

Decision on Bill 197 legal challenge reaffirms right to environmental decision-making

By Mark PavilonsEditor

A court ruling on Minister's Zoning Orders (MZOs) has citizens' groups calling for changes. The Ontario Divisional Court determined that the Government of Ontario broke the law when it failed to comply with the public consultation requirements of Ontario's Environmental Bill of Rights (EBR). Specifically, in a decision released on Sept. 3, it declared that the Minister of Municipal Affairs and Housing acted "unreasonably and unlawfully" in failing to consult with the public on changes to the Planning Act regarding Minister's Zoning Orders (MZOs). "As Environmental Commissioner of Ontario for 15 years, I am heartened to see the Court uphold the rights of people to participate in government decision-making affecting the environment," said Gord Miller, Chair of Earthroots. "The Court's declaration is clear - the Government of Ontario broke the law in violating those rights." "The Environmental Bill of Rights provides very significant tools for the people of Ontario to know about, and participate in, decisions that affect their environment. Complying with the Ontario EBR is not 'optional,'" added Theresa McClenaghan, executive director of the Canadian Environmental Law Association (CELA). "In this decision, the Divisional Court has reaffirmed the requirement for the Ontario government to ensure those rights are provided to the public." In August 2020, after the passage of Ontario's controversial Bill 197, a legal challenge against the legislation was launched by: Earthroots, Ontario Nature, CELA, Cooper Price (a 17-year-old activist) and Michel Koostachin (who was born and raised in Attawapiskat). "This judgement is a win for the involvement of young people in the political process. Our leaders must start listening to our voices when legislating our future," said Cooper Price. Represented by Joseph Castrilli, Richard Lindgren and David Estrin of CELA, the parties to the lawsuit alleged that Bill 197 was enacted in a manner that failed to comply with the public notice and comment requirements of the EBR. The court agreed that the Minister should have consulted the public on the MZO amendments, given their potentially significant environmental impact. The court also noted that prior to the passing of Bill 197, the Auditor General of Ontario had informed the Minister that the public should be consulted on the MZO amendments, because of their environmental significance. But the Minister failed to do so. "The Government of Ontario chose to break the law and expand its powers to issue MZOs even after a warning from the Auditor General - before Bill 197 passed - that it was required to consult the public first. Such blatant disrespect for the law and our environmental rights should not be taken lightly," stated Dr. Anne Bell, Ontario Nature's Director of Conservation and Education. "The Court's declaration holds the government publicly accountable. The people of Ontario now know that the Government of Ontario broke the law. I hope the Court's decision will help ensure that the government doesn't do so again. But in fact it's already a repeat offender. It broke the law when it scrapped Ontario's cap-and-trade program back in 2018. And it broke the law again with its mandatory anti-carbon tax gas-pump stickers in 2019. This is the third time in as many years." The Court's decision doesn't change the Bill 197 amendments with respect to MZOs. They are still in place. These include greater powers to interfere with municipal planning and overrule decisions by municipal councils and planners - and to do so without giving public notice. "But at least the government's law-breaking is not hidden from Ontarians. We can and must demand better from our political leaders." Bell said citizens should be concerned about MZOs because they allow developers to "sidestep environmental protections, public consultation and transparent municipal planning processes and decision-making. They deprive the public of the opportunity to participate in critical land use decisions that may affect drinking water, farmland and green spaces in their communities." Issued by the Minister of Municipal Affairs and Housing, MZOs are used to directly zone land for particular purposes, without public notice or consultation. There is no opportunity for concerned citizens to appeal such orders. The provincial government has issued dozens of MZOs, many impacting prime farmland and natural areas. According to King resident Susan Lloyd Swail, the "rampant use of MZOs since 2018 is troubling as it shows a disregard for the rights of people to participate in government decision making. Our land use planning system relies on public participation and people want to have a say in shaping their communities." Many MZOs were issued on sensitive lands. If the normal public process were followed studies could have been conducted to minimize the impacts of those developments on the natural environment. With the current climate emergency escalating we need government to do more to reduce the loss of forests, wetlands, rather than fuel the crisis by bypassing environmental regulations. "If the government thought fast-tracking developments would reduce the cost of housing, it hasn't."