

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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November 15, 2007

The Honorable Donna Cansfield, Minister
Ministry of Natural Resources
Room 6630, Whitney Block
99 Wellesley Street, West
Toronto, Ontario, M7A 1W3

by Registered Mail

Dear Minister:

re: Bill 184 – Species at Risk Act

The following comments address:

Who We Are:

Launched at Peterborough in 1994 with a mandate “to protect, and entrench in law, landowner rights and responsibilities”, the Ontario Property and Environmental Rights Alliance (OPERA) is a provincial coalition of trade associations, citizen organizations and private individuals. On behalf of our members and supporters, please accept congratulations and best wishes on your recent Cabinet appointment as Ontario’s Minister of Natural Resources, a vital portfolio that will surely benefit from your many years of outstanding public service.

Bill 184 Concerns:

OPERA, like many other organizations, previously filed a number of written reservations concerning Bill 184 as hurriedly introduced late in 2006 and hastily ratified early in 2007. We also attended, last November 1, a Stakeholder Input Session to review some, but not all, proposed Regulations for this statute. On that occasion MNR staff advised delegates in attendance that any further review of such proposals would have to be completed by December 31, 2007 in order to expedite legislative passage of same six months later.

The next day, November 2nd, we received an e-mailed request for comment regarding 98 species currently declared at risk in Ontario. Requesting public assessment for each wildlife species on that long list within the short time line specified and without any scientific abstract that justifies each “at risk” designation is, in our view, asking for the impossible.

Honorable Minister, we respectfully suggest preparation, presentation and approval of Bill 184 via an electronically circulated Discussion Paper, a few narrowly advertised and poorly attended public meetings and a potentially biased Legislative Review Panel has already spawned a nagging unease and bitter resentment among private owners and lessees of land directly affected by this legislation. To then compress public discussion of its Regulations into a 2-month period and allow only a few weeks for concerned citizens to review nearly a hundred species alleged to be at risk, is a schedule that demeans an avowed MNR intention to ensure Bill 184 “transparency”.

OPERA strongly supports the broad concept and stated objectives of Bill 184 but firmly opposes the truncated and inherently unfair process by which your Ministry is proceeding with its implementation.

Committee on Status of Species At Risk in Ontario (COSSARO)

This Committee, consisting for the most part of scientists and environmentalists, is not responsible to the public for its recommendations and its land use sanctions do not require Ministerial approval. Thus, unlike federal species at risk legislation, the Minister is accountable to the public for decisions over which he or she has no control. We note the Committee is independent of and separate from a Species at Risk Public Advisory Committee (SARPAC), a long-overdue oversight tribunal that we fervently hope will properly represent the interests of ordinary citizens entangled in Regulations that enforce government statutes such as Bill 184.

COSSARO members rarely have a propriety interest or financial investment in property on which they opt to apply more state control. Consequently, their land use proscriptions, however technically acceptable, can sometimes reflect bias and insensitivity. Indeed, similar committees acting under similar legislation in the United States are often seen as unintentional creators of the “shoot, shovel and shut up” philosophy adopted by frustrated American landowners who consider themselves a species at risk by regulation, if not by definition.

We understand protective restrictions for the 98 species referenced above have previously focused on the development industry in Ontario but NOT on individual landowners. However, under Bill 184, it appears such restrictions will now apply to all citizens of this province, corporate and private alike. We believe most landowners are unaware of this subtle extension of COSSARO empowerment. Thus, recent distribution of a lengthy species list with an attached request for immediate “stakeholder” assessment, does not, in our view, satisfy the purpose or meet the standards of extensive, fair and transparent public consultation.

Current and Suggested Parameters:

The Input Session promised “focus” meetings in November and December of this year. OPERA will be pleased to attend those conferences although we regret to hear none will be open, and thus transparent, to the public. We have accordingly asked your officials for the date, time, place and agenda of each such meeting.

Our coalition is also preparing a list of policy and regulatory questions not tabled at the recent Input Session. We hope these will attract public attention to legislation that can severely inhibit, by arbitrary regulation without capital compensation, private ownership of land, particularly rural land, in the name of species protection.

Some examples:

1. *Does Bill 184 acknowledge the four Senate recommendations that emerged from federal SARA hearings?*
2. *Can designation of species or their habitat affect mortgage worth and market value of private land?*
3. *Which provincial Ministry or agent will interpret and enforce Bill 184 Regulations and at whose cost?*
4. *Who are the current members of the Committee on the Status of Species at Risk in Ontario?*
5. *Can COSSARO or its agents enter private property in search of species at risk without owner consent?*
6. *Is Bill 184 to be enforced and are alleged violators to be punished under government criminal law powers?*
8. *Does “strict liability” presume guilt and “due diligence” require defendants to prove innocence at their cost?*
9. *Will notice and details of Recovery Programs be announced for public comment outside the Internet?*
10. *Do MNR databases identify species at risk habitat and have owners been notified and asked for consent?*

The Niagara Escarpment Planning and Development Act took 12 years to enact. Bill 184 was legislated in 12 months. Since 19 federal, provincial and/or territorial statutes already protect Canada’s species at risk, one wonders about the blistering implementation pace of Bill 184. Moreover, elasticized government interpretation of its enforcement vocabulary such as “permits” and “exemptions” promises all manner of future controversy and confrontation for private landowners/lessees.

As Ontario’s new Minister of Natural Resources, OPERA urges you to investigate not only the initial process and intended benefits of Bill 184 but also its unintended consequences and dollar costs. It is our confident hope that such a review might encourage selective amendment of that legislation followed by much longer timelines as well as a lot more public (and seen to be public) dialogue prior to finalization of its Regulations.

We look forward to your comments and advice in all of these matters.

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

R.A.. (Bob) Fowler, Secretary

c.c. OPERA Members and Supporters / Karen Bellamy, MNR,
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