

# Reflections



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The *Environmental Bill of Rights, 1993* (EBR Act) gives each person in Ontario the right to participate in—and hold officials accountable for—decisions made by the government that affect the environment—the air we breathe, the water we drink, the land we grow food on, and the plants and animals that contribute to a resilient, healthy environment.

The EBR Act provides:

- means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
- increased accountability of the Government of Ontario for its environmental decision-making;
- increased access to the courts by residents of Ontario for the protection of the environment; and
- enhanced protection for employees who take action in respect of environmental harm.

But Ontarians' ability to exercise those rights to make a difference depends on: how effectively government and ministries exercise *their* responsibilities

under the EBR Act; how well ministries notify and consult the public on proposals; how seriously they consider environmental principles in decision-making; and how they respond to requests from the public to review or investigate environmental matters.

Since 2019, the Office of the Auditor General has been required under section 51 of the EBR Act to report annually on the operation of this Act. For each of the past four years, the Office has identified recurring issues such as non-compliance and poor implementation of the Act. We've found that issues can arise for a number of reasons: either ministries don't have effective processes or policies to ensure that staff do what's needed under the Act; officials disregard the intent of public consultation requirements under the Act; or they don't make the EBR Act a priority.

This year, ministry staff have made improvements in the ways they follow the Act in their day-to-day work. However, in the following instances, Ontarians' rights to be informed and/or fully consulted on important environmental decisions were bypassed:

- In March 2022, the Ministry of Municipal Affairs and Housing posted a proposal notice on the Environmental Registry for public consultation on Bill 109 (the *More Homes for Everyone Act, 2022*), which would make environmentally significant changes to the *Planning Act*. However, the bill was passed into law two weeks before the required 30-day consultation period ended, effectively bypassing consultation requirements under the EBR Act and thereby negatively affecting Ontarians' rights to provide feedback.
- Neither the Strategic Plan for the Deployment of Small Modular Reactors, released in March 2022, nor the Low-Carbon Hydrogen Strategy, released in April 2022, were posted by the

Ministry of Energy on the Environmental Registry for consultation with Ontarians, as required under the EBR Act.

- In July 2020, the Ministry of the Environment, Conservation and Parks posted a proposal notice for a regulation to exempt activities in provincial parks and conservation reserves from the *Environmental Assessment Act*. In the fall of 2021, Ministry staff realized that the notice had incorrectly indicated that *only projects in parks* would be exempted from the *Environmental Assessment Act*, but in fact projects *related to parks* would be exempted as well. It also was unclear that future park boundary changes would not be subject to a new Environmental Impact Assessment Policy. The Minister's Office directed ministry staff not to repost the proposal on the Environmental Registry with the new information, even though the incorrect and missing information was significant enough to warrant updating the proposal notice. In deciding not to repost, the choice was made to not fully and transparently consult with all Ontarians in accordance with the EBR Act.

Transparency about legislative and policy changes that may impact the environment is important in other ways as well. This year we again found situations when ministries did not always promptly notify the public when decisions were made after public consultation. We also noted several instances where ministries did not fully explain on the Environmental Registry the potential environmental implications of proposed legislative or policy changes, or how public consultation affected the decision-making.

Ministries also missed legislated deadlines required by the EBR Act to respond to people who filed requests for investigations or reviews on

environmental issues. In one situation regarding investigation requests pertaining to bird collisions with buildings in Ottawa, we found that the Ministry of the Environment, Conservation and Parks' denial of an investigation of *Environmental Protection Act* allegations was late and unreasonable, and that the Ministry did not fully investigate allegations related to the *Endangered Species Act, 2007* to the extent necessary, in contravention of the EBR Act.

As the administrator of the Act, it is important that the Ministry of the Environment, Conservation and Parks champions the EBR Act. But for the fourth year, we have found it has done little to educate Ontarians about the EBR Act, not fulfilled a decade-old public request to review the EBR Act, and not ensured that the Act applies to all environmentally significant government decisions.

As Ontario's population and infrastructure needs grow, increased development has the potential to negatively impact natural areas and the environment. Fully embracing the intent of the EBR Act and following transparent and meaningful consultation can only help government make informed, long-term environmental decisions that benefit all Ontarians, while building public understanding and support.



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