

A resilient, just & sustainable future for all

Ecojustice platform proposals for the 2022 Ontario election

Overview

It is critical that Ontario's political parties prioritize the climate and biodiversity crises that continue to impact people's health, livelihoods, and communities. The next Government of Ontario must commit to revising and enacting new laws, policies and programs needed to set the province on course to a resilient, just, and sustainable future for all. Importantly, it must do so in a manner that respects the rights of Indigenous peoples.

In addition to the four issues outlined in this proposal, there are several other areas of environmental law in need of strengthening due to extreme deregulation, most notably those related to changes made through Bill 197. Our [July 2020 blog post](#) provides a high level overview of how, through Bill 197, the Government of Ontario compromised environmental protections and the public's right to consultation on changes to environmental legislation. More detail on the bill and our subsequent lawsuit challenging the government's failure to conduct public consultation can be found in our [case overview](#).

Ecojustice proposes four environmental priorities for the next Government of Ontario:

- 1. Adopting a Climate Accountability Framework**
- 2. Safeguarding Ontario's Biodiversity and Forests**
- 3. Modernizing the Environmental Bill of Rights**
- 4. Improving Ontario's Air Quality Regulation**

About Ecojustice

Ecojustice uses the power of the law to defend nature, combat climate change, and fight for a healthy environment. Its strategic, innovative public interest lawsuits and law reform advocacy deliver lasting solutions to Canada's most urgent environmental problems. As Canada's largest environmental law charity, Ecojustice operates offices in Vancouver, Calgary, Toronto, Ottawa, and Halifax.

For more information, visit www.ecojustice.ca.

Contact information

Devon Page, Executive Director

Ecojustice

dpage@ecojustice.ca

604-685-5618 x 233

1. Adopting a Climate Accountability Framework

The IPCC's 6th Assessment Report makes abundantly clear that we have a very small window of opportunity to make the ambitious emissions reductions that are necessary to address climate change. In addition to the IPCC's dire warnings, Canada ranks dead last among the G7 on climate progress. Each province has an essential part to play in combating climate change and in developing a robust accountability framework that legitimizes and affirms a commitment to net-zero.

Ontario once defined itself as a climate leader with the passage of the *Climate Change Mitigation and Low-carbon Economy Act* in 2016. At the time, the CCMLEA was one of the more ambitious provincial commitments to a low-carbon economy, but the rollback of this legislation was a serious setback. It is not too late for Ontario to reassert leadership on this issue; the next government should re-establish a strong provincial framework for climate accountability that steps beyond greenwashing and towards a legislated commitment to science.

An Ontario climate accountability framework must include the following key elements:

1. Long-term GHG reduction targets (2030 and 2050) that are ambitious, enshrined in law and move Ontario towards its fair contribution to a 1.5 C world.
2. Five-year carbon budgets that cap total GHG emissions. These budgets will anchor planning to meet the targets by breaking up long-term goals into manageable pieces.
3. Regular plans to achieve the carbon budgets and targets, accompanied by reports on progress on those plans. These plans and reports must be tabled before Provincial Parliament.
4. An arms-length expert climate advisory committee drawn from all regions of the province, including Indigenous Peoples and Knowledge holders, that (1) advises government on long-term targets, including the five-year carbon budgets, (2) monitors and reports on government progress towards achieving the budgets and long-term targets, and (3) provides advice to the government on climate-related policy.
5. A statutory requirement for government to table responses to the climate committee's progress reports before Provincial Parliament. The response must set out how the government will act on the body's recommendations.

Proposed platform language

We will take on Ontario's fair share of the climate emergency and introduce legislation to create an Ontarian climate accountability framework. That legislation will:

- Set legally binding targets on a pathway to a safe climate;
- Mandate transparent and detailed government plans to meet those targets;
- Require government to obtain and respond to independent expert advice on those targets and the plans; and
- Require regular and open reporting on progress towards achieving those targets.

2. Safeguarding Ontario's Biodiversity and Forests

Ontario is home to a wealth of terrestrial and aquatic ecosystems, including 71 million hectares of forest that provide habitat for endangered species, store carbon, and protect watersheds. These ecosystems support Ontarians' livelihoods and keep our communities healthy.

But Ontario's natural heritage is at risk. Massive regulatory exemptions, "pay to slay" regulations, and other loopholes have left Ontario's endangered species and forests vulnerable to the whims of developers and industry. Logging can take place without a plan to recover species and habitat, without climate mitigation, and without an option for the public to request environmental assessments. Ontario's environmental deregulation has led to widespread deforestation and species loss and decline,¹ leading Ontario's Auditor General to conclude that Ontario is "failing in its mandate to protect species at risk."²

In 2019, the Government enacted a drastic overhaul of Ontario's Endangered Species Act (ESA) and Environmental Assessment Act (EAA) that gutted protections for the province's most vulnerable plants and animals and significant forests. These changes:

- Permanently exempted forestry operations – one of the primary drivers of species decline – from the ESA, even though officials concluded the exemption could cause "significant adverse effects" to endangered or threatened species such as boreal caribou.
- With the new "Conservation Fund" under the ESA, deprived six endangered species of the chance to receive "overall benefits" for recovery of their populations and habitats, instead allowing habitat to be destroyed in exchange for payment, with no requirement that the payment go directly towards mitigation or recovery.
- Exempted the logging industry from any assessments under the EAA, eliminating even the minimum standards implemented following the Class Environmental Assessment for Forest Management on Crown Lands, including for climate mitigation.

Ontario's current regulatory regime has other gaps that leave forests and species vulnerable:

- Forestry laws do not account for infrastructure such as logging roads and their negative impact on forest intactness.
- Ontario's only Biodiversity Strategy was written in 2011, covered the period 2011-2020, and has yet to produce any tangible results.³
- The strategy did not include Indigenous-led initiatives such as Indigenous Protected and Conserved Areas. The Auditor General found that Ontario is falling behind other jurisdictions because it has no long-term strategic plan for species at risk, nor any performance measurement framework to evaluate whether existing programs and policies are helping species.
- For Boreal Caribou, one of Ontario's most iconic and at-risk species, Ontario has never implemented a plan to keep habitat disturbance below the levels scientifically determined to give the species a chance to survive and recover.

¹ Wildlands League. 2019. Boreal Logging Scars: An extensive and persistent logging footprint in typical clearcuts of northwestern Ontario, Canada. Available at: <https://loggingcars.wpengine.com/wp-content/uploads/MyUploads/Summary-for-Decision-Makers.pdf>

² Office of the Auditor General of Ontario. 2021. Value-for-Money Audit: Protecting and Recovering Species at Risk. Available at: https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_ProtectingSpecies_en21.pdf

³ Ontario Ministry of Natural Resources. 2012. Biodiversity: It's In Our Nature. Available at: https://files.ontario.ca/mnr_biion_accessibility_en_final.pdf

Ontario needs modern laws that recognize the key to species recovery is protecting and restoring habitat, especially our forests. The approach should be grounded in scientific and Indigenous knowledge and should make biodiversity central to government priority-setting.

Proposed platform language

We commit to Ontario's endangered species and forests by:

- Implementing all recommendations in the Auditor General of Ontario's report on Protecting and Recovering Species at Risk;
- Restoring all lost protections under the *Endangered Species Act* (ESA), including repealing the "pay to slay" exemption;
- Ensuring all forestry activities comply with the ESA to support the recovery of Ontario's endangered species that depend on Ontario's forests;
- Protecting forests by amending the Crown Forest Sustainability Act (CFSA) to require all logging plans to incorporate forest connectivity and intactness, climate mitigation and adaptation, protection of endangered species, and Indigenous Rights;
- Re-establishing and modernizing the environmental assessment Declaration Order for forestry to require individual environmental assessments where it is determined, based on reasonable grounds, that a forest management plan will not fulfil the goals of the updated CFSA;
- Renewing Ontario's biodiversity strategy with Indigenous perspectives and contributions at its heart, including prioritizing Indigenous Protected and Conserved Areas; and
- Saving boreal caribou by immediately halting all disturbance in their critical habitat until the minimum 65% management threshold is applied to all activities and approvals in caribou habitat, and by committing to habitat restoration where required at the range-level.

3. Modernizing the Environmental Bill of Rights

Though the Ontario *Environmental Bill of Rights* (EBR) was a leading piece of legislation in 1993, its shortcomings have become increasingly apparent. The EBR is in serious need of reform to bring it up to speed with legal developments, provide a meaningful right to a healthy environment for all Ontarians, and achieve its stated purposes: environmental protection, public participation, and government accountability.

Ontario's EBR should affirm the rights of all persons to a healthy environment by protecting the people and natural habitats in Ontario from pollution and ecological destruction. These rights need to be set within the current and evolving context of the escalating climate, pollution and biodiversity crises.

To help restore Ontario's status as an environmental leader, the EBR should be amended to:

- Guarantee an enforceable, substantive right of all present and future generations of Ontarians to a healthy and ecologically balanced environment, safeguarded by the government's responsibility to protect the environment;
- Strengthen enforcement tools to ensure they can be used as intended: to hold the Ontario government and those responsible for pollution and environmental damage accountable for their actions;
- Ensure all provincial environmental laws and policies and their administration are informed by the right to a healthy environment for people in Ontario, including land use planning under the *Planning Act*;
- Remove barriers to third party appeals;
- Update Reg 681/94 to ensure all government departments (and proposals within those departments that may have an impact on the environment) are classified instruments under the EBR;
- Ensure that decisions address cumulative effects and promote environmental justice — including the avoidance of adverse effects that disproportionately affect vulnerable populations;
- Universally recognize and give effect to the precautionary principle, the polluter pays principle, the principle of non-regression and the principle of intergenerational equity; and
- Reinstate the independent Office of the Environmental Commissioner of Ontario (ECO).

Public engagement on changes to the EBR with these enhancements in mind would position Ontario toward healthy and just future.

Proposed platform language

We will deepen our commitment to transparency, accountability and environmental justice by engaging people in Ontario in a comprehensive review and modernization of the EBR with a focus on:

- Providing a substantive right to a healthy environment;
- Ensuring that right is protected through government accountability and transparency; and
- Embedding the right to a healthy environment and environmental justice in all government decision-making.

4. Improving Ontario's Air Quality Regulation

Communities in Ontario near industrial areas – often vulnerable or marginalized communities – experience disproportionate impacts from air pollution. Ontario has been slow to adopt regulatory measures to address this inequity, and the weak measures it has adopted have resulted in little progress over the last 17 years, since Ontario enacted Local Air Quality Regulation 419/05 (Reg 419). Reg 419 was supposed to protect fenceline communities from industrial air emissions by setting health-based standards for pollutants, while leaving some flexibility to set standards that exceed the health-based standard through a site-specific standard process with community consultation.

However, faced with strong opposition from a powerful industrial lobby, the initial premise of the regulation has been lost through several exemptions, amendments, lengthy implementation delays, and failures to set health-based standards for harmful pollutants:

- Ontario increasingly relies on technical standards and new regulations as alternative compliance tools, allowing some of the biggest polluters to shirk compliance with health-based standards in exchange for committing to install technical upgrades over unnecessarily lengthy implementation timelines.
- Ontario repeatedly grants polluters site-specific standards that allow levels of pollution higher than the health-based standards without requiring evidence of pollution reductions or progress towards compliance with health-based standards.
- Pollutants with severe health impacts lack standards or have outdated limits not protective of health.
- Ontario lacks a clear policy explaining how it will consider cumulative effects for most pollutants and most facilities, and does not appear to consider cumulative effects when it grants approvals, even when communities are exposed to emissions from several facilities.

To address these gaps and ensure that Ontario's air pollution regulatory regime protects human health and the environment, we recommend the following measures:

- Conduct cumulative effects assessments for all air approvals, including technical and site-specific standards, and develop a clear policy explaining how this will be done.
- Update all outdated air quality standards (e.g., NOx) and introduce health-based standards for pollutants without standards (e.g., PM2.5).
- Limit the number of years a facility can operate under a site-specific standard, without showing progress in reducing emissions, to ensure progress toward meeting the health-based standard.
- Review and revise technical standards to shorten implementation timelines and strengthen emissions reduction measures where gaps are identified based on comparable technical standards in the US.
- Tighten the timelines and emission standards in Regulations 530 and 88.
- Revise Regulation 681/94 to ensure that technical, site-specific, and air regulations are subject to third-party appeal rights under the EBR.
- Proactively disclose information about Ontario's air pollution regulatory efforts in a timely, regular way (not just in annual reports). This disclosure should include applications for approvals by facilities and information about enforcement activities.
- Expand ambient and facility-specific air monitoring activities and report real-time monitoring data to the public.

Proposed platform language

To protect the health and well-being of people in Ontario, including vulnerable or marginalized communities, we commit to developing a robust and transparent strategy for improving air quality. The strategy will focus on improving Ontario's air quality regulation to hold industry accountable to higher air quality standards, and ensure that polluters can no longer shirk compliance with critical health-based standards. Essential measures will include:

- Implementing a transparent policy that ensures cumulative effects assessments are conducted for all air approvals, without loopholes or exceptions.
- Updating all outdated air quality standards, and introducing health-based standards for pollutants without existing standards.
- Ensuring progress toward meeting the health-based standards by implementing a time-limit for the use of site specific exemptions unless progress in emissions reduction is shown.
- Reviewing and revising technical standards to shorten implementation timelines and strengthen emissions reduction measures Ensuring that technical, site-specific, and air regulations are subject to third-party appeal rights under the EBR.
- Proactively and regularly disclosing information about Ontario's air pollution regulatory efforts in a timely way. This disclosure should include applications for approvals by facilities and information about enforcement activities.
- Expanding ambient and facility-specific air monitoring activities and report real-time monitoring data to the public.