s. 9 of Yukon’s *Environment Act* states that “compliance with a permit, license or...a standard” is a defence to an action under that statute.

On one hand, it seems reasonable that facilities licensed and operating pursuant to an approval/ licence issued by the provincial government or a regulatory standard should be entitled to rely on compliance as a defence to a RTHE action. On the other hand, a statutory authorization defence could have significant implications for the RTHE and environmental accountability in Ontario.

The LCO has concluded that the *EBR* should not extend the statutory authorization defence to instruments or regulatory standards. To do so would undermine the RTHE and leave a wide gap in Ontario’s environmental accountability regime.

This conclusion does not mean that compliance with an instrument or a regulatory standard should have no or little weight in an *EBR* environmental protection action. On the contrary, the LCO believes compliance with an instrument or a regulatory standard are factors that a court should consider in assessing the due diligence defence. The LCO believes that instead of prescribing a statutory defence, it is preferable to have a court assess the extent to which these factors are relevant in individual cases.

## Remedies

The *EBR* states that a court can grant injunctive relief, order the negotiation of a restoration plan, grant declaratory relief, or make any other order the court considers appropriate for a s. 84 action.<sup>38</sup> The LCO recommends the *EBR*'s remedy provisions remain unchanged.

## Costs for *EBR* Environmental Protection Actions

Public interest litigants remain potentially liable for adverse costs under both *CEPA* and the *EBR*. The LCO believes costs reform is needed to improve environmental accountability and promote the RTHE in Ontario. As a result, the *EBR* should be amended to establish a one-way costs rule for litigants bringing an environmental protection action to enforce the RTHE. To deter lawsuits that have no legal or factual basis, however, the *EBR* should be amended to give courts the authority to award costs against a plaintiff if the court believes the action is frivolous, vexatious or otherwise misused.

## Looking Forward

The LCO makes the following predictions about the potential impact of environmental protection actions in Ontario:

First, the LCO expects that *EBR* citizen suits will be an important, but infrequent, litigation tool used by environmental advocates, organizations, and individuals. Environmental protection suits will increase, while remaining comparatively infrequent, expensive, factually complex, and legally challenging. Environmental advocates and others relying on citizen suits will have to triage cases carefully.

Second, most lawsuits will be brought against the provincial government to challenge provincial environmental decision-making, standard-setting, or to enforce procedural obligations. The prohibitive cost and complexity of environmental litigation will mitigate against what U.S. analysts Adelman and Reilly-Diakun call “retail” environmental litigation and citizen suits against private entities.<sup>39</sup>

Third, environmental protection suits will supplement, but not replace, government environment regulation and enforcement.

Finally, the legal principles governing the RTHE and environmental protection suits in Ontario will develop over time through regulations, standard-setting, consultations, licensing, and litigation. This will allow the law to develop based on experience, evidence, and with the participation of affected parties.



## 8. Environmental Justice

Environmental justice analysis evaluates the impact of environmental risks and harms from a geographic, racial, and/or income perspective to determine whether risks and harms are distributed fairly in society. Environmental justice analysis also asks whether there is differential access and influence over environmental decision-making.<sup>40</sup>

### Environmental Justice in the United States

Environmental justice principles and practices are well-established in the U.S. Environmental justice is defined by the U.S. Environmental Protection Agency as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.”<sup>41</sup>

Environmental justice is a major focus of the Biden administration’s environmental, climate and energy policy. Recent initiatives include: Executive Order 14008 titled “Tackling the Climate Crisis at Home and Abroad”; establishing the White House Environmental Justice Advisory Council; recommendations to improve best practices for community engagement and public outreach; the Climate and Economic Justice Screening Tool; and the Environmental Justice Scorecard.<sup>42</sup>

Several U.S. states have also enacted laws and policies that address environmental justice, including Washington, Maryland, Vermont, Wisconsin, and New York.<sup>43</sup> The 2023 New York legislation is one of the strongest environmental justice statutes in the United States. This law stipulates that a new permit will not be issued for a project if the project will “cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community.”<sup>44</sup>

### Environmental Risks in Canada and Ontario

Studies show that Indigenous, low-income, and marginalized communities in Canada and Ontario are disproportionately impacted by pollution. For example, the 2023 Provincial Climate Change Impact Assessment report concluded that:

---

*Climate change has already had significant impacts on the individuals, communities, and associated services in Ontario. These risks are expected to continue. The assessment reveals that climate change risks are highest among Ontario’s most vulnerable populations and exacerbate existing disparities and inequities.*<sup>45</sup>

---

### Environmental Justice in Canada

The *EBR* was enacted long before environmental justice became an important environmental accountability principle. At the federal level, environmental justice principles were recently adopted in Bill S-5, which requires the federal government to exercise its *CEPA* powers in a manner that “protects the environment and human health, including the health of vulnerable populations.”<sup>46</sup>

The LCO believes environmental justice should be reflected in provincial environmental decision-making. The provincial government should advance environmental justice by:

- Adopting environmental justice as a purpose of the *EBR*.
- Developing a comprehensive provincial environmental justice strategy in partnership with the communities affected by environmental harms, including Indigenous communities, racialized communities, and low-income communities.



## 9. Updating the Purpose of the EBR

The purpose section of the *EBR* currently includes important environmental principles such as the “pollution prevention principle,” “biodiversity conservation,” and “natural resources conservation.”<sup>47</sup>

The LCO believes several new principles should be incorporated into the *EBR* to ensure the Act reflects contemporary objectives in environmental accountability and Canadian law, including the polluter pays principle, the precautionary principle, the principle of intergenerational equity, and the principle of environmental justice.



## 10. Improving Public Participation and Government Transparency

Public participation and government transparency underpin the *EBR*’s political accountability model.

### Statements of Environmental Values (SEVs)

Statements of Environmental Values (SEVs) were intended to ensure that ministries considered the *EBR* when making environmentally significant decisions.<sup>48</sup> The LCO believes SEVs could be improved by amending the *EBR* to specify that:

- SEVs include detailed requirements and mandatory renewal provisions.
- *EBR* “decision notices” specify how SEVs were considered and applied in provincial decision-making.
- SEVs be considered when making decisions respecting legislation, regulations, policies, and instruments.

### Office of the Environmental Commissioner

The Office of the Environmental Commissioner has been described as the “*EBR*’s institutional centerpiece.”<sup>49</sup> The Environmental Commissioner’s independent reports were central components of the *EBR*’s political accountability model.

The provincial government’s 2018 *Restoring Trust, Transparency and Accountability Act (RTTA Act)* transferred the Environmental Commissioner’s duties



to the Auditor General of Ontario and Environment Minister and made important changes to the Environmental Commissioner's independence, responsibilities, and functions.<sup>50</sup>

Some observers believe the *RRTA Act* reforms may undermine the independence of the Environmental Commissioner and reduce environmental accountability. The LCO acknowledges this potential but notes that stakeholders have also commented favourably on how the Auditor General and new Environmental Commissioner have performed their duties. On balance, the LCO believes that environmental accountability is more likely to be achieved through a separate stand-alone Office of the Environmental Commissioner. The Environmental Commissioner's powers to obtain access to information and records from government ministries should be strengthened. The Environmental Commissioner should also have an explicit mandate to evaluate environmental policies and undertake public education programs.

## Access to Environmental Information

The Registry has been successful in ensuring Ontarians have access to timely information about environmentally significant proposals and decisions.<sup>51</sup> The Registry could be improved, however, by amending the *EBR* to specify that government ministries provide electronic links to proposed instruments and the text of proposed policies, Acts and regulations once they are approved for public consultation.

Access to environmental information could also be improved if the public were allowed to seek a fee waiver of all or part of *FIPPA* fees for environmental information. The provincial government should also develop a government-wide policy to ensure proactive disclosure of environmental information.<sup>52</sup>

## Public Input into the Request for Review Process

The LCO recommends that government ministries post an information notice on the Registry of their decision to undertake a review of a policy, Act, regulation or instrument and provide the public with an opportunity to provide comments during the review process.

## EBR Amendments to Streamline Processes, Reduce Uncertainty, and Clarify the Law

There are many *EBR* amendments that could streamline or "modernize" existing provisions and processes, reduce legal uncertainties, and clarify the scope of the *EBR*'s application.

### Leave to Appeal

The LCO believes the objectives of the *EBR*'s s.41 leave test (screening out meritless leave applications) can be achieved more effectively through other means. The Ontario Land Tribunal has amended its Rules of Practice and Procedure to authorize, on its own initiative and without a hearing, dismissal of a matter on grounds that it is frivolous, vexatious, or commenced in bad faith.<sup>53</sup> The LCO believes this procedure is sufficient to address the need to screen unmeritorious *EBR* leave applications.

The LCO recommends that the public have the right to appeal site-specific standards and technical standards under the *EBR*. The EASR regime also should also be subject to notice and comment and third-party appeal rights under the *EBR*. The LCO believes these recommendations are necessary to ensure access to justice and government accountability.

## Judicial Review

The *EBR*'s political accountability model means that legal processes and remedies are restricted. The LCO recommends s. 118(1) of the *EBR* be amended to allow judicial review of administrative decisions that violate the right to a healthy environment and that causes, or is likely to cause, significant harm to the environment. Further, s. 118(2) of the *EBR*, which only permits judicial review of instruments, should be extended to apply to Acts and regulations.

## Remedies

Section 37 of the *EBR* provides that the failure to comply with the public participation rights under Part II of the *EBR* does not affect the validity of any policy, Act, regulation, or instrument. The effect of this provision is to restrict the available remedies on judicial review to declaratory relief. The LCO believes that to address *EBR* non-compliance it is necessary for the courts to have all remedies available to them. The LCO, therefore, recommends s. 37 be revoked.

## Exceptions to the *EBR*

The *EBR* provides several exceptions to its public participation requirements, including emergencies (s. 29), “substantially equivalent” processes (s.30), instruments that implement an undertaking or project approved in accordance with a statutory decision (s.32), and proposals that give effect to the budget or economic statements presented to the Ontario Legislature (s.33).

The LCO believes when the Minister relies on the s.30 “substantially equivalent process” exception, the Minister should provide notice of that decision on the Registry and their reasons for doing so. Section 32(1) (a) of the *EBR* should also be clarified to specify that it only applies when a tribunal has fully considered the environmental impacts of a project or undertaking. Finally s. 32(1)(b), which allows an exception for an instrument which would be a step towards implementing a project or undertaking approved under the *Environmental Assessment Act*, should be revoked.

## Section 103 – Public Nuisance

Section 103 of the *EBR* made incremental reform to the standing requirement that a plaintiff had to suffer “special damages” to bring a public nuisance action. The LCO recommends that consultation with the private bar and other interested stakeholders be undertaken to assess whether s. 103 has improved access to justice and if further reforms are required.

## Section 84 – Harm to Public Resource

Section 84 of the *EBR* creates a limited cause of action for Ontario residents alleging harm or imminent harm to a public resource. The LCO believes that a statutory RTHE is preferable and recommends s. 84 be deleted.



## 11. Other Legal Strategies to Promote Environmental Accountability

The public trust doctrine is a well-established environmental accountability strategy in American law. The doctrine states that governments do not own public resources but have a fiduciary duty to manage them for the benefit of current and future generations. If governments fail to uphold this duty, the doctrine holds that the public should have access to court remedies.<sup>54</sup>

The “rights of nature” doctrine is an emerging legal approach that rejects the anthropocentric view of nature as a commodity and emphasizes the interdependence of ecosystems and humans. Rights of nature have been recognized by many cultures.<sup>55</sup> For example, a central element of the legal system of many Indigenous cultures is a “set of reciprocal rights and responsibilities between humans and other species, as well as between humans and non-living elements of the environment.”<sup>56</sup>

The LCO believes it is premature to make recommendations in these areas. As a result, legal developments should be monitored to better assess whether the public trust doctrine and the concept of the rights of nature should be acknowledged in the *EBR*.



# 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*.

# Endnotes

- 1 The LCO's full report, *A New Environmental Bill of Rights for Ontario: Final Report* [LCO EBR Final Report], and other materials are available on the LCO project website at <https://www.lco-cdo.org/en/our-current-projects/environmental-accountability-rights-responsibilities-and-access-to-justice/>.
- 2 *Environmental Bill of Rights, 1993*, SO 1993, c 28 [EBR].
- 3 Joseph F. Castrilli and Richard D. Lindgren, "Leave to Appeal under Ontario's Environmental Bill of Rights: *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*" in *Litigating Canada's Environment: Leading Canadian Environmental Cases by the Lawyers Involved*, (Toronto: Thomson Reuters Canada Limited, 2017) at 151.
- 4 Available at <https://www.lco-cdo.org/en/our-current-projects/environmental-accountability-rights-responsibilities-and-access-to-justice/>.
- 5 Castrilli and Lindgren at 151.
- 6 Section 4 of the LCO EBR Final Report discusses these issues in detail.
- 7 Climate Risk Institute, *Ontario Provincial Climate Change Impact Assessment: Technical Report*, (January 2023) [PCCIA], online: <https://www.ontario.ca/page/ontario-provincial-climate-change-impact-assessment> at *xiii*. The report was prepared for the Ontario Ministry of the Environment, Conservation and Parks by the Climate Risk Institute.
- 8 Sections 7-10 and 13 of the LCO EBR Final Report discusses these issues in detail.
- 9 The PCCIA report states:  
*The direct and indirect impacts of climate change on Indigenous Communities in Ontario are far-reaching and complex, from increased populations with a need for relocation or evacuation during extreme weather events, to disruptions in cultural and community land-based practices, and reductions in access to health care and social services during extreme events.*  
PCCIA at 316. See also the 2020 United Nations Special Rapporteur's report which stated that Indigenous Peoples face greater exposure to hazardous substances than the rest of the population. Among other findings, the Special Rapporteur noted that the Grassy Narrows First Nation and the Wabaseemoong (Whitedog) Independent Nations were still suffering serious health impacts from mercury poisoning which occurred over 50 years ago. UN Human Rights Council, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, 27 November 2022 [UNHRC Report], online : <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F12%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.
- 10 "United Nations Conference on the Human Environment, "Declaration of the United Nations Conference on the Human Environment: Principle 1." (1972) [Stockholm Declaration], online: <https://www.un.org/en/conferences/environment/stockholm1972>.
- 11 See David R. Boyd, *Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*, in *The Human Right to a Healthy Environment* 18 [Boyd 40 Years], (John H. Knox & Ramin Pejman eds., 2018).
- 12 "UN General Assembly declares access to clean and healthy environment a universal human right." (28 July 2022), online at <https://news.un.org/en/story/2022/07/1123482>.
- 13 *Ibid.*
- 14 Office of the High Commissioner for Human Rights, United Nations Environment Programme, United Nations Development, *What is the Right to Healthy Environment?*, Information Note [UN Information Note], online: <https://www.undp.org/publications/what-right-healthy-environment> at 9.
- 15 Boyd 40 Years at 3.
- 16 See James May's thoughtful discussion of this issue in James May, "The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes." in 42:3 *Cardozo Law Review* 983 (2021) [May].
- 17 John Knox, quoted in May at 1003.
- 18 Parliament of Canada, *Strengthening Environmental Protection for a Healthier Canada Act*, 2023, S.C. 2023, c. 12 [Bill S-5]. Bill S-5 included extensive amendments to the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33 [CEPA].
- 19 See generally, Joseph F. Castrilli and Fe de Leon, "Submissions to the House of Commons Standing Committee on Environment and Sustainable Development on Bill S-5, An Act to Amend the Canadian Environmental Protection Act, 1999 etc." (September 2022), online: [https://cela.ca/wp-content/uploads/2022/10/Bill\\_S-5-HC\\_submissions\\_Sept\\_2022.pdf](https://cela.ca/wp-content/uploads/2022/10/Bill_S-5-HC_submissions_Sept_2022.pdf).
- 20 Ontario Chamber of Commerce, *The Climate Catalyst: Ontario's Leadership in the Green Global Economy*, (2021) [Ontario Chamber of Commerce], online at: <https://occ.ca/our-publications/> at 39.
- 21 David R. Boyd, *The Right to a Healthy Environment* (Vancouver: UBC Press, 2012) [Boyd 2012] at 25-26.
- 22 *Ibid* at 25.



- 23 *Ibid* at 26.
- 24 *Ibid*.
- 25 Ontario Chamber of Commerce at 12-13.
- 26 Kerry D. Florio, “Attorney’s Fees in Environmental Citizen Suits: Should Prevailing Defendants Recover? (2000) 27 Boston College Environmental Affairs Law Review 707, at 709.
- 27 David Adelman and Jori Reilly-Diakun, “Environmental Citizens Suits and the Inequities of Races to the Top” in 92 *Colorado Law Review* 2 (2021) [Adelman] at 431.
- 28 David Bryden, “Environmental Rights in Theory and Practice” (1978) 62 *Minnesota Law Review* 163, at 210.
- 29 See generally Adelman.
- 30 *Ibid* at 431.
- 31 *Ibid* at 433-444.
- 32 *Ibid* at 407.
- 33 *Ibid* at 441.
- 34 *Ibid* at 451.
- 35 Quebec: *Environmental Quality Act*, CQLR, c Q-2, s. 19.3.; Yukon: *Environment Act*, RSY 2002, c 76, s. 10; Northwest Territories: *Environmental Rights Act*, SNWT 2019, c 19, s. 13(2); Nunavut: *Environmental Rights Act*, RSNWT (Nu) 1988, c 83, s.6(2).
- 36 *CEPA* s. 22.
- 37 Joseph F. Castrilli and Fe De Leon, “Submissions to the House of Commons Standing Committee on Environment and Sustainable Development on Bill S-5, An Act to Amend the Canadian Environmental Protection Act, 1999 etc.” (September 2022), online: [https://cela.ca/wp-content/uploads/2022/10/Bill\\_S-5-HC\\_submissions\\_Sept\\_2022.pdf](https://cela.ca/wp-content/uploads/2022/10/Bill_S-5-HC_submissions_Sept_2022.pdf) [Castrilli and De Leon] at 37-38.
- 38 *EBR*, s. 93(1)(a).
- 39 Adelman at 441.
- 40 See generally, Dayna Nadine Scott, “What is Environmental Justice?” (2014) Osgoode Leal Research Paper Series. 4., online: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1003&context=olsrps> and Natalie J. Chalifour, “Environmental Justice and the Charter: Do environmental injustices infringe section 7 and 15 of the Charter?” (2015) 28 *Journal of Environmental Law & Practice*.
- 41 US, Environmental Protection Agency, Learn About Environmental Justice, online: <https://www.epa.gov/environmentaljustice/learnabout-environmental-justice>.
- 42 See the LCO’s extensive discussion of American environmental justice initiatives at LCO *EBR* Final Report at 69-71.
- 43 *Ibid* at 71
- 44 Michael B. Gerrard & Edward McTiernan, “New York Adopts Nation’s Strongest Environmental Justice Law”, *New York Law Journal*, (May 10, 2023), online: [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4954&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4954&context=faculty_scholarship)
- 45 PCCIA at 288.
- 46 *CEPA* s. (2)(1)(a).
- 47 *EBR* s. 2.1
- 48 See generally, Task Force Report at 23-24.
- 49 Mark S. Winfield, “A Political and Legal Analysis of Ontario’s Environmental Bill of Rights” (1998) 47 *University of New Brunswick Law Journal* 325 at 341.
- 50 See generally, *Restoring Trust, Transparency and Accountability Act, 2018*, SO 2018 c 17, [RTTA Act], cl 50(1), Schedule 15, *Environmental Bill of Rights, 1993*. See also, Charles J. Birchall, “What is the Role of Ontario’s New Commissioner of the Environment?” (April 28, 2020), online: [https://www.willmsshier.com/docs/default-source/articles/ontario\\_s-new-commissioner-of-the-environment-cb-28-april-2020.pdf?sfvrsn=74c157d5](https://www.willmsshier.com/docs/default-source/articles/ontario_s-new-commissioner-of-the-environment-cb-28-april-2020.pdf?sfvrsn=74c157d5).
- 51 See LCO *EBR* Final Report at 88-90.
- 52 See generally, *Ibid* at 90-92.
- 53 See generally, *Ibid* at 94-96.
- 54 See generally, *Ibid* at 105-108.
- 55 See generally, *Ibid* at 109-110.
- 56 David R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save The World*, (Toronto: ECW Press, 2017) at “Introduction” p. xxx.



LAW COMMISSION OF ONTARIO  
COMMISSION DU DROIT DE L'ONTARIO

2032 Ignat Kaneff Building  
Osgoode Hall Law School, York University  
4700 Keele Street, Toronto, Ontario, Canada M3J 1P3