

RCCAO and MEA's 2017 Environmental Bill of Rights Application - What's it All About?

What Happened?

On February 3, 2017 a joint application by the Residential and Civil Construction Alliance of Ontario (RCCAO) and the Municipal Engineers Association (MEA) was hand delivered to the Environmental Commissioner of Ontario. The application, under section 61 of the *Environmental Bill of Rights*, calls for a review of and changes to the *Environmental Assessment Act*, various regulations under that statute; and all policies and guidance documents, published or in use by the Ministry of the Environment and Climate Change (“MOECC”) related to the Municipal Class Environmental Assessment (“MCEA process”). The review and changes are required to identify and implement reforms that are urgently needed and allow municipal proponents to complete the MCEA process in a reasonably timely, efficient and effective manner.

The application included the reasons why it is in the public interest to review and revise the statute, regulations and policies associated with the MCEA process.

Ontario's MCEA process applies to the construction, improvement, replacement, operation, maintenance and repairs to a broad range of municipal infrastructure works, including but not limited to: municipal roads, bridges, drinking water distribution systems, cycling paths and lanes, flood control works, pedestrian bridges, water and wastewater treatment plants and pumping stations and water towers. The MCEA process divides infrastructure projects into four classes: Schedule A, Schedule A+, Schedule B and Schedule C. Schedule B and Schedule C projects require public consultations with all potential stakeholders in the area of the proposed project and the preparation and submission of a specific form of report or study.

Since the inception of the MCEA process in 1987, the typical time taken to go through the process has grown to more than 26 months and the associated costs for consultations and reports has increased much more than the cost of living.

Another concern is what is known as a ‘Part II Order’ or ‘Bump-Up’ request. Simply stated it is a written request that anyone in the Province can make to require a full environmental assessment hearing for virtually any municipal infrastructure project. The mere submission of a written request instantly stops a municipal infrastructure project and it cannot restart unless and until the Minister provides his or her personal written approval. Even though the Minister denies these request in the vast majority of cases, this process often adds more than a year and extra costs to an already long and expensive regulatory process.

The application included endorsements and letters of support from 13 other organizations including the Region of Peel, the Ontario Good Roads Association, the Ontario Construction Secretariat, the Surety Association of Canada and the Ontario Society of Professional Engineers.

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What Are the Requested Changes?

There are many opportunities for improvement to the MCEA process, but the application focuses on the following:

- a. Expediting the response process for Part II Orders or Bump Up requests by restricting confirming that Schedule A and Schedule A+ projects are exempt and by delegating the Minister's authority to personally respond to senior staff such as directors;
- b. Supporting changes to better integrate and harmonize the MCEA process with processes under the *Planning Act*;
- c. Reducing the scope of MCEA reports and studies to reduce duplication with existing public processes and decisions made under municipal Official Plans and provincial legislation such as the *Places to Grow Act, 2005*;
- d. Acknowledging that climate change impacts on MCEA projects can and should be addressed through competent design and engineering without unduly increasing the scope of MCEA reports; and
- e. Ensuring the MOECC provides more timely responses to put forward by the MEA.

Why Not Advocate for Changes Through Other Channels?

The application by MEA and RCCAO is not the first time that the request for change has been made. The MEA has been trying to work with the MOECC to make improvements, however the MOECC has expressed a reluctance to consider any statutory or regulatory changes that might be required.

The Minister of the Environment in 2005 commissioned an Advisory Panel to review and recommend changes to the environmental assessment process. A total of 42 changes were recommended, many of which would have improved the MCEA process. Unfortunately, the Ministry has not implemented any substantive recommendations.

The Canadian Environmental Law Association (CELA) filed its own application for review in 2013 calling for a review of the environmental assessment process, including the MCEA process. The Ministry chose not to proceed with the requested review by CELA.

The Environmental Commissioner of Ontario has reviewed the environmental assessment process in several of its annual reports and has criticized the Ministry for failing to respond to major recommendations by the Advisory Panel and the 2013 CELA application for review.

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Over the past decade, RCCAO has met with Ministry officials and commissioned a series of independent reports looking at the status and potential improvements to the MCEA process. The Ministry has been reluctant to implement a substantial number of the recommendations cited in those reports, even though the current Minister of the Environment and Climate Change made a commitment in early 2015 that a major review of the EA legislation would occur in 2016.

The Auditor General's 2016 annual report¹ (the "**AG Report**") included a 48 page chapter on environmental assessments which included the MCEA process and listed 12 separate recommendations consisting of 20 specific actions, to address the audit findings. The Ministry has not confirmed any plans to immediately implement the recommended actions.

Where Are We Now and What Happens Next?

The Environmental Commissioner of Ontario promptly reviewed the application and appendices, determined that the application merited consideration by the MOECC and forwarded the application to the Ministry on February 8, 2017.

On February 13, 2017 MOECC formally acknowledged receipt of the application and said that it will carefully consider it and contact the applicants by April 14, 2017 if a review is to proceed. If the Ministry chooses not to undertake a review, it will provide a rationale for that decision.

MEA will provide updates as soon as additional information becomes available.
