"UNPUBLISHED CONFLICTS + UNKOWN REMEDIES = UNNAMED FIXERS"

ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE
Unit A, 135 Church Street, North, Mount Forest, Ontario, N0G 2L2
Phone: 519-323-2308 / Fax: 519-323-0289
E-Mail: opera@bmts.com / Web Page: www.bmts.com/~opera/

March 28, 2011

Mr. Ives Tremblay, Policy Advisor
Ministry of Agriculture, Food and Rural Affairs
Strategic Policy Branch
77 Grenville Street, 11th Floor
Toronto, Ontario, M5S 1B3

COPY OF ELECTRONIC SUBMISSION TO EBR 011-2677
from
ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

PREAMBLE:

In 2008 the Ministry of Natural Resources (MNR) proposed a Strategy for Preventing and Managing Human-Wildlife Conflicts in Ontario. Three years later the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) is seeking public comment regarding a sub-set of that proposal - an Agriculture-Wildlife Conflict Strategy. The genesis of both initiatives is Ontario's latest Species at Risk Act (SARA) which was written not by MNR but rather by a coalition of 5 professional lobby groups. Human-wildlife conflicts inherent in that highly questionable legislation are now recognized as troubling realities that demand review and remedy. In that context, we suggest, with respect, OMAFRA conflict strategies are unlikely to reflect balanced opinion, the rule of law or deference to landowner rights if those strategies are influenced by the original authors of SARA legislation.

That said, OMAFRA opening proposals for such strategy include a number of commendable initiatives that benefit all private owners of land, farmers and non-farmers alike. Some examples:

1. Enhancing information sources (despite government assurances to the contrary, relying chiefly on the Internet for public consultation produces limited, if not biased, public response)
2. Improving programs and tools for producers including compensation (although not here specified, compensation must include full recognition for equity and/or production losses arising from SARA)
3. One-window information access (at vast public expense at least four provincial Ministries separately administer and fund regulatory land use bureaucracies whereas there should be only one)

COMMENT:

Initial MNR discussions of a SARA conflict strategy evidently involved some 30 otherwise unidentified "stakeholders", a term that conceals more than it reveals. The 5th Edition of the Canadian Law Dictionary defines stakeholder as "a third party chosen by two or more persons to keep in deposit property or money the right of possession of which is in dispute and to deliver the property or money to the disputant identified as its rightful owner in a court of law". Land ownership in Ontario was indisputably established by written, inextinguishable contract with the British government more than a hundred years ago (Crown Land Patents) and no third party has since been "chosen", or is in any way authorized, to hold legally registered private land "in deposit" outside a courtroom

Until identified by name and mandate, we contend some bureaucrats and consultant-lobbyists attending conflict strategy sessions might not be, by definition, stakeholders at all. Moreover, whether any of them hold, as do registered landowners, who are not often invited to these advance discussions, propriety or financial interest in lands affected by "conflict strategy" deliberations is an open question.

FOCUS:

Human-wildlife conflict prevention, an expressed objective of the MNR core document, in our view, is best achieved by repeal of the privately-manufactured species legislation in current vogue. A replacement statute could then be properly and impartially designed to respect the status and guard the welfare of all endangered species including farmers.

That failing, by name and intent conflict management acknowledges the existence or anticipation of defined tensions and recognizes the need for their resolution by consensus and compromise. Still, development and presentation of OMAFRA recommendations for such supervision, however appropriate and applauded, should include clear reference to under-published SARA pre-conditions that tend to limit their worth and constructive application. For example, the legislation:

1. Allows "partial taking" of privately-owned land by regulation (thus avoiding legal proceedings under Ontario's Expropriation Act where fair compensation for affected landowners is an established right)
2. Provides for "strict liability" charges (accused offenders must prove innocence rather than the state being required to prove guilt, a flagrant reversal of the Magna Carta and English common law)
3. Denies right of appeal against controversial government regulations (a cornerstone symbol of a free and democratic society noticeably absent in police state regimes where those adjectives don't apply)
4. Requires landowners to function as unpaid wildlife custodians (recognize and preserve endangered species and their respective habitats on pain of draconian penalties for non-compliance)
5. Assumes landowners are able to recognize breed and habitat of any number of allegedly endangered species (while providing "protection" of same to a government standard never yet documented)

Accordingly, we urge OMAFRA to include in its Agricultural Wildlife Conflict Strategy some mention of those disincentives as well as possible means of their termination or reduction. Some suggestions:

1. Amendment of SARA to provide right of appeal and access to Expropriation Act hearings as well as removal of clauses specifying “strict liability” and “due diligence” (accused must cover all costs of defending against SARA charges filed on MNR authority, whim or impulse).

2. Introduction of a process based on European custom to provide compensation for SARA-inspired equity and/or production losses on private property by means of lump sum cash payment or defined annual royalty in exchange for registered easement on title.

3. Routine print media publication of conflict examples, penalties for convicted SARA violators and a compensation plan offering a charitable tax receipt where cash or royalty payment is denied to private owners of land reduced in value and/or productivity by SARA regulation.

We appreciate this opportunity to comment on OMAFRA’s intention to create an Agricultural Wildlife Conflict Strategy.

Thank you

R.A. (Bob) Fowler, Secretary
Ontario Property and Environmental Rights Alliance