

August 14, 2017

BY EMAIL

Mr. Ken Peterson
Provincial Planning Policy Branch
Ministry of Municipal Affairs
777 Bay Street, 13th Floor
Toronto, Ontario
M5G 2E5

Dear Mr. Peterson:

**RE: CELA COMMENTS ON BILL 139 (*Building Better Communities and Conserving Watersheds Act, 2017*)
ENVIRONMENTAL REGISTRY NO. 013-0590**

Please find attached the comments of the Canadian Environmental Law Association (CELA) in relation to various proposals contained within Bill 139 (*Building Better Communities and Conserving Watersheds Act, 2017*). This submission is being filed with you pursuant to the above-noted Environmental Registry notice.

For the reasons described in the attached brief, CELA concludes that Bill 139 is a regressive reform package that subverts, or wholly eliminates, important procedural rights and substantive protections currently enjoyed by Ontarians under the existing law and policy framework.

For example, in relation to *Planning Act* appeals, Bill 139 purports to:

- reduce the number and types of matters which may be appealed to the Local Planning Appeal Tribunal (LPAT);
- limit the grounds of appeal that can be advanced before the LPAT;
- restrict who can participate in LPAT hearings, and constrain how the LPAT hearings will be conducted (e.g. no testimony under oath, no cross-examinations by parties, etc.);
- eliminate *de novo* hearings before the LPAT, and narrow the LPAT's decision-making authority; and
- stipulate that the as-yet unwritten LPAT rules of practice and procedure prevail over the *Statutory Powers Procedure Act* (SPPA) where there is "conflict" between the LPAT rules and the procedural safeguards entrenched in the SPPA.

In our view, none of the foregoing rollbacks from the current land use planning regime can be considered as progressive, justifiable or protective of the public interest. To the contrary, Bill 139 will make it exceedingly more difficult for CELA's client community to play a meaningful role in the land use decision-making process, or to ensure that decision-makers are held accountable through appropriate appellate procedures.

At the same time, Bill 139 contains no new provisions aimed at removing or reducing the financial barriers currently faced by residents or non-governmental organizations who participate in the land use planning system, and who often encounter well-resourced municipalities and/or deep-pocketed developers. In our view, it is long overdue for the Ontario government to address the fiscal imbalance in parties' resources, particularly when appeal hearings are held under the *Planning Act*.

Accordingly, we make two overall recommendations in relation to Bill 139:

CELA RECOMMENDATION #1: Bill 139 should not be enacted as currently proposed. Instead, Bill 139 should be withdrawn by the Ontario government unless the legislative proposals are significantly amended in order to safeguard the public interest, and to ensure that Ontario's land use planning system is fair, robust, participatory, transparent and accountable.

CELA RECOMMENDATION #2: If Bill 139 proceeds to Second Reading, then the Ontario Legislature should refer the Bill to a standing committee for public hearings.

Please contact the undersigned if you require any additional information about CELA's submissions on Bill 139.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

Encl.