



environmental
defence

December 1, 2020

Julia Douglas, Clerk
Clerk of the Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block,
99 Wellesley Street West , Toronto ON M7A 1A2

Via email: comm-financeaffairs@ola.org

Dear Julia Douglas,

Good afternoon. My name is Keith Brooks, and I'm the Programs Director for Environmental Defence Canada. I'm joined today by my colleague, Phil Pothén, our Ontario Environment lead.

Thank you for the opportunity to address the committee today. We are going to raise some general concerns with Bill 229 and its introduction, and some substantive concerns with the Bill, focussing on Schedule 6.

It is our view that both Schedules 6 and 8 should be removed from this bill.

First, some general comments.

We are aware that the government has been consulting on the role and mandate of Conservation Authorities for some time. Environmental Defence participated in some of those consultations. If the government wishes to make changes to the role of conservation authorities, that's clearly within its mandate. But to introduce those changes as part of an omnibus budget bill is highly problematic.

I'll note that just 2 weeks ago, the Auditor General criticized this government for routinely flouting the Environmental Bill of Rights. Now, by introducing changes to environmental legislation as part of a budget bill, the government is once again avoiding its obligations under the EBR and curtailing public consultation and comment.

Indeed, one could argue that the decision to include Schedules 6 and 8 in this Bill could be driven by a desire to avoid the government's obligations under the EBR. This, alone, is reason enough to remove these schedules from the Bill.

The timing of these changes, in particular Schedule 6, is also problematic given the debate under way about the increasing use of Ministers' Zoning Orders, and how at least some of those orders relate to conservation authorities' role in the planning and permitting process, which Schedule 6 amends.

My colleague will expand on that more in a moment, but I mention it here as another concern related to how and when these amendments are being introduced.



Of specific concern is the MZO issued in Ajax in the Lower Duffins Creek Wetland Complex. As I'm sure the members of the committee are aware, that MZO permits the construction of a warehouse in a provincially significant wetland. However, that project cannot proceed without a permit from the Toronto and Region Conservation Authority, which the TRCA is reluctant to grant, holding the view that development should not occur in provincially significant wetlands.

Schedule 6, then, may have specific bearing on this development proposal, though I note that this is not the only instance of an MZO permitting development in a wetland. Nonetheless, the introduction of Schedule 6, at this precise time, could be construed as a move to allow this particular development to proceed, rather than part of a well-reasoned set of amendments to the Conservation Authorities Act on the whole.

My final point before passing this to my colleague is that despite the speed at which this bill has been rushed through the legislature, and despite the fact that Ontarians have not been consulted per the obligations under the EBR, Ontarians are overwhelmingly opposed to this move to undermine Conservation Authorities.

Tens of thousands of Ontarians have sent letters to their elected representatives. Thousands have made phone calls as well. Municipalities, conservation authorities, the Greenbelt Council, Ontario's Big City Mayors, the Ontario Federation of Agriculture, and many others stand united in requesting Schedule 6 be removed from this Bill. If this government is truly interested in what the people have to say, the people are speaking loudly and clearly on this matter - remove Schedule 6 from Bill 229.

I'll now turn to my colleague Phil Pothén.

Environmental Defence requests the removal of Schedule 6 and Schedule 8 of Bill 229:

Regarding schedule 8, **we adopt the testimony of the Wildlands League and Ontario Nature.**

Our own submissions are directed to Schedule 6. As my colleague indicated I'll be drilling into the technical basis of our objections.

Let there be no misunderstanding:

- There is **no good faith case** to be made that Schedule 6 improves or maintains the protection we get from conservation authorities.
- Schedule 6 would diminish their scope, powers, and impartiality to such a degree that they can **no longer keep Ontarians safe.**



It does this in two main ways:

1. First, Schedule 6 would transform fact-based, arms-length decisions about what is necessary to prevent flooding and landslides and protect resources, into polarizing battles between political partisans or towns with conflicting short-term self-interest.
2. Second, Schedule 6 would cause conservation authorities to be paralyzed by the fragmented ownership, jurisdiction and technical discipline that they were designed to overcome.

Schedule 6 would sideline technical expertise and watershed-level public interests in favour of politics through three main measures:

- First, it would end the established implied duty of conservation authority members to prioritize the watershed-wide objects of the authority.
 - It would force them to favour the narrow interests of their appointing municipalities.
 - Decisions would become a function of the balance of votes between towns who'd reap revenues from development and those who'd bear the environmental risks. (amendments to s. 14.1)
- Second, it would let unscrupulous rejected applicants who know they cannot convince experts their proposal is safe, to circumvent any independent expert adjudicative body and request reconsideration by a partisan politician instead.
- Third, schedule 6 would *actually allow* a minister to usurp the whole authority of a CA with respect to development permits.
 - One massive problem this creates is that it would leave the minister to decide an application without conservation authorities even preparing the technical analysis required to assess whether the criteria set out in the act have been met.
 - This analysis cannot be provided by ministry staff because the comprehensive watershed-specific knowledge resides with, and must often be created from scratch by conservation authority.
 - This same problem arises to a lesser extent on requests for reconsideration by the minister.
 - That is because the amended Act would not seem to require appellants to stick to the version of their application that was considered by the CA, and which was the subject of its technical evaluations.
 - By contrast, someone appealing municipal refusal of a planning application is required to stick with the proposal considered by Council.

I am going to touch on 3 of the 7 main ways schedule 6 allows conservation authorities to be paralyze by fragmented jurisdiction, ownership, and technical discipline:

- First, by amending ss. 21(1)(b) to let landowners refuse conservation authorities access to do hydrological measurements and similar testing, Schedule 6 would



prevent them from discovering when conditions on one site require protective measures elsewhere in the watershed.

- This change is will be exploited cynically by landowners who know or suspect that its property has features that make development risky and thus require permitting.
- Just by refusing access, they'd be able to prevent the conservation authority from finding out it even has jurisdiction.
- Second, by denying conservation authorities access to expropriation, schedule 6 would empower bad actors to hold hostage lands which are of little market value, but indispensable to the protection of the public interest.
 - For example, the owner of land where a facility is required to prevent severe flooding could leverage that danger to extract a windfall from land ill-suited to development.
- Third, schedule 6 would strip conservation authorities of the legal standing in *Planning Act* proceedings that they rely upon to prevent and address environmental threats to public safety that stem from parts of the watershed outside protected features themselves.
 - While the Act gives Conservation Authorities direct permitting power over lands where the risk of development is extreme O. Reg. 97/04 s.3, what happens outside those sites is also of tremendous importance.
 - They must use Planning Act and PPS provisions about protection of ecological systems and conservation of natural resources, and their standing in *Planning Act* decisions and appeals to ensure that watershed concerns are given due attention.]

People who complain about Schedule 6 are being told its measures were requested in earlier consultations.

- We've no problem accepting that this is true of some participants. Plenty of interests wish they could profit from dumping, excavation and other development that endangers people and natural systems.
- What we do have trouble accepting, is that the members of this committee, and their caucus-mates, fall into that category.

Please remove Schedule 8 and Schedule 6 of this budget bill. You know very well it's the right thing to do.