

Environmental Bill of Rights, 1993

S.O. 1993, CHAPTER 28

Consolidation Period: From December 15, 2009 to the [e-Laws currency date](#).

Last amendment: 2009, c. 33, Sched. 15, s. 4.

Skip Table of Contents

CONTENTS

PREAMBLE

PART I

DEFINITIONS AND PURPOSES

- [1.](#) Interpretation
- [2.](#) Purposes of Act

PART II

PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING

GENERAL

- [3.](#) Purpose of Part II
- [4.](#) Application of Part II

THE ENVIRONMENTAL REGISTRY

- [5.](#) Registry
- [6.](#) Purpose of registry

MINISTRY STATEMENT OF ENVIRONMENTAL VALUES

- [7.](#) Ministry statement of environmental values
- [8.](#) Public participation in statement
- [9.](#) Notice of final statement
- [10.](#) Amending the statement
- [11.](#) Effect of statement

PROPOSALS – GENERAL

- [12.](#) Interpretation: more than one ministry considering proposal
 - [13.](#) Fundamental changes in a proposal
 - [14.](#) Factors in determining effect of proposal on environment
- ##### PROPOSALS FOR POLICIES, ACTS AND REGULATIONS
- [15.](#) Proposals for policies and Acts
 - [16.](#) Proposals for regulations
 - [17.](#) Additional time for public comment on proposals for policies, Acts, regulations
 - [18.](#) How to give notice under s. 15 or 16

CLASSIFYING PROPOSALS FOR INSTRUMENTS

- [19.](#) Minister to develop regulation to classify instrument proposals
- [20.](#) Classification process
- [21.](#) Amending regulations to classify instrument proposals

PROPOSALS FOR INSTRUMENTS

- [22.](#) Public notice of proposals for instruments
- [23.](#) Additional time for public comment on Class II proposals
- [24.](#) Enhanced public participation for Class II proposals
- [25.](#) Additional notice of Class II proposals
- [26.](#) Reclassification of specific proposals

HOW TO GIVE NOTICE OF PROPOSALS

- [27.](#) Manner and form of notification
- [28.](#) Means of giving additional notice of Class II proposals

PROPOSALS – EXCEPTIONS

- [29.](#) Exception: emergencies

- [30.](#) Exception: other processes
- [31.](#) Means of giving notice, ss. 29 and 30
- [32.](#) Exception: instruments in accordance with statutory decisions
- [33.](#) Exception: budget proposals

MINISTERIAL ROLE AFTER GIVING NOTICE OF A PROPOSAL

- [34.](#) Appointment of mediator
- [35.](#) Minister to consider comments
- [36.](#) Implementation notice
- [37.](#) Effect of failure to comply with Part II

APPEALS OF DECISIONS ON CLASS I AND CLASS II INSTRUMENT PROPOSALS

- [38.](#) Right to seek leave to appeal a decision on an instrument
- [39.](#) Appellate body
- [40.](#) Time for appeal
- [41.](#) Leave test
- [42.](#) Automatic stay if leave granted
- [43.](#) No appeal from leave decision
- [44.](#) Grounds for appeal decision
- [45.](#) Powers on appeal
- [46.](#) Procedure
- [47.](#) Public notice of appeals under other Acts
- [48.](#) Existing rights of appeal not affected

PART III

THE ENVIRONMENTAL COMMISSIONER

- [49.](#) Environmental Commissioner
- [50.](#) Salary
- [51.](#) Pension of Environmental Commissioner
- [52.](#) Oath of office
- [53.](#) Temporary appointment
- [54.](#) Employees
- [55.](#) Budget
- [56.](#) Audit
- [57.](#) Functions
- [58.](#) Reports
- [58.1](#) Reports on energy conservation
- [58.2](#) Reports on greenhouse gas emissions
- [58.3](#) Separate reports
- [59.](#) Special assignments
- [60.](#) Examination on oath or affirmation

PART IV

APPLICATION FOR REVIEW

- [61.](#) Application for review
- [62.](#) Referral to minister
- [63.](#) Ministerial review, ss. 65 to 72
- [64.](#) Forwarding applications to more appropriate ministries
- [65.](#) Acknowledgment of receipt
- [66.](#) Notice to persons with direct interest
- [67.](#) Preliminary consideration
- [68.](#) Review of recent decisions
- [69.](#) Duty to review
- [70.](#) Notice of decision whether to review
- [71.](#) Notice of completion of review
- [72.](#) No disclosure of personal information about applicants
- [73.](#) Application of Act to proposals resulting from review

PART V

APPLICATION FOR INVESTIGATION

- [74.](#) Application for investigation
- [75.](#) Referral to minister
- [76.](#) Acknowledgment of receipt
- [77.](#) Duty to investigate
- [78.](#) Notice of decision not to investigate
- [79.](#) Time required for investigation
- [80.](#) Notice of completion of investigation

- [81.](#) No disclosure of personal information about applicants
- PART VI**
RIGHT TO SUE
HARM TO A PUBLIC RESOURCE
- [82.](#) Definitions, Part VI
- [83.](#) Application of ss. 84 to 102
- [84.](#) Right of action
- [85.](#) Defence
- [86.](#) Role of Attorney General
- [87.](#) Public notice of action
- [88.](#) Notice to protect interests
- [89.](#) Participation in action
- [90.](#) Stay or dismissal in the public interest
- [91.](#) Discontinuance, abandonment, settlement, etc.
- [92.](#) Interlocutory injunctions: plaintiff's undertaking to pay damages
- [93.](#) Remedies
- [94.](#) When order to negotiate not to be made
- [95.](#) Restoration plans
- [96.](#) Orders ancillary to order to negotiate
- [97.](#) If parties agree on restoration plan
- [98.](#) Court developed restoration plan
- [99.](#) Estoppel
- [100.](#) Costs
- [101.](#) Stay on appeal
- [102.](#) Limitations

PUBLIC NUISANCE CAUSING ENVIRONMENTAL HARM

- [103.](#) Public nuisance causing environmental harm
- PART VII**
EMPLOYER REPRISALS
- [104.](#) Meaning of "Board", Part VII
- [105.](#) Complaint about reprisals
- [106.](#) Labour relations officer, authorization
- [107.](#) Labour relations officer, inquiry into complaint
- [108.](#) Inquiry by the Board
- [109.](#) Burden of proof
- [110.](#) Determination by the Board
- [111.](#) Agreement to the contrary
- [112.](#) Failure to comply
- [113.](#) Enforcement of determination
- [114.](#) Effect of settlement
- [115.](#) Act performed on behalf of employer
- [116.](#) Powers, etc., of the Board

PART VIII
GENERAL

- [117.](#) Delegation
- [118.](#) No judicial review
- [119.](#) Protection from personal liability
- [120.](#) Crown bound
- [121.](#) Regulations

Preamble

The people of Ontario recognize the inherent value of the natural environment.

The people of Ontario have a right to a healthful environment.

The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.

While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I DEFINITIONS AND PURPOSES

Interpretation

1. (1) In this Act,

“air” means open air not enclosed in a building, structure, machine, chimney, stack or flue; (“air”)

“environment” means the air, land, water, plant life, animal life and ecological systems of Ontario; (“environnement”)

“harm” means any contamination or degradation and includes harm caused by the release of any solid, liquid, gas, odour, heat, sound, vibration or radiation; (“atteinte”)

“instrument”, except as otherwise provided under clause 121 (1) (c), means any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, direction or order issued under an Act, but does not include a regulation; (“acte”)

“land” means surface land not enclosed in a building, land covered by water (which, for greater certainty, includes wetland) and all subsoil; (“terre”)

“policy” means a program, plan or objective and includes guidelines or criteria to be used in making decisions about the issuance, amendment or revocation of instruments but does not include an Act, a regulation or an instrument; (“politique”)

“prescribed” means prescribed by the regulations under this Act; (“prescrit”)

“registry” means the environmental registry established under section 5; (“registre”)

“regulation”, except as otherwise provided under clause 121 (1) (c), has the same meaning as in Part III (Regulations) of the *Legislation Act, 2006*; (“règlement”)

“water” means surface water and ground water. (“eau”) 1993, c. 28, s. 1 (1); 2006, c. 21, Sched. F, s. 136 (1).

Proposals for policies, Acts

(2) For the purposes of this Act, a proposal to make, pass, amend, revoke or repeal a policy or Act is a proposal for a policy or Act. 1993, c. 28, s. 1 (2).

Proposals for regulations

(3) For the purposes of this Act, a proposal to make, amend or revoke a regulation is a proposal for a regulation. 1993, c. 28, s. 1 (3).

Proposals for instruments

(4) For the purposes of this Act, a proposal to issue, amend or revoke an instrument is a proposal for an instrument. 1993, c. 28, s. 1 (4).

Classification of proposals for instruments

(5) For the purposes of this Act, a proposal for an instrument is a Class I, II or III proposal if it is classified as a Class I, II or III proposal, as the case may be, by the regulations under this Act. 1993, c. 28, s. 1 (5).

Interpretation: implementation of proposals

(6) For the purposes of this Act,

(a) a proposal for a policy is implemented when the person or body with authority to implement the proposal does so;

(b) a proposal for an Act is implemented when the bill that would implement the proposal receives third reading in the Legislative Assembly; and

(c) a proposal for a regulation is implemented when the regulation that would implement the proposal is filed with the Registrar of Regulations in accordance with Part III (Regulations) of the *Legislation Act, 2006* or, if that Part does not apply, when the regulation comes into force. 1993, c. 28, s. 1 (6); 1996, c. 27, s. 22; 2006, c. 21, Sched. F, s. 109.

Same

(7) For the purposes of this Act, a decision whether or not to implement a proposal for an instrument is made when the person or body with statutory authority to issue, amend or revoke the instrument does so. 1993, c. 28, s. 1 (7).

Purposes of Act

2. (1) The purposes of this Act are,

- (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
- (b) to provide sustainability of the environment by the means provided in this Act; and
- (c) to protect the right to a healthful environment by the means provided in this Act. 1993, c. 28, s. 2 (1).

Same

- (2) The purposes set out in subsection (1) include the following:
 - 1. The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
 - 2. The protection and conservation of biological, ecological and genetic diversity.
 - 3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.
 - 4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
 - 5. The identification, protection and conservation of ecologically sensitive areas or processes. 1993, c. 28, s. 2 (2).

Same

- (3) In order to fulfil the purposes set out in subsections (1) and (2), this Act provides,
 - (a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
 - (b) increased accountability of the Government of Ontario for its environmental decision-making;
 - (c) increased access to the courts by residents of Ontario for the protection of the environment; and
 - (d) enhanced protection for employees who take action in respect of environmental harm. 1993, c. 28, s. 2 (3).

**PART II
PUBLIC PARTICIPATION IN GOVERNMENT DECISION-MAKING**

GENERAL

Purpose of Part II

3. (1) This Part sets out minimum levels of public participation that must be met before the Government of Ontario makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments. 1993, c. 28, s. 3 (1).

Same

- (2) This Part shall not be interpreted to limit any rights of public participation otherwise available. 1993, c. 28, s. 3 (2).

Application of Part II

- 4.** Provisions of this Part apply in relation to ministries as prescribed. 1993, c. 28, s. 4.

THE ENVIRONMENTAL REGISTRY

Registry

- 5.** (1) An environmental registry shall be established as prescribed. 1993, c. 28, s. 5 (1).

Cost of registry

(2) The cost of establishing and operating the registry shall not be imposed on a municipality. 1993, c. 28, s. 5 (2); 2002, c. 17, Sched. F, Table.

Purpose of registry

6. (1) The purpose of the registry is to provide a means of giving information about the environment to the public. 1993, c. 28, s. 6 (1).

Same

(2) For the purposes of subsection (1), information about the environment includes, but is not limited to, information about,

- (a) proposals, decisions and events that could affect the environment;
- (b) actions brought under Part VI; and
- (c) things done under this Act. 1993, c. 28, s. 6 (2).

MINISTRY STATEMENT OF ENVIRONMENTAL VALUES

Ministry statement of environmental values

7. Within three months after the date on which this section begins to apply to a ministry, the minister shall prepare a draft ministry statement of environmental values that,

- (a) explains how the purposes of this Act are to be applied when decisions that might significantly affect the environment are made in the ministry; and
- (b) explains how consideration of the purposes of this Act should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry. 1993, c. 28, s. 7.

Public participation in statement

8. (1) After the draft ministry statement of environmental values is prepared and not later than three months after the day on which this section begins to apply to a ministry, the minister shall give notice to the public that he or she is developing the ministry statement of environmental values. 1993, c. 28, s. 8 (1).

Means of giving notice

(2) Notice under this section shall be given in the registry and by any other means the minister considers appropriate. 1993, c. 28, s. 8 (2).

Contents of notice

(3) Notice given under this section in the registry shall include the following:

1. The text of the draft statement prepared under section 7 or a synopsis of the draft.
2. A statement of how members of the public can obtain copies of the draft statement.
3. A statement of when the minister expects to finalize the statement.
4. An invitation to members of the public to submit written comments on the draft statement within a time specified in the notice.
5. A description of any additional rights of participation in the development of the statement that the minister considers appropriate.
6. An address to which members of the public may direct,
 - i. written comments on the draft statement,
 - ii. written questions about the draft statement, and
 - iii. written questions about the rights of members of the public to participate in developing the statement.
7. Any information prescribed by the regulations under this Act.
8. Any other information that the minister considers appropriate. 1993, c. 28, s. 8 (3).

Time for public comment

(4) The minister shall not finalize the ministry statement of environmental values until at least thirty days after giving the notice under this section. 1993, c. 28, s. 8 (4).

Same

(5) The minister shall consider allowing more than thirty days between giving the notice under this section and finalizing the statement in order to permit more informed public consultation on the statement. 1993, c. 28, s. 8 (5).

Same

(6) In considering how much time ought to be allowed under subsection (5), the minister shall consider the following factors:

1. The complexity of the matters on which comments are invited.

2. The level of public interest in the matters on which comments are invited.
3. The period of time the public may require to make informed comment.
4. Any private or public interest, including any governmental interest, in resolving the matters on which comments are invited in a timely manner.
5. Any other factor that the minister considers relevant. 1993, c. 28, s. 8 (6).

Notice of final statement

9. (1) Within nine months after the day on which this section begins to apply to a ministry, the minister shall finalize the ministry statement of environmental values and give notice of it to the public. 1993, c. 28, s. 9 (1).

Means of giving notice

(2) Notice under this section shall be given in the registry and by any other means the minister considers appropriate. 1993, c. 28, s. 9 (2).

Contents of notice

(3) The notice shall include a brief explanation of the effect, if any, of comments from members of the public on the development of the statement and any other information that the minister considers appropriate. 1993, c. 28, s. 9 (3).

Amending the statement

10. (1) The minister may amend the ministry statement of environmental values from time to time. 1993, c. 28, s. 10 (1).

Same

(2) Sections 7 to 9 apply with necessary modifications to amendments of the statement. 1993, c. 28, s. 10 (2).

Effect of statement

11. The minister shall take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry. 1993, c. 28, s. 11.

PROPOSALS – GENERAL

Interpretation: more than one ministry considering proposal

12. For the purposes of sections 15, 16 and 22, where a proposal is under consideration in more than one ministry, “ministry” means the ministry with primary responsibility for the proposal and “minister” has a corresponding meaning. 1993, c. 28, s. 12.

Fundamental changes in a proposal

13. For the purposes of sections 15, 16 and 22, the question of whether a proposal has been so fundamentally altered as to become a new proposal is in the sole discretion of the minister. 1993, c. 28, s. 13.

Factors in determining effect of proposal on environment

14. In determining, under section 15 or 16, whether a proposal for a policy, Act or regulation could, if implemented, have a significant effect on the environment, a minister shall consider the following factors:

1. The extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from a decision whether or not to implement the proposal.
2. The geographic extent, whether local, regional or provincial, of any harm to the environment that could result from a decision whether or not to implement the proposal.
3. The nature of the private and public interests, including governmental interests, involved in the decision whether or not to implement the proposal.
4. Any other matter that the minister considers relevant. 1993, c. 28, s. 14.

PROPOSALS FOR POLICIES, ACTS AND REGULATIONS

Proposals for policies and Acts

15. (1) If a minister considers that a proposal under consideration in his or her ministry for a policy or Act could, if implemented, have a significant effect on the environment, and the minister considers that the public should have an

opportunity to comment on the proposal before implementation, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented. 1993, c. 28, s. 15 (1).

Exception

(2) Subsection (1) does not apply to a policy or Act that is predominantly financial or administrative in nature. 1993, c. 28, s. 15 (2).

Proposals for regulations

16. (1) If a minister considers that a proposal under consideration in his or her ministry for a regulation under a prescribed Act could, if implemented, have a significant effect on the environment, the minister shall do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented. 1993, c. 28, s. 16 (1).

Exception

(2) Subsection (1) does not apply to a regulation that is predominantly financial or administrative in nature. 1993, c. 28, s. 16 (2).

Additional time for public comment on proposals for policies, Acts, regulations

17. (1) The minister shall consider allowing more than thirty days between giving notice of a proposal under section 15 or 16 and implementation of the proposal in order to permit more informed public consultation on the proposal. 1993, c. 28, s. 17 (1).

Same

(2) In considering how much time ought to be allowed under subsection (1), the minister shall consider the factors set out in subsection 8 (6). 1993, c. 28, s. 17 (2).

How to give notice under s. 15 or 16

18. Notice under section 15 or 16 shall be given in accordance with section 27. 1993, c. 28, s. 18.

CLASSIFYING PROPOSALS FOR INSTRUMENTS

Minister to develop regulation to classify instrument proposals

19. Within a reasonable time after this section begins to apply to a ministry, the minister for the ministry shall prepare a proposal for a regulation to classify proposals for instruments as Class I, II or III proposals for the purposes of this Act and the regulations under it. 1993, c. 28, s. 19.

Classification process

20. (1) In this section,

“implementation decision” means a decision whether or not to implement a proposal for an instrument. 1993, c. 28, s. 20 (1).

Steps to develop regulation to classify instrument proposals

(2) In developing a proposal under section 19 for a regulation to classify proposals for instruments as Class I, II or III proposals, the minister shall take the following steps:

1. Review all Acts prescribed for the purposes of section 16 and administered by the minister for the ministry and list all provisions of those Acts that permit implementation decisions to be made.
2. Exclude from the list compiled in step 1 all provisions that permit implementation decisions to be made on review of or appeal from an earlier implementation decision made under an Act.
3. Consider each provision remaining on the list after step 2 to identify the provisions under which an implementation decision could be made that could have a significant effect on the environment.
4. Consider each provision identified in step 3 and identify and describe each type of proposal for an instrument about which an implementation decision could be made under the provision that the minister considers should be classified as a Class I, II or III type of proposal because of the potential for implementation decisions about proposals of that type to have a significant effect on the environment.
5. In determining whether a decision could have a significant effect on the environment for the purposes of steps 3 and 4, consider,
 - i. the extent and nature of the measures that might be required to mitigate or prevent any harm to the environment that could result from the decision,

- ii. the geographic extent, whether local, regional or provincial, of any harm to the environment that could result from the decision,
 - iii. the nature of the private and public interests, including governmental interests, involved in the decision, and
 - iv. any other matter that the minister considers relevant.
6. Classify each type of proposal for an instrument identified in step 4 as a Class I, II or III type of proposal, in accordance with steps 7 to 10.
 7. Classify a type of proposal as a Class II type of proposal if the minister considers that the public notice and public participation requirements of sections 23 to 25 ought to apply to it because of the level of risk and extent of potential harm to the environment involved.
 8. Classify a type of proposal as a Class II type of proposal if an Act provides for the exercise of discretion on whether a hearing should be held before an implementation decision is made on a proposal of the type, but does not require the hearing to be held if the discretion is not exercised.
 9. Classify a type of proposal as a Class III type of proposal if an Act requires hearings to be held to determine whether or not proposals of the type should be implemented, even if the Act provides for the exercise of discretion not to hold a hearing.
 10. Classify a type of proposal for an instrument as a Class I type of proposal if it has not been classified as a Class II or III type of proposal in steps 7 to 9.
 11. Prepare a proposal for a regulation that would classify proposals of each type identified in step 4 as Class I, II or III proposals in accordance with steps 7 to 10. 1993, c. 28, s. 20 (2).

Amending regulations to classify instrument proposals

21. (1) A minister shall from time to time review the regulations that classify proposals for instruments as Class I, II or III proposals and that relate to Acts administered by the minister for the ministry and shall prepare proposals to amend the regulations as the minister considers advisable. 1993, c. 28, s. 21 (1).

Same

- (2) Section 20 applies with necessary modifications to proposals prepared under this section. 1993, c. 28, s. 21 (2).

PROPOSALS FOR INSTRUMENTS

Public notice of proposals for instruments

22. (1) The minister shall do everything in his or her power to give notice to the public of a Class I, II or III proposal for an instrument under consideration in his or her ministry at least thirty days before a decision is made whether or not to implement the proposal. 1993, c. 28, s. 22 (1).

Interpretation

- (2) For the purposes of subsection (1), a proposal for an instrument is under consideration in a ministry if,
 - (a) it is possible that a decision whether or not to implement the proposal will be made under an Act by the minister for the ministry or by a person employed in the ministry; or
 - (b) it is possible that a decision whether or not to implement the proposal will be made under an Act administered by the minister for the ministry. 1993, c. 28, s. 22 (2).

Exception

(3) Despite subsection (1), the minister need not give notice of a proposal to amend or revoke an instrument if the minister considers that the potential effect of the amendment or revocation on the environment is insignificant. 1993, c. 28, s. 22 (3).

How to give notice

- (4) Notice under this section shall be given in accordance with section 27. 1993, c. 28, s. 22 (4).

Additional time for public comment on Class II proposals

23. (1) A minister required to give notice under section 22 of a Class II proposal for an instrument shall consider allowing more than thirty days between giving the notice and the decision whether or not to implement the proposal in order to permit more informed public consultation on the proposal. 1993, c. 28, s. 23 (1).

Same

(2) In considering how much time ought to be allowed under subsection (1), the minister shall consider the factors set out in subsection 8 (6). 1993, c. 28, s. 23 (2).

Enhanced public participation for Class II proposals

24. (1) A minister required to give notice under section 22 of a Class II proposal for an instrument shall also consider enhancing the right of members of the public to participate in decision-making on the proposal by providing for one or more of the following:

1. Opportunities for oral representations by members of the public to the minister or a person or body designated by the minister.
2. Public meetings.
3. Mediation among persons with different views on issues arising out of the proposal.
4. Any other process that would facilitate more informed public participation in decision-making on the proposal. 1993, c. 28, s. 24 (1).

Same

(2) In exercising his or her discretion under subsection (1), the minister shall consider the factors set out in section 14. 1993, c. 28, s. 24 (2).

Additional notice of Class II proposals

25. A minister required to give notice under section 22 of a Class II proposal for an instrument shall give additional public notice of the proposal in accordance with section 28. 1993, c. 28, s. 25.

Reclassification of specific proposals

Class I proposal to be treated as Class II proposal

26. (1) A minister may treat a Class I proposal for an instrument under consideration in his or her ministry as if it were a Class II proposal if the minister considers that it is advisable to do so for the purpose of protecting the environment. 1993, c. 28, s. 26 (1).

Class II proposal to be treated as Class III proposal

(2) If a decision is taken under any Act to hold a hearing to decide whether or not to implement a Class II proposal for an instrument, the proposal shall, for the purposes of this Act, be deemed to be a Class III proposal. 1993, c. 28, s. 26 (2).

Class III proposal to be treated as Class II proposal

(3) If a decision is taken under any Act not to hold a hearing before deciding whether or not to implement a Class III proposal for an instrument, the proposal shall, for the purposes of this Act, be deemed to be a Class II proposal. 1993, c. 28, s. 26 (3).

HOW TO GIVE NOTICE OF PROPOSALS

Manner and form of notification

Means of giving notice of proposals

27. (1) Notice of a proposal under section 15, 16 or 22 shall be given in the registry and by any other means the minister giving the notice considers appropriate. 1993, c. 28, s. 27 (1).

Contents of notice of proposals

(2) Notice of a proposal given under section 15, 16 or 22 in the registry shall include the following:

1. A brief description of the proposal.
2. A statement of the manner by which and time within which members of the public may participate in decision-making on the proposal.
3. A statement of where and when members of the public may review written information about the proposal.
4. An address to which members of the public may direct,
 - i. written comments on the proposal, and
 - ii. written questions about the rights of members of the public to participate in decision-making on the proposal.

5. Any information prescribed by the regulations under this Act.
6. Any other information that the minister giving the notice considers appropriate. 1993, c. 28, s. 27 (2).

Rights of participation

(3) A statement under paragraph 2 of subsection (2) shall include a description of the following rights of public participation in decision-making on the proposal:

1. The right to submit written comments in the manner and within the time specified in the notice.
2. Any additional rights of public participation provided under section 24.
3. Any additional rights of public participation prescribed by the regulations under this Act.
4. Any additional rights of public participation that the minister giving the notice considers appropriate. 1993, c. 28, s. 27 (3).

Regulatory impact statement

(4) The minister shall include a regulatory impact statement in a notice of a proposal given under section 16 in the registry if the minister considers that it is necessary to do so in order to permit more informed public consultation on the proposal. 1993, c. 28, s. 27 (4).

Same

(5) A regulatory impact statement shall include the following:

1. A brief statement of the objectives of the proposal.
2. A preliminary assessment of the environmental, social and economic consequences of implementing the proposal.
3. An explanation of why the environmental objectives, if any, of the proposal would be appropriately achieved by making, amending or revoking a regulation. 1993, c. 28, s. 27 (5).

Means of giving additional notice of Class II proposals

28. (1) The additional notice of Class II proposals required by section 25 shall be given by such means as the minister considers appropriate, including at least one of the following means:

1. News release.
2. Notice through local, regional or provincial news media, such as television, radio, newspapers and magazines.
3. Door to door flyers.
4. Signs.
5. Mailings to members of the public.
6. Actual notice to community leaders and political representatives.
7. Actual notice to community organizations, including environmental organizations.
8. Notice on the registry in addition to the notice required by section 22.
9. Any other means of notice that would facilitate more informed public participation in decision-making on the proposal. 1993, c. 28, s. 28 (1).

Same

(2) In determining what means of giving notice are appropriate under subsection (1), the minister shall consider the factors set out in section 14. 1993, c. 28, s. 28 (2).

PROPOSALS – EXCEPTIONS

Exception: emergencies

29. (1) Sections 15, 16 and 22 do not apply where, in the minister's opinion, the delay involved in giving notice to the public, in allowing time for public response to the notice or in considering the response to the notice would result in,

- (a) danger to the health or safety of any person;
- (b) harm or serious risk of harm to the environment; or

(c) injury or damage or serious risk of injury or damage to any property. 1993, c. 28, s. 29 (1).

Same

(2) If a minister decides under subsection (1) not to give notice of a proposal under section 15, 16 or 22, the minister shall give notice of the decision to the public and to the Environmental Commissioner. 1993, c. 28, s. 29 (2).

Same

(3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate. 1993, c. 28, s. 29 (3).

Exception: other processes

30. (1) Sections 15, 16 and 22 do not apply where, in the minister's opinion, the environmentally significant aspects of a proposal for a policy, Act, regulation or instrument,

- (a) have already been considered in a process of public participation, under this Act, under another Act or otherwise, that was substantially equivalent to the process required in relation to the proposal under this Act; or
- (b) are required to be considered in a process of public participation under another Act that is substantially equivalent to the process required in relation to the proposal under this Act. 1993, c. 28, s. 30 (1).

Same

(2) If a minister decides under subsection (1) not to give notice of a proposal under section 15, 16 or 22, the minister shall give notice of the decision to the public and to the Environmental Commissioner. 1993, c. 28, s. 30 (2).

Same

(3) Notice under subsection (2) shall be given as soon as reasonably possible after the decision is made and shall include a brief statement of the minister's reasons for the decision and any other information about the decision that the minister considers appropriate. 1993, c. 28, s. 30 (3).

Means of giving notice, ss. 29 and 30

31. Notice to the public under section 29 or 30 shall be given in the registry and by any other means the minister considers appropriate. 1993, c. 28, s. 31.

Exception: instruments in accordance with statutory decisions

32. (1) Section 22 does not apply where, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking or other project approved by,

- (a) a decision made by a tribunal under an Act after affording an opportunity for public participation; or
- (b) a decision made under the *Environmental Assessment Act*. 1993, c. 28, s. 32 (1).

Same

(2) Section 22 does not apply where, in the minister's opinion, the issuance, amendment or revocation of an instrument would be a step towards implementing an undertaking that has been exempted by a regulation under the *Environmental Assessment Act*. 1993, c. 28, s. 32 (2).

Same

(3) A decision about a class of undertaking is a decision within the meaning of subsection (1) and an exemption for a class of undertaking is an exemption within the meaning of subsection (2). 1993, c. 28, s. 32 (3).

Exception: budget proposals

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. 1993, c. 28, s. 33 (1).

Same

(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. 1993, c. 28, s. 33 (2).

MINISTERIAL ROLE AFTER GIVING NOTICE OF A PROPOSAL

Appointment of mediator

34. (1) A minister may appoint a mediator to assist in the resolution of issues related to a proposal for an instrument of which notice has been given under section 22. 1993, c. 28, s. 34 (1).

Same

(2) A minister shall not make an appointment under subsection (1) without the consent of the person applying for the instrument or the person who would be subject to the instrument, as the case may be. 1993, c. 28, s. 34 (2).

Minister to consider comments

35. (1) A minister who gives notice of a proposal under section 15, 16 or 22 shall take every reasonable step to ensure that all comments relevant to the proposal that are received as part of the public participation process described in the notice of the proposal are considered when decisions about the proposal are made in the ministry. 1993, c. 28, s. 35 (1).

Same

(2) For the purposes of subsection (1), a comment on the legislative or regulatory framework within which the decision whether or not to implement a proposal for an instrument is to be made is not a comment relevant to the proposal for the instrument. 1993, c. 28, s. 35 (2).

Implementation notice

Proposals for policies, Acts, regulations

36. (1) As soon as reasonably possible after a proposal for a policy, Act or regulation in respect of which notice was given under section 15 or 16 is implemented, the minister shall give notice to the public of the implementation. 1993, c. 28, s. 36 (1).

Proposals for instruments

(2) As soon as reasonably possible after a decision is made whether or not to implement a proposal for an instrument in respect of which notice was given under section 22, the minister shall give notice to the public of the decision. 1993, c. 28, s. 36 (2).

Means of giving notice

(3) Notice under this section shall be given in the registry and by any other means the minister considers appropriate. 1993, c. 28, s. 36 (3).

Contents of notice

(4) The notice shall include a brief explanation of the effect, if any, of public participation on decision-making on the proposal and any other information that the minister considers appropriate. 1993, c. 28, s. 36 (4).

Effect of failure to comply with Part II

37. Failure to comply with a provision of this Part does not affect the validity of any policy, Act, regulation or instrument, except as provided in section 118. 1993, c. 28, s. 37.

APPEALS OF DECISIONS ON CLASS I AND CLASS II INSTRUMENT PROPOSALS

Right to seek leave to appeal a decision on an instrument

38. (1) Any person resident in Ontario may seek leave to appeal from a decision whether or not to implement a proposal for a Class I or II instrument of which notice is required to be given under section 22, if the following two conditions are met:

1. The person seeking leave to appeal has an interest in the decision.
2. Another person has a right under another Act to appeal from a decision whether or not to implement the proposal. 1993, c. 28, s. 38 (1).

Same

(2) For greater certainty, subsection (1) does not permit any person to seek leave to appeal from a decision about a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33. 1993, c. 28, s. 38 (2).

Same

(3) For the purposes of subsection (1), the fact that a person has exercised a right given by this Act to comment on a proposal is evidence that the person has an interest in the decision on the proposal. 1993, c. 28, s. 38 (3).

Further rights of appeal

(4) Any person who, by virtue of this Part, is a party to an appeal about a proposal has rights of appeal from an appellate decision about the proposal equivalent to those of any other party to the appeal. 1993, c. 28, s. 38 (4).

Same

(5) For the purposes of subsection (4), an appellate decision about a proposal is not limited to a decision whether or not to implement the proposal but includes, for example, the following kinds of decisions:

1. An order to an earlier decision-maker to make a new decision about the proposal.
2. An order varying an earlier decision about the proposal.
3. An order to set aside an earlier decision about the proposal. 1993, c. 28, s. 38 (5).

Appellate body

39. (1) Subject to the regulations under this Act, the application for leave to appeal and the appeal shall be heard by the appellate body that would hear an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1). 1993, c. 28, s. 39 (1).

Same

(2) For example, an appeal on a question of law from a decision to issue an instrument relates to the same proposal as and is of a similar nature to an appeal on a question of law from a decision not to issue the instrument. 1993, c. 28, s. 39 (2).

Time for appeal

- 40.** An application for leave to appeal under subsection 38 (1) shall not be made later than the earlier of,
- (a) fifteen days after the day on which the minister gives notice under section 36 of a decision on the proposal; and
 - (b) fifteen days after the day on which notice relating to the proposal is given under section 47. 1993, c. 28, s. 40.

Leave test

- 41.** Leave to appeal a decision shall not be granted unless it appears to the appellate body that,
- (a) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision; and
 - (b) the decision in respect of which an appeal is sought could result in significant harm to the environment. 1993, c. 28, s. 41.

Automatic stay if leave granted

42. (1) The granting of leave under section 41 to appeal a decision stays the operation of the decision until the disposition of the appeal, unless the appellate body that granted the leave orders otherwise. 1993, c. 28, s. 42 (1).

Same

- (2) Subsection (1) applies despite any provision in or under any other Act. 1993, c. 28, s. 42 (2).

No appeal from leave decision

- 43.** There is no appeal from a decision whether or not to grant an application for leave to appeal. 1993, c. 28, s. 43.

Grounds for appeal decision

44. The appellate body shall make its determination in an appeal under this Part on grounds similar to those that would apply to an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1). 1993, c. 28, s. 44.

Powers on appeal

45. The appellate body has similar powers on an appeal under this Part to those the appellate body would have on an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1). 1993, c. 28, s. 45.

Procedure

46. The appellate body hearing an application for leave to appeal or an appeal under this Part may follow procedures similar to those the appellate body would follow on an appeal relating to the same proposal and of a similar nature brought by a person referred to in paragraph 2 of subsection 38 (1), or may vary those procedures as appropriate. 1993, c. 28, s. 46.

Public notice of appeals under other Acts

47. (1) A person who exercises a right under another Act to appeal from or to seek leave to appeal from a decision whether or not to implement a proposal for a Class I or II instrument of which notice is required to be given under section 22 shall give notice to the public in the registry of the appeal or application for leave to appeal. 1993, c. 28, s. 47 (1).

Same

(2) For greater certainty, subsection (1) does not require any person to give notice to the public of an application or appeal respecting a proposal to which section 22 does not apply because of the application of section 29, 30, 32 or 33. 1993, c. 28, s. 47 (2).

Delivery of notice

(3) The notice required by subsection (1) shall be given by delivering it to the Environmental Commissioner, who shall promptly place it on the registry. 1993, c. 28, s. 47 (3).

Same

- (4) Delivery of the notice to the Environmental Commissioner shall be made no later than the earlier of,
- (a) two days after the day on which the application was made or the appeal commenced; and
 - (b) the end of the time period within which the application could be made or the appeal could be commenced. 1993, c. 28, s. 47 (4).

Content of notice

- (5) The notice shall include the following:
1. A brief description of the decision in respect of which an appeal is sought, sufficient to identify the decision.
 2. A brief description of the grounds for the application for leave to appeal or for the appeal.
 3. Any information prescribed by the regulations under this Act. 1993, c. 28, s. 47 (5).

Appellate body not to proceed without notice

(6) The appellate body hearing the application for leave to appeal or the appeal shall not proceed with the application or appeal until fifteen days after notice is given to the public in the registry in accordance with this section, unless the appellate body considers it appropriate to proceed sooner. 1993, c. 28, s. 47 (6).

Participation in application or appeal

(7) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the application or appeal, the appellate body may permit any person to participate in the application or appeal, as a party or otherwise. 1993, c. 28, s. 47 (7).

Same

(8) In reaching a determination under subsection (7), the appellate body shall have regard to the intent and purposes of this Act. 1993, c. 28, s. 47 (8).

Existing rights of appeal not affected

48. Nothing in this Part shall be interpreted to limit a right of appeal otherwise available. 1993, c. 28, s. 48.

PART III THE ENVIRONMENTAL COMMISSIONER

Environmental Commissioner

49. (1) There shall be an Environmental Commissioner who is an officer of the Assembly. 1993, c. 28, s. 49 (1).

Appointment

(2) The Lieutenant Governor in Council shall appoint the Environmental Commissioner on the address of the Assembly. 1993, c. 28, s. 49 (2).

Term of office

(3) The Environmental Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms. 1993, c. 28, s. 49 (3).

Removal

(4) The Lieutenant Governor in Council may remove the Environmental Commissioner for cause on the address of the Assembly. 1993, c. 28, s. 49 (4).

Nature of employment

(5) The Environmental Commissioner shall not do any work or hold any office that interferes with the performance of his or her duties as Commissioner. 1993, c. 28, s. 49 (5).

Salary

50. (1) The Environmental Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council. 1999, c. 5, s. 2.

Same

(2) The salary of the Environmental Commissioner shall not be reduced except on the address of the Assembly. 1999, c. 5, s. 2.

Pension of Environmental Commissioner

51. The Environmental Commissioner is a member of the Public Service Pension Plan. 1993, c. 28, s. 51.

Oath of office

52. Before commencing the duties of his or her office, the Environmental Commissioner shall take an oath, to be administered by the Speaker of the Assembly, that he or she will faithfully and impartially exercise the functions of his or her office. 1993, c. 28, s. 52.

Temporary appointment

53. (1) If the Environmental Commissioner dies, resigns or is unable or neglects to perform the functions of his or her office while the Assembly is not in session, the Lieutenant Governor in Council may appoint a temporary Environmental Commissioner to hold office for a term of not more than six months. 1993, c. 28, s. 53 (1).

Same

(2) A temporary Environmental Commissioner shall have the powers and duties of the Environmental Commissioner and shall be paid the remuneration and allowances fixed by the Lieutenant Governor in Council. 1993, c. 28, s. 53 (2).

Employees

54. (1) Subject to the approval of the Board of Internal Economy, the Environmental Commissioner may employ such employees as the Commissioner considers necessary for the efficient operation of his or her office, and may determine their salaries or wages and the terms and conditions of their employment. 2006, c. 35, Sched. C, s. 35 (1).

Same

(2) Salaries or wages determined under subsection (1) shall be comparable to the salaries or wages determined under Part III of the *Public Service of Ontario Act, 2006* for public servants employed under that Part to work in a ministry, other than in a minister's office, who are in similar positions. 2006, c. 35, Sched. C, s. 35 (1).

Benefits

(3) The benefits determined under Part III of the *Public Service of Ontario Act, 2006* with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the employees of the office of the Environmental Commissioner:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits.
2. Plans for group life insurance, medical-surgical insurance or long-term income protection.
3. The granting of leaves of absence. 2006, c. 35, Sched. C, s. 35 (1).

Same

(4) For the purposes of subsection (3), if a benefit applicable to an employee of the office of the Environmental Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Commissioner or any person authorized in writing by the Commissioner. 2006, c. 35, Sched. C, s. 35 (1).

Pensions

(5) The employees of the office of the Environmental Commissioner are members of the Public Service Pension Plan. 2006, c. 35, Sched. C, s. 35 (1).

Budget

55. The Board of Internal Economy may from time to time issue directives to the Environmental Commissioner with respect to the expenditure of funds and the Environmental Commissioner shall follow the directives. 1993, c. 28, s. 55.

Audit

56. The accounts and financial transactions of the office of the Environmental Commissioner shall be audited annually by the Auditor General. 1993, c. 28, s. 56; 2004, c. 17, s. 32.

Functions

- 57.** In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental Commissioner to,
- (a) review the implementation of this Act and compliance in ministries with the requirements of this Act;
 - (b) at the request of a minister, provide guidance to the ministry on how to comply with the requirements of this Act, including guidance on,
 - (i) how to develop a ministry statement of environmental values that complies with the requirements of this Act and is consistent with other ministry statements of environmental values, and
 - (ii) how to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry;
 - (c) at the request of a minister, assist the ministry in providing educational programs about this Act;
 - (d) provide educational programs about this Act to the public;
 - (e) provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided in this Act;
 - (f) review the use of the registry;
 - (g) review the exercise of discretion by ministers under this Act;
 - (h) review recourse to the rights provided in sections 38 to 47;
 - (i) review the receipt, handling and disposition of applications for review under Part IV and applications for investigation under Part V;
 - (j) review ministry plans and priorities for conducting reviews under Part IV;
 - (k) review the use of the right of action set out in section 84, the use of defences set out in section 85, and reliance on section 103 respecting public nuisance actions; and
 - (l) review recourse to the procedure under Part VII for complaints about employer reprisals. 1993, c. 28, s. 57.

Reports

58. (1) The Environmental Commissioner shall report annually to the Speaker of the Assembly who shall lay the report before the Assembly as soon as reasonably possible. 1993, c. 28, s. 58 (1).

Same

- (2) The annual report shall include,
- (a) a report on the work of the Environmental Commissioner and on whether the ministries affected by this Act have co-operated with requests by the Commissioner for information;
 - (b) a summary of the information gathered by the Environmental Commissioner as a result of performing the functions set out in section 57 including, for greater certainty, a summary of information about compliance with ministry statements of environmental values gathered as a result of the review carried out under clause 57 (a);
 - (c) a list of all proposals of which notice has been given under section 15, 16 or 22 during the period covered by the report but not under section 36 in the same period;
 - (d) any information prescribed by the regulations under this Act; and
 - (e) any information that the Environmental Commissioner considers appropriate. 1993, c. 28, s. 58 (2).

Same

(3) The first report under subsection (1) shall be submitted in the first half of 1996 and shall cover the period beginning on the day this Act receives Royal Assent and ending on December 31st, 1995. 1993, c. 28, s. 58 (3).

Special reports

(4) The Environmental Commissioner may make a special report to the Speaker of the Assembly at any time on any matter related to this Act that, in the opinion of the Commissioner, should not be deferred until the annual report, and the Speaker shall lay the report before the Assembly as soon as reasonably possible. 1993, c. 28, s. 58 (4).

Report on ministry statement of environmental values

(5) If the Environmental Commissioner considers that a minister has failed to comply with section 7, 8 or 9 respecting a ministry statement of environmental values, the Commissioner shall, as soon as reasonably possible, report to the Speaker of the Assembly who shall lay the report before the Assembly as soon as reasonably possible. 1993, c. 28, s. 58 (5).

Reports on energy conservation

58.1 (1) The Environmental Commissioner shall report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels, and the Speaker shall lay the report before the Assembly as soon as reasonably possible. 2009, c. 12, Sched. F, s. 1.

Same

(2) Each report shall,

- (a) describe the results of initiatives in Ontario during the year covered by the annual report to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels;
- (b) describe the progress in meeting targets established by the Government of Ontario for reducing the use or making more efficient use of electricity, natural gas, propane, oil and transportation fuels; and
- (c) identify,
 - (i) any Acts or regulations of Canada or Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels,
 - (ii) any by-laws of municipal councils in Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels, and
 - (iii) any policies of the Government of Canada, the Government of Ontario or municipal councils in Ontario that result in barriers to the development or implementation of measures to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels. 2009, c. 12, Sched. F, s. 1.

Powers

(3) In addition to his or her powers under section 60, the Environmental Commissioner may, for the purpose of this section, require any of the following persons to prepare and submit to the Commissioner, within such time as is specified by the Commissioner, a report containing such information as is specified by the Commissioner:

1. The Ontario Energy Board.
2. The Ontario Power Authority.
3. The Independent Electricity System Operator.
4. The Smart Metering Entity within the meaning of the *Electricity Act, 1998*.
5. A generator, transmitter or distributor, as those terms are defined in the *Electricity Act, 1998*.
6. A gas distributor, gas transmitter, producer or storage company, as those terms are defined in the *Ontario Energy Board Act, 1998*.
7. Any other prescribed person or class of persons. 2009, c. 12, Sched. F, s. 1.

Same

(4) The first report under subsection (1) shall be submitted before the end of 2010 and shall cover the period beginning on January 1, 2009 and ending on December 31, 2009. 2009, c. 12, Sched. F, s. 1.

Reports on greenhouse gas emissions

58.2 (1) The Environmental Commissioner shall report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce emissions of greenhouse gases, and the Speaker shall lay the report before the Assembly as soon as reasonably possible. 2009, c. 12, Sched. F, s. 1.

Same

(2) Each report under subsection (1) shall include a review of any annual report on greenhouse gas reductions or climate change published by the Government of Ontario during the year covered by the report under subsection (1). 2009, c. 12, Sched. F, s. 1.

Powers

(3) In addition to his or her powers under section 60, the Environmental Commissioner may, for the purpose of this section, require a prescribed person or class of persons to prepare and submit to the Commissioner, within such time as is specified by the Commissioner, a report containing such prescribed information as is specified by the Commissioner. 2009, c. 12, Sched. F, s. 1.

Same

(4) The first report under subsection (1) shall be submitted before the end of 2009. 2009, c. 12, Sched. F, s. 1.

Definition: greenhouse gas

(5) In this section,

“greenhouse gas” means,

- (a) carbon dioxide,
- (b) methane,
- (c) nitrous oxide,
- (d) hydrofluorocarbons,
- (e) perfluorocarbons, or
- (f) sulphur hexafluoride. 2009, c. 12, Sched. F, s. 1.

Separate reports

58.3 The reports required by sections 58, 58.1 and 58.2 shall be made separately. 2009, c. 12, Sched. F, s. 1.

Special assignments

59. The Environmental Commissioner shall perform special assignments as required by the Assembly, but such assignments shall not take precedence over the other duties of the Commissioner under this Act. 1993, c. 28, s. 59.

Examination on oath or affirmation

60. (1) The Environmental Commissioner may examine any person on oath or solemn affirmation on any matter related to the performance of the Commissioner’s duties under this Act and may in the course of the examination require the production in evidence of documents or other things. 1993, c. 28, s. 60 (1).

Same

(2) For the purposes of an examination under subsection (1), the Commissioner has the powers conferred on a commission under Part II of the *Public Inquiries Act* and the Part applies to the examination as if it were an inquiry under that Act. 1993, c. 28, s. 60 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Application of *Public Inquiries Act*, 2009

(2) Section 33 of the *Public Inquiries Act*, 2009 applies to an examination under subsection (1). 2009, c. 33, Sched. 6, s. 57.

See: 2009, c. 33, Sched. 6, ss. 57, 92.

Delegation

(3) The Environmental Commissioner may authorize in writing any person or group of persons to exercise the Commissioner’s powers under this section. 1993, c. 28, s. 60 (3).

**PART IV
APPLICATION FOR REVIEW**

Application for review

61. (1) Any two persons resident in Ontario who believe that an existing policy, Act, regulation or instrument of Ontario should be amended, repealed or revoked in order to protect the environment may apply to the Environmental Commissioner for a review of the policy, Act, regulation or instrument by the appropriate minister. 1993, c. 28, s. 61 (1).

Same

(2) Any two persons resident in Ontario who believe that a new policy, Act or regulation of Ontario should be made or passed in order to protect the environment may apply to the Environmental Commissioner for a review of the need for the new policy, Act or regulation by the appropriate minister. 1993, c. 28, s. 61 (2).

Same

(3) An application under subsection (1) or (2) shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

- (a) the names and addresses of the applicants;
- (b) an explanation of why the applicants believe that the review applied for should be undertaken in order to protect the environment; and
- (c) a summary of the evidence supporting the applicants' belief that the review applied for should be undertaken in order to protect the environment. 1993, c. 28, s. 61 (3).

Same

(4) In addition, an application under subsection (1) shall clearly identify the policy, Act, regulation or instrument in respect of which a review is sought. 1993, c. 28, s. 61 (4).

Referral to minister

- 62.** (1) Within ten days of receiving an application for review, the Environmental Commissioner shall do the following:
1. Refer the application to the minister or ministers for the ministry or ministries that the Environmental Commissioner considers appropriate to review the matters raised in the application.
 2. Where an application is referred to a minister for a ministry not prescribed for the purposes of this Part, give notice to the applicants in accordance with subsection (2). 1993, c. 28, s. 62 (1).

Referral to ministry not prescribed for this Part

- (2) A notice under paragraph 2 of subsection (1) shall,
- (a) name the ministry or ministries to which the application has been referred;
 - (b) identify any ministry named under clause (a) that is not prescribed for the purposes of this Part; and
 - (c) explain that the obligations set out in sections 65 to 72 apply only in relation to ministries prescribed for the purposes of this Part. 1993, c. 28, s. 62 (2).

Ministerial review, ss. 65 to 72

63. (1) Subject to subsection (2) and section 64, the obligations set out in sections 65 to 72 apply where a minister receives an application for review from the Environmental Commissioner for consideration in a ministry that is prescribed for the purposes of this Part. 1993, c. 28, s. 63 (1).

Same

- (2) The obligations in sections 65 to 72 do not apply in relation to an application for,
- (a) a review of an existing Act, regulation or instrument other than a prescribed Act, regulation or instrument;
 - (b) a review of the need for a new exemption under the *Environmental Assessment Act*. 1993, c. 28, s. 63 (2).

Same

(3) A minister who determines under subsection (2) that sections 65 to 72 do not apply in relation to an application for review shall give notice of the determination to the applicants. 1993, c. 28, s. 63 (3).

Forwarding applications to more appropriate ministries

64. (1) A minister who has received an application from the Environmental Commissioner for review in his or her ministry and who believes that his or her ministry is not an appropriate ministry to review matters raised in the application may, with the consent of the Commissioner, return the application to the Commissioner to be forwarded under section 62 to another ministry if appropriate. 1993, c. 28, s. 64 (1).

Same

(2) A minister who has returned an application in accordance with subsection (1) has no obligations in relation to the application under sections 65 to 72. 1993, c. 28, s. 64 (2).

Acknowledgment of receipt

65. A minister who receives an application for review from the Environmental Commissioner shall acknowledge receipt to the applicants within twenty days of receiving the application from the Commissioner. 1993, c. 28, s. 65.

Notice to persons with direct interest

66. (1) A minister who receives an application for review from the Environmental Commissioner in respect of an instrument shall also give notice that the application has been made to any person who the minister considers ought to get the notice because the person might have a direct interest in matters raised in the application. 1993, c. 28, s. 66 (1).

Same

(2) A notice under subsection (1) shall include a description of the application for review. 1993, c. 28, s. 66 (2).

Preliminary consideration

67. (1) The minister shall consider each application for review in a preliminary way to determine whether the public interest warrants a review in his or her ministry of matters raised in the application. 1993, c. 28, s. 67 (1).

Same

(2) In determining whether the public interest warrants a review, the minister may consider,

- (a) the ministry statement of environmental values;
- (b) the potential for harm to the environment if the review applied for is not undertaken;
- (c) the fact that matters sought to be reviewed are otherwise subject to periodic review;
- (d) any social, economic, scientific or other evidence that the minister considers relevant;
- (e) any submission from a person who received a notice under section 66;
- (f) the resources required to conduct the review; and
- (g) any other matter that the minister considers relevant. 1993, c. 28, s. 67 (2).

Same

(3) In addition, in determining whether the public interest warrants a review of an existing policy, Act, regulation or instrument applied for under subsection 61 (1), the minister may consider,

- (a) the extent to which members of the public had an opportunity to participate in the development of the policy, Act, regulation or instrument in respect of which a review is sought; and
- (b) how recently the policy, Act, regulation or instrument was made, passed or issued. 1993, c. 28, s. 67 (3).

Review of recent decisions

68. (1) For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II. 1993, c. 28, s. 68 (1).

Exception

(2) Subsection (1) does not apply where it appears to the minister that,

- (a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and
- (b) the evidence was not taken into account when the decision sought to be reviewed was made. 1993, c. 28, s. 68 (2).

Duty to review

69. (1) A minister who determines that the public interest warrants a review under section 67 shall conduct the review within a reasonable time. 1993, c. 28, s. 69 (1).

Priorities for reviews

(2) A minister may develop plans and set priorities for the reviews required to be conducted under this Part in his or her ministry. 1993, c. 28, s. 69 (2).

Notice of decision whether to review

70. Within sixty days of receiving an application for review under section 61, the minister shall give notice of his or her decision whether to conduct a review, together with a brief statement of the reasons for the decision to,

- (a) the applicants;
- (b) the Environmental Commissioner; and
- (c) any other person who the minister considers ought to get the notice because the person might be directly affected by the decision. 1993, c. 28, s. 70.

Notice of completion of review

71. (1) Within thirty days of completing a review applied for under section 61, the minister shall give notice of the outcome of the review to the persons mentioned in clauses 70 (a) to (c). 1993, c. 28, s. 71 (1).

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the review. 1993, c. 28, s. 71 (2).

No disclosure of personal information about applicants

72. A notice under section 66, 70 or 71 shall not disclose the names or addresses of the applicants or any other personal information about them. 1993, c. 28, s. 72.

Application of Act to proposals resulting from review

73. The provisions of this Act apply to a proposal for a policy, Act, regulation or instrument under consideration in a ministry as a result of a review under this Part in the same way that they apply to any other proposal for a policy, Act, regulation or instrument. 1993, c. 28, s. 73.

**PART V
APPLICATION FOR INVESTIGATION**

Application for investigation

74. (1) Any two persons resident in Ontario who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Commissioner for an investigation of the alleged contravention by the appropriate minister. 1993, c. 28, s. 74 (1).

Same

(2) An application under this section shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

- (a) the names and addresses of the applicants;
- (b) a statement of the nature of the alleged contravention;
- (c) the names and addresses of each person alleged to have been involved in the commission of the contravention, to the extent that this information is available to the applicants;
- (d) a summary of the evidence supporting the allegations of the applicants;
- (e) the names and addresses of each person who might be able to give evidence about the alleged contravention, together with a summary of the evidence they might give, to the extent that this information is available to the applicants;
- (f) a description of any document or other material that the applicants believe should be considered in the investigation;
- (g) a copy of any document referred to in clause (f), where reasonable; and
- (h) details of any previous contacts with the office of the Environmental Commissioner or any ministry regarding the alleged contravention. 1993, c. 28, s. 74 (2).

Statement of belief

(3) An application under this section shall also include a statement by each applicant or, where an applicant is a corporation, by a director or officer of the corporation, that he or she believes that the facts alleged in the application are true. 1993, c. 28, s. 74 (3).

Same

(4) The statement referred to in subsection (3) shall be sworn or solemnly affirmed before a commissioner for taking affidavits in Ontario. 1993, c. 28, s. 74 (4).

Referral to minister

75. Within ten days of receiving an application under section 74, the Environmental Commissioner shall refer it to the minister responsible for the administration of the Act under which the contravention is alleged to have been committed. 1993, c. 28, s. 75.

Acknowledgment of receipt

76. The minister shall acknowledge receipt of an application for investigation to the applicants within twenty days of receiving the application from the Environmental Commissioner. 1993, c. 28, s. 76.

Duty to investigate

77. (1) The minister shall investigate all matters to the extent that the minister considers necessary in relation to a contravention alleged in an application. 1993, c. 28, s. 77 (1).

Same

(2) Nothing in this section requires a minister to conduct an investigation in relation to a contravention alleged in an application if the minister considers that,

- (a) the application is frivolous or vexatious;
- (b) the alleged contravention is not serious enough to warrant an investigation; or
- (c) the alleged contravention is not likely to cause harm to the environment. 1993, c. 28, s. 77 (2).

Same

(3) Nothing in this section requires a minister to duplicate an ongoing or completed investigation. 1993, c. 28, s. 77 (3).

Notice of decision not to investigate

78. (1) If the minister decides that an investigation is not required under section 77, the minister shall give notice of the decision, together with a brief statement of the reasons for the decision, to,

- (a) the applicants;
- (b) each person alleged in the application to have been involved in the commission of the contravention for whom an address is given in the application; and
- (c) the Environmental Commissioner. 1993, c. 28, s. 78 (1).

Same

(2) A minister need not give notice under subsection (1) if an investigation in relation to the contravention alleged in the application is ongoing apart from the application. 1993, c. 28, s. 78 (2).

Same

(3) A notice under subsection (1) shall be given within sixty days of receiving the application for investigation. 1993, c. 28, s. 78 (3).

Time required for investigation

79. (1) Within 120 days of receiving an application for an investigation in respect of which no notice is given under section 78, the minister shall either complete the investigation or give the applicants a written estimate of the time required to complete it. 1993, c. 28, s. 79 (1).

Same

(2) Within the time given in an estimate under subsection (1), the minister shall either complete the investigation or give the applicants a revised written estimate of the time required to complete it. 1993, c. 28, s. 79 (2).

Same

(3) Subsection (2) applies to a revised estimate given under subsection (2) as if it were an estimate given under subsection (1). 1993, c. 28, s. 79 (3).

Notice of completion of investigation

80. (1) Within thirty days of completing an investigation, the minister shall give notice of the outcome of the investigation to the persons mentioned in clauses 78 (1) (a) to (c). 1993, c. 28, s. 80 (1).

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the investigation. 1993, c. 28, s. 80 (2).

No disclosure of personal information about applicants

81. A notice under section 78 or 80 shall not disclose the names or addresses of the applicants or any other personal information about them. 1993, c. 28, s. 81.

PART VI RIGHT TO SUE

HARM TO A PUBLIC RESOURCE

Definitions, Part VI

82. In this Part,

“court” means the Superior Court of Justice but does not include the Small Claims Court; (“tribunal”)

“public land” means land that belongs to,

- (a) the Crown in right of Ontario,
- (b) a municipality, or
- (c) a conservation authority,

but does not include land that is leased from a person referred to in clauses (a) to (c) and that is used for agricultural purposes; (“terre publique”)

“public resource” means,

- (a) air,
- (b) water, not including water in a body of water the bed of which is privately owned and on which there is no public right of navigation,
- (c) unimproved public land,
- (d) any parcel of public land that is larger than five hectares and is used for,
 - (i) recreation,
 - (ii) conservation,
 - (iii) resource extraction,
 - (iv) resource management, or
 - (v) a purpose similar to one mentioned in subclauses (i) to (iv), and
- (e) any plant life, animal life or ecological system associated with any air, water or land described in clauses (a) to (d). (“ressource publique”) 1993, c. 28, s. 82; 2001, c. 9, Sched. G, s. 4 (1); 2002, c. 17, Sched F, Table.

Application of ss. 84 to 102

83. Sections 84 to 102 apply only in respect of a contravention of an Act, regulation or instrument that occurs after the Act, regulation or instrument is prescribed for the purposes of Part V. 1993, c. 28, s. 83.

Right of action

84. (1) Where a person has contravened or will imminently contravene an Act, regulation or instrument prescribed for the purposes of Part V and the actual or imminent contravention has caused or will imminently cause significant harm to a public

resource of Ontario, any person resident in Ontario may bring an action against the person in the court in respect of the harm and is entitled to judgment if successful. 1993, c. 28, s. 84 (1).

Steps before action: application for investigation

(2) Despite subsection (1), an action may not be brought under this section in respect of an actual contravention unless the plaintiff has applied for an investigation into the contravention under Part V and,

- (a) has not received one of the responses required under sections 78 to 80 within a reasonable time; or
- (b) has received a response under sections 78 to 80 that is not reasonable. 1993, c. 28, s. 84 (2).

Same

(3) In making a decision as to whether a response was given within a reasonable time for the purposes of clause (2) (a), the court shall consider but is not bound by the times specified in sections 78 to 80. 1993, c. 28, s. 84 (3).

Steps before action: farm practices

(4) Despite subsection (1), an action may not be brought under this section in respect of actual or imminent harm to a public resource of Ontario from odour, noise or dust resulting from an agricultural operation unless the plaintiff has applied to the Farm Practices Protection Board under section 5 of the *Farm Practices Protection Act* with respect to the odour, noise or dust and the Farm Practices Protection Board has disposed of the application. 1993, c. 28, s. 84 (4).

Same

(5) A person seeking to bring an action under this section in respect of harm from odour, noise or dust resulting from an agricultural operation is a person aggrieved by the odour, noise or dust within the meaning of subsection 5 (1) of the *Farm Practices Protection Act*. 1993, c. 28, s. 84 (5).

When steps before action need not be taken

(6) Subsections (2) and (4) do not apply where the delay involved in complying with them would result in significant harm or serious risk of significant harm to a public resource. 1993, c. 28, s. 84 (6).

Action not a class proceeding

(7) An action under section 84 may not be commenced or maintained as a class proceeding under the *Class Proceedings Act, 1992*. 1993, c. 28, s. 84 (7).

Burden of proof: contravention

(8) The onus is on the plaintiff in an action under this section to prove the contravention or imminent contravention on a balance of probabilities. 1993, c. 28, s. 84 (8).

Other rights of action not affected

- (9) This section shall not be interpreted to limit any other right to bring or maintain a proceeding. 1993, c. 28, s. 84 (9).

Rules of court

- (10) The rules of court apply to an action under this section. 1993, c. 28, s. 84 (10).

Defence

85. (1) For the purposes of section 84, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the defendant exercised due diligence in complying with the Act, regulation or instrument. 1993, c. 28, s. 85 (1).

Same

(2) For the purposes of section 84, an Act, regulation or instrument is not contravened if the defendant satisfies the court that the act or omission alleged to be a contravention of the Act, regulation or instrument is authorized by an Act of Ontario or Canada or by a regulation or instrument under an Act of Ontario or Canada. 1993, c. 28, s. 85 (2).

Same

(3) For the purposes of section 84, an instrument is not contravened if the defendant satisfies the court that the defendant complied with an interpretation of the instrument that the court considers reasonable. 1993, c. 28, s. 85 (3).

Same

- (4) This section shall not be interpreted to limit any defence otherwise available. 1993, c. 28, s. 85 (4).

Role of Attorney General

86. (1) The plaintiff in an action under section 84 shall serve the statement of claim on the Attorney General not later than ten days after the day on which the statement of claim is served on the first defendant served in the action. 1993, c. 28, s. 86 (1).

Right of Attorney General

(2) The Attorney General is entitled to present evidence and make submissions to the court in the action, to appeal from a judgment in the action and to present evidence and make submissions in an appeal from a judgment in the action. 1993, c. 28, s. 86 (2).

Public notice of action

87. (1) The plaintiff shall give notice of the action to the public in the registry and by any other means ordered by the court. 1993, c. 28, s. 87 (1).

Same

(2) The plaintiff shall give notice in the registry under subsection (1) by delivering the notice to the Environmental Commissioner who shall promptly place it on the registry. 1993, c. 28, s. 87 (2).

Same

(3) Within thirty days after the close of pleadings, the plaintiff shall make a motion to the court for directions relating to the notice under this section, including directions as to when the notice should be given. 1993, c. 28, s. 87 (3).

Same

(4) The notice shall include any information prescribed by the regulations under this Act and any information required by the court. 1993, c. 28, s. 87 (4).

Same

(5) The court may require a party other than the plaintiff to give the notice. 1993, c. 28, s. 87 (5).

Costs

(6) The court may make any order for the costs of the notice that the court considers appropriate. 1993, c. 28, s. 87 (6).

Notice to protect interests

88. (1) At any time in the action, the court may order any party to give any notice that the court considers necessary to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action. 1993, c. 28, s. 88 (1).

Same

(2) The court may make any order relating to the notice, including an order for the costs of the notice, that the court considers appropriate. 1993, c. 28, s. 88 (2).

Participation in action

89. (1) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the action, the court may permit any person to participate in the action, as a party or otherwise. 1993, c. 28, s. 89 (1).

Same

(2) Participation under subsection (1) shall be in the manner and on the terms, including terms as to costs, that the court considers appropriate. 1993, c. 28, s. 89 (2).

Same

(3) No order shall be made under subsection (1) in an action after the court has made an order under section 93 in the action. 1993, c. 28, s. 89 (3).

Same

(4) This section shall not be interpreted to limit the orders a court may make under the rules of court or otherwise. 1993, c. 28, s. 89 (4).

Stay or dismissal in the public interest

90. (1) The court may stay or dismiss the action if to do so would be in the public interest. 1993, c. 28, s. 90 (1).

Same

(2) In making a decision under subsection (1), the court may have regard to environmental, economic and social concerns and may consider,

- (a) whether the issues raised by the proceeding would be better resolved by another process;
- (b) whether there is an adequate government plan to address the public interest issues raised by the proceeding; and
- (c) any other relevant matter. 1993, c. 28, s. 90 (2).

Discontinuance, abandonment, settlement, etc.

91. (1) An action under section 84 may be discontinued or abandoned only with the approval of the court, on the terms that the court considers appropriate. 1993, c. 28, s. 91 (1).

Settlement without court approval

- (2) A settlement of an action under section 84 is not binding unless approved by the court. 1993, c. 28, s. 91 (2).

Effect of settlement

(3) A settlement of an action under section 84 that is approved by the court binds all past, present and future residents of Ontario. 1993, c. 28, s. 91 (3).

Notice: dismissal, discontinuance, abandonment or settlement

(4) In considering whether to dismiss an action under section 84 without a finding as to whether the plaintiff was entitled to judgment, whether for delay, for public interest reasons or for any other reason, or in considering whether to approve a discontinuance, abandonment or settlement of the action, the court shall consider whether notice should be given under section 88. 1993, c. 28, s. 91 (4).

Interlocutory injunctions: plaintiff's undertaking to pay damages

92. In exercising its discretion under the rules of court as to whether to dispense with an undertaking by the plaintiff to pay damages caused by an interlocutory injunction or mandatory order, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law. 1993, c. 28, s. 92.

Remedies

- 93.** (1) If the court finds that the plaintiff is entitled to judgment in an action under section 84, the court may,
- (a) grant an injunction against the contravention;
 - (b) order the parties to negotiate a restoration plan in respect of harm to the public resource resulting from the contravention and to report to the court on the negotiations within a fixed time;
 - (c) grant declaratory relief; and
 - (d) make any other order, including an order as to costs, that the court considers appropriate. 1993, c. 28, s. 93 (1).

Damages

- (2) No award of damages shall be made under subsection (1). 1993, c. 28, s. 93 (2).

Farm practices

(3) No order shall be made under this section that is inconsistent with the *Farm Practices Protection Act*. 1993, c. 28, s. 93 (3).

When order to negotiate not to be made

- 94.** The court shall not order the parties to negotiate a restoration plan if the court determines that,
- (a) adequate restoration has already been achieved; or
 - (b) an adequate restoration plan has already been ordered under the law of Ontario or any other jurisdiction. 1993, c. 28, s. 94.

Restoration plans

95. (1) This section applies to restoration plans negotiated by the parties and to restoration plans developed by the court under section 98. 1993, c. 28, s. 95 (1).

Restoration plans: purposes

(2) A restoration plan in respect of harm to a public resource resulting from a contravention shall, to the extent that to do so is reasonable, practical and ecologically sound, provide for,

- (a) the prevention, diminution or elimination of the harm;
- (b) the restoration of all forms of life, physical conditions, the natural environment and other things associated with the public resource affected by the contravention; and
- (c) the restoration of all uses, including enjoyment, of the public resource affected by the contravention. 1993, c. 28, s. 95 (2).

Same

(3) A restoration plan may include provisions to address harm to a public resource in ways not directly connected with the public resource, including,

- (a) research into and development of technologies to prevent, decrease or eliminate harm to the environment;
- (b) community, education or health programs; and
- (c) the transfer of property by the defendant so that the property becomes a public resource. 1993, c. 28, s. 95 (3).

Same

(4) A provision under subsection (3) shall be included in a restoration plan only with the consent of the defendant. 1993, c. 28, s. 95 (4).

Same

(5) A provision under clause (3) (c) shall be included in a restoration plan only with the consent of the defendant and the transferee. 1993, c. 28, s. 95 (5).

Restoration plan: provisions for implementation

(6) A restoration plan may include provisions for monitoring progress under the plan and for overseeing its implementation. 1993, c. 28, s. 95 (6).

Restoration plans: considerations

(7) When negotiating or developing a restoration plan in respect of harm, the negotiating parties or the court, as the case may be, shall consider,

- (a) any orders under the law of Ontario or any other jurisdiction dealing with the harm; and
- (b) whether, apart from the restoration plan, the harm has been addressed in the ways described in subsection (2). 1993, c. 28, s. 95 (7).

Restoration plans: payments

- (8) A restoration plan may provide for money to be paid by the defendant only if,
 - (a) the money is to be paid to the Minister of Finance;
 - (b) the money is to be used only for the purposes mentioned in subsections (2) and (3); and
 - (c) the Attorney General and the defendant consent to the provision. 1993, c. 28, s. 95 (8).

Orders ancillary to order to negotiate

96. If the court orders the parties to negotiate a restoration plan, the court may,

- (a) make any interim order that the court considers appropriate to minimize the harm; and
- (b) make any order that the court considers appropriate,
 - (i) for the costs of the negotiations,
 - (ii) requiring a party to prepare an initial draft restoration plan for use in the negotiations,
 - (iii) respecting the participation of non-parties in the negotiations, and
 - (iv) respecting the negotiation process, including, on consent of the parties, an order concerning the use of a mediator, fact finder or arbitrator. 1993, c. 28, s. 96.

If parties agree on restoration plan

97. (1) If the parties agree on a restoration plan within the time fixed by the court under clause 93 (1) (b) and the court is satisfied that the terms of the plan are consistent with section 95, the court shall order the defendant to comply with the plan. 1993, c. 28, s. 97 (1).

Same

- (2) For the purpose of determining whether an agreed plan is consistent with section 95, the court may,
- (a) appoint one or more experts under the rules of court; and
 - (b) on consent of the parties, hear submissions or receive reports from any mediator, fact finder or arbitrator involved in the negotiation. 1993, c. 28, s. 97 (2).

Court developed restoration plan

98. (1) If the parties do not agree on a restoration plan or if the court is not satisfied that a plan agreed to by the parties is consistent with section 95, the court shall develop a restoration plan consistent with section 95 and, for the purpose, the court may,

- (a) order the parties to engage in further negotiations for a restoration plan on the terms that the court considers appropriate;
- (b) order one or more parties to prepare a draft restoration plan;
- (c) appoint one or more persons to investigate and report back on any matter relevant to the development of a restoration plan;
- (d) appoint one or more non-parties to prepare a draft restoration plan; and
- (e) make any other order that the court considers appropriate. 1993, c. 28, s. 98 (1).

Same

(2) The rules of court respecting court appointed experts apply with necessary modifications to the appointment of a person under clause (1) (c) or (d). 1993, c. 28, s. 98 (2).

Order to implement

- (3) The court shall order the defendant to comply with the restoration plan developed by the court. 1993, c. 28, s. 98 (3).

Estoppel

99. (1) The doctrines of cause of action estoppel and issue estoppel apply in relation to an action under section 84 as if all past, present and future residents of Ontario were parties to the action. 1993, c. 28, s. 99 (1).

Exception

(2) Subsection (1) does not apply where an action under section 84 has been discontinued, abandoned or dismissed without a finding as to whether the plaintiff was entitled to judgment. 1993, c. 28, s. 99 (2).

Costs

100. In exercising its discretion under subsection 131 (1) of the *Courts of Justice Act* with respect to costs of an action under section 84 of this Act, the court may consider any special circumstance, including whether the action is a test case or raises a novel point of law. 1993, c. 28, s. 100.

Stay on appeal

101. The delivery of a notice of appeal from an order under this Act does not stay the operation of the order, but a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken may order a stay on terms that the judge considers appropriate. 1993, c. 28, s. 101.

Limitations

102. (1) No person shall bring an action under section 84 in respect of a contravention that caused harm after the earliest of,

- (a) the second anniversary of the day on which the person bringing the action first knew,
 - (i) that the harm had occurred,
 - (ii) that the harm was caused by the contravention,
 - (iii) that the contravention was that of the person against whom the action is brought, and

- (iv) that, having regard to the nature of the harm, an action under section 84 would be an appropriate means to seek to address it;
- (b) the second anniversary of the day on which a reasonable person with the abilities and in the circumstances of the person seeking to bring the action first ought to have known of the matters referred to in clause (a); and
- (c) the second anniversary of the day on which public notice of an action in respect of the contravention and the harm was given under section 87. 1993, c. 28, s. 102 (1).

Same

(2) Despite subsection (1), if clause (1) (a) or (b) applies to establish the limitation period under subsection (1), a person may bring the action after the end of that period, to the extent permitted by subsections (3) and (4). 1993, c. 28, s. 102 (2).

Same

(3) If the person bringing the action applied under section 74 for an investigation of the contravention before the end of the period established under subsection (1) by the application of clause (1) (a) or (b), the person may bring the action within 120 days after the day on which the person received a notice under section 78 or 80 in respect of the contravention. 1993, c. 28, s. 102 (3).

Same

(4) If the person bringing the action applied under section 5 of the *Farm Practices Protection Act* with respect to the harm before the end of the period established under subsection (1) by the application of clause (1) (a) or (b), the person may bring the action within 120 days after the day on which the Farm Practices Protection Board disposed of the application. 1993, c. 28, s. 102 (4).

Same

(5) For greater certainty, a limitation period established under this section conflicts with and is in place of any limitation period set out in the *Limitations Act, 2002*. 2002, c. 24, Sched. B, s. 34.

Same

(6) Subsection 19 (5) of the *Limitations Act, 2002* does not apply to postpone or suspend a limitation period established under subsection (1) by the application of clause (1) (c). 2002, c. 24, Sched. B, s. 34.

PUBLIC NUISANCE CAUSING ENVIRONMENTAL HARM

Public nuisance causing environmental harm

103. (1) No person who has suffered or may suffer a direct economic loss or direct personal injury as a result of a public nuisance that caused harm to the environment shall be barred from bringing an action without the consent of the Attorney General in respect of the loss or injury only because the person has suffered or may suffer direct economic loss or direct personal injury of the same kind or to the same degree as other persons. 1993, c. 28, s. 103 (1).

Farm practices

(2) Subsection (1) shall not be interpreted to limit a right or defence available under the *Farm Practices Protection Act*. 1993, c. 28, s. 103 (2).

PART VII EMPLOYER REPRISALS

Meaning of “Board”, Part VII

104. In this Part,

“Board” means the Ontario Labour Relations Board. 1993, c. 28, s. 104.

Complaint about reprisals

105. (1) Any person may file a written complaint with the Board alleging that an employer has taken reprisals against an employee on a prohibited ground. 1993, c. 28, s. 105 (1).

Reprisals

(2) For the purposes of this Part, an employer has taken reprisals against an employee if the employer has dismissed, disciplined, penalized, coerced, intimidated or harassed, or attempted to coerce, intimidate or harass, the employee. 1993, c. 28, s. 105 (2).

Prohibited grounds

(3) For the purposes of this Part, an employer has taken reprisals on a prohibited ground if the employer has taken reprisals because the employee in good faith did or may do any of the following:

1. Participate in decision-making about a ministry statement of environmental values, a policy, an Act, a regulation or an instrument as provided in Part II.
2. Apply for a review under Part IV.
3. Apply for an investigation under Part V.
4. Comply with or seek the enforcement of a prescribed Act, regulation or instrument.
5. Give information to an appropriate authority for the purposes of an investigation, review or hearing related to a prescribed policy, Act, regulation or instrument.
6. Give evidence in a proceeding under this Act or under a prescribed Act. 1993, c. 28, s. 105 (3).

Labour relations officer, authorization

106. The Board may authorize a labour relations officer to inquire into a complaint. 1993, c. 28, s. 106.

Labour relations officer, inquiry into complaint

107. A labour relations officer authorized to inquire into a complaint shall make the inquiry as soon as reasonably possible, shall endeavour to effect a settlement of the matter complained of and shall report the results of the inquiry and endeavours to the Board. 1993, c. 28, s. 107.

Inquiry by the Board

108. If a labour relations officer is unable to effect a settlement of the matter complained of, or if the Board in its discretion dispenses with an inquiry by a labour relations officer, the Board may inquire into the complaint. 1993, c. 28, s. 108.

Burden of proof

109. In an inquiry under section 108, the onus is on the employer to prove that the employer did not take reprisals on a prohibited ground. 1993, c. 28, s. 109.

Determination by the Board

110. (1) If the Board, after inquiring into the complaint, is satisfied that the employer has taken reprisals on a prohibited ground, the Board shall determine what, if anything, the employer shall do or refrain from doing about the reprisals. 1993, c. 28, s. 110 (1).

Same

- (2) A determination under subsection (1) may include, but is not limited to, one or more of,
- (a) an order directing the employer to cease doing the act or acts complained of;
 - (b) an order directing the employer to rectify the act or acts complained of; or
 - (c) an order directing the employer to reinstate in employment or hire the employee, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount assessed by the Board against the employer. 1993, c. 28, s. 110 (2).

Agreement to the contrary

111. A determination under section 110 applies despite a provision of an agreement to the contrary. 1993, c. 28, s. 111.

Failure to comply

112. If the employer fails to comply with a term of the determination under section 110 within fourteen days from the date of the release of the determination by the Board or from the date provided in the determination for compliance, whichever is later, the complainant may notify the Board in writing of the failure. 1993, c. 28, s. 112.

Enforcement of determination

113. If the Board receives notice in accordance with section 112, the Board shall file a copy of its determination, without its reasons, with the Superior Court of Justice, and the determination may be enforced as if it were an order of the court. 1993, c. 28, s. 113; 2001, c. 9, Sched. G, s. 4 (2).

Effect of settlement

114. (1) If a complaint under section 105 has been settled, whether through the endeavours of the labour relations officer or otherwise, and the settlement has been put in writing and signed, a party to the settlement may file a written complaint with the Board alleging that another party to the settlement has failed to comply with the settlement. 1993, c. 28, s. 114 (1).

Same

(2) Sections 106 to 108 and 110 to 113 and subsection (1) apply with necessary modifications with respect to a complaint alleging failure to comply with a settlement. 1993, c. 28, s. 114 (2).

Act performed on behalf of employer

115. For the purposes of sections 105 to 114, an act that is performed on behalf of the employer shall be deemed to be the act of the employer. 1993, c. 28, s. 115.

Powers, etc., of the Board

116. (1) The provisions of the *Labour Relations Act, 1995* and the regulations under it relating to powers, practices and procedures of the Board apply with necessary modifications to an inquiry by the Board into a complaint under section 105 or 114. 1993, c. 28, s. 116 (1); 2006, c. 19, Sched. K, s. 1 (1).

Application of provisions of *Labour Relations Act, 1995*

(2) Sections 114, 116, 117 and 118 of the *Labour Relations Act, 1995* apply with necessary modifications to an inquiry by the Board into a complaint under section 105 or 114. 1993, c. 28, s. 116 (2); 2006, c. 19, Sched. K, s. 1 (2).

**PART VIII
GENERAL**

Delegation

117. A minister may authorize in writing any person or group of persons to exercise any of the minister's powers or duties under this Act. 1993, c. 28, s. 117.

No judicial review

118. (1) Except as provided in section 84 and subsection (2) of this section, no action, decision, failure to take action or failure to make a decision by a minister or his or her delegate under this Act shall be reviewed in any court. 1993, c. 28, s. 118 (1).

Exception

(2) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that a minister or his or her delegate failed in a fundamental way to comply with the requirements of Part II respecting a proposal for an instrument. 1993, c. 28, s. 118 (2).

Same

(3) An application under subsection (2) shall not be made later than twenty-one days after the day on which the minister gives notice under section 36 of a decision on the proposal. 1993, c. 28, s. 118 (3).

Protection from personal liability

119. (1) Except in the case of an application for judicial review under section 118, no proceeding for damages or otherwise shall be commenced against a minister, a deputy minister or an employee in a ministry for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act. 1993, c. 28, s. 119 (1); 2006, c. 35, Sched. C, s. 35 (2).

Crown not relieved of liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by any agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort as if subsection (1) had not been enacted. 1993, c. 28, s. 119 (2); 2009, c. 33, Sched. 15, s. 4 (1).

Crown bound

120. This Act binds the Crown. 1993, c. 28, s. 120.

Regulations

121. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing or respecting any matter that this Act refers to as a matter prescribed by the regulations or as otherwise dealt with by the regulations;
- (b) deeming an organizational unit of government to be a ministry and a member of the Executive Council to be the minister for the ministry for the purposes of this Act and the regulations under it;
- (c) deeming a document or class of documents to be either an instrument or class of instruments or a regulation or class of regulations for the purposes of this Act and the regulations under it;
- (d) prescribing ministries and the provisions of Part II that apply in relation to each of them, for the purposes of section 4;
- (e) requiring a person or body to establish and operate the registry;
- (f) respecting the operation and use of the registry;
- (g) prescribing fees that may be charged in relation to use of the registry;
- (h) relating to the giving of notice in the registry;
- (i) prescribing the contents of classes of notice given in the registry;
- (j) classifying proposals for instruments as Class I, II or III proposals, for the purposes of this Act and the regulations under it;
- (k) specifying intervals at which reviews of regulations under subsection 21 (1) shall occur;
- (l) providing for exemptions from Part II in respect of any class of proposal for a policy, Act, regulation or instrument including, but not limited to, exemptions for the purpose of expediting decision-making about proposals;
- (m) providing for the notices required under Part II for two or more proposals relating to the same undertaking to be given together;
- (n) providing for the public participation processes required under Part II for two or more proposals relating to the same undertaking to be undertaken together;
- (o) respecting mediation under section 34, including but not limited to regulations respecting the costs of mediation, the confidentiality of representations made during mediation and the procedures to be followed in mediation;
- (p) clarifying, for the purposes of appeals under Part II,
 - (i) what rights of appeal are equivalent,
 - (ii) what appeals are of a similar nature, and
 - (iii) what grounds for appeal and powers on appeal are similar;
- (q) providing for applications for leave to appeal under section 38 to be heard by one member of the appropriate appellate body, despite section 39 of this Act or any other provision in any Act or regulation;
- (r) providing for applications for leave to appeal to be partly or wholly in writing, despite the provisions of the *Statutory Powers Procedure Act*;
- (s) providing for stays pending decisions on applications for leave to appeal;
- (t) providing for procedures for applications for leave to appeal and for appeals under Part II;
- (u) prescribing fees that may be charged in connection with applications for review under Part IV and applications for investigation under Part V. 1993, c. 28, s. 121 (1); 2009, c. 33, Sched. 15, s. 4 (2).

Classes

(2) A class described in the regulations under this Act may be described according to any characteristic and may be described to consist of or to include or exclude any specified member or thing whether or not with the same characteristics. 1993, c. 28, s. 121 (2).

General or specific regulations

(3) Regulations under this Act may be general or specific in nature. 1993, c. 28, s. 121 (3).

Acts, regulations and instruments of Canada

(4) The authority in this Act to prescribe an Act, regulation or instrument includes the authority to prescribe an Act of Canada, a regulation of Canada or an instrument of Canada. 1993, c. 28, s. 121 (4).

Provisions of Act, regulations

(5) The authority in this Act to prescribe an Act or regulation includes the authority to prescribe one or more provisions of the Act or regulation. 1993, c. 28, s. 121 (5).

122. REPEALED: 2002, c. 24, Sched. B, s. 25.

123. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1993, c. 28, s. 123.

124. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1993, c. 28, s. 124.

Français

[Back to top](#)