



ONTARIO'S CLIMATE CHANGE PLAN AND ENVIRONMENTAL ASSESSMENT: LEGAL CHALLENGES AND OPPORTUNITIES

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November 19, 2008

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- CELA is a public interest group founded in 1970 for the purposes of using and improving laws to protect the environment and to conserve natural resources
- CELA has focused much of its casework, law reform, public education, and community organization on environmental assessment matters at the federal and provincial levels
- CELA has been involved in numerous sectors relevant to climate change (e.g. energy, forestry, land use planning, transportation, agriculture, waste management, etc.)



- Purpose of Ontario's EA Act is the “betterment” of Ontarians by providing for the “protection, conservation and wise management” of the environment
- Purpose of federal CEAA is:
 - avoidance of significant adverse environmental effects;
 - promotion of sustainable development
 - cooperation and coordination of EA processes
 - promotion of communication with Aboriginal peoples
 - prevention of transboundary effects
 - ensuring timely/meaningful public participation



- Tools available in relation to “undertakings” under Ontario’s EA Act include individual EA, class EA, harmonization, public hearing (ERT), mediation, declaration, regulatory exemption (e.g. O.Reg.116/01 (electricity); O.Reg.101/07 (waste); O.Reg. 231/08 (transit))
- Tools available in relation to “projects” under the federal CEAA include screening report, class screening report, mediation, comprehensive study, panel review, joint panel review, law list, inclusion/exclusion lists, etc.



- Having regard for these public interest purposes, how should EA tools be interpreted, applied or modified in order to help achieve the 5 key components of Ontario's *Go Green* action plan?
 1. Green targets: GHG reductions
 2. MoveOntario 2020: new/improved public transit
 3. Creating green jobs & facilitating green technology
 4. Green power: renewables, energy efficiency, etc.
 5. Grow green: greenspace, tree planting, local food



- *Go Green* invokes the Integrated Power System Plan's commitment to energy conservation, phase-out of coal plants, increasing the amount of electricity from renewable sources (wind, solar, biomass, hydro), etc.

BUT...

- The IPSP itself was exempted from provincial EA coverage (O.Reg.276/06), while renewables must go through Class EA or Environmental Screening Process (O.Reg.116/01), plus other provincial/federal/local approvals & planning requirements



Example #1: Energy

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- **Wolfe Island Wind Project**
- Proponent prepared ERR under O.Reg.116/01; elevation requests denied
- Proponent obtained local land use approvals (OMB appeal & settlement)
- Responsible Authority (NR Can) preparing Screening Report under CEAA (funding trigger)
- Planning started in 2002; construction done in 2009



- *Go Green* commits to development of rapid transit in the GTA/Hamilton region; advocates vehicles that are lighter, more fuel efficient, or green-powered (e.g. hybrids, hydrogen); promotes green power for industry; emissions trading; co-generation projects; etc.

BUT...

- *Go Green* lauds current ethanol fuel requirements (5%), and promotes use of E85 fuel by public/private vehicles
- uncertainty as to whether (or to what extent) EA will be applied to industrial facilities that will be using/producing alternative fuels



Example #2: Alternative Fuels

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- **Lafarge Cement Plant**
- Reduce GHG by burning scrap tires, plastics, etc.? EA designation refused; EPA approvals issued & appealed; no CEAA
- **FarmTech Ethanol Plant**
- Reduce GHG by producing ethanol for vehicles? beside PSW; no provincial EA; OPA + ZB needed; EPA C of A needed; screening under CEAA (need & alts to?)



- The preceding examples (and others) illustrate some underlying questions about EA practice in Ontario:
 1. If the scale/extent of EA review should reflect environmental significance, then why are some projects/undertakings with considerable GHG implications getting approved with little or no EA scrutiny?
 2. Conversely, should projects/undertakings sidestep EA requirements merely because of perceived GHG benefits claimed by proponents?
 3. Conflicting policies, competing priorities, and inter-jurisdictional fragmentation - who is minding the shop?



4. When are we going to get serious about cumulative effects?
5. When are we going to get serious about “strategic EA” of policies, plans, or programs?
6. How can we better integrate EA with land use planning, especially in the GHG context?
7. What funding models or mechanisms should be developed to facilitate public participation in EA?
8. What should be done to enhance EA monitoring, inspection and enforcement?



- Rounding up old fridges and handing out coupons for CFL light bulbs are steps in the right direction

BUT...unless there is a sea change in EA law, policy, practice and procedure in the GHG context, are we just re-arranging deck chairs on the Titanic?

See also: ECO 2007-08
Annual Report
(www.eco.on.ca)