

The *EBR* Litigation Rights Workshop - Backgrounder

The *EBR* contains two new distinct legal rights and enhances two existing legal rights. Collectively, these rights – right to sue for harm to a public resource, whistle-blower protection, right to sue for public nuisance, and leave to appeal – are referred to as the litigation rights because they enable members of public to go to court or an adjudicative tribunal to resolve disputes about environmental decision-making. Since the *EBR* was proclaimed, the leave to appeal right has been used extensively, the two right to sue rights have been used minimally, and the whistle-blower protection right has not been utilized at all.

Under section 57 of the *EBR*, the Environmental Commissioner of Ontario (ECO) is required to review the public's recourse to the litigation rights (subsections (h), (k), & (l)). In past years, the ECO has fulfilled this obligation by including information in the annual reports (the "other legal rights" chapter in particular). The ECO has also updated and published the "Nuts and Bolts" paper which provides an overview of the *EBR* rights and how they have been used. However, this information has tended to be descriptive. To date, the ECO has not undertaken a thorough evaluation of the use of the litigation rights. Such an evaluation could be informative as to the types of action the ECO could undertake or recommend to improve the public's access to these rights.

In order to fulfil the obligations set out in the *EBR*, the ECO has begun a more detailed evaluation of the litigation rights. Initially, this involves two projects. The first is the development of a discussion paper on the *EBR* litigation rights. This paper should be completed in early to mid-November. The second project involves hosting a workshop. This workshop would bring together individuals who are active in utilizing the *EBR* and invite them to share their thoughts and concerns on how these rights are being used (or not being used). It would provide a forum to solicit a broad range of opinions and ideas on the role and effectiveness of the litigation rights. The feedback received from the workshop and from the distribution of the discussion paper would provide a foundation from which the ECO could carry out its mandate to review the litigation rights and could also be used to improve the ECO's educational work on the *EBR*.

Key Questions About the Litigation Rights to be Addressed at the Workshop:

- ! What experiences to date has the public had in using these litigation rights?
- ! Is the use of the *EBR* litigation rights working as envisioned by the *EBR* task force in drafting these rights?
- ! Are these rights resulting in better environmental decision-making (directly or indirectly)?
- ! Are there additional measures that could be taken to support the use of these rights?
- ! Are there unnecessary barriers to using the *EBR* litigation rights?
- ! Is there a need for better education/public outreach to make people and professionals aware of these rights?

Agenda: EBR Litigation Rights Workshop
Thursday, May 25, 2000 – 9:00 a.m. to 4:00 p.m.
MacDonald Block, Queen's Park

Facilitator: Joanna Kidd, LURA Consulting

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| 9:00-9:15 | Registration & Coffee |
| 9:15-9:30 | Commissioner's Welcome and Opening Comments |
| 9:30-10:00 | Overview of Litigation Rights and Issues: Presentation by ECO staff |
| 10:00-10:15 | Coffee Break |
| 10:15-12:00 | Panel Discussion on Use of Litigation Rights |
| 12:00-1:00 | Lunch |
| 1:00-2:30 | Break-out Groups: Leave to Appeal Provisions; Harm to a Public Resource; and Public Nuisance & Whistleblower Provisions |
| 2:30-2:45 | Coffee Break |
| 2:45-3:30 | Reporting on Break-out Groups |
| 3:30-4:00 | Conclusions/Next Steps |