

May 21, 2019

BY E-MAIL ONLY (glo@ontario.ca)

Ms. Carolyn O'Neill
Ministry of the Environment, Conservation and Parks
Great Lakes and Inland Waters Branch
40 St. Clair Avenue West, Floor 10
Toronto, Ontario
M4V 1M2

Dear Ms. O'Neill:

**Re: Modernizing Conservation Authority Operations
Conservation Authorities Act (ERO #013-5018)
Bill 108, More Homes, More Choices Act, Schedule 2, 2019**

On May 8, 2019, Toronto and Region Conservation Authority (TRCA) submitted comments to the Environmental Registry of Ontario (ERO) on the proposal to amend the *Conservation Authorities Act* (CA Act). As noted in our letter, these comments were prepared and approved by TRCA Board of Directors in advance of the release of Bill 108, the "More Homes, More Choices Act", on May 2, 2019. As the proposed amendments to the CA Act are now detailed in Schedule 2 of Bill 108, we take this opportunity to offer the following additional comments. Furthermore, as many of the proposed amendments to the Act are subject to the details of future enabling regulations, it is requested that conservation authorities and municipalities be engaged in the development of these regulations prior to their release in order to successfully achieve implementation of the Province's objective of modernizing conservation authority operations.

TRCA is pleased that the current purpose and objects in the *Conservation Authorities Act* remain broad and unchanged, to facilitate continued innovation and adaptation for local watershed-based solutions to current and emerging natural resource issues. The role of conservation authorities (CAs) has evolved over time to become critical on-the-ground implementers for a number of provincial and municipal goals and objectives related to natural resource management and protection of the natural environment. In the Greater Golden Horseshoe, TRCA has played a critical role in addressing climate change risks and the impacts of rapid growth and urbanization within its area of jurisdiction and beyond through partnerships with other CAs and municipalities. This work supports the Province's and municipalities' efforts to facilitate and manage growth while addressing pressing environmental issues such as Lake Ontario water quality, flood and erosion hazard management, stormwater management, conserving natural resources and source water protection.

The suite of recommendations regarding the proposed amendments to the CA Act and associated implementing regulations as provided in our submission of May 8, 2019, continue to remain applicable

based upon our review of the details provided in Schedule 2 of Bill 108. We would, however, like to highlight and reiterate some of our previous comments and recommendations, in addition to providing some new comments.

Defining core mandatory programs and services

Bill 108 Schedule 2 provides a new clause 21.1 (1):

21.1 (1) If a program or service that meets any of the following descriptions has been prescribed by the regulations, an authority shall provide the program or service within its area of jurisdiction:

- 1. Programs and services related to the risk of natural hazards.*
- 2. Programs and services related to the conservation and management of lands owned or controlled by the authority including any interests in land registered on title.*
- 3. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006.*
- 4. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations.*

Conservation Authorities undertake watershed-based programs to protect people and property from flooding and other natural hazards, and TRCA recognizes hazard management as a provincially mandated program. To provide clarity and intent in describing programs and services, it is recommended that the wording in the ERO posting, "natural hazard protection and management" be used instead of "the risk of natural hazards" as proposed in Bill 108.

Tree planting, restoring natural areas and conservation services programs are examples of conservation authority activities that improve the landscape and make the watershed more resilient to the variations in precipitation patterns resulting from climate change. As such, natural hazards and natural heritage are intrinsically linked, and best addressed in a holistic manner through integrated watershed planning. Further, the integration of natural hazard, natural heritage and other watershed-based programs provides optimum cost savings and efficiencies. Accordingly, as previously requested, we recommend the following:

To be consistent with the purpose and objects of the CA Act, as well as the *Made in Ontario Environment Plan*, TRCA continues to recommend that the management and conservation of natural resources be included in the core mandatory programs.

Minister appointed investigator(s) for audits

As indicated in our previous comments, transparency to our funders and stakeholders is of utmost importance to TRCA. We accomplish this through financial accountability clauses in Memorandums of Understanding/Service Level Agreements, in addition to our annual financial statement audit. However, having reviewed the powers of an investigator, reporting and cost of an investigation as set out in section 23.1(4-8), we continue to have concerns about frivolous requests at the cost (time and/or financial) of conservation authorities. As such, we reiterate our previous recommendation that the Act be amended to reflect the following:

That the Minister or any partner municipality be allowed to request an audit of special purpose financial information limited strictly to how their funds have been spent, at their cost, and that overall financial accountability remain as a fiduciary responsibility of the Conservation Authority's Board of Directors.

This would allow our Board of Directors to retain their right to request additional audits/investigations by third parties as they deem necessary, in accordance with their fiduciary duties to the organization. This would provide peace of mind to our partners, while respecting the vital role that our Board of Directors plays in governing our not-for-profit organization. Further to this point, if any stakeholder would like the opportunity to request that a CA undergo another type of investigation, they are able to attend a Board meeting and explain their motivation and have the Board vote on the requirement for such an examination in a transparent manner.

Additional Amendments:

Risk Management/Indemnification Clause

Although it is not included in the Ministry's proposal, TRCA would like to reiterate our request for additional wording regarding risk management.

Given the potential liability associated with the operation of flood and erosion control infrastructure and programs for which conservation authorities are responsible, particularly in the face of increased liability exposures associated with climate change, some form of statutory immunity for the good faith operation of this essential infrastructure and programming is warranted. TRCA requests:

That a clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure and programming be added to the CA Act.

Enforcement and Compliance Enhancements

TRCA supports proclaiming un-proclaimed sections of the Act for better deterrents to non-compliance with section 28 regulations. During the 2017 CA Act review and amendments, TRCA was pleased to see substantial amendments were made to the Act to enhance enforcement mechanisms and the significantly higher (offence) penalties than those currently identified in the Act. The immediate need for improved deterrents to non-compliance is acute in TRCA's highly urbanized watersheds given current development and population pressures, increasing risks to health and safety and property damage from illegal activities, trespass, dumping and extreme weather events. To that end, as detailed in our previous comments, TRCA recommended:

That enhanced provisions for enforcement and compliance be added to the CA Act, including stop work orders, orders to comply, clarification for "after the fact" permits and a definition of an "officer" for enforcement purposes.

Further to the above, TRCA offers the following new comments regarding enforcement and compliance provisions under section 29 of the CA Act related to conservation lands, owned and managed by conservation authorities.

As urbanization pressures increase and the population expands within our communities, there is a growing responsibility on CAs to preserve and protect these valuable greenspaces. Ongoing abuse by a relatively small number of irresponsible users continues to degrade the ecological integrity of the lands and poses a significant threat to the public's enjoyment and safety. Community expectations to address unlawful activities on these lands in an efficient and effective manner and to provide patrons with a safe and enjoyable environment poses a significant challenge to CAs due to current legislative restrictions.

Deterrence and protection of conservation authority lands within the Province through s.29 of the CAA and associated regulation(s) should be consistent to the protections afforded under the *Provincial Parks and Conservation Reserves Act (PPCRA)*. Further, these efforts should demonstrate a commitment to providing CAs with the necessary tools to fulfill the obligations under a core mandate in the conservation and management of our lands. Attachment 1 to this letter identifies the current legislative restrictions in more detail along with recommended amendments to the CA Act and any associated regulations that would address these challenges.

On the basis that programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title, are considered mandatory, TRCA recommends that section 29 provisions of the CA Act and associated regulations for enforcement and compliance be consistent with the protections afforded under the *Provincial Parks and Conservation Reserves Act*.

Thank you once again for the opportunity to provide comments on this important initiative. TRCA would be pleased to discuss these and other opportunities for modernizing conservation authority operations and governance through amendments to the *Conservation Authorities Act* and associated regulations. Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned at your earliest convenience.

Sincerely,

<Original signed by>

John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer

Enclosure: Attachment 1: Conservation Authorities Act, S.29 Enforcement and Compliance Enhancements

BY E-MAIL

cc: Mr. Alex MacLeod, Ministry of Natural Resources and Forestry Conservation Policy Branch

Attachment 1:

Conservation and Management of Conservation Authorities Lands Conservation Authorities Act. S.29 Enforcement and Compliance Enhancements

Background:

Conservation lands, owned and managed by Ontario's Conservation Authorities (CAs), are often a gateway to the public, exposing them to the significant contributions of CAs in the protection and enhancement of the watersheds within the Province. They provide valuable opportunities for people to connect with nature and explore numerous outdoor recreational opportunities within their communities such as camping, hiking, swimming, picnicking, and relaxing within these natural spaces. CAs, combined, own approximately 146,000 hectares of property throughout the Province, often located within or adjacent to urban centres.

Officers appointed under s. 29 of the *Conservation Authorities Act (CAA)* are required to regulate and govern the use of conservation areas, campgrounds, and large land tracts, comparable to the role of Park Wardens within the Provincial Parks system. CA officers are customer service oriented and focus on a compliance-based approach through education and awareness, as opposed to taking punitive actions to achieve a desired outcome.

Compliance Challenges:

As urbanization pressures increase and the population expands within our communities, there is a growing responsibility on CAs to preserve and protect these valuable greenspaces. Ongoing abuse by a relatively small number of irresponsible users continues to degrade the ecological integrity of the lands and poses a significant threat to the public's enjoyment and safety. Community expectations to address unlawful activities on these lands in an efficient and effective manner and to provide patrons with a safe and enjoyable environment poses a significant challenge to CAs due to current legislative restrictions.

Deterrence and protection of conservation authority lands within the Province through s.29 of the *CAA* and associated regulation(s) should be consistent to the protections afforded under the *Provincial Parks and Conservation Reserves Act (PPCRA)* and should demonstrate a commitment to provide CAs with the necessary tools to fulfill the obligations under a core mandate in the conservation and management of our lands.

Unlawful activities in which CA officers are confronted with range from illegal and often commercial harvesting of flora and fauna; illegal hunting; drug cultivation; illegal dumping of waste soils and garbage; damage or theft of property; illegal use and damaging effects of off-road vehicles; liquor offences and criminal offences. These undesirable activities are proportionate to the pressures and challenges experienced within our Provincial Parks.

When comparing the *CAA* and the *PPCRA*, the short-form offence wording prohibitions of user activities are similar in nature, however, CA officers do not possess similar lawful authority to require identification, stop vehicles, inspect, search and seize items involved with substantial offences on our lands. Having similar officer authorities, as those defined within the *PPCRA*, achieves a coordinated compliance and enforcement approach within the Province for addressing unauthorized, unsafe and damaging activities within our protected parks and greenspace lands, particularly as it relates to Provincial Offences matters.

Legislative Restrictions:

Currently there is no definitive definition of an “officer” within the *CAA*, and the pending provisions under s. 30 of the *CAA* only identifies that “An authority may appoint officers for the purposes of ensuring compliance with the Act and regulations”. Appointed officers of the *CAA* are currently provided a class designation as Provincial Offences Officers through the Minister of Natural Resources and Forestry under section 1(3) of the *Provincial Offences Act (POA)*, with enforcement powers limited to the *CAA* and the *Trespass to Property Act*.

The *PPCRA* defines “officers” under s. 5(1) to include “a conservation officer, a park warden, a park ranger, a district manager, a conservation reserve manager, a superintendent and an assistant superintendent designated under s. 12”, which states that “The Minister may designate a person or class of persons as park wardens for the purpose of this Act and the regulations”. The “Powers of Officers” under the Act are outlined in s.37 where “An officer has all the power and authority of a member of the Ontario Provincial Police within a Provincial Park or conservation reserve”.

The authority afforded to “officers” within Provincial Parks is prescribed by specific Ontario Parks policies and provides lawful access to other relevant Provincial legislation in the execution of their duties, including the *Liquor Licence Act (LLA)*, *Off-Road Vehicles Act (ORVA)*, *Motorized Snow Vehicles Act (MSVA)*, and applicable provisions of the *Highway Traffic Act (HTA)*. Officers appointed under the *CAA* are not currently afforded the same level of authority.

Previous class designations, through the Minister of Natural Resources and Forestry, did provide CA officers the lawful authority under the *LLA*, *ORVA*, *MSVA* and the *ORVA*, however these legislative abilities were removed as a result of restrictions within those Acts, particularly regarding CA officer appointments and “officer” definitions. The enforcement of these additional Acts is restricted to defined “police officers” or “peace officers”, depending on the legislation.

Currently, Police resources to assist CA officers in the enforcement on our lands is becoming increasingly limited. Providing CA officers, the authority to effectively address unauthorized, unsafe and damaging activities serves the best interest of our stakeholders and patrons, reduces liability associated with unauthorized activities and better protects the integrity of the ecologically sensitive lands within our jurisdiction. Police Services provide invaluable assistance to CAs, particularly incidents of a criminal nature, however there is an expectation

that CA officers will address unlawful activities in an effective manner, particularly relating to Provincial offence-oriented matters.

In the past, Special Constable designations were provided to several CAs in the Province through the Ontario Provincial Police, and other Police Services, to assist officers in fulfilling the expectations of our communities to protect our greenspaces. These appointments provided lawful access to other important relevant Provincial Acts, such as *LLA*, *ORVA*, *MSVA*, *ORVA* and specific provisions of the *HTA*. In 2006, conservation authorities were notified that these designations would not be renewed past their expiry dates, not as a result of an abuse of power by any CA officer, but these “borrowed powers” would be better served by changing our existing legislation to enable CA officers to effectively address occurrences on our lands.

Requested CA Amendments and other Relevant Provincial Legislation:

Updating enforcement provisions within the *CAA*, similar to those afforded within the *PPCRA*, such as the authority to require identification; stop vehicles; alleviate obstruction of officers; inspect, search and seize items associated with substantial offences, in addition to amendments to the *CAA* regulation, such as the ability to remove individuals and cancel permits, as cited in Appendix A, will allow for increased enforcement efficiencies, deterrence of undesirable activities and preservation of evidence associated with offences committed within conservation lands.

Providing a clear definition of “officer” within the *CAA* would provide clarification of the authority of CA officers and allow for additional legislative tools to be added to CA class designations. As previously noted, several useful Provincial statutes are unavailable to CAs as a result of the current “officer” explanation within the *CAA*, as enforcement provisions within requested legislation is restricted to either a “peace officer” or “police officer”.

The *CAA* does not differentiate between “officers” appointed under s.28 (development/ natural hazard regulations) and s.29 (CA owned lands). It would be advantageous to have all “officers” appointed under the *CAA* defined as “peace officers”, and further define officers appointed under s.29 have “the power and authority of a member of the Ontario Provincial Police within a conservation area for the purposes of the *Liquor Licence Act*, *Off-Road Vehicles Act*, *Motorized Snow Vehicles Act* and provisions of the *Highway Traffic Act*”. This would provide opportunities for the Ministry to increase class designation opportunities to CA s.29 “officers” to include this additional authority and provide for the enforcement of certain provisions of legislation. Opportunities would exist for the Province to work with CAs (i.e. Conservation Ontario’s Regulatory Compliance Committee) to develop policies, procedures and training requirements with relation to the enhanced legislative enforcement initiatives and tools.

“Peace Officer”, as defined under the Criminal Code of Canada, identifies a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process. This definition encompasses the responsibilities of CA officers designated under s.29 of the *CAA*, and in the absence of a clear “officer” definition within the *CAA*, CA officers cannot rely on this broad definition when fulfilling their responsibilities, as it is open to interpretation by partnering

agencies, offending parties and defense attorneys, and significantly limits enforcement and compliance protections within our conservation areas.

Summary:

Conservation Authority owned lands are available to the public for active recreational opportunities within conservation areas and campgrounds, utilized by families for social events, fishing, swimming, boating and camping, to passive outdoor opportunities within larger, more remote land tracts and wildlife areas, popular for hiking, photography and birdwatching. These lands are a well-used resource by numerous user groups and the general public due to the proximity to more populous centers, and occurrences which endanger public and staff safety and cause significant damage to the natural environment are occurring more frequently. Public expectations exist for CA officers, appointed under s.29, to appropriately address conservation land offences, which are factually restrictive under our current legislation.

CA officers appointed under the CAA are full time, or long term contract employees within our agencies, and the requested amendments to the CAA, along with the addition of other relevant legislative authority, will ensure services are provided to adequately respond to the needs of the public and the protection of these lands. The additional authorities requested, as outlined within the attached appendix, will substantially improve compliance initiatives, ensure public and CA officer safety, and effectively deter undesirable activities and behaviors on our lands: