

Part 5 :

Mining, Transportation and Public Safety

Table of Contents

Mining	5 - 1
Transportation	5 - 7
Underground Storage Tanks, Boilers and Pressure Vessels	5 - 16
Endnotes	5 - 19

MINING

Introduction and Overview

The mining industry emerged as a major beneficiary of the "Common Sense Revolution." The requirements of the *Mining Act* regarding the closure of mines were significantly weakened through Bill 26, *The Savings and Restructuring Act*, in January 1996. In addition, controls on most prospecting activity under the *Public Lands Act* were eliminated in November 1996, and prospectors were granted an exemption from environmental liability under the *Environmental Protection Act* in December 1995. Furthermore, the government imposed a mining tax freeze, and maintained subsidies to the industry while laying off most of the Ministry of Northern Development and Mines staff responsible for overseeing mine closure.

The government's March 1999 response to the 'Lands for Life' Round Table reports included a number of major concessions to the forestry and mining industries, and other interests. In the case of mining, statements issued by the Ministry of Northern Development and Mines indicated that mineral tenure in new parks and protected areas is to be maintained, prospecting permitted in these areas, and land 'borrowed' from parks for mining purposes if significant mineral deposits are found. More than \$20 million in new subsidies to the mining industry are also to be provided. According to statements issued by the government any future expansion of parks and protected areas in Ontario will require the agreement of the mining and forest industries. The government's statements regarding mining activities the new protected areas were confirmed in July 1999.

Bill 26 Amendments to the *Mining Act*

The Bill 26 amendments to the *Mining Act* significantly weakened the Act's provisions related to the closure and remediation of mines in the province. In particular, the Bill 26 amendments:

- weakened the Act's provisions for the approval of mine closure plans by the Ministry of Northern Development and Mines (MNDM);
- eliminated the requirement that mining companies post realizable financial securities to ensure that if they go bankrupt the taxpayer does not have to pay for the closure of their mines;
- exempted information related to the financial assurances for mine closures provided by mining companies from freedom of information requests;
- removed the requirements for the delivery of annual reports on implementation of closure plans to the MNDM by mining companies;
- exempted holders of mining claims from liability for pre-existing mine hazards; and
- exempted proponents who voluntarily surrender mining lands from any future environmental liabilities even if they arise as a result of the proponent's actions.¹

At the same time, the budget for the MNDM's Mine Remediation Branch was

reduced by \$1.3 million/yr and fourteen staff members laid off.²

The Ministry of Northern Development and Mines has estimated that there are already more than 5,000 abandoned mines in Ontario,³ and estimates of the cost of their remediation range from \$300 million⁴ to \$3 billion.⁵ Effectively, the Bill 26 amendments to the *Mining Act* reversed the effect of amendments made to the Act in 1989⁶ to ensure that the public did not assume the costs of remediating additional abandoned mines.

A draft regulation to implement the Bill 26 amendments to the mine closure provisions of the *Mining Act* was circulated by the Ministry in May 1997. It provided details on the contents of closure plans to be filed by mine operators, and the "corporate financial test" which is to replace the financial assurance requirements of the previous *Mining Act*. A draft non-binding Mine Rehabilitation Code has also been circulated by the Ministry.

Amendments to the *Mining Act* adopted through Bill 120 *The Red Tape Reduction Act* (Ministry of Northern Development and Mines), in December 1997 permit the delegation of approval of mine closure plans to any person designated by regulation. These amendments appear to be linked to the Bill 26 amendments to the *Mining Act*. The provision may also be intended to permit the establishment of a self-regulation system for mine closure similar to that set up for pressure vessels, underground storage tanks, elevators and other devices through the Technical Standards and Safety Authority.

Mineral Exploration on Public Lands.

In November 1996 the Ministry of Natural Resources announced new regulations under the Bill 26 amendments to the *Public Lands Act*. These removed permitting requirements for mineral exploration on public lands, including clearing, mechanical stripping, bulk sampling, drilling and blasting, moving heavy equipment and drilling rigs and building trails.⁷ Public lands constitute 87% of the province's total land surface.⁸ Regulations regarding mineral exploration in ecologically sensitive areas were adopted in June 1998.⁹

Temagami

The Mining industry has also been favoured by a number of specific land-use decisions by the province. The most significant of these was the government's decision to reject, in June 1996, the recommendations of the Temagami Community Comprehensive Planning Council that sensitive wetlands in the headwaters of the Lady Evelyn River System be protected from mining activities.¹⁰ More generally, the decision to open the Temagami Region to mining activities set off what was described as the "biggest - and the last - staking rush ever" in September 1996.¹¹ Parts of the Temigami area, including the Skyline reserve, were re-opened for mineral claim staking in October 1998.¹²

MISA Metal Mining Sector Regulation Amendments

In September 1996 the Ministry of Environment and Energy amended the MISA regulation for the Metal Mining Sector to "clarify" the non-application of the regulation to closed mine sites. In addition, the Ministry amended the regulations to "clarify the point that there are no discharge limits set on seepage from waste rock and slag storage sites "(i.e. Acid Mine Drainage). Companies are required to report on storm water control in relation to such sites.¹³

In December 1997, the Ministry posted proposals on the EBR Registry to amend the MISA Metal Mining Sector Regulation to reduce the frequency of chronic toxicity monitoring, reduce the frequency of discharge monitoring from daily to three days per week, and remove effluent limits for substances that are not used, produced or stored at a facility.¹⁴ These amendments have yet to be implemented.

The weakening of the MISA regulations affecting the Metal Mining and Industrial Minerals sectors was a major goal of the mining industry's submission to the Ministry of Environment and Energy's Regulatory Review Process. Among other things, the industry pressed for the elimination of the effluent acute toxicity testing requirements, the pH adjustment requirements, complete exemptions for operators using Best Available Treatment Economically Achievable (BATEA) pollution control technologies, and the exemption of the salt industry from lethality limits.¹⁵

Information obtained by through a Freedom of Information request indicated that approximately 25% of Ontario's operating metal mines failed the MISA acute toxicity test requirements for their effluent between August and September 1997.¹⁶ Data obtained by the Sierra Legal Defence Fund showed that 19 Ontario metal mining facilities in Ontario regulated through the MISA program were involved in cases of significant non-compliance with MISA requirements in 1997.

In her April 1999 Annual Report, the Environmental Commissioner noted a marked increase in the Ministry of the Environment's use of 'Program Approvals' with only two such approvals being granted in the period 1994-1997, and nine being issued in 1998. 'Program Approvals' permit companies to operate and emit pollutants at levels higher than regulated limited, on the basis that the polluter is undertaking a program that will eventually result in the company's achieving compliance.¹⁷

Each of the nine Program Approvals granted in 1998 were provided to companies that had failed to comply with pollution limits established by the MISA regulations. The Commissioner noted that the companies in question had negotiated generous phase-in periods to comply with the requirements of the MISA regulations, and that the use of 'Program Approvals' in this way may weaken the impact of the regulations, and signal a retreat by the Ministry from the enforcement of regulatory controls.¹⁸

Information obtained by CIELAP through a freedom of information request indicated that as of September 1998, there were eight program approvals in place, and one proposed in relation to facilities regulated under the MISA metal mining sector regulations. The facilities included: Algoma Ore Division (Sault St. Marie); Cameco Canada Mining (Sault St. Marie); Inco Coppercliff, Crean Hill Mine, Garson Mine, Nolin Creek and Whistle

Mine (Sudbury); and Inco Port Colborne (proposed).¹⁹ A program approval has also been proposed for Cameco Corporation's Port Hope facility.²⁰

Environmental Liability Exemption for Prospectors

In addition to the Bill 26 amendments to the *Mining Act*, prospectors were granted immunity from environmental liability for pre-existing mine hazards under the *Environmental Protection Act* through a regulation announced on December 13, 1995 by the Ministry of Environment and Energy. This regulation seemed intended to permit and promote prospecting on unremediated abandoned mine sites.

Mining Tax Freezes and Subsidies

In its May 1996 budget, the government announced a five-year freeze on all mining taxes and *Mining Act* related fees and licenses.²¹ The government also announced its intention to amend the *Corporations Tax Act* to incorporate the expansion of the accelerated depreciation allowance for new and expanded mines provided in the February 1996 federal budget.²²

The Ontario Mineral Incentive Program (\$3 million/yr) was eliminated, removing a small subsidy to the mining industry in 1996. The Ontario Prospectors Assistance program (\$2 million/yr) has been retained.²³ This was despite the 22% cut to the budget of the Ministry of Northern Development and Mines, and the lay-off of all but two of the Ministry's fourteen mine closure inspectors.²⁴

'Lands for Life'

The government announced its response to the recommendations of the 'Lands for Life' Round Table Reports in March 1999. The 'Lands for Life' process was established in April 1997 to determine the future uses of public lands in Central and Northern Ontario, an area encompassing 47% of the province's land area. The government stated its intention to protect 12% of the lands in the planning area from development, a significant increase over current levels and the recommendations of the Round Tables.²⁵

However, the commitment is subject to a number of major concessions to the forestry and mining industries, and other interests. In the case of mining, documents released by the Ministry of Northern Development and Mines state that mineral tenure in new parks and protected areas is to be maintained, prospecting permitted in these areas, and land 'borrowed' from parks for mining purposes if significant mineral deposits are found. More than \$20 million in new subsidies to the mining industry are also to be provided.²⁶ In addition, the Ministry's documents state that any future expansion of parks and protected areas will require the "mutual agreement" of the mining and forest industries.²⁷

Following the March 29, announcement the Ministry of Northern Development and

Mines sent a contract to every mining claim holder in Ontario, requesting that those who had been "parked" or otherwise affected by the 'Lands for Life' announcements sign and return the contract. However, the Prospectors and Developers Association of Canada (PDAC) posted a notice on its website, urging mining claim holders not to sign the contract, stating that a legal opinion obtained by the Association suggested that their existing rights could be jeopardized by doing so.²⁸

The Ministry of Northern Development and Mines has moved to withdraw lands affected by the 'Lands for Life' announcement from staking under the *Mining Act*.²⁹ However, the Ministry has stated that areas designated as having "Provincially Significant Mineral Potential" "will be re-opened to exploration and staking under regulations to be developed for such areas."³⁰

It is important to note that the Ministry of Northern Development and Mines' announcements on March 29 directly contradicted provisions of the 1999 Ontario Forest Accord, signed by the representatives of the Partnership for Public Lands,³¹ the forest industry and the Ministry of Natural Resources. The Accord stated that mining would be excluded from parks and protected areas,³² provided for interim protection from mining activities for areas proposed as parks or protected areas,³³ and stated that the Ontario Forest Accord Advisory Board would develop a strategy for additions to the parks and protected areas system.³⁴

International criteria for the definition of protected areas specifically require the permanent exclusion of mining, logging and hydroelectric development.³⁵ This criteria cannot be met by the 'protected' areas announced on March 29 as, according to the government's statements, mineral exploration and mining may be permitted within them. Mining activities in 'protected' areas were excluded from the federal government's 1997 minerals and metals policy.³⁶ This reflects the consideration that mining operations can have unremediable environmental impacts, such as acid mine drainage, over an area orders of magnitude larger than the mine site itself.³⁷

In July 1999, the government confirms the elements of the March 1999 'Lands for Life' announcements regarding mining, stating that mineral exploration will be permitted in areas with very high mineral potential in new provincial parks and conservation reserves under controlled circumstances. If a site is to be developed for a mine, the area would be removed from the park or conservation reserve by deregulating, and another area would be added to the park or conservation reserve to replace the deregulated area.³⁸

TRANSPORTATION

Overview

There have been very few developments over the past four years to guide Ontario's transportation system to a more environmentally sustainable basis. Most developments will, or have had, the opposite effect. The most significant indicator in the past four years, of Ontario moving toward a less environmentally sustainable transport system, was the January 1997 announcement that the province would be retreating entirely from the funding of public transit. This decision removed \$718 million annually from the capital and operating budgets of municipal transit agencies across the province (at a later date some capital funding was restored).

In tandem with the de-funding of public transit were a series of changes to the land use planning system which will lead to greater urban sprawl, lower density settlements and a greater dependence on the personal vehicle for mobility. Most notable of these were *Bill 20 - The Land Use Planning and Protection Act*, enacted in March 1996 and changes to the Provincial Policy Statement.

Of the actions that were initiated to reduce the air pollution impacts of the road-based transport system in Ontario, several of the most substantial were initiated by the federal, not the provincial government. These included regulations to reduce the sulphur and benzene content of gasoline. Though the Ontario government publicly endorsed the lower sulphur content initiative, it was later revealed that several cabinet ministers had, privately, petitioned the federal government to delay the implementation of this action. One redeeming action on this front, was the move by Ontario government, early in its mandate, to reduce the summertime volatility of gasoline, thereby making a potential contribution to reducing smog.

The only significant environmental protection initiative undertaken by the province in the transportation area was the establishment of a vehicle inspection and maintenance program, Drive Clean. While the initiative will achieve some real environmental and public education benefits it could have been producing benefits much earlier and on a much wider basis. The program was significantly delayed in its implementation, having been announced early in the government's mandate but not produced until virtually the end of the mandate. Furthermore, according to the province's Environmental Commissioner, its emission-reducing benefits are unlikely to match the increase in emissions stemming from the province's changes to transit and land use policy changes.

Despite cancelling a great deal of municipal-level support to road and highway development and maintenance, funding still flowed to a number of large and small road projects across the province. The largest and most controversial of these was the commitment to fund and build the Red Hill Creek Expressway in Hamilton. Northern road projects were funded extensively through the Northern Ontario Heritage Fund Corporation. Meanwhile, Highway 407 was completed and sold, and although this venture was billed as

a model for government to reduce its capital costs, it is apparent that substantial public investment is required to underwrite such projects.

A variety of lesser measures implemented by the new government demonstrated its decidedly liberal approach to personal vehicle use relative to that of previous governments. These included: the cancellation of the photo radar highway speed control system in the opening days of its mandate; an on-going attempt to 'police' gasoline prices, particularly the price hikes that occur during peak vehicle usage periods; and the frequently suggested amending of the maximum speed limit on Ontario's 400-series highways from 100 km/h to 120 km/h.

There were no developments of any significance over the past four years that could be attributed to the provincial government that would support lower impact transportation modes, such as : rail enhancements and applications (freight or passenger) that would reduce emissions; expanded cycling infrastructure within communities; or better integration of cycling and walking with transit, rail and bus. The Greater Toronto Service Board, instituted in this period is technically charged with transit integration across the region but is considered too weak to affect any positive changes.

In summary, the transportation system in Ontario continues to develop along the path it was set in the 1950s -- a high reliance on the personal vehicle as the primary mode of transportation and the continual expansion of a road network to support an ever expanding vehicle population. It has been emphasized that this path is not only environmentally unsustainable but is proving to be financially unsustainable as well.³⁹ Nonetheless, the current provincial government has indicated that roads and personal motor vehicles will be given priority in transportation policy. This focus will continue to lead to substantial land use changes, habitat destruction, drainage pattern alterations, energy consumption in excess of basic needs and a chronic, worsening air quality situation in southern and central Ontario.

The De-funding of Public Transit

Public Transit Funding Reductions

In its first year, provincial support for public transit was significantly affected by the "Common Sense Revolution." Operating subsidies for GO transit services are to be reduced by \$20 million/yr by the 1997/98 fiscal year. In addition, the capital expansion program for GO Transit was cancelled. Reductions in municipal transit operating subsidies of \$16 million was announced for the 1995/96 and 1996/97 fiscal years. The province also withdrew its financial support for the proposed Eglinton Avenue subway line in Toronto (\$42 million).

The Ministry of Transportation's Business Plan of May 1996 outlined a commitment to increase funding to the municipal transit network in the 1996-97 fiscal year. However, on January 15, 1997 the Ontario government announced that it was eliminating \$718 million in municipal transit support (see Figure 4.3) thereby placing the entire burden of

system financing on municipalities.⁴⁰ Particularly hard hit by the announcement were the TTC and GO transit systems. The TTC was left with a shortfall of \$95.8 million/year and GO Transit \$110 million/year. These developments came after several years of funding reductions to both agencies.⁴¹

The GO transit system alone carries 120,000 people each weekday (34 million passengers per year)⁴² which has the effect of replacing 100,000 vehicles, on a daily basis, that would otherwise be on the roads (based on the typical occupancy rate).

Table 4.3 : Provincial Transportation Expenditures by the province terminated in 1996-97

Municipal Transit (1996-97)	Reductions	Cumulative
Operating	\$217 million	
Capital	\$391 million	

Sub total	\$608 million	\$608 million
GO Transit (1996-97) capital and operating	\$110 million	

Transit Subtotal	\$110 million	\$718 million
Airports (1996-97)	\$ 7.6 million	
Ferries (1996-97)	\$ 10 million	

	\$ 17.6 million	\$735.6 million
Total transportation reduction (excluding roads)		\$735.6 million

Source: Ministry of Transportation News Release and Backgrounder, Jan 15, 1997

While TTC ridership remains high in 1999 because of currently strong economic conditions, concern exists that future financial pressures for the TTC could be significant.⁴³ Competition for funding, that would support TTC capital and operating expenses, from within the municipal budget could become intense in the years ahead. An economic downturn could greatly compound these pressures.

Transit Initiatives and their Funding

Aside from continuing its support to the very capital-intensive Sheppard Subway Line in North York, it appeared that the province would abandon transit support altogether as early as 1997-98. In place of direct support, the province started to encourage a variety of advertising-based revenue-generating initiatives. Toward this end, the Minister of Transportation declared his support for expanded use of GO Transit vehicles as advertising media.

Support for Public Transit : A Final Funding Blitz?

A year after announcing the termination of support to municipal transit, the provincial government made one final step to shore up the financial sustainability of municipal transit systems in Ontario before exiting entirely from the activity. In early 1998, the Minister of Transportation, announced that it was helping municipalities establish capital reserve funds.⁴⁴ The funds are to help repair and replace aging transit vehicles in the years ahead as municipal transit authorities adapt to the complete withdrawal of the provincial government.

The Future of Transit

Calls for Transit Privatization

The government of Ontario was advised to go beyond merely advertising on GO Transit vehicles. The Government Task force on Agencies, Boards and Commission's January 1997 *Report on Operational Agencies* recommended that "the government review commercialization options for GO Transit to determine the most cost-effective method for delivering rail and bus services." Effectively, the Taskforce called for a review of its operations and their suitability for privatization. During the first term of the Common Sense Revolution government, no plans for the privatization of municipal transit systems have proceeded.

Transit System Integration

A transit integration plan for the Greater Toronto Area has been sorely needed and regularly discussed at the GTA municipality level and the provincial level for a number of years. During the 1995-1999 period, discussions continued and some limited action was taken.

Following the amalgamation of the cities and boroughs that made up Metropolitan Toronto, a committee to review the design of a Greater Toronto Services Board was struck. In a report in 1997 called *Getting Together*, the committee called for greater transit integration under a proposed Greater Toronto Services Board.⁴⁵

On December 18, 1998, *Greater Toronto Services Board Act*, 1998 received Royal Assent. The Act came into force on January 1, 1999 and created a board to review integration issues, most notably transportation, for municipalities in the Greater Toronto Area. While one of the intended roles of the Board was to oversee transit integration in the GTA, the body has been characterized as too "weak" to achieve the objective.⁴⁶ The Board was finally structured in such a way that reaching a decision on significant issues such as amending the transit "funding formula" or amending "planning strategies" will be difficult.⁴⁷ If the Board was readily in control of funding it would have a lever to exert some control over the integration of each municipality's transit system. Inadequate integration or even inadequate information about transit system integration can constitute a barrier to use and expansion of transit.

Transit and Urban Form

Beyond the reductions in financial support, transit systems will have to contend with the difficulties in serving sprawling urban forms across Ontario. Many of the measures put in place by the current Ontario government are bound to create lower density urban environments (see section *Land Use Planning*). Low density areas are much more difficult and much less cost-effective for transit systems to serve than medium or high density urban developments.

Land Use Planning Changes That Promote Sprawl / Vehicle Use

Bill 20 *The Land-Use Planning and Protection Act*, and the new provincial planning policy statement that accompanied it repealed many of the key elements of the planning reform legislation and provincial policy statement put in place by the previous government. These had been developed from recommendations of the Commission on Planning and Development Reform in Ontario and were intended to promote urban intensification and reduce urban sprawl.

If urban landforms continue to expand at the residential and population density of current typical developments, then servicing these areas with transit is likely to be unfeasible. The expansion of such landform will discourage modes of transport which have the ability to be more energy efficient and less pollution intensive.

Gasoline Emissions : Provincial Action Limited, often Obstructive

In March 1998, it was documented that gasoline sulphur levels were higher in Ontario than anywhere else in North America and even most other parts of the world.⁴⁸ Sulphur dioxide is a by-product of fuel combustion and a significant lung irritant. The MoE estimates that up to 1800 premature deaths are caused by air pollution each year.⁴⁹ According to the Environment Canada study, released in February 1998, average gasoline sulphur levels in Ontario were 533 ppm as compared to the Canadian average of 343 ppm (see Table 4.4).⁵⁰ The US average is 260 ppm while the average in California is 30 ppm.⁵¹

Table 4.4 : Sulphur content of gasoline in Canada in the mid-1990s.

Canada (1995)	343 ppm	Ontario (1996)	533 ppm
Atlantic (1995)	276 ppm	Quebec (1995)	364 ppm
Prairies (1995)	228 ppm	B.C. (1995)	273 ppm

Source : Environment Canada

In November 1998 it was revealed that the Ontario Ministers of the Environment, Economic Development and Trade and Transportation had written to the federal Minister of the Environment, opposing a federal initiative to dramatically lower the sulphur content of gasoline sold in Canada.⁵² The government of Ontario had publicly stated its support for the federal initiative.⁵³

Fuel Standards Revisions

The Ministry of the Environment announced a program to revise many of its standards, including air quality standards, as a major project in October 1996.⁵⁴ The updating of standards for toxic air pollutants was identified as a priority for this effort.

There have been eleven changes to standards to date, of which two pertain to fuel. Strengthened summer gasoline volatility limits were adopted in February 1997 and a new Allowable Air Quality Criteria (AAQC) for PM10 adopted in November 1997. The former measure has a reasonable potential to make a contribution to reducing smog conditions; the latter less so. In her Annual Report for 1997 the Environmental Commissioner stressed that the PM10 Criteria were guidelines and not standards and are not enforceable. As well, a compliance was not established to ensure that the guideline would be met.⁵⁵

PM10 does not necessarily relate solely or specifically to fuel composition as there are many sources of particulate matter however, fuel composition and use are large contributors of airborne particulate matter. A movement toward fewer road vehicles and cleaner fuels would assist in meeting this guideline. For example, diesel fuel is much higher in particulate content than gasoline which in turn has a higher content than natural gas.⁵⁶ The Province's performance in these areas has not been particularly strong.

Drive Clean reaches the starting block

Vehicle Inspection and Maintenance Program

Early in its mandate, the province announced that it would establish a vehicle inspection and maintenance program more comprehensive than a pilot program that had been operating. A pilot program had been operating in Mississauga since April 1995 and was discontinued in October of 1996. In April 1997 the Minister of Environment and Energy stated that "We're putting together a vehicle inspection and maintenance program for Ontario but we are not rushing into it without carefully considering all options."⁵⁷

In August 1997, The Minister announced the program as "Drive Clean." The program, was to begin to be implemented for the summer of 1998. However, little progress was made and in April 1998, the Minister acknowledged that the government would not be proceeding with the program in 1998.⁵⁸ The implementation of the program was put off until the Spring of 1999.

Under the program, cars and light trucks that are greater than 3 but less than 20 years old must pass an emissions test at the time of their registration renewal date. Initially, the program applies only to those subject vehicles in the Greater Toronto Area and the Regional Municipality of Hamilton. The program may be extended to various centres in Southern Ontario over time. Under the program, if a vehicle's emissions does not conform to the model year standards, the vehicle could be subject to repairs up to \$200. Vehicles that are heavily emitting due to engine wear are apt to escape the most necessary repairs as the maintenance required would exceed the \$200.00 limit. No provision has been made

for the repair or removal of these vehicles from the road.

Heavy-duty trucks and buses were initially exempted from the Drive Clean program.⁵⁹ Heavy-duty trucks and buses produce a significant proportion of road-based emissions of all types. The government has stated its intention to phase in the program for these vehicles in September 1999.

The Environmental Commissioner expressed concern in her 1999 report that the program's environmental benefits are likely to be undermined by the many land-use, municipal and transportation changes, that the Ontario government has made. The Commissioner indicated that "Drive Clean is limited in the results it can achieve..." and that "Even if Drive Clean operates successfully, MOE and other ministries must turn their attention to reducing the number of cars on the road by curbing urban sprawl and expanding public transportation."⁶⁰

Infrastructure Impacts

Highway and Municipal Road Funding Reductions

Initially, there was a positive beginning, in the very first year of the Common Sense Revolution by way of significant reductions in provincial funding for highways and municipal road building.

- A reduction of \$74 million was announced in municipal road funding in the Minister of Finance's July 21, 1995 Economic Statement, although all provincial grants to municipalities were subsequently consolidated into an unconditional grant program; hence the impact of this reduction at the municipal level may vary.
- In April 1996, it was announced that funding for provincial highway infrastructure would be reduced by \$70.5 million/yr by 1997/98. The remaining funding was to be focused on the maintenance of existing infrastructure, rather than expansion.
- A reduction to the Northern Highways program was also announced in October 1995 (\$9.75 million). The elimination of provincial funding for the Sultan Road near Chapleau (\$7 million) and the Northern Ontario Resources Transportation Program (\$3.2 million) were announced as well.
- Reductions of \$50 million in highway capital and \$25 million in highway operating funding for municipalities were announced on January 15, 1997.

These reductions appeared likely to have the effect of reducing urban sprawl by eliminating provincial subsidies for the road infrastructure necessary for urban expansion. Nonetheless, the province will still spend \$600 million per year on highways. The transportation ministry also approved the commercialization of roadway signage to generate revenue to offset highway costs.

Furthermore, the province continued to provide major funding to a number of environmentally destructive highway projects, including \$100 million for the Red Hill Creek Expressway (see Backgrounder, Figure 4.5) in Hamilton, but also Highway 407 on both sides of the GTA, and Highway 416 near Ottawa. In addition, in its May 1996 budget the government restored some funding for provincial highways and municipal roads, notably \$100 million for provincial highway repair, and an additional \$40 million for Northern Road repair.

Many of these projects which will help ensure that: the vehicle population continues to rise; land uses change; habitats and drainage patterns are irrevocably altered; and that fuel is consumed and emissions discharged in excess of what they need to be in order for Ontarians to remain mobile.

Red Hill Creek Expressway

This four-lane highway development project near and in Hamilton has provoked controversy for over a decade because of its likely impact on the Red Hill Valley which includes extensive wetland and other environmentally significant areas. The province has helped to move the project closer to completion by offering at least \$100 million in support and by limiting the extent of the project's environmental assessment review to just design changes and not the assessment of need or alternatives to the project.⁶¹ In May 1997, the Minister of Environment and Energy approved the plans for Hamilton-Wentworth's Red Hill Creek Expressway.

In May 1999, it was determined that the federal government would conduct an environmental assessment to the project given its potential impact on fish habitat in the Red Hill Creek and other environmental concerns.⁶²

Ontario's Electronic Toll Road

Ontario's first and only electronic toll road, Highway 407, opened in the Spring of

Figure 4.5 : Red Hill Valley Backgrounder

A Joint Hearing Board granted approval to the project in 1985. The East-West section is mostly complete. The North-South Section through the Valley commenced in 1990 but also ceased that year as the province withdrew funding. In March 1997, the MoEE granted the Region an Environmental Assessment Act exemption to allow it to make changes to the North-South section (essentially allowing the Region to proceed under a slightly modified design). The North-South section is slated for construction within a year and the province has maintained its commitment to its funding portion. The project's potential impacts include altered drainage courses and wildlife habitat as well as neighbourhood impacts at highway's terminus.

Source: Red Hill Creek Expressway North-South Section Draft Summary Report Volume 1. November 1997 Ministry of Transportation and Region of Hamilton-Wentworth.

Red Hill Valley Natural Heritage Features:

- Home to Red Hill Creek which in turn is home to 18 species of fish including brown trout, northern pike and chinook salmon.
- Contains evidence of settlement by aboriginals, United Empire Loyalists and early European newcomers.
- 65 kinds of breeding birds; 169 migratory birds; 11 types of amphibians and reptiles; 43 butterfly species; 140 types of moth; 20 mammals including deer, mink foxes and coyotes. Black terns and common moorhens travel through its marshes.
- Red Hill Valley Revitalization Project began in 1995 and attempts to return the Red Hill Valley to its status as a vital ecosystem.
- 640 hectares in size.

Source: Trails of the Red Hill Valley, Hamilton Region Conservation Authority.

1997. Proponents refer to it as a cost-effective way to build infrastructure and a model of public-private cooperation. Critics, on the other hand, point to the high level of debt guaranteed by the province that financed the project. In October 1996, the Provincial Auditor cited a number of concerns about the highway including that: it may not produce enough revenue from drivers to pay for itself; no equity was provided from the private sector consortium to build the road; it failed to create the public-private partnership envisaged when the project started; the contracts for maintenance of, versus construction of, the highway should have been separated; and that taxpayers will assume operating and ownership risks right from the start instead of after 30 years as originally planned.

Tolls could be used to more accurately capture the full cost of road construction and operation (ie. including environmental and health costs). Road pricing, if properly applied, could also be used to strengthen the attractiveness of transit relative to the personal vehicle. These concepts were highlighted in the 1998 report⁶³ of the Environmental Commissioner of Ontario as well as in the 1995 final report of the Ontario Roundtable on Environment & Economy's Transportation Collaborative⁶⁴ but have not been advanced comprehensively in Ontario.

Life, Liberty and the Pursuit of 120 kmh

A variety of measures implemented by the new government demonstrated its decidedly liberal approach to personal vehicle use relative to that of previous governments. One of the swiftest implementations of the new government was the abolition of the photo radar highway speed control system on July 5, 1995. The system had been in place for less than a year and was credited with helping to reduce excessive speeds on Ontario highways speed limits by some transportation and policing agencies.⁶⁵ Some jurisdictions had experienced a one-third drop in serious injuries from traffic accidents with the introduction of photo radar.⁶⁶

The abolition of photo radar was soon followed by queries from the Parliamentary Assistant to the Minister of Environment and Energy directed to the Minister of Transportation about the possibility of raising the speed limits on Ontario's 400 series highways from 100 kmh to 120 kmh.⁶⁷ Such a move would be of concern for both transportation safety and air quality reasons. In terms of energy use and hence air emissions, for example, a standard vehicle is far more energy-consuming at velocities above 100 kmh than between 80 kmh and 100 kmh.⁶⁸

Throughout its first mandate, the "Common Sense" government made repeated efforts to 'police' gasoline prices, particularly the price hikes that occur during peak vehicle usage periods. The effort was mostly pretence as the province has very few tools to control or restrict consumer prices in this way.

UNDERGROUND STORAGE TANKS, BOILERS AND PRESSURE VESSELS

Introduction and Overview

The *Safety and Consumer Statutes Administration Act, 1996* (the SCSAA), which was proclaimed in force on July 22, 1996, provided for the creation of a non-profit, private organization to deliver the technical standards and safety programs of the Ontario Ministry of Consumer and Commercial Relations (MCCR). These include programs related to boilers and pressure vessels, elevating and amusement devices, hydrocarbon fuels (natural gas, propane, fuel oil and gasoline) and equipment, and upholstered and stuffed articles. As of May 5, 1997, delivery of these programs and services have been carried out by the newly established *Technical Standards and Safety Authority* (TSSA). Details of the transfer are outlined in an Administrative Agreement, as required by the SCSAA, that was signed by the TSSA and MCCR Minister David Tsubouchi on January 13, 1997.

The transfer of responsibilities from the MCCR to the TSSA represents one of the most sweeping privatizations ever undertaken in Canada, involving major regulatory, administrative and law enforcement functions. In effect, virtually the entire Technical Standards and Safety Division of the MCCR has been privatized. However, to date, the transfer has been the subject of little public attention or scrutiny.

A preliminary review of the TSSA presented by CIELAP is its Second Year Report on Ontario's Environment and the 'Common Sense Revolution'.⁶⁹ The review raised a number of major legal and policy concerns regarding the creation and structure of the Authority. Serious questions regarding the implications of these transfers have also been raised by the Environmental Commissioner,⁷⁰ Provincial Ombudsman⁷¹ and Information and Privacy Commissioner.⁷²

There are particular concerns that, as the functions of the TSSA are no longer be carried out by provincial government agencies, they escape the application of such statutes as the *Environmental Bill of Rights, Freedom of Information and Protection and Privacy Act, Ombudsman Act, Environmental Assessment Act, and the French Language Services Act* and mechanisms for public and legislative oversight and accountability, such as the Provincial Auditor. Although the TSSA, carries out law enforcement activities, it is also unclear whether the *Canadian Charter of Rights and Freedoms* applies to their actions.

Some accountability measures were incorporated into the TSSA/MCCR Agreement. These included requirements for business plans and annual reports to be tabled in the Legislature,⁷³ and for third party audits to be provided as part of the annual report requirements.⁷⁴ In addition, under section 6 of the SCSAA, the government maintained the authority to revoke the powers of the corporation when certain conditions are met.

While these measures are laudable, they do not adequately address the issues raised by the fact that an agency mandated to exercise the regulatory powers of the

provincial government will escape oversight by the Legislature and its Officers in a number of important ways. It is also unclear the extent to which the Minister will accept responsibility to the Legislature for the TSSA's actions, or simply attempt to direct blame for errors or wrongdoing towards the TSSA Board of Directors.

Although the Minister maintains the legislative authority to revoke powers given to the Authority,⁷⁵ this procedure is unlikely following the transfers of authority and staff. As the TSSA has absorbed the staff of the Technical Standards Division of the MCCR, there is no government capacity left in place to resume the functions delegated to the authority. Consequently, the significance of this safeguard is limited.

CIELAP's preliminary analysis concluded that the TSSA suffers from a number of other structural problems which may prove difficult to overcome. The Agency itself is a hybrid of public and private functions and authorities. It is a private agency charged with the administration and enforcement of public law. It is given authority by the Legislature to require membership by its regulatees, and to collect and retain membership and other fees.

Furthermore, the Authority is currently structured around a fundamental conflict of interest, in that its board of directors is dominated by representatives of the economic interests it is supposed to regulate. Despite this inherent conflict, the TSSA and its Board were given no clear mandate to ensure the protection of public safety in the execution of their duties.

Questions also arise with respect to how the principles of natural justice which would normally apply to a public decision-making body will apply to the TSSA. This issue will likely only be resolved through litigation.

Recent Developments

It is widely anticipated that the MCCR/TSSA transformation may provide the model for similar changes to the regulatory functions of other provincial government agencies, including the Ministry of the Environment. Attempts have been made in the MCCR/TSSA Agreement and SCSAA to address some areas of concern with the TSSA regime, such as accountability and access to information. In addition, TSSA staff appear sensitive to many of the issues which have been raised by CIELAP's analysis.

In October 1998, the Ministry of Consumer and Commercial Relations proposed amendments to the *Technical Standards and Safety Act*. Among other things the legislation would have designated the TSSA as the responsible authority for the posting of *Environmental Bill of Rights* notices for the *Gasoline Handling Act*.

A study published in April 1999 for the Environmental Agenda for Ontario project recommended that the legislation creating the TSSA, and any other private entity to which regulatory functions are delegated, be amended to apply the requirements of the *Environmental Bill of Rights*, *Ombudsman Act*, *Freedom of Information and Protection of*

Privacy Act, Audit Act, Environmental Assessment Act, and French Language Services Act to these bodies. The study also recommended that the legislation creating such 'delegated regulatory organizations' be amended to permit the responsible Minister or cabinet to give policy direction to their boards of directors, in a manner similar to section 10 of the former *Power Corporation Act*.⁷⁶ This would establish a clear line of accountability between the TSSA Board of Director and the Minister and cabinet, and between the Minister and cabinet and the Legislature.⁷⁷

Endnotes

1. For a detailed discussion of the impact of the Bill 26 amendments, see Winfield and Jenish, *Brief to the Standing Committee on General Government Regarding Bill 26*.
2. A. Robinson, "Ontario to shut mine closing arm," *The Globe and Mail*, October 25, 1995.
3. *The State of Canada's Environment* (Ottawa: Minister of Supply and Services, 1991), pg.11-16.
4. Robinson, "Ontario to shut mine closing arm."
5. Tom Spears, "Waste clean-up will need \$3 billion and 20 years," *Ottawa Citizen*, October 25, 1990.
6. *An Act to Amend the Mining Act* (Bill 71), 1989.
7. See Ministry of Natural Resources Press Release and Fact Sheets, "New Regulations Guide Activities on Crown Land," November 5, 1997.
8. M. Mittelstadt, "Ontario cuts need for mining permits," *The Globe and Mail*, November 13, 1997.
9. EBR Registry No. RD8E001, September 3, 1998.
10. K. Unland, "Temigami logging, mining approved," *The Globe and Mail*, June 29, 1996.
11. Carl Forbes, President, Strike Minerals Inc., quoted in P. Bethour, "Miners get set for staking marathon," *The Globe and Mail*, September 13, 1996.
12. EBR Registry No. RD7E0001, September 1, 1998.
13. EBR Registry No. RA5E0027, September 26, 1996.
14. EBR Registry No. RA7E0023.P.
15. Mining Association of Ontario submission to the Ministry of Environment and Energy Regulatory Reform Project, March 12, 1996.
16. Ministry of the Environment Response to CIELAP Freedom of Information request. Ministry reference SDB981270, September 8, 1998.
17. ECO, *Report 1998*, pg.192.
18. *Ibid.*, pp.192-193.
19. Ministry of the Environment Response to CIELAP Freedom of Information request. Ministry reference SDB981270, September 8, 1998.
20. EBR Registry Posting IA7E1339, September 4, 1997.
21. The Hon. E. Eves, Minister of Finance, Budget Speech, May 7, 1996, pg. 28.
22. *1996 Ontario Budget: Budget Papers*, pp.19-20.
23. Personal Communication, Dick Cowan, Ontario Ministry of Northern Development and Mines, May 24, 1996.
24. A. Robinson, "Ontario to shut mine closing arm," *The Globe and Mail*, October 25, 1995.
25. Ministry of Natural Resources, *Backgrounder: Ontario's Living Legacy/New Parks and Protected Areas*, March 29, 1999.
26. Ministry of Northern Development and Mines, *Backgrounder: Ontario's Commitments to the Mineral Industry*, March 29, 1999; Ministry of Northern Development and Mines, *Press Release "Hodgeson Announces \$19 Million for Operation Treasure Hunt"*, March 29, 1999; Ministry of Northern Development and Mines, *Press Release, "Hodgeson Announces \$4 Million for Ontario Prospectors"*, March 29, 1999.
27. MNDM, *Ontario's Commitments to the Minerals Industry*.

- 28.PDAC "Lands for Life Cautionary Announcement," <http://www.pdac.ca/lands.htm>.
- 29.E-mail Communication, John Gammon, MNDM, May 7, 1999, cited in CELA, The Lands for Life Process, note 22.
- 30.Memo from John Gammon, Assistant Deputy Minister, Mines and Minerals Division, MNDM, May 7, 1999, re: Ontario Living Legacy - New Parks and Conservation Reserves.
- 31.Consisting of the Wildlands League, the Federation of Ontario Naturalists, and the World Wildlife Fund Canada.
- 32.The 1999 Forest Accord, Article 1.
- 33.*Ibid*, Art.2.
- 34.*Ibid*, Art.6.
- 35."IUCN Protected Areas Management Criteria" at <http://www.OntarioParks.com/iuc.html>
- 36.*Government of Canada Minerals and Metals Policy* (Ottawa: Natural Resources Canada, 1997).
- 37.See for example, *More Precious than Gold: Endangered Species Discussion Paper on Mining and the Environment* (Victoria: Environmental Mining Council of British Columbia, 1997).
- 38.EBR Registry Notices PB7E4001(Great Lakes St.Lawrence), PB7E4002 (Boreal East), and PB7E4003(Boreal West), July 16, 1999.
- 39.See generally "The Road to Sustainable Transportation in Canada" The National Round Table on Environment and Economy 1997 and "Transport minister calls for halt to rising automobile traffic" by Vicki Barnett in the *Calgary Herald*, page E3, Jan 30, 1998.
- 40.Ministry of Transportation Press Release "Province reduces duplication in the delivery of public transportation services" Jan. 15 1997.
41. Ministry of Transportation "Municipal Transit Backgrounder", January 1997
- 42.Martin Mittlestaedt "Transit costs unloaded on Ontario cities, towns" *Globe and Mail*, Jan 16, 1997.
- 43.Capital and operating grant reductions put pressure on various points inside and outside the TTC. Within the TTC it can put pressure on increasing the fare; at the municipal government level, transit needs to compete with other services to obtain support from the municipal budget. The fare increases most recently have not had a noticeable impact on ridership, primarily because economic conditions are strong and ridership is high. However many pressures lie ahead. The provincial capital grant will soon disappear and if economic conditions are not as robust there could be severe pressure to raise fares and cut costs and service. A number of 'psychological' barriers to raising fares are very close to being reached. The adult token fare is \$1.70; the adult monthly pass is \$88.50. If these prices were to move to or above \$2.00 and \$100.00 respectively, then ridership could be discouraged. Furthermore, the TTC has undergone a significant period of adjustment, particularly to adjusting to decreasing operating and capital grants, over the past decade (operating grants have fallen from \$272M in 1991 to \$146M in 1998 while fare have risen from \$1.07 in 1991 to \$1.30 in 1992 to \$1.60 in 1998 to \$1.70 in 1999. Continuing this trend into the future could present severe pressures on service and system reliability. Conversation with Bob Hughes, Senior Marketing Analyst, Toronto Transit Commission on June 25, 1999.
44. See "Province Commits Funds to Assist Municipalities with New GO Transit Responsibilities" (March 13/98) and "Municipalities to Receive Provincial Funds to Help With New Transit and Airport Responsibilities" (March 9/98) at <http://www.newswire.ca/government/ontario/english/releases>
- 45.William Walker "Improved transit urged for GTA" *Toronto Star*, June 18, 1997.
46. Comments by Milt Farrell, chair of the task force that led to recommendations for a Greater Toronto Services Board. See "Toronto Reconsidered: Planning for the next century" by John Barber and James Rusk, *Globe and Mail*, July 8, 1999.

47. The Greater Toronto Service Board has 40 members from across the GTA. This, rather large size coupled with its voting structure appears designed to limit significant change : "Where we want there to be two-thirds majority is on issues such as the funding fomula [for transit] and such as on the planning strategies." according to the Minister of Municipal Affairs and Housing. See James Rusk "Law would streamline Toronto planning" *The Globe and Mail*, Firday June 26, 1998.
48. M.Mittelstaedt "Canadian gasoline fuels smog, federal study says" *Globe and Mail*, March 7,1998.
49. *Letter from the Minister, Ontario's Smog Plan: A Partnership for Collective Action*, Steering Committee Report, Ministry of the Environment, January 1998.
50. M.Mittelstaedt "Canadian gasoline fuels smog, federal study says" *Globe and Mail*, March 7,1998.
- 51.Ibid.
- 52.T.Blackwell, "Tories fear changes to gas: Federal limits on sulphur content said to be too costly," *The Hamilton Spectator*, October 1998.
53. M.Mittelstaedt, "Sterling's flip-flop elicits anger," *The Globe and Mail*, November 7, 1998.
- 54.EBR Registry Notice PA6E0014.P, October 10, 1996.
55. Environmental Commissioner of Ontario, *Open Doors - Ontario's Environmental Bill of Rights / Annual Report 1997*, April 1998.
- 56.*Clean Vehicles and Fuel for British Columbia / A Policy Paper*, Ministry of Environment, Lands and Parks.1995. Page 20.
57. *New Release* : "Sterling to assess Georgia's vehicle emission testing program" Ministry of Environment and Energy, April 17, 1997.
- 58.R.Brennan, "Ontario's vehicle-emission program put back by a year," *The Hamilton Spectator*, April 15, 1998..
- 59.The public information pamphlet "Psssst! Want some advice on how to pass your Drive Clean test" from the Ministry of the Environment indicates that : " A similar program for heavy-duty trucks and buses will follow." but does not specify a timeframe.
60. Environmental Commissioner of Ontario *Open Doors / Report 1998*, Office of the Environmental Commissioner, Toronto, April 1999.
- 61.Mark McNeil "Streamline environment review: region" *Hamilton Spectator*, Mar 8, 1997.
62. *News Release* "Environmental Review Panel Announced for Red Hill Creek Expressway" Canadian Environmental Assessment Agency, Ottawa, Ontario, May 6, 1999.
63. Envionmental Commissioner of Ontario , *Open Doors / Ontario's Environmental Bill of Rights Report 1998*, Toronto, Ontario, April 1999, page 99.
64. See generally the Final Report of the Ontario Roundtable on Environment and Economy's Transportation Collaborative, Toronto, Ontario, 1995.
65. In 1994, the year photo radar was introduced, speeding declined in the areas it was introduced and highway deaths declined 16 per cent over the previous year according to the Ministry of Transportation. Excessive speed had been the most contributing factor in fatal accidents in 51% of deaths in 1989; 44% of deaths in 1990; 56% of deaths in 1991; 42% in 1992; 28% in 1993 and 25% in 1994 according to the Ontario Provincial Police. See M.Mittlestaedt "Taking more than a passing glance at photo radar" *The Globe and Mail*, Thursday June 22, 1995.
66. After the introduction of photo radar in west London, England, traffic accident related serious injuries fell from 297 to 187. The Ontario Provincial Police indicated that this would be expected as "the faster you drive the harder you crash." See Wallace Immen, "Photo radar: how it catches speeders" *The Globe and Mail*, Tuesday May 17, 1994.

67. See *Ontario Hansard* "Members' Statements / Speed Limits" Mr Doug Galt (Northumberland) to Hon. Al Palladini (Minister of Transportation), Wednesday April 10, 1996.
68. J. Gibbons, G. Jenish et. al. *Carbon Dioxide Reduction Options for Ontario: A Discussion Paper*. Toronto: Canadian Institute for Environmental Law and Policy 1994, pg 63.
69. M. Winfield and G. Jenish, *Ontario's Environment and the "Common Sense Revolution"* (Toronto: CIELAP, July 1997), pp.114-125.
70. ECO, *Annual Report 1996*.
71. Ombudsman Ontario, *Annual Report* (Toronto: June 1996), pg.3.
72. Information and Privacy Commissioner, *1998 Annual Report* (Toronto: June 1999) www.ipc.on.ca/web_site.ups/intro/frames.htm.
73. MCCR/TSSA Agreement, Section 5.
74. MCCR/TSSA Agreement, Schedule "C"
75. MCCR/TSSA Agreement, s.6.
76. *The Power Corporation Act* was repealed through the *Energy Competition Act, 1998*.
77. See M. Winfield and P. Muldoon, *Democracy and Environmental Accountability in Ontario* (Toronto: Environmental Agenda for Ontario, April 1999).