

Chapter 1

The Environmental Bill of Rights





The Environmental Bill of Rights: A strong tool for people and the environment.

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1.1 The Environmental Bill of Rights

Ontario's Environmental Bill of Rights, 1993 (EBR) is an environmental law unlike any other in the world. The purposes of the EBR are to:

- protect, conserve and, where reasonable, restore the integrity of the environment,
- provide sustainability of the environment, and
- protect the right of Ontarians to a healthful environment.

To achieve these goals, the EBR requires the Ontario government to consider the environment in its decision making. Certain ministries, known as “prescribed ministries,” have specific responsibilities under the EBR.

During the ECO's 2017/2018 reporting year (April 1, 2017 – March 31, 2018), there were 17 prescribed ministries (see Prescribed ministries during the ECO's 2017/2018 reporting year). On June 29, 2018, after the end of the ECO's 2017/2018 reporting year, the Ontario government made a number of changes to EBR-prescribed ministries, changing ministry names and reducing the total number of prescribed ministries to 15. For purposes of this report, the ECO uses the new ministry names, unless reference to the previous ministry names is required for clarity.

Prescribed ministries during the ECO's 2017/2018 reporting year

Agriculture, Food, and Rural Affairs (OMAFRA)

Economic Development and Growth (MEDG)
(now called the Ministry of Economic Development, Job Creation and Trade, or MEDJCT)

Education (EDU)

Energy (ENG) (now part of the combined Ministry of Energy, Northern Development and Mines, or ENDM)

Environment and Climate Change (MOECC)
(now called the Ministry of the Environment, Conservation and Parks, or MECP)

Government and Consumer Services (MGCS)¹

Health and Long-Term Care (MOHLTC)

Housing (MHO) (now part of the combined Ministry of Municipal Affairs and Housing, or MMAH)

Indigenous Relations and Reconciliation (MIRR)
(now called the Ministry of Indigenous Affairs, or IAO)

Infrastructure (MOI)

Labour (MOL)

Municipal Affairs (MMA) (now part of the combined Ministry of Municipal Affairs and Housing, or MMAH)

Natural Resources and Forestry (MNRF)

Northern Development and Mines (MNDM)
(now part of the combined Ministry of Energy, Northern Development and Mines, or ENDM)

Tourism, Culture and Sport (MTCS)

Transportation (MTO)

Treasury Board Secretariat (TBS)

1. The Technical Standards and Safety Authority (TSSA) is an independent, not-for-profit administrative authority that is responsible for administering regulations under the Technical Standards and Safety Act, 2000 on behalf of the MGCS. For the most part, the TSSA is responsible for carrying out the EBR obligations of the MGCS.



While the government has the primary responsibility for protecting the natural environment, the EBR recognizes that the people of Ontario have the right to participate in environmentally significant decision making, as well as the right to hold the government accountable for those decisions. The EBR empowers Ontarians to participate in environmental decision making in a number of different ways.

The people of Ontario have the right to participate in environmentally significant decision making.

The EBR's "tool kit" is a collection of government obligations and public participatory rights that work together to help ensure that the purposes of the law are met. The EBR tool kit includes:

- the oversight role of the Environmental Commissioner of Ontario (see section 1.2)
- Ministry Statements of Environmental Values (see section 1.3)
- requirements for public notice and consultation on environmentally significant proposals for government policies, acts, regulations and "instruments" (permits, approvals and licences) through the Environmental Registry (see section 1.4)
- the right of Ontarians to seek leave to appeal (i.e., challenge) government decisions on certain instruments, the right to sue for harm to the environment or a public resource, and whistleblower protection (see section 1.5), and
- the right of Ontarians to submit an application to the government asking it to review an existing law, policy or regulation, or the need for a new one ("applications for review"), or to ask the government to investigate an alleged contravention of an environmental law ("applications for investigation") (see Chapter 2).

See the ECO's website (eco.on.ca) for an up-to-date list of ministries, laws and instruments that are subject to the EBR.

1.2 The Environmental Commissioner of Ontario

The Environmental Commissioner of Ontario (ECO) is an independent Officer of the Legislative Assembly. Often referred to as Ontario's "environmental watchdog," the ECO is responsible for reviewing and reporting on the government's compliance with the EBR, and how the public is using their EBR rights. To ensure that the EBR is upheld, the ECO monitors how prescribed ministries exercise their discretion and carry out their responsibilities under the law.

Each year, the ECO reports on whether ministries have complied with the EBR, and whether ministry decisions were consistent with the purposes of the law. One of the ways that we report on ministry compliance with the EBR is by issuing "EBR Report Cards" for each prescribed ministry (see Chapter 3). We also report on the public's use of EBR tools. Further, the ECO reports on the progress of the Ontario government in keeping the EBR up to date, which it must do by prescribing new ministries, laws and instruments that are environmentally significant.

The ECO is responsible for reviewing and reporting on the government's compliance with the EBR, and how the public is using their EBR rights.

The ECO also reviews and reports on a wide variety of environmental topics, often relating to recent Ontario government decisions or issues raised by members of the public. Additionally, since 2009, the ECO has reported annually on the progress of activities in Ontario to reduce emissions of greenhouse gases, and to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels.

The ECO reports to the Legislative Assembly of Ontario – not to the governing political party or to a ministry.

1.2.1 Education and outreach by the ECO in 2017/2018

People across Ontario face a wide range of environmental issues every day, and they often don't know where to turn for help. Our office receives questions about many environmental issues for various levels of government. For example, we receive queries about local concerns on issues such as a new subdivision or an impact to a neighbourhood creek, to broader concerns about our changing climate or how the boreal forest is being conserved.

Every year, our office receives about 1,400 inquiries by phone and e-mail. Common concerns include difficulties accessing information about environmental assessment processes, questions about using the Environmental Registry, and enquiries about what we have previously reported on a variety of topics.

We also help the public understand and navigate their environmental rights, so they can engage directly with provincial ministries on environmental decisions that matter to them. We always try to connect people with the information that they require. That includes redirecting some people to different branches of the Ontario government, and sometimes to municipalities or the federal government.

Our many reports are easily accessible on our website: eco.on.ca. People are using our online information more frequently – our website traffic grew by 40% compared to the previous year. Ontarians can also follow the ECO through our blog, Twitter, Facebook and LinkedIn accounts, as well as our YouTube channel. Stay tuned for more updates to the ECO's website in the coming year.

More than 2,300 users are now signed up for our Environmental Registry Alert service, available on eco.on.ca, to receive e-mail alerts when topics that interest them show up on the Environmental Registry. Until the Ministry of the Environment, Conservation and Parks (MECP) completes its ongoing overhaul of the Environmental Registry, our Environmental Registry Alert

service remains the most convenient way to track public comment opportunities offered by Ontario ministries on environmental matters. ECO staff will continue to offer support and assistance in this important project. More than 2,100 people also follow our @EBR_EnvRegistry account to be notified of what's on the Environmental Registry via Twitter.

Media coverage of our reports to the Ontario legislature has shown a steady upward trend over the past four years. The ECO was mentioned in over 1,600 media stories during our 2017/2018 reporting year. The Environmental Bill of Rights and Environmental Registry were mentioned in many more. In addition to our three annual reports, the ECO's October 2017 Special Report, *Beyond the Blue Box*, received significant attention, which continued into spring 2018.

Commissioner Saxe and other staff continue to connect with thousands of Ontarians through speaking engagements and webinars. The ECO hosted public webinars to provide overviews of our reports. In addition, we delivered webinars hosted by Sustainability CoLab, EcoSchools, Forests Ontario, and Faith and the Common Good. The Commissioner also has visited many places, ranging from Aamjiwnaang First Nation in Sarnia to the Invasive Species Research Centre in Sault Ste. Marie.

Bringing the latest climate science to the attention of Ontario's key public policy leaders was a top priority for the Environmental Commissioner this year. Throughout this reporting period, Commissioner Saxe continued to give presentations about climate change to dozens of audiences in Ontario's government, industry, and financial sectors.

Educating Ontarians about their rights under the EBR is an ongoing priority for our office. The Environmental Commissioner and her staff promote the EBR toolkit in their presentations to audiences across the province. In addition to more than 80 report-related presentations focused on topics ranging from endangered species to wastewater, the ECO delivered 35 presentations specifically focused on the EBR toolkit. Audiences



included students from elementary schools to colleges and universities; industry and government, such as events hosted by the Ontario Woodlot Association, City of London and City of Hamilton; and non-profit groups like the Oak Ridges Moraine Land Trust, Ontario Nature, Pickering Naturalists, and Waterloo Region Nature.

The ECO is responsible for reviewing and reporting on the government's compliance with the EBR, and how the public is using their EBR rights.

To celebrate World Environment Day in June 2018, we released our educational guide - The Environmental Bill of Rights: Your Environment, Your Rights - in 10 additional languages. Providing such educational services is important for the ECO, as more than a quarter of Ontario's population identifies a first language that is not English. On National Indigenous Peoples Day later that month, we released this guide to environmental rights in Cree, Oji-Cree and Ojibwe.

The ECO's Resource Centre, with an extensive collection of environmental documents, is also open to the public. Altogether, the ECO is proud of our growing success in reaching and serving Ontarians. The ECO is always on the lookout for new audiences to share information about the citizen rights toolkit available under the EBR, and to update Ontarians on current environmental issues. The ECO is happy to offer overview presentations about the EBR to audiences across Ontario, including lecture and classroom settings, service clubs, private sector groups, ratepayer groups and non-profits. For more information, contact us at commissioner@eco.on.ca.

1.3 Statements of Environmental Values

The EBR requires each prescribed ministry to develop and publish a Statement of Environmental Values (SEV). An SEV describes how the ministry will integrate environmental values with social, economic and scientific considerations when it makes environmentally significant decisions; ministries must consider their SEVs when making decisions that might significantly affect the environment. The ministry does not always have to conform to its stated values, but it must explain how it considered them when making a decision.

1.3.1 Keeping SEVs up to date

Prescribed ministries are not required to review or update their SEVs on any regular basis. However, some ministries do so to reflect an updated mandate or to include additional values.

For example, in the 2017/2018 reporting year the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), the Ministry of Economic Development, Job Creation and Trade (MEDJCT) and the Ministry of Natural Resources and Forestry (MNRNF) all proposed changes to their SEVs to include, among other things, commitments related to climate change, the consideration of Indigenous peoples and a five year review of the SEV. Additional ministries have since proposed similar updates to their respective SEVs.

MNRNF staff proactively contacted the ECO in March 2018 to share the ministry's draft updated SEV, which includes additional changes such as a commitment to reviewing the SEV every five years, and a commitment to considering a new, detailed list of principles when developing policies, acts, regulations and instruments. The ECO applauds the MNRNF for its efforts to make its SEV more meaningful, and for its plans to build awareness of the SEV within the ministry through staff training and new implementation tools.

Prescribed ministries may also be required to update their SEVs or prepare new SEVs when they undergo significant changes, such as combining with another ministry or splitting into multiple ministries.

1.4 Public notice and consultation using the Environmental Registry

The Environmental Registry is the key EBR tool facilitating public engagement in government environmental decision making. The Environmental Registry is a website that provides the public with access to information about environmentally significant proposals put forward by the Ontario government, and allows the public to provide comments on those proposals. Once the government has made a decision whether to proceed with a proposal (or not), information about the government's decision is also published on the Environmental Registry.

Ministries must also use the Environmental Registry to give notice when they are relying on an exception under the EBR to excuse the ministry from following the usual public consultation requirements of the act. Occasionally, ministries also use the Environmental Registry to share environmentally significant information that they are not required to post, or that they are required to post under legislation other than the EBR.

The Environmental Registry also provides other information that may help the public exercise their EBR rights, including:

- notice of appeals and leave to appeal applications related to certain instruments
- background information about the EBR
- links to the full text of the EBR and its regulations
- links to prescribed ministries' Statements of Environmental Values
- in some cases, links to the full text of proposed and final policies, acts, regulations and instruments, and
- in some cases, links to other information relevant to a proposal.

The Ministry of the Environment, Conservation and Parks (MECP) hosts and maintains the Environmental Registry. Currently, the Environmental Registry can be accessed at ebr.gov.on.ca. The ministry also is in the process of creating a new, modernized Environmental Registry (see section 1.4.6).

The ECO monitors ministries' use of the Registry to ensure that prescribed ministries are fulfilling their responsibilities under the EBR and respecting the public's participation rights. In 2017/2018, ministries posted over 1,500 proposals and over 1,800 decisions on the Environmental Registry for policies, acts, regulations, licences, permits and other environmental approvals, and members of the public submitted thousands of comments. Ministries also posted 133 information notices and 2 exception notices. See Table 1 for a list of the most commented-on proposals for which the government posted decision notices on the Environmental Registry in 2017/2018. See Figure 1 and Figure 2, below, for a breakdown of new notices (i.e., proposals, information notices and exception notices) posted on the Environmental Registry, by ministry, in 2017/2018.



Table 1. Top 10 most commented-on government proposals decided and posted on the Environmental Registry in 2017/2018.

	Proposal	# of Comments Received
1	Bottled Water Technical Guidance Document	8,431
2	A regulation establishing a new water bottling charge	7,962
3	Canada-Ontario Action Plan for Lake Erie	2,227
4	Planning Ontario's Energy Future: A Discussion Guide to Start the Conversation	1,755
5	Amended Niagara Escarpment Plan, 2016 (part of the Co-ordinated Land Use Planning Review)	902
6	Algonquin Provincial Park Management Plan Amendment	783
7	A Wetland Conservation Strategy for Ontario 2016-2030	654
8	Cap and Trade Program Design Options	575
9	Ontario Cap and Trade Program: Offsets Credits Regulatory Proposal	549
10	Discussion Paper: Addressing Food and Organic Waste in Ontario (Resource Recovery and Circular Economy Act, 2016)	527

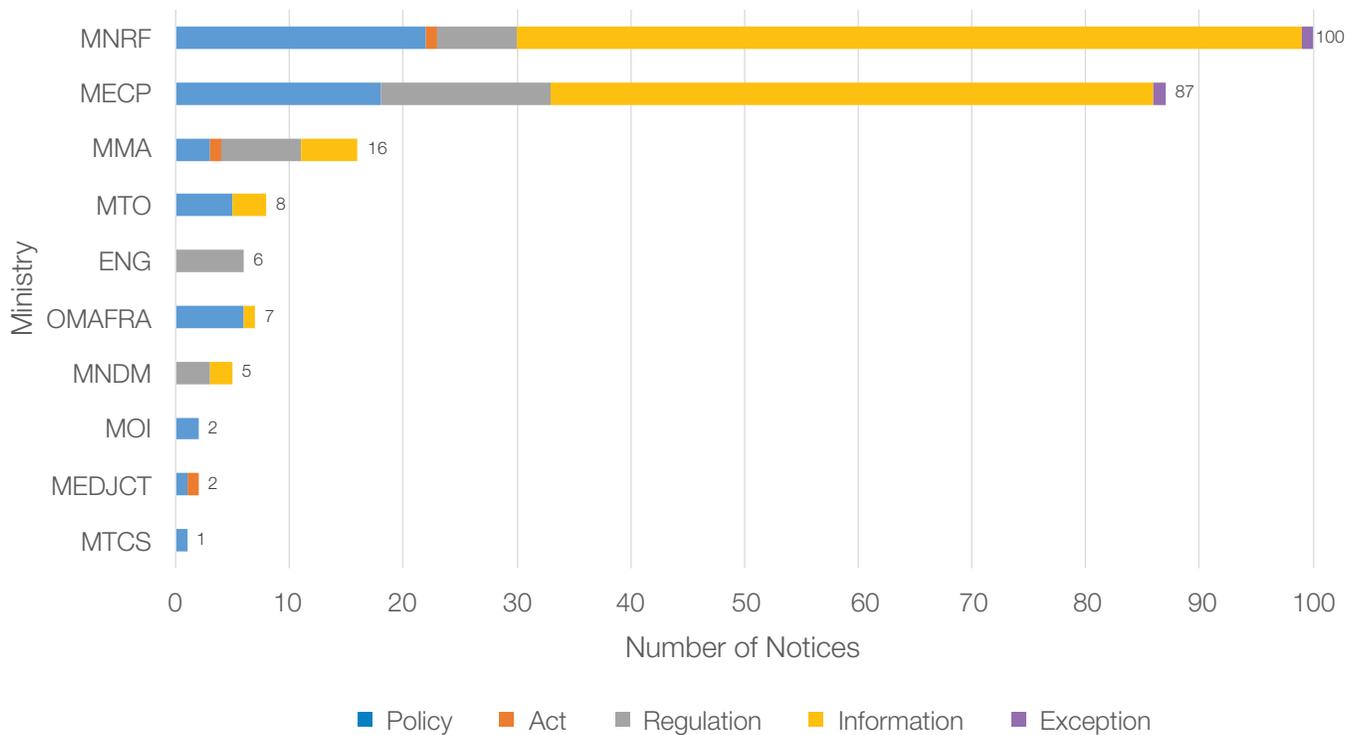


Figure 1. Total number of policy, act, and regulation proposals and information and exception notices posted on the Environmental Registry in 2017/2018, by ministry. Note that six prescribed ministries (EDU, MOHLTC, MHO, IAO, MOL, and TBS) did not post any notices in 2017/2018.

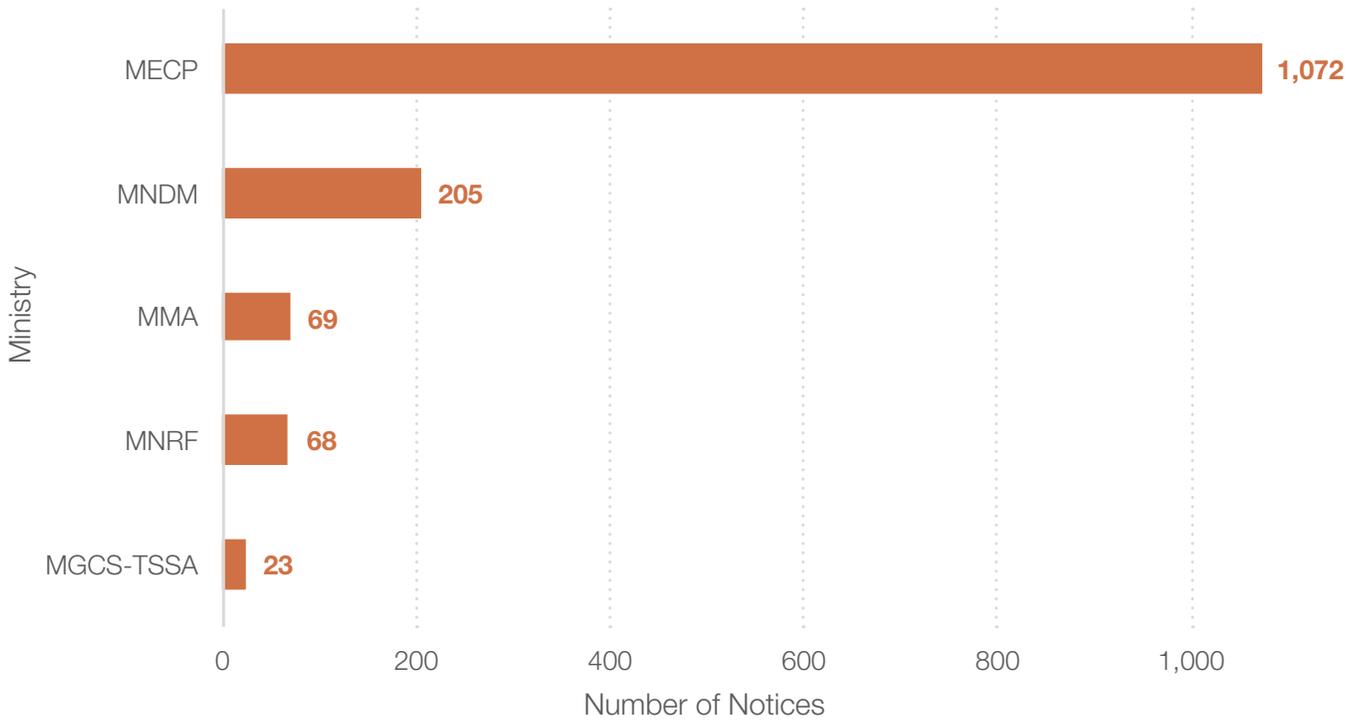


Figure 2. Total number of instrument proposal notices posted on the Environmental Registry in 2017/2018, by ministry.

1.4.1 Policies, acts and regulations

Prescribed ministries are required to give notice of and consult on environmentally significant proposals for policies, acts and regulations on the Environmental Registry. Ministries must provide at least 30 days for the public to comment on any proposed environmentally significant act or policy, as well as regulations made under prescribed acts; there are 40 acts prescribed (in whole or in part) under the EBR. The public can submit comments online, by mail or by e-mail. Ministries must consider the public's comments when making a decision on a proposal. Once a decision is made, ministries must give notice of the decision promptly on the Environmental Registry, explaining how the public's comments affected the final decision.

During the ECO's 2017/2018 reporting year, 11 prescribed ministries posted 99 proposal notices and 81 decision notices for policies, acts and regulations on the Environmental Registry (see Figure 3).

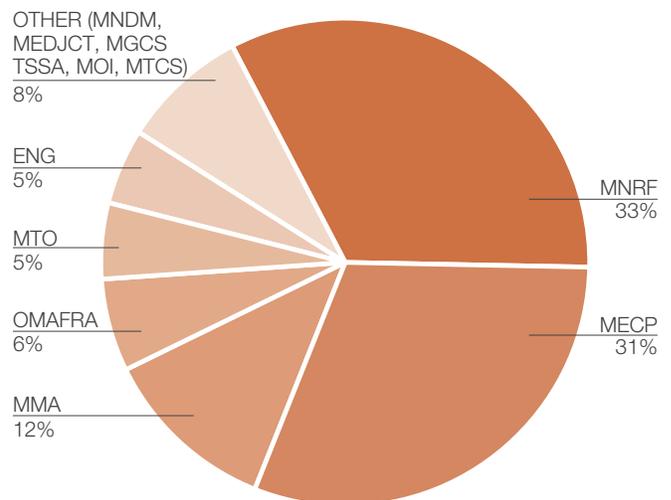


Figure 3. Percentage of all policy, act and regulation notices (proposals and decisions) posted on the Environmental Registry by prescribed ministry in the 2017/2018 reporting year. Note that EDU, MOHLTC, MHO, IAO, MOL, and TBS did not post any notices.



Ministry of the Environment, Conservation and Parks fails to consult the public on the repeal of Ontario’s cap and trade program

In July 2018 (after the end of the ECO’s 2017/2018 reporting year), the Ministry of the Environment, Conservation and Parks (MECP) made an environmentally significant decision to repeal the province’s cap and trade program – designed to combat climate change – without consulting the public. Under the EBR, the ministry should have posted a proposal notice for the regulation on the Environmental Registry, consulted the public for a minimum of 30 days, and considered any public comments submitted before making a final decision.

Instead, the ministry inappropriately posted an exception notice (#013-3221) on the Environmental Registry to notify the public of the government’s decision to file a regulation repealing the cap and trade program. The notice stated that “the Minister was of the opinion that the recent Ontario election was a process of public participation that was substantially equivalent to the process required under the EBR and that ... the government made a clear election platform commitment to end the cap and trade program.”

A proposal that has already undergone a process of public participation that is substantially equivalent to

The ECO strongly disagrees that an election is a process of public participation substantially equivalent to the process required by the EBR.

the process required by the EBR can be excepted from the EBR’s consultation requirements. The ECO strongly disagrees that an election is a process of public participation substantially equivalent to the process required by the EBR. The public’s right to know about and comment on environmentally significant government proposals, and to know the effects of their comments on final policy decisions, is wholly separate from the democratic mandate the public gives a party through an election.

This is the first time in the EBR’s history that a ministry has used this rationale in deciding to post an exception notice instead of a proposal notice, and it should be the last. The public has much to contribute to good environmental policy, and consultation via the Environmental Registry has often resulted in better decision making and better results for Ontario.

1.4.2 Permits, licences and other approvals

During the ECO’s 2017/2018 reporting year, five ministries (MGCS, MECP, MMA, MNRF and MNDM) were also prescribed for the purposes of giving notice and consulting on certain proposed “instruments” (e.g., permits, licences and other approvals) that are issued by those ministries. Currently, select instruments issued under 19 different acts are subject to the EBR.

These ministries must give notice on the Environmental Registry of any proposals and decisions related to those instruments, such as the decision to issue or revoke a prescribed permit.

This year, these ministries posted 1,437 proposal notices and 1,738 decision notices for instruments on the Environmental Registry (see Figure 4).

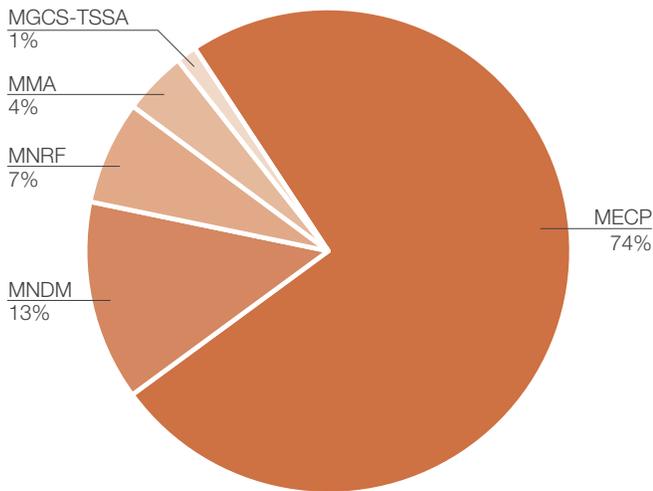


Figure 4. Percentage of all instrument notices (proposals and decisions) posted on the Environmental Registry by prescribed ministry in the 2017/2018 reporting year.

1.4.3 Information notices

Sometimes the government proposes or makes a decision that could affect the environment, but the EBR does not require the responsible ministry to post a proposal notice on the Environmental Registry. In such a case, the ministry may choose to inform the public by voluntarily posting an “information notice” on the Registry. For example, the MNRF voluntarily posts information notices to let the public know when it proposes to issue certain types of permits under the Endangered Species Act, 2007 that the EBR does not require to be posted.

Ministries also use information notices to fulfill requirements of other statutes to provide information to the public. These are some of the most common types of information notices posted on the Environmental Registry. Examples include amendments to renewable energy approvals (required under the Environmental Protection Act) and approved source protection plans (required under the Clean Water Act, 2006).

In the 2017/2018 reporting year, 6 ministries posted 133 information notices. The ECO assessed all information notices in the reporting year and judged them all as appropriate uses of the Environmental Registry. For example, in August 2017, the MNRF

made good use of an information notice (#013-1070) to notify the public that it had updated the Lakes and Rivers Improvement Act Administrative Guide. The ministry updated the Guide to reflect new legislation and ministry name changes and to provide policy clarification, but did not include any changes with environmentally significant impacts or consequences.

1.4.4 Exception notices

In certain situations, the EBR relieves prescribed ministries of their obligation to consult the public before making an environmentally significant decision. In such situations, ministries must instead post an “exception notice” to inform the public of the decision and explain why it did not first post a proposal notice and consult the public.

Ministries can post an exception notice instead of a proposal notice in two main circumstances. First, a ministry may post an exception notice when the ministry must make a decision quickly in order to deal with an emergency, and the delay in waiting for public comment would result in danger to public health or safety, harm or serious risk to the environment, or injury or damage to property. Second, a ministry can notify the public about an environmentally significant proposal using an exception notice when the proposal will be, or has already been, considered in another public participation process that is substantially equivalent to the process required under the EBR.

In the 2017/2018 reporting year, the MECP and the MNRF each posted one exception notice, and the ECO judged them both to be appropriate uses of the Environmental Registry.

However, as discussed in section 1.4.1 above, the MECP posted an exception notice in July 2018 (outside of the ECO’s 2017/2018 reporting year) for the repeal of Ontario’s cap and trade program. The ECO believes that the ministry’s use of an exception notice in that case was inappropriate, and an example of egregious non-compliance with the EBR that denied the public its right to participate in an important environmentally significant decision.



1.4.5 No chance to comment: ministry failures to post environmentally significant proposals

The ECO has a statutory duty to report to the Ontario legislature on how well ministries are fulfilling their obligations under the EBR to notify and consult the public on environmentally significant proposals using the Environmental Registry. The ECO's evaluation is largely contained within our EBR report cards (see Chapter 3), with the exception of determining if any prescribed ministries failed to properly post proposal notices for environmentally significant policies, regulations or acts to the Environmental Registry. When ministries fail to post environmentally significant proposals on the Environmental Registry, the public does not have a chance to comment on the proposal, or to be informed of the effect of their comments.

This year, the ECO identified three instances in which prescribed ministries failed to post environmentally significant proposals on the Environmental Registry (see Table 2) – a disappointment compared to last year, when there were no such cases of non-compliance that we found. The ECO reminds all prescribed ministries to post every environmentally significant proposal on the Environmental Registry for public consultation.

Table 2. Ministry non-compliance with the EBR by failing to post proposal notices on the Environmental Registry between April 1, 2017 and March 31, 2018.

Ministry of Agriculture, Food and Rural Affairs (OMAFRA)
Northern Livestock Pilot Action Plan
Ministry of Energy, Northern Development and Mines (ENDM)
Long Term Energy Plan
Ministry of Health and Long-term Care (MOHLTC)
Guidelines for implementing Modernized Ontario Public Health Standards regarding healthy environments and safe water

Guidelines for implementing Modernized Ontario Public Health Standards regarding healthy environments and safe water

The Ministry of Health and Long-Term Care publishes the Ontario Public Health Standards (OPHS), which contain goals, program outcomes and requirements for “Healthy Environments” and “Safe Water” that must be attained by boards of health. The Ministry of Health and Long-Term Care produces protocols and guidelines that provide direction to boards of health on meeting the OPHS requirements. The Updated Recreational Water Protocol (2018), Operational Approaches to Recreational Water Guideline (2018), Small Drinking Water Systems Risk Assessment Guideline (2018), and Healthy Environments and Climate Change Guideline (2018) all contain direction that the ECO believes has environmental impacts. For example, the Operational Approaches to Recreational Water Guideline has changed the way public health units monitor and report on E. coli in recreational waters to align with the national guideline – a change that sparked some concern from members of the public working to protect Great Lakes water quality who would have liked to comment on the proposed change.

The ECO considers all of these protocols and guidelines to be environmentally significant. We believe that the ministry should have posted a proposal for these documents on the Environmental Registry, so that members of the public who were concerned about the changes could have expressed their views to the ministry and been assured that the ministry would consider their comments before finalizing the documents.

The ECO met with MOHTLC staff to discuss the ministry's obligations under the EBR regarding the protocols and guidelines. Although staff indicated that the MOHLTC would post an information notice on the Environmental Registry containing all the updated protocols and guidelines when they were complete, the updated protocols and guidelines are now available on the ministry website but as of September 2018 no information notice has been posted.

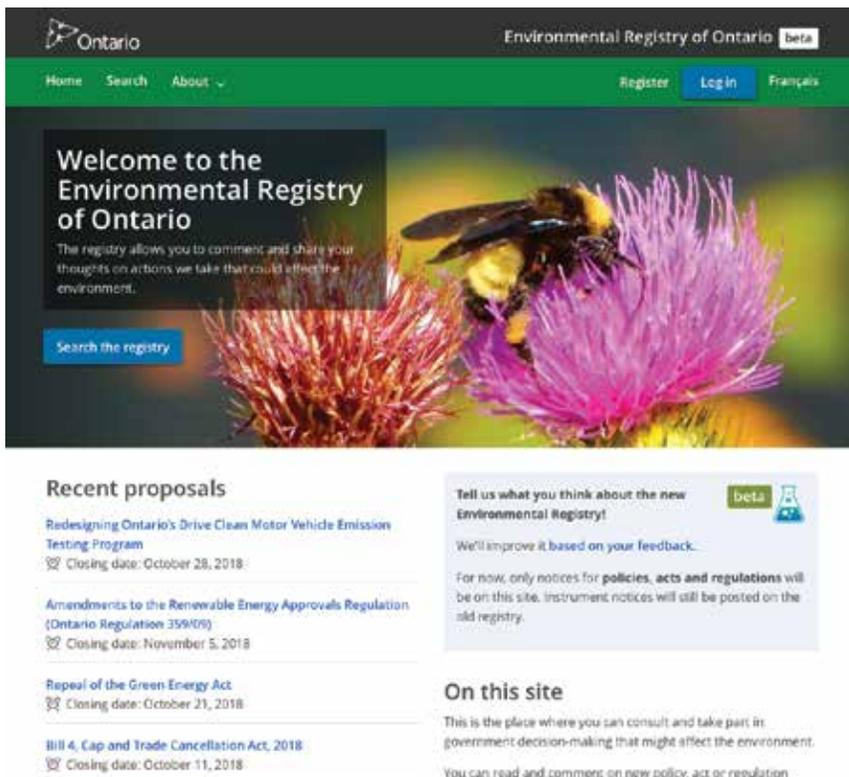
1.4.6 An EBR success story: A new Environmental Registry for Ontario

The Environmental Registry is one of the key innovations of the Environmental Bill of Rights. Originally launched as a bulletin board system, over the years it evolved into a complex website that Ontarians use to find out about and provide input into important environmental decisions. A working, easy to use registry is critical for people to be able to exercise their EBR right to participate in the Ontario government's environmental decision making.

In recent years, it became clear that the existing Environmental Registry platform, which has not been updated since 2007, has reached the end of its useful life. It is hard to read, difficult to search, and incompatible with mobile devices – among many other problems (see Part 1.2.1 of the ECO's 2015 Environmental Protection Report). The ECO has highlighted these deficiencies a number of times and urged the Ministry of the Environment, Conservation and Parks (MECP) to overhaul the Environmental Registry.

Beginning in 2016, following requests by the ECO, a new Environmental Registry for Ontario finally started to become a reality. The MECP started out by holding an "ideation session" that brought together ministry staff, ECO staff and members of the public to brainstorm ways the Environmental Registry could be improved. Then, in April 2017, the MOECC began to collaborate with the Ontario Digital Service. This team conducted extensive user research, which resulted in more than 50 hours of discussions with ministry staff, environmental law firms, advocacy groups, municipalities, business owners, concerned citizens, and the Environmental Commissioner.

Based on this research, the team produced prototypes for a new registry and brought in users for testing. These prototypes were refined and transformed into the new Environmental Registry of Ontario, which was publicly launched in beta in February 2018. The team formally solicited feedback from users for the first four months of the initial launch and continues to consult with users as new features are developed.



Source: ero.ontario.ca



As of September 2018, the beta version of the Environmental Registry only included recent notices for policies, acts and regulations, but ministries could also post new bulletins (known as information notices on the old Registry) and exception notices. The MECP anticipated that the new Registry would soon include all types of notices, including new instrument notices. Eventually, the full archive of notices on the Environmental Registry will also be carried over to the new site.

The mobile-friendly and highly accessible site includes a number of the features that users have been requesting for years, including vastly improved search capabilities. Notably, the new Registry has a built in notification function so that users can receive alerts when notices containing selected keywords are posted, when a proposal is updated or decided, and when their comments are moderated. The MOECC and Ontario Digital Service team also put an emphasis on making the new registry easier for users to understand, and provided extensive “plain language” training for ministry staff who are responsible for putting information on the Registry.

For now, both the new Environmental Registry of Ontario and the old Environmental Registry exist in parallel, to ensure that Ontarians can always access the critical information on the Registry while all of the needed features are added to the new site. Once all the required features are integrated and working well, the new Environmental Registry will fully replace the old site.

The ECO commends the MECP and the Ontario Digital Service for their outstanding work on the new Environmental Registry of Ontario.

The ECO commends the MECP and the Ontario Digital Service for their outstanding work on the new Environmental Registry of Ontario. By emphasizing the importance of the user experience, while still accommodating legal requirements and government needs, this team developed a cutting edge platform

that will make it easier for the public to access important environmental information and participate in environmental decision making. The ECO looks forward to watching the new Registry platform evolve and eventually replace the old site. In the meantime, we encourage you to explore the new site. It can be accessed at ero.ontario.ca.

1.5 Appeals, lawsuits and whistleblower protection

The EBR provides Ontarians with increased access to courts and tribunals for the purposes of environmental protection. It provides a special right for members of the public to seek leave to appeal (i.e., permission to challenge) certain ministry decisions regarding instruments. For example, a member of the public could use this EBR right to challenge a decision by the Ministry of the Environment, Conservation and Parks (MECP) to issue an approval for a waste disposal site in their community.

Ontario residents may also take court action to prevent harm to a public resource or to seek damages for environmental harm caused by a public nuisance. Finally, the EBR provides enhanced protection for employees who suffer reprisals from their employers for exercising their EBR rights or for complying with, or seeking the enforcement of, environmental rules.

1.5.1 Appeals of instruments

Instruments that are subject to EBR consultation can be appealed in several different ways. Many laws provide individuals and companies with a right to appeal government decisions that directly affect them, such as a decision to deny, amend or revoke an instrument that they applied for or that the government issued to them. In some cases, laws also give third parties (e.g., members of the public) a direct right to appeal ministry decisions about instruments – third parties can appeal decisions on some Planning Act instruments² and can appeal decisions on renewable energy approvals under the Environmental Protection Act. Finally, the EBR allows third parties to seek leave to appeal decisions

on many types of instruments that are subject to EBR consultation, including environmental compliance approvals (ECAs) for air, sewage and waste, and permits to take water.

Appeals of EBR-prescribed instruments are generally heard by the Environmental Review Tribunal, with the exception of Planning Act appeals, which are heard by the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board).

When someone challenges an instrument that is subject to EBR consultation in any of the ways described above, the ECO notifies the public by posting an appeal notice on the Environmental Registry. We post another notice when the matter is concluded to inform the public of the outcome.

During the 2017/2018 reporting year, the ECO posted notices on the Environmental Registry for six new appeals and one application for leave to appeal. Instrument holders filed five of the appeals, while a third party filed one appeal challenging the amendment of a renewable energy approval. The third party application for leave to appeal challenged an environmental compliance approval for a waste facility; the Environmental Review Tribunal denied that application.

Over the course of this reporting year, the Environmental Review Tribunal and the Ontario Municipal Board issued decisions on 18 appeals and leave to appeal applications related to EBR-prescribed instruments, including decisions on 13 appeals that were filed in previous years. This year most appeals were granted or granted in part, or were resolved through a settlement agreement (see Figure 5).

2. On April 3, 2018, amendments to the Planning Act came into force that eliminate the ability to appeal provincial decisions on official plans and official plan updates, including conformity exercises. In addition to no longer being appealable directly under the Planning Act, such decisions are also no longer appealable by third parties under the EBR.

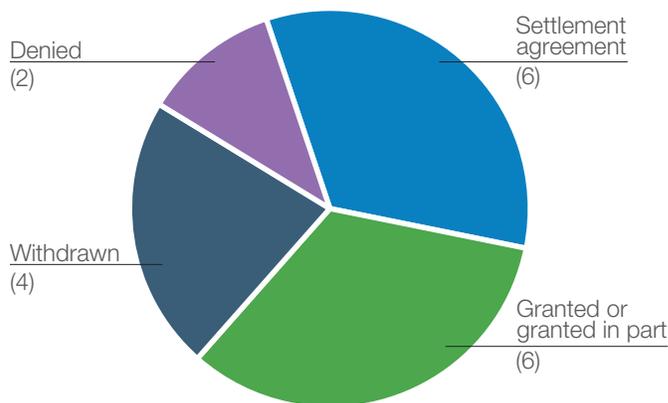


Figure 5. Outcome of appeals and leave to appeal applications decided in the 2017/2018 reporting year.

1.5.2 Lawsuits and whistleblower protection

The ECO is not aware of any new lawsuits brought under the EBR for public nuisance or harm to a public resource during the 2017/2018 reporting year. Similarly, the ECO is not aware of any employer reprisal (“whistleblower”) cases in this reporting year.

1.6 Keeping the EBR in sync

To be effective, the EBR needs to be kept up to date with new laws, new ministries, and the shuffling of government portfolios.

When ministries are “prescribed” under the EBR (i.e., made subject to the law by being listed in a regulation), they must comply with the EBR’s public notice and consultation requirements for environmentally significant policies, acts and regulations. They must also develop a Statement of Environmental Values and consider those values when making any environmentally significant decisions. Ministries can also be prescribed for applications for review, and environmentally significant acts administered by those ministries can be made subject to applications for investigation.



Making certain permits, licences, and other approvals subject to the EBR is important because it then requires ministries to comply with the EBR's public notice and consultation requirements for those instruments. Generally, prescribed instruments are also subject to applications for review and investigation. In many cases, making instruments subject to EBR requirements also gives members of the public the right to seek leave to appeal decisions about those instruments.

The ECO encourages the Ministry of the Environment, Conservation and Parks (MECP) (the ministry responsible for administering the EBR and its regulations) to work with other ministries to regularly update the EBR regulations (O. Reg. 73/94 and O. Reg. 681/94) to ensure Ontario residents can continue to participate in all environmentally significant government decisions.

1.6.1 ECO request to subject additional ministries, agencies and laws to EBR public participation rights

This year, the ECO undertook a comprehensive review of environmentally significant ministries, agencies and acts that have yet to be prescribed under the EBR. We compiled a priority list of these and sent it to the then Premier of Ontario, requesting that the government bring these important laws and organizations under the EBR umbrella to enable the public to participate when environmentally significant changes are made to laws and regulations. Below, you can see a list of ministries, agencies and acts that the ECO recommended be made subject to the EBR. You can view our letter to the Premier, including the complete list and the rationale for our requests, on our website at eco.on.ca.

We received a non-committal response to our request from the then Premier, and acknowledgements of our request from some of the ministries who would need to work with the Ministry of the Environment, Conservation and Parks to prescribe themselves or acts or agencies under their jurisdiction, namely the Ministry of Finance, the Ministry of Transportation, the Ministry of Infrastructure, and the Ministry of Natural Resources

and Forestry. However, to date little progress has been made towards bringing these environmentally significant ministries, agencies and acts under the EBR umbrella.

Ministries and agencies recommended by the ECO for prescription under the Environmental Bill of Rights:

- Metrolinx
- Ministry of Finance
- Ontario Heritage Trust

Acts recommended by the ECO for prescription under the Environmental Bill of Rights:

- Drainage Act
- Weed Control Act
- Building Code Act, 1992
- Municipal Act, 2001
- City of Toronto Act, 2006
- Infrastructure for Jobs and Prosperity Act, 2015
- Electricity Act, 1998
- Energy Consumer Protection Act, 2010
- Ontario Energy Board Act, 1998 (currently only partially prescribed)
- Wilderness Areas Act
- Forestry Act
- Algonquin Forestry Authority Act
- Ontario Forest Tenure Modernization Act, 2011
- Forest Fires Prevention Act

1.7 The ECO Recognition Award: the Mushkegowuk Climate Summits

Each year, we ask prescribed ministries to submit exceptional programs and projects to be considered for the ECO's Recognition Award. This award is meant to recognize and praise public servants from a ministry prescribed under the EBR for their hard work in an initiative that is innovative, goes above and beyond legal mandates of the ministry, better Ontario's environment, and meets the requirements and purposes of the EBR. For a list of past recipients of the ECO's Recognition Award, see Table 3.

This award is meant to recognize and praise public servants for their hard work.

This year, the ECO received nominations for 13 projects and programs from four ministries. The ECO congratulates all the ministry staff who implemented these exceptional environmental projects.

After careful consideration, the ECO has decided to give the 2018 ECO Recognition Award to staff from the Ministry of the Environment, Conservation and Parks (MECP), the Ministry of Natural Resources and Forestry (MNRF) and the Ministry of Energy, Northern Development and Mines (ENDM) for their role in supporting the Mushkegowuk Climate Summits.

The concept for the Climate Summits was developed by the Mushkegowuk Tribal Council, informed by the vision of its member First Nations to understand and protect the James and Hudson Bay Lowlands. The ministries, along with Laurentian University, provided funding, advice, guidance and the participation of scientific experts at the summits. The multiple partners involved in this year's recipient project, as well as the lead role of Mushkegowuk Council and communities,

demonstrate the value of partnerships and the importance of collaboration in working together to further shared environmental goals in Ontario.

The Hudson Bay Lowlands cover about half of Ontario's Far North, and are a globally significant carbon store. The peatlands in this region are currently helping to cool the planet, but the carbon sink is increasingly vulnerable as temperatures warm. Climate change is already having impacts for people across Ontario, and these impacts are even more pronounced for northern Indigenous communities that rely on these ecosystems for their food, medicine, livelihoods and cultural practices. There is a growing need to better understand the role of the Hudson Bay Lowlands in the global climate system, as well as the impacts that climate change is expected to have on the vast carbon stores in this region.

The MECP, the MNRF and the ENDM are collaborating with the Omushkego people and the Mushkegowuk Council, to begin to fill knowledge gaps and develop more robust climate change strategies. The Mushkegowuk Council initiated this partnership to address shared concerns about climate change impacts and to promote the exchange of Traditional Knowledge and western scientific information.

The Mushkegowuk Council

The Mushkegowuk Council is the representative organization for seven First Nations in the Western James Bay and Hudson Bay region: Attawapiskat First Nation, Kashechewan First Nation, Fort Albany First Nation, and Moose Cree First Nation along the James Bay Coast; and Taykwa Tagamou First Nation, Missanabie Cree First Nation, and Chapleau Cree First Nation farther South in the Boreal Shield. The Mushkegowuk Council has also been working on this project with Weenusk First Nation, located on the Hudson Bay coast.



This partnership has resulted in several capacity building initiatives, and the Mushkegowuk Climate Summits – a gathering of nationally and internationally recognized scientists and researchers, Elders, youth, traditional knowledge keepers and community land use planners. The Climate Summits are the first of their kind in Canada in that they are led by First Nations. They offer a unique opportunity for public input and help to ensure that the concerns of the First Nations communities are actively considered.

The Council has taken initiative to build technical capacity at both regional and community levels, and the MECP has supported Mushkegowuk in hiring an Environmental Steward in each of the eight participating communities. These stewards are tasked with gathering traditional knowledge in their respective communities, sharing climate change information and monitoring environmental changes. They have also worked closely with the Living with Lakes Centre at Laurentian University to learn additional technical and research skills to apply within their stewardship roles. The Environmental Stewards have presented their findings at the most recent Climate Summit and are contributing to ongoing carbon monitoring and research programs in the Hudson Bay Lowlands.

The government's partnership with the Mushkegowuk Council and its contributions to the Mushkegowuk Climate Summits is part of broader reconciliation efforts to strengthen relationships with Indigenous people. In addition to their obligation to provide information and consultation opportunities on the Environmental Registry for the public-at-large, these ministries are exploring new strategies for meaningful engagement with First Nations communities on environmental issues that have a direct impact on their future.

One of the key outcomes of the Climate Summits is that they help lift communication barriers and give First Nations community members a voice to express concerns and ideas that might not otherwise be heard. The Climate Summits are one example of how information can be exchanged in a way that will allow

for sustained engagement with the communities who are most impacted. The ministries' partnership with the Mushkegowuk Council demonstrates a commitment to shared decision making, and will ultimately lead to further collaboration and more informed climate change adaptation and mitigation strategies for northern Ontario.



The Climate Summit was hosted by the Mushkegowuk council in Timmins, Ontario in December 2016 and January 2018.

Photo credit: Vern Cheechoo, Mushkegowuk Council, 2016.

Table 3. Past Recipients of the ECO's Recognition Award: OMAFRA, MECP, MMAH, MNRF, MTCS and MTO.

Year	Program or Project
2017	Pollinator Health Strategy and Action Plan (OMAFRA, MECP, MNRF)
2016	Mid-Canada Radar Site Clean-Up in Polar Bear Provincial Park (MNRF)
2015	No submission found to be acceptable
2014	Water Chestnut Management in Voyageur Provincial Park (MNRF)
2013	Wasaga Beach Provincial Park Piping Plover Program (MNRF)
2012	Algonquin Provincial Park's Waste Management System (MNRF)
2011	Bioretention Cells and Rubber Modified Asphalt at the QEW Ontario Street Carpool Lot, Beamsville (MTO)
2010	Green Power for the Summer Beaver Airport (MTO)
2009	Project Green (MECP)
2008	Zero Waste Events at the Metro Toronto Convention Centre (MTCS)
2007	No submission found to be acceptable
2006	Southern Ontario Land Resource Information System (MNRF)
2005	Conservation of Alfred Bog (MNRF, MECP, MMAH)
2004	Environmental Monitoring (MECP)
2003	Ontario's Living Legacy (MNRF)
2002	Oak Ridges Moraine Strategy (MMAH)
2001	Eastern Massasauga Rattlesnake Project for Highway 69 Reconstruction (MTO)
2000	Septic System Program (MMAH)