

FROM SEED TO TREE:
***Analyzing Perspectives on 20 Years of Institutional Evolution of
the Office of the Environmental Commissioner of Ontario***

by:

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Introduction

As one of the Legislative Assembly's independent officers, the Environmental Commissioner of Ontario (ECO) was born out of the Environmental Bill of Rights (EBR) almost two decades ago. With the first Commissioner being appointed one year following passage of the Bill in 1993, the Commissioner's office continues to act independently from the government, providing an objective review of the implementation of the EBR and compliance amongst Ministries. Over the years, the Commissioner's office has evolved under the leadership of two official ECOs, Eva Ligeti (1994 – 1999) and Gord Miller (2000 – present), amidst the administration of three governments of different political stripes, the proliferation of the internet and social media, and multiple pendulum shifts between public concern about environmental issues and economic recessions.

From the early days of the government's Task Force that led to establishing the ECO, to today, this analysis will focus on the institutional evolution of the office over the past twenty years. In particular, the evolution of the ECO from conception to law; the evolution of the ECO as a public educator; the evolution of the ECO as a watchdog; and the evolution of the ECO's legislative relevance. Supplementing the written record of David Pond, Political Science Professor at the University of Toronto, a number of personal interviews with provincial Ministers and Commissioners, past and present, and academics will be used to compare various perspectives regarding his notion that the ECO has crossed the line in exercising the role of a parliamentary officer. Overall, from seed to tree, the office of the Environmental Commissioner of Ontario has evolved over the years, weathering its share of storms, and thereby proving to be resilient and relevant today and for years to come.

Overview of the *Environmental Bill of Rights (EBR)*

In order to fully understand and appreciate the role of the ECO, one must first consider the legislation from which it was established: the Environmental Bill of Rights (EBR). There are four key components to the EBR: the Environmental Registry (ER), the rights granted to Ontarians, Statements of Environmental Values (SEVs), and the Environmental Commissioner of Ontario (ECO).

Firstly, the purposes of the Environmental Bill of Rights (EBR), as defined directly by the Act are as follows:¹

- To protect, conserve and where reasonable, restore the integrity of the environment;
- To provide sustainability of the environment;

¹ *Environmental Bill of Rights, 1993*. 3rd session, 35th Legislature.

- To protect the right to a healthful environment;
- To prevent, reduce, and eliminate the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment;
- To protect and conserve biological, ecological and genetic diversity;
- To protect and conserve natural resources, including plant life, animal life, and ecological systems;
- To encourage the wise management of natural resources; and
- To identify, protect and conserve ecologically sensitive areas and processes.

The Environmental Registry (ER) is an online electronic tool mandated by the EBR, and managed by the Ministry of Environment. It serves as a vehicle for government to post environmentally significant proposals and for the public to access, review, and comment on these proposals in exercising their rights under the Act. Specifically, the people of Ontario are granted the following legal rights with respect to the government's process of proposing, amending, or eliminating laws, instruments and policies:²

- Right to notice;
- Right to review and comment;
- Right to appeal Ministry decisions;
- Right to apply for a review;
- Right to apply for an investigation;
- Right to sue; and
- Whistleblower protection.

In addition, the Act prescribes 14 Ministries (see Appendix B for list of Ministries) to develop and enforce Statements of Environmental Values (SEVs). These statements essentially serve as frameworks for Ministries when making decisions that may have an impact on the environment by specifically stating how they will consider the environment and how they will apply the purposes of the EBR described in the Act.

Finally, and central to this paper's analysis, the Environmental Commissioner of Ontario is responsible for reviewing compliance with the EBR. According to the Act, the functions include the following:³

- Review the implementation of this Act and compliance in ministries with the requirements of this Act;
- At the request of a minister, provide guidance to the ministry on how to comply with the requirements of this Act;
- At the request of a minister, assist the ministry in providing educational programs about this Act;
- Provide educational programs about this Act to the public;

² *Ibid.*

³ *Ibid.*

- Provide advice and assistance to members of the public who wish to participate in decision-making about a proposal as provided in this Act;
- Review the use of the registry;
- Review the exercise of discretion by ministers under this Act;
- Review recourse to the rights provided;
- Review the receipt, handling and disposition of applications for review under Part IV and applications for investigation;
- Review ministry plans and priorities for conducting reviews;
- Review the use of the right of action, the use of defences, and respecting public nuisance actions; and
- Review recourse to the procedure for complaints about employer reprisals.

Overall, the Environmental Commissioner brings the Act to life by ensuring compliance with the Statements of Environmental Values and usage of the Environmental Registry. These tools have stood the test of time, and continue to be used today.

Context: Building on Previous Studies

Various studies have been done on topics related to the Environmental Bill of Rights (EBR), including previous OLIP Interns Rachel Stack (Intern 2006/07) and Angela Hersey (Intern 2008/09). Stack's analysis evaluates the EBR as an effective participatory instrument by highlighting the Act's features that promote accessibility, quality of deliberation, and accountability.⁴ She concludes that, while the Act is not "perfect", it is an effective tool for the average citizen to participate in the legislative process, and believes that the model should be adopted in other areas of government to promote civic engagement. Hersey looks more specifically at the Environmental Commissioner's office and the Environmental Registry, both of which are components of the EBR, by analyzing how they play a role in the environmental decision-making process.⁵ She concludes that the tools do, indeed, affect the government decision-making process.

In addition, Dr. David Pond has published extensively on the topic of the Environmental Commissioner's office. Pond is currently a professor at the University of Toronto and a former researcher at the Legislative Assembly of Ontario. He wrote a major paper for Canadian Study of Parliament Group, where he focused in great detail on the impact of parliamentary officers on parliamentary democracy – including, in

⁴ Stack, Rachel, "The Grass is Always Greener on the Other Side: An Examination of the Ontario Environmental Bill of Rights and Public Engagement in Environmental Policy," *Canadian Political Science Association Conference* (2007).

⁵ Hersey, Angela, "Government, Watchdog, and Citizen Engagement: Affecting Environmental Decision Making in Ontario through the Environmental Registry and the Office of the Environmental Commissioner of Ontario," *Canadian Political Science Association Conference* (2009).

particular, the Environmental Commissioner of Ontario.⁶ A shorter version was later published in *Canadian Parliamentary Review*.⁷ While he clearly does not oppose strong environmental education and accountability, he points out areas where he believes the Environmental Commissioner of Ontario has exceeded the terms of the office's mandate as defined by the Act. He points to examples, which he believes demonstrate populism, "policy entrepreneurship", and advocacy on behalf of public opinion that is unmediated through the Registry. A number of these examples will be studied throughout this paper.

Building on these previous studies, this paper will focus more on how the Commissioner's office, specifically, has evolved since its mandate was legislated through the EBR to today. In addition to providing historical analysis, part of this paper will objectively supplement the work of Dr. David Pond by comparing and contrasting his views to those of EBR Task Force Members, as well as Commissioners and Cabinet Ministers, past and present.

Evolution of the ECO from Concept to Law

Throughout the 1980s, at least nine attempts were made to introduce an Environmental Bill of Rights through Private Member's Bills (PMBs) by various MPPs – most of which were based on the world's first EBR, the *Michigan Environmental Protection Act, 1970*.⁸ Prior to the 1990 election, opposition NDP MPP Ruth Grier and then-NDP leader Bob Rae met with environmental groups in order to develop their environment platform for the upcoming election, which ultimately incorporated the promise to finally pass an EBR.⁹

Upon the election of the NDP government, Grier was appointed Minister of Environment and subsequently struck a Task Force to develop the legislation, which met a total of 55 times to debate and discuss the Bill, as well as its implementation. The Task Force's composition included members from both environmental and industry groups.¹⁰ Refer to Appendix C for a list of the composition of the Task Force membership. To this

⁶ Pond, David, "The Impact of Parliamentary Officers on Canadian Parliamentary Democracy: A Study of the Commissioner of the Environment and Sustainable Development & The Environmental Commissioner of Ontario," *Canadian Study of Parliament Group* (2008).

⁷ Pond, David, "The Role of Parliamentary Officers: A Case Study of Two Officers," *Canadian Parliamentary Review* (2010).

⁸ "The Nuts, the Bolts and the Rest of the Machinery: A Guide to Ontario's *Environmental Bill of Rights*" (A background paper for Public Participation and the Environment Five Years of the *Environmental Bill of Rights* in Ontario, 15 February 1999).

⁹ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller. *Beginnings*. Environmental Commissioner of Ontario, 13 Feb. 2012. Audio Recording. Web. <<http://environmentalbeginnings.ca/>>.

¹⁰ *Report of the Task Force on the Ontario Environmental Bill of Rights* (1992).

day, the consensus model used by the Task Force remains unique, and is often credited for the success of the EBR and its resilience over time.¹¹

In fact, the inclusion of a Commissioner within the proposed legislation arose out of a compromise amongst members of the Task Force.¹² After all, the idea of an ECO was not originally included in the Task Force's terms of reference. The problem with original drafts of the Bill was enforceability. In other words, the group was concerned about who would be the watchdog for the EBR and the rights it prescribed. On one hand, the environmental groups wanted to see the EBR enforced through the courts, whereas the industrial groups saw government as playing that role. According to Paul Muldoon, one of the Task Force's members, the EBR evolved to include an ECO as a result of a compromise:

*[Industry] wanted to weigh the Bill more to political accountability, and the environmental groups wanted to weigh the Bill more to legal accountability. [...] [The ECO] wasn't legal or political – it was a compromise with both legal and political authority.*¹³

Moreover, the EBR evolved during conceptual discussions of the Task Force on the proposed Environmental Registry – the tool through which the Commissioner would ultimately review government proposals and public comments. In particular, the evolution of the internet directly affected the proposed EBR, prompting the draft to correspondingly evolve as well.¹⁴ When the Task Force first met, it was prior to the advent of the “world wide web”, so there was not originally a mechanism for notice of comment. While the government had an electronic bulletin board, it was difficult to use and non-governmental groups did not have access to it. However, with the proliferation of the internet beginning in the early nineties, conveniently while the Task Force was developing the Bill, it became the obvious medium for the registry. Not surprisingly, Muldoon called it, “great timing!”

Thanks to great timing, as well as compromise amongst members of the Task Force, both of which contributed to the evolution of the EBR into its final draft form, the Bill was ultimately introduced for first reading in the Ontario Legislature on May 31 1993. The Minister of Environment and Energy at the time, Bud Wildman, outlined his government's vision, calling the EBR a “victory for all Ontarians”, including the public who would enjoy increased participation in environmental decision-making as well as business who would enjoy more predictability with respect to approvals.¹⁵ Upon going to second and third reading, the EBR passed in the House and received royal assent on December 14 1993. The rest is history...

¹¹ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

¹² *Ibid.*

¹³ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

¹⁴ *Ibid.*

¹⁵ Wildman, Bud. Legislative Assembly of Ontario. 1993. *Debates and Proceedings*. 31 May 1993

Evolution of ECO as a Public Educator

The office of the Environmental Commissioner has evolved as a public educator. In particular, it has evolved from focusing public educational efforts on the rights and tools granted through the EBR to promoting big-picture policy issues, often a step ahead of government and the public. In light of this evolution of the ECO's public education efforts, University of Toronto Professor David Pond believes the ECO has crossed the line of a parliamentary officer by taking on what he describes as a "policy entrepreneur" role.¹⁶ This perspective will be compared to those of Ministers and Commissioners, past and present that welcome the ECO's evolution as a public educator.

Under the first Environmental Commissioner, Eva Ligeti, the ECO's public education efforts focused primarily on the EBR itself. One of the review papers, published by the Commissioner's office five years after the EBR became law, reveals the interpretation of the office at that time with respect to its responsibility of educating the public. It stipulates that because the notion of environmental rights was relatively new, it was therefore important for the ECO to deliver public education programs on the EBR and how to participate in environmental decision-making.¹⁷ In a recent interview with Ligeti, she acknowledges that part of her office's role was to provide public education on the EBR.¹⁸ She added that she delegated much of that responsibility to staff who would promote the EBR, for instance, through local public libraries or at conferences. In addition, she emphasized that she understood her role as primarily reaching out to all Members of the Ontario Legislature as opposed to being in the public spotlight.

Pond agrees that Commissioner Ligeti was very good at emphasizing process as part of her EBR-mandated education efforts.¹⁹ He asserts that she did a great job at setting up the Commissioner's office, along with the process, and educating the public about the process. In addition, he believes she rightfully understood that her primary constituency as a parliamentary officer was the Legislature.

While Pond praises Ligeti for her interpretation of the ECO's education role, it should be noted that interviews with former NDP Environment Ministers Grier and Wildman point out that this could be because Ligeti was required to spend a significant amount of time setting up the office.^{20 21} For instance, she had to acquire office space, hire staff, and spend a substantial amount of time getting Ministries subject to the EBR

¹⁶ Pond, David, "The Role of Parliamentary Officers: A Case Study of Two Officers."

¹⁷ "Independence, Accountability & Transparency: The Role of the Environmental Commissioner of Ontario" (A background paper for Public Participation and the Environment Five Years of the *Environmental Bill of Rights* in Ontario, 15 February 1999).

¹⁸ Ligeti, Eva. Interview by Author. Phone. 15 April 2013.

¹⁹ Pond, David. Interview by Author. Toronto, ON. 18 April 2013.

²⁰ Wildman, Bud. Interviews by Author. Toronto, ON. 25 April 2013.

²¹ Grier, Ruth. Interview by Author. Toronto, ON. 16 May 2013.

to come to terms with their new responsibilities under the Act. In addition, Ligeti recalls that towards the end of her term she had started exploring some critical longer-term policy issues, such as the unsustainable nature of urban sprawl.²²

Using a different focus, current Environmental Commissioner Miller has extended the ECO's public education efforts. When asked about the legacy he hopes to leave as Commissioner in a recent interview, he responded with: "creating the right space so that a layperson understands."²³ He refers to this process as "building the lexicon", which he attempts to do by moving ideas from the scientific community into the political community over a gradual period of time. By educating the public, he aims to get Ontario to a point at which government is mature enough to take appropriate action. He offers his work on climate change from 2002 as an example, *Climate Change: Is the Science Sound?* This special report essentially attempts to establish a political dialogue based on sound scientific rhetoric on a topic that, at the time, typically faced questions of legitimacy.²⁴ Other reports have covered topics such as population growth (2005), paying for the management of hazardous waste (2010), biodiversity (2012), and more.

While some may see value in the evolving scope of the ECO's educational efforts, Pond believes the office has crossed the line defined by the EBR.²⁵ He explains that the relationship between the Commissioner and the general public is, in fact, quite limited upon analysis of the Act. To be clear, as previously stated, he does not believe there is any problem with the Commissioner educating the public about the EBR and how to participate in the environmental-decision making process: "this is the extent to which the EBR provides a statutory basis for populist campaigns by the [ECO]..." However, he asserts that the office has invalidly moved beyond the statutory limits of the EBR by openly advocating on big-picture policy issues through reports, which he calls, "policy entrepreneurship":

*Under Gord Miller, the office has moved into open policy advocacy. The ECO has framed this activity in terms of populism purportedly authorized by his status as a monitor of the Registry.*²⁶

Pond points to the Commissioner's reports on population growth and climate change as examples.²⁷ Note that Appendix D lists exactly what the EBR prescribes for annual reports. When asked to elaborate on the role of a parliamentary officer in a recent interview, he explained that an officer's role should be simply to provide the House with the data it needs through annual reports and, in the case of the ECO,

²² Ligeti, Eva. Interview by Author.

²³ Miller, Gord. Interview by Author. 26 February 2013.

²⁴ *Ibid.*

²⁵ Pond, David, "The Role of Parliamentary Officers: A Case Study of Two Officers."

²⁶ *Ibid.*

²⁷ *Ibid.*

administer the registry.²⁸ He believes that Commissioner Miller has erroneously interpreted the EBR's public education clause as a "free-wheeling discretionary mandate as a policy commentator", whereas the clause implies educating the public on using the online registry. He theorizes that perhaps this evolution has taken place because the literal interpretation of the Act is not relatively interesting now that we live in an internet-literate society. He adds that, by the same token, the internet offers a vast selection of information on environmental issues – by both environmental science professors and environmentalist organizations – that already fill the role of policy entrepreneurship. In other words, his main concern is that the Commissioner's office goes beyond simply commenting on issues raised through the registry, and consequently "goes off the rails" by identifying environmental problems of the future.²⁹

In comparison, others have a different outlook. For example, Task Force member Paul Muldoon appreciates the fact that the reports are substantive and how they not only record what the environment is doing, but actually comment on it.³⁰ Rick Lindgren, another member of the Task Force, believes the critical analysis from the ECO is what Ontario needs because he does not have any faith in the reporting from government ministries.³¹ Bud Wildman, the Minister who introduced the EBR in the House, does not see anything wrong with an expanded scope of education: "If there's one thing that's important, we need a well-informed public. We'll all make better decisions if given the knowledge."³² Not surprisingly, the current Commissioner also disagrees with Pond's analysis, citing Section 2 of the EBR (Purpose of the Act), which he believes is a clear mandate to not only comment on government action, but also to educate the public on government inaction.³³

Taking a slightly different stance from the EBR's founders, current Minister of Environment Jim Bradley finds the ECO's focus on emerging issues helpful in terms of proposing solutions.³⁴ In particular, he states that while Pond is likely correct in his literal interpretation of the EBR, the ECO's deviation on education efforts does not personally bother him because he believes he is part of a government that has effectively promoted the environment. He also points out that this is a trend amongst all parliamentary officers, like Ontario's Ombudsman and even the Auditor General, who now reports on value-for-money, and not just strictly accounting. However, it should be noted that value-for-money is explicitly set out in the Auditor General Act.

Overall, the Environmental Commissioner's role as an educator has evolved over the past couple of decades. From the pre-internet era to today, the ECO's focus on

²⁸ Pond, David. Interview by Author.

²⁹ *Ibid.*

³⁰ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

³¹ *Ibid.*

³² Wildman, Bud. Interview by Author.

³³ Miller, Gord. Interview by Author.

³⁴ Bradley, Jim. Interview by Author. Toronto, ON. 14 May 2013.

public education has shifted from primarily instructing the public on their new environmental rights and how to use the online registry, to a broader focus on public policy. The current Commissioner sees this expansion of political discourse to emerging scientific issues as being part of the legacy he hopes to leave. And while Pond makes a case that argues the ECO has crossed the line of the parliamentary officer defined by the EBR, the founding members of the EBR seem to disagree with this notion.

Evolution of ECO as a Watchdog

Another way in which the office of the Environmental Commissioner has evolved over the past couple of decades is as an environmental “watchdog” – a term often used by the media and some observers to describe the office. By expanding beyond just the written annual and special reports, the ECO has increased the public visibility of its efforts of holding the government accountable. Firstly, targeting local newspapers and online social media to amplify its message amidst corporatization of the media have contributed to this ongoing evolution. In addition, active advocacy within the public realm through, for example, opinion editorial pieces and public roundtables, has also increased the visibility of the ECO as a watchdog, thereby contributing to the evolution of the office.

The office has promoted accountability since being established in 1994, primarily through its responsibility to publish annual written reports that are presented to the Legislative Assembly of Ontario each December. According to the EBR, the Commissioner must review Ministry implementation of the EBR by measuring compliance with Statements of Environmental Values (SEVs) written by each respective Ministry. Essentially, this means that the ECO compares the theoretical values of the Ministry to their actual activities and decisions over the course of the year. In addition, the Commissioner reports on the proposals logged by Ministries on the registry and how they complied with the Act by responding to public comment. Michael Cochrane, Chair of the Task Force, stresses the intended importance of the ECO fulfilling the accountability role described by the EBR:

*It would take a quantum leap of faith in government to assume that one government or a succession of governments could maintain willingly a high standard of compliance with such a piece of legislation.*³⁵

Many years since the early days, embracing online social media has increased the public visibility of the ECO as a watchdog. These new communications strategies have conveniently come at a time that Miller describes as the “corporatization of the

³⁵ Muldoon, Paul and Lindgren, Richard, *The Environmental Bill of Rights: A Practical Guide* (Toronto: Emond Montgomery, 1995), 130.

media.”³⁶ In other words, he believes the major media outlets have blocked discussion since roughly 2008, partly because of declining numbers of journalists in the Queen’s Park press gallery. As a result, he believes his team has circumvented the block in traditional media by constructing a new approach through platforms like *Facebook* and *Twitter*. The Commissioner now has a *YouTube* channel with online videos that link back to the Commissioner’s annual reports on the website, as well as a *Wiki site* that features an online report card system that tracks and grades government compliance. As a result, the ECO has become more visible within the public realm.

In addition to embracing social media, the ECO has begun to strategically tap into local print media outlets to further his work in promoting government accountability.³⁷ Miller explains that the office simply keeps an eye out for local environmental developments throughout Ontario and offers to weigh in on them as they arise. In doing so, the ECO links contemporary news issues back to previous annual and special reports. For example, if a small town is dealing with a food waste issue, he’ll offer to weigh in on the topic and refer readers to the ECO’s waste management and energy consumption reports. Since larger media corporations, like the *Toronto Star*, own many local newspapers some local stories may even go province-wide if they carry enough clout on a local level. Consequently, the Commissioner believes the office has evolved significantly in terms of its ability to effectively promote its efforts: “We’re more effective now. Major media was a filter. So, we found our way around it.”³⁸

Furthermore, by entering the public realm of debate, the ECO has expanded its visibility as a watchdog, beyond just publishing and announcing the annual reports. Pond points to the Commissioner’s handling of the controversial aggregates issue in Ontario as an example that he believes exemplifies the ECO’s shift.³⁹ In the 2006/2007 annual report, *Reconciling our Priorities*, the Commissioner commented on the issue, stating there is not much the ECO can do beyond explaining the opportunities for public comment and appeal under the EBR.⁴⁰ However, Pond argues that the Commissioner ultimately did get involved publicly, as opposed to simply confining the office to educating the public on using the EBR.⁴¹ Instead, he points out, the ECO submitted an article to the *Toronto Star*, which was published in January 2005 on why Ontario needs a policy to deal with the negative effects of the extraction industry. Pond also points out that a year later, the ECO hosted a day-long roundtable seminar amongst stakeholders on the aggregates issue to propose a long-term strategy to the province. Pond therefore affirms that the Commissioner has crossed the line as a parliamentary officer:

³⁶ Miller, Gord. Interview by Author.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Pond, David, “The Role of Parliamentary Officers: A Case Study of Two Officers.”

⁴⁰ Miller, Gord. *Annual Report 2006-2007: Reconciling Our Priorities*. Report: Environmental Commissioner of Ontario, 2007.

⁴¹ Pond, David, “The Role of Parliamentary Officers: A Case Study of Two Officers.”

*What is striking about this episode is the Commissioner's unabashed insertion of his office into civil society debates over environmental reforms. He appeared to have cast off the institutional mooring of a parliamentary officer to engage directly in policy advocacy aimed squarely at the minister.*⁴²

In other words, Pond believes the ECO has expanded its role as a watchdog, but in doing so, has gone beyond the scope of the role intended by the Task Force. He explains the EBR implies the role should be simply to act as a monitor of the fairness and transparency of how ministries comply with the Act.

Ruth Grier, who struck the Task Force as Ontario Minister of Environment, agrees that Miller has certainly escalated the public attention to his annual reports.⁴³ However, with respect to the notion that the ECO has crossed the line, she believes that Pond could not be more wrong, describing it as an “unfortunate error”.⁴⁴ She believes that the Task Force report clearly speaks to the fact that the ECO exists to hold the government accountable and enable the public to hold the government accountable. She agrees it is important for the ECO to assist the public on how to use the tools, but only to assist the ECO in its goals. Overall, Grier thinks Miller has been an excellent example of holding the government accountable, being open to the public and selecting issues that need to be exposed:

*My thoughts are that Gord did exactly what he was supposed to do. The aggregates issue desperately needs some support.*⁴⁵

Former Environment and Energy Minister Bud Wildman also sees no problem with the Commissioner's watchdog strategy, advising that parliamentary officers have a role to competently highlight non-partisan and factual issues as part of their accountability to, not only the Legislature, but also the public.⁴⁶ As for Commissioner Miller, he believes he has interpreted the Act accurately, noting that it is his job to give a voice to these kinds of environmental issues in order to promote increased accountability and transparency.⁴⁷

When asked about this issue, University of Toronto Professor Emeritus Peter Russell advises there is a difference between going after a political party and attacking it specifically, versus publicly commenting on issues within your mandate that may consequently hurt the party in power.⁴⁸ He believes the latter is “okay.” For example, he believes the work the federal Parliamentary Budget Officer, Kevin Page, was acceptable

⁴² Pond, David, “The Role of Parliamentary Officers: A Case Study of Two Officers.”

⁴³ Grier, Ruth. Interview by Author.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Wildman, Bud. Interview by Author.

⁴⁷ Miller, Gord. Interview by Author.

⁴⁸ Russell, Peter. Interview by Author. 16 May

given that he did not intentionally try to hurt the party in power, but rather shed light on his findings. However, he acknowledges that Miller may have crossed the line as a parliamentary officer by actively lobbying civil society.⁴⁹

Taking a broader perspective, Minister Jim Bradley stated that the one qualm he has with the watchdog practices of parliamentary officers, in general, is that they are diminishing the individual role of the MPPs of the House:

*Every time you establish one of these offices, [the media and individuals] go to them instead of MPPs and the government.*⁵⁰

He adds that parliamentary officers may also skew government priorities through their public advocacy. However, he stresses that the Environmental Commissioner is positive and appreciates that the Commissioner provides objective advice to anyone, including individual members.⁵¹

Overall, the office of the Environmental Commissioner of Ontario has evolved as a watchdog on environmental issues over the past two decades. The visibility has increased, despite corporatization of the media, through new local print and online social media strategies. In addition, the ECO has entered public debates as a vocal advocate on environmental concerns, including Ontario's aggregates issue. While the founding fathers of the EBR see this watchdog practice as perfectly reasonable, some academics believe the Commissioner may have crossed the line as a parliamentary officer.

Evolution of the ECO's Legislative Relevance

The final way in which the office of the Environmental Commissioner has evolved is in terms of legislative relevance. This has happened in two primary ways. Firstly, throughout the late nineties, legislative amendments to environmental legislation, outside of the EBR, have considerably amplified the significance of the EBR. The second way in which the ECO has evolved legislatively is through additions made to the EBR via the *Green Energy and Green Economy Act 2009*, which expanded the scope of the ECO to include the monitoring of greenhouse gas emissions and energy conservation targets. As a result of these changes to the EBR and other legislation, the job of the Commissioner has become significantly more important than what it was intended to be by the Task Force that crafted the original EBR.

According to former Canadian Environmental Law Association Students-at-Law Tessaro and Bruckmann, the role of the ECO evolved significantly over the office's first six years due to, what they refer to as, the "gutting" of Ontario's environmental

⁴⁹ *Ibid.*

⁵⁰ Bradley, Jim. Interview by Author.

⁵¹ *Ibid.*

framework by the Harris government at the time.⁵² They assert that the EBR was originally intended to exist as part of an array of environmental legislation and government programs, including public consultation processes, intervenor funding, access to government information, and sufficient staff. However, by dismantling environmental legislation and cutting the Ministry budgets under then-Premier Harris, they believe that mechanisms for public consultation on environmental decisions have been weakened. At the same time, the net effect of these legislative changes to statutes external to the EBR has been an evolution in the ECO's legislative relevance:

*The office of the [ECO] now stands as almost the last hope for citizens concerned about [...] their environment. [It] has become the guardian not just of the EBR, but of a fine line between a much-reduced government accountability and complete exclusion of the public from the decision making process.*⁵³

In recent interviews, former Environment Minister Ruth Grier and Task Force member Paul Muldoon, they echo this belief. Grier recalls that in her speech at the tenth anniversary celebration of the ECO she stated that there's a risk the EBR had become the "only tree left standing in the forest of environmental legislation."⁵⁴ In addition, Muldoon agrees that the political shift of the late nineties resulted in increased significance for the ECO, stating, "[The EBR] became the ceiling. It was never designed to be the ceiling – it was supposed to be the floor for public participation."⁵⁵

More specifically, Grier explains that the legislative climate at the time at which the EBR passed was quite different from what followed under the subsequent government.⁵⁶ When the EBR was being considered, Grier explains Ontario had very strong environmental assessment and environmental protection acts. For instance, the government had a whole section of the Ministry looking at polluters and taking them to court. She believes that while the McGuinty government has restored some environmental assessment legislation, there is no doubt that the role of the ECO has become increasingly more important since its inception.⁵⁷

Despite the amendments to other environmental legislation and reductions in environment-related budgets by government in the late nineties, the EBR stood the test of time. Muldoon credits the resilience of the EBR with the consensus-based process the Task Force utilized.⁵⁸ Having brought together members of the environmental movement and industry, he believes the result was an implicit understanding among

⁵² Tessaro, Lara and Bruckmann, Elisabeth, "The Changing Role of Ontario's Environmental Commissioner," *Intervenor: Vol 25* (2000).

⁵³ *Ibid.*

⁵⁴ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

⁵⁵ *Ibid.*

⁵⁶ Grier, Ruth. Interview by Author.

⁵⁷ *Ibid.*

⁵⁸ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

members of the Task Force and the respective groups they represented, that they would not lobby to make changes to the Act after it passed, for the rest of the NDP's term and even after the 1995 election that brought the Progressive Conservatives to power:

After '95, in the same way that [my colleagues and I] couldn't argue for substantial changes to the EBR, industry couldn't argue for substantial changes against the EBR. [...] I didn't perceive a great industrial lobby to change it. I respect industry for that. They were in the driver seat where they could have just walked in and changed it.⁵⁹

In other words, since industry's representation had buy-in to the development of the EBR, those Task Force members were able to effectively defend it within the business community, thereby increasing the resilience of the Environmental Commissioner's office during a time of turbulence for environmental legislation. Consequently, the ECO, and the EBR that gave it birth, evolved in terms of legislative relevance, taking on a more significant role.

The second way in which the ECO has evolved in terms of legislative relevance, is via additions made to the EBR. In 2009, the McGuinty government passed the *Green Energy and Green Economy Act*, which effectively increased the responsibilities of the ECO by amending the EBR. Since it passed, the ECO is now required to report annually to the Ontario Legislature on the government's progress in meeting targets to reduce consumption or increase efficiency of electricity, natural gas, propane, oil, and transport fuels.⁶⁰ The legislative additions also mandate the Commissioner to identify any policy barriers that may be preventing the government from reaching its targets, whether municipal, provincial, or federal. Moreover, the ECO must issue a separate annual report on the province's greenhouse gas emissions and assess whether the government is meeting its targets. These legislative amendments have had a direct impact on the evolution of the Commissioner's office, including not only the role of the ECO, but also the structure of the office, and, surprisingly, even the physical space, too.

In a recent interview, current Environmental Commissioner Gord Miller describes the impact of these legislative changes on his office.⁶¹ Miller explains that Ontario's Chief Energy Conservation Officer used to exist under the structure of the Ontario Power Authority (OPA), with a focus on electricity specifically, and was supported by about five staff members. The *Green Energy Act* closed the Chief's office, and essentially delegated the responsibilities to the ECO. Describing it as an "intense process", Miller points out that he was basically asked to do more with less, and has now been mandated to review greenhouse gas emissions progress, as well as conservation progress on a number of energy sources – unlike the OPA which only had to review electricity-specific conservation. However, it should be noted he enjoys the small

⁵⁹ *Ibid.*

⁶⁰ *Green Energy and Green Economy Act, 2009*. 1st session, 39th Legislature.

⁶¹ Miller, Gord. Interview by Author.

number of staff because it creates an office environment conducive to flexibility. Interestingly enough, he proudly adds that they successfully reduced the office's total energy consumption, even with six new staff members, by optimizing efficiencies in retrofitting the office.⁶² Evidently, the ECO has evolved as an institution in response to legislative amendments. It is interesting to note that other than this one-time addition of employees, the staffing level and budget of the office has remained relatively constant.⁶³

Pond advises that this legislative expansion under the EBR marks the first time the ECO was formally given the jurisdiction to review the substance of government policy.⁶⁴ In other words, unlike previous instances where he believes the ECO has gone beyond the jurisdiction of the EBR by becoming a "policy entrepreneur", the recently-amended EBR actually empowers the ECO to weigh in on some specific policy matters.

Conclusions

Two decades of history have shaped the office of the Environmental Commissioner of Ontario (ECO), one of Ontario's newer parliamentary officers. It all started with just an idea. One Bill, two Commissioners, three different governments, five Premiers, 20 years time and 40 reports later, the ECO has undoubtedly evolved as an institution. From a pre-internet society to an age of social media, much has changed. This paper analyzed the evolution of the Commissioner's office, focusing on the evolution of the ECO from conception to law; the evolution of the ECO as a public educator; the evolution of the ECO as a watchdog; and the evolution of the ECO's legislative relevance.

Some academics, like David Pond, believe that the ECO has deviated from the mandate established by the EBR, while the founding fathers as well as Commissioners, past and present, applaud the evolution that has taken place. Overall, while Pond may disagree, he acknowledges that the ECO's reports are "goldmines of information" on how the government works, and for that, they're absolutely invaluable.⁶⁵ Muldoon calls the evolution "the best history of environmental issues of any province," adding the reports have essentially become encyclopedias.⁶⁶ And while Commissioner Miller's recommendations are not always followed, he will continue to "speak for the trees, because the trees have no tongues."⁶⁷ So, whether one disagrees with the institutional change that has taken place or not, the reality is that the office of the Environmental Commissioner has evolved. From seed to tree, it is likely that the ECO will continue to branch out, well into the future.

⁶² *Ibid.*

⁶³ Miller, Gord. Interview by Author.

⁶⁴ Pond, David. Interview by Author.

⁶⁵ *Ibid.*

⁶⁶ Grier, Ruth, Paul Muldoon, and Rick Lindgren. "Birth of the EBR." Interview by Gord Miller.

⁶⁷ Miller, Gord. Interview by Author.

Appendix A: Interviewees by Author

Jim Bradley

Minister of Environment

Ruth Grier

Former Minister of Environment (1990 – 1993)

Eva Ligeti

First Environmental Commissioner of Ontario (1994 – 1999)

Gord Miller

Environmental Commissioner of Ontario (2000 – present)

David Pond

Professor, University of Toronto

Peter Russell

Professor Emeritus, University of Toronto

Charles Jackson “Bud” Wildman

Former Minister of Environment and Energy (1993 – 1995)

Appendix B: Ministries Prescribed under the EBR

Ministries currently prescribed under the EBR include:⁶⁸

- Ministry of Agriculture, Food and Rural Affairs (OMAFRA)
- Ministry of Consumer Services (MCS)
- Ministry of Economic Development and Innovation (MEDI)
- Ministry of Education
- Ministry of Energy (ENG)
- Ministry of the Environment (MOE)
- Ministry of Government Services (MGS)
- Ministry of Health and Long-Term Care (MOHLTC)
- Ministry of Labour (MOL)
- Ministry of Municipal Affairs and Housing (MMAH)
- Ministry of Natural Resources (MNR)
- Ministry of Northern Development and Mines (MNDM)
- Ministry of Culture, Tourism and Sport (MCTS)
- Ministry of Transportation (MTO)

⁶⁸ *Environmental Bill of Rights, 1993.*

Appendix C: Task Force Membership

The members of the Task Force on the Ontario Environmental Bill of Rights were:⁶⁹

Richard Dicerni

Co-Chair and Deputy Minister of Environment

Michael Cochrane

Co-Chair

Robert Anderson

Business Council on National Issues

George Howse

Canadian Manufacturers' Association

Richard Lindgren

Canadian Environmental Law Association

John Macnamara

Ontario Chamber of Commerce

Andrew Roman

Paul Muldoon

Pollution Probe

Sally Marin

Ministry of the Environment

⁶⁹ *Report of the Task Force on the Ontario Environmental Bill of Rights (1992).*

Appendix D: Report Contents Prescribed by EBR

According to the EBR, the annual report shall include:⁷⁰

- a) A report on the work of the Environmental Commissioner and on whether the ministries affected by this Act have co-operated with requests by the Commissioner for information;
 - b) A summary of the information gathered by the Environmental Commissioner as a result of performing the functions set out in section 57 including, for greater certainty, a summary of information about compliance with ministry statements of environmental values gathered as a result of the review carried out under clause 57 (a);
 - c) A list of all proposals of which notice has been given under section 15, 16 or 22 during the period covered by the report but not under section 36 in the same period;
 - d) Any information prescribed by the regulations under this Act; and
 - e) Any information that the Environmental Commissioner considers appropriate.
- 1993, c. 28, s. 58 (2).

⁷⁰ *Environmental Bill of Rights, 1993.*

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