

Tuesday December 1, 2020

Conservation Ontario: Proposed Provincial Changes for Conservation Authorities Deserve More Discussion Nov 27, 2020

LONDON, ON: EnPointe Public Affairs, a London-based advocacy and public policy analysis firm today released a response to Conservation Ontario (“CO”) comments released on Friday November 27, 2020 for media and public information purposes:

1. *Almost 70 years of successful watershed management in Ontario is threatened by legislative changes to both the Conservation Authorities Act and the Planning Act as proposed by the Province through Schedule 6 of the Ontario Budget Bill 229.*

EnPointe Response:

- (a) CO and several of Ontario’s thirty-six conservation authorities (“CA” or “CAs”) routinely employ statements such as “70 years of success,” or “world-class,” or “leading” in their narratives discussing CAs’ operations and work.

To date no references have been cited of qualified analyses or examinations conducted by reliable third party auditors/reviews as to how effective CAs are at achieving their mandate.

- (b) CO publicizes that CAs release self-generated “Watershed Report Cards,”¹. In several examples CAs themselves note poor or below average performance results in restoring and/or rehabilitating local watershed features, habitats, species, and water quality among others.² These are CA self assessments not independent reviews.
- (c) Further, in 2018 Ontario Auditor General Bonnie Lysyk conducted a special audit of the Niagara Peninsula Conservation Authority (“NPCA”).³

In her report, Ms. Lysyk wrote that broader issues relevant to all CAs not just

¹ “Watershed Reporting - Ontario’s Watersheds Are Stressed,” undated. *Conservation Ontario*. [online] <https://conservationontario.ca/policy-priorities/science-and-information-management/watershed-reporting> Accessed Nov 30, 2020.

² “2017 Watershed Report Card - Fish Creek,” dated 2017. *Upper Thames River Conservation Authority* [online] http://thamesriver.on.ca/wp-content/uploads/WatershedReportCards/RC_Fish.pdf Accessed Nov 30, 2020

³ “Special Audit of the Niagara Peninsula Conservation Authority,” pg 5 dated Sep 2018. *Office of the Auditor General of Ontario* [online] https://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf Accessed Nov 30, 2020

NPCA require “clarification and guidance from the Province to overcome.”⁴

2. *There has been a call from our municipal, environmental, and watershed partners for the Province to repeal the changes and sit down with municipalities and CAs to find workable solutions.*

EnPointe Response:

- (a) Governments both Liberal and Progressive Conservative have undertaken significant consultative exercises since 2016 with the very parties CO names in its commentary.

The past Liberal government conducted consultations throughout 2016-2017 which culminated in the passage of Bill 139, the *Building Better Communities and Conserving Watersheds Act*, 2017.⁵ The government of the day did not conduct legislative committee hearings on Bill 139 in 2017; however, stakeholder consultation and Environmental Registry of Ontario (“ERO”) postings were detailed.⁶

EnPointe participated in several of the former and the public consultations. We noted that the audiences in each were often indistinguishable - that is to say that both the stakeholder and public iterations of the consultations were oversaturated by CA and municipal contributors almost exclusively.

- (b) EnPointe has confirmed with the Ministry of Environment, Conservation, and Parks (“MECP”) that recurrent dialogue with CO and all the province’s CAs has been consistent and ongoing since the current government entered its mandate in June 2018.

The history of and the frequency with which CAs and municipalities have interacted regarding CA reform validate the following:

- (1) Minister of Environment, Conservation, and Parks the Honourable Jeff Yurek signalled the current government’s intent for different reforms than those contemplated in Bill 139 in correspondence released the day the Association of Municipalities of Ontario (“AMO”) annual conference began in August 2019;⁷

⁴ Ibid, page 5.

⁵ “Bill 139, Building Better Communities and Conserving Watersheds Act, 2017,” dated Dec 18, 2017. *Legislative Assembly of Ontario* [online] <https://www.ola.org/en/legislative-business/bills/parliament-41/session-2/bill-139> Accessed Nov 30, 2020.

⁶ “Bill 139 - (Schedule 3) - the proposed Building Better Communities and Conserving Watershed Act, 2017: Amendments to the Planning Act,” dated Dec 20, 2017. *Government of Ontario* [online] <https://ero.ontario.ca/index.php/notice/013-0590> Accessed Nov 30, 2020

⁷ “Province directs conservation authorities to ‘wind down’ programming,” dated Aug 20, 2019. *CBC News* [online] <https://www.cbc.ca/news/canada/london/london-ontario-conservation-authority-1.5252717>

- (2) MECP hosted individual and live reviews with Conservation Ontario and all thirty-six CAs throughout the fall and early winter of 2019-20;^{8 9} and
- (3) MECP conducted a survey regarding CA reform that was released on February 14, 2020 and open for submissions by stakeholders and the public for thirty days.¹⁰

The Government of Ontario across over four years and during two different mandates can be assessed as having consistent, long-term, and substantial evidence of the positions of CAs, CO, sectoral stakeholders, and the public regarding reform of the *Conservation Authorities Act*.

Further, the government of the day has prerogative in law to legislate CAs as a delegated agency. CAs are to implement policy but are not the exclusive authors of it and cannot reasonably argue for that approach.

EnPointe would also note that, unlike Bill 139, committees of the Legislative Assembly may conduct public hearings. Unlike 2017, the Standing Committee on Finance and Economic Affairs has scheduled public hearings where Schedule 6 may be examined¹¹

3. *Conservation authorities are proud of the watershed-based approach used in Ontario. They have well-established working relationships with the majority of municipalities who appreciate the collaborative nature of our planning processes and the science and watershed expertise that CAs bring to the planning tables.*

EnPointe Response:

- (a) Ontario is the only jurisdiction in North America that features CAs as a conservation construct out of sixty-three sub-national jurisdictions in Canada and the United States. No other province or state has adopted or is in the process of adopting Ontario's CA model.
- (b) Without objective measurements conducted by qualified investigators who regularly assess performance and results, CAs themselves cannot be deemed immune from reform or that reform can only emerge from the CAs themselves to

⁸ Minister's remarks in multiple events at the Rural Ontario Municipalities Association (ROMA) in Toronto, ON January 19-21 2020. EnPointe Public Affairs was present at each and recorded comments.

⁹ Minister's remarks at Multi-stakeholder Consultations held on January 31st, February 7, and February 14, 2020. EnPointe Public Affairs was present at each and recorded comments in addition to acting as a panelist-presenter on Feb 7 and 14, 2020.

¹⁰ "Public Consultation," dated Feb 14, 2020. *Government of Ontario* [online] <https://www.ontario.ca/page/consultation-ontario-conservation-authorities> Accessed Nov 30, 2020.

¹¹ "Standing Committee on Finance and Economic Affairs," dated Dec 1, 2020. *Legislative Assembly of Ontario* [online] <https://www.ola.org/en/legislative-business/committees/finance-economic-affairs/parliament-42/agendas/2020-dec-01-agenda-standing-committee-finance-economic-affairs> Accessed Dec 01, 2020

be acceptable. This standard does not exist in any other sector of the Government of Ontario in respect of public interests. It is not for a subordinate public entity to dictate terms to the enabling authority if not empowered to do so in law. CAs are not.

- (c) The Auditor-General has commented that both “province and municipalities could do more to oversee conservation authorities.”¹² Schedule 6 of Bill 229 proposed by the current government includes provisions for municipalities and MECP to intervene in circumstances the Auditor General encouraged.¹³ CO has urged for the entire repeal of Schedule 6 without rationalizing how or why it and/or CAs cannot contribute to developing the regulations attached to the legislative amendments that address deficiencies the Auditor-General identified in 2018.
 - (d) Conservation Ontario has also long acknowledged that the degree of “science and watershed expertise,” suffers from significant variance among the thirty-six CAs.¹⁴ CAs were also never envisioned as planning agencies or beyond offering professional commentary on environmental impacts of proposed development. CO is arguing that to reassign or determine new policies and practices to balance conservation and planning are untenable without CA involvement. But this argument ignores best practices and quantifiable/validated used in some of the sixty-two other provincial and state jurisdictions.
4. *Ontario has years of local watershed science collected by CAs, their partners, landowners, universities, and even citizen scientists. This information is used to help inform decision-making about where to put development, how to protect water quality and quantity, as well as how to conserve, restore and rehabilitate important natural systems such as forests, wetlands, soils, escarpments, moraines and lakes.*
- (a) CAs acknowledge reliance on materials that are not updated¹⁵ and can defeat or undermine scientific defensibility in regulatory matters. CAs recognize these discrepancies but transfer the burden to update information onto permit applicants. This applies significant costs to permit applications that are otherwise simple. The shift of “knowledge-authority,” away from the province and the CAs onto citizens has increased liability on both and discouraged reasonable proposals materializing into planning process for fear or aversion to cost, time, and rejection considerations. A culture of negative institutional

¹² “Special Audit of the Niagara Peninsula Conservation Authority,” pg 8, dated Sep 2018. *Office of the Auditor General of Ontario* [online] https://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf Accessed Nov 30, 2020

¹³ Ibid, pg 8.

¹⁴ General Manager - Conservation Ontario’s remarks at Multi-stakeholder Consultations held on January 31st, February 7, and February 14, 2020. EnPointe Public Affairs was present at each and recorded comments in addition to acting as a panelist-presenter on Feb 7 and 14, 2020.

¹⁵ “Municipality of Northern Bruce Peninsula - Natural Hazards Mapping Project 2017,” dated Feb 2018. *Grey Sauble Conservation Authority* [online] <https://northernbrucepeninsula.civicweb.net/FileStorage/19B4543E5FD143A99ABD93E0C19BFEC5-10.%20Grey%20Sauble%20Conservation%20Authority-%20Appendix%20.pdf> Accessed Nov 30, 2020

perceptions cost Ontario and its communities growth and revenue.

- (b) CO advances a further non-sequitur on watershed science. CO and CAs have maintained with some emphasis that the core utility of CAs as an institution is the reliability of their in-house scientific expertise. Yet in a plethora of urban and rural examples, CAs reject knowledgeable citizen input and even professional arguments that uphold the same. This is serious inconsistency at best. At worst, it begets irregularity and can bring CAs' competencies in administrative review and objectivity in procedural fairness into serious disrepute.
5. *We value the long-standing partnerships among the conservation authorities, the Province and municipalities so we don't make this request lightly. Our working relationships are central to ensuring that we protect people from flooding and natural hazards, protect drinking water sources, and deliver watershed-based programs that will conserve Ontario's natural resources.*
- (a) CO, CAs, and municipalities have been engaged for over four years in continual dialogues regarding substantive changes to the *Conservation Authorities Act*. The legislation itself has not seen a comprehensive modern update in more than twenty years. The positions that further review is warranted and that the problems with CA operations and policies are misunderstood or unknown do not align with the chronology of facts.
 - (b) On flooding, CO and CAs have never chosen to enumerate or highlight the regularity and scale of new flood control infrastructure built each fiscal year. Tens of millions of dollars having been allocated to CAs for that core purpose; yet it remains substantively unaddressed or ignored in CO and CA discourses. Pre-Bill 229, CO did not draw attention on what flood control works could not be maintained or begun due to government changes to funding in 2019.¹⁶

EnPointe will treat flooding in Ontario and its connections to conservation authorities under separate cover in a forthcoming publication.

EnPointe offers this commentary for educational and information purposes and for public review and comment.

¹⁶ "Ontario cuts conservation authority flood programs," dated Apr 21, 2019. *CBC News* [online] <https://www.cbc.ca/news/canada/toronto/ontario-flooding-cuts-conservation-1.5105897> Accessed Nov 30, 2020.

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This analysis was conducted in response to Conservation Ontario

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<https://conservationontario.ca/about-us/watershed-views-blog/blog/proposed-provincial-changes-for-conservation-authorities-deserve-more-discussion>