

COVID-19 in Ontario: An Opportunity to Degrade Environmental Law and Policy

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Major Paper

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Abstract

This paper identifies and evaluates the early responses to the COVID-19 pandemic within Ontario. The concept of policy windows is used in this paper to articulate how the pandemic created opportunities for policy and legal changes within Ontario. The Ford government was presented with two potential paths in confronting the unprecedented health and economic crises that were unfolding. These paths were to double down on supporting existing economic actors including entrenched businesses and industries while continuing pre-pandemic trajectories, or to make significant economic changes by putting Ontario on a path towards green business and in doing so spurring new economic activity. This paper demonstrates that the former path was taken, doubling down on pre-existing paths while also degrading and reverting existing environmental protections.

To demonstrate this policy window and the path that was selected, this paper compiles all the decisions and changes made by the Ford government in the first months of the pandemic which relate to or have impacts on environmental laws and policy. This paper compares these decisions to the Ford government's pre-existing pathways to assess how the pandemic did or did not change trajectories. This paper concludes that these pathways were not significantly altered. Many of the decisions that were made during these initial months were decisions that were already on the government's agenda. However, this paper does see an increased hostility towards environmental policies, laws and protections that may indicate further degradations in the future – especially in the areas of public participation and consultation, particularly with respect to land use development issues.

Foreword

This research paper was written to support the research and learning that I have done throughout the joint Master in Environmental Studies and Juris Doctors program. I entered the program hoping to focus on climate change in order to examine how this singular environmental issue interacted with a broader picture of environment, law and society in general. My focus throughout the program has been on understanding how topics such as politics, policy and law influence climate change. Furthermore, I wanted to understand how practical limitations and technologies such as energy and electricity questions play into solving this problem.

My goal has always been to work on the questions and issues that are facing Canada today while answering those questions with a grounding on history and context that explains how the situation came to be. In the face of COVID-19 it became clear to me that the questions that needed confronting now were those constrained by and influenced by the virus. As a result, I chose to confront what this unprecedented time in our history meant for the environment. The conflict between simultaneous health and economic emergencies in the face of a pre-existing environmental emergency – that being climate change created the perfect context for the questions I am most curious about. This emergency context allowed me to ask questions about the interconnectedness between environmental protections, politics, history and societal priorities. This paper touches on many different types of environmental issues, not strictly climate change. However, I believe that understanding how decisions are made in the face of emergency has taught me about what needs to happen politically, legally and within the public in order to address climate change in the future.

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Introduction

As the effects of climate change accelerate, responses will need to pivot to address a higher volume of environmental emergencies. Climate change will produce more severe forest fires, natural disasters such as floods, and severe storms. As well, there is an increased potential for disease outbreaks such as COVID-19.¹ While more specific emergency response planning will be needed in relation to these environmental concerns, environmental laws and policies are essential to preventing emergency situations. Environmental protections are key requirements in the face of heightened environmental emergencies, and as a result, ensuring that current protections are upheld and bolstered is an important response to these threats.

The COVID-19 emergency that arrived in 2020 drastically impacted everyday life and the priorities of Ontarians. Historically periods of emergency have been times of change in law and policy. From a political economy perspective, this tendency to shift and change during periods of emergency or crisis can be explained through the theory of policy windows. This theory sees emergencies or issues as one element that can open an opportunity for policy change. This paper will use the theory of policy windows to demonstrate that the Ford government in Ontario had an opportunity as a result of COVID-19 to make a significant shift in Ontario's economy.

The economic crisis and hardships that arose from the COVID-19 pandemic opened a mega policy window through which a significant shift towards a green economy could have occurred. The financial crisis opened opportunities for creative ways of encouraging economic recovery. One proposed solution saw the economic downturn as a chance to shift struggling companies and industries towards long-term sustainable businesses within a green economy model. This paper will demonstrate that this opportunity was not taken. Rather, the conventional pathway was maintained – a pathway that focuses on the restoration and recovery of existing industries and economic structures and incorporates backwards-looking trajectories on environmental protection. What this paper will refer to as the “conventional pathway”, is the Ford government's doubling down on their pre-COVID trajectories regarding economic structures and returning to older standards of environmental laws. Instead of moving towards an

¹ Renne Cho, “How Climate Change Is Exacerbating the Spread of Disease” (September 4, 2014), online: *State of the Planet* <https://blogs.ei.columbia.edu/2014/09/04/how-climate-change-is-exacerbating-the-spread-of-disease/#:~:text=Climate%20change%20will%20also%20affect,and%20more%20extreme%20weather%20events>.

economic model that would support both business and environmental needs, the Ford government undercut and reduced environmental protections in the face of the COVID-19 emergency .

This paper lays out the changes and decisions made by the Ford government that impacted and affected environmental issues within Ontario. The paper will focus on the decisions made during the initial period of the pandemic, when it was declared an emergency within Ontario at the beginning of March 2020, to August 2020, a few weeks after the emergency was revoked by the provincial government. Although the declaration of emergency continues to have an impact beyond the date of its revocation, and many more decisions have been made since August, this paper will limit its discussion to the initial months of the pandemic. This early period highlights the most significant decisions in choosing between paths focused on introducing environmental protections or maintaining the conventional pathway. The period between March and August 2020 is what this paper refers to as “the period of emergency” or “the early days of the pandemic.”

Many of these legal and policy changes have significant environmental impacts despite their initial appearance. It is important to make these impacts understandable and accessible in order to hold the Ford government to account for its actions. Many researchers in the field of emergency response note that each time emergency powers and tools are used is an opportunity for to degrade the basis of the legal system and the principle of the rule of law² Emergencies can provide opportunities to make constitutionally significant changes to the legal system.³ Other researchers explain that emergency powers and regimes bleed into periods of normalcy because emergencies do not have concrete beginnings and endings.⁴ Emergencies provide an opportunity to degrade the legal system and undermine the rule of law. As this paper will demonstrate, the Ford government has a record of hostility to environmental issues and the emergency provided an opportunity to undermine laws and policies the government disagrees with. As a result, it will be important to closely watch how the government responds to the COVID-19 emergency concerning environmental issues so that environmental protections are not victims of further erosion.

² Jocelyn Stacey, “Vulnerability, Canadian Disaster Law, and The Beast” (2018) 55:4 Alta L Rev 853-887 at para 28 (Quicklaw) & Venkat Iyer, “States of Emergency – Moderating their Effects on Human Rights” (1999) 22: Dalhousie L.J. 125 at para 7 (Quicklaw).

³ N. C. Lazar, “Review: The Everyday Problem of Emergencies” (2009) 59:2 U of T Law J. 237-249 at 239 (JSTOR). <https://www.jstor.org/stable/40211257>.

⁴ *Ibid* at 245.

Outline

This paper will be broken into four sections to demonstrate how the COVID-19 emergency impacted environmental law and policy. The first section will outline Kingdon's model of policy windows: what windows are; how they are opened and used; and how the COVID-19 pandemic fits into this model as a mega policy window – a huge opportunity to make policy change. The first section will articulate how COVID-19 was a fork in the road concerning environmental issues. The second section of this paper will outline where the Ontario environmental legal and policy regime stood before the COVID-19 emergency to provide comparisons to the COVID-19 decisions. The third section of this paper will summarize the legislative, regulatory, and policy measures that were taken by the Ontario government during the period of emergency and in response to the emergency. This section will also explain how key changes impacted environmental issues. The final section of this paper will discuss why the Ford government chose to bolster the conventional economic pathway and how the policy window model helps contextualized this decision. This final section will also consider what the decisions made during the COVID-19 pandemic mean for the future of environmental law and policy within Ontario. By comparing the pre-COVID-19 trajectory to the decisions made in the initial months of the pandemic the paper concludes that the Ford government will continue on a policy trajectory that remains hostile to environmental issues despite the opportunity to better align environmental and economic needs. Furthermore, these decisions indicate increased hostility and degradation in particular areas of environmental concern, most importantly concerning issues of public participation.

Methodology

This paper uses several types of sources to inform the research. Section one on policy windows is based on John W. Kingdon's book *Agendas, Alternatives, and Public Policies*. It summarizes his framework of policy streams and applies those streams to the context of the COVID-19 emergency. The information that informs that application of the policy streams concept comes from a collection of sources. These include reports from institutions such as Statistics Canada and government agencies that contextualize the policy stream, as well as public-facing documents from environmental and industry interest groups that present their respective positions on how an economic recovery should be handled.

Section two, on the government's pre-COVID-19 agenda, was informed by government documentation as well as from reports, public-facing posts, and news releases from environmental organizations. Government documents and plans are used to understand the Ford government's policy directions. These documents also give a point of comparison between what was said and what was done. The section is further informed by a collection of sources from environmental groups, legal documents, and reports

from the Environmental Commissioner of Ontario, which explain from an environmental perspective how the government's actions since its election have affected environmental issues.

Section three was primarily built around the contents of Appendix A. Appendix A was created by identifying and compiling environmental decisions during the early days of the pandemic. Most of this work was done through Westlaw's "COVID-19 Legal Materials" resource, which tracks COVID-19 related legal decisions. Once these changes were identified they were summarized and explained either directly from the legal source material or through public-facing resources from Ontario law firms and environmental legal organizations that specialize in the relevant fields. Section three was researched using the same methodology, simply expanding the depth and scope of research for the decisions that were discussed.

The analysis in section four was undertaken by comparing and contrasting the information gathered under sections two and three and applying those comparisons to the structure of the policy window. By contrasting the pre-COVID-19 policy trajectory with what occurred during the early days of the pandemic it is possible to assess what type of policy window occurred, and why this type of decision making may have happened.

1. Section 1: Policy Windows

1.1. What is a Policy Window?

To assess Ontario's actions during COVID-19 for impacts on environmental law, this paper will be using John W. Kingdon's theory of policy windows. Kingdon provides a model for understanding how policy changes are made within the government. This model is based on the concept that rapid change can occur when windows of opportunity are opened and there is a convergence of three factors, what he refers to as 'streams'. There must be a problem (the problem stream), a solution to that problem as well as an individual or group to present the solution (referred to as the policy stream), and political will to accept the solution (referred to as the politics stream).⁵ When these streams merge, policy change occurs.

A window can open for several reasons, one reason being the emergence of a new problem. These windows provide an opportunity for people in and outside of government to push forward their solutions and ideas.⁶ While policy change tends to be incremental and slow, a window is an opportunity to push through changes rapidly. A change that may typically happen piece-meal over a long period could be pushed through immediately in the face of a window. COVID-19 is a clear problem that took the attention of all levels of government. It signalled an opportunity for solutions to be presented from the policy stream, solutions that could change policy, law, or the government's trajectory in response to the problem. Kingdon explains that an open window affects what he calls the 'decision agenda', which are the things within the 'governmental agenda' (generally what is getting attention) that are currently being decided on, things that are up for active decision.⁷ Policy windows can shuffle the prioritization of certain items on the decision agenda.⁸ With the virus' wide implications it created a mega-policy window, a huge opportunity for rapid policy shifts.

1.2. The COVID-19 Policy Window

The rest of this section will outline how the policy window theory fits into the context of COVID-19 and the economic issues that arose from the pandemic. The three streams will be examined, what their role in decision making was, and ultimately how these three streams came together to lead Ontario on a path of doubling down on the conventional pathway.

⁵ John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (New York: Longman, 1995) [Kingdon] at 165.

⁶ *Ibid* at 168.

⁷ *Ibid* at 166 and 4.

⁸ *Ibid* at 167.

1.2.1. *The Problem Stream*

In the case of COVID-19, Ontario and the world were faced with two problems intersecting each other. To begin there was the unprecedented health crisis. Ontario and the world faced the challenge of preventing and mitigating the spread of this new deadly virus. In attempts to mitigate the spread, Ontario asked its citizens to stay home and to keep their distance from others. As a result of these measures a new problem was created an economic crisis. Businesses were required to temporarily close their doors to limit the spread of the virus, people were asked to stay home from their jobs, and the stock market crashed in response.⁹ In March and April of 2020 Canada saw the steepest drops in economic activity on record with the economy contracting 7.5% in March and 11.6% in April.¹⁰ Many businesses lost revenue and were forced to lay off employees, leading to Ontario's employment decreasing by 11.9%.¹¹ In August of 2020, between one-quarter and one-fifth of small businesses in Canada reported more than a 40% decrease in revenues when compared to the previous year.¹² As a result of this chain of events the COVID-19 crisis became an even more complicated problem, it was now simultaneously a health crisis and an economic crisis.

Kingdon explains that for the problem stream to be engaged attention must be drawn to an indicator that there is a problem, and the government must see that indicator as a problem warranting action.¹³ Focusing events such as crises or emergencies can work to highlight these indicators. They do not, however, always lead to the government addressing the problem.¹⁴ Certain issues are more likely to be identified and be considered problems by the government if they are areas that are highly visible to the public,¹⁵ and these focusing events, such as crisis, must enforce a pre-existing perception of a problem – the issue must have already been on the minds of the people.¹⁶

In the case of the COVID-19, the dual problem demanded attention and inherently called for solutions because of the problem's scope. People's health and livelihoods were threatened, creating a huge window

⁹ Mazur, Man Dang & Miguel Vega, "COVID-19 and the March 2020 stock market crash. Evidence from S&P1500" (2020) 101690 Finance Research Letters (Science Direct).

¹⁰ Stephanie Tam, Shivani Sood, & Chris Johnston, "Impact of COVID-19 on small businesses in Canada, third quarter 2020" (November 17, 2020), online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00088-eng.htm> [Tam].

¹¹ Government of Ontario, "April to June, 2020" (August 6, 2020), online: *Ontario Employment Reports* <https://www.ontario.ca/document/ontario-employment-reports/april-june-2020>.

¹² Tam, *Supra* note 10.

¹³ Kingdon, *Supra* note 5 at 91.

¹⁴ *Ibid* at 91.

¹⁵ *Ibid* at 91 and 95.

¹⁶ *Ibid* at 98.

of opportunity to present solutions in response to both crises. While both problems directly affected the public the economic problem was highly visible to the average person. Many people lost their jobs or lost hours at work, a large number of small businesses were heavily impacted as a result of these downturns.¹⁷ It was also clear that if these trends continued Canada would enter a recession.¹⁸ Economic issues also meet the threshold of being an issue in the back of people’s minds. Economic issues are always inherently a public concern. However, before the pandemic, there was also a sense amongst Canadians that economic opportunities were lacking. Furthermore, as this paper will demonstrate, the Ford government had articulated a need to invigorate the Ontario economy through increased business and development policies. The economic shifts as a result of COVID were identified and seen as a problem because of these tangible impacts to the average person, because of the government’s pre-COVID-19 history addressing economic concerns, and because of their inherent location within a dual health and economic crisis. This crisis as a result became a mega policy window, a huge opportunity for policy changes to be pushed through.

1.2.2. *The Policy Stream*

When a problem is identified there is an opportunity for new ideas, paths, and solutions.

These ideas get picked from the policy stream. ‘Policy entrepreneurs’ are the people that create, develop, and present these solutions, often before the problem or opportunity arises. Policy entrepreneurs work on these policy ideas with the hopes of having them adopted at an opportune moment – such as a crisis in need of a solution.

An opportunity to present solutions such as a policy window attracts potential policy entrepreneurs and their ideas, which often compete to be adopted under the fluctuating agenda. Ontario experienced this flocking as the conversation regarding economic recovery began. Two general categories of solutions emerged. On one side there was the view that economic recovery should be a ‘green recovery’,¹⁹ creating economic growth and prosperity by bolstering the ‘green economy’ and supporting a transition to new

¹⁷ Tam, *Supra* note 10.

¹⁸ Francis Fong, “Why this recession will be unlike any other” (April 23, 2020), online: *Chartered Professional Accountants Canada* <https://www.cpacanada.ca/en/news/pivot-magazine/2020-04-23-covid-19-recession>.

¹⁹ Raimund Bleischwitz, “COVID-19: 5 ways to create a green recovery” (June 26, 2020), online: *World Economic Forum* <https://www.weforum.org/agenda/2020/06/five-ways-to-kickstart-a-green-recovery/> [Bleischwitz].

types of industry. This support could be provided by investing in green energy,²⁰ infrastructure,²¹ and focusing on creating growth in carbon-reducing and pollution-reducing industries. This proposed strategy argued that these industries have the potential to create many new, well-paying jobs which will help support individuals and will ultimately create new economic growth.²² Furthermore, these proposals and opinions demonstrated the existing issues within Canada's energy sector and the issue of Canada's continued reliance on these unsustainable industries for economic prosperity. These green recovery plans addressed the economic issue and pre-existing environmental issues Canada faced.

These proposals of economic recovery through investment in green industry and green transitions came primarily from environmental groups such as the David Suzuki Foundation, Environmental Defence, the Pembina Institute, Climate Action Network Canada,²³ the Canadian Environmental Law Association²⁴ as well as other groups and thinkers in the area of environmental protection.

On the other hand, there was the opinion that the best way to address economic concerns was to increase support for and double down on existing economic interests and policy trajectories.²⁵ In this view, the economy could be supported by increasing help for vital economic sectors such as construction and land development industries, manufacturing industries, resource sectors such as the forestry and mining sectors, as well as other similar large economic players in the pre-COVID economy.²⁶ Support for these

²⁰ Alex Ballingall, "Environmental advocates say going green could help boost Canada's COVID recovery," *The Toronto Star*, (May 29, 2020) <https://www.thestar.com/politics/federal/2020/05/29/environmental-advocates-say-going-green-could-help-boost-canadas-covid-recovery.html>.

²¹ Bleischwitz, *Supra* note 19.

²² Martin Heger & Lia Sieghart, "Going green after COVID-19 will help MENA economies recover better" (July 6, 2020), online: *World Bank Blogs* <https://blogs.worldbank.org/arabvoices/going-green-after-covid-19-will-help-mena-economies-recover-better>.

²³ Climate Action Network Canada, "Seven principles to align COVID-19 recovery with Canada's climate commitments – new report shown to key federal minister" (July 7, 2020), online: *Climate Action Network* <https://climateactionnetwork.ca/2020/07/07/seven-principles-to-align-covid-19-recovery-with-canadas-climate-commitments-new-report-shown-to-key-federal-ministers/>.

²⁴ Isobel Mason, "What will it take to achieve a Green and Just Recovery?" (November 6, 2020), online: *CELA* <https://cela.ca/what-will-it-take-to-achieve-a-green-and-just-recovery/>.

²⁵ Mark Winfield, "Governments must resist coronavirus lobbying and focus on long-term transformation", online: *The Conversation* <https://theconversation.com/governments-must-resist-coronavirus-lobbying-and-focus-on-long-term-transformation-138178>. [*Resist Coronavirus Lobbying*].

²⁶ Innovation Economy Council "Factory Forward: How Advanced Manufacturing is Retooling Ontario's Industrial Heartland" (July 2020), online (pdf): *Innovation Economy Council* https://oce-ontario.org/docs/default-source/default-document-library/iec_factory_forward_hoadvanced_manufacturing_is_retooling_ontarios_industrial_heartland_july_2020.pdf?sfvrsn=2 & AVIN Specialized Reports, "The Auto Sector and the COVID-19 Pandemic: Recovery Support and

industries could come in two main forms, through funding and bailouts, or regulatory relief and deregulation. This help would allow these industries to weather downturns they experience, with the perspective that these industries can bring new growth through shovel ready projects that simply need funding or flexibility to get started.²⁷ Eventually these industries would be as economically profitable as before.²⁸

These types of policy trajectories and asks from large industry are not new to Ontario policy. Deregulation and funding issues have been a topic of discussion for many years, with the 1980s and 1990s seeing large shifts towards deregulatory policies, particularly concerning public goods like the environment, public health and safety.²⁹ Furthermore, these trajectories were already accepted before Ford's election. The "Open for Business" model for supporting the economy was previously used in the McGuinty government.³⁰ While the concept of regulatory reform had a previous history of use in the former Harris government.³¹

However, the COVID-19 emergency presented a policy window in which more of these types of requests from business and industry could be brought forward. An opportunity to pose requests for deregulation as solutions to an economic crisis. The policy entrepreneurs that brought forward the suggestion of bolstering the conventional pathway were taking the opportunity to push forward long-standing asks from existing economic interests. The Ford government's responsiveness to these types of requests from business and industry was demonstrated by setting up an online portal where businesses could request

Opportunities" (June 2020), online (pdf): *Ontario Centres of Excellence* https://oce-ontario.org/docs/default-source/publications/avin_quarterly-specialized-report_june-2020.pdf?sfvrsn=2.

²⁷ Chris Christopher & Stephanie Stimpson, "What's Next for Canadian Oil and Gas as COVID-19 Adds to Existing Challenges" (May 7, 2020), online: *Westlaw* [https://nextcanada.westlaw.com/Document/I82009fb5959711ea80afece799150095/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://nextcanada.westlaw.com/Document/I82009fb5959711ea80afece799150095/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) & Innovation Economy Council, "Factory Forward: How Advanced Manufacturing is Retooling Ontario's Industrial Heartland" (July 2020), online (pdf): *Ontario Centres of Excellence* at 5 https://oce-ontario.org/docs/default-source/default-document-library/iec_factory_forward_hoadvanced_manufacturing_is_retooling_ontarios_industrial_heartland_july_2020.pdf?sfvrsn=2.

²⁸ Chris Christopher & Stephanie Stimpson, "What's Next for Canadian Oil and Gas as COVID-19 Adds to Existing Challenges" (May 7, 2020), online: *Westlaw* [https://nextcanada.westlaw.com/Document/I82009fb5959711ea80afece799150095/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://nextcanada.westlaw.com/Document/I82009fb5959711ea80afece799150095/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search))

²⁹ Edward Iacabucci, Michael Trebilcock, & Ralph A winter, "The Canadian Experience with Deregulation" (2006) 56: 1 UTLJ 1-74, (JSTOR).

³⁰ Mark Winfield, "Environmental Policy in Ontario: 'Greening' the Province from the 'Dynasty' to Wynne" in ed. J. Malloy and C. Collier, *The Politics of Ontario*, 6th ed. (Toronto: University of Toronto Press, 2017) at 11.

³¹ *Ibid.*

regulatory relief.³² At a public level groups advocating for this position, or elements of it included groups like the Canadian and Ontario Home Builders' Associations and the Building Industry and Land Development Association.³³

Business interests and external stakeholders were not the only parties who sought to push through pre-existing policy ideas. Policy entrepreneurs inside of the government were also seeking similar deregulatory policy changes that backed the conventional pathway. The window was an opportunity to remove rules and regulations that the government did not like. As this paper will discuss in more depth some of the changes that highlighted these opportunities included the suspension of the Environmental Bill of Rights, which the Ford government had demonstrated their previous disregard. Furthermore, changes to environmental assessments processes also demonstrate that the government itself was jumping through policy windows to achieve goals that existed before the COVID-19 emergency.

1.2.3. *The Political Stream*

Kingdon explains that the political stream is independent of the problem and policy streams and is influenced by the public mood, organized political forces, election results and events within the government itself.³⁴ In the case of COVID-19, the national mood will be a key element in understanding the political stream. The political stream has a powerful effect on agenda-setting. It can determine if something is possible, if an idea is out of the question, and if the general public will tolerate a decision.³⁵

Within the political stream economic action likely became a high priority because of the public mood. The national or public mood is a sense that elected politicians have about how the public is feeling.³⁶ In the case of COVID-19, it is likely the government of Ontario believed that the public mood was demanding action on economic issues. With such significant harms happening to people's livelihoods, businesses, and jobs the Ford government needed to be seen as responding to the economic impacts of COVID-19. Ford risked losing political support from ignoring impacts that the average person was facing, while also risking this loss of support from business and industry.

³² *Resist Coronavirus Lobbying*, *Supra* note 25.

³³ John Provenzano, "The- Residential- and- Non-Residential-residential Construction- Industry- Will- Lead- the- Post- COVID-19- Economic- Recovery.html" (June 8, 2020), online: *Globe News Wire* <https://www.globenewswire.com/news-release/2020/06/08/2044756/0/en/The-Residential-and-Non-Residential-Construction-Industry-Will-Lead-the-Post-COVID-19-Economic-Recovery.html>.

³⁴ *Kingdon*, *Supra* note 5 at 145.

³⁵ *Ibid* at 145.

³⁶ *Ibid* at 148.

Once a topic is on the agenda, organized forces join the picture.³⁷ These forces are interest groups outside of government that defend certain positions. Governments tend to listen to the groups that are heard more often or hold more political resources – such as having increased group cohesion, or the ability to affect the economy.³⁸ Furthermore, once a program or idea has the government’s ear then more interest groups will work on keeping the government in support of it.³⁹

In the case of COVID-19 economic recovery there was an imbalance in the strength of the two sides. The position in favour of following conventional economic and policy pathways – those being the pathways that Ford already supported – held an advantage. Entrenched business interests could demonstrate their economic impact, while strong voices were backing these interests and the conventional pathway surrounding them. The conventional pathway already had government support and therefore had more interest groups working to maintain that support – it had inertia behind it.

Strong inertia can be countered, and change can occur.⁴⁰ For this to happen interest groups in favour of seeing green change needed to demonstrate strong benefits and strong support behind it, while also being heard loudly and often by the government. Doing so was an uphill battle because of the difference in political power between industry groups and environmental groups. Business interests have inherent power in swaying economic issues because of their structural role in the economy.⁴¹ Government’s rely on businesses to support the economy and as a result the government is predisposed to listen to their requests and concerns. This imbalance in who is being listened to was further tipped in favour of business interests. The Ford government actively encouraged hearing voices from industry and business while reducing the opportunity for public consultation on environmentally relevant questions.

Ultimately the conventional pathway was seen to offer more political benefits to the Ontario government than the green path offered to the Ontario government. This path offered solutions to the economic crisis that took minimal government effort. Policy positions did not need to be shifted, new ideas did not need to be understood, and in doing so the government easily addressed the public mood without significant effort or creating positive obligations for the government. This pathway ultimately fit neatly into Ford’s

³⁷ *Ibid* at 164.

³⁸ *Ibid* at 150 to 151.

³⁹ *Ibid* at 152.

⁴⁰ *Ibid* at 152.

⁴¹ Kindred Winecoff, “The Structural Power of Business: Taking Structure, Agency and Ideas Seriously” (February 4, 2016), online: *Duck of Minerva* <https://duckofminerva.com/2016/02/the-structural-power-of-business-taking-structure-agency-and-ideas-seriously.html#:~:text=Lindlom%20saw%20the%20power%20of,manipulate%20the%20views%20of%20citizens.>

populist view of government, in which the government should play a backseat role in order to make way for struggling businesses, industries, and ultimately the growth of the economy. Furthermore, following this path allowed for opportunities in which the government could push its agendas. The green path on the other hand offered longer-term benefits for society as a whole. It did not present a situation where immediate political benefits would be lost if this path was not followed. Rather the green path asked the Ford government to play an active role in creating change while lacking any real promise of immediate political benefit. While the conventional pathway offered political benefits that would be lost if not maintained.

Through Kingdon's explanation of the political stream, it is possible to see what needed to occur for the green path to be accepted in the political stream. Significant political benefits needed to be demonstrated; the national mood needed to be in favour of change; and there needed to be strong support within government and external political forces. The political will to take the green path did not exist. The policy entrepreneurs presenting this new path did not sufficiently counter the inertia behind the conventional pathway. The national mood was in favour of immediate economic action and not directly concerned with environmental issues at the time; the internal and external forces on the government were presented by groups that the government was predisposed to listen to; and the benefits that were offered by this path were not immediate, nor directly relevant to the Ford government's political needs. The Ford government needed to be seen as addressing the economic concerns, and supporting the conventional pathway was a simple, politically acceptable way of satisfying this need.

1.2.4. How the Streams Merge

The three streams that Kingdon identifies each play a role in how policy is developed and adopted. However, none of the three streams alone will lead to policy change. Rather the three streams must be coupled. This coupling occurs through policy entrepreneurs who lie in wait for an opportunity or problem which they can attach their pre-existing policy ideas to as a potential solution.⁴²

In the case of COVID-19 economic issues, the policy entrepreneurs presented two paths: a turn towards a green economy, or a doubling down on the conventional pathway. The conventional pathway had the upper hand in persuading the government because the government already accepted the underpinning policy ideas. This path also naturally aligned with the Ford government's view that their role is to bolster the market by reducing government interference via cutting taxes and "red tape". The green path asked

⁴² Kingdon, *Supra note 5* at 179.

the Ford government to play a positive and active role in economic restructuring, standing in opposition to the Ford government's stance.

For the green path to have been taken the policy entrepreneurs bringing forward this position needed to have found acceptance in the policy stream and the political stream – softening the policy stream, the public, and the government to their idea. In the COVID-19 scenario, the green path presented a solution that the government on a political level was not open to, standing in opposition to the neoliberal ideals of the government. Rather than stepping back from government involvement the green path asked the Ford government to actively work towards major policy changes and changes that would require greater long-term involvement of the government. For this kind of change to occur there would be a need for increased regulation, greater government oversight on industry, increased government programming, and other government heavy roles and positive obligations that would be necessary for making such fundamental shifts. With this proposal standing in such stark opposition to the Ford government's political positions the green path would have needed to find significant political benefits for the Ford government, while also finding ways to be heard louder and more prominently than those in favour of the conventional pathway. As a result, being accepted within the political stream was an uphill battle in this scenario.

The suggestion of doubling down on the conventional pathway was properly coupled: supporting existing businesses and industry addressed the economic problem, and there was support from the political stream for this direction. As a result, that path was taken. This coupling was possible because of the policy entrepreneurs presenting the ideas. In this case, there was no single key entrepreneur who succeeded in pushing this decision. With the size of this policy window many people and groups were trying to push through their ideas. These players came from within and outside of the government. It is known that significant amounts of lobbying occurred, pressuring the Ontario government on behalf of major economic interests.⁴³ While it is not possible to name all of the parties that brought forward policy suggestions, some of the key players include: entrepreneurs representing entrenched business interests; those representing heavy polluting industries; others representing development interests – both in and outside of government; and those representing the interest of the government itself.

These are the interests that benefited most from the decisions that were made by the Ford government. The Ford government helped existing businesses and developers, gaining their support and not ruffling feathers with massive shifts in industries. Furthermore, the government helped its own by providing

⁴³ *Resist Coronavirus Lobbying, Supra* note 25.

powers and opportunities to government agencies. Through understanding who benefited, and thus which policy entrepreneurs were listened to, it can be seen how the political will was gained in support of the conventional pathway – as the path of least resistance – therefore coupling the three streams. The combined force of these voices, in conjunction with the mood of the average Ontarian, ensured the government followed the conventional pathway.

2. Section 2: Pre-Covid-19 Agenda

To understand how COVID-19 impacted Ontario's environmental policy and legal trajectories, it is necessary to contextualize where the Conservative Ontario government stood in this area before the emergency.

From the very beginning, the Ford Government held positions opposed to existing environmental protections, campaigning on a promise to end the Cap and Trade system and oppose the federal carbon tax backstop.⁴⁴ In 2018, after their election, the Ford Government released its *Made-in-Ontario Environment Plan*. A plan that would balance "a healthy environment with a healthy economy".⁴⁵ However, this balance has been constantly tipped in favour of the economy. Since the plan's creation, there has been little to no movement on major issues in the Plan other than the rollback of cap-and-trade and the opposition to a carbon tax.

For example, in 2020 the Auditor General of Ontario found that the Ford government was not on track to meet its 2030 emissions reduction targets.⁴⁶ This deficiency is because the government has not prioritized climate change issues across its government.⁴⁷ To date, the Ford government has not lived up to its major plans and promises in the *Made-in-Ontario Environment Plan*. While this plan purports to deal with a wide variety of important environmental issues⁴⁸ the plan is not a true representation of the Ford government's position. Instead, the document is a red herring. The Plan acts as if positive environmental action is being taken when the main priorities are to eliminate cap-and-trade and support other economic goals.

Official documents that illustrate the government's stance on environmental law and policy are limited, with the *Made-in-Ontario Environment Plan* being the most significant document available in this area. To

⁴⁴ Ontario PC Party, "For the People A Plan for Ontario", online: *Ontario PC* https://www.ontariopc.ca/plan_for_the_people [PC Party].

⁴⁵ Ministry of the Environment, Conservation and Parks, "A Made-in-Ontario Environment Plan" (2018), online (pdf): *Government of Ontario* at 3 <https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf>. [*Made-in-Ontario Environment Plan*].

⁴⁶ Office of the Auditor General of Ontario, News Release, "Reducing Greenhouse Gas Emissions Not Yet an Ontario Cross-Government Priority: Auditor General" (November 18, 2020) https://www.auditor.on.ca/en/content/news/20_newsreleases/2020news_ENVreducinggreenhousegasemissions.pdf.

⁴⁷ *Ibid.*

⁴⁸ *Made-in-Ontario Environment Plan*, *Supra* note 47 at 6.

date the Ford government has refused to release the mandate letters given to ministers,⁴⁹ further limiting the official documentation available. General policy trajectories of the Ontario government, as well as looking at the specific actions taken by the Ford government will help to fill in some of these gaps.

2.1. How Ford's Politics Frames the Government's Policy

The election of the Conservative Ford Government in 2018 signified the rise of populism within Ontario. Populist politics arise from an ideological view that there are the people and the elite.⁵⁰ This view sees the two groups as having an antagonistic relationship, in which the elite are constantly being lifted higher, while the people are unfairly victimized, degraded, and denigrated.⁵¹ Populist politics take these values to mean that government should be dictated by the will of the people – or by the will of those who are marginalized or disenfranchised by systems built on these antagonistic relationships – rather than by the corrupt elite.⁵² The conceptions of this dynamic are dictated by ideological outlooks.⁵³

Ford's version of populism is complicated by his neoliberal ideas of opening Ontario for business and removing barriers to business. While entrenched business and industry would typically be conceptualized as part of an elite group within society Ford's populism appears to take a different view. In this view, the working class who has been affected by overseas manufacturing and globalism are tied to businesses. It is not just the working class who has become disenfranchised by elites, but Ontario businesses as well. This correlation can be seen through the support that Ford has received. His populist rhetoric of opening Ontario for business has gained him large support from the working class who would typically have been employed in traditional businesses and industries.⁵⁴

Populist governments are often in opposition to environmental issues such as action on climate change because the issues lack tangible impacts for the average person. For example, climate action tends to impact or change the job opportunities offered to the working class in industry and manufacturing – the

⁴⁹ Nicole Brockbank, "Ford government's fight to keep its mandate letters secret heard at Ontario Divisional Court," *CBC*, (May 22, 2020) <https://www.cbc.ca/news/canada/toronto/ford-government-s-fight-to-keep-its-mandate-letters-secret-heard-at-ontario-divisional-court-1.5579737>.

⁵⁰ Ben Stanley, "The thin ideology of populism" (2008) 13: 1 *J. of Political Ideologies* 95 (Taylor & Francis Online) <https://doi.org/10.1080/13569310701822289>.

⁵¹ *Ibid*

⁵² Cas Mudde, "The Populist Zeitgeist" (2014) 39: 4 *Int. J. of Comparative Politics* 541 (Cambridge University Press).

⁵³ Benjamin De Cleen, Jason Glynos, & Aurelien Mondon, "Critical research on populism: Nine rules of engagement" (2018) 25: 5 *Organization* 649 (Sage Journals).

⁵⁴ Cornelia Fraune & Michele Knodt, "Sustainable energy transformations in an age of populism, post-truth politics, and local resistance" (2018) 43: *Energy Research & Social Science* 1-7 at 2 (Science Direct) <https://doi.org/10.1016/j.erss.2018.05.029> [Fraune & Knodt].

people.⁵⁵ Additionally, the ideology of right-wing populism tends to oppose climate action because it is pushed by and for the liberal elite, without benefiting or adding value to the people.⁵⁶

In the case of the Ford Government, environmental action stands in opposition to their populist and neoliberal values of supporting businesses and the people through bolstering business. In this conception of government environmental laws and protections merely add in the types of barriers the government sees as necessary to remove – “red tape” and barriers to businesses. Where the Ford Government’s political beliefs lead to a conclusion that the role of government is to step back from interfering with the market, environmental protections require that the government play an active role in directing the economy. By engaging with environmental protections the government would be taking on the role they see embodied in the liberal elite – an imposition of barriers on disenfranchised groups while adding no value for the people. The Ford Government therefore sees no positive role of government in constructively directing the economy, their job is to merely reduce taxes and cut “red tape”. The green pathway demands a positive role from the government in order to spur the changes needed to follow that path. As a result the green path can not fit into the Government’s conception of its own role, and was unlikely to have ever gained support from this government.

Ford’s neoliberal and populist ideas put his government in a position opposing liberal elite conceptions of environmentalism and in favour of supporting traditional sectors of employment such as manufacturing and other entrenched industries. In holding this stance he is purporting to support the people in a traditional sense by encouraging the development of historical types of employment that have benefited the general public in the past.

2.2. Assessing Policy Stances Through Action

The Ford government made many decisions and changes that impacted environmental issues before COVID-19. By compiling these actions it is possible to see several overarching themes. The Ford government has focused on four areas: climate change; land-use and development; governance; and general red-tape reduction and deregulation.

⁵⁵ Matthew Lockwood, “Right-wing populism and the climate change agenda: exploring the linkages” (2018) 27:4 *Enviro. Politics* 712-732 (Taylor & Francis Online) <https://doi.org/10.1080/09644016.2018.1458411>.

⁵⁶ *Ibid* & *Fraune & Knodt, Supra* note 56.

2.2.1. Climate Change

The Ford government came to office having promised to end the Cap and Trade system and to oppose the federal carbon tax backstop.⁵⁷ Within a month of coming to office, the Ford revoked the cap-and-trade regulations⁵⁸ and prohibited former participants from purchasing, selling, or trading emissions credits.⁵⁹ The Environmental Commissioner of Ontario raised concern about the removal of this program and also argued that the decision was made without public consultation under the *Environmental Bill of Rights* (EBR).⁶⁰ Subsequently, the Ford Government posted an “exemption notice” to the Environmental Registry, indicating that this regulation was exempt from requirements to provide notice or conduct consultation. The justification for this exemption was that in the Minister’s opinion the government had provided the “substantial equivalent” of consultation and notice via the Conservative Party’s 2018 election platform which supported this rollback of the cap-and-trade program.⁶¹

Shortly after, in October 2018, the government repealed the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.⁶² Once again no public notice or consultation occurred under the EBR,⁶³ although the government eventually posted a 30 day comment period on the Environmental Registry to collect comments on Bill 4. On this consultation issue, the Divisional Court noted that the rollback of the cap-and-trade program without consultation was unlawful – however, the court did not grant a formal declaration to this effect.⁶⁴

With the rollback of the Ontario cap-and-trade program, Ontario became subject to the ‘Federal Backstop’ outlined in the *Greenhouse Gas Pollution Pricing Act*.⁶⁵ As the PC Party had campaigned it would do, the Ontario government challenged the constitutional authority of this legislation,⁶⁶ arguing that the

⁵⁷ *PC Party, Supra* note 46.

⁵⁸ O. Reg. 114/16.

⁵⁹ Alexandra Sadvari & Liane Langstaff, “Ontario’s Cap and Trade Program Ends and Federal Backstop Looms: Implications for Ontario Businesses” (October 9, 2018), online: *Gowling WLG* <https://qowlingwlq.com/en/insights-resources/articles/2018/ontario-s-cap-and-trade-program-ends/> [Sadvari & Langstaff].

⁶⁰ Richard Lindgren, “Annotation to” (2019) 26: 4 CELR-ART 215 (Westlaw) [https://nextcanada.westlaw.com/Document/19506ea2f490625aae0540010e03eefe2/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)](https://nextcanada.westlaw.com/Document/19506ea2f490625aae0540010e03eefe2/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)) [Lindgren].

⁶¹ *Ibid.*

⁶² *Sadvari & Langstaff, Supra* note 61.

⁶³ *Lindgren, Supra* note 62.

⁶⁴ Amir Attaran & Ian Miron, “Challenging Ontario’s gutting of cap and trade program”, online: *Ecojustice* <https://ecojustice.ca/case/challenging-ontarios-gutting-of-cap-and-trade-program/>.

⁶⁵ *Sadvari & Langstaff, Supra* note 61.

⁶⁶ *Ibid.*

program imposed an unconstitutional tax on Ontarians.⁶⁷ The Court of Appeal struck down Ontario's argument finding that the federal carbon pricing system was constitutionally sound.⁶⁸ In response to the Court's ruling, Premier Ford indicated that his government would appeal to the Supreme Court of Canada.⁶⁹ To date, the Supreme Court has heard the appeal but has not yet released a decision.

By removing and opposing the two means of pricing carbon in Ontario, the Ford government demonstrated its opposition towards direct pre-emptive action on climate change. The government has also shown hostility towards indirect forms of climate change mitigation and adaptation.

In September of 2018, the government scrapped the electric car rebate program, claiming that the move would save taxpayers \$1 billion over four years.⁷⁰ Before it was scrapped, the program incentivised people to purchase electric vehicles by rebating the purchase of those vehicles up to \$14,000 depending on the car.⁷¹ The Ford government also repealed the *Green Energy Act, 2009*, which was created to encourage energy conservation, expand renewable energy production and incentivise new jobs in renewable energy.⁷² Both the electric car rebate program and the *Green Energy Act* were meant to help transition Ontario towards more renewable energy, and less reliance on fossil fuels, both of which would help fight against climate change.

Furthermore, during their time in office, the Ford Government has halved the funding available to the conservation authorities for flood control⁷³ and eliminated a government program through the Ministry of Natural Resources and Forestry that aimed to plant 50 million trees.⁷⁴ Increased flood control will be

⁶⁷ The Attorney General of Ontario, News Release, "Ontario Announces Constitutional Challenge to Federal Government's Punishing Carbon Tax Scheme" (August 2, 2018) <https://news.ontario.ca/en/release/49841/ontario-announces-constitutional-challenge-to-federal-governments-punishing-carbon-tax-scheme>.

⁶⁸ Angela Johnston, "Ford 'going to pursue' carbon tax challenge to Supreme Court", CBC, (October 24, 2019) <https://www.cbc.ca/news/canada/toronto/ford-government-carbon-tax-legal-challenge-1.5333357> & Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544, 2019 CarswellOnt 10495.

⁶⁹ Angela Johnston, "Ford 'going to pursue' carbon tax challenge to Supreme Court", CBC, (October 24, 2019) <https://www.cbc.ca/news/canada/toronto/ford-government-carbon-tax-legal-challenge-1.5333357>.

⁷⁰ Canada Drives "How to Get Your Electric Car Rebate in 2020" (January 7, 2020), online: *Canada Drives* <https://www.canadadrives.ca/blog/buying-a-vehicle/government-fuels-electric-vehicle-demand-with-electric-car-rebates-in-canada-and-top-affordable-electric-vehicles>.

⁷¹ *Ibid.*

⁷² Jonathan Yantzi, "Ontario Repeals Green Energy Act, 2009" (October 12, 2018), online: *Aird & Berlis* <https://www.airdberlis.com/insights/blogs/energyinsider/post/ei-item/ontario-repeals-green-energy-act-2009>.

⁷³ Ausable Bayfield Conservation Authority, "Flood program provincial funding cut in half", online: *Susable Bayfield Conservation Authority* <https://abca.ca/post/?ID=945>.

⁷⁴ The Canadian Press, "Ontario cancels program that aimed to plant 50 million trees" CBC, (April 25, 2019) <https://www.cbc.ca/news/canada/toronto/ontario-tree-planting-program-cut-1.5110282>.

necessary as climate change brings more severe weather to Ontario, and the planting of the 50 million trees was intended to improve soil quality, increase wildlife habitat and mitigate against the effects of climate change.⁷⁵

The removal of these programs and laws undermine the ability of Ontario to prevent climate change and respond to new threats that the Province will face. Through these actions, the Ford government demonstrated their favouring of eliminating programs that will have long term impacts, environmentally and economically, in favour of immediate financial savings.

2.2.2. *Land-Use and Development*

The Ford government has made several changes to land-use and development that have impacted environmental protections. In the spring of 2019, the government presented *Bill 108, More Homes, More Choice Act, 2019*.⁷⁶ Many of the changes this Bill created revolve around use and acquisition of land, creating many environmental implications. Concerning changes that impacted environmental law and policy, the followings acts were amended:⁷⁷

- Conservation Authorities Act
- Development Charges Act, 1997 and the Education Act
- Endangered Species Act, 2007
- Environmental Assessment Act
- Environmental Protection Act
- Planning Act

The *Endangered Species Act* was significantly impacted. The Bill introduced a “pay to slay” model for solving issues with endangered species.⁷⁸ Developers can now pay into a fund for endangered species, rather than finding on the ground solutions when their development would undermine the habitat of an endangered species. Furthermore, the Bill changes how species are classified. If their species is doing well in other areas beyond the region in question, then getting protection under the Act becomes more

⁷⁵ Forests Ontario, “50 Million Tree Program”, online: *Forests Ontario* <https://www.forestsontario.ca/en/program/50-million-tree-program>.

⁷⁶ *Bill 108, More Homes, More Choices Act, 2019*, 1st Sess, 42nd Leg, Ontario, 2019 (Assented to June 6, 2019) S.O. 2019, c. 9.

⁷⁷ *Ibid.*

⁷⁸ Kelsey Scarfone, “Ontario’s Endangered Species Act is being dismantled, even if the government would like you to believe otherwise” (June 5, 2019), online: *Environmental Defense* <https://environmentaldefence.ca/2019/06/05/endangered-species-act-dismantled/>.

difficult.⁷⁹ Additionally, the Bill allows the Minister to delay new species-at-risk protections for up to three years.⁸⁰

In *Bill 108*, a variety of changes were also made to development charges, parkland dedications, and community benefit charges. These land use planning tools are used by municipalities to procure land or funding that support public programs and infrastructure. These tools can be used to acquire greenspaces, or similar government-funded infrastructure, as well they can be utilized to encourage certain types and densities of development. Although the changes had yet to be implemented before the COVID-19 emergency.

Most significantly concerning land use planning, the changes adjusted density targets across Ontario. In more rural outer regions of Ontario the Ford government lowered the density targets by half. With similar reductions outside of urban centres.⁸¹ This change favours urban sprawl over density, despite previous policies trying to incentivise more dense developments for environmental purposes.⁸² These new reduced targets are lower than density goals in the 1990s which were already low before Ontario created a growth plan with the intention of intensification and higher density developments.⁸³ With lower targets, more urban sprawl will occur increasing, rather than decreasing dependency on cars and fossil fuels.

It was claimed that these changes were made to bring new housing to the market. Some opponents have been critical of the fact that loosening density targets allow for less dense development leading to fewer residences being built.⁸⁴ However, the clear aim was to spur development through deregulation, despite that loosening density target development leads to increased environmental consequences. These changes to land-use and development appear to be aimed at speeding up development processes and making land easier to access for projects. These changes are occurring at the expense of tools and protections that help maintain greenspace during development and are designed to curb urban sprawl.

2.2.3. Governance

Before Covid-10 the Ford government made one significant change to governance in environmental law and policy and had plans for more changes underway. In 2018, the Ford government enacted Bill 57,

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Stefan Novakovic, "Ontario's Growth Plan Changes: The End of Smart Growth?" (January 22, 2019), online: *Urban Toronto* <https://urbantoronto.ca/news/2019/01/ontarios-growth-plan-changes-end-smart-growth>.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

omnibus legislation that amended the *Environmental Bill of Rights*.⁸⁵ These amendments abolished the office of the Environmental Commissioner of Ontario,⁸⁶ transferring the responsibilities of the Commissioner to the Office of the Auditor General.⁸⁷ This change impacted how environmental issues were governed and overseen in Ontario, changing the structure of environmental policy, law, and protections. In announcing these cuts, the finance minister Vic Fedeli stated that the elimination of this office was intended to cut costs.⁸⁸ The move to merge the job of the Commissioner with the office of the Auditor General was seen by environmental advocacy groups as a sign that the Ford Government did not intend to comply with Ontario's *Environmental Bill of Rights*⁸⁹ and would reduce accountability on environmental issues.⁹⁰

Before Covid-19 the Ford government was beginning to make governance changes via an amendment to the *Environmental Assessment Act* (EAA). With the significant role that the EAA plays in ensuring that there is environmental oversight as Ontario develops and grows, changes to the EAA are necessarily changes to how environmental protections are governed. Revising environmental assessment within Ontario has been a topic of discussion periodically since 1975.⁹¹ Major changes occurred in 1996 and with further amendments in 2006.⁹² Criticism of the assessment process was a topic of conversation throughout the 2000s and revisited in the late 2010s in the 2016 Auditor General's report, with changes and updates to the *Environmental Assessment Act* being widely seen as necessary. There has been active interest in seeing the *Environmental Assessment Act* amended, from academics, politicians, environmental groups and other groups impacted by the Act.

⁸⁵ Lindgren, *Supra* note 62.

⁸⁶ *Ibid.*

⁸⁷ Auditor General of Ontario, "Operation of the Environmental Bill of Rights 1993" in *2019 Annual Report* (December 4, 2019), online (pdf):

https://www.auditor.on.ca/en/content/annualreports/arreports/en19/v2_200en19.pdf

⁸⁸ Kelsey Scarfone, "Silencing a critic: Ontario Government makes cut to environmental watchdog in the wake of a damning new report" (November 23, 2018), online: *Environmental Defence* <https://environmentaldefence.ca/2018/11/23/environment-commissioner/> [Scarfone].

⁸⁹ Ecojustice, "Statement: Doug Ford axes independent office of Ontario's Environmental Commissioner" (November 15, 2018) <https://ecojustice.ca/pressrelease/statement-doug-ford-axes-independent-office-of-ontarios-environmental-commissioner/>

⁹⁰ Scarfone, *Supra* note 90.

⁹¹ Richard D. Lindgren and Burgandy Dunn, "Environmental Assessment in Ontario: Rhetoric vs. Reality" (2010) 21 J.E.L.P. (CELA) <https://cela.ca/wp-content/uploads/2019/08/766.LindgrenDunnFinal.pdf>

⁹² *Ibid.*

In April of 2019, the Ontario government released a discussion paper titled: *Modernizing Ontario's Environmental Assessment Program*.⁹³ The paper outlined the Government's vision and intended plan for modifying and modernizing the Environmental Assessment Act, with the motivation of streamlining processes, eliminating duplication, as well as reducing "red tape".⁹⁴ However, the plan did not align with the suggestions proposed by the Auditor General in 2016.⁹⁵ The report identified four themes for modernizing the Act: Better aligning assessment type with levels of risk; eliminating duplication or redundancy; shortening timelines; and going digital. Some early-stage changes that were identified as first steps in achieving these goals included:

- Exempting low-risk projects from the need to complete a Class Environmental Assessment;⁹⁶
- Re-classifying some categories of medium-risk projects, exempting those projects from environmental assessment requirements;⁹⁷
- Identifying specific projects with low risk and high economic benefits, that could be exempt from environmental assessment requirements;⁹⁸
- Creating regulation to limit when the Minister must make a decision about public "bump-up" requests, and how those requests can be made;⁹⁹

These changes were proposed as helping to create a balance between a healthy environment and a healthy economy.¹⁰⁰

Before COVID-19 some action had been taken on implementing these changes. In *Bill 108: More Homes, More Choice Act, 2019* some changes were made about screening criteria, which would exempt certain projects from the act, and provided the Minister with new powers to amend Class Environmental

⁹³ Ministry of the Environment Conservation and Parks, "Modernizing Ontario's Environmental Assessment Program Discussion Paper" (2019), online (pdf): <https://prod-environmental-registry.s3.amazonaws.com/2019-04/EA%20Discussion%20Paper.pdf>

⁹⁴ *Ibid* at 1.

⁹⁵ Auditor General of Ontario, "Environmental Assessments" in *2016 Annual Report* (November 30, 2016), online (pdf): https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf [*Environmental Assessments*].

⁹⁶ *Ibid* at 10 & 13.

⁹⁷ *Ibid* at 10.

⁹⁸ *Ibid* at 10.

⁹⁹ *Ibid* at 13.

¹⁰⁰ *Ibid* at 13.

Assessments, as well as other changes.¹⁰¹ The Government's website makes clear that more changes were to come in line with the 2019 discussion paper.¹⁰²

The elimination of the Environmental Commissioner and the intended changes to the *Environmental Assessment Act* point to a willingness to make significant changes to how environmental issues are managed. As well as a willingness to adopt changes that might mean less protection. Without the Environmental Commissioner there is not the same assurance that there is an impartial body safeguarding environmental protections, and the proposed changes to the EAA demonstrated allowances for less stringent requirements for environmental assessments.

2.2.4. General Red Tape and Deregulation

As part of the Government's fall 2018 Economic Outlook and Fiscal Review, the Ford government released *Ontario's Plan for the People*.¹⁰³ The Ford Government outlined several goals including: "making Ontario open for business", and "leaving more money in people's pockets".¹⁰⁴ Ford ensured Ontarians that his government would create new business and new jobs by making Ontario more attractive to international businesses. He explained that companies will be attracted by streamlining processes, reducing barriers and costs to businesses, harmonizing regulatory requirements across levels of government and removing duplicated or unnecessary regulations.¹⁰⁵ The Government set a target to reduce the cost of complying with regulations by \$400 million annually for businesses by 2020¹⁰⁶ to encourage business to create new jobs.¹⁰⁷

The Government proposed leaving more money in people's pockets by ending cap-and-trade, opposing the federal government's carbon tax, cancelling 758 renewable energy contracts to reduce electricity bills,

¹⁰¹ Katarzyna Sliwa and Aaron Kurts, "Bill 108, More Homes, More Choice Act – unpacked", (June 12, 2019), online: *Dentons* <https://www.dentons.com/en/insights/alerts/2019/june/12/bill-108-more-homes-more-choice-act-unpacked>

¹⁰² Government of Ontario, "Modernizing Ontario's environmental assessment program" (July 8, 2020), online: *Government of Ontario* <https://www.ontario.ca/page/modernizing-ontarios-environmental-assessment-program>.

¹⁰³ Government of Ontario, "A Plan for the People 2018 Ontario Economic Outlook and Fiscal Review Background Papers" (November 15, 2018), online: *Government of Ontario* <https://www.fin.gov.on.ca/fallstatement/2018/contents.html> [2018 Economic Outlook].

¹⁰⁴ *Ibid.*

¹⁰⁵ Office of the Premier, News Release, "Ontario's Government for the People Cutting "red tape" to Make Ontario a Top Destination for Global Investments" (December 12, 2018) <https://news.ontario.ca/en/release/50731/ontarios-government-for-the-people-cutting-red-tape-to-make-ontario-a-top-destination-for-global-inv>

¹⁰⁶ Government of Ontario, "Open for Business" (November 15, 2018), online: *Government of Ontario* <https://www.ontario.ca/page/open-business>

¹⁰⁷ *Ibid.*

and ending the Drive Clean Program.¹⁰⁸ As this section has shown, the Ford government followed through on these specific promises as well as others. For instance, in April 2019 the government repealed the *Toxics Reduction Act, 2009* – set to be implemented December 2021. The government explained that the Act was being repealed to eliminate duplications under Federal laws, reduce burden, and because they did not see meaningful reductions in toxins from the program.¹⁰⁹ However, the Provincial legislation regulated different aspects of toxins than the Federal regulations, so the same protections are not maintained without the *Toxics Reduction Act*.¹¹⁰

There are many more examples of this kind of deregulation and “red tape” reduction that has occurred under the Ford government. These have included the removal of protections against cosmetic pesticides such as harmful neonicotinoids under Bill 132,¹¹¹ a decision that rolled back existing protections in response to industry lobbying.¹¹² The government also removed tools available to municipalities that protected against harms to groundwater from pits and quarries,¹¹³ as well as rolled back the Municipal Industrial Strategy for Abatement (MISA) program, which established pollution limits across Ontario for major industry sectors. Rather than updating this 25-year-old program, the Ford government rolled protections back to those that existed in the 1990s, which are insufficient for today’s needs.¹¹⁴ In removing and rolling back these types of regulations and programs, the Ford government is not removing redundant regulations. Rather, it is removing important protective tools that do not have equivalent counterparts within the law.

¹⁰⁸ 2018 *Economic Outlook*, *Supra* note 105.

¹⁰⁹ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 013-4234, “Repeal the Toxics Reduction Act, 2009 and all associated regulations by December 31, 2021” (April 18, 2019) <https://ero.ontario.ca/notice/013-4234#decision-details>.

¹¹⁰ David McRobert, “The Implications of the Proposed Changes to and the Ultimate Repeal of Ontario’s Toxics Reduction Act, 2009” (2019), online: https://www.researchgate.net/publication/330738567_The_Implications_of_the_Proposed_Changes_to_and_the_Ultimate_Repeal_of_Ontario's_Toxics_Reduction_Act_2009

¹¹¹ Ontario Nature, News Release, “Ontario must reverse course on Pesticides Regulation changes to protect pollinators” (November 14, 2019) <https://ontarionature.org/news-release/ontario-must-reverse-course-on-pesticides-regulation-changes-to-protect-pollinators/>

¹¹² *Ibid.*

¹¹³ Ontario Nature, News Release, “Ontario Government bows to the aggregate industry, moves to block municipal efforts to protect groundwater” (November 12, 2019) <https://ontarionature.org/news-release/ontario-blocks-efforts-to-protect-groundwater/>

¹¹⁴ Mark Winfield, “New and improved Ford government continues its war on the environment” (December 5, 2019), online: <https://marksw.blog.yorku.ca/2019/12/05/new-and-improved-ford-government-continues-its-war-on-the-environment/>

These goals to cut costs, reduce regulatory burdens, and eliminate barriers for businesses are important for contextualizing the Ford Government's actions relating to environmental laws and policies. Most, if not all of the actions that were taken pre-pandemic in the area of environmental law and policy have had motivating factors related to reducing costs, or regulatory burdens for business, industry, and development.

2.3. Summary – What was the Government Focused on Before COVID-19?

Since their election in 2018, the Ford government has repealed, removed, and degraded many environmental laws. They have eliminated environmental programs and they have been under fire for disregarding environmental protections such as those under the Ontario *Environmental Bill of Rights*. The government's actions are the best articulation of their policy and legal priorities with respect to environmental issues, these issues being secondary to economic and business priorities. The removal of environmental protections is seen as a mechanism for removing costs and barriers for business and development while gaining political clout with these groups.

The government's actions have occurred in four main areas: concerning climate change; land use and development; governance; and the elimination of "red tape". These categories point to the kinds of interests that the Ford government supports. The government's actions before COVID-19 largely benefited businesses and developers. The elimination of climate change related programs removed barriers and costs from businesses and industries. Addressing land use and development topics eliminate barriers for both business and government projects and cutting "red tape" and supporting deregulation created benefits for these parties by generally removing barriers. Furthermore, by making changes to governance structure the government was removing constraints from itself. It removed and degraded structures of accountability and transparency by removing objective oversight from the Environmental Commissioner of Ontario, reducing the scope and rigor of the Environmental Assessment regime, and disregarding important participation laws under the Environmental Bill of Rights. These changes and actions allowed for more leniency in their own decisions.

Before COVID-19 the Ontario government stood in opposition to environmental laws. The government saw these laws and policies as standing in opposition to the ability for Ontario to encourage economic development through both government and private initiatives, while also providing an opportunity to create governance changes that benefited their view that a government should take a backseat role.

3. Section 3: Environmental Emergency Measures in Response to Covid-19

This section will summarize and explain what legal and policy decisions were made concerning environmental issues during the initial period of emergency. Furthermore, this section will identify any trends, patterns, and takeaways that can be gained from compiling these changes. With the significant number of decisions that were made in the face of COVID-19, this paper will limit its discussion to the period between March and August 2020 which includes the period during which the provincial declaration of emergency was in place. However, emergency powers, impacts, and decisions continue to be used to make decisions beyond the end of September, which may in turn impact environmental law and policy. As a result, it will be important to continue these conversations about environmental impacts well past the end of the declared emergency.

The attached Appendix A lists and outlines in detail the relevant changes and decisions that were made between March and August 2020. The Appendix includes any decision made during this period that related to issues of land use planning, energy, transportation, agriculture and farming, and other environmentally relevant subject areas. These decisions and changes were made for the most part either through legislative changes – namely Bill 189 and Bill 195 or through changing and creating regulations. The Appendix also includes some key decisions and dates that are not directly related to environmental issues but contextualize the use of emergency powers and orders throughout these months – including decisions such as the declaration and revocation of emergency.

3.1. Types of Changes Made

There are several common types of changes that were made during this period, and the decisions relevant to this paper were typically one of the following:

- time extensions for development, emergency measures, court proceedings, certificates/credentials/ licences, pollution reporting dates, or municipal bylaws;
- changes to the allocation of power across various levels of government;
- changes to public consultation or how notice is provided;
- definition and language change within legislation and regulation;
- changes to land development tools, and how land is used or acquired;
- cost/financial reductions and changes;
- changes to existing rules of operation or industry standards, and exemptions from normal regulation;

- alteration or rollback of recently created legislation; and
- closure of amenities.

There are three subject areas in which these changes typically fall. Changes relating to land use planning, and land development; regulatory relief for industry; or changes to governance. These categories intersect and relate, with some decisions fitting into multiple categories.

Through the compilation of these changes, it is possible to also identify common motivating factors. The government’s overt motivations include the desire to:

- reduce burdens on businesses;
- streamline and change processes;
- reduce “red tape”;
- provide more options for businesses;
- offset administrative costs and reduce costs for businesses;
- support important identified projects – fast track important projects;
- confront an increased need for space and facilities;
- allow physical development to continue during the pandemic.

3.2. Key Changes

This paper does not have the space to go into depth on each change that was made; however, several changes and decisions are illustrative of what occurred and what was on the government agenda during the declaration of emergency. The following paragraphs will provide detail on the most significant changes, what occurred, what the changes mean for environmental law and policy, and how they demonstrate the government of Ontario’s environmental agenda during the declaration of emergency.

3.2.1. *Suspending the EBR*

What was the Change?

On April 1st, O. Reg. 115/20 was made under the *Environmental Bill of Rights* (EBR). The regulation created temporary exemptions to public participation requirements under the legislation.¹¹⁵ Normally governmental decisions and programs – including proposals to amend or revoke laws, regulations, policies, or instruments – that could have a significant effect on the environment must be posted on the Environmental Registry for public notice. The public must also be given time to provide comments on the

¹¹⁵ O. Reg. 106/20.

posting. In creating these proposals and programs, governmental Ministries must consider the legislations environmental values when making decisions that might significantly affect the environment.

Under O. Reg. 115/20 both requirements were temporarily amended. Public notice and consultation were no longer necessary while the regulation was in place – although Ministries were encouraged to continue to post notifications on the registry.¹¹⁶ Furthermore, certain ministries became exempt from the requirement that environmental values be considered.

Implications of the Change

These amendments to the EBR, as described above, relate to governance. The removal of the EBR's oversight fundamentally affects how decision making occurs and has the potential for severe environmental implications. As a result, these changes are important for contextualizing all decisions made throughout the period in which this regulation was in place, including decisions relating to land use, development, and regulatory relief.

The requirements for notice and public consultation under the EBR are the main mechanisms for tracking government decisions that have environmental impacts. The ability to communicate thoughts and concerns has been an integral environmental protection offered by the EBR.¹¹⁷ Without these requirements it is impossible to fully account for all environmental decisions; decisions may have been overlooked by the public because no notice was required.¹¹⁸ As a result, it is not possible to hold the government accountable for their actions. For instance, without these protections, industry lobbying was able to influence exemptions for petroleum refining during the period of the emergency exemptions without any public input.¹¹⁹ Without these requirements for consultation and notice, changes with negative environmental consequences have occurred without public scrutiny. The removal of these rules degraded the transparency and accountability of the government by taking away legislated rights that the public previously held.

¹¹⁶ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1599, "Temporarily exempting proposals from the application of the Environmental Bill of Rights (EBR)" (April 3, 2020) <https://ero.ontario.ca/notice/019-1599>.

¹¹⁷ Kerrie Blaise, "Earth Day report: Perils of reducing environmental rights during COVID-19" (April 22, 2020), online: CELA <https://cela.ca/earth-day-report-perils-of-reducing-environmental-rights-during-covid-19/> [Blaise].

¹¹⁸ Ecojustice, News Release, "Ecojustice and clients remain vigilant of environmental rollbacks" (June 15, 2020) <https://ecojustice.ca/pressrelease/statement-ecojustice-and-clients-remain-vigilant-of-environmental-rollbacks/> [Ecojustice and Clients].

¹¹⁹ *Ibid*

Public consultation is also a necessary tool for the government that allows for the collection of information related to Indigenous, social and environmental values that are integral for making relevant decisions.¹²⁰ As a result, all decisions that were made during the revocation of the EBR's rules were made with lower standards of environmental protections. These decisions were made without full knowledge and context of the impacts of these changes that would normally be required, essentially rolling back protections to a standard before the creation of the EBR in the 1990s. This information includes public opinion, environmental impacts, and cultural impacts.

Environmental groups and experts have indicated that the decision to suspend these protections was not supported by any rationale¹²¹ since the exception did not elevate capacity constraints the government was facing.¹²² Furthermore, the decision was unnecessary, as the EBR contains emergency-based exceptions that could have been applied in response to COVID-19 specific needs.¹²³ The exemption was also not limited to COVID-19 related decisions, making the action overbroad, exacerbating the potential negative impact this decision could have.¹²⁴

3.2.2. Environmental Assessment

What was the Change?

The amendments to the *Environmental Assessment Act* (EAA) were made under Bill 197, the *COVID-19 Economic Recovery Act*. These amendments are set to come into force in stages as a long-term transition to this new system of assessment. The key amendments to the EAA made under Bill 197 include changes to which projects must undergo assessment through the creation of a project list; changes to the types of assessments that projects must take through the creation of "comprehensive" and "streamlined" assessments; and the creation of new timelines for assessments.¹²⁵

Before these changes, all public sector undertakings required environmental assessments, unless specifically exempted. Under this new model rather than exempting those projects that do not require

¹²⁰ Blaise, *Supra* note 119.

¹²¹ *Ecojustice and Clients, Supra* note 120 & Letter from CELA et al. to Premier Doug Ford (April 17, 2020) <https://cela.ca/wp-content/uploads/2020/04/EBRExemptionLetter2020.pdf>

¹²² Blaise, *Supra* note 119.

¹²³ Mark Winfield, "Ontario's Business Friendly Agenda Accelerates in the Shadow of the Pandemic" (May 6, 2020), online: *York University* <https://marksw.blog.yorku.ca/2020/05/06/ontarios-business-friendly-agenda-accelerates-in-the-shadow-of-the-pandemic/> & Blaise, *Supra* note 119.

¹²⁴ Letter from CELA et al. to Premier Doug Ford (April 17, 2020) <https://cela.ca/wp-content/uploads/2020/04/EBRExemptionLetter2020.pdf>.

¹²⁵ Matt Mcpherson, "Ontario continues to throw environmental pre-caution to the wind with Bill 197", online *OKT* <https://www.oktlaw.com/ontario-continues-to-throw-environmental-pre-caution-to-the-wind-with-bill-197/> [Mcpherson].

assessments, the provincial Cabinet will create a list of projects that they deem as requiring an assessment.¹²⁶ This method shifts from a standard where all government projects are by default covered under the EAA regime, to a system where projects must be opted-into the system.

The change to the EAA also includes the creation of “comprehensive” and “streamlined” assessments.¹²⁷ Before these changes, most environmental assessments in Ontario fell under the category of Class EAs, a system where pre-approved classes of projects were subject to certain conditions.¹²⁸ The changes to the EAA are shifting the legislation from the use of Class EAs to the use of a “streamlined” EA system.¹²⁹ Streamlined EAs will be created and dictated by regulation rather than directly under the EAA legislation.¹³⁰ In the processes of moving towards this streamlined EA system, interim changes are being made to existing Class EAs, with many of the changes reducing the amount of scrutiny being applied and exempting certain categories of “low-risk” projects entirely.¹³¹

Some additional changes that were included in these amendments to the EAA include the creation of an exemption of the EAA from Section 21.2 of the *Statutory Powers Procedure Act* – this is a tribunal’s power to review a decision made under the *Environmental Assessment Act*.¹³² Additionally, the amendments also restrict when Ontarians can request more rigorous assessments for specific projects through a “bump-up” or “elevation”.¹³³

Implications of the Change

The amendments to the EAA relate to governance, land use and development, and regulatory relief. Environmental assessments play a significant role in deciding how development decisions are made. Environmental assessments are important guiding rules for land use and development and changes to those rules ultimately mean changes to governance and impacts on how land use and development occur. These amendments also relate to regulatory relief because the changes allow for less burdensome

¹²⁶ Richard Lindgren, “EA is Not red tape: The Case against Ontario Bill 197” (July 13, 2020), online: CELA <https://cela.ca/ea-is-not-red-tape-the-case-against-ontario-bill-197/>. [EA is not red tape].

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Richard J. King, et. al. “Ontario introduces sweeping changes to environmental legislation” (August 6, 2020), online: Osler <https://www.osler.com/en/resources/regulations/2020/ontario-introduces-sweeping-changes-to-environmental-legislation> [King].

¹³³ EA is not red tape, *Supra* note 128.

assessments for many projects – particularly for government projects. In this case, regulatory relief is being offered to government agencies and projects.

a) Existing Protections are Undermined

The Auditor General’s 2016 report flagged several issues with the EAA that needed to be addressed: a large number of significant government plans and programs that only get assessed through streamlined assessments, rather than more rigorous assessments; a lack of public notification; and a lack of independent, objective oversight.¹³⁴ The Auditor General articulated that the Act, before these recent changes, fell short of achieving its purpose of identifying and resolving potential environmental problems before damage occurs.¹³⁵

The changes that were made to the EAA do not fix these issues that undermine environmental protection. Instead, the changes to the EAA set back environmental protections to a similar standard of protections that were available in the 1970s, where environmental assessments were not required unless a political decision-maker determined one was necessary.¹³⁶ Rather than addressing the issues identified by the community and articulated by the Auditor General, the Ontario Government made contrary decisions. Exemptions have been made for certain projects, either allowing them to by-pass the assessment process altogether, or requiring lower levels of assessment than previously. There is also no longer an automatic requirement to undergo an assessment.¹³⁷ These changes will likely lead to fewer, rather than more, government projects undergoing assessments.

Forestry management is an example of how protections have been undermined as a result of adjusting which projects need to undergo assessment. The Ontario government repealed Declaration Order MNR-75¹³⁸ which required environmental assessments concerning forest management on crown land. Environmental assessments will no longer be necessary for crown forestry activities.¹³⁹ This change

¹³⁴ *Environmental Assessments*, *Supra* note 97.

¹³⁵ *Ibid.*

¹³⁶ Laura Bowman, “Ontario passes sweeping changes to environment assessment” (July 17, 2020), online: *Ecojustice* <https://ecojustice.ca/ontario-proposes-sweeping-changes-to-environmental-assessment/> [Bowman].

¹³⁷ Rodney Northey, “What is and is not Modernized in Ontario’s Re-Write of its Environmental Assessment Act” (July 28, 2020), online: *Gowling WLG* <https://gowlingwlg.com/en/insights-resources/articles/2020/modernized-ontario-environmental-assessment-act/>

¹³⁸ Government of Ontario, “Archived – Declaration Order MNR-75: Environmental Assessment Requirements for Forest Management on Crown lands in Ontario” (September 17, 2015), online: *Government of Ontario* <https://www.ontario.ca/page/declaration-order-mnr-75-environmental-assessment-requirements-forest-management-crown-lands-ontario>

¹³⁹ *Ibid.*

removes oversight and protection of forests and reduces Indigenous consultation requirements in this area.¹⁴⁰ Forestry protections will now occur under the Ontario forestry manual. However, this manual can be easily amended – unlike the legislative protections that were available under the EAA. As a result, these protections are less stable and more susceptible to change.

This lack of stability in protection is seen elsewhere in the EAA amendments. As this paper has noted, when Class EAs are transitioned into the “streamlined” EA system, these streamlined EAs will be created through regulation.¹⁴¹ Regulations offer less protection from change and degradation because they can be amended at the discretion of the Ministry and Cabinet, unlike protections offered under legislation. The changes to the EAA are shifting many of the rules and processes into regulation and as a result, the power over the EAA is being shifted from Parliament to the Executive Branch of government.¹⁴²

The changes to the EAA lead to less stable regulation over the assessment proceeds and reduces the number of assessments that will occur. Fewer assessments lead to fewer chances for identifying environmental issues, and fewer assessments mean less opportunity for the public to be informed of and participate in decisions that impact the environment. These changes to the EAA ultimately lower the environmental protections that are gleaned from these assessment processes.¹⁴³ The effects of proposed projects could have extensive impacts that last many years¹⁴⁴ and without a means of effectively evaluating those impacts before the project beginning there is no way to mitigate or find solutions to potential harm.

b) Participation and Consultation are Undermined

These amendments to the *Environmental Assessment Act* (EAA) have several effects on public participation. For example they: decrease the ability for the public to have their voices heard; reduce the ability for public appeals; and remove the ability to request greater scrutiny of a project. Beyond general public participation, consultation rights of Aboriginal communities are also affected by these changes. The Law Firm Olthuis Kleer Townshend – LLP (OKT), representing several Indigenous communities is

¹⁴⁰ Aidan Macnab, “First Nations and Environmental groups challenge Ontario’s changes to Environmental Assessments” (September 7, 2020), online: *Law Times* <https://www.lawtimesnews.com/practice-areas/litigation/first-nations-and-environmental-groups-challenge-ontarios-changes-to-environmental-assessments/333064> [Macnab].

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Environmental Assessments*, *Supra* note 97.

¹⁴⁴ *Ibid.*

challenging the Ontario Government on the changes to the EAA.¹⁴⁵ Amongst OKT's arguments is the concern that these changes will impact the government's duty to consult and accommodate First Nations impacted by proposed projects.¹⁴⁶ With more projects becoming exempt from assessments, in particular the exemption of small or medium risk projects that may have serious impacts on Aboriginal rights, it will be more difficult for First Nations to be consulted or even notified of projects occurring on their land.¹⁴⁷ Although there is a constitutional obligation to consult with affected First Nations, the regulatory regimes under the EAA are essential for prompting these consultation processes.¹⁴⁸ Without the voices of Aboriginal communities and the voices of the general public, the government will not have access to important information regarding environmental harms and threats that may otherwise be overlooked.

Further to this theme of consultation, the changes to the EAA themselves lacked general public consultation. The changes to the EAA were given Royal Assent on April 14, 2020, 13 days after the creation of the temporary exemptions from the *Environmental Bill of Rights* (EBR). As a result, the Ontario government proposed and passed the changes without public consultation, stating that consultation was not required.¹⁴⁹ The Ontario Auditor General has since stated this action was non-compliant with the EBR and Ecojustice and Greenpeace Canada have challenged the changes by judicial review claiming non-compliance.¹⁵⁰

3.2.3. *Planning Tools*

What was the Change?

Bill 197 made amendments to both the *Development Charges Act*, as well as the *Planning Act*, both on the topic of development charges and other related municipal planning tools.¹⁵¹ The amendments to both Acts changes the types of services that a municipality can fund through development charges and community benefit charges. The amendments also roll back and make alterations to changes that were

¹⁴⁵ *Macnab, Supra* note 142.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Mcpherson, Supra* note 127.

¹⁴⁸ *Ibid.*

¹⁴⁹ Superior Court of Justice, "Greenpeace Canada and Western Canada Wilderness Committee v Minister of the Environment, Conservation and Parks Notice of Application to Divisional Court for Judicial Review" (2020), online (pdf) <https://ecojustice.ca/wp-content/uploads/2020/08/Notice-of-Application-Greenpeace-and-Wilderness-Committee-v-Ontario.pdf>

¹⁵⁰ *Bowman, Supra* note 138.

¹⁵¹ Hartley Lefton et al., "Bill 197: Ontario's sweeping COVID-19 recovery legislation – Key Takeaways for your Business" (July 21, 2020), online: *Mccarthy Tetrault* <https://www.mccarthy.ca/en/insights/articles/bill-197-ontarios-sweeping-covid-19-recovery-legislation-key-takeaways-your-business> [Lefton et al.].

made, but not yet in force¹⁵², under the *More Homes, More Choices Act* in 2019.¹⁵³ The amendments to the *Planning Act* also impact parkland dedication, rolling back the removal of section 42(3) of the *Planning Act*, allowing municipalities to continue using parkland dedication¹⁵⁴ and to pass a bylaw requiring alternative parkland dedication rates.¹⁵⁵

For a more detailed description of the changes to these planning tools see Appendix A.

Bill 197, *the Recovery Act*, also created new types of powers concerning development and land use. First, the Bill created amendments to the *Ministry of Municipal Affairs and Housing Act*, to create a new office titled the Provincial Land and Development Facilitator. The new position will advise the Minister regarding growth, land use and other matters,¹⁵⁶ potentially acting as another avenue for development industry lobbyists to have access to the government.

The amendments additionally provide the Minister of Municipal Affairs and Housing with new powers. The Minister's power over "specified land" has been expanded – the definition of this land being anything other than land within the Greenbelt Area.¹⁵⁷ The Minister has the power to make orders about site plan control and inclusionary zoning, having the power to confirm that site plan controls do not apply to all or part of the specified lands.¹⁵⁸ Additionally, the Minister can require landowners to enter agreements regarding a site plan with a municipality.¹⁵⁹ Within these agreements, the Minister will have the power to

¹⁵² Robert Howe, Matthew Lakatos-Hayward, & Max Laskin, "Ontario Rethinks Proposed Community Benefits Charges and Changes to Parkland Dedication and Development Charges" (July 13, 2020), online: *Goodmans* https://www.goodmans.ca/Doc/Ontario_Rethinks_Proposed_Community_Benefits_Charges_and_Changes_to_Parkland_Dedication_and_Development_Charges_.

¹⁵³ *Ibid.*

¹⁵⁴ John Michael McGarth, "What Bill 197 means for planning, deal-making, and cities in Ontario" (July 10, 2020), online: *TVO* <https://www.tvo.org/article/what-bill-197-means-for-planning-deal-making-and-cities-in-ontario>. [McGarth].

¹⁵⁵ *Lefton et al, Supra* note 153.

¹⁵⁶ Bill 197, *COVID-19 Economic Recovery Act, 2020*, 1st Sess, 42nd Leg, Ontario, 2020 (Assented to July 21, 2020) S.O. 2020, c. 18 [Bill 197].

¹⁵⁷ Davies Howe LLP, "Bill 197 (COVID-19) Economic Recovery Act Summary of Specific Legislation" (July 28, 2020), online: *Davies Howe Land Development Advocacy & Litigation* <http://www.davieshowe.com/covid-19-economic-recovery-act-summary-of-specific-legislation/>. [Summary of Specific Legislation].

¹⁵⁸ *Lefton et al, Supra* note 153 & *Summary of Specific Legislation, Supra* note 159.

¹⁵⁹ *Summary of Specific Legislation, Supra* note 159.

dictate how site plans should be handled within these agreements.¹⁶⁰ The Minister additionally has the power to require that affordable housing be included as part of any development.¹⁶¹

In addition to these changes, the Ontario government bolstered the ability of the Minister to utilize Zoning Orders. These orders allow the Minister to zone land without giving public notice or consultation.¹⁶² These Orders are not subject to the Local Planning Appeal Tribunal.¹⁶³

Implications of the Change

The changes to planning tools relate to land use and development, governance, and regulatory relief. Most clearly, the category of land use and development is engaged. The categories of governance and regulatory relief are engaged similarly to the way they were for the amendments to the EAA. Changes to the planning tools ultimately lead to how planning in municipalities is governed. Regulatory relief is arguably given to the government itself. By increasing the Minister of Municipal Affairs' powers allows the minister to circumvent land use and development processes and requirements.

Notably, the new lower density targets that were set alongside these land use tools were not rolled back. Despite the many other changes being reconsidered, the continued use of reduced density targets perpetuates the harms of developmental sprawl arising from low-density targets and leaves Ontario with protections equal to those available in the 1990s.

The governance impacts of these new land use planning powers are significant. The Minister now has overriding powers on how land is used, what types of development occur, and how land is acquired. These are significant powers for one Minister to hold and these powers by-pass existing legal structures and regulations put in place to ensure safety, oversight, and accountability for government decisions. These overriding powers undercut important checks on government action. The new ministerial powers and the use of Ministerial Zoning Orders allow the Minister to make unilateral decisions about development and

¹⁶⁰ Chris Barnett, "Ontario revisits development charges and parkland dedication with Bill 197" (July 13, 2020), online: Osler <https://www.osler.com/en/resources/regulations/2020/ontario-revisits-development-charges-and-parkland-dedication-with-bill-197> [Barnett].

¹⁶¹ *Ibid.*

¹⁶² Ontario Nature, "Steamrolling the way for development, behind closed doors" online: Ontario Nature <https://ontarionature.good.do/mzo/email/>.

¹⁶³ *Ibid.*

the impact of projects on the environment.¹⁶⁴ By entirely bypassing the typical processes for planning and developing environmental interests will be overlooked.

Increased use of Ministerial Zoning Orders, in particular, is an authoritarian tool that bypasses entire land use planning processes. zoning decisions and development plans do not need to go undergo any of the checks and balances of the planning processes, including the notice and consultation processes under the *Environmental Bill of Rights*. A lack of consultation and the subsequent lack of appeal that comes with these Orders removes oversight. Without oversight there is little way to hold the government accountable for the decisions that are made and the environmental impact that occurs; it is even difficult to know what decisions and impacts occurred.

Similarly, the new Provincial Land and Development Facilitator position could be used to fast-track development on projects such as low-density sprawl on farmland, forests and wetlands. Fast-tracking such projects place them outside of the normal planning processes and those environmental protection processes.¹⁶⁵ Allowing for more of these types of developments, and fast-tracking their implementation will enable more urban sprawl, therefore impacting a larger area of natural land.¹⁶⁶ The consequence of this promotion of development is an override of any chance for public or municipal comment or oversight, as well as legislative and regulatory oversight.

Throughout the emergency declaration, Ministerial Orders have already been used in ways that undermine and degrade the environment. Four Orders were made by the Minister in April 2020 and seven were made in August 2020. Three of these orders approved the destruction of small protected wetlands, as well as allowing a retirement community to be built on farmland in Markham and Whitchurch-Stouffville.¹⁶⁷ Whereas one of the Order's made in August approves major development in Caledon which is opposed by the Peel Regional government.¹⁶⁸ As is the nature of these Orders, no public consultation was necessary concerning the destruction of these natural lands, and no appeals can be made to offer protection from these or future destructive projects.¹⁶⁹

¹⁶⁴ Tim Gray, "You may have never heard of a Minister's Zoning Order and that used to be ok – but not anymore" (August 28, 2020), online: *Environmental Defence* <https://environmentaldefence.ca/2020/08/28/may-never-heard-ministers-zoning-order-used-ok-not-anymore/> [Gray].

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

Minister's Zoning Orders were never intended to be used as regular planning tools. Rather, they were intended to be used in extraordinary circumstances - this intention and purpose has been reiterated over the years of its use.¹⁷⁰ However, changes to their use in Bill 197 increases the ability to use MZO's and demonstrates a trend towards their more widespread use. Between 1969 and 2013, on average, Minister's Zoning Orders were used 1.3 to 1.6 times per year.¹⁷¹ In the past year, more than 26 Minister's Zoning Orders were issued.¹⁷² The inclusion of Minister's Zoning Orders within the Economic Recovery Plan is worrisome because it suggests a continuation of this reliance on a process that limits oversight, public participation and environmental protections.

It is important to note that the government adjusted their prior amendments as well as created new amendments to development tools with the intention of encouraging more development.

3.2.4. *Suspension of Timelines and Normal Standards*

What was the Change?

There are a few key changes relating to timelines and standards that illustrate the kinds of changes that occurred in this area. Concerning time adjustments, many of these adjustments were made about planning and development made under the *Planning Act*. On March 20, 2020, under O. Reg. 73/20, the Province suspended all timelines under the *Planning Act*, the *Local Planning Appeal Tribunal Act*, the Tribunal's *Rules of Practice and Procedure* as well as other statutes and regulations.¹⁷³ This had the effect of pausing a variety of litigation and court proceedings.¹⁷⁴ Shortly after the creation of this pause, O. Reg. 149/20 was created to modify this suspension of timelines concerning land use planning.¹⁷⁵ This change allowed municipalities to continue with planning decisions if they chose to, and retroactively exempted the *Planning Act* from the suspension.¹⁷⁶ Through this Regulation, municipalities were given the power to control the decision-making and appeals processes under the *Planning Act* during the period of emergency.¹⁷⁷

¹⁷⁰ Letter from Cathie Macdonald & Geoff Kettel, to Steve Clark (October 16, 2020) <https://urbanneighbourhoods.ca/ministers-zoning-orders/>.

¹⁷¹ *Ibid.*

¹⁷² *Gray, Supra* note 166.

¹⁷³ Patrick Harrington and Leo F. Longo, "Changes to Planning Act Timelines During Ontario State of Emergency" (April 17, 2020), online: *Aird & Berlis* <https://www.airdberlis.com/insights/publications/publication/changes-to-planning-act-timelines-during-ontario-state-of-emergency>.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

Related to the adjustment of normal legal timelines and procedures, many regulatory standards were also adjusted. These changes can be seen in amendments to O. Reg. 390/18, which waives and delays requirements for certain site visits and inspections concerning greenhouse gas emissions in regulated facilities. These amendments also delayed the greenhouse gas reporting requirements for 2019. Similar amendments were made to O. Reg. 419/05 and O. Reg. 4019/05 which amended the petroleum refining technical standards and the petrochemical technical standards respectively. These amendments were intended to provide regulatory relief for facilities in Ontario and as part of the amendments allowed for a reduced number of required inspections in 2020.

Implications of the Change

These changes fall into the category of regulatory relief – both for industries such as the oil and gas industry, but also for municipalities. Municipalities specifically asked for relief from the suspension of timelines for planning and development issues – there were concerns from municipalities that these new timelines would delay and harm development in their communities. The adjustments for municipalities therefore also fall into the categories of changes to governance – as clear changes were made to how municipalities would govern these issues and the category of land use and development.

These adjustments to normal timelines, procedures, and standards are intended to be temporary, to provide relief to industries and municipalities that are impacted by COVID-19 related delays or hurdles. However, taking these procedures outside of typical timelines and requirements can result in the degradation of environmental protections. By delaying greenhouse gas reporting, 2019 data will not be available when expected to make informed policy choices on that issue. Furthermore, reducing inspections inherently reduces oversight and subsequent protection. Adjusting how the *Planning Act* is applied and providing municipalities with power over the process may have an impact on the types of development that are undertaken and the timeline under which the public can participate.

Fundamentally these decisions demonstrate the government's inherently willingness to listen to and respond to the interest of big polluters and entrenched economic players. By allowing for such significant amendments to typical requirements, including decreased oversight and reporting on environmentally harmful substances and by-products, the government demonstrates a favouring of these interest over the health and protection of the environment.

3.2.5. Electricity pricing

What was the Change?

Electricity pricing adjustments occurred through O. Reg. 80/20, created on March 24 providing government subsidies to energy consumers. The Regulation suspended time-of-use pricing and fixed electricity costs at off-peak prices - the lowest rate available for electricity, 10.1 cents/kWh. This price adjustment lasted until May 31, 2020. At its end a “recovery rate” was applied, fixing rates at 12.8 cents/kWh, which is the average price for electricity that is typically paid.¹⁷⁸ The recovery rate lasted until October 31, 2020.¹⁷⁹ When these suspensions of time-of-use pricing ended the Ontario government implemented another cost-reducing program to keep energy prices lower for Ontarians.¹⁸⁰ However, this paper will not go into the specifics of those programs.

Industrial consumers further benefited during the period of emergency, when in July of 2020 their electricity bills were restructured.¹⁸¹ Industrial consumers will no longer be subject to the “Global Adjustment”, cutting their costs while reducing a key source of funding for the capital costs of the electricity system.¹⁸² With this change more of these capital costs will be placed on the shoulders of residential and small business consumers.

Implications of the Change

The decision to remove time-of-use pricing was a decision that falls into the category of regulatory relief by subsidising costs.

By removing time-of-use pricings, while creating additional subsidies, the Ontario government is keeping electricity prices artificially low. The costs consumers are paying do not reflect the actual costs to create and distribute the electricity. Rather the costs are being covered through taxes and other government revenue. As a result, these programs are financially costly, with the Ontario government spending more

¹⁷⁸ Energy, Northern Development and Mines, Statement, “Ontario Provides Consumers with Greater Stability and Predictability with Their Electricity Bills” (May 30, 2020) <https://news.ontario.ca/en/statement/57061/ontario-provides-consumers-with-greater-stability-and-predictability-with-their-electricity-bills> [Energy, Northern Development and Mines].

¹⁷⁹ *Ibid* .

¹⁸⁰ Energy, Northern Development and Mines, News Release, “Ontario Helps Keep Energy Costs Low for Families, Small Businesses and Farmers” (October 13, 2020) <https://news.ontario.ca/en/release/58782/ontario-helps-keep-energy-costs-low-for-families-small-businesses-and-farmers>.

¹⁸¹ Mark Winfield, “Has Ontario made itself an “innovation wasteland” for energy? (July 13, 2020), online: *LinkedIn* [linkedin.com/pulse/has-ontario-made-itself-innovation-wasteland-energy-mark-winfield/?trackingId=PyhNMOHwJBvMJhCnzIWwZw%3D%3D](https://www.linkedin.com/pulse/has-ontario-made-itself-innovation-wasteland-energy-mark-winfield/?trackingId=PyhNMOHwJBvMJhCnzIWwZw%3D%3D).

¹⁸² *Ibid*.

than \$175 million between March and May to provide the adjusted rates.¹⁸³ It was estimated that a typical resident would have saved \$34 under this period and typical commercial ratepayers saved \$98.¹⁸⁴ In total it is estimated that the Ontario government will spend \$5.8 billion in 2020-21 to subsidize electricity prices under the suspension of time-of-use pricing, in combination with prior subsidization programs.¹⁸⁵ To put this amount in context, Ontario's budget deficit in the 2019-2020 year, before the start of the pandemic was \$11.81 billion.¹⁸⁶ \$5.8 billion is, therefore, a huge increase in spending, equating to roughly half of the previous year's total deficit spent on subsidizing the cost of electricity. These are huge costs for relatively small individual savings for residents and businesses - and yet, as this paper has demonstrated, there is an articulated need by the government to lower government spending. As this paper has shown, environmentally relevant laws and policies have been modified and degraded to save money, and yet here the government is increasing spending.

In addition to the financial costs, the subsidization of electricity, and the removal of time-of-use pricing degrades environmental policy. Time-of-use pricing is a mechanism for incentivising individuals to reduce energy consumption during periods of peak use. It is more costly to produce extra electricity during these peaks, therefore time-of-use pricing reflects this increase. By incentivising more consistent usage throughout the day the overall amount of electricity that needs to be produced is lowered and rather than producing extra electricity in anticipation of the daily peak, baseline production can be additionally reduced. By removing time-of-use pricing a useful energy conservation tool was eliminated.

3.3. Summary - What do these COVID-19 changes mean for the trajectory of environmental law and policy?

The decisions outlined in this section are only some of the many changes that occurred during this period. However, these examples are illustrative of the common themes and priorities that are seen throughout the government's decisions concerning environmental issues. These themes include an inherent favouring of business interests including a favouring of the voices and priorities of entrenched economic players; a willingness to push through long-standing requests from economic interests or long-standing goals of the Ford government itself; a disregard for governmental transparency and accountability while favouring the

¹⁸³ *Energy, Northern Development and Mines, Supra* note 180.

¹⁸⁴ Financial Accountability Office of Ontario, "A Financial Review: The Decision to Freeze Time-Of-Use Electricity Pricing" (May 22, 2020), online: *FAO* <https://www.fao-on.org/en/Blog/Publications/time-of-use-pricing-2020>.

¹⁸⁵ *Ibid.*

¹⁸⁶ Reuters, "UPDATE 1- Canada 2019-2020 budget deficit almost doubles, preliminary data show" (May 29, 2020), online: *Reuters* <https://www.reuters.com/article/canada-economy-budget-idUSL1N2DB1I4>.

removal of constraints on government actions; and a policy trajectory that continues to stand in opposition to environmental protections.

The Ontario government demonstrated that its main priorities in responding to COVID-19 were to increase governmental power and increase the ability for the government to directly respond to economic concerns through fast-tracked development of land and laws. These goals were achieved in the government's opinion by supporting private sector development through regulatory relief – regulatory relief that had been long-standing asks from these players.

None of these changes or categories of changes discussed in this paper are entirely new ideas. Amendments to the *Environmental Assessment Act* were already being actively contemplated, and the artificial reduction of electricity prices was already being done in other ways and was a key feature of the Ford government's position.

The suspension of the *Environmental Bill of Rights* was new and unprecedented. However, the Ford government had demonstrated a lack of respect for the processes of consultation under the EBR as several proposals and projects under the Ford government have been incorrectly exempt from the reach of the EBR. As a result, the suspension of the EBR can be seen as an extension of these prior sentiments and actions demonstrated by this government.

Similarly, the exemptions to normal standards and the suspensions of time limits that occurred were novel decisions. However, before the pandemic, the Ford government had articulated support for decisions that benefit business and development interests through the goal of making Ontario "open for business". As a result, providing high levels of regulatory relief for these groups is not a newly created trajectory or preference for the Ford government.

While the rollbacks on some of the planning tools were to a limited extent a new trajectory, the underlying motivation remains the same – support development. This change is merely a shift in what is seen as best for development. The changes that support increased use of zoning orders and higher levels of Ministerial control are also not entirely unprecedented. Minister zoning orders have been used at increased levels during the Ford government's administration and as a result, these new powers are not entirely new trajectories.

Overall, the path that the Ford government moved down during the early days of the pandemic was not new. Most of these decisions were either contemplated or inaction before COVID-19. Alternatively, they

were areas under discussion, or they are actions that speak to pre-existing policy positions and preferences.

In establishing the priorities discussed here the government demonstrated that they continue to stand in opposition to environmental laws and policies. As this section has demonstrated, many changes that were meant to support these priorities will lead to negative environmental impacts, either through lack of consultation, lack of oversight or by undermining existing protection programs. These examples point to a tendency to move away from robust public participation in the area of development and land use. The decisions the government has made about environmental assessment, transportation, waste, and development leave lasting impacts and permanently degrades how public participation, notice, and oversight occurs. The government has demonstrated that the decision to suspend public consultation and notice under the EBR was not a singular decision in the face of emergency – but rather points to a willingness to amend what public participation and governmental transparency looks like even after the COVID-19 emergency is over. These post-emergency implications point to a shift towards increased governmental autonomy, a reduction of constraints on government action, and the removal of structures for accountability and transparency.

4. Section 4: What was Covid-19's Impact/The Path that Ontario Took

4.1. Ontario Chose the Conventional Pathway

At the beginning of the pandemic, it was not clear which path would be chosen. Would the pandemic create an opportunity for transitioning to new industries, or would the conventional pathway remain? It is clear from the collection of actions this paper has discussed that the path chosen within Ontario was that of supporting the conventional pathway, rather than a shift towards a greener economy. This conclusion can be drawn for two main reasons: decisions continued to align with pre-COVID trajectories, and the decisions did not benefit environmental laws or policies.

The underlying themes and motivations behind the decisions made during the emergency period mirror those of the pre-COVID agenda. Before COVID-19 the Ford Government made clear its support for business interests in Ontario through commitments to cutting “red tape”, reducing costs and barriers for businesses, and eliminated redundancies in regulation and processes. Furthermore, the classification of the Ford government as populist indicated an inherent leaning towards the favouring of the economy, a willingness to listen to business interests, and a general stance in opposition to environmental issues. These priorities remained during the period of emergency. As section 3 demonstrated, the changes made during the period of emergency largely supported, continued, and expedited: development, the reduction of “red tape”, and the streamlining of processes. The priorities of the government appear unaltered on these issues.

The second reason it is possible to conclude that the conventional pathway was chosen is that the changes that occurred under the period of emergency largely undermine existing environmental protections, regulations, and policies. As section 3 demonstrated, many of the changes that were made leave open possibilities of environmental degradation, in the short and long term. As the “red tape” is cut, holes in oversight both from the public and by the government appear. The actions taken during the emergency period were not taken in favour of supporting transitions to new green industries, rather they supported existing industries and governmental interests and long-standing asks and goals of both groups, taken at the expense of environmental issues. This disregard for environmental concerns is consistent with the government's actions before the COVID-19 emergency.

4.2. The COVID-19 Policy Window Shuffled the Decision Agenda

The COVID-19 emergency did not lead to a policy window that shifted Ontario in a new direction; the main agenda of the Ford government did not change. However, a policy window still occurred: an issue

appeared, solutions were presented, and the Ontario government did make changes to policy and law. Policy windows shuffle the decision agenda, as was the case in this scenario.

Amendments to the *Environmental Assessment Act* are illustrative of how the agendas were impacted. Environmental assessments were clearly on the government's agenda before COVID-19. The government had released plans and intentions to make changes in this area, indicating that this issue was on their minds. Some changes were underway but they were not pressing. Amending environmental assessments was not a newly proposed solution to economic recovery post-pandemic. Many of the changes that occurred were already proposed and in the works.

However, the need to respond to an economic crisis shuffled the prioritization of that particular issue. Environmental assessments moved from the governmental agenda, where decisions were still being considered, but for the most part not actively implemented, to high on the decision agenda, where the government actively made changes and decisions. This policy window led to a shuffling of the decision agenda, placing environmental assessments near the top as a "solution" to the economic problem. The amendments to the *Environmental Assessment Act* are the clearest example of how the governmental and decision agendas were shuffled, taking this window as an opportunity to push through long-standing ideas and goals. Similar shifting can be seen in the other decisions that occurred, with many of the decisions made being in areas the government at least had their eye on before COVID-19, or that provided some benefit to them.

4.3. Why was the Green Option Not Taken?

Several factors can help to explain why the green option was not taken in this scenario, all relating to political will and the politics stream of the window. By placing the decisions in context with who benefited and lost from those changes it is possible to see how political will was influenced and why decisions were made.

4.3.1. *The Government Gained*

As this paper has touched on several times, the government itself gained a significant number of benefits from following the conventional pathway. The government gained new powers and oversight. It gained greater ability to make future changes about development and environmentally sensitive issues, and it was able to push through ideas on its agenda in expedited time with little public oversight.

The suspension of the *Environmental Bill of Rights* and the amendments to the *Environmental Assessment Act* both create an opportunity to push through future changes with lower levels of public scrutiny. In a

way, these changes provided regulatory relief to the government itself – allowing on the short term concerning the EBR, and long term concerning the EAA, to push through changes and programs with fewer regulatory barriers. This shift away from regulatory burdens on the government itself is a longstanding fight. As previously discussed, the *Environmental Assessment Act* has a history since its creation, of players in and outside of government seeking amendments and re-conceptualizations of environmental assessments. Within the government, there is a history of ministries and municipalities standing in opposition and having issues with the EAA because of the burdens it places on their projects.¹⁸⁷ Similarly, the EBR placed burdens on provincial agencies. By creating the amendments it did, the government was benefiting the voices that favoured increased governmental freedom.

It is not clear that amending the environmental assessment process will directly benefit the economic recovery post-pandemic. Rather the economic emergency presented an opportunity for changes to be made. Amendments to the environmental assessment were already changes the government was willing to make, making it easy to couple the solution to the problem, even if the solution was not the most direct means of addressing the economic issue. These amendments were sure to draw significant public attention and many comments and suggestion during normal times. If the changes could be made without the complicated process of public consultation, the Ontario government could achieve exactly the changes they want to see without concessions.

The context of an emergency provides a situation in which the government could push through changes with less public scrutiny via direct public participation. The suspension of the *Environmental Bill of Rights* consultation requirements provided barriers to public opposition being voiced, while the use of omnibus bills further provided cover from scrutiny. The use of omnibus bills makes it difficult to scrutinize the government's intentions, or even know that the change is being made. Omnibus bills are intended to allow for several changes on the same subject matter but within different bills.¹⁸⁸ Omnibus bills can stretch the meaning of the "same subject matter", making it difficult to hold the government to account and making it difficult to assess the function of the changes.¹⁸⁹ The placing of the changes to the *Environmental Assessment Act* within a bill titled the *Economic Recovery Act*, makes it appear that these amendments

¹⁸⁷ Environmental Assessment Advisory Panel, "Improving Environmental Assessment in Ontario: A Framework for Reform, Volume 1" (March 21, 2005), at 180 online: <https://cela.ca/improving-environmental-assessment-in-ontario-a-framework-for-reform-volume-1/>.

¹⁸⁸ David Israelson, "Ford's grab bag of bad environmental law" (September 16, 2020), online: *The Lawyer's Daily* <https://www.thelawyersdaily.ca/articles/21001/ford-s-grab-bag-of-bad-environmental-law-david-israelson>

¹⁸⁹ *Ibid.*

were intended to support the COVID-19 emergency specifically. The general public is arguably more likely to be in favour of changes made to get the province out of the current state of crisis than they would if these changes were proposed simply for their own sake. The implication of the changes included in this omnibus bill suggests that the only intention and motivation for these changes was to rectify the emergency. In reality, the changes that were made had been intended long before the emergency began. This re-contextualizing of the changes makes it more difficult to assess the intention behind these changes as well as the impact and implications of these changes. As a result, there is likely to be less public scrutiny and a greater ability for consensus.

The theories behind emergency response articulate that this kind of response, which benefits government, are typical in times of emergency. Two features of all emergency regimes include significant increases to powers in the executive branch of government and abridgements or suspensions of citizens' rights and freedoms.¹⁹⁰ In the case of the economic response to COVID-19, the Ontario government increased its powers and decreased the participation right of citizens concerning environmental issues. With these two features in place, the government had the opportunity to create changes that they had already planned but in an expedited fashion. As a result, political will for the conventional pathway which allows for these opportunities is increased, and the green path would have needed to demonstrate a better political opportunity than these increased powers and easy to implement strategies.

4.3.2. Businesses and Industry Gained

Apart from the benefits to government agencies - and the political clout that the Ford government received by appearing to address economic issues - business and industry benefited the most. The businesses and industries that fall into this category of the biggest winners are those in the areas of development, forestry, resource extraction, industrial polluters and large energy consumers. These big businesses and industries greatly benefited from the various forms of regulatory relief that were provided. As this section demonstrated, industries such as the petroleum and petrochemical industries had their regulatory burdens reduced, necessarily benefiting them. Other industries were provided extension concerning licences and certificates, similarly reducing burdens. Big energy consumers were provided significant subsidies on electricity rates which will continue to benefit their financial position into the future and at the expense of the taxpayer. The Ontario government demonstrated clear favouritism

¹⁹⁰ Venkat Iyer, "States of Emergency – Moderating their Effects on Human Rights" (1999) 22: Dalhousie L.J. 125 (Quicklaw).

towards providing these kinds of benefits to business and industry despite the impacts on the average person and to the environment.

The fact that these business and industry interest benefited indicates that the voices supporting these interests helped to build political will. Kingdon tells us that political will is in part based on the voices from organized political forces, as well as the national mood. In this case, the national mood was clearly in favour of economic action. Furthermore, the conventional pathway, as discussed previously, had inertia behind it, with many strong voices supporting the continuation of support for existing industry and existing economic structures. As a result, the Ford government was hearing significant support for immediate help for Ontario businesses at the time.

On the other hand, the voices supporting a green path came from a limited number of environmental organizations and groups. Those voices were fewer in number compared to those coming from the national mood and business interests combined. Furthermore, the green path proposed solutions for the long term, a look at the economic system as a whole, unlike the conventional pathway that offered immediate solutions to the issues voiced from the national mood through regulatory relief. Following the conventional pathway provided ways the government could immediately address the significant number of voices they were hearing from. Addressing these issues immediately, was a politically sound decision aimed at addressing the loudest groups' concerns in the fastest and most direct way. As a result, political will was gained for the conventional pathway, allowing for the policy streams to meet in favour of this pathway.

4.3.3. Environmental Protections Lost

Where entrenched economic interests and the government were winners – benefiting from these changes – the environment, and groups in support of environmental interests and protections were the losers, ultimately suffering from these actions. These decisions degraded rights to consultation, public notice, and transparency. In losing those protections: the average citizen is harmed by losing a right to be heard; indigenous communities are harmed because there are fewer chances that constitutional rights of consultation will be triggered; and the environment is harmed because there is less public oversight and accountability on environmental decisions.

The fact that these negative impacts arose from the policy decisions made during the early days of COVID-19 demonstrates the lack of political will there was for the proposal to adopt a green path forward. Not only did the Ontario government not take the green path, but by doubling down on the conventional

pathway the government undermined environmental issues. The government moved further from the green path rather than closer to it.

As this paper has alluded to, upholding or bolstering these environmental protections stands in the way of the benefits the government gained from the conventional pathway. Increased governmental power was gained at the expense of environmental protections. As a result, to gain the political favour for the green path, the benefits offered directly to the government would need to be equal to and beyond these power and political benefits.

4.4. Why the Conventional Pathway Triumphed

The factors that can impact political will to accept a proposal or change include the national mood, organized political forces, and events within the government itself.¹⁹¹ A government must see the solution as politically viable and in line with how the public and other political forces feel – in other words, there must be a consensus for there to be the political will to adopt a solution. The COVID-19 emergency provided “consensus” in several ways. First, the state of emergency provided reasons for the government to suspend public participation and it provided reasons for passing omnibus bills, as well as a reason to provide themselves and their government branches with increased powers. By suspending public participation and lumping the changes with dozens of other complicated legal changes, it was easier to push through amendments or changes than under normal processes. Through this the government gained a benefit - an opportunity for complicated changes they had long-standing plans for, to be expedited. Secondly, in making these types of changes the government appeared to be directly addressing the concerns of the public – the national mood – as well as the loud voices within businesses and industry. Therefore, in addition to benefiting directly through increased power, and expedited change, the government benefited politically by appearing to efficiently address concerns with economic issues that appeared to be shared by a large group of people.

By making economic and business-oriented changes and exceptions the Ford government was benefiting its own interests and appearing to address significant issues faced by Ontario. This path did not require positive action or the imposition of positive obligations on the government as the green path would have. As a result, the conventional pathway path aligned more closely with the populist stance of creating smaller governments and aligned with their populist stances on economic growth and policy. As a result, making these decisions, coupled with their benefits, was not a decision that would have needed very much

¹⁹¹ *Kingdon, Supra note 5 at 146-153.*

convincing. The alternative they were presented with was a change that is entirely new, requiring significant change, with benefits in the long rather than the short term, and which ultimately stand in opposition to the government's existing policy stances. As a result, a consensus was easily built in favour of the conventional pathway, merging the three streams.

4.5. Summary - What Does this Policy Window Mean for the Post COVID-19 Trajectory?

The COVID-19 policy window was a chance for the trajectory of environmental law and policy to be fundamentally changed. This change did not occur. Rather, the trajectory of this area under the control of the Ford government will largely stay the same. The actions of the government suggest that the balance between the environment and the economy continues to tip in favour of the economy, and the government will continue to undermine environmental protections and programs. The general business-friendly trends that were being followed before COVID-19 will continue and potentially deepen in some areas. While the conventional pathway was maintained, the changes during the state of emergency suggest the possibility of a turn towards even more destructive trends in some areas.

The cutting of "red tape" and the reduction of regulatory duplication to reduce costs is not a new motivation for the Ford government. However, the government has demonstrated that it will continue to cut or modify environmental regulations and oversight to reduce costs to developers, and businesses in the face of COVID-19, while also gaining political benefits for itself. The *COVID-19 Recovery Act* demonstrated that the Ford government sees environmental protections and processes as standing in the way of economic recovery as well as standing in the way of the Government's interests. As Ontario continues to financially recover from the COVID-19 crisis this rhetoric around costs, and the financial burdens on businesses will be important to watch. More financial incentives will likely be seen as necessary, as a means of encouraging recovery and pacifying the loudest voices in the face of the financial crisis. With an increased need for economic growth, there are increased motivations for the Ford government to amplify its previous cost-saving policies at the expense of environmental protections that can slow down projects and development. As a result, these trajectories should be watched closely.

The shifts in Ministerial and other government powers that were seen during the period of emergency also demonstrate a potential trajectory towards a more negative treatment of environmental policies, laws, and regulations. With increased powers in the hands of Ministers, and placed in regulation rather than legislation, changes and decisions will be easier to make. The use of these new powers and regulations should be watched carefully because of a decrease in oversight and chances to intervene. For instance, the increased ability for a Minister to issue a Zoning Order could have significant environmental

impacts. Similarly, the heavy use of regulations within the revamped *Environmental Assessment Act* could lead to future changes that have a significant impact on how assessments are conducted. Both changes allow for future decisions to be made with little or no public oversight or chances for dispute. This trend surrounding COVID-19 decisions demonstrates long term changes to how environmental decision making will be conducted.

Alongside the continued rhetoric around “red tape” and cost reduction, as well as establishing powers to support the Ford government’s pro-business policies, the Ford government continues to show contempt for rules and processes concerning public participation. The government has demonstrated that it is willing to undermine the processes directly and indirectly. The trend towards increased uses of tools such as Minister’s Zoning Orders, omnibus bills, and the revamping of public notice requirements all demonstrate ways in which these participation processes are increasingly being undermined.

While the general public, as well as environmental interest groups, and communities are getting less access to government participation, there is a trend towards increased flexibility for businesses, and greater access to the government for industry, at the expense of environmental oversights via regulation and legislation. This shift can be seen through the government’s encouragement for businesses to ask for regulatory relief, as well as through the many actions that reduced “red tape” and regulatory burdens on business and industry, allowing for more self-direction within these industries. The government’s continued shift towards listening more to business and industry needs, over the voice of individuals and communities, is a trajectory that must be watched carefully. An imbalance of who has access to the government’s ear can lead to further decisions that degrade environmental protections. A trend towards allowing more access to one of these groups, over the other, means that the policy entrepreneurs that are available to present policy solutions will tend to favour solutions in support of business and potentially in opposition to environmental issues. As a result, policy decisions in the future may skew further into areas that degrade the environment, without voices on the other side explaining the environmental impact of certain decisions. The voices that will suggest environmental viable solutions and policy will not be heard.

Conclusion

The COVID-19 crisis sparked the opportunity for a policy window. The crisis presented several issues that needed solutions. Two paths presented themselves as solutions to the economic problem: support the conventional pathway by ensuring that established industries and businesses could weather the economic storm; or take the financial crisis as a motivation to re-imagine and re-structure the businesses and industries to create a green economy. The Ford government's political leanings, its hostility towards environmentalism, as well as strong voices concerned with economic issues ultimately ensured that the path favouring the conventional pathway was taken. The conventional pathway path favoured policy decisions that were already on the government's agenda, providing opportunistic benefits, while also offering several political benefits via this path.

The decisions made to support the COVID-19 response and recovery created significant implications for environmental policy and law. The changes impacted public participation on environmentally sensitive projects and decisions; the changes reduced or removed environmental requirements in certain areas, mostly relating to development or energy industries; and the changes created new powers to make decisions and changes in areas where the environment could likely be affected and harmed.

Although the policy window did not lead to entirely new systems of law and policy, the path that was taken will leave lasting impacts. The Ford government's actions during the period of emergency suggest that the government will continue to stand in opposition to environmentally rigorous protections and that the government may be moving towards policies that will tip the scales even further in favour of business and economic interests. The economic recovery from COVID-19 is in its infancy, and the long road ahead presents many opportunities for the government to continue tipping the scales in this manner. During writing this paper the situation continues to evolve.

Although this paper focused on decisions made up until September of 2020, more degrading changes have been made since. For instance, Bill 229 introduced in November of 2020 created harmful impacts to the *Conservation Authorities Act*, marginalizing the role of Conservation Authorities in the municipal planning process.¹⁹² The initial response to the financial and health crises demonstrates that the Ford government will continue to see environmental protections as standing in the way of further economic recovery and political benefit. Policy decisions are likely to reflect this stance for the foreseeable future. To uphold

¹⁹² Davies Howe, "Bill 229 Proposes to Amend the Conservation Authorities Act" (November 30, 2020), online: <http://www.davieshowe.com/bill-229-proposes-to-amend-the-conservation-authorities-act/>.

environmental protections it will be essential to continue watching and holding the government accountable for the actions it takes throughout and in the aftermath of these crises.

Appendix A

A. Legislative Changes

The following section lists the provincial bills that were created to respond to the COVID-19 emergency that relate to environmental issues. These omnibus bills amended dozens of existing legislation as well as created new legislation as an emergency response. This section lists each bill and provides summaries of the amendments that relate to environmental legislation or could have potential impacts on environmental issues. The areas that have been included here as relevant to environmental concerns, including legislation relating to land use planning, energy, transportation, agriculture and farming.

A.1. Coronavirus (Covid-19) Support and Protection Act, 2020, S.O. 2020, c. 6 (Bill 189, 2020)

Bill 189 had its first reading and was given Royal Assent on April 14, 2020. The following subheadings outline the relevant amendments that occurred under the *Coronavirus (Covid-19) Support and Protection Act, 2020*.

A.1.1. Amendments to the Development Charges Act, 1997, S.O. 1997, c.

The amendments to the *Development Charges Act, 1997* extend development charge by-laws that were set to expire during the period of emergency.¹⁹³

A.1.2. Amendments to the Education Act, R.S.O. 1990, c. E.2

Similar to the *Development Charges Act, 1997*, the *Education Act* was amended to extend education development charge by-laws set to expire during the period of the emergency.¹⁹⁴

A.1.3. Amendments to the Planning Act, R.S.O. 1990, c. P. 13

The amendments to the *Planning Act, 1990* provide the Minister of Municipal Affairs and Housing with the ability to create regulations that govern time periods under the *Planning Act* during the emergency.¹⁹⁵ Additional amendments to time periods under the *Planning Act*, specifically, exemptions to general

¹⁹³ Bill 189, *Coronavirus (COVID-19) Support and Protection Act, 2020*, 1st Sess, 42nd Leg, Ontario, 2020 (Assented to April 14, 2020) S.O. 2020, c. 6.

¹⁹⁴ *Ibid.*

¹⁹⁵ Davies Howe LLP, “Bill 189: Coronavirus (COVID-19) Support and Protection Act” (April 20, 2020), online: *Davies Howe Land Development Advocacy & Litigation* <<http://www.davieshowe.com/bill-189-coronavirus-covid-19-support-and-protection-act/>>.

suspensions on limitation periods, were made under regulation 149/20 – as will be noted under section A.3 of this appendix.¹⁹⁶

A.2. Covid-19 Economic Recovery Act, 2020, S.O. 2020, c. 18 (Bill 197, 2020)

The following amendments were made under Bill 197, which had its first reading on July 8, 2020, and was given royal assent on July 21, 2020.

A.2.1. Amendments to the *Building Code Act, 1992, S.O. 1992, c. 23*

The amendments to the *Building Code Act* provide the Minister of Municipal Affairs and Housing with greater ability to make regulations under and relating to the Act. These powers are moved to the Minister from the Lieutenant Governor in Council, who previously had similar powers. Also, the Minister may adopt by reference documents related to the Act. These documents include national model codes or any other “code, formula, standard, guideline, protocol or procedure”¹⁹⁷ that the Minister considers necessary.

These amendments to the *Building Code Act* were made to simplify the *Building Code Act’s* regulation-making process¹⁹⁸ and streamlining building codes so that they were in line with other provinces.¹⁹⁹ As well the amendments were meant to enable faster responses from the Province regarding construction sector needs.²⁰⁰

A.2.2. Amendments to the *Development Charges Act, 1997, S.O. 1997, c. 27*

As with many of the amendments for other pieces of legislation, Bill 197 modified timelines to include emergency-related extensions within the *Development Charges Act*.

The more substantial amendments made to the *Development Charges Act* align with changes made to the *Planning Act*.²⁰¹ The amendments to both Acts lead to a change in which service development charges and community benefit charges can be recovered. In 2019 Bill 108 – the *More Homes, More Choices Act*, created provisions that would limit community benefit charges to soft services and development charges to hard services – however, these changes never came into force. The amendments from Bill 197 to both

¹⁹⁶ *Ibid.*

¹⁹⁷ *Building Code Act, 1992, S.O. 1992, c. 23, S 34(1.1).*

¹⁹⁸ *Lefton et al, Supra* note 153.

¹⁹⁹ *Summary of Specific Legislation, Supra* note 159.

²⁰⁰ *Ibid.*

²⁰¹ *Lefton et al, Supra* note 153.

the *Development Charges Act* and the *Planning Act* roll back these restrictions to maintain the current rules that allow development charges to recover the costs of soft services. However, a service can only be funded either through a community benefit charge or a development charge.²⁰²

Bill 197 also modifies, rather than rolls back, some of the changes from Bill 108. For instance, Bill 197 expands the list of services that development charges can be imposed on to include: by-law enforcement and court services; services related to public health and emergency preparedness; housing services; as well as others.²⁰³ The Bill also creates amendments to how services can be grouped for development charges. Previously services could be grouped into categories, but now can be included into classes.²⁰⁴

A.2.3. Amendments to the Drainage Act, R.S.O. 1990, c. D. 17

The changes that were made to the Drainage Act revolved primarily around “prescribed persons” and which persons need to be notified and involved with various steps of the creation of new sewage works. The changes moved from a list of various persons and groups that must be involved to the requirement that the “prescribed persons” based on the regulations must be involved. These amendments are intended to simplify the environmental appraisal process for drainage works.²⁰⁵

A.2.4. Amendments to the Environmental Assessment Act, R.S.O. 1990, c. E. 18

The amendments made to the *Environmental Assessment Act* were intended to streamline and reduce “red tape” in the assessment process.²⁰⁶ These amendments are set to come into force in stages.

The first major amendment under Bill 197 will change which projects will require environmental assessments. Once proclaimed, the *Act* will only require environmental assessments for both public and private undertakings if the project has specifically designated as needing one.²⁰⁷ The provincial Cabinet will be able to determine which undertakings are included on these designated lists.²⁰⁸ Before this change, all public sector undertakings required environmental assessments unless specifically exempted.

²⁰² All from *Ibid.*

²⁰³ *Summary of Specific Legislation, Supra* note 159.

²⁰⁴ *Ibid.*

²⁰⁵ *Lefton et al, Supra* note 153.

²⁰⁶ *King, Supra* note 134.

²⁰⁷ *Ibid.*

²⁰⁸ *EA is not red tape, Supra* note 128.

The amendments create two new types of assessments: “comprehensive” and “streamlined” environmental assessments.²⁰⁹ These types are created under newly created Parts II.3 and II.4, replacing existing Parts II and II.1 respectively.²¹⁰

Additionally, the amendments make it so that Section 21.2 of the Statutory Powers Procedure Act no longer apply – this is a tribunal’s power to review a decision made under the Environmental Assessment Act.²¹¹

The amendments also restrict when Ontarians can request more rigorous assessments for specific projects through a “bump-up” or “elevation”.²¹²

A variety of consequential amendments were also made to related environmental statutes that reference the *Environmental Assessment Act* and requirements to undertake an assessment.²¹³

A.2.5. Consequential Amendments to the Environmental Bill of Rights, S.O. 1993, c. 28, s. 32

The amendments made to the *Environmental Bill of Rights* (EBR) are consequential amendments arising from the addition of Part II.4 of the *Environmental Assessment Act* (EAA) regarding Streamlined Environmental Assessments. The amendments to the EBR make a variety of alternations to existing requirements and exceptions to providing public notice under the *Act* – for example, both section 32(1), 32(2), and 32(3) were amended concerning notice requirements.²¹⁴ Section 32(1) of the EBR is amended by rewording the two existing²¹⁵ exceptions to notice requirements and adds an instance where the exception applies; when the instrument has met the requirements under the new Part II.4 of the EAA.²¹⁶ Similarly, section 32(2) of the EBR previously provided an exception for the EAA to the requirement that a minister must provide public notice of a proposal for an instrument.²¹⁷ Previously these exceptions were about regulations under the EAA; the amendment adds an exception for section 15.3 of the EAA.²¹⁸

²⁰⁹ *Ibid.*

²¹⁰ *King, Supra* note 134.

²¹¹ *Ibid.*

²¹² *EA is not red tape, Supra* note 128.

²¹³ All from *King, Supra* note 134.

²¹⁴ *Bill 197, Supra* note 158 at ss. 32(1) to 32(3).

²¹⁵ *Environmental Bill of Rights, 1993, S.O. 1993, c. 28.* As it appeared on July 1, 2019 to July 20, 2020.

²¹⁶ *Bill 197, Supra* note 158.

²¹⁷ *Bill 197, Supra* note 158 at ss. 32(2) and s. 22.

²¹⁸ *Bill 197, Supra* note 158 at s. 51(1).

Additionally, section 32(3) is amended to reflect the changes in section 32(1) and (2) while also referring to exemptions for a “class of undertakings”.²¹⁹

The amendments also add section 33.1 which states that any amendments made under Schedule 6 of the *COVID-19 Economic Recovery Act, 2020* are not subject to the rules relating to a minister’s role after giving notice of a proposal.²²⁰ These roles include the requirement that a minister take reasonable steps to ensure that proposals that arise from public participation are considered, as well as a requirement that public notice is given when a policy proposal is implemented.²²¹ This amendment means that any amendments made to the EAA under Bill 197 are exempt from the ministerial requirements.

A.2.6. Amendments to the Farm Registration and Farm Organization Funding Act, 1993, S.O. 1993, c. 21

The amendment provides an opportunity for individuals to appeal a denial of a farming business number. Complementary amendments to related legislation were also made about this addition.²²²

A.2.7. Amendments to the Ministry of Municipal Affairs and Housing Act, R.S.O. 1990, c. M. 30

Bill 197 creates a new office titled the Provincial Land and Development Facilitator, the position to be appointed by the Minister. The new position will advise the Minister regarding growth, land use and other matters.²²³

A.2.8. Creation of the Modernizing Ontario for People and Business Act, 2020, S.O. 2020, c. 19, Sched. 11

This new piece of legislation is aimed at reducing “red tape” and burdens on Ontario businesses. The Act provides a list of principles relating to the reduction of burdens that all ministers should have regard for when developing an instrument under the Act.²²⁴ Additionally, the Act provides several clauses with the aim of additional reductions of these burdens over the long term.²²⁵ One specific requirement to attain

²¹⁹ *Bill 197, Supra* note 158.

²²⁰ *Bill 197, Supra* note 158 at schedule 6 section 51 (7) & Letter from Laura Bowman et al. to EA Modernization Team and Jeff Yurek (July 16, 2020) <https://ecojustice.ca/wp-content/uploads/2020/07/2020-07-16-public-consult-on-Sched-6-Bill-197-002.pdf>.

²²¹ *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28. S. 34 to 37.

²²² *Bill 197, Supra* note 158.

²²³ *Ibid.*

²²⁴ *Modernizing Ontario for People and Businesses Act, 2020*, S.O. 2020, c. 18, Sched. 11. s. 4. [*Modernizing Ontario*].

²²⁵ *Bill 197, Supra* note 158.

these goals is the requirement to offset administrative costs of regulatory requirements.²²⁶ If an instrument such as a regulation, policy or form that falls under the Act's governance increases administrative costs then an offset for that cost must be created.²²⁷ Additionally, a regulatory impact analysis will now have to be done before the creation of new regulation, policy or form.²²⁸ An annual report will also be required by the Minister concerning burden reduction.²²⁹

Ontario Ministries will also be required under the new Act to create regulatory programs to recognize businesses that demonstrate excellent compliance with regulatory requirements.²³⁰

A.2.9. Amendments to the Planning Act, R.S.O. 1990, c. P.13

As previously noted amendments to the *Planning Act* align with changes under Bill 197 to community benefits and development charges in the *Development Charges Act*.²³¹ These changes relate to where development charges and community benefit charges can be applied. The amendments to the *Planning Act* roll back changes made in 2019 in the *More Homes, More Choices Act* which had yet to be brought into force. Concerning community benefit charges, Bill 197 amends the new section 37 that had yet to be brought into force.²³² The amendments include a restriction on the size of developments that can have a community benefits charge imposed on – they cannot be imposed on developments that have less than five stories above the ground or fewer than ten residential units.²³³ An additional amendment allows for municipalities to enact community benefit charge bylaws which include the cost of development charge services or parkland²³⁴ – but limited to one community benefit charge by-law at a time.²³⁵

Concerning parkland dedication, the amendments roll back the removal of section 42(3) of the *Planning Act*. This section provides a municipality with the power to pass a bylaw requiring alternative parkland dedication rates.²³⁶ The current system will generally be maintained as is, keeping the current alternative parkland rate that applies to high-density residential developments.²³⁷ To set a higher parkland dedication

²²⁶ *Modernizing Ontario, Supra* note 226 at s 2.

²²⁷ *Ibid* at s 2 & *Lefton et al, Supra* note 153.

²²⁸ *Modernizing Ontario, Supra* note 226 at s 3. & *Lefton et al, Supra* note 153.

²²⁹ *Modernizing Ontario, Supra* note 226 at s. 7.

²³⁰ *Ibid* at s 6.

²³¹ *Lefton et al, Supra* note 153.

²³² *Bill 197, Supra* note 158 at Sched. 17 s. 1.

²³³ *Ibid* at Sched. 17 s. 1.

²³⁴ All from *Lefton et al, Supra* note 153 & *Bill 197, Supra* note 158 at Sched. 17 s. 1.

²³⁵ *Summary of Specific Legislation, Supra* note 159.

²³⁶ *Lefton et al, Supra* note 153.

²³⁷ *Summary of Specific Legislation, Supra* note 159.

rate via a by-law, public consultation will be required. These alternative rates can be appealed to the Tribunal. However, the Tribunal cannot amend by-laws to increase a rate or payment. Any parkland dedication by-laws that currently exist will expire two years after the amendments come into force.²³⁸

The *More Homes, More Choices Act* had intended under section 37 to combine monetary and parkland dedication into a single charge. However, the rollbacks in Bill 197 will keep the two charges separate.²³⁹

The amendments additionally provide the Minister of Municipal Affairs and Housing with new powers. The Minister's power over "specified land" has been expanded – the definition of this land being anything other than land within the Greenbelt Area.²⁴⁰ Also, the Minister has the power to make orders concerning site plan control and inclusionary zoning, having the power to confirm that site plan controls do not apply to all or part of the specified lands.²⁴¹ Additionally, the Minister can require landowners to enter agreements regarding a site plan with a municipality.²⁴² Within these agreements, the Minister will have the power to dictate how site plans should be dealt with within these agreements.²⁴³

The Minister additionally has the power to require that affordable housing be included as part of any development.²⁴⁴

A.2.10. Amendments to the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50

Both the amendments to the *Public Transportation and Highway Improvement Act*,²⁴⁵ as well as the creation of the *Transit-Oriented Communities Act, 2020*,²⁴⁶ are intended to simplify the process of land expropriation by the Minister of Transportation.²⁴⁷ Specifically, the amendments to the *Public Transportation and Highway Improvement Act* provide the Minister with the power to create an alternative process by which property owners of the land that is proposed to be expropriated can send comments to the Minister. As well as new processes by which the Minister can consider these

²³⁸ *Ibid.*

²³⁹ *McGarth, Supra* note 156.

²⁴⁰ *Summary of Specific Legislation, Supra* note 159.

²⁴¹ *Lefton et al, Supra* note 153 & *Summary of Specific Legislation, Supra* note 159.

²⁴² *Summary of Specific Legislation, Supra* note 159.

²⁴³ *Barnett, Supra* note 162.

²⁴⁴ *Ibid.*

²⁴⁵ *Bill 197, Supra* note 158 at Sched. 19.

²⁴⁶ *Ibid* at Sched. 20.

²⁴⁷ *Lefton et al, Supra* note 153.

comments.²⁴⁸ These new processes will replace the current “hearings of necessity”, and the amendments create exemptions for hearings of necessity.²⁴⁹

A.2.11. Creation of the *Transit-Oriented Communities Act, 2020, S.O. 2020, c. 18, Sched. 20*

This new Act will give the province the power to designate lands as a transit-oriented community if the land requires or may be required for a transit-oriented community project.²⁵⁰ This designation will allow the province to make investments that support priority transit projects.²⁵¹ Current priority transit projects include the Ontario Line, Scarborough Subway Extension, Young North Subway Extension, and the Eglinton Crosstown West Extension.²⁵² The current transit-oriented communities program revolves around the development of transit concerning these key transit stations.²⁵³ The designation of a transit-oriented community additionally means that the Minister can establish processes for receiving and considering comments, rather than holding a hearing of necessity regarding the expropriation of this type of land.²⁵⁴ Furthermore, the *Statutory Powers and Procedure Act* does not apply to the process or the relevant regulations that the Minister establishes.²⁵⁵

This new legislation also makes amendments to other Acts such as the *Ministry of Infrastructure Act, 2011*, giving the Minister and the Lieutenant Governor in Council new powers concerning transit-oriented community projects including borrowing money and making regulations.²⁵⁶

A.3. Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17 (Bill 195)

This new piece of legislation had its first reading on July 7, 2020, and was given Royal Assent on July 21, 2020. The Act mirrors the *Emergency Management and Civil Protection Act*, providing some similar powers for emergency response, but specific to responding to COVID-19.²⁵⁷ With its enactment, most of

²⁴⁸ *Lefton et al, Supra* note 153 & *Bill 197, Supra* note 158 at sched 19 section 1.

²⁴⁹ *Ibid.*

²⁵⁰ *Barnett, Supra* note 162 & *Lefton et al, Supra* note 153 & *Bill 197, Supra* note 158 at Sched. 20 s. 3.

²⁵¹ *Barnett, Supra* note 162.

²⁵² *Ibid.*

²⁵³ *Lefton et al, Supra* note 153.

²⁵⁴ *Lefton et al, Supra* note 153 & *Bill 197, Supra* note 158 at Sched. 20 s. 3.

²⁵⁵ *Bill 197, Supra* note 158 at Sched. 20 s. 3(5).

²⁵⁶ *Ibid* at Sched. 20 s. 4.

²⁵⁷ Daniel Sheppard, “Emergency Measures in Response to COVID-19” (July 14, 2020), online, (pdf): *Goldblatt Partners* <https://goldblattpartners.com/wp-content/uploads/Emergency-Powers-Memo-July-14.pdf>.

the COVID-19 emergency orders made under the *Emergency Management and Civil Protection Act* will now be regulated under this new Act.²⁵⁸

This Act terminates the declaration of emergency made under O. Reg. 50/20.²⁵⁹ However, the Act additionally extends the existing orders made under sections 7.0.2 and 7.1 of the *Emergency Management and Civil Protection Act* for 30 days and provides the Lieutenant Governor in Council with the power to extend those periods.²⁶⁰ These orders, with some exceptions, can continue to be amended or revoked by the Lieutenant Governor in Council as if the declaration of emergency were still in effect.²⁶¹ The orders that cannot be amended under these new rules, and that relate to environmental issues, include O. Reg. 75/20 (Drinking Water Systems and Sewage Works), O. Reg. 80/20 (Electricity Price for RPP Consumers), and O. Reg. 141/29 (Temporary Health or Residential Facilities).²⁶²

²⁵⁸ *Ibid.*

²⁵⁹ *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17. s. 17. [*Reopening Ontario*].

²⁶⁰ *Ibid* at s. 2 and s. 3.

²⁶¹ *Ibid* at s. 4.

²⁶² *Ibid* at s. 4(5).

B. Regulatory Changes

The following section lists the regulation changes that occurred and the regulations that were created in response to the COVID-19 emergency and during the emergency period. These particular regulation changes relate to environmental legislation and policy or could have potential impacts on environmental issues. The areas that have been included here as relevant to environmental concerns include areas relating to land use planning, energy, transportation, agriculture and farming. Each regulation is listed with the amending regulation, the date the amendment, or new regulation, was made and filed as well as a summary of the amendments and new regulations.

B.1. Amendments to O. Reg. 170/03: Drinking Water Systems

Amending Regulation: Ontario Regulation 65/20 made under the *Safe Drinking Water Act, 2002, S.O. 2002, c. 32*²⁶³

Dates: Made March 12, 2020, and Filed March 19, 2020. Comes into force on the later of the day it is filed, or the day that subsection 3(2) of Schedule 3 of the *People's Health Care Act, 2019* comes into force.

Summary of Amendments:

The amendment revokes the existing definition of "health care facility".²⁶⁴

B.2. Creation of O. Reg. 50/20: Declaration of Emergency²⁶⁵

Dates: March 17, 2020, and Filed March 18, 2020. Revoked on July 24, 2020.

Summary of Amendments:

This was the provincial declaration of emergency in response to COVID-19. Made through Order in Council 518/2020. This regulation was revoked on July 24, 2020, under section 17 of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17 – Bill 195*²⁶⁶

B.3. Creation of O. Reg. 73/20 under the *Reopening Ontario (A flexible Response to COVID-19) Act, 2020 S.O. 2020, c. 17, formerly under the Emergency Management and Civil Protection Act*²⁶⁷

²⁶³ O. Reg. 65/20.

²⁶⁴ *Ibid.*

²⁶⁵ *Reopening Ontario, Supra* note 261.

²⁶⁶ *Ibid.*

²⁶⁷ O. Reg. 73/20.

Dates: Made and Filed March 20, 2020. Revoked on September 14, 2020.

Summary of Amendments:

This Regulation suspended any limitation periods created by provincial state, regulation, rule, by-law or order. With the suspensions being retroactive to March 16, 2020. Similarly, the Regulation suspends any period of time created by a statute, regulation, rule, by-law, or order, concerning proceedings in Ontario. With the suspensions being retroactive to March 16, 2020.²⁶⁸

The Regulation provides clarification to how long these suspensions will be in place, lifting the suspensions on specific dates for the *Niagara Escarpment Planning and Development Act*, the *Constitution Act*, the *Family Responsibility and Support Arrears Enforcement Act*, as well as these act's relevant regulations.²⁶⁹

B.4. Creation of O. Reg. 75/20 order under subsection 7.0.2(4) of the *Emergency Management and Civil Protection Act*²⁷⁰

Dates: Made and Filed March 23, 2020.

Summary of Amendments:

This Order recognizes that drinking water systems are essential public services, as well as recognizes the potential for these systems to become overwhelmed because of the pandemic. The Order lays out who can operate a municipal drinking water system or regulate a non-municipal drinking water system.

The Order also extends the expiration date of certificates issued under O. Reg. 128/04 until after the order has been revoked. The Order also allows for certain tests to be conducted by persons who are not a certified operator or water quality analyst – if the person meets certain criteria and records are kept of who performed the tests. Furthermore, the Order provides the Agency or owner of a municipal drinking water system with the ability to take measures regarding work deployment and staffing in response to operational challenges. As well as providing the Agency or owner with specific powers regarding staffing and employment. These allowances are despite the typical regulations that apply under the *Safe Drinking Water Act* and other relevant regulations.

The Order provides similar temporary rules relating to sewage works. The order lays out who can operate a wastewater treatment facility or wastewater collection facility under the *Ontario Water Resources Act*.

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ O. Reg. 75/20.

The order extends licences set to expire under O. Reg. 129/04. These allowances are despite the typical regulations that apply under the *Ontario Water Resources Act* and other relevant regulations. The Order requires that records be kept of persons who perform duties under these new rules.

The Order also provides the Agency or a municipality with the power to take measures concerning work deployment and staffing generally and lays out specific powers they have relating to this area.²⁷¹

B.5. Creation of O. Reg. 80/20, order under subsection 7.0.2(4) of the *Emergency Management and Civil Protection Act*²⁷²

Dates: Made and Filed March 24, 2020.

Summary of Amendments:

This order temporarily removes time of use rates for customers being billed on time of use rates and sets electricity prices at the lowest rate - 10.1 cents/kWh.²⁷³ This order was extended on May 3, 2020, continuing to use this low rate until May 31, 2020.²⁷⁴

B.6. Creation of O. Reg. 105/20: Order Made Under the Act – Extension of Emergency²⁷⁵

Dates: Made and Filed March 30, 2020.

Summary of Amendments:

This was an extension of the emergency order under O. Reg. 50/20. The order was set to terminate on March 31, 2020, unless extended. This regulation extended that period for 14 days.²⁷⁶

B.7. Creation of O. Reg. 106/20: Order Made Under the Act – Extensions and Renewals of Orders²⁷⁷

Dates: Made and Filed March 30, 2020.

²⁷¹ All from *Ibid.*

²⁷² O. Reg. 80/20.

²⁷³ *Ibid* & Ministry of Energy, Northern Development and Mines, Environmental Registry of Ontario Bulletin, 019-1801, “Suspension of Time-Of-Use (TOU) Electricity Rates during COVID-19 Outbreak” (May 20, 2020) <https://ero.ontario.ca/notice/019-1801>.

²⁷⁴ Ministry of Energy, Northern Development and Mines, Environmental Registry of Ontario Bulletin, 019-1801, “Suspension of Time-Of-Use (TOU) Electricity Rates during COVID-19 Outbreak” (May 20, 2020) <https://ero.ontario.ca/notice/019-1801>.

²⁷⁵ O. Reg. 105/20.

²⁷⁶ *Ibid.*

²⁷⁷ O. Reg. 106/20.

Summary of Amendments:

This regulation renews orders created in response to the declaration of emergency. The regulations that are to be extended are listed within schedules in O. Reg. 106/20. This regulation has been amended regularly since it was made on March 30, 2020, to adjust various timelines and applicable regulations.²⁷⁸

B.8. Creation of O. Reg. 104/20: Emergency Order Under Subsection 7.0.2;(4) of the Act – Closure of Outdoor Recreational Amenities²⁷⁹

Dates: Made and Filed March 30, 2020. Revoked on July 17, 2020.

Summary of Amendments:

This regulation closed outdoor recreation amenities from the public.²⁸⁰ These restrictions were then amended on April 24 under O. Reg. 175/20 to allow community gardens to operate and created definition changes.²⁸¹ Additionally on June 11, 2020, under O. Reg. 265/20, amendments were made to change which public amenities would remain closed.²⁸²

B.9. Creation of O. Reg. 115/20: Temporary Exemptions Relating to Declared Emergency²⁸³

Dates: Made and Filed April 1, 2020.

Summary of Amendments:

This regulation creates temporary exemptions for proposals for Acts, policies, regulations and instruments regarding requirements for public participation under Part II of the Act. Under these exemptions, governmental decisions of these kinds that could have a significant effect on the environment do not need to be posted on the Environmental Registry for public comment, nor does notice of these decisions need to be given to the public.²⁸⁴

²⁷⁸ *Ibid.*

²⁷⁹ O. Reg. 104/20.

²⁸⁰ *Ibid.*

²⁸¹ O. Reg. 175/20.

²⁸² O. Reg. 265/20.

²⁸³ O. Reg. 115/20.

²⁸⁴ O. Reg. 115/20.

An additional exemption is created regarding the requirement that certain ministries must take reasonable steps to ensure that environmental values are considered in decisions that might significantly affect the environment.²⁸⁵

These exemptions were to be applied until 30 days after the declaration of emergency is terminated. On June 15, 2020, the Ontario government posted a bulletin on the Environmental Registry of Ontario indicating that these exemptions were terminated.²⁸⁶

B.10. Amending O. Reg. 63/09: General

Amending Regulation: Ontario Regulation 134/20 made under the *Pesticides Act, R.S.O. 1990, c. P. 11*²⁸⁷

Dates: Made April 8, 2020, and Filed April 9, 2020.

Summary of Amendments:

The amendments make wording changes to the definition of terms, as well as adding or replacing existing definitions.²⁸⁸ The amendments also create some exceptions for cosmetic pesticide uses, including for use in cemeteries for certain uses.²⁸⁹ Some permitting and licencing requirements are modified.²⁹⁰ Amendments were made to reduce administrative burden and complexity, and followed changes to the *Pesticides Act in 2019*.²⁹¹

B.11. Creation of O. Reg. 141/20: Order Under Subsection 7.0.2(4) of the Act – Temporary Health or Residential Facilities²⁹²

Date: Made and Filed April 9, 2020.

²⁸⁵ *Ibid.*

²⁸⁶ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1939, “Revocation of O. Reg. 115/20: Temporary Exemptions Related to Declared Emergency” (June 19, 2020) <https://ero.ontario.ca/notice/019-1939>.

²⁸⁷ O. Reg. 134/20.

²⁸⁸ *Ibid.*

²⁸⁹ Information Update from Craig Murdoch to Hamilton Mayor and Members of City Council (May 1, 2020) https://www.hamilton.ca/sites/default/files/media/browser/2020-05-01/information_update_-_cemeteries_cosmetic_pesticide_ban_es20005_city_wide_002.pdf.

²⁹⁰ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Regulation, 019-0601, “Amendments to the Pesticide Regulation (63/09 General)” (April 15, 2020) <https://ero.ontario.ca/notice/019-0601>.

²⁹¹ *Ibid.*

²⁹² O. Reg. 141/20.

Summary of Regulation:

This regulation was created to respond to the increased need for hospital space and capacity to respond to COVID-19.²⁹³ The regulation allows temporary health and residential facilities to be created with exemptions from some requirements under the *Building Code Act*, the *Planning Act*, and the *City of Toronto Act*. However, including some conditions that must be satisfied for any new construction that is undertaken – including the required involvement of an architect and a professional engineer.²⁹⁴

B.12. Creation of O. Reg. 142/20: Order Under Subsection 7.0.2(4) of the Act – Closure of Public Lands for Recreational Camping²⁹⁵

Dates: Made and Filed April 9, 2020, repealed June 1, 2020.

Summary of Regulation:

This regulation prohibited recreational camping on public lands.²⁹⁶ This ban was lifted on June 1, 2020.²⁹⁷

B.13. Amending Reg. 761 of R.R.O. 1990: Milk and Milk Products

Amending Regulation: Ontario Regulation 161/20 made under the Milk Act, R.S.O. 1990, c. M. 12²⁹⁸

Summary of Amendments:

The amendments renew any certificates or licences to carry on businesses as a non-shopkeeper-distributor, which expired on March 31, 2020. Additionally, any certificates or licences to carry on businesses as a non-shopkeeper-distributor set to expire after the amendments come into force and before the end of the emergency period will continue in effect; these extensions will end 90 days after the emergency period. Concerning any certificates or licences to carry on businesses as a non-shopkeeper-distributor set to expire within 60 days after the emergency period will have an additional 90 days before expiry.²⁹⁹

B.14. Amending O. Reg. 267/03: General

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*

²⁹⁵ O. Reg. 142/20.

²⁹⁶ *Ibid.*

²⁹⁷ Government of Ontario, “Recreational activities on Crown land” (July 2, 2020), online: *Government of Ontario* <https://www.ontario.ca/page/recreational-activities-on-crown-land>.

²⁹⁸ O. Reg. 161/20.

²⁹⁹ *Ibid.*

Amending Regulation: Ontario Regulation 148/20 made under the Nutrient Management Act, 2002, S.O. 2002 c. 4³⁰⁰

Dates: Made and Filed April 14, 2020.

Summary of Amendments:

The amendment adds section 109.2. This section extends licences or certificates that are set to expire between the date the amendment comes into force which was April 14, 2020, and April 30, 2021. These licences and certificates will not expire until April 30, 2021. The amendment also provides flexibility in satisfying the requirements for renewing these licences or certificates. Allowing individuals to use passing grades on examinations that were taken less than one year before making the application but not earlier than one year before the section came into force.³⁰¹

B.15. Created O. Reg. 149/20: Special Rules Relating to Declared Emergency³⁰²

Dates: Made April 14, 2020, and Filed on April 15, 2020.

Summary of New Regulation:

This Regulation was created following amendments to the *Planning Act* under Bill 189. Those amendments extended limitation periods concerning proceedings. O. Reg. 149/20 was created to address concerns that these amendments would freeze land use planning matters.³⁰³ The Regulation was intended to give municipalities flexibility with planning matters during the state of emergency and allows for some land use planning matters to progress.³⁰⁴ However, not all areas of land use planning were provided exemptions under O. Reg. 149/20. Some tribunal processes continue to be governed by O. Reg. 73/20.

The specific pandemic related rules that were created in O. Reg. 149/20 include changes regarding providing a notice of a decision. The requirements for providing notice for applications under the *Planning Act* have been adjusted for several matters. Any notices that fit into the specified categories will have

³⁰⁰ O. Reg. 148/20.

³⁰¹ *Ibid.*

³⁰² O. Reg. 149/20

³⁰³ Michael S. Polowin et. al., "O. Reg. 149/20: The implications of COVID-19 on land use planning timelines in Ontario" (April 20, 2020), online: *Gowlings WLG* <https://gowlingswlg.com/en/insights-resources/articles/2020/the-implications-of-covid-19-on-land-use/> [Polowin et. al.].

³⁰⁴ *Ibid.*

extended deadlines if the process of providing notice fell just before or after the declaration of emergency.³⁰⁵

Additionally, the Regulation amends time periods under the *Planning Act* to exclude the period in which the declaration of emergency is in place. Time periods that would have ended after March 17, 2020, will not have to include the emergency period in the calculation of time. However, some limitation periods will continue to run with respect to certain Tribunal decisions.³⁰⁶

Relating to the calculation of time section 5(2) of the Regulation deems that certain appeals and motions will be deemed not to have been filed. This change is to prevent appeals and motions resulting in non-decisions if there was an expiration of a time period set between March 17, 2020, and April 15, 2020. Time periods will be extended in certain situations that fall under this section.³⁰⁷

The regulation also extends the duration of interim control by-laws. These by-laws that were in effect before March 17, 2020, will remain in effect until the end of the emergency period, or until the municipality revokes them.³⁰⁸

B.16. Amendments to O. Reg. 260/97: General

Amending Regulation: Ontario Regulation 185/20 made under the Grains Act, R.S.O. 1990, c. G. 10³⁰⁹

Dates: Made April 29, 2020, Approved and Filed April 30, 2020.

Summary of Amendments:

The amendments made to this regulation extend licences under the *Grain Act* during the current period of emergency. These licences will be extended to 90 days after the period of emergency.³¹⁰

B.17. Amendments to Amendments to O. Reg. 332/12: Building Code

Amending Regulation: Ontario Regulation 209/20 made under the Building Code Act, 1992, S.O. 1992, c.

23³¹¹

³⁰⁵ O. Reg. 149/20 at s. 4.

³⁰⁶ *Ibid* at s. 5.

³⁰⁷ *Ibid* at s. 5.

³⁰⁸ All from *Polowin et. al., Supra* note 305.

³⁰⁹ O. Reg. 185/20.

³¹⁰ *Ibid*.

³¹¹ O. Reg. 209/20.

Dates: Made May 8, 2020, and Filed May 11, 2020.

Summary of Amendments:

The amendments deal with permits to construct or demolish a building under the Act. Time periods are amended to account for days in which offices are not open because of Covid-19. As well the amendments remove some requirements for receiving a conditional permit. These exceptions arise under certain scenarios relating to the impacts of emergency measures.³¹²

B.18. Amendments to Reg. 725 of R.R.O. 1990: Livestock

Amending Regulation: Ontario Regulation 216/20 made under the Livestock and Livestock Products Act, R.S.O. 1990, c. L. 20³¹³

Dates: Made May 13, 2020 and Filed May 14, 2020.

Summary of Amendments:

Subsection 4(10) and (11) were added to extend the date of expiry for licences under the *Livestock and Livestock Products Act* that are set to expire during the current period of emergency. These licences will expire 90 days after the end of the emergency.³¹⁴

B.19. Amended O. Reg. 390/18: Greenhouse Gas Emissions: Quantification, Reporting and Verification

Amending Regulation: Ontario Regulation 218/20 made under the Environmental Protection Act, R.S.O. 1990, c. E. 19³¹⁵

Dates: Announced April 23, 2020.³¹⁶ Made May 13, 2020, and Filed May 14, 2020.

Summary of Amendments:

³¹² *Ibid.*

³¹³ O. Reg. 216/20.

³¹⁴ O. Reg. 206/20.

³¹⁵ O. Reg. 2018/20.

³¹⁶ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1775, "Amendments to 2019 greenhouse gas emissions reporting requirements in response to the COVID-19 outbreak" (May 14, 2020) <https://ero.ontario.ca/notice/019-1775>. [Bulletin 019-1775].

The amendments to O. Reg. 390/18 extend the date by which greenhouse gas emissions reporting for 2019 must be done.³¹⁷ These deadlines were adjusted to align with federal deadline extensions.³¹⁸ These deadlines add one to three months for regulated facilities to meet their various reporting requirements.³¹⁹ Amendments also included the waiving or delaying of requirements for certain site visits.³²⁰

B.20. Amendments to the Petrochemical – Industry Standard under the Local Air Quality Regulation (O. Reg. 419/05)³²¹

Dates: June 10, 2020.

Summary of Amendments:

These amendments were posted on the Environmental Registry of Ontario³²², the changes were made to the petrochemical technical standards³²³ that are defined under O. Reg. 419/05: Air Pollution under the *Environmental Protection Act*. The changes to the technical standards were meant to provide regulatory relief to four petrochemical facilities in Ontario during the emergency period. The changes reduced the number of required inspections and surveys from three to two times in 2020.³²⁴

B.21. Amendments to the Petroleum Refining – Industry Standards under the Local Air Quality Regulation (O. Reg. 419/05)³²⁵

Dates: June 10, 2020.

Summary of Amendments:

³¹⁷ O. Reg. 2018/20.

³¹⁸ Anna Cote, “Ontario Moves June 1 Greenhouse Gas Reporting Deadline in Response to COVID-19” (May 26, 2020), online: *Gowling WLG* <https://gowlingwlg.com/en/insights-resources/articles/2020/ontario-greenhouse-gas-reporting-deadline-moved/>.

³¹⁹ *Ibid.*

³²⁰ *Bulletin 019-1775*, *Supra* note 318.

³²¹ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1753, “Amendments to the Petrochemical – Industry Standard under the Local Air Quality Regulation (O. Reg. 419/05)” (June 10, 2020) <https://ero.ontario.ca/notice/019-1753>. [*Bulletin 019-1753*].

³²² *Ibid.*

³²³ Government of Ontario, “Petrochemical – Industry Standard” (June 10, 2020), online: *Government of Ontario* <https://www.ontario.ca/document/technical-standards-manage-air-pollution/petrochemical-industry-standard>.

³²⁴ *Bulletin 019-1753*, *Supra* note 323.

³²⁵ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1752, “Amendments to the Petroleum Refining – Industry Standard under the Local Air Quality Regulation (O. Reg. 419/05)” (June 10, 2020) <https://ero.ontario.ca/notice/019-1752>. [*Bulletin 019-1752*].

These amendments were posted on the Environmental Registry of Ontario³²⁶, the changes were made to the petroleum refining technical standards³²⁷ that are defined under O. Reg. 419/05: Air Pollution under the *Environmental Protection Act*. The changes to the technical standards were meant to provide regulatory relief to four petrochemical facilities in Ontario during the emergency period. The changes reduced the number of required inspections and surveys from three to two times in 2020.³²⁸

B.22. Amended O. Reg. 153/04: Records of Site Condition

Amending Regulation: Ontario Regulation 274/20 made under the Environmental Protection Act, R.S.O. 1990, c. E. 19³²⁹

Dates: Made June 11, 2020, and Filed June 12, 2020.

Summary of Amendments:

These amendments add section 15.1, creating exceptions to current clauses regarding the ability to change the use of a property. The section allows for the use of a property or building to change if the change is for the use of a temporary health or residential facility.

These amendments also delay the implementation of the excess soil regulation made under O. Reg 406/19 of the *Environmental Protection Act*.³³⁰ Provisions were set to begin being phased in on July 1, 2020, these provisions have been delayed until January 1, 2021. Consequential amendments relating to these provisions were also delayed.³³¹ The amendments also add schedule F – dealing with when soil can be brought and left to an RSC property, and requirements that must be met by a qualified person.³³²

B.23. Amending O. Reg. 407/19, Which Amends O. Reg. 153/04: Records of Site Condition – Part XV.1 of the Act

³²⁶ *Ibid.*

³²⁷ Government of Ontario, “Petroleum refining – Industry Standard” (June 10, 2020), online: *Government of Ontario* <https://www.ontario.ca/document/technical-standards-manage-air-pollution/petroleum-refining-industry-standard>.

³²⁸ *Bulletin 019-1752, Supra* note 327.

³²⁹ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1853, “Delayed commencement of the new Excess Soil Regulation and exemption from Record of Site Condition for temporary hospitals and residences” (June 12, 2020) <https://ero.ontario.ca/notice/019-1853>.

³³⁰ *Ibid.*

³³¹ *Ibid.*

³³² O. Reg. 274/20.

Amending Regulation: Ontario Regulation 271/20 made under the *Environmental Protection Act, R.S.O. 1990, c. E. 19*³³³

Dates: Made June 11, 2020, and Filed June 12, 2020.

Summary of Amendments:

These amendments change the dates that parts of O. Reg. 407/19 come into force, with some dates now set at July 1, 2020, and others set at January 1, 2021.³³⁴ O. Reg. 407/19 was made at the end of 2019 and creates changes to a variety of definitions under the Act that relate to the Building Code, soil, and types of land or building use.³³⁵

B.24. Amending O. Reg. 408/1, Which Amends Reg. 347 of R.R.O. 1990: General – Waste Management

Amending Regulation: Ontario Regulation 272/20 made under the *Environmental Protection Act, R.S.O. 1990, c. E. 19*³³⁶

Date: Made June 11, 2020, Filed June 12, 2020.

Summary of Amendments:

This amendment changes the date that Reg. 347 of R.R.O. 1990 come into force – from July 1, 2020, to January 1, 2021.³³⁷ The amendments under Reg. 347 of R.R.O. 1990 were made at the end of 2019 and relate to definitions of types of soil as well as amendments relating to soil under the Act.³³⁸

B.25. Amending O. Reg. 406/19: On-Site and Excess Soil Management

Amending Regulation: Ontario Regulation 270/20 made under the *Environmental Protection Act, R.S.O. 1990, c. E. 19*³³⁹

Date: Made June 11, 2020, and Filed June 12, 2020.

Summary of Amendments:

³³³ O. Reg. 271/20.

³³⁴ *Ibid.*

³³⁵ O. Reg. 407/19.

³³⁶ O. Reg. 272/20.

³³⁷ *Ibid.*

³³⁸ O. Reg. 408/19.

³³⁹ O. Reg. 270/20.

The amendments push the date back that the Regulation (with some exceptions) comes into force, from June 1, 2020, to January 1, 2021.³⁴⁰ The amended regulation deals with soil management.

B.26. Amending O. Reg. 149/20: Special Rules Relating to Declared Emergency

Amending Regulation: Ontario Regulation 278/20 made under the Planning Act, R.S.O. 1990, c. P. 13³⁴¹

Dates: Made and Filed on June 15, 2020.

Summary of Amendments:

These amendments adjust and clarify the timelines and dates within the existing regulation.³⁴²

B.27. Amendments to O. Reg. 429/04: Adjustments Under Section 25.33 of The Act

Amending Regulation: Ontario Regulation 227/20 Made under the Electricity Act, 1998, c. 15, Sched. A³⁴³

Dates: Made June 26, 2020, and Filed on June 30, 2020.

Summary of Amendments:

This regulation amended section 5 and section 19.1 of O. Reg. 429/04. Section 5 was amended by qualifying the definition of “base period” providing conditions for determining a base period.³⁴⁴

Section 19.1 was amended by adding subsection 19.1(1) which dictates how global adjustment will be determined during the pandemic. Global adjustment is a cost that fluctuates monthly to reflect the cost of electricity infrastructure needs.³⁴⁵ Subsection 19.1(1) caps and explain how these adjustments will be determined for certain classes of consumers, in this case, Class B market participants.³⁴⁶ Section 19.1 is set to be revoked on January 1, 2021.³⁴⁷

B.28. Amendments to O. Reg. 429/04: Adjustments Under Section 25.33 of the Act

³⁴⁰ *Ibid.*

³⁴¹ O. Reg. 278/20.

³⁴² *Ibid.*

³⁴³ O. Reg. 335/20.

³⁴⁴ O. Reg. 227/20.

³⁴⁵ IESO, “What is Global Adjustment”, online: *Electricity Pricing* <http://www.ieso.ca/en/Learn/Electricity-Pricing/What-is-Global-Adjustment>

³⁴⁶ O. Reg. 227/20.

³⁴⁷ *Ibid.*

Amending Regulation: Ontario Regulation 335/20 Made under the Electricity Act, 1998, c. 15, Sched. A³⁴⁸

Dates: Made June 26, 2020, and Filed on June 30, 2020. To be revoked on July 1, 2022.

Summary of Amendments:

This regulation amends O. Reg. 429/04 by adding section 19.2. This amendment explains how to determine the peak demand factor adjustment period for 2021 for Class A market participants.³⁴⁹ These peak demand factors are used to calculate certain monthly charges for these customers.³⁵⁰

B.29. Amendment to O. Reg. 231/08: Transit Projects and Metrolinx Undertakings

Amending Regulation: Ontario Regulation 342/20 made under the *Environmental Assessment Act, R.S.O. 1990, c. E. 18*³⁵¹

Dates: Made and Filed on June 30, 2020.

Summary of Amendments:

These amendments make some basic language changes. Furthermore, the amendments to clause 8(5)(a) which speaks to discussions a proponent shall have with interested aboriginal communities. Before the amendments, this section included consultation on “protected aboriginal or treaty rights”³⁵² and will now more specifically include consultation about “existing aboriginal or treaty rights, as recognized and affirmed in section 35 of the *Constitution Act, 1982*”.³⁵³ A similar wording change is made to the other clauses within this regulation that reference “protected aboriginal or treaty rights”.

Amendments to Paragraph 5 of subsection 15(4) also create exemptions for some transit projects related to a Minister’s requirement to consider written objections to the project.³⁵⁴ The transit projects that are excluded are added under section 15 of the regulation as subsection 22.1 listing the Scarborough Subway

³⁴⁸ O. Reg. 335/20.

³⁴⁹ *Ibid.*

³⁵⁰ IESO, “Peak Demand Factor and Capacity Based Recovery Amount for Class A”, online: *Settlements* <http://www.ieso.ca/en/Sector-Participants/Settlements/Capacity-Based-Recovery-Amount-for-Class-A>.

³⁵¹ O. Reg. 342/20

³⁵² O. Reg. 231/08 as it appeared on June 29, 2020 s. 8(5)(a).

³⁵³ O. Reg. 342/20 at s. 6.

³⁵⁴ *Ibid* at ss. 12(2).

Extension, the Yonge Subway Extension, and the Eglinton West Light Rail Transit Extension. Additional processes under section 15 are also added in these amendments.³⁵⁵

B.30. Created O. Reg. 362/20, Zoning Area – Town of Caledon, Regional Municipality of Peel³⁵⁶

Dates: Made and Filed July 10, 2020.

Summary of Amendments:

This was a Zoning Order within the Town of Caledon. Created to facilitate the development of mixed-use, residential and commercial development.³⁵⁷

B.31. Created O. Reg. 448/20: Zoning Area – City of Mississauga, Regional Municipality of Peel³⁵⁸

Dates: Made August 10, 2020, and Filed on August 12, 2020.

Summary of Amendments:

This was a zoning order within the City of Mississauga applying to a piece of land in the Regional Municipality of Peel. The Order allows the land to be used for residential purposes, as well as long-term care homes.³⁵⁹

B.32. Created O. Reg. 450/20: Zoning Order – City of Toronto³⁶⁰

Dates: Made August 10, 2020, and Filed August 12, 2020.

Summary of Amendments:

This was a Zoning Order within the City of Toronto. The Order allowed for a piece of land within Toronto to be used for residential purposes, as well as long-term care homes.³⁶¹

³⁵⁵ *Ibid* at s. 8.

³⁵⁶ O. Reg. 362/20.

³⁵⁷ Ministry of Municipal Affairs and Housing, Environmental Registry of Ontario Bulletin, 019-2090, "Ontario Regulation 362/20 – Zoning Order in the Town of Caledon" (August 10, 2020) <https://ero.ontario.ca/notice/019-2090>.

³⁵⁸ O. Reg. 448/20.

³⁵⁹ *Ibid*.

³⁶⁰ O. Reg. 450/20.

³⁶¹ *Ibid*.

B.33. Created O. Reg. 445/20: Zoning Order – City of Vaughan, Regional Municipality of York³⁶²

Dates: Made August 10, 2020, and Filed on August 12, 2020.

Summary of Amendments:

This was a Zoning Order within the City of Vaughan and applies to a piece of land within the Regional Municipality of York. The Order allows for the land to be used for one or more long-term care home as well as accessory uses.³⁶³

B.34. Created O. Reg. 438/20: Zoning Order – Town of Ajax, Regional Municipality of Durham³⁶⁴

Dates: Made July 30, 2020, and Filed July 31, 2020.

Summary of Amendments:

This was a Zoning Order within the Town of Ajax and applies to a piece of land within the Regional Municipality of Durham. The Order prohibits the land from being used for any purpose other than a 192-bed capacity long-term care home, and a 320 unit retirement home.³⁶⁵

B.35. Created O. Reg. 446/20: Zoning Order – Town of Oakville, Regional Municipality of Halton

Dates: Made August 10, 2020, and Filed August 12, 2020.

Summary of Amendments:

This was a Zoning Order within the Town of Oakville and applying to a piece of land within the Regional Municipality of Halton. The Order allows for the land to be used for one or more long-term care homes and accessory uses.³⁶⁶

³⁶² O. Reg. 445/20.

³⁶³ *Ibid.*

³⁶⁴ O. Reg. 438/20.

³⁶⁵ *Ibid.*

³⁶⁶ O. Reg. 446/20.

C. Instruments and Other Initiatives

C.1. Ontario's Action Plan: Responding to COVID-19

Instrument: *Ontario's Action Plan: Responding to COVID-19 (March 2020 Economic and Fiscal Update)*.³⁶⁷

Date: March 25, 2020.

Summary:

This action plan outlined the governments first step in addressing the impacts of COVID-19, this plan also includes the decision to replace the fall Budget with a one year economic and fiscal update. The plan allocates money to a variety of issues and areas affected by the emergency. Much of the money directed towards the health care system to bolster testing and confront with the health aspects of the emergency. It also includes money allocated to programs that reduce electricity and energy bills. As well as funding other relevant programs.³⁶⁸

C.2. Extension of Construction Hours

Instrument: News release³⁶⁹

Date: April 8, 2020.

Summary:

Construction hours for essential construction projects were extended to allow for building 24 hours a day. These projects included constructions for the health care sector for new hospitals, expansions or COVID-19 assessment centres.³⁷⁰

C.3. Amendment of Environmental Compliance Approval No. A031806 No. A220106, Clean Harbors Canada, Inc.³⁷¹

³⁶⁷ The Government of Ontario, News Release, "Ontario's Action Plan: Responding to COVID-19" (March 25, 2020) <https://news.ontario.ca/en/release/56463/ontarios-action-plan-responding-to-covid-19>.

³⁶⁸ *Ibid.*

³⁶⁹ The Government of Ontario, News Release, "Ontario Accelerates Essential Construction Projects During COVID-19" (April 8, 2020) <https://news.ontario.ca/en/release/56608/ontario-accelerates-essential-construction-projects-during-covid-19>.

³⁷⁰ *Ibid.*

³⁷¹ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1981, "Instrument Decision Bulletin – Clean Harbours Canada, Inc." (June 19, 2020) <https://ero.ontario.ca/notice/019-1981>.

Instrument: Amendment to Environmental Compliance Approval No. A031806 No. A220106, Clean Harbors Canada, Inc.

Date: April 22, 2020.

Summary:

The Ministry of the Environment, Conservation and Parks granted temporary approval to Clean Harbours Canada, Inc. to receive, store and transfer biomedical waste at two locations, one in St. Clair Township and one in Mississauga. The biomedical waste allowed is waste generated from decontamination services. The approval lasts for 90 days after the end of the emergency order after which remaining biomedical waste must be shipped off-site.³⁷²

C.4. Creation of Environmental Compliance Approval No. 8719-BNWR7F, Stericycle, ULC

Instrument: Environmental Compliance Approval No 8719-BNWR7F³⁷³

Date: May 20, 2020.

Summary:

The Ministry of the Environment, Conservation and Parks approved the establishment of four temporary sites in which storage and transfer of biomedical waste can occur. These sites were in the Cities of Mississauga, Hamilton, London, and Ottawa.³⁷⁴ These facilities are owned by Stericycle, ULC and were granted temporary approval to receive, store and transfer biomedical waste. These approvals last for 90 days after the end of the emergency order and after that period the sites must return to normal operations and all biomedical waste must be shipped off-site.³⁷⁵

³⁷² *Ibid.*

³⁷³ Ministry of the Environment, Conservation and Parks, Environmental Registry of Ontario Bulletin, 019-1980, "Instrument Decision Bulletin – Stericycle ULC" (June 19, 2020) <https://ero.ontario.ca/notice/019-1980>.

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*

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