

EBR Review Strategic Policy Branch
77 Wellesley Street West, 11th floor
Toronto, ON M7A 2T5
e-mail: EBRreview@ontario.ca

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The **Ontario Council of the Canadian Federation of University Women (CFUW)** is pleased to respond to the Review of the Environmental Bill of Rights, 1993 (EBR). We recognize the important role the EBR has played over the past 23 years in protecting Ontario's environment, our natural resources and heritage and the health of our ecosystems. And we applaud the government's initiative in updating this vital legislation.

CFUW Ontario Council would like to comment on several of the Review questions.

Question 1. A need to expand and modify the EBR Purposes and Principles:

While the question does not specifically cover the preamble, the Preamble is the inspiration, the guiding light, describing both the rights and the dream. As we believe that strong enforceable environmental legislation like Ontario's *Environmental Bill of Rights* is necessary to protect local ecosystems and our health, we would ask that the words "healthful environment" be further extended..

CFUW Ontario Council recommends that the Preamble be modified:

Preamble

The people of Ontario recognize the inherent value of the natural environment.

The people of Ontario have a right to a healthful environment - **the right to breathe clean air, drink safe water, enjoy healthy ecosystems and a toxin-free environment.**

The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.

While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.

The Purpose of an Act sets the tone and the parameters for interpretation of the legislation that follows. It is important that the wording truly reflects its priorities and intent and reflects as well the most up-to-date understandings of the issues to be dealt with.

A. Purposes of Act 2.(1)

The **Protection** of the environment is fundamental to this Act – and it presents a very different challenge from that of Conservation and Restoration. It needs to stand alone as the first and foremost Purpose of the Act.

We are also concerned that the word “**reasonable**” does not suggest a strong scientific basis on which to base a decision to “restore the integrity of the environment”. We would suggest that word be changed to better reflect the proactive intent of the EBR.

CFUW Ontario Council recommends that Section 2.(1) (a) be divided and modified to read:

Purposes of Act 2.(1)

2. (1) The purposes of this Act are,
- (a) to protect the environment from harm by the means provided in this Act;
 - (b) to conserve and, where possible, to restore the integrity of the environment by the means provided in this Act;
 - (c) to provide sustainability of the environment by the means provided in this Act; and
 - (d) to protect the right to a healthful environment by the means provided in this Act. 1993, c. 28, s. 2 (1).

B. Purposes of Act 2.(2)

In Section 2.(2) the more specific purposes are delineated. It is here that the more recently acknowledged environmental principles should be explicitly stated. These principles have been noted and requested for inclusion by the majority of Ontario’s environmental non-governmental organizations (ENGO) community.

It is also important to recognize explicitly in 2.(2) 5 & 6 (previously 3 & 4, see recommendations below), the **importance of our water resources** as one of the natural resources which requires special protection.

CFUW Ontario Council is also concerned by the use of the word “**unreasonable**” in Section 2. (2) 1. Lacking a clear definition of what constitutes an unreasonable threat – this word is subjective in nature and open to an interpretation that could run counter to the intent and purpose of the EBR.

This could lead to an evasion of responsibilities under the EBR legislation, and raises the distinct possibility that economic interests could trump the imperative for environmental protection with impunity.

CFUW Ontario Council would urge that the word “unreasonable” be replaced by the word “measurable” or ideally that the descriptor be deleted entirely.

CFUW Ontario Council recommends Section 2.(2) be expanded and modified to read:

Same

- (2) The purposes set out in subsection (1) include the following:
- 1. The prevention, reduction and elimination of the use, generation and release of pollutants that are a (measurable) threat to the integrity of the environment using the precautionary principle, ensuring zero discharge and requiring that the polluter pay for damage, site restitution and clean-up.

2. The protection and conservation of biological, ecological and genetic diversity based on the principle of Intergenerational Equity which recognizes that “resources and assets (such as quality and diversity of environment) do not 'belong' to any one generation but are to be administered and preserved in trust for all future generations”.
3. The recognition of a Substantive Right to a clean and healthy environment – clean air to breathe, safe water to drink, a nontoxic environment, a stable climate and healthy ecosystems for future generations.
4. The recognition of the need for Environmental Justice – to remedy the disproportionate exposure of low-income and indigenous groups to the effects of pollution of land, water and air.
5. The protection and conservation of natural resources, including water resources, plant life, animal life and ecological systems.
6. The encouragement of the wise management of our natural resources, including water resources, plant life, animal life and ecological systems.
7. The identification, protection and conservation of ecologically sensitive areas or processes. 1993, c. 28, s. 2 (2).

Question 2: Additional ministries, instruments or legislation that should be covered under the EBR

CFUW Ontario Council recommends that all ministries should be covered under the EBR.

Certainly those ministries currently listed would have the greatest exposure to decisions which could have an effect on the environment. But all ministries should be aware of their obligations under the EBR.

Question 3: A need to adjust EBR requirements regarding the content, review and updating, or application of Statements of Environmental Values (SEV).

CFUW Ontario Council recognizes and applauds the Government of Ontario for its leadership in establishing the SEVs and in instituting the requirement for SEVs to be prepared in specific ministries. As noted above CFUW considers this to be such an important tool, that we recommend it be expanded to include all ministries. The template used in creating the SEVs is comprehensive and requires that each ministry look at their obligations under the EBR from several different perspectives.

The use of the SEVs is sufficiently important that it should not be left up to the discretion of individual ministries to establish internal policies requiring staff to document how and when SEVs are considered. In order for the process to be consistent and transparent:

CFUW Ontario Council recommends that the government require the staff of all ministries to document how and when Statements of Environmental Values are considered in making decisions that will or could impact the environment.

The effectiveness of the SEVs is tested in the section entitled “**Integration of Other Considerations**”. It is true that each ministry must consider its SEVs when making decisions. But it is also true that the objectives set out in the EBR must be integrated with social, economic, and scientific considerations. And there is no clear indication given of what must happen when economic advantage conflicts with environmental harm.

In crafting the Great Lakes Protection Act, Ontario made a breakthrough decision. It incorporated the principle of “**Precedence**” into the Act by identifying and affirming the critical criterion in the case of conflict – so that “the provision that provides the greatest protection to the ecological health of the Great Lakes-St. Lawrence River Basin prevails”.

It would be a vital step in the government’s commitment to protect the environment to include this principle of **Precedence** in the EBR and its SEVs – so that whenever there was a conflict between competing economic and environmental interests, the one which protected the environment would prevail. This would provide an especially important incentive to find ways to prevent and mitigate harm to the environment in sectors such as mining, forestry, extraction and development.

CFUW Ontario Council therefore urges the Government of Ontario to establish the Principle of Precedence in the EBR and in the Section “Integration of Other Considerations” of the SEVs.

Question 6. Changes to Section 32 - Exception

This section, which exempts decisions that have a potential effect on the environment by tribunals such as the Ontario Municipal Board (OMB) or an Environmental Assessment (EA) from public notice, should be removed from the EBR.

Notice of such decisions must be given to the public and to the Environmental Commissioner. Tribunals such as the OMB do not have environmental experts as judges and often make rulings which favour the interests of economic development over that of the environment. Even decisions made under an EA need to be reviewed to ensure that the Act is being interpreted according to the intent originally envisioned by the government.

CFUW Ontario Council recommends that the Government of Ontario delete Section 32 from the EBR.

If, however, it is not deemed possible to delete Section 32 from the Act, then at least, in the interests of transparency, there should be a repetition of the clause which follows other exceptions in the Act - inserted as Section 32 (4)

(4) If a minister decides under subsection (1) or (2) not to give notice of a proposal under Section 32, the minister shall give notice of the decision to the public and to the Environmental Commissioner.

Ontario Council of the Canadian Federation of University Women (CFUW) is a voluntary, self-funded, non-profit organization with 54 clubs across the province, which is affiliated with the national CFUW and Graduate Women International.

Our mandate is to promote education and life-long learning, to encourage the participation of members in their communities, and to enhance the status of women and girls.

Our main concerns include high quality public education, universal health care, a clean safe environment, the economic security of women as well as the prevention of violence against women.

Respectfully submitted



Sandra Thomson
President, CFUW Ontario Council
president@cfuwontcouncil.ca
president.cfuwontario@gmail.com
www.cfuwontcouncil.ca

Prepared by Carolyn Day, Environment Policy Advisor, CFUW Ontario Council, with added comments from CFUW Ottawa