379 Ronka Road
Worthington, ON P0M3H0
LindaH@OntarioRiversAlliance.ca
OntarioRiversAlliance.ca

8 November 2016

Anda Kalvins
Project manager
Ministry of the Environment and Climate Change
Environmental Policy Division
Strategic Policy Branch
77 Wellesley Street West
Floor 11, Ferguson Block
Toronto, Ontario
M7A 2T5
By Email: Anda.Kalvins@Ontario.ca

Re: EBR 012-8002 – Environmental Bill of Rights - Review

Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several stewardships, organizations, and private and First Nation citizens who have come together to protect, conserve and restore healthy river ecosystems.

ORA is very grateful for the opportunity to comment on the Ministry of Environment and Climate Change's (MOECC) review of components of Ontario's Environmental Bill of Rights (EBR), 1993, and on the possibility of enshrining our rights to a healthy environment into the legislative framework.

The EBR is in serious need of reform in order to better achieve the stated purposes of its legislation, to ensure environmental protection, public participation and government accountability.

The EBR must protect our substantive right to a healthy environment for all Ontarians, and must guarantee our right to breath clean air, drink safe water, enjoy a nontoxic environment, and to ensure healthy ecosystems for our present and future generations. The EBR should prevent the destruction of natural habitat, and ensure sustainability and biodiversity. The EBR must also ensure a citizen's right to apply for leave to appeal a Director or Minister's decision before an independent and impartial tribunal, the Environmental Review Tribunal. This must all be explicitly spelled out in Ontario's EBR.

The role of the Environmental Commissioner of Ontario (ECO) is key to the effective implementation of the EBR, yet the powers of the ECO are limited.

ORA recommends that the EBR be amended to expressly empower the ECO to make recommendations in the Annual and Special Reports, and to impose a duty upon the MOECC and other prescribed ministries to provide the Ontario Legislature with a written response to the ECO's recommendations within 90 days of their being tabled in the Legislative Assembly.

1. **Definitions, Purposes and Principles:**

   ORA recommends that the purposes of the EBR must protect:
   - the right of present and future generations of Ontarians to a healthy and ecologically balanced environment; and provide timely access to:
     - current evidence-based environmental information;
     - environmental justice in the courts and before administrative decision-makers;
     - fair and effective mechanisms for participating in environmental decision-making; and must
     - protect the rights of employees against reprisals for taking or facilitating actions to safeguard the environment.

2. **Additions under the EBR:**

   ORA recommends that the EBR purposes and principles is expanded to include all agencies and instruments that may impact on the environment and/or are directed by the various Ministries, such as the IESO under the Ministry of Energy, the Ontario Energy Board, or an instrument such as the Class Environmental Assessment for Waterpower (Class EA). All programs and regulators making decisions that could impact on the environment should be subject to the Environmental Bill of Rights, and the right to apply for leave to appeal.

3. **EBR Requirements:**

   Currently the SEVs are very vague and outdated, and have not been effective in improving environmental outcomes.

   ORA recommends:
   a. Ministries undertake a public review and revision of the SEVs every five years; and
   b. Section 11 of the EBR be amended to clarify that all ministry decisions in relation to Acts, regulations, policies and prescribed instruments “shall conform with the relevant SEV”.

4. **Public Participation in Decision-making:**

   The EBR has been very hit and miss with some important amendments, decisions or proposals not receiving sufficient consultation or posting. The minimum comment period of 30 days is far too short for the public and First nations to provide meaningful input.

   ORA recommends:
   a. Clear, concise and enforceable requirements regarding the posting of proposed Acts, regulations, policies and instruments;
   b. A minimum 60-day comment period;
   c. Full access to all internal and proponent’s documentation with regard to a decision on an instrument, proposal, permit, application, approval, etc.;
   d. Registry notices must be clear, comprehensive and informative;
   e. Decision notices on Registry postings must be posted in a timely manner; and

f. When ministry decision-makers conclude that Registry notice is not required due to statutory exemptions, it should be obligatory upon the decision-makers to post an "exception notice" on the EBR Registry in order to provide clarity, traceability and accountability.

5. The Leave to Appeal Process:

Where it is available to prescribed instruments, the third-party appeal is one of the most important EBR mechanisms available for protecting the environment and ensuring governmental accountability. Unfortunately, there is no Leave to Appeal process when a Minister makes a decision on the Class EA for Waterpower. This is unfair and unworkable to stakeholders. Additionally, the ability to appeal a Director's decision has a very short time frame of 15 days.

ORA Recommends:

a. The ability to make Leave to Appeal the Minister's decision must be provided for the Class EA for Waterpower.
b. The Leave test in Section 41 is deleted so that it no longer serves as an unreasonable barrier to citizen access to the Environmental Rights Tribunal (ERT).
c. EBR leave application should be extended from 15 days to at least 30 days.
d. Effective, affordable and timely access to information.

6. Section 32 – EA Exception to public participation:

ORA suggests that the Section 32 "EA exception" is no longer appropriate and should be deleted from the EBR in its entirety.

7. **Applications for Review and Investigation:**

As the ECO reports, the majority of requests to review or investigate have been denied by the relevant ministries over the past two decades. A ministry is supposed to complete an investigation within 120 days or provide the applicant and the ECO with an estimate of the additional time required. Within the additional time given in the estimate, the minister must either complete the investigation or provide a further written time estimate.

ORA recommends that Parts IV and V of the EBR should be amended to clarify that nothing prevents prescribed Ministries from granting Applications for Review or Investigation, even if the subject-matter of the application is already known to, or under consideration by the ministries.

It would also be helpful to restrict or eliminate the grounds upon which ministries' preliminary responses to applications for review or investigation may be delayed beyond the prescribed timeframes in the EBR. For both types of application, the EBR should be amended to prescribe 60 days as the deadline for the ministry's preliminary response

The EBR should further specify that it is a contravention of the EBR for ministries to fail to meet this deadline. Consideration should be given to granting the ECO the power to order the ministry to meet a deadline established by the ECO. Consideration should be

given to amending the EBR to require the ministry to report on progress to the applicants and to the ECO every 90 days until the review or investigation has been completed.

ORA is also in full support of the recommendations offered by Richard D. Lindgren, Counsel for the Canadian Environmental Law Association, as well as Pierre Sadik of Ecojustice Canada.

Thank you for this opportunity to comment!

Respectfully,

Linda Heron
Chair, Ontario Rivers Alliance
(705) 866-1677