

ONTARIO MOVES TO UPDATE PROVINCIAL ENVIRONMENTAL ASSESSMENT

By Stanley Berger

On April 25th, 2019 the Environmental Registry <https://ero.ontario.ca/notice/013-5102#proposal-details> contained proposals for amending the Province's *Environmental Assessment Act* enacted 44 years ago in 1975. It further elaborated on its policy proposals in a discussion paper which can be viewed on the same site. Comments can be submitted on-line until May 25, 2019. The key proposals follow:

- Modernize the environmental assessment program to focus on higher-risk projects by exempting very low-risk activities (e.g. snow plowing and de-icing operations, constructing roadside parks and adding bike lanes) from Class Environmental Assessments. These exempted activities have been classified as low-risk following comprehensive consultation on the Class Environmental Assessment involving the Ministry, the public, Indigenous communities and other stakeholders.
- Ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project (i.e. "bump-up"), including:
 1. Clearly defining which matters bump-ups can be requested on, including matters related to Aboriginal or treaty rights and other matters of provincial importance as prescribed.
 2. Authorizing the creation of a regulation that would prescribe limits on when the Minister must make decisions on requests, and deadlines for requesting a bump-up to provide transparency for all involved in the process.
 3. Ensuring that Ontarians are given priority over other interests by limiting bump-up requests to only those that live in Ontario.
- Clarify the Minister's authority to reconsider an approval of a project and ask for additional information on an individual environmental assessment, if deemed appropriate.



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The Province's discussion paper highlights the 4 driving factors behind the proposals as follows:

- ensuring better alignment between the level of assessment and level of environmental risk associated with a project;
- eliminating duplication between environmental assessment and other planning and approvals processes;
- finding efficiencies in the environmental assessment process and related planning and approvals processes to shorten the timelines from start to finish; and
- going digital by permitting online submissions.

It would hardly be going out on a limb to suggest that the devil will be in the details. More specifically, there will be strong interest in knowing when bump-ups will be permitted, what the time-lines on bump-up requests will be and how the Minister's authority to request reconsideration of project approvals and additional information might be limited. It should be noted that while this policy process is underway, Canada's proposal to update federal environmental assessment through Bill C-69 (the *Impact Assessment Act*) is before the Canadian Senate. Senators have embarked on a set of public meetings in Western Canada to gather further information upon which to conduct their review of the legislation. Western Canada is the region of the country which has expressed some of the strongest criticism of the legislation. Opponents argue that the proposed law poses an even greater barrier to natural resource development than the current federal assessment law. The window for Senate approval of the current bill is closing as Parliament will adjourn for the summer and this October Canadians will be going back to the polls.