

## ENERGY AND ENVIRONMENTAL BULLETIN

April 2005

### EXPERT PANEL RECOMMENDS ESSENTIAL CHANGES TO ONTARIO'S ENVIRONMENTAL ASSESSMENT FRAMEWORK

An expert report entitled "Improving Environmental Assessment in Ontario: A Framework for Reform" authored by a panel of experts appointed by Ontario Environment Minister Leona Dombrowsky was made available for comments from Ontarians on April 4, 2005.

Though the report ultimately reaches the conclusion that Ontario's *Environmental Assessment Act* (the "Act") is fundamentally sound and should not be repealed, it does contain a number of recommendations, which if implemented, could significantly change some aspects of the environmental assessment ("EA") process in Ontario. The report contends that the proposed changes will deliver major improvements in the energy, waste and transportation sectors that have in the past been plagued with delays and inconsistencies.

The panel's main comment was the significant "disconnect" between the *Act* and the actual "on the ground" delivery of the environmental assessment program. The panel made numerous recommendations to address this problem, focusing on the application of clear, consistent and transparent rules. The panel also recognized that certain recommendations will require significant resources and several suggestions in the report address the issue of funding for these resources.

#### HISTORY OF THE EA REVIEW PROCESS

Ontario's history with EAs goes back to the 1970s when the Province's struggle to balance the interests of project proponents and the public began. This tension has been particularly acute lately in respect of energy, waste and transportation projects where some projects have been mired in the EA process for years and others have been canceled altogether due to public opposition during the EA process.

On April 5, 2004, Leona Dombrowsky, Ontario's Minister of the Environment announced the Ministry's intention to establish an advisory panel of experts to develop proposals on possible approaches to improving the environmental assessment process for waste management facilities, transit and transportation projects and clean energy facilities in Ontario. In a speech, the Minister stated: "We need to create a sharper, more effective and more efficient tool to deal with projects that impact our environment."

In June of 2004, an EA executive advisory panel was appointed. The panel members included representatives familiar with environmental issues from academia, the clean energy sector and the consulting industry.

The goal of the review was to revitalize the EA program by providing clear, prescriptive rules for appropriate environmental planning and decision-making. The aim was to rebalance EA decision-making by setting out clear roles for all participants and to refocus the EA process such that the level of review/assessment of undertakings reflects the potential that each proposal has to positively or negatively impact the environment as defined by the Act.

## KEY RECOMMENDATIONS

Although the panel made over 40 recommendations, the report states that the central innovation, and the cornerstone of the report, rests within the first five recommendations. These recommendations are “integrated and should not be selectively or independently pursued”. A link to the entire report can be found on the MOE homepage at [www.ene.gov.on.ca](http://www.ene.gov.on.ca). Key recommendations of the report, which can be broadly categorized as either directed to improve policy or implementation, are as follows:

### *Policy Recommendations:*

- i) General need for principles, policies and procedures.* General EA principles should be set out within the Ministry of the Environment (“MOE”) policy guidelines on how to interpret and apply the purpose of the *Act* to specific undertakings; provincial policies should be made for each sector (waste, energy, transportation) on what factors contribute to “green undertakings”; and prescriptive sector-specific procedures should be put in place.
- ii) Act Principles:* There is a need for guidance on how to interpret and apply the purpose of the *Act*. A set of general EA principles should be articulated in the *Act’s* policy guidelines for specific application to all decisions made under the *Act*.
- iii) Sector-specific Policy:* The MOE should develop sector-specific policies which must be followed under the *Act*, just as the Provincial Policy Statement is issued and applied under the *Planning Act*.

### *Implementation Recommendations:*

- i) Sector Working Groups:* Immediately establish small sectoral working groups for Energy, Transportation and Waste sectors;
- ii) EA Procedures:* Procedures should be put in place to correlate assessment requirements with the degree of benefit and risk associated with an undertaking;
- iii) Ministry Cooperation:* Improved cooperation between Ministries in reviewing applications;
- iv) Common Hearings:* Facilitation of common hearings through changes to the *Consolidated Hearing Act*;
- v) Compliance:* Significant changes to improve monitoring, reporting and enforcement; and
- vi) Bump-ups or Elevation Requests:* Bump-ups would be adjudicated by the existing Environmental Review Tribunal.

Other recommendations include new protocols and procedures that more effectively involve First Nations and aboriginal communities in the EA process; the introduction of a system of EA fees to generate revenue that can be specifically directed to EA activities; the establishment of an independent provincial advisory body to provide expert advice; and a greater use of alternative dispute resolution techniques throughout the EA process.

## NEXT STEPS

The comment period on this report remains open until July 4, 2005. After the comments are received, the Ministry will decide which recommendations it will adopt.

If you have any questions regarding this or any other environmental issue, feel free to contact any of the members of our Environmental Group listed below.

Michael Peterson	<a href="mailto:Michael.Peterson@mcmillanbinch.com">Michael.Peterson@mcmillanbinch.com</a>	416.865.7839
Kristi Sebalj	<a href="mailto:kristi.sebalj@mcmillanbinch.com">kristi.sebalj@mcmillanbinch.com</a>	416.865.7854
Scott Stoll	<a href="mailto:scottstoll@mcmillanbinch.com">scottstoll@mcmillanbinch.com</a>	416.865.7861

The above is presented for informational purposes only and should not be construed or considered to be legal advice.

---

*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

---

© Copyright 2005 McMillan Binch LLP

## MCMILLAN BINCH LLP

---

TELEPHONE: 416.865.7000  
FACSIMILE: 416.865.7048  
WEB: WWW.MCMILLANBINCH.COM

BCE PLACE, SUITE 4400, BAY WELLINGTON TOWER, 181 BAY STREET, TORONTO, ONTARIO, CANADA M5J 2T3