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From: Legislative Assembly of Ontario
Sent: November 27, 2020 10:21 PM
To: Standing Committee on Finance and Economic Affairs
Cc: Teng, Deborah
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Submitted values are:

Bill or item of business: Bill 229, Protect, Support and Recover from COVID-19 Act
(Budget Measures), 2020

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November 27, 2020

VIA email

Standing Committee on Finance and Economic Affairs

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Attn: Amarjot Sandhu, MPP, Chair: amarjot.sandhu@pc.ola.org

Julia Douglas, Clerk: comm-financeaffairs@ola.org

CC: Hon. Rod Phillips, Minister of Finance: rod.phillipsco@pc.ola.org

Hon. Doug Ford, Premier of Ontario: doug.fordco@pc.ola.org

Re: Bill 229, Protect, Support and Recover from COVID - 19 Act (Budget Measures), 2020

I definitely agree with all the objections to schedules 6 and 8 in Bill 229 that are voiced in the letter below from the Canadian Environmental Law Association. These short-sighted schedules must be removed. Don't keep undervaluing our environmental protections!

"On behalf of the Canadian Environmental Law Association (CELA), please find for the assistance

of the Standing Committee our recommendation, as discussed below, that:

Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8 (proposed changes to the Crown Forest Sustainability Act, 1994) both be withdrawn in their entirety from Bill 229.

About Canadian Environmental Law Association

CELA is a non-profit, public interest organization established in 1970 for the purpose of using

and improving existing laws to protect public health and the environment. For nearly 50 years,

CELA has used legal tools, undertaken ground-breaking research, and conducted public interest

advocacy to increase environmental protection and safeguard communities. CELA works towards protecting human health and the environment by actively engaging in policy analysis

and seeking justice for those harmed by pollution or poor environmental decision-making.

It is

from this public interest perspective that we have reviewed Schedules 6 and 8 in Bill 229.

Bill 229 submission to Standing Committee from CELA - 2

Lack of Robust, Meaningful Public Consultations

On November 5, 2020, the Ontario government tabled omnibus budget measures Bill 229 (the proposed Protect, Support and Recover from COVID - 19 Act (Budget Measures), 2020) for First

Reading in the Ontario Legislature.¹ Schedule 6 of Bill 229 proposes fundamental changes to the

Conservation Authorities Act² (CAAct) and to the conservation authorities' role in land use

planning. Schedule 8 of Bill 229 proposes a permanent exemption for authorized logging operations from prohibitions against killing species at risk and destroying their habitats. An

Environmental Registry of Ontario (ERO) bulletin titled Updating the Conservation Authorities

Act³ (ERO # 019 - 2646) was also posted on November 5, 2020, stating that public consultation is

not required under Ontario's Environmental Bill of Rights, 1993⁴ (EBR) because the proposed

amendments form part of a budget. The most recent ERO bulletin relating to the intersection of

forest operations and species at risk protections titled Proposed amendment to a regulation

under the Endangered Species Act, 2007 relating to forest operations in Crown forests⁵ (ERO #

019 - 1995) was posted on June 29, 2020 and relies on the temporary halt to EBR rights earlier

this year⁶ as the reason for not requiring consultation and hence not officially providing a

decision notice. In the ERO bulletin, responses to the continued exemption from ESA prohibitions for forest operations that "were approved for publishing are available in the

Bulletin supporting materials section." At time of writing, no such supporting materials were

available (see attached). As such, the public cannot view the noted responses: 75 received

through the registry and 3981 received by email. There does not appear to be any ERO notices

at all related to the proposal to permanently exempt forest operations from species at risk

protection and recovery obligations.

¹ See <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-229>.

2 See <https://www.ontario.ca/laws/statute/90c27>.

3 See <https://ero.ontario.ca/notice/019-2646>.

4 See <https://www.ontario.ca/laws/statute/93e28>. Section 33 of the EBR states:

33 (1) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, form

part of or give effect to a budget or economic statement presented to the Assembly.

(2) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, change,

(a) a policy that forms part of a budget or economic statement presented to the Assembly; or

(b) a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the

Assembly.

5 See <https://ero.ontario.ca/notice/019-1995>.

6 The Auditor General found: “In April 2020, the Environment Ministry used a regulation to suspend the operation

of the public consultation requirements of the EBR Act to allow the government to act quickly

to address issues arising from the COVID - 19 emergency. The regulation exempted all proposals from the EBR Act

public consultation requirements, even if they were not related to COVID - 19. As a result of this broad exemption,

members of the public lost their right to seek leave to appeal ministries’ decisions on 197 environmentally significant permits and approvals that were proposed during the ten week exemption

period—permits and approvals that, for example, would allow industrial facilities to discharge pollutants to the air

and water in Ontario communities—and that were unrelated to COVID - 19.” Office of the Auditor General of

Ontario, Annual Report, Operation of the Environmental Bill of Rights (2020), Chapter 1, November 2020. See

<https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.

Bill 229 submission to Standing Committee from CELA - 3

Bill 229 is the most recent proposal in a disturbing and undemocratic trend, starting with Bill 55,

Strong Action for Ontario Act (Budget Measures), 20127, of using omnibus budget measures bills to make substantive changes to environmental laws and thereby sidestepping the public’ s

EBR rights.

CELA has on - going concerns regarding the lack of opportunity for meaningful public input,

absence of appropriate engagement with Indigenous communities, and expedited legislative process. Proceeding with significant legislative amendments affecting forests, species, waters,

and lands should not occur when many First Nation communities are unable to consult

directly
with their members due to the ongoing COVID - 19 pandemic.
Further, relying on an exemption for budget measures implementation when proposed amendments to environmental laws are likely to have significant ecological and social impacts is
inconsistent with the public participation rights guaranteed in the EBR. By not providing the
opportunity for public review and comment via the ERO, which imposes a duty on the appropriate ministries to take every reasonable step to ensure all comments received in relation to a proposal are considered when decisions are made⁸, the government has both denied the public their rights and also deprived themselves from hearing from Indigenous communities and the public regarding their values and interests affected by Schedules 6 and 8.
The Auditor General of Ontario' s recent compliance report echoed this concern about improper
sidestepping of key consultation requirements in the EBR.⁹
Remove Schedule 6, proposed changes to the Conservation Authorities Act and consequential amendments
CELA' s overall conclusion is that while a small number of the proposed changes (including
improved transparency through publicly available information) may be supportable in principle,
the majority of the Schedule 6 amendments are regressive in nature and are completely contradictory to fulfilling both the purpose of the Conservation Authorities Act and the desire to
set the course for more climate resilient communities in the future. Accordingly, CELA recommends that Schedule 6 not be enacted in its present form and instead be withdrawn in its
entirety from Bill 229.
Over the past five decades, CELA has been involved in various law reform initiatives, court
cases, public hearings and other administrative proceedings related to the importance of integrated watershed management and ensuring hydrological integrity in land use planning on
behalf of low - income individuals and disadvantaged or vulnerable communities. In particular,
⁷ See <https://www.ola.org/en/legislative-business/bills/parliament-40/session-1/bill-55>.
⁸ Environmental Bill of Rights, 1993, s 35
⁹ Office of the Auditor General of Ontario, Annual Report, Operation of the Environmental Bill of Rights (2020),
Chapter 1, November 2020. See
<https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.
Bill 229 submission to Standing Committee from CELA - 4
CELA was counsel representing citizens of Walkerton at the associated drinking water

inquiry

and has been a persistent voice in seeking drinking water source protections for all residents of

Ontario¹⁰. Further, Justice O' Connor endorsed watershed - based management of surface water

and groundwater in his Part Two Report¹¹. Conservation authorities have played a crucial role in

the first phase of implementation¹² of the Clean Water Act, 2006¹³. Having arms - length agencies, whose jurisdiction is on a watershed - basis, has been key to enabling drinking water

source protections.

Ontario' s Special Advisor on Flooding Doug McNeil noted:

Ontario has a long history of taking actions to keep people and property safe from the impacts of flooding through land use planning policies and mitigative activities. The development of the modern floodplain policy in Ontario, the watershed approach, the conservation authority model, and the flood standards have been extremely effective at reducing flood risks, especially in new greenfield development areas.¹⁴

While the purpose of the CAAct is to “provide for the organization and delivery of programs and

services that further the conservation, restoration, development and management of natural

resources in watersheds in Ontario” ¹⁵, the scope and powers of conservation authorities will be

limited to the point that no meaningful integrated watershed management will be possible. The

“watershed approach” and the “conservation authority model” that the Special Advisor on

Flooding lauded will be stripped down and made unrecognizable. Building climate resilient communities for the future will be impeded, if not impossible. Outlined below is a nonexhaustive

list of concerns.

1. Indigenous people and Indigenous knowledge will not be represented in membership of conservation authorities

Although it is proposed that a non - derogation clause¹⁶ will be added to the CAAct, such a

confirmation of the constitutional protections afforded to existing aboriginal and treaty rights

¹⁰ See <https://cela.ca/review-clean-water-act/>.

¹¹ The Honourable Dennis R. O' Connor, Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking

Water (2002), Chapter 4, pp 103 - 107; report available for download online

http://www.archives.gov.on.ca/en/e_records/walkerton/report2/index.html.

¹² See <https://conservationontario.ca/conservation-authorities/source-water-protection>.

¹³ See <https://www.ontario.ca/laws/statute/06c22>.

14 See Executive Summary, Ontario's Special Advisor on Flooding Report to Government, An Independent Review of the 2019 Flood Events in Ontario, A Report to the Hon. John Yakabuski, Minister of Natural Resources and Forestry (October 2019), <https://www.ontario.ca/document/independent-review-2019-flood-events-ontario>.

15 CAAAct, section 0.1.

16 Bill 229, Schedule 6, section 1, proposes to add the following provision:

1.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection

provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and

affirmed in section 35 of the Constitution Act, 1982.

Bill 229 submission to Standing Committee from CELA – 5

in and of itself will not be sufficient to bring Indigenous rights into consideration by conservation authorities. For example, the membership of conservation authorities is not expanded to include the ability to appoint Indigenous representation. The governance model

for conservation authorities does not appear to have been adjusted at all to incorporate Indigenous ways of knowing.

2. Narrowing of duties of conservation authorities' members is counter to the watershed approach needed to build climate resilient communities for the future

The duty of members will not include acting to "further the objects" of a conservation authority

and the duty of members who are municipal councilors will be to act on behalf of their respective municipality. Conservation authorities were established to have a watershed-based

approach and oversight precisely because municipal boundaries and interests do not align completely with ecologically relevant (e.g. watershed) boundaries.

3. Narrowing the objects and powers of conservation authorities is counter to the watershed approach needed to build climate resilient communities for the future

The current Provincial Policy Statement (PPS) contains policies aimed at protecting, improving

and restoring water quality and quantity, including emphasizing "using the watershed as the

ecologically meaningful scale for integrated and long-term planning, which can be a foundation

for considering cumulative impacts of development" 17 and aimed at ensuring "the diversity and

connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems" as important recognition of the "linkages between and

among natural heritage features and areas, surface water features and ground water

features." 18 The proposed amendments will narrow the objects of conservation authorities such

that ensuring land use planning decisions are consistent with the PPS and achieving the overall purpose of the CAACT will be significantly impeded. Further, conservation authorities' powers to study & investigate, enter land throughout the watershed, cause research to be done, and expropriate will be narrowed or removed, making the ability to use a watershed approach next to impossible.

4. Removing conservation authorities' status as independent public bodies in land use planning will set integrated watershed management back decades. Bringing conservation authorities under the "one window" approach to municipal land use planning will limit meaningful integrated watershed management. Under the Planning Act, all

17 Provincial Policy Statement (2020), policy 2.2.1(a). See <https://www.ontario.ca/page/provincial-policy-statement-2020>.

18 PPS (2020), policy 2.1.2. Bill 229 submission to Standing Committee from CELA – 6 provincial interests are expressed and defended only through the Ministry of Municipal Affairs and Housing (MMAH). As there is no express mechanism to ensure the interests of other ministry's mandates, including (as proposed) the watershed approach of conservation authorities, are reflected in MMAH's implementation of the Planning Act, the desire to build climate resilient communities for the future is very unlikely to be fully realized.

5. New procedures are being introduced without indication of whether matching third party rights of appeal in the public interest will be provided. New procedural rights for requestors (for fee reconsideration) and applicants (for the yet to be proclaimed permits), including new rights to appeal to the LPAT, are proposed. Further, new processes for the Minister to review, as well as appoint investigators and recommend the appointment of administrators, are also proposed. These amendments do not indicate, one way or another, whether third party, public interest based, appeal rights (as exist under the EBR for certain "instruments") will be made available.

6. Much of the detail, particularly in relation to setting out the scope of programs and services, any standards and requirements, and other important matters, continue to be left to the development of future regulations. It is impossible to fully analyze the impact of the proposed changes to conservation authorities' roles and responsibilities, as so many details are left to the discretion of the Lieutenant Governor in Council and/or the Minister to make future regulations. Building climate resilience is crucially important for Ontario. For the reasons discussed above,

CELA believes that the proposed changes to conservation authorities will not achieve this important task. To the contrary, the package of amendments as proposed are likely to set back

watershed planning and implementation of an ecosystem - based approach by decades.

Remove Schedule 8, proposed changes to the Crown Forest Sustainability Act, 1994

CELA opposes the entirety of Schedule 8 and calls for its withdrawal from Bill 229.

The Crown Forest Sustainability Act, 1994 (CFSA) applies to approximately two thirds of Ontario's land base, which is home to numerous species at risk and their habitat. It is precisely

because of the Act's application to the majority of Ontario that makes the rollbacks proposed in

Schedule 8 so significant and objectionable from the public interest perspective. If enacted,

Schedule 8 will oust the protection for endangered species, contained in the Endangered Species Act, 2007 and not replicated in the CFSA, from most of the Ontario landscape.

Bill 229 submission to Standing Committee from CELA - 7

While Schedule 8 introduces a definition of "species at risk," (ie. species that are listed as

extirpated, endangered or threatened on the Species at Risk List in Ontario) into the CFSA, it

does so in order to exempt all forestry operations from mandatory consideration of species at

risk protection and recovery mandated by the Endangered Species Act, 2007 (ESA).¹⁹ That is,

Schedule 8 proposes a new exemption within the CFSA which if enacted, removes the ESA's prohibitions - that no person shall kill, harm, or harass²⁰ a listed species nor damage or destroy

its habitat necessary for their survival and recovery²¹ - from forestry operations, when on

Crown land, as part of a forest management plan or forest resource licence.

More alarmingly, Schedule 8 proposes to remove the ability of the Minister to issue orders in

circumstances when there is imminent danger to an at-risk species.²² Specifically, under the

ESA, the Minister is able to order that a person stop engaging in an activity that could or is

having a "significant adverse effect" on a species at risk.²³ However, by virtue of the proposed

Schedule 8 amendment, this power has been nullified.

Further, while Schedule 8 introduces a new regulation making power enabling the Minister of

Natural Resources and Forestry to order forestry operations to refrain or take certain actions to

minimize impacts on at-risk species,²⁴ the passage of such a regulation remains at the discretion

of the Lieutenant Governor in Council. Notably, the scope of the regulatory power and its aim

to ‘avoid or minimize harm’ to species at risk is also much narrower than the ESA’s purpose to

‘protect and promote recovery.’ In short, a could-be regulation is not a stand in for the ESA and

its detailed oversight and enforcement mechanisms aimed expressly at protecting at-risk species and enabling their recovery.

Read in conjunction with the province’s commitment to double logging in public forests²⁵ and

permanently exempt forestry from environmental assessment,²⁶ Schedule 8 unravels what few legal mechanisms remained that prioritize conservation and protect natural areas in response

to the biodiversity crisis. As set out in the Auditor General’s 2020 Annual Report, this is

precisely the issue which ought to garner the government’s urgent and utmost attention:

19 Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1

20 ESA, sections 9 and 10

21 ESA, section 1

22 Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1(3)

23 ESA, Section 27.1

24 Bill 229, Schedule 8, proposed amendment to CFSA, section 69(1)

25 Ontario has committed “to unleash the full potential of this important industry,” see online;

<https://www.ontario.ca/page/ontarios-forest-sector-strategy>

26 See ERO decision notice “Proposed amendments to General Regulation 334 under the Environmental

Assessment Act to remove Regulatory Duplication of Forest Management requirements in Ontario” (June 30,

2020), <https://ero.ontario.ca/notice/019-0961>; see also CELA’s blog, “Exemption of forestry from the

Environmental Assessment Act sets a bad precedent,” (13 July 2020) online:

[https://cela.ca/exemption-of-forestryfrom-](https://cela.ca/exemption-of-forestryfrom-the-environmental-assessment-act-sets-a-bad-precedent/)

[the-environmental-assessment-act-sets-a-bad-precedent/](https://cela.ca/exemption-of-forestryfrom-the-environmental-assessment-act-sets-a-bad-precedent/)

Bill 229 submission to Standing Committee from CELA – 8

Biodiversity loss has been ranked as a top-five risk—by likelihood and impact—to economies over the next decade. Unlike other provinces, Ontario does not have a longterm plan or target to expand its network of protected areas.²⁷

Conclusion

In making our recommendations, we further refer the Standing Committee to our detailed comments previously provided on recent proposals related to conservation authorities, forest

operations, and species at risk, including:

● Proposed Amendments to the Conservation Authorities Act – Preliminary Analysis (Nov 2020)²⁸

- We Need Our Conservation Authorities - Survey & Primer Report (Sep 2020)29
- Letter to the Premier in Support of Ontario’ s Conservation Authorities (Apr 2020)30
- Conservation Authorities Modernization ERO Numbers: 013 - 5018 (including Schedule 2, Bill 108) and 013 - 4992 (May 2019)31
- Submission on proposed amendment to a regulation under the Endangered Species Act, 2007, relating to forest operations (Jun 2020)32
- Submission on Bill 132, Schedule 16 regarding the proposed amendments to the CFSA (Nov 2019)33
- Submission on Bill 108, Schedule 5 regarding proposed amendments to the ESA (May 2019)34,
- Submission on the 10th Year Review of Ontario’ s Endangered Species Act Discussion paper (Feb 2019)35

For the reasons discussed above, CELA strongly recommends that Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8 27 Office of the Auditor General, “2020 Annual Report of Environmental Value - for - Money Audits and the

Operation of the Environmental Bill of Rights,” online:

https://www.auditor.on.ca/en/content/annualreports/arreports/en20/ENV_reflections_en20.pdf, pg 2

28 See <https://cela.ca/proposed-amendments-to-the-conservation-authorities-act-preliminary-analysis/>.

29 See <https://cela.ca/we-need-our-conservation-authorities/>.

30 See <https://cela.ca/letterofsupportforconservationauthorities/>.

31 See <https://cela.ca/conservation-authorities-modernization-ero-numbers-013-5018-including-schedule-2-bill-108-and-013-4992>.

32 See <https://cela.ca/forestry-exemption-endangered/>.

33 See <https://cela.ca/submissions-on-bill-132/>.

34 See <https://cela.ca/submission-regarding-legislative-amendments-to-the-endangered-species-act-bill-108-schedule-5-environmental-registry-no-013-5033/>.

35 See <https://cela.ca/10th-year-review-of-ontarios-endangered-species-act/>.

Bill 229 submission to Standing Committee from CELA – 9

(proposed changes to the Crown Forest Sustainability Act, 1994) be withdrawn in their entirety from Bill 229.

Regards,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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Would you like to add any other information?

No