



Operation of the *Environmental Bill of Rights, 1993*

2022 Value-for-Money Audit

Why we did this audit

- Since 2019, the Office of the Auditor General of Ontario has been responsible for reporting annually on the operation of the *Environmental Bill of Rights, 1993* (EBR Act), including how and when Ontarians exercise their environmental rights and how well the Province fulfils its EBR Act obligations.

Why it matters

- The EBR Act was intended to protect the environment by ensuring that Ontarians are informed about and have an opportunity to participate in the Province's initiatives that could significantly affect the environment, including those that impact air, water, land, plant and animal life, climate, biodiversity and ecosystem functions. The public's participation in the design and implementation of these initiatives can lead to better environmental outcomes.
- The Province's fulfilment of its EBR Act obligations facilitates transparency and accountability for environmentally significant decisions.

What we found

The Environment Ministry Again Did Not Provide Leadership on the EBR Act

- The Ministry of the Environment, Conservation and Parks (Environment Ministry) still has not carried out a review of the EBR Act to identify and assess gaps and issues that hinder the effective operation of the Act—a review that the Ministry agreed to do more than 10 years ago.
- The Environment Ministry fully met our audit criteria in just 33% of cases.
- The Environment Ministry still has not updated its Statement of Environmental Values.
- The Environment Ministry did little to educate Ontarians about the EBR Act.
- The Environment Ministry will not implement our Office's 2020 recommendation that it take action to ensure that the EBR Act applies to all environmentally significant decisions made by the Province.
- The Environment Ministry was not transparent about the status of its 2018 Made-in-Ontario Environment Plan.

RECOMMENDATION 1, 11-14

Some Ministries Deliberately Ignored Ontarians' Rights to be Consulted about Environmentally Significant Proposals

- The Ministry of Municipal Affairs and Housing did not consult Ontarians for the minimum 30-day consultation period before implementing Bill 109's amendments to the Planning Act.
- The Ministry of Energy did not consult Ontarians about two new important policies affecting the environment: the Strategic Plan for the Deployment of Small Modular Reactors and the Low-Carbon Hydrogen Strategy.
- The Environment Ministry did not share key information with all Ontarians about its proposal to exempt projects related to provincial parks and conservation reserves from the Environmental Assessment Act.

RECOMMENDATION 2-5

Most Ministries Did Not Always Meet EBR Act Requirements

- Overall, ministries fully met our audit criteria in 68% of cases and partially met them in 22% of cases.
- Ontarians were not always given clear or complete information in notices posted on the Environmental Registry.
- Ontarians were not given timely notice of 20% of the decisions we reviewed.
- The Ministry of Natural Resources and Forestry did not keep 21% of its proposal notices on the Environmental Registry current.

RECOMMENDATION 6-10, 17-20

Environment Ministry Did Not Adequately Investigate Alleged Bird Deaths from Flying into Buildings

- The Environment Ministry refused to investigate allegations that building owners had breached the *Environmental Protection Act*:
 - Ontarians submitted two EBR Act applications, alleging that buildings in Ottawa discharged a contaminant (reflected light), which attracted and killed hundreds of birds each year, including some at-risk species, when they collided with building windows.
 - The Ministry stated in November 2021 that the allegations were not serious enough to warrant an investigation, and that non-regulatory tools such as education and outreach are a more proportionate response to address concerns related to the impacts of reflected light on birds.
 - As of September 2022, the Ministry had not reached out to the building owners to encourage them to implement voluntary measures to protect birds from building strikes.
- The Ministry also did not respect the statutory deadline for deciding whether to undertake the requested investigation.

RECOMMENDATION 15, 16

Conclusions

- Overall, prescribed ministries improved their compliance with the EBR Act from 2021. Some ministries have started taking steps to increase staff awareness and understanding of the EBR Act, and to implement new or updated procedures to ensure they comply with it.
- Despite these improvements, major problems persisted in the operation of the EBR Act. Some ministries again deliberately ignored the EBR Act when they did not consult Ontarians appropriately on environmentally significant initiatives.
- In addition, most ministries had instances when they did not follow the EBR Act's minimum legal requirements.
- Lack of, and partial compliance with, the EBR Act reduced the Province's accountability for its environmental decisions and risked undermining public confidence in those decisions.
- An enduring problem with EBR Act implementation is the continued lack of leadership from the Environment Ministry.

Read the report at www.auditor.on.ca