

Environment laws are stalling development in Ontario, study says

By Fatima Syed in News, Politics | August 16th, 2019



A major construction project on the 401 highway in Windsor and Essex County, Ontario. Flickr photo/Di Bédard

Imagine there's a severe flood in a small Ontario town.

Imagine the flood washes out a key bridge, which serves as a fire and ambulance route.

The town leaders want to replace the bridge but in a different location, so that it's safe from future weather events. They also want to elevate it, and reinforce the river banks below.

Under Ontario's current environmental assessment laws, it will be two to four years before the town can even begin construction, said Frank Zechner, a civil engineer in Alberta's oil and gas sector turned environmental lawyer.

It should take only five to eight months, he said in an interview with *National Observer*.

Zechner has written a new [report](#) that highlights the shortcomings of Ontario's current Municipal Class Environmental Assessment (MCEA) process, which designates the planning and design of municipal infrastructure projects according to the requirements of the province's Environmental Assessment Act to ensure that all environmental impacts of a development project are considered, and any effects appropriately mitigated before construction.

Entitled “Case Studies that Support Reforming Ontario’s Municipal Class Environmental Assessment Process,” the report is the sixth in a series commissioned by the Residential and Civil Construction Alliance of Ontario (RCCAO) — an advocacy group for engineers and construction workers in the province — since 2009.

Zechner investigated 12 infrastructure projects across the province that faced significant delays and additional costs arising from "red tape and duplication." Nine were road-related projects, two were bridges and one was a sewage water infrastructure project. In 10 cases, the MCEA process took between two and five years. Four of the projects required more than \$2 million for consultants and reports; six required more than \$500,000. These amounts, Zechner argues in the report, are too high.

For example, a highway extension near Waterloo, Ont. was approved only after eight years of consultations and studies costing over \$2 million. Construction started spring of this year.

Zechner’s report recommends modernizing the province’s Environmental Assessment Act (EAA) to address such issues. And the Doug Ford government agrees, having criticized the act for being “burdensome (and) discouraging job-creators from coming to Ontario to do business.”

Zechner's report has been received by Environment Minister Jeff Yurek, as part of the Ford government's consultation of wide reform of the act.

"The ministry has already implemented several of the recommendations included in the report," Chelsea Dolan, a spokesperson for Yurek, wrote in a statement to *National Observer*.



Jeff Yurek shakes hands with Ontario Premier Doug Ford as he is sworn in as Minister of Environment, Conservation and Parks during a cabinet shuffle at Queen's Park in Toronto, Ont., Thursday, June 20, 2019. Photo by Cole Burston

Before the legislature rose for the summer, the government passed the omnibus Bill 108, which sought to uproot a lot of Ontario's environmental and housing policies. The bill amended the Environmental Assessment Act to exempt low risk projects from the Act, as recommended by

Zechner's report, and enabled the development of regulations to ensure the Minister's discretion can only be considered on Aboriginal and treaty rights and matters of provincial importance. It also allowed the establishment of time limits to ensure quicker decisions are made.

In April, the Environment Ministry released a [discussion paper](#) to begin consultations on the reform.

"The Ministry of the Environment, Conservation and Parks is taking a two-phased approach to modernizing the environmental assessment program. We are focusing on short-term actions to provide immediate relief on timelines, and get critical infrastructure to Ontario families faster and longer-term proposals for creating a framework that will eliminate duplication, streamline approvals processes, enhance access to and transparency of environmental assessment information, and focus on projects that pose the greatest risk to Ontario communities and ecosystems," Dolan wrote.

"The ministry will be working closely with the Municipal Engineers Association over the coming months to find efficiencies in the (process) and further consider the other recommendations in the RCCAO's report," Dolan wrote.

But the report hints at an old conflict in the province that has intensified since the Ford government came to power: does reduced red tape and simpler regulations for development inherently mean weakened environmental rules and protections?

"We're not saying we want to build infrastructure willy-nilly," Andy Manahan, executive director of the RCCAO, said in an interview. "Each project has to be proven to be needed, and to be in the public interest. But because of the duplication and the additional cost, we're saying: can we cut out some of the red tape and do things more effectively? We're trying to minimize the process inefficiencies."

Zechner agrees: "If you want growth, you have to allow it some way to proceed."

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Dianne Saxe, Ontario's former environmental commissioner, told *National Observer* that the act's ineffectiveness in delivering "timely, predictable decisions" on infrastructure project approvals has been an issue since she joined the Environment Ministry in the mid-1980s.

Among Saxe's and Zechner's main complaints about the act are that it lacks clear criteria and timelines and that it offers no chain of accountability. In his report, Zehner finds there is a disconnect between what municipalities, developers and contractors want to do and what the province requires them to do to achieve those goals. There is also complexity in what office, agency, or government official should be responsible for making decisions for environmentally conscious, urban planning and development.

In 2016, [Ontario's auditor general](#) found that the province is the only jurisdiction in Canada that doesn't require environmental assessments for private-sector projects, such as mining or chemical manufacturing, which can have long-term impacts on [on water quality and aquatic ecosystems](#). That report also found that the cumulative effects of multiple projects are not usually assessed., and that there was a need for better and more proactive monitoring to ensure environmental requirements were being complied with.

In her reports as environmental commissioner, Saxe found that one of the main flaws in the act is the fact that the environment minister has the discretion to provide a decision on or review of any project, but is not mandated to do so in any specified time period. And, there's no way to speed up the process.

Saxe argued that the EAA needs to be reformed to encourage environmentally conscious decisions. But, she said, she also recognizes that slow-moving environmental assessments are costly to developers.

"I do agree that there should be opportunities to fail, and fail fast," she said. "It's really helpful to find out that the answer is going to be 'no' as quickly as possible. But, that's something the government has never been good at. They don't like saying no."



Dianne Saxe, former Environmental Commissioner of Ontario, seen in her office during an interview with National Observer on Dec. 6, 2018. Photo by Cole Burston

Zechner's report, too, suggests a number of ways to reform these problems including:

- Exempt low-risk projects from the act (such as road projects)
- Reduce the scope and complexity of environmental study reports, so that they are less costly and quicker to complete and focus on "key issues"
- Delegate the environment minister's authority to environment ministry bureaucrats
- Mandate a regulatory deadline for decisions

- Enhance access and transparency by creating "a province-wide centralised internet-based system"
- Recognize approvals given under the Planning Act, which RCCAO says also includes environmental considerations

Manahan says these recommendations wouldn't diminish environmental responsibility. He said he wants to see an integrated planning/environmental assessment process that helps streamline or fast track low-risk projects like the strengthening and expansion of roads, or urgent construction projects in the aftermath of severe events.

While Saxe agrees that reform is needed, she disagrees with the RCCAO's methodology. While Zechner's report justifies some of its recommendations by saying they would speed up road projects, Saxe said she believes such projects should be slowed down.

"Any time we're putting more money into expanding urban sprawl, that is worsening our carbon footprint and locking us into a future that we can't survive," she said. "So the assumption that building and expanding growth is low-risk, and should go ahead as quickly and cheaply as possible — well, I don't accept that assumption."

In a report released this year, an expert panel convened by the Council of Canadian Academies (CCA) — a not-for-profit organization founded by the Royal Society of Canada, the Canadian Academy of Engineering, and the Canadian Academy of Health Sciences to conduct independent expert-panel assessments to inform public policy — found that one of Canada's top climate risks was to physical infrastructure, noting that there was 85 per cent risk of "catastrophic" damage to infrastructure in the next 20 years.

Saxe cited this report in conversation with *National Observer* to suggest that while the RCCAO is accurate in identifying the possible need for a speedier process to build infrastructure, she contests that this infrastructure translates to more roads.

"I don't think it needs to be speedier to build highways. But, building bike lanes, absolutely," Saxe said.

At present, Saxe said this environmentally conscious urban planning model does not exist in the Ford government's new legislation reforming the act.

"The purpose of environmental laws is to provide a better environmental outcome. Some projects provide a better environmental outcome," she said. "I don't agree that just because somebody wants to build something, it should necessarily be possible to build fast."