



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

November 3, 2016

Ms. Anda Kalvins,
Project Manager,
Strategic Planning Branch, Strategic Planning Unit
Climate Change & Environmental Policy Division
Ministry of the Environment & Climate Change
77 Wellesley Street West,
Ferguson Block, Floor 11
TORONTO, ON M7A 2T5

**Review of Environmental Bill of Rights - A Provincial Dialogue
EBR Registry Number 012-8002**

Dear Ms. Kalvins:

On behalf of the Ontario Professional Planners Institute (OPPI), I am submitting the Institute's response with regards to the Province's "Review of Environmental Bill of Rights - A Provincial Dialogue" (EBR 012-8002).

OPPI is the recognized voice of the Province's planning profession. Our almost 4,500 members work in government, private practice, universities, and not-for-profit agencies in the fields of urban and rural development, community design, environmental planning, transportation, health, social services, heritage conservation, housing and economic development. Members meet quality practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the *Ontario Professional Planners Institute Act, 1994*, to use the title "Registered Professional Planner" (or "RPP").

OPPI strongly supports the Purposes stated in Section 2 of the *Environmental Bill of Rights, 1993* (EBR). We recognize that the Act applies to the Government of Ontario with respect to public participation in decision-making by the Province.

OPPI is aware of various discussion papers, proposed statutes and regulations by referring to the Environmental Registry and has responded when and where it is in the interest of OPPI and its members.

Members of OPPI rely on the Environmental Registry to be made aware of various proposals and decisions made by the government under certain statutes and regulations. Where the Minister of Municipal Affairs, for example, is the approval authority, we recognize the importance of providing opportunities for public participation in the decisions regarding official plans and amendments.

OPPI members are aware of the various Ministry Statements of Environmental Values that provide some context for Ministry decisions particularly by the Ministry of Natural Resources and Forestry, the Ministry of Environment and Climate Change (MOECC), the Ministry of Municipal Affairs, the Ministry of Agriculture, Food and Rural Affairs and the Ministry of Transportation.

The EBR asserts in its Preamble, that the “people of Ontario” recognize the inherent value of the natural environment; the right to a healthful environment; and that their common goal is the protection, conservation and restoration of the natural environment for the benefit of present and future generations. The Government of Ontario has the primary responsibility of achieving this goal, but the corollary is that “the people should have means to ensure that it [the goal] is achieved in an effective, timely, open and fair manner.”

Section 2 of the EBR sets out three clear Purposes and the fundamental ways in which these purposes are to be achieved by the government. These are broad in scope and are subject to the specific regulation under the Act.

OPPI accepts the assertions of the Preamble and the rights and responsibilities it establishes. Since these are broadly stated and set out the expectations of the “people of Ontario”, we believe that the people who rely on other government and agency institutions such as municipalities should also expect the same rights. As land use planners, our members understand the provisions of the Ontario *Planning Act* that prescribe a process for public participation and the appeal of municipal decisions. While the *Planning Act* and *Provincial Policy Statement 2014* do require consideration of environmental factors in planning decisions, these do not establish environmental goals or purposes consistent with those in the EBR. The Discussion Guide does not seek to explore changes to the *Planning Act* or other statutes that could be made more compatible with the EBR.

The second paragraph under the Background to the Discussion Guide acknowledges that “there is a movement in Canada to enshrine a right to a healthy environment in a legislative framework, principally in the Canadian Constitution”. MOECC is asking for our view “to inform contribution to the national dialogue.” As a provincially-based association, OPPI is not engaged in this particular discussion.

With this introduction to our understanding of the EBR, this submission focuses on Questions 1, 2, 3, and 4. We do not consider the remaining questions to be sufficiently relevant to our mandate.

Question 1: Should the EBR purposes and principles be expanded or modified?

As practitioners, we understand that the natural environment is influenced and connected to human activities in our communities. People have a “right to a healthful environment”, but people also have a responsibility in their social and economic activities to sustain this “healthful environment”, once government decisions are made. In our view, people share the common goal with government, however, they are organized in communities and individually.

OPPI does not recommend that the purposes and principles should be expanded.

Question 2: Are there additional Ministries, instruments or legislation that should be covered under the EBR?

We recognize that Ontario Regulation 73/94, General, scopes the Ministries, Policies, Acts and Regulations that are subject to the EBR.

It is clear that the natural environment is influenced by the continuing reality of international, national and Provincial Climate Change. Decisions that are made by Provincial Ministries and Agencies regarding climate change actions may very well influence and be influenced by the natural environment.

We suggest that all Ministries, Agencies, Acts and Regulations that deal with Climate Change actions and decisions be included in the list under OR 73/94.

Question 3: Is there a need to adjust EBR requirements regarding the content, review and updating, or application of Statements of Environmental Values? If so, how?

OPPI is aware of the Statements of Environmental Values (SEVs) and members do have regard for these when considering proposed and final decisions of Ministries. The Discussion Guide emphasizes that “SEVs explain how the objectives set out in the EBR must be integrated with social, economic, and scientific considerations.” Section 7 of the EBR sets out how Ministries under OR 73/94 are required to explain “how the purposes of the Act are to be applied when decisions that might significantly affect the environment are made in the Ministry,” and “how consideration of the purposes of this Act should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry.”

The essential point of the SEVs is that there should be environmental rigour to Ministry decision-making particularly when considering proposals under prescribed Acts and Regulations. Some members of OPPI are sensitive to Ministry and Agency decisions under the *Aggregate Resources Act*, the *Conservation Authorities Act*, the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Lake Simcoe Protection Act 2008*, and the *Ontario Water Resources Act*, as examples where scientific uncertainty is a concern.

The application of the Precautionary Principle should be incorporated into all of the SEVs of the prescribed Ministries. Currently, the Precautionary principle is partially recognized in MOECC’s SEV, and not in any others.

In our view, uncertainty must be dealt with in favour of the natural environment and its ecological functions. A decision in the face of uncertainty requires the application of precaution to reduce uncertainty. A proponent of a particular project should demonstrate that there will be measures to reduce or eliminate negative impacts to natural environment features and functions, at the time of the Ministry or Agency decision. The demonstration should include precautionary measures such as mitigation and monitoring and continuous evaluation of the decision.

To ensure this, the EBR should devote a section to the Precautionary Principle, explain its meaning, purpose and application to Ministry and Agency decisions, and require its incorporation into SEVs.

Question 4: Should changes be made to the EBR's requirements for "Public Participation in Decision-making" to improve engagement of the public regarding acts, regulations, policies, instruments and other processes? If so, what changes are necessary, particularly regarding the Environmental Registry and its notice requirements?

Members of OPPI are aware of the EBR and the Environmental Registry and rely upon this information in their practices. As professionals practising in Ontario, we use this information to assist public, private and not-for-profit sector clients who may have an interest in a particular matter. We know that community groups are also aware of the Registry and use it to provide comments to the Ministries. The majority of the public is, however, likely not aware of the EBR and of its importance in protecting rights under the Act. The EBR is a valuable process that readily makes information available to the public instead of the public having to make scattershot requests and if necessary, applying under the Provincial Freedom of Information process.

The Registry website is extremely antiquated, and both the site and its use by the Ministries have often been criticized by the Environmental Commissioner. We are pleased to read that MOECC is taking steps to modernize the Registry. We leave it to MOECC to propose the specific steps to do that and encourage that measures be taken to make it easier to submit formatted text and tables as part of submissions so that submissions may be more easily read by staff. OPPI considers itself one such stakeholder, and would be pleased to participate in reviewing such proposals.

OPPI continues to support this Provincial initiative. We welcome the opportunity to meet with you and staff to discuss our submission and to further explore these ideas and recommendations. Please contact me at 416-668-8469 or by email at l.ryan@ontarioplanners.ca.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

Loretta Ryan, RPP, CAE
Director, Public Affairs
Ontario Professional Planners Institute