

THE ROLE OF ENVIRONMENTAL COMMISSIONERS IN PROMOTING SUSTAINABILITY

BY EVA LIGETI

In February 1994, the Ontario government proclaimed the *Environmental Bill of Rights, 1993 (EBR)*. The proclamation of the *EBR* indicates a new era in environmental decision making—one aimed at better public participation and greater accountability of government decision makers. The

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legislation expressly requires the ministers and staff of 13 Ontario government ministries to integrate environmental, social, economic, and scientific factors when environmentally significant decisions are taken.

The purpose of the *EBR* is to make government law-making and policy-making more transparent and accessible for all members of the public. It does this through a number of means, including:

1. Establishing an Environmental Registry, and allowing the public to comment on environmentally significant new laws, regulations, instruments, and policies;

2. Allowing Ontario residents to put forward Applications requesting Reviews of

environmentally significant laws, policies, and instruments;

3. Allowing Applications for Investigation of contraventions of prescribed Acts, regulations, and instruments; and

4. Creating whistle-blowing protection for employees who use the processes of the *EBR*.

Any resident of Ontario or a corporation which has its head office in Ontario can use the processes in the *EBR*.

THE ROLE OF THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

The *EBR* also creates the Environmental Commissioner of Ontario (*ECO*). The Commissioner is appointed for a five-year term by an all-party committee of the Ontario Legislature and operates at arms-length from the government. The Commissioner's budget is approved by an all-party committee of the Legislature and the Commissioner is accountable to the entire Legislature and reports to that body annually. The Commissioner can also issue special reports pointing out areas of concern that cannot wait until the next annual report.

Ontario is not the only jurisdiction that has established an environmental commissioner or a similar position. In the past two years my staff and I have built a network for information-sharing among environmental commissioners and similar officials in New Zealand, Australia's Capital Territory, the European Commission in Brussels, British Columbia, Germany, and the Netherlands. In July 1996, the first federal Commissioner for

the Environment and Sustainable Development was appointed to serve in the office of the Auditor General of Canada.

This movement toward the establishment of environmental commissioners reflects the efforts of diverse jurisdictions to create the institutions necessary to accomplish

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sustainability goals. Connections between the work of environmental commissioners and sustainability include the following:

INDEPENDENT REVIEW SUPPORTS INTERNATIONAL COMPETITIVENESS

To be truly competitive globally, jurisdictions must be able to show that they take environmental protection seriously. The new international dynamics mean that weaknesses on environmental matters can quickly and often un-

expectedly result in trade sanctions, negative publicity campaigns, or damaging consumer boycotts, not only against corporations, but also against provinces or nations. The experience of the B.C. forestry sector vis-à-vis its European customers is one recent example.

Jurisdictions must be able to point to fair, transparent regulation and effective enforcement of environmental laws. They must be able to show not only sound environmental policy, but also that the policies are carried out satisfactorily. Ontario's *EBR* provides an independent, impartial review of the provincial government's environmental performance, which can strengthen our international reputation.

Even the managers of large investment vehicles such as mutual funds are increasingly looking for environmentally responsible investments. Companies already exist which specialize in advising clients who wish to direct capital in environmentally responsible directions.

INDEPENDENT REVIEW HELPS AVOID COSTLY ENVIRONMENTAL CLEAN-UPS AND RESOURCE MANAGEMENT MISTAKES

The purpose of the *EBR* is to protect the natural environment. Among other things, the *EBR* is designed to encourage pollution prevention and conservation of natural resources. Pollution prevention and conservation of natural resources are practical means to avoid huge financial and social liabilities.

INDEPENDENT REVIEW ENHANCES SMART DECISION-MAKING BY GOVERNMENT

The establishment of new accountability mechanisms such as the *EBR* and the *ECO* fosters smart decision making by

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governments, industry, and other stakeholders. Smart decision making requires that we consider the best, most complete information available before taking action. For example, when governments release their proposed new policies and legislation for public comment on the Environmental Registry, they have the opportunity to receive new information from all sectors of Ontario and avoid wasteful mistakes.

INDEPENDENT REVIEW HELPS IDENTIFY OPPORTUNITIES FOR GREATER EFFICIENCIES BY GOVERNMENT

By reviewing the environmentally significant policies and programs of Ontario government ministries, the

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ECO evaluates which activities deliver environmental protection most effectively. In addition, my annual report identi-

fies areas where sister ministries may be working at cross-purposes, where staff resources could be shared between ministries, or where the lack of measurable targets is preventing government accountability. I make specific, practical recommendations for improvements.

INDEPENDENT REVIEW WILL PROVIDE EQUITY FOR STAKEHOLDERS

Since the *EBR* ensures that all stakeholders get equal access to information about proposals affecting the environment, this will help ensure a more consistent application of environmental regulations across Ontario.

INDEPENDENT REVIEW WILL COMMUNICATE ENVIRONMENTAL SUCCESS STORIES

Environmental commissioners can recognize progress where it is being made and comment favourably on cases where governments have carried out successful environmental initiatives.

THE NEED FOR INNOVATIVE INSTITUTIONAL MECHANISMS AND REFORMS

As we move into the twenty-first century, environmental commissioners provide an important new institutional mechanism to promote sustainability. Members of the public can exercise their environmental rights and express their concerns about sustainability with the knowledge that an independent officer of Parliament will review how government officials are handling them.

There is a need for other new institutional mechanisms as well. The credibility of government as the sole protector of public goods has declined markedly in the past decade. In part, this has been the result of high profile failures of


the regulatory system in a number of areas. Events like the St. Basile-le-grande PCB fire in September 1988, the massive tire fire in Hagersville, Ontario in early 1990, the destruction of the East Coast cod fishery in Atlantic Canada, and the decline of the West Coast salmon fishery have called the capability and competence of government regulators into question.

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To date, there has been limited discussion about how environmental goods are best delivered and what types of institutions and institutional reforms environmental goods require. Canadians need to explore a new environmental vision and consider the kind of institutional reform required to deliver goods and services that will promote sustainability. In addition, it seems clear that community involvement and public participation in regulatory decision making must be the cornerstones of any reforms. One example of a new type of institution pioneered in Canada is the National Round Table on the Environment and the Economy and its provincial and local counterparts (some of which, such as those in

B.C. and Ontario, have been disbanded in the past two years). In their explorations of the contours of sustainability and institutional reform, they have sought to build consensus in a multi-stakeholder context.

The effectiveness, efficiency, and fairness of the regulation and policy-making processes in Ontario and other jurisdictions in Canada can be, and need to be, improved. However, the goals of protection of health, safety, and the environment must take precedence in these efforts if public confidence in government is not to be undermined. Rapid, wholesale regulatory reviews, such as those undertaken in Alberta and Newfoundland, and now under way in Ontario, may not be giving adequate attention to these goals. In fact, such projects run a significant risk of weakening requirements essential to the protection of human health and safety, and the environment.

If the proposed changes to environmental policies are not informed by the public and all stakeholders we will, without a doubt, accumulate further problems and increase the clean-up cost down the road. This may damage our competitive advantage, and thereby defeat the purpose of the exercise. 

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