

Bill 4 and the Removal of Cap and Trade: A Case Study of Carbon Pricing, Climate Change Law and Public Participation in Ontario, Canada

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Governments from around the world—including Canada—have declared climate change an emergency. This signals the need for aggressive climate change law and policy across national and subnational jurisdictions. At the same time, these shifts may need to be sensitive to public opinion to ensure longevity. In an effort to address a research gap and better understand public participation in environmental law, I share findings from a study that traced public comments and their effect on policy changes, following a decision to remove carbon pricing in Ontario, Canada. Results show that a large majority (78.6%) of people objected to Bill 4 (the Cap and Trade Cancellation Act), with less than 1% in support. There was a diversity of opposition, though concerns over climate change and for future generations were the most salient. There were also indications of political impacts from Bill 4, as even self-described conservatives vowed to fight the new government's changes and vote for more effective climate policy going forward. In light of this clear public mandate, the study then reviews the changes made by government to Bill 4 and subsequent, related policies following the consultation period in order to see what impact comments had. This includes tracing changes and communication with Ontario government officials—both of which show the thousands of comments had little effect. I close the paper with a discussion of implications and future research in the area of public participation in environmental law.

Les gouvernements du monde entier, y compris le Canada, ont déclaré que le changement climatique était une urgence. Cela indique la nécessité d'une loi et d'une politique agressives sur le changement climatique dans les juridictions nationales et infranationales. Dans le même temps, ces changements peuvent devoir être sensibles à l'opinion publique pour garantir la longévité. Afin de combler une lacune en matière de recherche et de mieux comprendre la participation du public au droit de l'environnement, je partage les résultats d'une étude qui retrace les commentaires du public et leur effet sur les changements de politique, suite à la décision de supprimer la tarification du carbone en Ontario, au Canada. Les résultats montrent qu'une grande majorité (78,6%) des personnes se sont opposées au projet de loi 4 (Loi sur l'annulation des plafonds et des échanges), avec moins de 1% de soutien. Il y avait une diversité d'opposition, bien que les préoccupations concernant le changement

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climatique et les générations futures soient les plus marquantes. Il y avait également des indications d'impacts politiques du projet de loi 4, car même les conservateurs autoproclamés se sont engagés à lutter contre les changements du nouveau gouvernement et à voter pour une politique climatique plus efficace à l'avenir. À la lumière de ce mandat public clair, l'étude examine ensuite les changements apportés par le gouvernement au projet de loi 4 et aux politiques connexes subséquentes après la période de consultation afin de voir quel impact les commentaires ont eu. Cela comprend le suivi des changements et la communication avec les représentants du gouvernement de l'Ontario - qui montrent tous les deux que les milliers de commentaires ont eu peu d'effet. Je termine le document par une discussion sur les implications et les recherches futures dans le domaine de la participation du public au droit de l'environnement.

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I. INTRODUCTION

In the face of climate change, effective and long-lasting environmental law and policy is urgently needed. Ophuls¹ wrote that given impending ecological crises, experts and governments alone are necessary for creating such environmental solutions—a kind of eco-dictatorship. Other contemporary work has argued that while expertise has a role to play, it needs to be supplemented by “green democracies” and “citizen juries”² in part because

¹ William Ophuls, *Ecology and the Politics of Scarcity* (San Francisco, CA: WH Freeman, 1977).

policy longevity relies upon political will and public opinion.³ Together, what we can say with more confidence is that *especially* when it aligns with scientific and social scientific consensus, it is important that environmental decision-making be responsive to the views of citizens. Doing so may have the potential to combine “good policy” with “good politics”.⁴

One way for environmental decision-making to take into account public opinion is for governments to create avenues, tools or platforms that facilitate citizen participation. This idea aligns with Principle 10 of the United Nations *Rio Declaration*,⁵ which states that environmental issues “are best handled with the participation of all concerned citizens”.⁶ Environmental problems cannot be solved by elected officials alone⁷ and public participation in policy creation sets a foundation for an accountable government.⁸ Especially when government decisions create “impacted communities”, their participation in decision-making is a basic tenet of democracy.⁹ Public participation also has more tangible benefits, including increasing acceptance of policy (i.e. when seen as “fair”),¹⁰ helping to create stronger popular authority and legitimacy,¹¹ and increasing trust in politicians.¹²

² Luigi Pellizzoni, “The politics of facts: local environmental conflicts and expertise” (2011) 20:6 *Env Politics* 765-785; John S. Dryzek, *The politics of the earth: Environmental discourses* (Oxford, UK: Oxford University Press, 2013).

³ Sally Eden, “Public participation in environmental policy: considering scientific, counter-scientific and non-scientific contributions” (1996) 5:3 *PUOS* 183-204; Archon Fung, “Varieties of participation in complex governance” (2006) 66 *Public Admin Rev* 66-75; Erik Hysing, “Representative democracy, empowered experts, and citizen participation: Visions of green governing” (2013) 22:6 *Env Politics* 955-974.

⁴ Kathryn A. Harrison, “A tale of two taxes: The fate of environmental tax reform in Canada” (2012) 29(3) *Review of Policy Research* at 383.

⁵ United Nations, “Report of the United Nations Conference on Environment and Development” (1992), *UN General Assembly*, online: < <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> > .

⁶ The UN has emphasized public participation in their own work, including the 2030 Agenda for Sustainable Development, which was shaped by surveys involving more than 7.5 million people; Oliver Fox & Peter Stoett, “Citizen participation in the UN Sustainable Development Goals consultation process: Toward global democratic governance?” (2016) 22:4 *Global Governance: A Review of Multilateralism and International Organizations* 555-574.

⁷ Thomas Johnson, “Environmentalism and NIMBYism in China: promoting a rules-based approach to public participation” (2010) 19:3 *Env Politics* 430-448; Helmut Weidner, “Capacity building for ecological modernization: lessons from cross-national research” (2002) 45:9 *American Behavioral Scientist* 1340-1368.

⁸ Martha S. Feldman & Anne M. Khademian, “The role of the public manager in inclusion: Creating communities of participation” (2007) 20:2 *Governance* 305-324; Nancy C. Roberts, *The age of direct citizen participation* (Abingdon, UK: Routledge, 2015).

⁹ Brian Adams, “Public meetings and the democratic process” (2004) 64:1 *Public Admin Rev* 43-54; Thomas C. Beierle, *Democracy in practice: Public participation in environmental decisions* (Abingdon, UK: Routledge, 2010).

In response to this call for expanded public participation, many governments have increased opportunities for advisory committees, public meetings, and other vehicles for engagement.¹³ In the environmental arena, these opportunities can take the form of public participation in environmental assessments or other public inquiry mechanisms which “recast administrative decision-making as a collective exercise”.¹⁴ Such government-initiated platforms can be seen as formal or “invited”¹⁵ opportunities for the public to shape law and policy beyond voting alone.¹⁶ Of course outside of public consultation, there are a multitude of other

¹⁰ Harriet Bulkeley & Arthur Mol, “Participation and environmental governance: consensus, ambivalence and debate” (2003) 12:2 *Env Values* 143-154; Jens Newig, “Does public participation in environmental decisions lead to improved environmental quality? towards an analytical framework” (2007) 1:1 *Communication, Cooperation, Participation (IJSC)* 51-71.

¹¹ Vivian Schmidt, “Democracy and legitimacy in the European Union revisited: Input, output and ‘throughput’” (2013) 61(1) *Political Studies*, 2-22; Grace Skogstad, “Who governs? Who should govern?: Political authority and legitimacy in Canada in the twenty-first century” (2003) 36(5) *Canadian Journal of Political Science/Revue canadienne de science politique*, 955-973; Justin Longo, “The evolution of citizen and stakeholder engagement in Canada, from Spicer to# Hashtags” (2017) 60(4) *Canadian Public Administration* 517-537.

¹² Russell J. Dalton, “Citizenship norms and the expansion of political participation” (2008) 56:1 *Political Studies* 76-98; Martin Welp, Bernd Kasemir & Carlo C. Jaeger, “Citizens’ voices in environmental policy” in *Public Participation and Better Environmental Decisions* (Enschede, Netherlands: Springer, 2009) 21-34.

¹³ Frans Coenen, ed, “Public participation and better environmental decisions: *The Promise and Limits of Participatory Processes for the Quality of Environmentally Related Decision-making*” (Enschede, Netherlands: Springer, 2009) 209; Benjamin J. Richardson & Jona Razzaque, “Public participation in environmental decision-making” (2006) 6 *Env Law for Sustainability* 165-194; Graham Smith, “Taking deliberation seriously: institutional design and green politics” (2001) 10:3 *Environmental Politics* 72-93.

¹⁴ Laura Berry, Jessica Koski, Cleo Verkuijl, C. Claudia Strambo & Georgia Piggot, “Making space: how public participation shapes environmental decision-making” (2019), *Stockholm Environment Institute*, online: <https://www.sei.org/publications/how-public-participation-shapes-environmental-decision-making/> > , at 3; John A. Sinclair & Meinhard Doelle, “Using law as a tool to ensure meaningful public participation in environmental assessment” (2003), 12 *JELP* 1-20; Debora VanNijnatten, “Participation and environmental policy in Canada and the United States: Trends over time” (1999) 27(2) *Policy Studies Journal* 267-287.

¹⁵ When public participation is initiated by those outside of government, it is known as a “created” space. A successful Canadian example of how a created space helped to facilitate the need for government to make an invited one can be seen in Angela Carter & Leah Fusco, “Western Newfoundland’s anti-fracking campaign: Exploring the rise of unexpected community mobilization” (2017) 12:1 *Journal of Rural and Com Dev*; see also Andrea Cornwall, “Spaces for transformation? Reflections on issues of power and difference in participation in development” in *Participation: from tyranny to transformation* (London, UK: Zed Books, 2004) 75-91.

¹⁶ S. Elstub & O. Escobar, “A typology of democratic innovations”, (2017) in *Political Studies Association’s Annual Conference* (Glasgow, UK: April, 2017), online: <<https://>

factors that shape how governments move forward with policy formation. These include ideology/partisanship,¹⁷ perceived mandates,¹⁸ wider polling data,¹⁹ and the voices of non-citizens.²⁰ Indeed, across both Canada and the US, important principles of environmental law such as precaution, strict liability, and extended producer responsibility are said to often play secondary roles to economic and political considerations that underlie policy.²¹

Implementing a system for the collection of public opinion regarding policy and lawmaking is the first step in this kind of more “democratic” type of environmental decision-making. The next is having a way for those views to make an impact. In this context, there is an overall lack of “notice and comment” research that can allow us to understand public commentary and its impact in Canada. Existing studies from the US suggest that individuals—but more so business/interest groups—hold tremendous power in shaping rule-making and policy formation.²² Such findings contrast with the romanticized view of “democratizing policymaking” in theory.²³ We also know that without

www.psa.ac.uk/sites/default/files/conference/papers/2017/A%20Typology%20of%20Democratic%20Innovations%20-%20Elstub%20and%20Escobar%202017.pdf > .

- ¹⁷ Dean Mann, “Environmental policy formation: the impact of values, ideology, and standards” (1981) US Department of Energy—Office of Scientific and Technical Information, online: < <https://www.osti.gov/biblio/5333455> > .
- ¹⁸ John Keeler, “Opening the window for reform: Mandates, crises, and extraordinary policy-making” (1993) 25(4) *Comparative Political Studies* 433-486.
- ¹⁹ Celine Belot, “Exploring the democratic linkage through the lens of governmental polling: a research agenda” (2019) 17(2) *French Politics* 211-226; Christine Rothmayr & Sibylle Hardmeier, “Government and Polling: Use and Impact of Polls in the Policy—Making Process in Switzerland” (2002) 14(2) *International Journal of Public Opinion Research* 123-140.
- ²⁰ Per Fredriksson & Jakob Svensson, “Political instability, corruption and policy formation: the case of environmental policy” (2003) 87(7) *Journal of public economics* 1383-1405; Jason Yackee & Susan Yackee, “A bias towards business? Assessing interest group influence on the US bureaucracy” (2006) 68(1) *The Journal of Politics* 128-139.
- ²¹ Errol Meidinger, Daniel Spitzer & Charles W. Malcomb, “Environmental principles in US and Canadian law” in *Elgar Encyclopedia of Environmental Law* (Cheltenham, UK: Edward Elgar Publishing Limited, 2018) 405-423. For a general overview of legalism and environmental policy in Canada and the United States, see Michael Howlett, “Beyond legalism? Policy ideas, implementation styles and emulation-based convergence in Canadian and US environmental policy” (2000) 20(3) *Journal of Public Policy* 305-329.
- ²² Susan Yackee, “Sweet-talking the fourth branch: The influence of interest group comments on federal agency rulemaking” (2005) 16(1) *Journal of Public Administration Research and Theory* 103-124.
- ²³ Michael Asimow, “On pressing McNollgast to the limits: The problem of regulatory costs” (1994) 57 *Law & Contemporary Problems* 127; Maureen Cropper, William Evans, Stephen Berardi, Maria Ducla-Soares & Paul Portney, “The determinants of pesticide regulation: A statistical analysis of EPA decision making” (1992) 100(1) *Journal of Political Economy* 175-197; David Nixon, Robert Howard & Jeff DeWitt, “With friends like these: Rule-making comment submissions to the securities and exchange commission” (2002) 12(1) *Journal of Public Administration Research and Theory* 59-76.

transparency about what participation meant, and when expectations of influence are not met, citizen fatigue in these processes can result.²⁴

In this paper, I present a study that used content and discourse analyses to review more than 4000 public comments made via the *Environmental Registry of Ontario (ERO)*, following the government's decision to introduce legislation (*Bill 4—The Cap and Trade Cancellation Act, 2018*) that ended provincial carbon pricing. The study is supplemented with a review of: i) changes made to the Bill, and ii) the province's new, central environmental policy, *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan*²⁵ (from here on, "*The Environment Plan*")—written in part to incorporate the public commentary analyzed here. The analysis is directed at better understanding: i) how engaged Ontario citizens feel about major climate policy changes and ii) the government's responsivity to the public participation and opinion it received. Using a large set of comments from individuals and organizations (n=4041), communication with government officials, and policy document analysis, this study responds to the calls for future research by Berry et al.,²⁶ who ask for a better understanding of voices and their impact.

II. THE CONTEXT OF ONTARIO, CANADA

(a) The Environmental Bill of Rights and the Environmental Registry of Ontario

In Ontario, Canada, an active forum of environmental decision-making can be found via the ERO. The ERO is a public tool that is part of the *Environmental Bill of Rights (EBR)*,²⁷ introduced by then Minister of Environment and Energy, Bud Wildman in 1993. During the time the Bill was introduced, Wildman stated that:

*The bill has been written for the public, in the public and by the public... [The EBR] provides the public with more opportunities to participate in environmental decision-making at an early stage, increases government accountability, and responsibility for the environment.*²⁸

More than 25 years later, the EBR has attracted some scholarly attention. Hersey writes that the EBR was a success because it formally extended the "guardianship of the natural environment" to the people of Ontario.²⁹ To help accomplish these goals and increase transparency, the EBR requires governments

²⁴ Berry et al, *supra* note 16; Coenen, *supra* note 15.

²⁵ Government of Ontario, "A Made-in-Ontario Environment Plan—Ontario's new plan to preserve and protect our environment for future generations", online: < <https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf> > .

²⁶ Berry et al, *supra* note 16.

²⁷ Environmental Bill of Rights, SO 1993 Ontario 1993, Chapter 28.

²⁸ Ontario, Legislative Assembly of Ontario (OLA) (1993), *Transcript of May 31, 1993*, 35th Parl, 3rd Sess, Bud Wildman, online: < <https://www.ola.org/en/legislative-business/house-documents/parliament-35/session-3/1993-05-31/hansard> > .

to consider public input via the ERO before making any significant environmental decisions.³⁰ Each relevant government ministry must post all environmentally significant decisions/proposals on the ERO, and give the public at least 30 days to submit comments.³¹ Following this time, ministries must explain how such comments affected a final decision.³² The ERO has been called the “heart” of the EBR and the cornerstone of public participation in Ontario.³³

Until Spring 2019, the Ontario EBR also *had* three other major components: the rights granted to Ontarians; Statements of Environmental Values; and the Environmental Commissioner of Ontario (ECO). In November 2018, the newly-elected Progressive Conservative (PC) government under Premier Doug Ford announced the elimination of the independent ECO position³⁴—a role thought of as an environmental “watchdog”. Damstra wrote that if the ERO is the heart of the EBR, “then surely the Environmental Commissioner of Ontario is its brain”.³⁵ Indeed, one of the major roles of the ECO was to monitor provincial ministries’ use of the ERO.³⁶ As part of the now enacted Bill 57,³⁷ the ECO was moved into the Office of the Auditor General of Ontario—a decision that legal critics say will lead to less accountability and oversight.³⁸

²⁹ Angela Hersey, “Government, watchdog, and citizen engagement: affecting environmental decision-making in Ontario through the Environmental Registry and the Office of the Environmental Commissioner of Ontario” (2009), *Annual Meeting of the Canadian Political Science Association*. Ottawa, Canada at 2, online: <<https://www.cpsa-acsp.ca/papers-2009/Hersey.pdf>> .

³⁰ Government of Ontario (2019), Environmental Bill of Rights, 1993, SO 1993, c 28, at 15(1), online: <<https://www.ontario.ca/laws/statute/93e28>> .

³¹ Government of Ontario (2019), Environmental Bill of Rights, 1993, SO 1993, c 28, at 16(1), online: <<https://www.ontario.ca/laws/statute/93e28>> .

³² Environmental Commissioner of Ontario (ECO), “Good Choices, Bad Choices, Environmental Rights and Environmental Protection in Ontario” (2017), online: <<https://eco.on.ca/reports/2017-good-choices-bad-choices/>> .

³³ Jacob Damstra, “Emerging Scholar Contribution: 20 Years Lost-Time for Change in Ontario’s Environmental Bill of Rights” (2014) 27:1 JELP.

³⁴ The independent ECO position, and its office, was to be officially cut on or before May 1, 2019 (ECO, 2019a). One critic has stated that the move is “out of sync with public expectations for accountability, human rights, and a healthy environment”. See Yannick Beaudoin, “Eliminating Ontario’s environmental commissioner a short-sighted move” (2018), *Toronto Star*, online: <<https://www.thestar.com/opinion/contributors/2018/11/19/eliminating-ontarios-environmental-commissioner-a-short-sighted-move.html>> ; Joanne Laucius, “Province cuts three offices created to act as watchdogs for the environment, youth and francophone services” (2018), *Ottawa Citizen*, online: <https://ottawacitizen.com/news/politics/province-cuts-three-offices-created-to-act-as-watchdogs-for-the-environment-youth-and-francophone-services>> .

³⁵ Damstra, *supra* note 35 at 86.

³⁶ ECO, *supra* note 34.

³⁷ Government of Ontario (2019), Restoring Trust, Transparency and Accountability Act, 2018, SO 2018, c 17—Bill 57, online: <<https://www.ontario.ca/laws/statute/s18017>> .

³⁸ Richard D. Lindgren, “Why the Environmental Commissioner of Ontario Matters:

There has also been some criticism of the Ontario EBR. A major criticism is that it excludes any provisions for adequate protection of a right to a healthy environment,³⁹ something scholars in Canadian environmental law have been advocating for at the federal level.⁴⁰ In addition, there has been specific criticisms of components of the EBR. Some critical commentary of the role of the ECO can be found in work by Pond who writes that under Gord Miller (2000-2015), the office moved into policy advocacy and populism.⁴¹ Others from government, including founders of the EBR, have pushed back against these suggestions, arguing that the public needs such education to be informed on important environmental matters and that the ECO's role as a check on Ministries is an important one.⁴² Finally, according to Damstra, the ERO itself has experienced "significant erosion in recent years", driven by Bill 68 (the *Open for Business Act, 2010*), which created provisions that allow for the bypass of the notice and comment period and removed some environmental protections.⁴³ The ERO began as a phone-based, dial-in system but evolved into an online platform in the mid 1990s.⁴⁴ At the time, the internet was increasingly seen as the vehicle for governments getting information to its citizens, and also as a way to encourage exchange of views, and increase citizen participation.⁴⁵ However, some

Legal Analysis of Schedule 15 or Bill 57" (2018), the Canadian Environmental Law Association, online: < <https://www.cela.ca/sites/cela.ca/files/CELA-Legal-Analysis-Bill-57.pdf> >; Theresa McClenaghan, "Environmental Law in Ontario 2019—Recent Changes and Proposals" (2019), the Canadian Environmental Law Association, online: < <https://www.cela.ca/sites/cela.ca/files/Env-Law-Ontario-2019-Recent-Changes.pdf> > .

³⁹ Damstra, *supra* note 35.

⁴⁰ David R. Boyd, "Elements of an Effective Environmental Bill of Rights" (2015) 27:3 JELP; David R. Boyd, *The right to a healthy environment: Revitalizing Canada's constitution* (Vancouver, BC: UBC Press, 2012); Heather Fast & Patricia Fitzpatrick, "Modernizing Environmental Protection in Manitoba: The Environmental Rights Act as One Component of Environmental Reform" (2017) 30:3 JELP.

⁴¹ David Pond, "The role of parliamentary officers: A case study of two officers" (2010) *Canadian Parliamentary Review*, at 23; David Pond, "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" (2008) *Canadian Study of Parliament Group*, at 38.

⁴² Anthony Boland, "From Seed to Tree: Analyzing Perspectives on 20 Years of Institutional Evolution of the Office of the Environmental Commissioner of Ontario" (2013) *Canadian Political Science Association*, online: < <https://www.cpsa-acsp.ca/papers-2013/Boland.pdf> > .

⁴³ Damstra, *supra* note 35 at 86. Further criticisms of the "use, misuse, and avoidance" of the Environmental Registry can be found in Rick Lindgren, "Statutory Environmental Rights: Lessons Learned from Ontario's Experience" (2011) *Canadian Environmental Law Association (the Renewing Environmental Law Conference)*, Vancouver, Canada.

⁴⁴ Paul Muldoon & Richard Lindgren, "The environmental bill of rights: a practical guide// Review" (1996) 22:4 *Alternatives Journal* 32-33.

⁴⁵ David R. Noack, "Of, by, and for the People: An Unprecedented Amount of

questioned—and continue to question—the supposed benefits of web-based over face-to-face engagement.⁴⁶ In particular, concerns have been raised regarding the quality of online deliberation and the possibility that governments may be unable to manage increases in feedback.⁴⁷ Research has found that while e-participation can lead to a greater sharing of views, the depth of these public comments may be lacking.⁴⁸ There is also some evidence industry influence in environmental rulemaking can far outweigh that of citizens.⁴⁹ That said, advocacy groups can help to mobilize citizen participation in ways that counteract industry.⁵⁰ Finally, a reliance on technology as a primary or sole means of public participation can expose gaps in access and competence and thus create new inequities in deliberative processes.⁵¹

Especially in recent years, the option for online submissions through the ERO portal has allowed tens of thousands of people to share their views. In 2015, a United Nations' Independent Expert on human rights and the environment noted the ERO as an example of good practice.⁵² Yet, while the

Government Data Is Available at Your Fingertips” (1995) 6:8 *Internet World* 28-34; Stephen Coleman & John Gotze, *Bowling together: Online public engagement in policy deliberation* (London UK: Hansard Society, 2001); Kevin A. Hill & John E. Hughes, *Cyberpolitics: Citizen activism in the age of the Internet* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1998).

⁴⁶ Richard Davis, *The web of politics: The Internet's impact on the American political system* (Oxford, UK: Oxford University Press, 1999); Matt Hern & Stu Chauk, “The Internet, Democracy and Community: another. big. lie” (1997) 3:4 *Journal of Family Life* 36-39.

⁴⁷ Raphael Kies, *Promises and Limits of Web-Deliberation* (New York, NY: Palgrave Macmillan, 2010); Stuart Shulman et al, “Electronic rulemaking: A public participation research agenda for the social sciences” (2003) 21:2 *Social Science Computer Review* 162-178; Longo, *supra* note 20.

⁴⁸ Stuart Shulman, “The case against mass e—mails: Perverse incentives and low quality public participation in US federal rulemaking” (2009) 1:1 *Policy & Internet* 23-53; David Schlosberg, Stephen Zavestoski & Stuart Shulman, “Democracy and e-rulemaking: Web-based technologies, participation, and the potential for deliberation” (2008) 4:1 *Journal of Information Technology & Politics* 37-55.

⁴⁹ Deserai Crow, Elizabeth A. Albright & Elizabeth Koebele, “Environmental rulemaking across states: Process, procedural access, and regulatory influence” (2016) 34:7 *Environment and Planning C: Government and Policy* 1222-1240.

⁵⁰ Deserai Crow, Elizabeth A. Albright & Elizabeth Koebele, “Stakeholder Participation and Strategy in Rulemaking: A Comparative Analysis” (2019) *State Politics & Policy Quarterly*, online: < <https://doi.org/10.1177/1532440018821655> > .

⁵¹ Graham Smith, *Options for Participatory Decision-Making for the Post-2015 Development Agenda* (2014), paper commissioned for the UN Expert Group Meeting: Formal/ Informal Institutions for Citizen Engagement for implementing the Post 2015 Development Agenda, online: < <http://www.fdsd.org/site/wp-content/uploads/2015/04/Options-for-participatory-decision-making-paper.pdf> > .

⁵² UN Independent Expert on Human Rights and the Environment (UNEHRE) *Compilation of Good Practices* (2015), online: < <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/GoodPracticesCategories> > .

ERO creates a process whereby participation can influence environmental decision-making, governments *may* proceed with their desired legislation—with little oversight or obligation to the public. With a paucity of empirical research set within this Ontario context to date, it may be that the EBR is “only as good as the government that uses it”.⁵³

(b) The cancellation of Cap and Trade

Many countries have implemented carbon pricing as a policy solution to climate change. As of October 2019, carbon pricing initiatives were being used in 46 national jurisdictions, representing more than 20% of global greenhouse gas emissions.⁵⁴ Part of this popularity may be due to the fact that pricing carbon is effective in addressing climate change—both in theory and practice.⁵⁵ Carbon pricing was the subject of the 2018 Riksbank prize in economic sciences, in memory of Alfred Nobel (known as the “Nobel Prize in Economics”).⁵⁶ Meanwhile, empirical evidence extends to Canada, where a consensus points to the effectiveness of British Columbia’s decade-running carbon tax.⁵⁷

In 2017, the Ontario Liberal government introduced a Cap and Trade program, which was the central regulation of the *Climate Change Mitigation and Low Carbon Economy Act*.⁵⁸ The program was part of the largest carbon market in North America, and included Quebec (Canada) and California (USA). Despite the promise for carbon pricing in Ontario to efficiently lower emissions,⁵⁹ in July 2018, the newly elected Ford government repealed Cap

⁵³ Hersey, *supra* note 31 at 10.

⁵⁴ World Bank, *Carbon Pricing Dashboard—Key Statistics*. (2019), online: <<https://carbonpricingdashboard.worldbank.org/>>.

⁵⁵ Alexander Barron et al, “Policy insights from the EMF 32 study on US carbon tax scenarios” (2008) 9:1 *Climate Change Economics*.

⁵⁶ Sam Wong, “Economics Nobel prize given for putting a price tag on climate change” (2018) *New Scientist*, online: <https://www.newscientist.com/article/2181795-economics-nobel-prize-given-for-putting-a-price-tag-on-climate-change/>.

⁵⁷ Aaron Wherry, “Scheer says British Columbia’s carbon tax hasn’t worked. Expert studies say it has” (2019), CBC News—Politics, online: <https://www.cbc.ca/news/politics/scheer-british-columbia-carbon-tax-analysis-wherry-1.5304364?_vfz=medium%3Dsharebar>; Brian Murray & Nicholas Rivers, “British Columbia’s revenue-neutral carbon tax: A review of the latest ‘grand experiment’ in environmental policy” (2015) 86 *Energy Policy*, 674-683; Di Xiang & Chad Lawley, “The impact of British Columbia’s carbon tax on residential natural gas consumption” 80 *Energy Economics* 206-218.

⁵⁸ Government of Ontario (2019), *Climate Change Mitigation and Low-carbon Economy Act*, 2016, SO 2016, c 7, online: <<https://www.ontario.ca/laws/statute/16c07>>; Carissa Wong & David McRobert, “Ontario’s Cap and Trade Cancellation Act: Recommendations to the Minister of Environment, Conservation and Parks” (2019), *Ontario Bar Association*, online: <<https://www.oba.org/Sections/Environmental-Law/Articles/Articles-2019/January-2019/Ontario%E2%80%99s-Cap-and-Trade-Cancellation-Act-Recommendations>>.

⁵⁹ Sharon Mascher, “Striving for equivalency across the Alberta, British Columbia,

and Trade. Its removal left Ontario without any tangible climate change plan. Alongside other moves such as the repeal of the *Green Energy Act*,⁶⁰ former ECO Dianne Saxe said that the new government has “gutted” effective climate change programs and that eliminating the Cap and Trade program “is bad for our environment, bad for our health and bad for business”.⁶¹

Despite being an environmentally significant decision, the Ford government’s choice to repeal the Cap and Trade program was originally done without opportunity for public comment via the ERO. The government argued that the June 2018 election was equivalent to the type of public comment process required.⁶² This was the first time in EBR history that any ministry used this rationale and according to Dianne Saxe, “should be the last”.⁶³ In September 2018, a legal challenge of Ontario’s plan to scrap Cap and Trade was made by Ecojustice-uOttawa Environmental Law Clinic, on behalf of Greenpeace Canada. Their allegation aligned with the view of the ECO; that the government failed to consult with the public. Within hours of the announcement of the lawsuit, the government responded by posting Bill 4, *the Cap and Trade Cancellation Act* to the ERO.⁶⁴ Even with this change, environmental law scholars Wong and McRobert argue that “the delayed and minimal comment period on Bill 4 is not consistent with the purposes, goals and legal provisions of the EBR”.⁶⁵ Indeed, this opinion was later shared by the

Ontario and Québec carbon pricing systems: the Pan-Canadian carbon pricing benchmark” (2018) 18(8) *Climate policy* 1012-1027.

⁶⁰ Government of Ontario (2019), *Green Energy and Green Economy Act, 2009*, SO 2009, c 12—Bill 150, online: < <https://www.ontario.ca/laws/statute/s09012> > .

⁶¹ Office of the Auditor General of Ontario (2018), *Blog—What’s New, Ontario Needs a Strong Replacement for Climate Change Law*, online: < <https://eco.auditor.on.ca/blog/environmental-commissioner-of-ontario-to-release-annual-greenhouse-gas-progress-report-2018/> > . For the full report, see Environmental Commissioner of Ontario (ECO), “Climate Action in Ontario: What’s Next? 2018 Greenhouse Gas Progress Report” (2018a), online: < <https://docs.assets.eco.on.ca/reports/climate-change/2018/Climate-Action-in-Ontario.pdf> > .

⁶² Wong & McRobert, *supra* note 61. For a rebuttal of this argument see Jacqueline Wilson, “Application for Review to the Ministry of the Environment, Conservation and Parks (Filed pursuant to Section 61 of the Environmental Bill of Rights)”, Canadian Environmental Law Association, online: < https://www.cela.ca/sites/cela.ca/files/EBR-Application-for-Review_cap-and-trade.pdf > .

⁶³ Environmental Commissioner of Ontario (ECO), “2018 Environmental Protection Report (Volume 1): Back to Basics: Respecting the public’s Voice on the Environment” (2018b) at 22; online: < <https://docs.assets.eco.on.ca/reports/environmental-protection/2018/Back-to-Basics.pdf> > .

⁶⁴ Paola Loriggio, “Greenpeace Canada taking Ontario government to court over repeal of cap and trade” (2018), *The Globe and Mail*, online: < <https://www.theglobeandmail.com/canada/article-greenpeace-canada-files-lawsuit-against-ontario-government-over-repeal/> > .

⁶⁵ Wong & McRobert, *supra* note 61 at 2.

majority of judges who in October 2019 dismissed the case—something a Greenpeace spokesman called a “moral victory”.⁶⁶

After the public comment period closed and during the final reading of Bill 4 on October 30, 2018, then Minister of Environment, Conservation and Parks, Rod Phillips stated that “all comments. . . were considered by the ministry as part of our consultation process”.⁶⁷ Others in parliament questioned whether this was actually the case, with Maris-France Lalonde stating: “wouldn’t it be interesting, before passing third reading, if we heard comments that were collected by the new government, that they would show transparency”.⁶⁸ A day later, and twenty days after the public comment period closed, Bill 4 was passed—two weeks before the notice of decision and release of public comments. This short timeframe, combined with what some call a lack of any significant amendment, suggests the “government did not give serious consideration to public input”.⁶⁹

III. RESEARCH CONTEXT

For those provide comments through public and government-supported platforms, it is reasonable to expect that their comments be acted upon, or at least considered. This expectation has relevance to ideas of procedural fairness or justice shown to be powerful forces in environmental law and policy across Canada and elsewhere.⁷⁰ And while the Ontario EBR has not established any kind of precedent for the minimum number of comments “required” to acknowledge strong public sentiment, one may reasonably expect that the greater the number, the more explicit the public desire for changes to—or support for—legislation. In the context of this study, *total* public comments

⁶⁶ Two of three divisional court judges agreed that the government violated the EBR when failing to consult with the public with regards to cancelling *Cap and Trade*. See Shawn Jeffords, “Moral victory for Greenpeace and court says Ontario broke law when scrapping cap-and-trade” (2019), *National Post*, online: <<https://nationalpost.com/news/canada/court-rules-ontario-broke-law-when-scrapping-cap-and-trade-system-but-no-change-expected>> .

⁶⁷ Legislative Assembly of Ontario (OLA), “Transcript of October 30, 2018—42nd Parliament, 1st Session” (2018), online: <<https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2018-10-30/hansard#para230>> .

⁶⁸ *Ibid.*

⁶⁹ Wong & McRobert, *supra* note 61 at 2.

⁷⁰ Alexandra Aragao, Sander Jacobs & An Cliquet, “What’s law got to do with it? Why environmental justice is essential to ecosystem service valuation” (2016) 22 *Ecosystem Services* 221-227; Jonas Ebbesson & Phoebe Okowa, eds, *Environmental Law and justice in context* (Cambridge, UK: Cambridge University Press, 2009); David McRobert, Julian Tennent-Riddell & Chad Walker, “Ontario’s green economy and green energy act: Why a well-intentioned law is mired in controversy and opposed by rural communities” (2016) 7:2 *Renewable Energy Law & Policy Review* 91-112; Chad Walker & Jamie Baxter, “Procedural justice in Canadian wind energy development: A comparison of community-based and technocratic siting processes” (2017) 29 *Energy research & social science* 160-169.

through the ERO from *Bill 4, Cap and Trade Cancellation Act, 2018* equalled 11,222. Though still much less than the record 52,229 comments regarding the proposed *regulation* of neonicotinoid pesticides,⁷¹ the number of comments received regarding Bill 4 via the ERO suggests high level of public interest. In fact, the number is substantially higher than the comments received relating to the eight other Acts open for public consultation through the ERO from December 2017 to October 2019, which averaged 199 comments.⁷² In their study of 1000 Ontario government decisions regarding permit requests in 2005, Deaton et al. found that few (3%) received any comments at all. These authors also found that even when permit requests did receive comments (i.e. concerns), there is no evidence that such public sentiment affected the government's decision.⁷³

Peer-reviewed, academic research on the topic of the ERO is difficult to find. A 2019 report analyzing the more than 11,000 public comments collected following the introduction of *Bill 4* was published by the office of former ECO Dianne Saxe, and provides an accessible and clear picture of lack of support for *Bill 4*.⁷⁴ Conducted independently from the Saxe report, this study strives to present a more academic, robust, and nuanced description of the discourses of opposition, support, and ambivalence to policy change. Perhaps more importantly, this article also advances an inquiry into the effect of such feedback, by looking at changes made to *Bill 4* and provisions of *The Environment Plan—Ontario's newly-written central environmental legislation*.

⁷¹ Nicholls suggests this was in part due to the way in which comments were solicited. Approximately 91% (47 400) were collected through seven campaigns by environmental groups, and the Ontario Beekeepers Association. Only 1543 comments (3% of total) were received online via the Environmental Registry portal. After excluding campaign emails, there were just 972 unique, individual comments. See Allison Nicholls, "Understanding public and stakeholder attitudes in pollinator conservation policy development" (2017), Master's Thesis. York University, online: < <https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/35140/MESMP02808.pdf?sequence=1&isAllowed=y> > ; ECO, *supra* note 34; Government of Ontario, "Environmental Registry (of Ontario)—Pollinator Health: A Proposal for Enhancing Pollinator Health and reducing the Use of Neonicotinoid Pesticides in Ontario" (2016), online: < <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTIzOTE5&statusId=MTkyMjcy&language=en> . January 22 2016 > .

⁷² To search and read through decisions posted through the ERO, see Government of Ontario (2019), Environmental Registry of Ontario, online: < <https://ero.ontario.ca/> > .

⁷³ James Deaton, Anastasia Lintner, and Donna R. Harrington, "Evaluating an environmental right: Information disclosure, public comment, and government decision making in Ontario" (2008) 56:3 *Canadian Journal of Agricultural Economics*, 277-294. The authors suggest that in part, participation may be low due to a lack of knowledge about the Environmental Registry. I agree, and extend the argument by stating that even if someone is aware of the ER, they may not receive notice of opportunities to comment, especially so if the government may anticipate public commentary to go against their policy objectives.

⁷⁴ Office of the Auditor General of Ontario, "What did the public say about cancelling cap and trade?". Blog—What's new? (2019), online: < <https://eco.auditor.on.ca/blog/what-did-ontarians-say-about-cancelling-cap-and-trade/> > .

This is something not attempted through the Saxe report. Further, all of this analysis is more strongly connected to legal writings, and the relevant policy literatures—which may help extend the reach of this study, and provide increased space for reflection.

Other research looking at the ERO and/or the EBR is similarly limited to grey literature. This includes work from Wong and McRobert (described above) and Lukasik et al., who outline key elements they see as crucial for public engagement via the EBR.⁷⁵ More ERO-specific research comes from Romm, who studies narratives of nature, and Hersey, who presents an analysis of in-depth interviews with government legislators, assistants, ministry representatives, and the ECO.^{76,77} The findings of Hersey suggest that the ERO has been affecting environmental decision-making through political pressure, media scrutiny, and an overall desire to be “good government”.⁷⁸ When then ECO Gord Miller was interviewed, he insisted that the ERO is a tool that must not be trivialized or used as a façade “hoisted by government to avoid criticism” (p. 5). This inability to affect the outcome (i.e. ERO “postings as a formality”, p. 55) is a common theme in thesis research by Core⁷⁹ and within a 10-year review of the EBR, where 64% of those who had used the ERO agreed that either the government did not consider their comments, or they had no way of knowing if they did.⁸⁰

While this literature provides us some insight, there is still lack of contemporary and published research that critically investigates public participation in Ontario environmental decision-making (i.e. via the ERO or otherwise). In recognition of this gap, the study presented here uses content and discourse analyses to review and trace the impact of public comments made as a result of the Ontario government’s decision to introduce *Bill 4* and end provincial

⁷⁵ Wong and McRobert, *supra* note 61; Lynda Lukasik, David McRobert, and Lisa Shultz, “Public Participation Rights, Environmental Policy Struggles & E-Democracy: Lessons Learned During the First 11 Years of Ontario’s Environmental Bill of Rights” (2006), *International Association of Public Participation Practitioners Conference*, Montreal, QC.

⁷⁶ Daniel Romm, “Public Commentary on Ontario’s Parks Systems: Nature narratives and where they come from” (2018) *LANDMARKS: The Undergraduate Geography Journal (The University of Toronto)*, 4, online: <http://geography.utoronto.ca/wp-content/uploads/2018/09/Landmarks_2018_Combined_2018-09-19-1.pdf> .

⁷⁷ Hersey, *supra* note 31.

⁷⁸ *Ibid.*

⁷⁹ Lindsay Core, “*Exploring the Exercise of Participatory Rights as Means of Environmental Protection: The Ontario Environmental Bill of Rights*” (2006) Master’s thesis. University of Oslo, online: <https://www.duo.uio.no/bitstream/handle/10852/22888/CORE_thesis.pdf?sequence=2&isAllowed=y> .

⁸⁰ Strathos, “*ECO 10 Year Review of the EBR—Results of the Pre-Consultation Questionnaire*”. Report Submitted to Environmental Commissioner of Ontario (2004) online: <<http://docs.assets.eco.on.ca/reports/other-publications/2004/2004-EBR-Questionnaire-results.pdf>> .

carbon pricing. Ultimately, this work seeks to assist readers in recognizing the value, in practice, of the EBR and ERO. The paper is somewhat in line with just a few others in Ontario⁸¹ and others elsewhere⁸² that analyze comments as a way to increase our understanding of public opinion on environmental issues. More recent work from Canada comes from Bowness and Hudson, and their study of public participation in the context of Alberta's expanding tar sands.⁸³ They found participation to be a tool used to legitimize government dominance and help promote public "buy-in" (see also participation as an "insufficient brake" in Frickel and Davidson⁸⁴). This is the first known peer-reviewed study to look at public commentary and its impact, via the ERO, in the area of climate change policy.

IV. METHODOLOGY

Public comments that made up part of the dataset of the study presented here were collected following the publication of the Ontario government's notice of decision of *Bill 4*, posted on the ERO website on November 15, 2018. To begin the collection of data, all *available* comments were downloaded via the ERO. This set included those comments submitted via the ERO website (n = 5030), and not others sent by email (n = 6187) or mail (n = 5).⁸⁵ 266 of the 5030 comments were unable to be posted publicly because they: i) contained inappropriate or offensive content, ii) were off topic, and/or iii) contained personal information.⁸⁶ Thus left a data set of 4764 comments. In order to control for the influence of multiple comments from the same person or organization (or re-posted from a single source), 723 comments found to be exact duplicates were deleted from the dataset.⁸⁷ This left a unique dataset of 4041 comments, explained across more than 650,000 words.

⁸¹ Nicholls, *supra* note 74; Romm, *supra* note 79.

⁸² James D. Proctor, "Environmental values and popular conflict over environmental management: A comparative analysis of public comments on the Clinton Forest Plan" (1998) 22:3 *Environmental Management* 347-358.

⁸³ Evan Bowness and Mark Hudson, "Sand in the cogs? Power and public participation in the Alberta tar sands" (2014) 23:1 *Env. Politics* 59-76.

⁸⁴ Scott Frickel and Debra Davidson, "Building environmental states: Legitimacy and rationalization in sustainability governance" (2004) 19:1 *International Sociology*, 89-110.

⁸⁵ The above-mentioned "Saxe Report" does include an analysis of all comments (n = 11,222). This article does not, in part because though those made by email or mail were not easily accessible to those outside of government, from the ERO website.

⁸⁶ See the Ontario Environmental Registry's Comment and privacy policies (<https://ero.ontario.ca/page/commenting-privacy>).

⁸⁷ The majority of those deleted comments (n = 483 or 66.8%) were found to be in the category of ambivalent/unsure/unclear. Thus, the percentage of those clearly in support or clearly opposed to Bill 4 did not change significantly when including or excluding duplicates.

From December 2018 to January 2019, comments were analyzed through both content and discourse analyses. Content analysis focused on whether the individuals or groups opinions fell into one of three categories: clearly supportive, clearly opposed, or ambivalent/unsure/unclear⁸⁸ to *Bill 4*. Content analysis was chosen as the first instrument of analysis to help digest and analyze a large collection of written information⁸⁹ for the purposes of filing each comment into one of the three categories. Content analysis also assisted in creating “replicable and valid inferences” from this set of qualitative data.⁹⁰ In the pages below, “counts” are presented according to the number of comments falling into each of the three categories.⁹¹

Discourse analysis was then used to better understand the depth and wide variety of reasoning behind public comments. Engaging with discourse analysis allows us to better understand what Chouliaraki and Fairclough⁹² call “linguistic ensembles” used to give meaning to the world around us. Discourse analysis has shown to have great value in the political arena⁹³—especially when looking at public policy discourses within it.⁹⁴ Thus, as content analysis looked to answer the “what” through positivist traditions (i.e. frequencies), discourse analysis helps uncover the “how”, or deeper meanings (i.e. through interpretive methods^{95,96}).

In the second stage of analysis, tools of content analysis were used to first read through the government’s Decision and Feedback summaries of *Bill 4*, which together summarized the major findings of the more than 11,000 public

⁸⁸ Note: in order to increase confidence in the review, we decided to categorize each comment as supportive or opposed if they explicitly state so. Thus, many comments fell into this broad category of ambivalent/unsure/unclear.

⁸⁹ Yackee and Yackee, *supra* note 22.

⁹⁰ Klaus Krippendorff, *Content analysis: An introduction to its methodology*. (Thousand Oaks, CA: Sage publications, 2018) at 408.

⁹¹ Another good example of qualitative content analysis in the study of policy change and public comments can be found here: Lindsey Haynes-Maslow, Lauri Andress, Stephanie Pitts, Isabel Osborne, Barbara Baquero, Lisa Bailey-Davis & Emily Morgan, “Arguments used in public comments to support or oppose the US department of agriculture’s minimum stocking requirements: a content analysis” (2018) 118(9) *Journal of the Academy of Nutrition and Dietetics* 1664-1672.

⁹² Lillie Chouliaraki & Norman Fairclough, *Discourse in late modernity: Rethinking critical discourse analysis* (Edinburgh, UK: Edinburgh University Press, 1999).

⁹³ Chris Skelcher, Navdeep Mathur & Mike Smith, “The public governance of collaborative spaces: Discourse, design and democracy” (2005) 83 (3) *Public administration* 573-596.

⁹⁴ Ron Scollon, *Analyzing public discourse: Discourse analysis in the making of public policy* (London, UK: Routledge, 2012).

⁹⁵ While content analysis does provide counts, in some cases where it helps to provide context, so too does the discourse analysis provided here.

⁹⁶ Fran Tonkiss, “Analysing text and speech: content and discourse analysis” (2004) 2 *Researching society and culture* 367-382.

comments, and describes the impact of such consultation. To further this line of inquiry, the results from email communication and a Freedom of Information (FOI) request—that asked for more detail about the changes that were made as a result of public comments in the ERO—are considered. Because many of the above messages cited *The Environment Plan* as a way forward in addressing public comments, the results section closes with a qualitative review of the current government’s new flagship environmental policy. Here I take note of key messages and main themes from the analysis of public commentary that may or may not have made their way into the new law. I was looking for evidence of changes in *The Environment Plan* in order to increase our confidence in the idea that the ERO comments had some impact (see the “hoop test” in Schwartz⁹⁷).

V. RESULTS

Findings presented here represent both the review of public comments and the attempt to trace how these views impacted environmental law and policy in the months following. I begin by describing the public comments via the ERO.

Of the 4041 unique comments, the large majority were submitted by individuals (n=3966 or 98.1%). The remainder were submitted by people “on behalf on my client” (e.g. as a lawyer or consultant) (n=9), or “in their professional capacity, on behalf of their organization” (e.g. corporations, community groups, schools, non-profit organizations) (n=66). Due to the great number of individual comments, as well as our focus on *citizen* participation, the results below mainly focus on these perspectives.

(a) Non-individual comments

Of the nine comments that were made on behalf of clients, none specified in what specific role the commentators were serving in, or who their client was. Five such comments were opposed to *Bill 4* and four were ambivalent/unsure/unclear. Most (62.1%) comments made on behalf of organizations showed opposition to *Bill 4*. 34.8% were ambivalent/unsure/unclear and 3% were supportive (see Table 5.1—Organization comments to Bill 4 proposal). Of note, those opposed to *Bill 4* included a variety of groups such as conservation groups, schools, non-profit organizations, public health/community groups, professional societies and corporations. Zero corporations—including Irving Oil and Koch Industries—supported *Bill 4*, while of smaller businesses, only one (Ivaco Rolling Mills) supported *Bill 4*.

⁹⁷ Elizabeth Schwartz, “Autonomous Local Climate Change Policy: An Analysis of the Effect of Intergovernmental Relations Among Subnational Governments” (2019) 36(1) *Review of Policy Research* 50-74.

Table 5.1—Organization comments to Bill 4 proposal

View	Organizations (n = 66)
Opposed (n = 41)	Ontario Citizens' Coalition for Clean Affordable Energy (2) ¹ ; Credit Valley Conservation Authority (2); Green Thumbs; RFCL Innovations Inc.; Bruce Peninsula Environment Group (BPEG); Queen's University; Viridius Lex LLP; Kingsview Village Junior School Green Team; MES Department, York University; The International Emissions Trading Association (IETA); Ontario Public Health Association; Ducks Unlimited Canada—Ontario; Anokiwin Wiyo-win—The Naming Project; Canadians for Clean Prosperity; Ontario Natural Building Coalition; Evolve Builders Group Inc.; Irving Oil; Environment North; Parry Sound Area Food Collaborative; Tay Valley Township; Green Party of Ontario (10); Peterborough Public Health; Oakvillegreen Conservation Association Inc.; Ontario Secondary School Teachers' Federation (OSSTF/FEESO); The Ontario Society for Professional Engineers; Windfall Ecology Centre; Environment Hamilton; Green Team, Bear Creek Secondary School (Barrie, ON); CleanTech North; Delta Management Group; ClimateAction Waterloo Region; ENGG 3180 (Air Quality class at the University of Guelph); Pollution Probe; Canadian Solar Industries Association; Peel Passive House Consulting; Koch Industries Inc.; Biothermic Wood Energy Systems Inc.; Region of Peel; Internet Energy Solutions Canada; Citizens Climate Lobby
Supportive (n = 2)	Canadian Manufacturers and Exporters; Ivaco Rolling Mills (with provisions)
Ambivalent or unsure or unclear (n = 23)	City of Hamilton (Healthy Environments Division); Middlesex-London Health Unit; Canadian Propane Association; Ontario Environment Industry Association; Advanced Biofuels Canada; Environment and Sustainability Committee of the Ontario Association of School Business Officials; Haliburton, Kawartha, Pine Ridge District Health Unit; Hydro One Inc.; Ontario Greenhouse Vegetable Growers; Efficiency Canada; BurlingtonGreen Environmental Association (8); Sustainable Severn Sound; Learning for a Sustainable Future; Bear Creek Secondary School (Barrie, ON); University of Ontario, Centre for Planetary

View	Organizations (n = 66)
	Science; SHARE (Shareholder Association for Research and Education); Unilever Canada; Faith and the Common Good; London Health Sciences Centre; Ontario Mining Association; Citizens Climate Lobby Hamilton; Ecohesian Inc.; Safe Guard Pest Control
<p>¹Numbers in brackets indicate the number of duplicate comments that each organization made to the Environmental Registry of Ontario. Duplicate comments are however not counted in any analysis presented here, including the n-values of views within this table. With the inclusion of duplicates, there is slightly higher levels of opposition (52/84) and ambivalence (30/84) to Bill 4.</p>	

(b) Individual comments

Of the total 3966 unique, individual comments (see Figure 5.2—Individual comment opinion of Bill 4, below), a large majority (78.6% or 3116) were opposed to *Bill 4* and/or supportive of the *Cap and Trade* program. Many of these comments were either supportive of past environmental policy and/or were concerned that meaningful climate change policy was being eliminated before anything was in its place. Related to the latter, there was a clear sentiment of concern for the policy gap being created. For example, one comment stated:

Cancellation is not leadership. Restore the green initiatives now to what they were on June 6, and begin the consultation/study/analysis/detailed thinking necessary to move our province forward. Do not cancel Cap and Trade without something better to take its place.

Another person spoke to their concerns in light of professional credentials:

I am a PhD physicist who follows the climate change science closely, and I am very distressed at the cancellation of the cap-and-trade system without any announcement of a replacement that will be as effective at reducing the greenhouse gases that cause climate change.

Less than 1% (n = 37; 0.93%) were supportive of the new government’s change in policy. Of those comments, 32 were supportive with little to no qualifications. Three others wanted to see the change, but did so because they saw the *Cap and Trade* not going far enough in terms of protecting the environment and lowering emissions related to climate change. Two people wrote they supported *Bill 4* but wanted the PC government to accept the Federal carbon tax. Only one person in the entire sample showed a clear denial of climate change science and that person also supported *Bill 4*.

788 (19.9%) of the sample were determined to be neutral or expressed an opinion that was unclear. Although many of these people were supportive of strong environmental policy, and often carbon pricing. These comments, however, simply did not make explicitly clear that they were either for or against the *Cap and Trade* program and/or *Bill 4*. An example of two such comments are as follows:

My heart breaks every time I see the damage humans are causing to our wildlife, trees, waterways and the air. Our planet is in trouble. Please don't be part of its destruction!!!! Please help our environment not kill it.

The ONLY things that matters is what happens to our planet. If we don't have a place to live, EVERYTHING else is secondary. Long term thinking is what's needed. Not the usual short-term, let's get re-elected in 5 years stuff that politicians seem quick to spout.

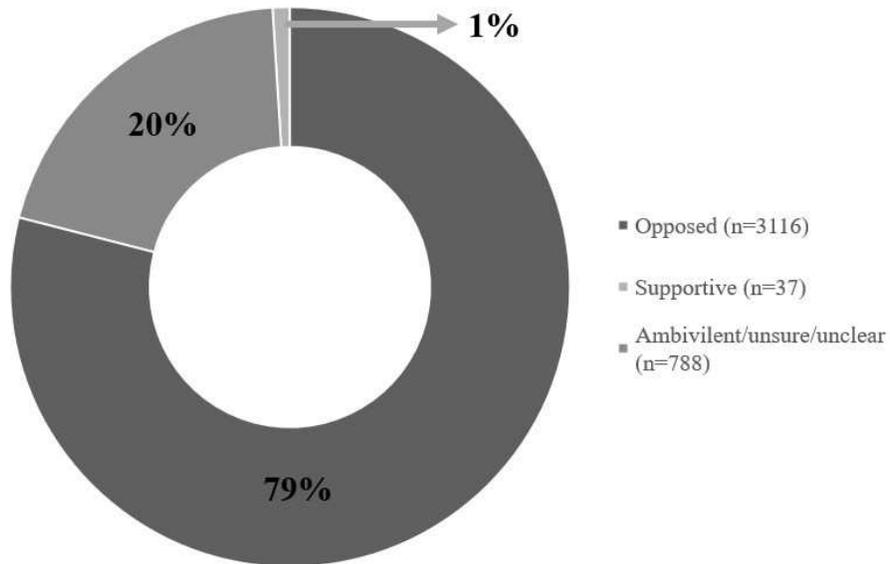


Figure 5.2—Individual comment opinion of Bill 4

(i) Basis of public opposition to Bill 4 expressed in Individual Comments

Because initial content analysis showed clear public opposition to *Bill 4* and the removal of *Cap and Trade* law, it is useful to examine the range of discourses around why individuals opposed such change.

A. Climate change and solutions

One popular reason expressed by individuals opposed to *Bill 4* was that it would break the Ontario government's commitments to climate change and threaten ecological, social and economic futures. There were a total of 2659 comments (67% of total) referencing "climate change", with the large majority being opposed to *Bill 4*. People often made reference to the scientific and/or economic consensus, including the recent UN IPCC report published in October 2018:

Just a few days ago, on October 8, 2018, the United Nations Intergovernmental Panel on Climate Change released its latest report

warning of “floods, drought, extreme heat and increased poverty should the world not take radical action to address climate change.” (source: The Guardian). Cancelling Ontario’s cap and trade system is the last thing Ontarians need.

In light of the recent IPCC report, [Bill 4] is downright reckless and irresponsible. What does this government propose to put in its place to ensure we meet our Paris Agreement commitments? Thoughts and prayers? If this government passes Bill 4, it will be on the wrong side of history.

Ontarians also showed their understanding of carbon pricing by citing the work that led to the 2018 Nobel Prize in Economics:

As the Nobel prize winner William Nordhaus’ work demonstrates, the pricing of carbon is the easiest, cheapest, and most straightforward way to foster the innovation needed to stop the negative effects of climate change.

I am requesting that you do not cancel cap and trade and not pass bill 4. The urgency of Climate change is a consideration that I hope the government will take into account. A Nobel prize winning scientist has said that one proven way of lowering CO2 emissions is by placing a price on carbon. Let market forces work for us. . .

B. Political themes

While one may hope everyone opposed to *Bill 4* wrote into the ERO to see policy change, it was clear some already felt like their comments would not be taken seriously and regardless of public opinion, no change would be carried out. Two such comments are:

Although I don’t believe your government will actually take any of the public opinion seriously in your decisions, I will say that repealing the Cap and Trade agreement will be looked upon in history as the greatest failure of this government.

To whom it may concern, I’m assuming my letter have will have little effect, as it seems the government has made up its mind to cancel cap-and-trade. I hope Premier Ford reconsiders. Again, I realize this is unlikely, so I urge the government to come up with alternative plans for Ontario to do its part to combat climate change.

Perhaps the biggest surprise in reading through the set of comments was the large number of people opposed to *Bill 4* who indicated they voted for Doug Ford’s government and/or identified generally as Conservative party supporters. The move to repeal the *Cap and Trade* legislation led many of these people to share that the PC party would lose their backing going forward:

Many of us voted for the PC party to remove the Liberal party as we thought it was time for a change in government. One thing the Liberal government had done well was to start to make progress towards addressing climate change. [lists mistakes of the Liberal government]. . .

But we did not vote to scrap every project that has been introduced in the past 15 years.

We didn't vote you in so we could have Bill 4. We voted to get rid of a corrupt Liberal government. I believe making polluters pay for their emissions will make them stop doing it and open Ontario for green energy jobs. You're going to put the bill through anyhow, and you're wrong to do so, and I won't forget when election time rolls around.

I voted for Doug Ford and watching the circus he has brought to Queen's Park has made me regret my vote. I am ashamed of the PC's.

Indeed, some of these concerned citizens saw no disconnect between conservatism and support for strong environmental policy:

As a conservative, I believe that we are put on this Earth to act as good stewards for it. The PC party will lose my vote if they are acting against this fundamental feature of our relationship with the planet. I used to be a card carrying Conservative, until the sudden policy/position shifts of the current government.

I am socially conservative. But climate change is not a joke it is a real threat. I am 23 and I'm worried about what the future holds because I know I will still be alive when the really serious impacts of climate change start happening. . .Please do not cancel this legislation!

If the Ford government continues to make stupid, shortsighted, borderline corrupt moves like this, I can promise you that as someone who's voted conservative in the past, you will not only NOT get my vote but I will donate, volunteer and try to pursued [sic] everyone I possibly can to make sure Ford doesn't get another term.

C. Global and local concerns

Many individuals' comments communicated both global and local concerns. These people often merged the two scales in referencing how *Bill 4* would affect future generations, and especially their children and grandchildren. For example, one person wrote that as a mother:

My little humans are my world and nothing is more important to me than their health and happiness. Unfortunately, their well-being is being threatened by climate change. I want my children to be able to go outside and play without the risk of poor air quality, or forest fires, or constant heat waves. . .Morally and economically, the cancellation of the cap and trade is not a wise decision.

Another person wrote in in their capacity as a medical doctor:

I'm writing to you today as a concerned physician. . .I must ask that this government not pass this bill, and maintain Ontario's carbon pricing system. . .We can either pay a small amount today, or much, much more tomorrow. For my sake, for my patient's sake, and for my children's sake, I can afford that small cost today, in order to save us all much greater costs in the future.

Others expressed concern about the loss of money raised via emission pricing that otherwise helped to fund local community projects (e.g. energy efficiency upgrades) and electric vehicle subsidies across the province. Individual commenters were aware of how the removal of funding would affect them and/or their local community. Such local and personal effects of law and policy change can be understood through the following comments:

The rebate for green vehicles made the decision to buy an electric car easier for a lot of citizens. Removing this incentive sends the wrong message and puts an electric car out of reach for a lot of citizens that would like to make this world a healthier place to live.

I do NOT support removing any of our incredibly important regulations on this matter!!! I work in tourism and removing these protections will allow bug money corporations to foul up everything my family and myself and thousands of others reply upon!

As a result of the announced policy changes, and the withdrawal of funding from the LCIF, my company will now pursue its efforts to commercialize its renewable energy solution that converts forest waste and residuals into liquid hydrocarbons. . .in the United States. . .where we can address the 350 million gallon per year demand for home heating oil—a half-billion-dollar market opportunity.

(c) What impact did public comments have?

Given the weight of public comment received in the ERO was generally opposed to *Bill 4*, this section turns to consider its impact. That is, in the pages below, findings are shared from an inquiry into how public commentary made through the ERO impacted the final version of *Bill 4*, and subsequent environmental legislation.

(i) Decision and Feedback summaries

In a Decision summary posted on the ERO website on November 15, 2018, there are two sections where the government outlines changes that were made following the announcement of *Bill 4*.⁹⁸ In the Decision details, eight amendments to *Bill 4* were made during the legislative process and included in the final *Cap and Trade Cancellation Act*.⁹⁹ These amendments are summarized (and shortened) as follows:

- 1) *Creating an advisory panel on the government's climate change plan*
- 2) *Ensuring free allowances (i.e. of carbon credits) were deducted once (not twice) in determining compensation to companies*
- 3) *Removing duplication in policy-making authority*
- 4) *Clarifying authority for amounts of compensation*

⁹⁸ Government of Ontario (2019), Decision Summary—Bill 4, Cap and Trade Cancellation Act, 2018, online: < <https://ero.ontario.ca/notice/013-3738#decision-details> > .

⁹⁹ Legislative Assembly of Ontario (2019), Bill 4, Cap and Trade Cancellation Act, 2018, online: < <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-4> > .

- 5) *Clarifying the scope of authority to limit compensation*
- 6) *Technical amendments to ensure accurate reference to program participants*
- 7) *Making electricity generators ineligible to recover their costs*
- 8) *Authorizing the reimbursement of expenditures (re: the wind down) that were incurred by the government prior to Bill 4 being enacted*

What stands out from this list is how most (6/8) are related to concerns brought forth by corporations (mostly opposed to Bill 4) who were responsible for buying and trading carbon credits. For example, related to concerns 5 and 6 (above), Koch Industries wrote in to express their belief that *Bill 4* would “create winners and losers. . .[disadvantaging] entities that diligently met their ‘mandatory participant’ compliance obligations [under cap and trade]”.¹⁰⁰ Irving Oil wrote that “Bill 4 penalizes suppliers of petroleum products on Ontario who are holders of excess emission allowances”.¹⁰¹ In contrast to the effect of corporations’ views, there are no clear changes made clear in this list that reflect the thousands of public comments in opposition to specific aspects of *Bill 4*, or the *Bill* altogether.

The second section that outlined changes made to *Bill 4* did so under a subtitle of “Feedback Summary”. The government writes that they received comments from a wide range of stakeholders across the province including members of the public, businesses, industry, environmental organizations, and municipalities. It then summarized the thousands of comments under seven main themes, including a brief description of each, and a response that outlines how comments helped shape changes to *Bill 4* (see Table 5.3—Feedback Summary, below). Some of these themes—including the “need for an alternative program” before the removal of *Cap and Trade*, concerns about environmental, health, and economic impacts, the loss of provincial leadership, and the need for a climate change plan—align with the main themes found through the analysis above. However, there was no quantification regarding the number of comments that fell into these categories, and no attempt to show the percentage of those in support of, or in opposition to *Bill 4*. The title of themes also lack specificity in terms of what commenters actually requested. For example, the need for carbon pricing may have been a more accurate portrayal than the need for an alternative program the Feedback summary refers to.

¹⁰⁰ Government of Ontario (2019), Bill 4, Cap and Trade Cancellation Act, 2018, Comments, Comment ID 10437, online: <<https://ero.ontario.ca/comment/10437#comment-10437>>.

¹⁰¹ Government of Ontario (2019), Bill 4, Cap and Trade Cancellation Act, 2018, Comments, Comment ID 9897, online: <<https://ero.ontario.ca/comment/9897#comment-9897>>.

Table 5.3—Feedback Summary

Theme	Description	Response
Desire for transparency and accountability	Commenters expressed concerns over the ministry’s consultation approach as well as the amount of information provided in the proposed bill. There were concerns with the ministry not providing details on greenhouse gas emission reduction targets or the number and frequency of progress reports the minister shall prepare in respect of the climate change plan.	The government is committed to transparency and considering the views of the people of Ontario. Our government received a strong mandate from the people of Ontario to cancel the cap and trade program. <u>Later this fall, we will release a comprehensive, made-in-Ontario environment plan to help protect and conserve our air, land and water, address litter and waste, increase our resilience to climate change and help all of us do our part to reduce greenhouse gas emissions.</u>
Need for an alternative program	Commenters requested an alternative program to be in place or information provided regarding an alternative program prior to the cancelation of the cap and trade program. Commenters also requested that they be provided an opportunity to consult on any future program.	<u>Later this fall, we will release a comprehensive, made-in-Ontario environment plan to help protect and conserve our air, land and water, address litter and waste, increase our resilience to climate change and help all of us do our part to reduce greenhouse gas emissions.</u>
Environmental and health impacts	Commenters expressed concerns that cancelling the cap and trade program will have a significant environmental and health impact on present and future generations. <u>Later this fall, we will release a comprehensive, made-in-Ontario environment plan to help protect and conserve our air, land and water, address litter and waste, increase our resilience to climate change and help all of us do our part to reduce green-</u>	Fighting climate change provides openings for us—as a society—to innovate, transform and strengthen environmental safeguards while creating jobs, respecting hardworking taxpayers and growing our economy. <u>The underlying principle of our new plan to fight climate change will be fairness—to taxpayers and businesses.</u> The government’s vision for Ontario includes the development of a better, more balanced plan to fight climate change and keep our air, land and waters clean for future generations. <u>Later this fall, we will release a comprehensive, made-in-Ontario environment plan to help protect and conserve our air,</u>

Theme	Description	Response
	<u>house gas emissions.</u>	<u>land and water, address litter and waste, increase our resilience to climate change and help all of us do our part to reduce greenhouse gas emissions.</u>
Economic impact	By scrapping the cap and trade program, households will save approximately \$260 per year on average. This includes \$190 in savings directly from lower fuel costs at the pump and lower natural gas in homes, and another \$70 per year in savings on lower prices on all goods and services. Cancelling the program will result in 8,300 more jobs across the province by 2021. Commenters expressed concerns about the potential negative economic impacts caused by cancelling the cap and trade program including lost opportunities in the green/clean technology sector and future infrastructure projects and the provincial government's decision to challenge the federal government's carbon tax.	As part of our made-in-Ontario plan, there will be an emissions reduction fund to invest in new technologies. This approach will also focus on actions that improve the business climate and facilitate private investment in these new technologies, especially in the energy sector. That means finding new, more affordable ways to cut emissions, reduce pollution and contamination in our air, water and communities. The province is challenging the federal government's plan to impose a carbon tax on Ontario families. Instead of creating and protecting jobs—the federal government's plan will burden Ontario's economy and chase jobs out of the province. Ontario is developing a responsible and transparent plan to wind down the cap and trade program that would have a minimal impact on taxpayer dollars while offering some support for eligible regulated participants of Ontario's cap and trade carbon tax program. The <i>Cap and Trade Cancellation Act</i> includes a compensation formula, and a separate compensation regulation will be developed.
Financial impacts of compensation approach	Commenters expressed concerns that market participants are ineligible to receive compensation. Commenters also expressed concerns about the compensation formula with respect to allowances distributed free of charge being deducted twice.	The compensation approach recognizes that regulated participants may have purchased allowances to comply with the regulation whereas market participants without a compliance obligation chose to take risks as market traders and speculators. Ontario amended Bill 4 to address the concern regarding free allowances in the compensation formula to remove the double deduction.
Provincial	Commenters expressed	Ontario will continue to do our part in

Theme	Description	Response
leadership	concerns about Ontario no longer being a leader in sustainability and green economy. Concerns were also expressed about not being able to meet international greenhouse gas emission reduction commitments.	reducing greenhouse gas emissions and preventing the worst potential effects of climate change from becoming a reality. We will continue championing for the environment by balancing responsible, modern environmental stewardship with efficiency and respect for taxpayer dollars. Ontario’s total greenhouse gas emissions have dropped by 22 per cent since 2005—even while the rest of Canada saw emissions increase by 3 per cent during that same time. In fact, most of Canada’s progress towards its 2030 Paris targets has occurred in Ontario. Ontario’s new actions to fight climate change will include an emissions reduction fund to invest in new technologies. The government will focus on actions that improve the business climate and facilitate private investment in these new technologies.
Climate change plan	Commenters acknowledged the government’s commitment to creating a climate change plan with greenhouse gas emission reduction targets.	Climate change is a global problem driven by greenhouse gas emissions from human activities. It presents challenges for our air, water, land, homes and businesses, local grown food and crops, not to mention the wear and tear it puts on outdated infrastructure and technologies. We must create resiliency against the effects climate change is already having on households, businesses, communities and public infrastructure. We must also curb our greenhouse gas emissions as part of the long-term, global solution to prevent the worst potential effects of climate change from becoming reality. <u>Later this fall, we will release a comprehensive, made-in-Ontario environment plan to help protect and conserve our air, land and water, address litter and waste, increase our resilience to climate change and help all of us do our part to reduce greenhouse gas emissions.</u>

Notably, the responses within the Feedback Summary only make one mention of changes or amendments to *Bill 4* and this relates to the financial impacts of the compensation approach and how double deductions and free allowances are addressed. The responses to all other concerns give general statements about the government's investment in new low-carbon technology, recognition of climate change, and/or the need for clear air, water and land. The government makes very clear in their response to environment and health impacts that their new climate change plan will be based on the "underlying principle. . .[of] fairness—to taxpayers and businesses". Here the government also cites what they see as their electoral mandate to cancel *Cap and Trade* following the June 2018 provincial election. However they seemingly disregard an even clearer public mandate (as reflected in the comments) to keep the program—at the very least until another program with carbon pricing is fully implemented. Also in the political realm, the government seems to suggest that Ontario's efforts to curb greenhouse gas emissions have been futile. They do so by writing that despite a provincial reduction of 22% since 2005, Canada's overall emissions have risen by 3%.

The government seemed to ignore what they admit was a clear desire to not have an absence of climate policy as they reiterate that their "made-in-Ontario environment plan" would be released in the fall (of 2018). The exact same sentence regarding this point was made a total of four times in responses to commenters' concerns—and oddly, once in the description of a concern (see underlined text "Later this fall. . ." in Table 5.3). Other important ideas the government writes about include how they were working to lower emissions affordably, and that they were challenging the Canadian Federal carbon tax and rebate plan in order to do so.

(ii) *Email communication and Freedom of Information request*

As part of this study's objective to better understand the impact of public comments regarding *Bill 4*, I reached out the provincial government via: i) an email and ii) a Freedom of Information (FOI) and Protection of Privacy Act request (henceforth, FOI request). In both sets of communication, I asked for more detail regarding:

- (1) how the set of ~11,000 public comments were analyzed; and
- (2) how this analysis helped to inform what later became passed as *Bill 4*.

In response to an email sent on April 4 2019, a staff member from the Ministry of Environment, Conservation and Parks replied on April 23 of the same year. The staff member pointed me to the ERO website and wrote that "each comment [regarding *Bill 4*] was read, summarized, grouped and considered by the Ministry as part of the consultation process". They also suggested some further reading of the new *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (the *Environment Plan*), "which addresses many of the concerns raised regarding *Bill 4*".

The letter responding to the FOI request did not answer the questions, providing instead a financial quote (see Figure 5.3). A staff member from the Ministry of Environment, Conservation and Parks wrote indicating that such an inquiry would involve reviewing approximately 6600 pages of records, and an estimated bill of \$328.00. Due to a lack of resources within the present study (i.e. both time and funding), this avenue was not explored further.

Ministry of the Environment, Conservation and Parks Access and Privacy Office 12 th Floor 40 St. Clair Avenue West Toronto ON M4V 1M2 Tel: (416) 314-4075 Fax: (416) 314-4285	Ministère de l'Environnement, de la Protection de la nature et des Parcs Bureau de l'accès à l'information et de la protection de la vie privée 12 ^e étage 40, avenue St. Clair ouest Toronto ON M4V 1M2 Tél. : (416) 314-4075
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April 25, 2019



**RE: Freedom of Information and Protection of Privacy Act Request
 Our File #: A-2019-02167**

This letter is in response to your request made pursuant to the *Freedom of Information and Protection of Privacy Act* for records related to:

- 1) How the ~11,000 public comments made regarding Bill 4 – The Cap and Trade Cancellation Act, 2018 were summarized and analysed.
- 2) How this summary and analysis helped to inform changes and a lack thereof to Bill 4 and its ultimate passing by the Ontario government in 2018.

Timeframe: October 11, 2018 (when public comment closed) to October 31, 2018 (when Bill 4 was passed)

After a search of the Ministry's Climate Change Resiliency Division, it is estimated that there will be approximately 6,600 pages of records in response to your request. Our preliminary review indicates that partial access may be granted. It is important to note that a portion of the responsive records may be protected under section 13(1) of the Act to protect advice to government and section 21(1) of the Act to protect the personal privacy of complainants and other personal identifying information pertaining to private individuals.

This is an "interim" decision because the head is not yet in a position to fully determine whether and how exemptions will apply. This interim decision is not binding on the Minister of Environment, Conservation and Parks.

In accordance with Section 57 of the *Freedom of Information and Protection of Privacy Act*, the estimated fees are detailed below:

• Search Time	5.00 hour(s) @ \$30/hour	\$ 150.00
• CD		\$ 10.00
• Preparation Time	5.50 hours @ \$30/hour	\$ 165.00
• Delivery		\$ 3.00
• Total		\$ 328.00
• Deposit Received		\$ 30.00
• Balance Owning		\$ 298.00
• 50% of Fee Estimate Required		\$ 149.00

Figure 5.3—Mailed response (from the Ministry of Environment, Conservation and Parks; re: FOI request)

(3) Analysis of “*The Environment Plan*”

As so much of the government’s response to the ERO-generated public commentary revolved around the much-publicized Fall 2018 *Environment Plan*,¹⁰² this document was also analyzed for evidence of content inspired by the thousands of ERO comments. While there is plenty of detail in the 54-page document, here the analysis focuses on a (full-text) review of overall messages and policies directly related to the kind of public opposition (i.e. seen above) to the removal of *Cap and Trade* and climate change law.

The document begins with a message from the now former Minister of Environment, Conservation and Parks, Rod Phillips, who states that Ontario’s new vision begins with protection and respect for “hardworking taxpayers”.¹⁰³ There is mention of the value of a healthy environment, the impacts of climate change, and how the plan will help Ontarians “continue to do their share to reduce greenhouse gas emissions”.¹⁰⁴ There is also clear criticism of *Cap and Trade*—a program the minister writes “[punished] people for heating their homes or driving their cars”.¹⁰⁵

Acting as a short summary of the *Environment Plan*, three Guiding Principles are contained within the document. They are: 1) Clear Rules and Strong Enforcement; 2) Trust and Transparency and 3) Resilient Communities. Because of the vagueness of such principles, none of these three have any strong connection to commentary found in opposition to *Bill 4*. Further, much of *The Environment Plan* is not directly relevant to climate change policy and/or the commentary received following the passing of *Bill 4*. This includes promises and actions items to improve air and water quality, and reduce littering.

In comparing the main concerns brought forth through the analysis of comments above, very few are addressed within *The Environment Plan*. For example, one of the key concerns articulated in the public comments related to the policy gap created by the removal of carbon pricing in Ontario. Due to the time that elapsed between *Cap and Trade*’s removal and the introduction of *The Environment Plan*—not to mention the roll-out of policies within it—it was inevitable that this concern could not be addressed in passing *Bill 4*.

Within *The Environment Plan*, any mention of climate change impacts are made in the context of problems created in Ontario; threats to infrastructure, food security, heat waves, and the health of ecosystems (see page 6, “The Challenge Ahead”). This contrasts with how the public most often saw climate change as problem that is not only affecting Ontario, but also the rest of Canada

¹⁰² Government of Ontario, *supra* note 27.

¹⁰³ *Ibid* at 2.

¹⁰⁴ *Ibid* at 6.

¹⁰⁵ *Ibid* at 3.

and the world as a whole. There is just one mention of Ontario working with the Federal government on “global environmental issues. . .[via] participating in international meetings and agreements”.¹⁰⁶ Within the same paragraph, the Plan outlines how Ontario has worked with other provinces and territories in the past. Another important mention of “global” is when the Plan discusses how Ontario is responsible for less than 0.4% of global emissions.¹⁰⁷

In a section titled “Doing Our Part”, the government seems to argue that because of Ontario’s leadership over the past 17 years (notably closing all coal-fired electricity stations), the province has earned the opportunity to remove environmental policies like *Cap and Trade*. This is done through the reiteration of how provincial emissions have dropped 22% from 2005 levels, while the rest of Canada has risen by 3%. Inserted as a “Quick Fact”, they write “[a]lmost all of Canada’s progress to its 2030 Paris Agreement targets have been driven by Ontario”.¹⁰⁸ Without any references to support the claim, the Ministry writes this “heavy lifting” has negatively impacted the financial burden experienced by families and businesses in the province.¹⁰⁹

Fulfilling a commitment made in *Bill 4*, the government devotes one chapter within *The Environment Plan* that acts as Ontario’s climate change plan. In this, they write about how the government is committed to: preparing communities for climate change, achieving the Paris Agreement target, making polluters accountable, activation of the private sector, energy conservation and efficiency programs, and demonstrating government leadership. Through these 22 pages, the government reinforces its goal to reduce greenhouse gas emissions by 30% by 2030—in line with Canada’s national goal and the commitment made under *Bill 4*. To meet this target, the Plan goes through the initiatives and sectors that will improve with, or sometimes without, government intervention. Very few of these are related to the public comments seen through the introduction of *Bill 4*. One reference to “making polluters accountable”, suggests some kind of price on carbon emissions (i.e. “we will ensure polluters pay their fair share”), but no price is given.¹¹⁰ Another common public comment about the need for investment in clean energy and technology is addressed in *The Environment*

¹⁰⁶ *Ibid* at 7.

¹⁰⁷ *Ibid* at 16.

¹⁰⁸ *Ibid* at 17.

¹⁰⁹ *Ibid* at 17.

¹¹⁰ In February 2019, the government introduced its new carbon pricing strategy—Making Polluters Accountable: Industrial Emission Performance Standards. Despite the new government’s vocal opposition to carbon pricing, they are considering do so and at similar levels as the Federal government’s “carbon tax and rebate system” (of \$20/per tonne in 2019 up to \$50/tonne in 2022). According to environmental economist Dave Sawyer, the new policy is “basically the same cap & trade system for large emitters but have added unwinding costs by scrapping cap and trade”. See more assessments of the plan in: Fatima Syed, “Doug Ford’s government just proposed plan looks a lot like a carbon tax” (2019), National Observer, online: <<https://www.nationalobserver.com/2019/02/12/news/doug-fords-government-just-proposed-plan-looks-lot-carbon-tax>> .

Plan, however it is written that such investment will come (in part) from private industry. Another source of funding is said to come from a newly created Ontario Carbon Trust. This will be initially funded through the provincial government, and supplemented with emission pricing from large emitters. Further details regarding this Trust are lacking. In sum, there is very little in *The Environment Plan* that reflects a recognition and in-depth understanding of public comments that were overwhelmingly opposed to *Bill 4* and the cancellation of *Cap and Trade* in Ontario.

VI. DISCUSSION

As seen through the study presented here, when elected governments wish to roll-back what is seen by many to be effective and necessary climate change law, there may be little the public can do to stop it. Despite the fact that less than 1% of comments to the ERO supported the Ontario government's removal of *Cap and Trade*, "citizen juries"¹¹¹ were ignored and policy proceeded with very little change.¹¹² With the recent elimination of the independent office of the ECO, there is a real concern that comments submitted through the ERO may be thrown further aside moving forward. Of course there are other important factors that influence law and policy-making, but when such an overwhelming consensus leads to little or no change in a government's course of action, we have to question the purpose of public participation. That this occurred within Ontario where the *EBR and ERO* are well-respected, and *generally* effective, should be concerning for other jurisdictions.

The more the 4000 comments analyzed revealed broad support for Ontario's *Cap and Trade* program and/or carbon pricing among individual citizens, but also organizations of all kinds. That the large majority of community groups, not-for-profits, and even fossil fuel-based industry opposed *Bill 4*, yet the government moved forward with little change, may leave one confused about who exactly they are listening to.¹¹³ Thus the results here align with Wright's concern that strong environmental enforcement regimes (e.g. *Cap and Trade*), can too easily be undone without major penalties by changes in government.¹¹⁴ In the newly-elected Ontario government's *Bill 4* Feedback summary, they acknowledge some of the most pressing groups of concerns, but fail to quantify these ideas and for the most part—save for some small financial concerns brought forth by Corporations—do not address them through changes to *Bill 4* or *The Environment Plan*. Instead, the underlying and sometimes overt messages

¹¹¹ Hysing, *supra* note 3.

¹¹² Wong & McRobert, *supra* note 61.

¹¹³ Crow et al, *supra* note 52.

¹¹⁴ David V. Wright, "Enforcement and Withdrawal under the California-Quebec (and not Ontario) Cap-and-Trade Linkage Agreement" (2018), presented at the *National Symposium, Environment in Courtroom: Enforcing Canadian GHG Emission Laws*, October 2018, Quebec, QC, online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272541 > .

from both documents were ideas of financial cost-savings and “fairness to taxpayers”—an idea brought forth on only a few of the more than 4000 comments analyzed.

Resentment could also be found in the comments of many citizens, who accurately predicted that their voices would not have any effect. The research thus reinforces a finding from a survey¹¹⁵ that showed people writing into the ERO believe the government did not in good faith consider their comments. This study may help provide a roadmap related to another major finding from the same survey—that citizens had no way of knowing if their comments had any impact. Tracing the evolution of law through the means presented here may help those looking to do so in other cases going forward.

When people spend time to understand an issue, think critically about policy, and share their views, there is an understandable amount of disappointment in what Roberts¹¹⁶ would call accountable government (see also Newig¹¹⁷). In this way, this study shares similarities with recent research from Alberta, Canada, where Bowness and Hudson found the government used public participation to nullify democratic control over tar sands expansion.¹¹⁸ If governments continue to not meet the expectations of its citizens, the effect may be decreasing levels of public engagement.¹¹⁹ Especially when it dovetails with scientific consensus and Nobel prize-winning economic thought, environmental decision-making needs to be more responsive to public opinion.¹²⁰ Environmental law and policy as a collective exercise¹²¹ will bring with it tangible benefits for sitting governments including increased trust.¹²² This idea also has some relevance to procedural (in)justice, studied in other realms of environmental policy¹²³ and should be studied in such context in future research.

Concerns over global climate change played the largest role in those commentaries opposed to *Bill 4*, with citizens of Ontario citing the wide-ranging harmful effects that a warming planet will bring. There was a clear sense of responsibility to be leaders and to not roll-back climate change policy without a program to immediately replace it. Some of this discourse was undoubtedly aided by what some may call convenient timing of the publication of the “12-year

¹¹⁵ Strathos, *supra* note 83.

¹¹⁶ Roberts, *supra* note 8.

¹¹⁷ Newig, *supra* note 10.

¹¹⁸ Bowness & Hudson, *supra* note 87.

¹¹⁹ Berry et al, *supra* note 16; Coenen, *supra* note 15.

¹²⁰ Eden, *supra* note 3.

¹²¹ Berry et al, *supra* note 16.

¹²² Bulkeley & Mol, *supra* note 10; Dalton, *supra* note 14; Welp et al, *supra* note 14.

¹²³ Neil Simcock, “Procedural justice and the implementation of community wind energy projects: A case study from South Yorkshire, UK” (2016) 59 *Land Use Policy* 467-477; Chad Walker & Jamie Baxter, “Procedural justice in Canadian wind energy development: a comparison of community-based and technocratic siting processes” (2017) 29 *Energy research & social science* 160-169.

warning” report from the United Nations IPCC,¹²⁴ and the announcement of the 2018 Nobel Prize In Economics.¹²⁵ Both took place in the days before the public was invited to share their views on *Bill 4*. This seemed to help educate people about such climate change topics, and undoubtedly helped inspire Ontarians to write in.

While climate change-based concerns from the ERO spoke to problems all over the world, the government’s response and *Environment Plan* was mostly focused on issues relevant to Ontario only. In addition, while the government of Ontario recognized its responsibility in working to achieve Canada’s nationally-determined contribution (re: the United Nations Paris Agreement on climate change¹²⁶), they did so in a way that may pit Ontario against the rest of the country. Citing responsibility for 0.4% of global greenhouse gas emissions without acknowledging Ontario is approximately 0.19% of the world’s population was another strategy perhaps designed to deflect attention and ignore commenters’ clear desire for serious action on climate change.¹²⁷

Ontarians who wrote into the ERO recognized how the introduction of *Bill 4*, alongside many other environmental law and policy roll-backs of the early-days Ford administration, would have harmful effects not only globally, but also in their local communities. Public comments showed how people spoke of local concerns; economic uncertainty, the inability to fund energy efficiency upgrades, or even purchase their first electric car. Young and old alike were concerned about the effect the rolling-back of *Cap and Trade* would have on their children, grandchildren and beyond. Thus climate change concerns as expressed in the public comments ranged across spatial and temporal scales, an idea at odds with the established “think global, act local” mantra.¹²⁸ The findings are more aligned with those who question this dichotomy.¹²⁹

¹²⁴ United Nations Intergovernmental Panel on Climate Change (UN IPCC), “Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments” (2018), online: <<https://www.ipcc.ch/2018/10/08/summary-for-policy-makers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>>.

¹²⁵ Wong, *supra* note 59.

¹²⁶ For more information about the Paris Agreement and Canada’s recent efforts in climate change mitigation, see Government of Canada, Canada’s National Reports to the United Nations Framework Convention on Climate Change, 2017 (2019), online: <<https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/seventh-national-communication-third-biennial-report.html>>.

¹²⁷ OECD, “Air and GHG emissions” (2019), online: <<https://data.oecd.org/air/air-and-ghg-emissions.htm>>. In 2017, Canada had the 8th highest levels of carbon dioxide (CO₂) emissions, on a per capita basis. This data can be found here: OECD, Air and GHG emissions. (2019) online: <<https://data.oecd.org/air/air-and-ghg-emissions.htm>>

¹²⁸ Eran Feitelson, “Sharing the globe: the role of attachment to place” (1991) 1:5 *Global Environmental Change* 396-406.

Comments from many self-described conservatives, showed a questioning of the policy decisions of the sitting government. While this may reinforce a negative belief about Canadian conservative parties and environmental politics,¹³⁰ we must be careful not to ascribe too much of an association between Conservatism and a lack of desire for effective and far-reaching environmental law and policy.¹³¹ It is true that in many parts of Canada, Conservative politicians—and the majority of people who vote for them¹³²—do not support climate policy. However, the last provincial Conservative government of Ontario made some great advances in provincial environmental law. Now former ECO Dianne Saxe reported that the public consultations regarding these changes were inclusive and effective.¹³³ Additionally, up until January 2018, the presumptive Progressive Conservative leader and Premier of Ontario, Patrick Brown, promised to support carbon pricing as climate change policy. This growing trend of policy support for effective environmental policy across the political spectrum is seen in this study through the number of commenters who claimed they voted for Doug Ford. These people suggested that there would be political ramifications from this unpopular policy decision. Along with other unpopular decisions, support for the Ford government has dropped significantly in the years since election.¹³⁴ This finding aligns with a June 2019 study¹³⁵ that showed opposition to *Cap and Trade* was a weak predictor of Progressive Conservative votes during the 2018 Ontario election. It also contrasts the government's messaging that claims they were elected because of an anti-carbon pricing platform.¹³⁶

¹²⁹ Patrick Devine-Wright, “Think global, act local? The relevance of place attachments and place identities in a climate changed world” (2013) 23:1 *Global Environmental Change* 61-69.

¹³⁰ Robert MacNeil, “Canadian environmental policy under Conservative majority rule” (2014) 23:1 *Environmental Politics* 174-178.

¹³¹ Chad Walker, Laura Stephenson & Jamie Baxter, “His main platform is ‘stop the turbines’”: Political discourse, partisanship and local responses to wind energy in Canada (2018) 123 *Energy Policy* 670-681.

¹³² Bruce Anderson & David Coletto, “Can the Conservatives win in 2019 by running against carbon pricing? It’s no slam dunk” (2018) *Abacus Data*, online: <<https://abacusdata.ca/can-the-conservatives-win-in-2019-by-running-against-carbon-pricing-its-no-slam-dunk/>>.

¹³³ Wong & McRobert, *supra* note 61 at 2.

¹³⁴ Mike Crawley, “Doug Ford’s ‘government that listens’ is hearing it in the polls” (2019), online: <<https://www.cbc.ca/news/canada/toronto/doug-ford-ontario-municipal-cuts-federal-election-1.5151160>>. 338 Canada, Province of Ontario List of Polls. (2020) online <<http://ontario.338canada.com/polls.htm>>

¹³⁵ Erick Lachapelle & Simon Kiss, “Opposition to carbon pricing and right-wing populism: Ontario’s 2018 general election” (2019) 28(5) *Environmental Politics* 970-976.

¹³⁶ John Michael McGrath (TVO), “The premier says he was elected to kill the carbon tax. Was he?” (2019), online: <<https://www.tv.o.org/article/the-premier-says-he-was-elected-to-kill-the-carbon-tax-was-he>>.

The focus of this study was on what Berry et al.¹³⁷ call a traditional “invited space” of public participation in environmental decision-making created by government.¹³⁸ That said, groups such as the Green Party of Ontario took advantage of an opportunity to mobilize “created spaces”¹³⁹ via sharing of their views on the ERO. Because of the potential for these forwarded comments to overwhelm more “organic” view-sharing, duplicate submissions were deleted. That said, because most of these duplicate submissions were found to be ambivalent/unsure/unclear regarding Bill 4, the trend of widespread opposition and less than 1% support remained regardless of whether these duplicate submissions were deleted. Such informal and “created spaces” have value in terms of education and encouraging participation rates, though these must exist in addition to, not in replacement of government-initiated platforms. Relying only on the former may only present a greater opportunity for governments to ignore views of its citizens.

The entirety of comments received in response to *Bill 4* (n=11,222), were analyzed by then ECO, and environmental lawyer, Dianne Saxe.¹⁴⁰ Her findings mirror the results presented here, notably in that only 1% of comments were in support of *Bill 4*. The parallel Saxe report also shared some thematic similarities with the present study, including concern for future generations and the loss of local economic opportunities. Thus we can be confident that some of the major findings described in this study regarding public comments are likely very similar to the overall sample. However to this I also extend these findings to include a kind of “follow-up”—to see if the main messages of opposition to Bill 4, once sent to government via the ERO, were listened to and acted upon by government. They were not.

While this study helps to advance our understanding of climate law and public participation in Canada, there are important areas of future research that remain. Some of these have been identified by Berry et al.¹⁴¹ and include questions of how marginalized communities have opportunities to amplify their voices in decision-making,¹⁴² in-depth investigations of created and invited spaces, and further inquiry into how legislators actually receive and apply public input. Concerning the latter, it is essential that we understand how governments actually do increase responsivity in environmental law-making. Thus future

¹³⁷ Berry et al, *supra* note 16.

¹³⁸ Cornwall, *supra* note 17; Elstub & Escobar, *supra* note 18.

¹³⁹ One such space can be seen through Ireland’s Citizen Assembly. It is a group made up of 99, randomly chosen Irish citizens who worked together to make Ireland a leader in climate change. The group ultimately gave 13 recommendations to the Government of Ireland (Smith, *supra* note 76). This idea is an alternative approach to public participation as has been labelled “deliberative democracy” by Berry et al, *supra* note 16. See also Carter & Fusco, *supra* note 17.

¹⁴⁰ ECO, *supra* note 34.

¹⁴¹ Berry et al, *supra* note 16.

¹⁴² Smith, *supra* note 54.

research in this area may include full legal analyses of *Bill 4* and/or the 2018 *Environment Plan*. It may also benefit from in-depth interviews with those politicians in decision-making roles (i.e. Ministers or the Premier in the case of Ontario). Such conversations could help to uncover internal policy capacities, or the ability for governments to actually make changes based on new information or perspectives. Such may be an explanation for the lack of changes seen here.¹⁴³

We also see the need for similar research to take place across the Canadian landscape, where provincial and territorial governments have varied approaches to public participation in decision-making. Questions of how a constitutional right to a healthy environment¹⁴⁴ would affect such tools of participation like the ERO are also ripe for discussion. Other potential avenues of fruitful research, in Ontario and elsewhere, include more advanced inquiry into ways to make the relationship between public input and decision-making more transparent. In this case study, and despite the use of multiple tools, it was still difficult to clearly see how public comments may have influenced the outcome of *Bill 4*.

In terms of policy recommendations, there may be small changes that could be made to the ERO web portal, including an option to clearly indicate one's opinion. A "checkmark box" where citizens can easily show their preference regarding environmental proposals (e.g. supportive, opposed, neutral) may provide a clearer and more quantitative picture for those in government. This would also help to improve researchers' confidence in patterns that emerge from the type of analyses shown here. There may also be better, more inclusive ways for governments to leverage technology¹⁴⁵ (i.e. outside of now "traditional" web portals) to increase citizen participation and our confidence in public opinion.

While I hope this study helps to better understand the views of Ontarians when it comes to climate change law, there are several reasons why it is difficult to extrapolate results here with overall public opinion across the province. The first is that given the huge imbalance of those opposed to (~79%) versus supportive of (~1%) *Bill 4*, I suspect the announced change in climate policy was more likely to attract objections. While recent surveys suggest most of the province (indeed country) may support/accept carbon pricing,¹⁴⁶ and programs like *Cap and Trade*, there is undoubtedly more than 1% of Ontarians in opposition.¹⁴⁷ Secondly, though public commentary was open to all Ontarians,

¹⁴³ Longo, *supra* note 13.

¹⁴⁴ Boyd, *supra* note 43; Fast & Fitzpatrick, *supra* note 43.

¹⁴⁵ Longo, *supra* note 20.

¹⁴⁶ In a poll conducted by Abacus Data, 22% of Ontarians were opposed to the federal government's carbon tax and rebate. 42% supported and 36% accepted such a plan. See Abacus Data, "Most people disagree with premier Ford on whether carbon tax will cause a recession", online: < <https://abacusdata.ca/most-people-disagree-with-premier-ford-on-whether-carbon-tax-will-cause-a-recession/> >; a survey from the University of Montreal that showed 57% of Ontarians and 58% of Canadians support a Cap and Trade system. See Universite de Montreal, Changements climatiques—Maps, online: < <https://www.umontreal.ca/climat/engl/> > .

only those citizens and organizations made aware of such an opportunity participated. While the sitting PC government allowed for public comment, it was other political parties—notably the Green Party of Ontario (GPO)—who strongly promoted opportunities for public commentary. An example can be seen on the GPO (2018) website,¹⁴⁸ where I suspect many commenters simply copy and pasted the GPO’s message into the ERO comment box. Thus, especially in the absence of any evidence that online citizen view-sharing is reflective of overall public opinion, arguably these voices represent those most interested in shaping effective climate law in Ontario. However, even in this case, this does not diminish the argument that the views reflected in the ERO public comments should have been more explicitly taken into consideration, and acted upon.

VII. CONCLUSION

For decades, the science of climate change has been well-established. Now, with advancing social scientific understandings of climate change solutions, we know the mechanisms that can effectively limit the warming of our planet. Yet these two pieces alone will not accomplish much if climate policy is fallible to changing political regimes. Thus for programs and initiatives to have longevity, they must also be accountable to public opinion—particularly when it intersects with scientific and social scientific consensus. In doing so, I reinforce that climate and environmental policy needs to be written to “survive elections”.¹⁴⁹ For the Ontario government going forward, I wish to echo the advice of Wong and McRobert¹⁵⁰ who describe the EBR as a “minimum floor, not the maximum ceiling” (p. 2). Apart from genuine changes being made as a result of public comments, a greater variety of public engagement strategies such as open houses across the province, may encourage more people to participate in meaningful ways—ways that governments cannot ignore. Finally, and despite the removal of the independent ECO as the “brain” of the EBR, its heart still remains via the ERO. Thus hope still lives on through the voices of Ontario citizens.

¹⁴⁷ Anderson & Coletto, *supra* note 137.

¹⁴⁸ Green Party of Ontario (GPO), “The Green Party of Ontario: Bill 4 is a giant leap backwards”, online: < <https://gpo.ca/2018/10/11/bill-4-is-a-giant-leap-backwards/> > .

¹⁴⁹ Chad Walker, “Let’s create climate policy that will survive elections” (2018) *The Conversation—Canada*, online: < <https://theconversation.com/lets-create-climate-policy-that-will-survive-elections-104886> > .

¹⁵⁰ Wong & McRobert, *supra* note 67.

Heidegger on Technology: Towards a Less-Anthropocentric, Multi-Disciplinary Legal Definition of “Sustainable”?

*Brady Chapman**

The term “sustainable” is used across disciplines to designate certain types of products, technologies or processes. An analysis of the term’s common usage suggests that an appropriate definition is one that recognizes how the term denotes some form of multi-disciplinary, non-anthropocentric environmental spectrum. The definition of “sustainable” used in Canadian legislation, including in the new Impact Assessment Act, is derived from the definition of “sustainable development” constructed within an international development context; it is inadequate to define what “sustainable” denotes in its common usage. In The Question Concerning Technology, philosopher Martin Heidegger describes the different ways of thinking that are at the foundation of traditional technologies and modern technologies. Traditional technologies employ a bringing-forth way of thinking, whereas modern technologies employ a challenging-forth way of thinking. Environmentalists have used Heidegger’s bringing-forth and challenging-forth framework to reveal the ways of thinking underlying the current environmental crisis. Heidegger’s framework has yet to receive much attention within an environmental law context. This paper argues that Heidegger’s bringing-forth and challenging-forth framework may be used to construct a less-anthropocentric, multi-disciplinary legal definition of “sustainable”.

Le terme «durable» est utilisé dans toutes les disciplines pour désigner certains types de produits, technologies ou processus. Une analyse de l’usage courant du terme suggère qu’une définition appropriée est celle qui reconnaît comment le terme désigne une forme quelconque de spectre environnemental multidisciplinaire et non anthropocentrique. La définition de «durable» utilisée dans la législation canadienne, y compris dans la nouvelle Loi sur l’évaluation d’impact, est dérivée de la définition de «développement durable» construite dans un contexte de développement international; il est inadéquat de définir ce que «durable» désigne dans son utilisation courante. Dans The Question Concerning Technology, le philosophe Martin Heidegger décrit les différentes manières de penser qui sont à la base des technologies traditionnelles et des technologies modernes. Les technologies traditionnelles emploient un mode de pensée qui fait avancer les choses, tandis que les technologies modernes emploient un mode de pensée qui les remet en question.

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