

Government, Watchdog, and Citizen Engagement: Affecting Environmental Decision Making in Ontario through the Environmental Registry and the Office of the Environmental Commissioner of Ontario

by

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With the enactment of the *Environmental Bill of Rights, 1993* (EBR), the guardianship of the natural environment was formally extended to include the people of Ontario. The legislation, introduced by then New Democratic Party (NDP) Minister of Environment and Energy, Hon. Bud Wildman, is based on the understanding that the Ontario Government has the primary responsibility for ensuring that the natural environment is protected, conserved, and restored for the benefit of all Ontarians of present and future generations but “the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.”¹ Under the EBR, the government is no longer permitted to make decisions of environmental significance without considering public input provided to it via the Environmental Registry (ER). Additionally, the office of the Environmental Commissioner of Ontario (ECO) was established under the EBR as an ‘environmental watchdog’ as a means to further guide the government in its endeavors to make environmentally sound decisions. Together, the ER and the ECO affect the decisions the government makes on environmental issues.

The ER is one of the most important aspects of the EBR when enabling public participation in the decision making process. It is an online medium where prescribed ministries² post their proposals for environmentally significant decisions for a minimum of thirty days, and where citizens are able to comment on these proposals. Once a proposal has been posted for the decided number of days, the ministries are required to review the comments and then post back on the ER how the comments affected the final decision. The ER is overseen and managed by the Ministry of Environment, and the ECO reviews the operation of the ER in annual reports.

The Environmental Commissioner is the ‘environmental watchdog’ of Ontario. The Commissioner is appointed to serve a five-year (renewable) term and operates as an independent officer of the Legislative Assembly, similar to the Ombudsperson or the Auditor General. The ECO reports at least once annually, through the Speaker, to the Legislative Assembly. Several duties are required of the ECO: ensure the full implementation of the EBR; assist the ministries by providing guidance, advice, education, etc.; educate the public; review and report on the action of ministries; and review the use of the public’s right to action.³

However, these tools have been criticized as ineffective because the government may still use discretion when proceeding with environmental decisions. The ER gives Ontarians an opportunity to make comments on proposed legislation, policies, or regulations, but the government decides how they will incorporate those comments into the final decision.⁴ Similarly, the ECO makes recommendations to the government, but has no legal means to enforce the regulations; the government may still choose whether to implement the recommendations of the ECO in full, partially, or not at all. Because the extent of implementation of the ECO’s recommendations and public comments received via the ER is dependant on the will of the government, it is difficult to measure to what extent these tools affect government decision-making.

¹ *Environmental Bill of Rights, 1993*. 3d sess., 35th Parliament, April 13, 1993 - December 9, 1994. Preamble.

² There are currently thirteen prescribed ministries under the EBR. For a complete list of these ministries, see Appendix D.

³ *Environmental Bill of Rights, 1993*. Section 57 a-1.

⁴ *Ibid.*, Section 35 (1).

The forthcoming analysis will show that these tools do in fact affect the government decision-making process. Based on interviews I conducted with Ministers, Parliamentary Assistants, ministry representatives,⁵ and the current Environmental Commissioner,⁶ it is apparent that legislators in the current government have a genuine respect for the EBR and that they understand the importance of the roles of the ECO and the ER. It is expected that the government, whenever possible, act on the recommendations of the ECO, and pay close attention to the ER; the government wants to be seen as a ‘good government’ and one that listens to these publicly respected bodies and are therefore seeks to incorporate them into its decision-making process. The government must use these tools or face public scrutiny by the media, by the opposition, and by organizations and persons with a concern for environmental issues. Understanding the direct and indirect pressures that are put on the government to allow the ECO and the ER to affect decision-making is necessary when evaluating how they play an influential role in the environmental decision-making process.

This analysis is important for several reasons. For example, it is not always easy to determine how the government incorporates the advice of the ECO or the concerns of citizens through the ER; therefore, it is easy to wonder why the EBR is important at all, and if it is relevant. If the EBR does nothing to change the way environmental policies are created, then rightly, it should not exist. However, if it has worked – if it has indeed allowed the ECO and individuals to affect the actions of the government – then justifiably it should be given credit.

It must be acknowledged that while this research attempts to measure to what extent the ER and the ECO affect governmental decision-making on the environment, it does not attempt to evaluate whether the existence of the EBR has made Ontario a provincial ‘leader’ when it comes to environmental protection. It does not directly consider whether there are more ‘good’ environmental policies in place now that the EBR exists. Instead, I am interested in how the ECO has played a role and how the citizens of Ontario have contributed when an environmental decision is made. Whether the Ontario government does a good job at protecting the environment is arguably important, but more central to my argument, it is important to determine if the EBR achieves what it has set out to do – engage the public on issues of environmental importance, and allow the ECO to affect or direct government when making those decisions.

USING THE TOOLS

The environmental mandates that the EBR hopes to accomplish can be summarized as follows: to ensure that the public is able to participate in decisions that are of environmental significance; to increase government accountability on environmental

⁵ Some interviewees requested that their answers not be singled out in the body of this paper. Therefore, I have refrained from identifying any of the interviewees in the text, aside from the Environmental Commissioner, but have identified the interviewees in the bibliography. The questions asked can be found in Appendix A.

⁶ The current Environmental Commissioner of Ontario is Gord Miller, and the former Environmental Commissioner was Eva Ligeti. Throughout this paper I will be using masculine pronouns when speaking about the current Commissioner, feminine pronouns when referring to the former Commissioner, and will refer to the office of the ECO or the position of the ECO as such, without use of gendered pronouns. The questions asked can be found in Appendix B.

issues; to increase access to courts for citizens wishing to hold the government legally accountable; and to enhance protection for environmental whistle-blowers.⁷ Within the EBR there are numerous tools that citizens may use, including the ER, to make certain that the above goals are met. There are also parameters, such as the ECO, that help ensure that the government operates in a transparent way and remains accountable to Ontarians. Simply put, “The Ontario *Environmental Bill of Rights* provides a minimum standard for public participation and increased government accountability that is independent of the government in power.”⁸

Under the EBR, the ER and the ECO serve a similar role in that they enable those outside of government to participate in the decision-making process when it comes to environmental issues. They compliment one another and help guide the government when making environmentally significant decisions. Although they are similar in this regard, Ministries understand them to be distinct entities serving separate functions within the EBR. The ECO offers a broader picture, long-term direction, and critiques not only government action, but government inaction. On the other hand, the ER is much more focused on detail and specific Ministry decisions, and solicits comments from the public with particular interests. Therefore, despite this perceived difference the ER and the ECO do work together to affect change.

Arguably, the most fundamental aspect of the EBR is the opportunity for the public to engage with the government on environmental issues that concern them. In interviews with several Ministers, Parliamentary Assistants, and Ministry representatives, the general sentiment I received was that Ministries are not only willing, but eager to engage with the public in the ways that the EBR allows.⁹ This legislation was not imposed upon the government, but introduced by a government that valued citizen input and believed that this input needed to be facilitated in some fashion. In 1993, when the bill was first introduced, then Environment and Energy Minister, Bud Wildman explained,

*This legislation will give Ontarians unprecedented rights to become advocates for the environment. The bill has been written for the public, in the public and by the public... [The EBR] provides the public with more opportunities to participate in environmental decision-making at an early stage, increases government accountability, and responsibility for the environment.*¹⁰

While this statement was made by a government that is no longer in power, the current government does willingly follow the parameters outlaid in the EBR as is expected under this legislation. It was expressed by several of those interviewed that a government that

⁷ Lukasik, Lynda, David McRobert, and Lisa Shultz, “Public Participation Rights, Environmental Policy Struggles & E-Democracy: Lessons Learned During the First 11 Years of Ontario’s Environmental Bill of Rights,” International Association of Public Participation Practitioners Conference, Montreal, QC, November 10-15, 2006. <http://www.eco.on.ca/eng/uploads/eng_pdfs/staffconf_ecobkgrd_nov10_06.pdf> (accessed 12 December 2008). 1-2.

⁸ Kurtz, Joel. “7 Years of Practical Experience with the Ontario Environmental Bill of Rights,” Presented at a seminar in 1997 entitled: Public Participation: The First Step Towards Environmental Rights, University of New Brunswick Law Faculty, Revised January 2001. 14.

⁹ (Interviews with ministry representatives, March 24 – April 15, 2009). A list of those interviewed can be found in Appendix E.

¹⁰ Wildman, Bud. Ontario. Legislative Assembly. 1993. *Debates and Proceedings*. May 31.

does not seek dialogue with the public, especially when legislated to do so as in the case of the EBR, does so at their peril; it is bad politics to ignore the citizens the government is there to serve.¹¹ Engaging with the public is evidently an important part of being in government.

Those who work closely with the ER understand that it is a useful tool taken seriously by the government. The Environmental Commissioner, who reviews how the government utilizes the ER and the comments it receives insists that it is a tool not to be trivialized in importance.¹² The ER also places Ontario in a unique position among the provinces. Frequently, a large part of the governmental decision-making process is excluded from public view; in Ontario, the ER allows the people to see what the government is doing, and to freely comment on those actions in a way that is meaningful.¹³ In the experience of one interviewee, those who use the ER are usually well informed and give good advice, and the government, therefore, respects the comments and uses them as they move forward.¹⁴

The significance of government engagement with the public through the ER could be interpreted in a number of ways. Allowing people to comment could be seen as merely tokenism, or a façade hoisted by government to avoid criticism by an audience that does not believe the government actually wants people to have any say in the actions of the government. Real and meaningful engagement does require action on behalf of the government as well as the citizens. The government must provide a starting point if it wants people to give input.

Lynda Lukasik, David McRobert, and Lisa Shultz co-authored a paper on the EBR in 2006 and identified three things that are necessary to facilitate public engagement through the EBR: access to relevant information; opportunities to participate in decision-making; and access to judicial and administrative proceedings.¹⁵ By using the ER as the primary practical method for engagement with public, the first two of these criteria are most pertinent. The third is certainly an important component of the EBR, but it is not directly related to the current discussion. The first necessity falls under the responsibility of the government; the government must take the first step in the process of engagement by posting notices to the ER. In doing so, information is provided to the public, and they are able to access it. Without these postings, public engagement simply cannot exist. This leads very closely to the second aspect, the opportunity for public to make comments on the information provided by government. Those comments then return to the government, which continues the process of engaging the public by taking those comments under consideration, and using them to make decisions on any changes to be made to the proposed legislation. This is the process of engagement.

What if the government somehow fails at the first stage of the engagement process? More specifically, what if people do not understand what has been posted and can therefore not participate? Or perhaps the public does not even know that the ER exists in the first place and is subsequently disconnected from the public engagement process. These are certainly challenges the government must address and hold in high

¹¹ (Interviews, March 24 – April 15, 2009).

¹² Miller, Gord. 2009. Interview by author. Toronto, ON. April 3.

¹³ *Ibid.*

¹⁴ (Interviews, March 24 – April 15, 2009).

¹⁵ Lukasik, McRobert, and Shultz, 3.

priority if it wishes to engage with the public. Several of the interviewees were aware that the wider public does not know about the ER, and therefore it is of no use to them.¹⁶ However, they did feel that when people are aware, they do become engaged, and it becomes a very effective tool.¹⁷

Government has occasionally taken on opportunities to help educate the public by collaborating with groups with an outreaching and educational mandate. During the early years of the EBR from 1994-1997, the government helped fund the Ontario Environment Network to work with environmental groups to help them learn how to use the ER.¹⁸ Additionally, it funded non-profit organizations engaged in educating the public on the ER.¹⁹ The Environmental Commissioner is also required under the EBR to serve as an educator on how people can exercise their rights under the EBR, which includes using the ER, a crucial part of the Commissioner's role.²⁰

To further examine opportunities for citizens engagement with government, we can use Weidemann and Fermers Public Participation Ladder, which was based on an earlier version by Sherry Arnstein. This ladder was explained by Lukasik, McRobert, and Shultz in the context of the EBR. The Public Participation Ladder presents a spectrum of ways in which individuals are able to be involved in the government's decision-making process. It ranges from the level of engagement that is least empowering to a level that would give citizens direct decision-making powers.²¹ In ascending order, the levels are Public right to know; Informing the public; Public right to object; Public participation in defining interests, actors and determining agenda; Public participation in assessing risks, actors and recommending solutions; and Public participation in final decision.²² Lukasik, McRobert, and Shultz have placed the EBR at the lower end of the spectrum, explaining that they only forms of engagement that the EBR readily allows are the "public right to know, informing the public and public right to object."²³ On the other hand, the upper end of the spectrum would allow for "public participation in determining the agenda and in assessing risks and recommending solutions."²⁴ Lukasik, McRobert, and Shultz claim that public participation with the EBR remains near the bottom, while still recognizing that although higher levels of participation exist, most people do not take advantage of those opportunities.²⁵

What this analysis does not consider, however, is the extent to which those that do choose to participate in a deliberate and active manner (rather than just having the right to participate or the right to be informed) actually influence what is done. Through the ER alone, I argue that it is reasonable for citizens to believe that they may reach a slightly higher level that is not explicitly defined on this spectrum – the level at which the

¹⁶ (Interviews, March 24 – April 15, 2009).

¹⁷ *Ibid.*

¹⁸ Lukasik, McRobert, and Shultz, 12.

¹⁹ *Ibid.*

²⁰ "Independence, Accountability & Transparency: The Role of the Environmental Commissioner of Ontario," Background paper for Public Participation and the Environment Five Years of the Environmental Bill of Rights in Ontario, February 15, 1999. <http://www.eco.on.ca/eng/uploads/eng_pdfs/ecorole.pdf> (accessed 12 December 2008). 7; *Environmental Bill of Rights, 1993*. Section 57.

²¹ Lukasik, McRobert, and Shultz, 15.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*, 16.

government acts on suggestions, or comments. Public comments that the government received via the ER have resulted in changing plans for government decisions. These changes (and some are more substantial than others) remain on the ER for public viewing.

To exemplify this, we can look at the *Endangered Species Act in 2007*. The Environmental Commissioner had recommended in his 2002-2003 Annual Report that the government create a new regulatory, policy, and legislative framework to address the issue of species at risk in Ontario that corresponds to federal government legislation.²⁶ The government posted its proposal on the ER and received over 2000 comments in response. As a result, several parts of the legislation were changed to address the concerns of the citizens and environmental groups who voiced their concerns.²⁷ This identifies the level of participation above simply the “right to object,” and moves towards having the public’s suggestions and alternatives to proposed legislation actually incorporated into the final legislation. Going higher on the Public Participation ladder than this may be an unreasonable level at which to expect ordinary citizens to engage. However, legislators do see the ER as an important tool for public consultation, and they recognize that unlike any other type of decision-making, the voices of the citizens are being *officially* heard²⁸ and many of their suggestions are heeded by the government, as in the case of the aforementioned Endangered Species Act.

The ECO’s recommendations that are made annually undoubtedly play a substantial role in the government’s decision-making process, and like the ER, the ECO is an extra-governmental body that influences environmental outcomes. All of the Ministry representatives that I interviewed professed a great amount of respect for the role of the ECO, and the duty that he carries is understood to be unbiased, comprehensive, and well-informed.²⁹ The Commissioner also qualified the role that he plays by explaining that his recommendations are made without any vested interest in government decisions, and for that reason gives credibility to the issues he puts forth.³⁰ He speaks on behalf of citizen concern, but also “for the trees, because the trees have no tongues.”³¹

GOVERNMENT TRANSPARENCY AND ACCOUNTABILITY

The effectiveness of the recommendations of the ECO really must be thought of in two different ways. First, to what extent do they help create a more transparent and accountable government. Secondly, how do the recommendations affect the decisions that are made by the Ministries, and how do Ministries respond to the recommendations. To address the first question, there are some examples we can look to in order to see how the recommendations have been used by the opposition, and by the media in the legislature.

²⁶ Environmental Commissioner of Ontario. November 27, 2003. *Thinking Beyond the Near and Now*. Toronto, ON. 138.

²⁷ A Review of Ontario’s Species at Risk Legislation. Environmental Registry. <<http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=Mjc2OTU=&statusId=MTUxNjk3&language=en>> (accessed 15 May 2009).

²⁸ (Interviews, March 24 – April 15, 2009).

²⁹ *Ibid.*

³⁰ (Miller 2009).

³¹ *Ibid.*

In 1997 under the government of Premier Mike Harris, the then ECO, Eva Ligeti, submitted a report in which she expressed concern with the government's environmental actions. The opposition continuously brought up this report in question period, and in debates, inquiring why the government was not paying more attention to the recommendations, including the Commissioner's concern for inadequate water testing.³² The ECO had previously recommended that that government develop a groundwater management strategy,³³ but this was not done. She explained, "Continued concern with groundwater issues underscores the need for a comprehensive groundwater management strategy in Ontario." A few years later, in 2000, Ontario experienced the Walkerton crisis whereby seven people were killed and thousands were sickened with E-coli and hospitalized due to compromised drinking water.³⁴ This became not only an environmental issue but a public health issue, and the Commissioner's earlier recommendations were fuel for the opposition in their efforts to hold the government accountable. In the midst of this crisis, the opposition pointed to the government's inaction when it came to implementing the policies of the ECO. Liberal member Lyn MacLeod stated in the house,

[The government] ignored the advice of their own commissioner. That's exactly what this government did with the Environmental Commissioner's report, in which she talked about the need for a groundwater strategy. [...] The Mike Harris government didn't just walk away from its responsibility to ensure the health of Ontarians by ensuring safe drinking water; it deliberately dumped the cost and the responsibility for ensuring the safety of our drinking water on to the municipalities. It shut down the Ministry of the Environment labs in the name of efficiency, even though we knew it would be three to five times the cost to do the testing in private labs.³⁵

NDP member Marilyn Churley also commented on the Commissioner's 1997 report in light of the Walkerton crisis, and reminded the government that concerns had previously been put forth by the opposition and the ECO. She quoted the Commissioner, saying, "She stressed that government cutbacks have compromised environmental protection, particularly in three areas: the testing of drinking water, acid rain and the inspection of pits and quarries."³⁶ In the same speech, Churley said, "The Environmental Commissioner of Ontario warned this government in 1997 that there could be dead bodies – she hoped not – warned this government that it could happen."³⁷ These statements did not directly affect the government's actions. However, these opposition members, like many others, used the recommendations of the Environmental Commissioner to help create transparency between the government and the Legislature. The Commissioner's analysis of the government's actions allowed the opposition and the

³² Ontario. Legislative Assembly. 1997. *Debates and Proceedings*. April 22, April 29.

³³ Environmental Commissioner of Ontario. June, 1996. *Opening the Doors to Better Environmental Decision Making*. Toronto, ON. 57-58.

³⁴ O'Connor, Hon. Dennis R. *Part One: A Summary Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues*. Ontario Ministry of the Attorney General. 2002. 2.

³⁵ Churley, Marilyn. Ontario. Legislative Assembly. 2000. *Debates and Proceedings*. May 30.

³⁶ *Ibid.*, June 5.

³⁷ *Ibid.*

public to see what the government had done with respect to water testing, and point out flaws in their plan. Later, in the wake of the Walkerton crisis, the Commissioner's recommendations of 1997 were referred to again, which further exemplified how the recommendations are used by the Opposition to expose the actions of the government, and increase transparency and accountability.

The media is able to bring issues to the attention of the public as another means of contributing to the transparency of the government's actions. The Environmental Commissioner's 2007/2008 Annual Report received media coverage across the province and highlighted a number of shortfalls of the government that the Commissioner had identified in that report. A sampling of newspaper articles named air pollution, biodiversity, water usage, species-at-risk, and other environmental concerns that the government needs to give attention to, as was stated in the ECO's report, *Getting to K(No)w*.³⁸ Not only does a report that critically evaluates the action of a government add a layer of exposure to government action and inaction, but media attention to that report will inevitably help to expand that transparency to a wider public audience – to citizens of the province. As with all of the ECO's reports that receive media attention, *Getting to K(No)w* allowed the Opposition and the public to see what the government has done in response to the previous years' recommendations, which are included in the annual report, and they are able to see what direction the ECO suggests the government take.

The current ECO uses the Annual Reports to provide a broad overarching scope of current environmental concerns, reiterate longstanding concerns, and suggest specific issues that need to be addressed (within specific ministries, for example). A common criticism of these recommendations is that the ECO is unable to enforce them. However, I would like to point to the opportunities for government transparency that the recommendations provide. Lukasik, McRobert, and Shultz point out that “[w]hile the ministries do not always heed the recommendations of the ECO, and the ECO has slightly less power to hold the government accountable than other officers of the legislature, there is no question that the reporting function of the ECO has been effective in increasing government accountability.”³⁹ Uses of the reports by the Opposition in the Legislature and by the media are two evident examples of why there is merit to that statement.

When interviewed, the Environmental Commissioner pointed to another significant opportunity that he has to affect the approach that government takes when making environmental decisions. Because of his status as a respected, arms-length officer of the Legislature, his opinions and comments are respected and given a certain amount of clout. When I asked the Commissioner if there were other ways that he was able to influence government, he explained that one of the most important things that he is able to do is to move ideas from the scientific community into the political community.⁴⁰ This is something that is done gradually, first by introducing ideas, then building on them, and

³⁸ Welsh, Moira. Province failing to track species' decline: Report Environment watchdog says non-profit groups documenting crisis of 'huge loss of species'. *Toronto Star*. October 21, 2008; Canwest News Service. Provincial watchdog slams water, air-quality protections. October 21, 2008; Blakeley, Bob. Residents deserve to know correct pollution levels *Simcoe Reformer*. October 24, 2008; The Canadian Press. Bio-diversity in Trouble. *Owen Sound Sun Times*. October 22, 2008.

³⁹ Lukasik, McRobert, and Shultz, 13.

⁴⁰ (Miller 2009).

then finally getting to a stage where government is mature enough to act on them. One example offered by the Commissioner was the report “Climate Change: Is the Science Sound?” presented to the Assembly in 2002. The idea behind this report was to begin the thought process of climate change, and move away from non-scientific rhetoric against the legitimacy of the reality of climate change. The Commissioner felt that these ideas needed to be established in the government before he, or any public body, could expect the government to move forward and act.⁴¹ Reports like this one are especially useful when dealing with an overarching issue that does not fall clearly under one or a few ministries. When considering climate change, there are many points of consideration, and all ministries need to take responsibility for what they are able to contribute.⁴²

LIMITATIONS TO AFFECTING CHANGE

We have been looking at the ways in which the Environmental Registry and the Environmental Commissioner are able to affect change of the Ministries of the government. However, there are certain systemic weaknesses that make this difficult and that hamper the argument that these tools perform their intended function. For instance, not all postings on the ER receive public comment, and some receive only very few comments. Additionally, the government will always be a player in a ‘political game’ – it will always need to make decisions for political reasons and this does not always mean a positive outcome for the environmental cause. The EBR, to some extent, is only as good as the government that uses it; that is, the government could exploit loopholes in the legislation that could enable it to disregard the comments on the ER, or the recommendations of the Commissioner. This also relates closely to the argument that the EBR is largely symbolic, and that it has little actual influence on governments decisions. I will discuss each of these concerns.

When items are posted on the ER for comment, there is a possibility that no one will comment. Either citizens do not know about the posting, or for whatever reason they simply choose not to comment. It is true that there have been a number of postings that have solicited none or a small number of comments. Considering this fact, does it mean that the ER is ineffective in influencing government decisions? If there are no comments received, then perhaps it could be viewed as ineffective in those cases. However, there have been instances where very few comments were received, sometimes less than ten, and still items have been changed in the legislation, regulation, act, policy, etc. For example, the government posted a draft of a policy document entitled “Provincially Significant Mineral Potential Procedural Manual for Ontario,” which received three comments. The Ministry did consider these comments and indicated on the ER that these comments and concerns were indeed incorporated into the revisions made on the document, and the final decision is posted on the ER for public view.⁴³

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Provincially Significant Mineral Potential Procedural Manual for Ontario. Environmental Registry. <<http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTc3MDg=&statusId=MTU1MTgy&language=en>> (accessed May 15, 2009).

When no comments are received on postings to the ER, the government is free to proceed as it wishes and act without input from the public. This could be construed as a weakness in the ER; if people do not comment, then how is the public to have input into government actions. To this, I would respond by emphasizing the fact that individuals and interest groups will respond to postings when it is of interest to them. A revision to a regulation may not attract many comments, but issues like endangered species and electricity might appeal to people, and may therefore attract more comments. All the ministry representatives I interviewed for this research understood that only the interested public use the Environmental Registry, although it remains a tool that is open for anyone.⁴⁴ Surely, it would be more effective if more people used it, but government does respond to comments that are posted regardless of how many or how few.

Politicians must still participate in the ‘political game’ so to speak. There are decisions that they will make for political reasons, and comments that for pragmatic reasons they will not incorporate into changes made to posted items.⁴⁵ The Environmental Commissioner qualified this fact by explaining that in using the ER, the government is urged to first be honest with the public, to consider the science and the factual information that is available when making decisions, and to allow individuals and well-informed stakeholder groups to point these out to the government on any given issue.⁴⁶ The comments received on the ER indicate flaws, challenge the ideas of the government, and hold government to account.⁴⁷ Several of the ministries expressed their appreciation for the comments that they receive on the ER, explaining that the comments allow the government to receive direction from the public, and they are a reassurance to the government when they are on the “right track.”⁴⁸

When it comes to implementing the recommendations of the ECO, the government still exercises caution, and pays close attention to the political implications of their actions. The government has its own political agenda and a plan for action that may or may not coincide with the will of the Environmental Commissioner. As previously mentioned, all ministries respect the opinions of the ECO, and trust that his recommendations are made with a great deal of knowledge and understanding of the science, the needs of the environment, and they incorporate the interest of Ontarians.⁴⁹ However, ministries do not always respond to the recommendations the ECO makes as quickly or efficiently as the ECO would like. Most of the ministries expressed that they incorporate the recommendations into their plan at a pace that works for their purposes and their mandates.⁵⁰ Several of them also pointed out that they try to anticipate what actions the Environmental Commissioner might recommend, and strive to coordinate the agenda of their ministry with the recommendations of the ECO.⁵¹

⁴⁴ (Interviews, March 24 – April 15, 2009).

⁴⁵ Common explanations given on the ER for why comments were not incorporated into final versions were that the item of issue was covered in other legislation, irrelevant to the current posted item, or did not address the issue that was being addressed with that item that was posted.

⁴⁶ (Miller 2009).

⁴⁷ *Ibid.*

⁴⁸ (Interviews, March 24 – April 15, 2009).

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

The ECO office has recently added a new feature to its website. Here they have ranked the government's compliance with the recommendations made by the ECO since 1999 using a five-stage system, stage one being no action on the recommendation, and stage five being a fully realized implementation of the recommendation.⁵² Of the 129 recommendations that have been made since 1999, 120 have been ranked and of these, 88 (73.2 percent) have been acted upon to some degree (received a ranking of two or higher). If we are to exclude the last two years of recommendations (2006-2007 and 2007-2008) with the understanding that it takes time for some of these recommendations to be implemented, 82 of 106 (77.4 percent) have received a ranking of 2 or higher. Looking at this data, it could be concluded that the recommendations, though they may not be acted upon immediately by government, are addressed in some way when reported by the ECO in annual reports.

Critics of the EBR will also point out that the effectiveness of the legislation depends on the government's reluctance to exploit the loopholes within the Act. The government must post matters of environmental importance on the ER and receive comments from the public. However, it is not required to change the legislation based on each request, as long as the final decisions can be justified in some way. Likewise, the ECO can make recommendations, but whether the government implements them is still at the will of that government. People are given legal rights under the EBR (which have only been briefly mentioned in this paper), and they may use the courts to challenge the government if they feel the government is not living up to its environmental responsibilities. But as in all legal proceedings, this is cumbersome and expensive.

However, I have demonstrated throughout this paper that the current government is intent on using the EBR as they make environmental decisions. To exemplify this claim further, we can consider the recently passed *Green Energy Act, 2009*. This Act, under Schedule F, increased the responsibility of the ECO by amending the *Environmental Bill of Rights, 1993*. Under this amendment, the ECO is now required to "report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce the use or make more efficient use of electricity, natural gas, propane, oil and transportation fuels."⁵³ We must presume that in passing this piece of legislation, the government wants to be successful in achieving the Act's intended goal, which is "fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy."⁵⁴ Therefore, one way the government believes that this will be accomplished is to have a reliable, credible, and knowledgeable officer participate and offer an annual evaluation, that being the Environmental Commissioner of Ontario. The government would not increase the responsibility of a body they feel does not perform well, or that it does not respect. With the addition of responsibility for the ECO under the *Green Energy Act, 2009*, we know that the government does hold the ECO in high regard, and values the input given by this office on environmental issues.

So while comments expressed through the ER are incorporated into final decisions, and recommendations made by the ECO are acted upon, albeit often at a slower than ideal pace, and when looking at moves by the government to increase the

⁵² See Appendix D for a chart summarizing the compliance with the recommendations.

⁵³ *Green Energy Act, 2009*. 1st sess., 39th Parliament, November 28, 2007 - . Schedule F.

⁵⁴ *Ibid.*, Preamble.

duties of the ECO, we can conclude that the government values these tools as contributors to the decision-making process. When considering the alternative, that being no opportunity for the public or an independent officer of the legislature to know what the government is doing or be able to have an input on the process, the existence of the EBR offers a transparency mechanism between the people and the government.⁵⁵

The importance of government accountability, both to the citizens of the province and to the Legislative Assembly should not be under-valued. Governments will make decisions that it believes will benefit the people of the province. If at the end of the government's term the public thinks that these decisions have not been good ones, they will speak with their ballots. Since a government's interest is to be re-elected, it is wise not to ignore the people it represents, nor shun a respected independent officer of the Assembly; to do so would be to present an image that it has no due regard for the law, and a narrow interest in engaging with the people it represents. One interviewee poignantly explained that too often people feel that government is not listening and that it is disengaged with their interests and the EBR has given people a safe place to express their views, which must be considered by the government; a government that does not listen to the people is not a good government.⁵⁶ This member, like all ministry representatives I spoke with, emphasized the importance of using this tool to listen to the people, and this benefits not only the citizens, but the government as well.⁵⁷

CONCLUSION

During a political era where people are continuously disengaged with the electoral process, and increasingly concerned about the state of the natural environment, the EBR allows an opportunity for people to engage with their government in a meaningful way. Kim Campbell received a great deal of criticism when she conveyed the idea that an election is no time to talk about serious issues, but this idea holds true in the current political climate, and relates closely with the purpose of the EBR. This legislation gives citizens to the extent that they are willing, a chance to engage with the government on environmental issues, and to rightfully expect their government to act in their interests. The Environmental Registry serves as a type of pseudo-convention, where individuals voice their opinion, and the government responds accordingly. The EBR's effectiveness lies in the law, and in the understanding of the government that it has a responsibility as a democratically elected government to pay close attention to those comments, or to be criticized by opposition, media, or voters when it comes time to decide once more, for whom they will vote. I have demonstrated that the government has listened and does listen to Ontarians, and has altered decisions to an extent that exemplifies this.

The Environmental Commissioner remains an advocate for the environment, and for the rights that have been granted to Ontarians through the EBR. This office is respected, and the current Commissioner's recommendations have been heeded to a varying degree by the Governments of Ontario. Though unable to legally enforce these recommendations, the respect of the position, the understanding of the ECO's knowledge

⁵⁵ (Interviews, March 24 – April 15, 2009).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

and over-arching environmental issues, legislators do make efforts to act in accordance with these recommendations.

The ER and the ECO, then, do affect the environmental decision-making process of the government. In increasing transparency in the process, and enabling greater accountability through the ER and the ECO, the people of Ontario are able to engage with government, and take an increased responsibility for the natural environment of the province. Though mired with criticism, the EBR is a forum for opportunity, and as long as citizens use this tool, it will continue to be a vessel for a closer interaction with a more responsible Ontario Government.

APPENDIX A

Interview questions asked to Ministers, Parliamentary Assistants, and Ministry representatives:

1. When creating legislation/policies, how do the recommendations that the ECO makes in annual/special reports factor in to the process?
2. How often are the actions by your ministry determined by things that the Environmental Commissioner has recommended, and how often are they completely unrelated?
3. Ministries are required to consult the public when making “environmentally significant decisions” through the Environmental Registry. When these comments are received, how do you go about evaluating them, and how do you consider the comments when making “environmentally significant decisions” (regulations, legislation, etc.)?
4. a) Do you think that the use of the Environmental Registry succeeds in engaging the public on environmental issues?

b) Based on your experience with the ER, and the EBR, to what extent do you feel the following statement is true?: “The EBR is a *participatory alternative* to the electoral system that affords the average citizen the opportunity to demand that government engage the public in a discussion on issues of environmental significance.”
5. In developing policies, legislation, or regulations, whose opinions do you feel are more credible (whose input plays a bigger role) - individuals that provide comments to the ER, or the ECO?

APPENDIX B

Interview questions asked to the Environmental Commissioner of Ontario, Gord Miller:

1. Do you base the recommendations you make in annual/special reports on suggestions/complaints from the public or are they formed independently?
2. Are there other ways that the ECO is able to influence environmental policies?
3. What do you see as the role of the ER in enabling a type of public participatory alternative to the electoral process?
4. What can the ECO do if the Legislature/government does not heed the ECO's recommendations?
5. In your opinion, does this influence/lack of influence of the ECO limit the effectiveness of the ECO within the Legislature? Why or why not?
6. What are some of the challenges that the ECO faces in affecting environmental change in Ontario? How could these challenges be met?

APPENDIX C

List of Prescribed Ministries under the Environmental Bill of Rights:

Ministry of Agriculture, Food and Rural Affairs

Ministry of Culture

Ministry of Economic Development and Trade

Ministry of Energy and Infrastructure

Ministry of Environment

Ministry of Government and Consumer Services

Ministry of Health and Long-Term Care

Ministry of Labour

Ministry of Municipal Affairs and Housing

Ministry of Natural Resources

Ministry of Northern Development and Mines

Ministry of Tourism

Ministry of Transportation

APPENDIX D

ECO Recommendation Compliance Breakdown 1999/2000 – 2007/2008 according to data from “List of ECO Recommendations” at:
<http://www.ecoissues.ca/wiki//index.php?title=Recommendations>.

Ranking ranges from 1 (no progress) to 5 (fully realized).

Ranking	Recommendations ranked at each stage	Total (%)
not ranked	9	(excluded from calculation of total)
1	32	26.6
2	22	18.3
3	20	16.6
4	27	22.5
5	19	15.8
Total	129, 120 ranked	99.8

ECO Recommendation Compliance Breakdown 1999/2000 – 2005/2006 according to data from “List of ECO Recommendations” at:
<http://www.ecoissues.ca/wiki//index.php?title=Recommendations>.

Ranking ranges from 1 (no progress) to 5 (fully realized).

Ranking	Recommendations ranked at each stage	Total (%)
not ranked	0	(excluded from calculation of total)
1	24	22.6
2	18	17.0
3	19	17.9
4	27	25.5
5	18	17.0
Total	106	100.0

APPENDIX E

List of Interviewees

Hon. Jim Bradley, Minister of Transportation

Hon. Donna Cansfield, Minister of Natural Resources

Hon. Leona Dombrowsky, Minister of Agriculture, Food and Rural Affairs

Jon Feairs, Senior Policy Analyst to the Minister of Northern Development and Mines

Kevin Flynn, Parliamentary Assistant to the Minister of Environment

Linda Jeffrey, Parliamentary Assistant to the Minister of Transportation

Gord Miller, Environmental Commissioner of Ontario

David Ramsay, Parliamentary Assistant to the Premier

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