



March 9 2021

To: Review Committee: Bill 245

Re: Ontario Bill 245: Accelerating Access to Justice Act, 2021

I am writing as the Ontario Campaigner for the Wilderness Committee with comments regarding Bill 245: *Accelerating Access to Justice Act, 2021*. This omnibus legislation was introduced for First Reading in the Ontario Legislature on February 16, 2021. Second Reading debate on the Bill occurred between February 22 and March 1, 2021, and the Bill was referred to the Standing Committee on the Legislative Assembly on March 2, 2021.

The Wilderness Committee is a national charitable organization with 14,000 supporters in Ontario. WC works to advance people-powered protection for woodlands, wetlands, wildlife and climate. Specifically, WC educates and supports the public in their rights to participate in decision-making and policies that affect the health of the environment.

Our comments centre on Schedules 6 and 10 of Bill 245, which are of particular concern to us and our supporters throughout the province, many of whom seek our advocacy advice in navigating through the various land-planning and associated tribunals to have input on land-use and proposed developments and their effects on environmental sustainability.

Schedule 6 of the Bill proposes to amalgamate five provincial tribunals into a single entity to be known as the Ontario Land Tribunal (“OLT” or “Tribunal”). Schedule 10 of the Bill proposes amendments to several provincial environmental laws, including the proposed elimination of existing rights of appeal under the Environmental Protection Act (“EPA”), Ontario Water Resources Act (“OWRA”), and other statutes.

For the reasons outlined below, the Wilderness Committee recommends that both Schedules 6 and 10 should be withdrawn from the Bill. In our view, supported by analysis from the Canadian Environmental Law Association (CELA), there is no evidence-based justification for the proposed merger of the five tribunals. We agree with CELA’s assessment that the provisions in these Schedules will not “accelerate” but instead inhibit access to environmental justice in Ontario.

a) Lack of public consultation under Ontario’s Environmental Bill of Rights

Schedules 6 and 10 of Bill 245 were introduced in the Ontario Legislature without any pre-

consultation with environmental stakeholders such as the Wilderness Committee or the public. During Second Reading debate on Bill 245, the Attorney General of Ontario referred to a number of professional groups, justice sector representatives, and provincial agencies that provided input on other Schedules of the Bill. However, this list did not include any references to environmental non-governmental organizations nor community organizations that have engaged with the various provincial tribunals proposed for amalgamation.

Given the significance of the proposed change under Schedule 6 and 10, there should have been prior consultation with interested or affected stakeholders under Ontario's Environmental Bill of Rights.

b) Bill inappropriately limits non-party participation.

Public participation rights are entrenched in the current ERT Rules and play a vital role in the tribunal's decision-making process—particularly as hearings before tribunals are often a determination of policy issues that affect a much broader public than the parties to the hearing. Opportunities currently in place under the ERT and LPAT allow non-parties at hearings to make oral submissions through participant or presenter status. These are crucial mechanisms that allow members of the public and citizens groups, particularly those who are un-represented, to participate in hearings and offer evidence to a tribunal without facing the risk of an adverse cost award.

Schedule 6 of the Bill proposes to greatly limit non-party participation at public hearings. In particular, section 17 states that a non-party can make submissions to the OLT in writing only. This will undoubtedly result in a significant loss of public participation rights, thereby depriving OLT members of relevant evidence and perspectives, and adversely impacting access to justice.

In the Wilderness Committee's experience, public trust and confidence in the outcomes of hearings is enhanced if members of the public can voice their concerns directly to the OLT. The opportunity to make an oral submission directly to the OLT member gives people the assurance that they have been heard, and offers the OLT member the opportunity to ask questions and seek clarifications from the person. In contrast, a person or group making a written submission does not necessarily know whether it has been read and understood. The opportunity for a non-party to orally share relevant information with the OLT (and to respond directly to questions) ensures the integrity and transparency of the hearing process for all parties.

c) Schedule 10 would eliminate ministerial appeals

Schedule 10 of the Bill proposes to eliminate appeals to the Minister from decisions made by tribunal members under environmental legislation. At present, for example, ERT decisions under the EPA may be appealed to the Minister on questions of fact or policy. The Wilderness Committee submits that Schedule 10 would undermine public access to justice by precluding appeals on these grounds.

Conclusion

For the reasons presented above, as well as the analysis submitted by CELA on March 2, 2021, the Wilderness Committee submits that Schedules 6 and 10 should be removed from Bill 245. The changes will necessarily reduce public participation, transparency, and access to environmental justice, and indeed, restrict the Wilderness Committee's ability to achieve our mission.

Sincerely,

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Wilderness Committee | People-Powered Wilderness Conservation

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Traditional territory of Mississaugas of the Credit, Anishnaabeg, Chippewa, Haudenosaunee and Wendat