

Feature, MJSDL Keynote Lecture—*Environmental Accountability in Ontario*

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1. INTRODUCTION

Hello everybody. Thanks for coming tonight, I understand you had lots of other options. I'm going to talk a little bit about who I am and what I do, what is happening now to the *Environmental Bill of Rights*, and a bit about my climate report which, as you just heard, was probably what is leading to the public execution of the Office of the Environmental Commissioner of Ontario.

2. THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

So, who am I and what do I do? I'm an independent legislative officer. To the general public, we are sort of government. But for a lawyer, I'm not government. If you think about the theory of the different branches of government—the legislative, the judiciary, and the executive—every civil servant in Ontario owes a duty of loyalty to the elected government of the day. I most definitely do not; they don't like that much. In Ontario, as of last November, there were nine independent legislative officers, each of those appointed unanimously by all the members of the provincial legislature to serve them and, through them, the public in our respective areas. The auditor general, the ombudsman, the chief elections officer—these are, I think, common across all jurisdictions now. We also had a French-language commissioner, a children's advocate, an integrity officer, a freedom of information and protection of privacy

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officer, and an environmental commissioner. From a legal theory point of view, these offices are odd; it's an American graft on a British parliamentary system. In the British parliamentary system, who should be speaking for the public interest and who should the public be able to trust on environmental matters? The government of the day ought to be, in theory, trustworthy to tell the truth and to protect critical public interests, but they regularly fall short.

So here we have this American graft of independent officers. My office is unique; there has been no other freestanding environmental commissioner in Canada. I'm a little bit like the congressional budget office—for Americans, that is usually a reference that they understand—for energy, environment, and climate. I have been the guardian of the *Environmental Bill of Rights* (EBR) which provides a series of procedural tools for public participation and protecting the environment.¹ In addition to that, most of my time has gone into reporting to the legislature, and, through them, to the public, on energy, environment, and climate. That means that I have had the almost impossible task of being non-partisan, but not neutral, on the issues that the MPPs I serve most disagree about. Hopefully they all agree, for example, that we should have fair elections. Hopefully they all agree that children deserve some kind of protection. But there is often much less consensus on the things that I do. That has always been an interesting challenge.

3. THE ENVIRONMENTAL BILL OF RIGHTS

The roots of the EBR can be traced back to *Roncarelli v Duplessis*,² one of the classic legal cases about the limits of administrative discretion: to what extent should one just trust the government to do the right thing, to what extent do there need to be limits to government power? After *Roncarelli v Duplessis*,³ we had Justice “Vinegar Jim” McRuer. There was a proposal in Ontario in 1964, to adopt a law that would allow the government—because after all they are from the government, we should trust them—to put people in jail for seven days any number of times consecutively, until the people talk, because there was a moral panic about organized crime.⁴ The government argued that nobody had to worry unless they had something to hide, and as to the people that had something to hide, why were we worried about protecting them anyway? There was an amazingly strong public revulsion to this proposal.⁵ It led to an inquiry being set up, what they called the “Inquiry into Civil Rights,” in the sense of civil rights being about the relationship between individuals and government.⁶ Through this inquiry, Justice McRuer developed what we think of as administrative law, this fundamental idea that anyone whose legal or economic rights are subject to government discretion has a right to things like notice, an opportunity to comment, reasons, and an opportunity to appeal. His report broke stunning new ground in 1968, almost exactly 50 years ago.

¹ SO 1993, c 28 [EBR].

² 1959 SCR 121, 1959 CanLII 50 (SCC).

³ *Ibid.*

⁴ Bill 99, *An Act to Amend The Police Act*, 2nd Sess, 27th Leg, Ontario, 1964.

⁵ “Shocked, Angry Outcry on Cass Proposals”, *Toronto Daily Star* (20 March 1964) 1.

⁶ Ontario, *Royal Commission Inquiry into Civil Rights* (Toronto: Queen's Printer, 1968) (The Honourable James Chalmer McRuer).

About a generation later, by the late 1980s, early 1990s, people were becoming aware that protecting property and economic rights didn't do enough. Lots of other things affect us, including, for example, climate change, but nobody has a clear individual legal, economic, or property right to air you can breathe or a climate you can survive in. The question became again: is it enough to blindly trust the government? When I was young, whatever the Attorney General said was, by law, the public interest. No one else could speak for the public interest. What the Attorney General said *was* the public interest. Did the Attorney General always speak for, for example, the trees, or for you? Clearly not. We have ample examples that we really can't just blindly trust the government to look after the environment.⁷ Then the question is, who else is there? What other mechanisms are there to govern human societies? Do we want, for example, the church to speak for us? The army? Big corporations? What else is there? The idea of the *EBR* was that there could be something else, that there could be some kind of counterbalance through the voice of the public. It's a little naïve, maybe, but this was the idea: that the environment is too important to be left only to government. That within government, the environment is too important to be left only to the Ministry of Environment, a ministry that has never had much power over other ministries.

How can one actually make this happen? There was a lot of nervousness about creating US-style legal rights; there was strong objection in the business community to creating citizen suits. So, the *EBR* created some process rights, which are not what the general public thinks of as rights at all. But they are at least an opportunity for the public to be given notice, and to comment, and hopefully to have some transparency, and maybe that would lead to accountability.

The main tool that the government has been required to use is to give notice on what is called the Environmental Registry when they propose to make an environmentally-significant decision.⁸ There have been quite a lot of these notices published over the years. The registry has been really quite useful. It gets about 1,000 hits a day.⁹

The Environmental Commissioner of Ontario (ECO) doesn't have any order power; I can't make anybody do anything. The public usually wants me to have a crystal ball, and a magic wand, and preferably a cheque book. What I have instead is a flashlight, and a can opener, and a megaphone. So, what can one do with those things? We can help, we can encourage, we can embarrass, we can coax. I've done a lot of embarrassing and coaxing. For example, when I was first appointed as Environmental Commissioner, government compliance with the *EBR* was appalling. One of the key features of the *EBR* was that, as I mentioned, the government is required to give notice when they are proposing an environmentally-significant decision. The *EBR* also creates a limited right of appeal for the public, for certain kinds of decisions, but that right of appeal is only triggered when the government posts the decision.¹⁰ What mechanism might the government use so that no one can appeal? If you don't post the decision, there is no

⁷ See e.g. Rachel Carson, *Silent Spring* (Boston: Houghton Mifflin, 1962); Jordan Kleinman, "Love Canal: A Brief History" (last visited 11 May 2019), online: *SUNY Geneseo* <www.geneseo.edu/history/love_canal_history>; "Agent Orange" (last updated 12 April 2019), online: *Encyclopedia Britannica* <www.britannica.com/science/Agent-Orange>.

⁸ *EBR*, *supra* note 1, s 27.

⁹ This estimation is based on internal ECO statistics.

¹⁰ *Supra* note 1, ss 38 (right of appeal), 40 (time to appeal counts from date of notice).

right of appeal. When I was appointed there were 1,800 decisions that they had made and not posted, and that was under an environmentally-committed government.¹¹ What we found is, in any situation where the fox is in charge of the hen house, the hens are not very well off. We have spent a lot of time helping and encouraging people and giving the ministries grief, and those postings were brought up to date.

The ECO office had a wonderful website.¹² If you are doing research on any environmental topic and if Ontario data should be useful, we've got 25 years' worth of information there. This week is actually the week of the anniversary, the 25th anniversary of the *EBR*; it was proclaimed February 15, 1994.¹³ We also had useful tools on the website. For example: because the government's own software is so poor, you have to go and search the registry all the time. You can't just register and say, "I want to know if the government posts something about climate change or Blanding's turtles." So, we hired a kid to write a hack. The government couldn't figure it out, but this kid did. Through that tool,¹⁴ we've sent out a million free notices so that people know when the government is making decisions or proposing to make a decision that interests them.

4. RECENT ECO REPORTS

As I mentioned, most of my time goes into writing reports. Today, I am going to talk about my three most recent reports. The 2018 energy conservation report is about electricity.¹⁵ One of the pollsters in Ontario put this quite gently, that politicians in Ontario have always had a tenuous grasp of the economics of energy, and particularly electricity, and now their grasp is flimsier than ever. Since I have this old-fashioned view that public policy ought to be based on facts, it drives me crazy when politicians say things about energy and, especially, electricity that are not true. Things that are clearly not true but get repeated over and over *ad nauseum*. I thought that perhaps if we documented the answers to key questions this would be of some help. Apparently not, but our report has lots of answers about electricity, for those interested.

In September, we put out our 2018 greenhouse gas progress report.¹⁶ The cover depicts where we were as being bright green and blue sky, and where we are going as brown and stormy skies. This is a fair summary of what is in the report because the new government was busy tearing up basically everything Ontario was doing about climate, and energy conservation, and lots of other things that I think are really important, especially for young people. In response,

¹¹ Environmental Commissioner of Ontario, *Back to Basics*, vol 1 (*Respecting the Public's Voice on the Environment*) (Toronto: ECO, 2018) at 79, online (pdf): *ECO* <docs.assets.eco.on.ca/reports/environmental-protection/2018/Back-to-Basics.pdf> [ECO, *Back to Basics*, vol 1].

¹² An archived version of the website may still be available (*Environmental Commissioner of Ontario*, online: *ECO* <eco.auditor.on.ca> [*Environmental Commissioner of Ontario*]).

¹³ *Supra* note 1.

¹⁴ "Environmental Registry Alerts" (last visited 11 May 2019), online: *ECO* <alerts.ecoissues.ca>.

¹⁵ Environmental Commissioner of Ontario, *Making Connections: Straight Talk about Energy in Ontario* (Toronto: ECO, 2018), online (pdf): *ECO* <docs.assets.eco.on.ca/reports/energy/2018/Making-Connections.pdf> [ECO, *Making Connections*].

¹⁶ Environmental Commissioner of Ontario, *Climate Action in Ontario: What's Next?* (Toronto: ECO, 2018), online (pdf): *ECO* <docs.assets.eco.on.ca/reports/climate-change/2018/Climate-Action-in-Ontario.pdf> [ECO, *Climate Action*].

the government said, in writing, that they did not take kindly to my criticism.¹⁷ I do not actually know why they decided on a public execution of my office, but this is the only report of mine to which they have officially objected.

In November, we put out our 2018 environmental protection report,¹⁸ as required by law. I joke that the environment report this year was brought to you by the letter “w”: water, wetlands, woodlands, wildlife, and wilderness. It’s a back to basics report. We knew there would be a new government after the election, whoever it would be. New governments tend to be interested in shiny, new things and not very interested in keeping up with important, old things, so we thought we would remind people why the basics are important.

Those were our three most recent reports and they’re all available in both official languages. Our *EBR* explanation is available in 15 languages, including three Indigenous languages.¹⁹ We also have a webinar for each report, so if you wanted to learn about, for example, electricity while you were on the elliptical or folding laundry, it’s all on the website.

We also do special reports. We did one on waste, waste diversion, and recycling.²⁰ Ontario is the world birthplace of the blue recycling box,²¹ and Ontarians have a deep faith in the blue box. People seem to think it is okay to drive an SUV and fly as long as they put something in the blue box, no matter what it is, whether it belongs there or not. In fact, the blue box system has high financial costs and modest environmental benefits.²²

We also did a report on soil health,²³ soil being one of those things that people take for granted. The Ministry of Agriculture had not focused on soil health, they had been so focused on other things. The people that had the expertise retired and weren’t replaced, while, over a generation, soil-carbon levels steadily declined on more than 80 percent of Ontario farms.²⁴

¹⁷ Letter from The Honourable Rod Phillips, Minister of the Environment, Conservation, and Parks (Ontario), to The Honourable Dianne Saxe, Environmental Commissioner of Ontario (2018), online (pdf): *ECO* <docs.assets.eco.on.ca/reports/climate-change/2018/Climate-Action-in-Ontario-Comments.pdf>

¹⁸ Environmental Commissioner of Ontario, *Back to Basics*, (Toronto: ECO, 2018), online (pdf): *ECO* <docs.assets.eco.on.ca/reports/environmental-protection/2018/Back-to-Basics.pdf>.

¹⁹ “*The Environmental Bill of Rights: Your Environment, Your Rights* Is Now Available In 10 Additional Languages” (5 June 2018), online (blog): *ECO* <eco.auditor.on.ca/blog/eb-10-additional-languages>; “*The Environmental Bill of Rights: Your Environment, Your Rights* Is Now Available In Cree, Oji-Cree, and Ojibwe” (21 June 2018), online (blog): *ECO* <eco.auditor.on.ca/blog/the-environmental-bill-of-rights-your-environment-your-rights-is-now-available-in-cree-oji-cree-and-ojibwe>.

²⁰ Environmental Commissioner of Ontario, *Beyond the Blue Box: Ontario’s Fresh Start on Waste Diversion and the Circular Economy* (Toronto: ECO, 2017), online (pdf): *ECO* <docs.assets.eco.on.ca/reports/special-reports/2017/Beyond-the-Blue-Box.pdf> [ECO, *Blue Box*].

²¹ Stewardship Ontario, *The Story of Ontario’s Blue Box* (2013) at 4, online (pdf): *Stewardship Ontario* <stewardshipontario.ca/wp-content/uploads/2013/02/Blue-Box-History-eBook-FINAL-022513.pdf>.

²² ECO, *Blue Box*, *supra* note 20 at 5–6.

²³ Environmental Commissioner of Ontario, *Putting Soil Health First: A Climate-Smart Idea for Ontario* (Toronto: ECO, 2016), online (pdf): *ECO* <media.assets.eco.on.ca/web/2016/11/Putting-Soil-Health-First.pdf>.

²⁴ *Ibid* at 9.

That impoverishes the soil and makes the soils much more vulnerable to droughts.²⁵ And guess what, we have more droughts now because of climate change. It makes soil more vulnerable to flooding,²⁶ and we have more flooding because of climate change. It makes the soil more likely to erode into water courses, carrying phosphorus that feeds the algae, and we get toxic algae blooms.²⁷ So, we have all these big impacts. And of all of the climate solutions, none of which are very easy, one of the easiest is to plant cover crops, keep live roots in the soil, and put organic matter back in the soil.²⁸ That report provoked a new provincial soil health strategy.²⁹

We wrote a report about storm water flooding,³⁰ because a central theme of how climate change is going to affect us is about water. For people who live in cities, one of the first places where climate change is already starting to hit is storm water. We have in Canada, generally, methods of paying for storm water management that don't make sense and don't work.³¹ We know this, we've been seeing it for years. In the United Kingdom in 2007, they had the largest destruction of civil infrastructure since the Blitz in World War II, over £3 billion of flood damage from heavy rain—really heavy rain that overwhelmed the sewer systems and flooded.³² It wasn't that the ocean flooded. It wasn't even so much that the rivers flooded, it was heavy rain. They have learnt from that, that storm water cannot be something that is managed only at public expense on public land. I always say to my kids, "There are enough mistakes around, make new ones." We shouldn't have to make the old ones again; we should be able to learn from other people's mistakes. The United Kingdom has already shown us what happens when we don't get smart about storm water in the face of climate change, and we are doing the same things they did wrong.

My goals when I was appointed as Commissioner were to do three things: (1) To serve the Ontario legislature, to give them more understanding on the *EBR*, and on energy, environment, and climate. We did that. (2) To improve the effectiveness of the *EBR* and we have done that. For example, those 1,800 decisions they hadn't posted were down to 100 within two years.³³ (3) To catalyse better environmental, energy, and climate outcomes for and with the people of Ontario. We're really proud of the work that we've done and at least we're being abolished for doing a good job. Some of the successes we have contributed to include modernizing

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid* at 10.

²⁸ *Ibid* at 4.

²⁹ Ontario, Ministry of Agriculture, Food, and Rural Affairs, *New Horizons: Ontario's Agricultural Soil Health and Conservation Strategy* (2018), online (pdf): *OMAFRA* <www.omafra.gov.on.ca/english/landuse/soil-strategy.pdf>.

³⁰ Environmental Commissioner of Ontario, *Urban Stormwater Fees: How to Pay for What We Need* (Toronto: ECO, 2016), online (pdf): *ECO* <media.assets.eco.on.ca/web/2016/11/Urban-Stormwater-Fees.pdf>.

³¹ *Ibid* at 15.

³² Sinead Cruise, "PwC Says Economic Impact from December's UK Storms Could Top \$4 Billion", *Reuters* (4 January 2016), online: *Reuters* <uk.reuters.com/article/uk-britain-floods-pwc-idUKKBN0UI11R20160104>.

³³ ECO, *Back to Basics*, vol 1, *supra* note 11 at 79.

Ontario's *Municipal Legislation Act*,³⁴ the inclusion of energy costs and green infrastructure in *Asset Management Planning for Municipal Infrastructure*,³⁵ and the end of the snapping turtle hunt,³⁶ recognizing that no win was just because of us. (Every success has many mothers.) For example, I am very proud that every municipality in Ontario now has the power to pass climate change by-laws.³⁷

5. A WRENCHING HALT

So, what now? Well since June 2018, lots of bad things have happened. Our *Climate Change Mitigation and Low-carbon Economy Act*, which included our climate targets, and our cap and trade system, and many other good programs, is gone.³⁸ A Greenpeace lawsuit forced the government to comply with the *EBR* and post its revocation of the climate law for public comment even though they had already gone to second reading.³⁹ There were 11,000 comments in only 30 days.⁴⁰ Only 1 percent supported cancelling cap and trade but the government didn't care.⁴¹ The *Green Energy Act* is also gone.⁴²

752 clean energy contracts are gone,⁴³ even though the Independent Electricity System Operator tells us that we won't have enough electricity to go around at peak by 2023, only four years from now.⁴⁴ In terms of our reputation around the world, in 2014 Ontario opened up to international markets and invited proposals to build renewable energy at the cheapest cost.⁴⁵ This was called the Large Renewable (energy) Procurement. Ontario invited proposals from all around the world. There were 103 expressions of interest, and 16 of them after two years of very expensive work were awarded power purchase contracts.⁴⁶ Most of them had

³⁴ Bill 68, *Modernizing Ontario's Municipal Legislation Act*, 2nd Sess, 41st Leg, Ontario, 2017, (assented to 30 May 2017), SO 2017, c 10.

³⁵ O Reg 588/17, s 1(1).

³⁶ Environmental Commissioner of Ontario, *Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario* (Toronto: ECO, 2017) at 60, online (pdf): [ECO <docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices.pdf>](http://ECO.docs.assets.eco.on.ca/reports/environmental-protection/2017/Good-Choices-Bad-Choices.pdf) [ECO, *Good Choices*].

³⁷ *Municipal Act*, SO 2001, c 25, s 10(2); *City of Toronto Act*, SO 2006, c 11, Sched A, s 8(2).

³⁸ SO 2016, c 7 (repealed on 14 November 2018).

³⁹ Mike Crawley, "Greenpeace Suing Ontario Government over Cancellation of Cap and Trade Program", *CBC News* (11 September 2018), online: [CBC <www.cbc.ca/news/canada/toronto/greenpeace-suing-ontario-government-over-cancellation-of-cap-and-trade-program-1.4819250>](http://www.cbc.ca/news/canada/toronto/greenpeace-suing-ontario-government-over-cancellation-of-cap-and-trade-program-1.4819250).

⁴⁰ "Bill 4, Cap and Trade Cancellation Act, 2018" (15 November 2018), ERO 013-3738, online: [Environmental Registry of Ontario <ero.ontario.ca/notice/013-3738#comments-received>](http://EnvironmentalRegistryofOntario.ero.ontario.ca/notice/013-3738#comments-received).

⁴¹ "What Did the Public Say about Cancelling Cap and Trade?" (15 January 2019), online (blog): [ECO <eco.auditor.on.ca/blog/what-did-ontarians-say-about-cancelling-cap-and-trade>](http://ECO.eco.auditor.on.ca/blog/what-did-ontarians-say-about-cancelling-cap-and-trade).

⁴² SO 2009, c 12, Sched A (repealed 1 January 2019).

⁴³ ECO, *Climate Action*, *supra* note 16 at 76.

⁴⁴ ECO, *Making Connections*, *supra* note 15 at 274.

⁴⁵ "Large Renewable Procurement" (last visited 17 June 2019), online: [Independent Electricity System Operator <www.ieso.ca/en/Sector-Participants/Energy-Procurement-Programs-and-Contracts/Large-Renewable-Procurement>](http://IndependentElectricitySystemOperator.ieso.ca/en/Sector-Participants/Energy-Procurement-Programs-and-Contracts/Large-Renewable-Procurement).

⁴⁶ ECO, *Climate Action*, *supra* note 16 at 76.

significant Indigenous participation.⁴⁷ The bidders then spent millions more in consultation and approvals processes. Ten of those projects have now been cancelled even though we need the power, despite the millions of dollars and years of work invested in them.⁴⁸

The government campaigned on a promise that they wouldn't touch the Greenbelt, a protected area around the Greater Toronto Area.⁴⁹ In the last week of November 2018, their *Environment Plan* also pledged to protect the Greenbelt.⁵⁰ Seven days later, they introduced Bill 66, legislation to allow every municipality to poke holes in the *Clean Water Act* adopted after Walkerton, the *Greenbelt Act*, and almost every other environmental law that might get in the way of developers building on wetlands, woodlands, and agricultural land.⁵¹

They are now going to "improve" the *Endangered Species Act*.⁵² I have already reported on how ineffective the government was in enforcing the *Endangered Species Act* as it was before.⁵³ Then there is the so-called *Growth Plan*, which is supposed to control sprawl in the Golden Horseshoe.⁵⁴ The *Growth Plan* has all sorts of lovely greenwashing at the front. It talks about all the great things it's going to do but, when you get down to brass tacks, where it makes municipalities put people is forcing additional sprawl.

Funding for all kinds of programs has been killed. I was just up in Timmins at the Mushkegowuk Climate Summit. The Mushkegowuk Council represents Cree First Nations in the far north of Ontario where they are seeing enormous changes. Climate change moves faster the farther north you are. A tiny amount of money provided a salary for 16 young people in

⁴⁷ IESO, "LRP I RFP - Selected Proponents List" (2016), online (pdf): *IESO* <www.ieso.ca/-/media/Files/IESO/Document-Library/energy-procurement/LRP/LRPI-Selected-Proponent-List-20160412.pdf>.

⁴⁸ ECO, *Climate Action*, *supra* note 16 at 77.

⁴⁹ "For the People" (last visited 13 May 2019), online: *Ontario PC* <www.ontariopc.ca/plan_for_the_people>.

⁵⁰ Ontario, Ministry of the Environment, Conservation, and Parks, *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (Toronto: Queen's Printer, 2018) at 48, online (pdf): *OMECP* <prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf> [Ontario, *Environment Plan*].

⁵¹ *An Act to Restore Ontario's Competitiveness by Amending or Repealing Certain Acts*, 1st Sess, 42nd Leg, Ontario, 2018 (assented to 3 April 2019), SO 2019, c 4. After enormous public opposition, including from the Federation of Agriculture, the part of Bill 66, Schedule 10, that specifically attacked the Greenbelt was withdrawn (Rob Ferguson, "Ford Government Backs Down on Plan That Could Have Opened up the Greenbelt to Development", *Toronto Star* (23 January 2019), online: *The Star* <www.thestar.com/politics/provincial/2019/01/23/ford-government-backs-down-on-plan-that-could-have-opened-up-the-greenbelt-to-development.html>). However, a large number of other environmental protections that restricted development were weakened by a series of government actions, including Bill 66, *supra* note 51; Bill 108 (*An Act to Amend Various Statutes with Respect to Housing, Other Development and Various Other Matters*, 1st Sess, 42nd Leg, Ontario, 2019 (assented to 6 June 2019), SO 2019, c 9); and amendments to the *Growth Plan* (Ontario, Ministry of Municipal Affairs and Housing, *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* (2019), online: *OMMAH* <www.ontario.ca/document/place-grow-growth-plan-greater-golden-horseshoe> [*Growth Plan*]).

⁵² Ontario, Ministry of the Environment, Conservation, and Parks, "Ontario Taking Steps to Improve the Endangered Species Act: Government Invites Public Input on Increasing Program Efficiencies, Achieving Positive Outcomes for Species" (18 January 2019), online: *OMECP* <news.ontario.ca/ene/en/2019/01/ontario-taking-steps-to-improve-the-endangered-species-act.html>.

⁵³ ECO, *Good Choices*, *supra* note 36 at 218–48.

⁵⁴ *Growth Plan*, *supra* note 51.

these tiny villages. One of them told us, they have had to learn by themselves about energy, and energy conservation, climate change, and learn how to explain it in their native languages. He was telling us how he personally changed all 117 light bulbs in his village. Now, all these young people are being fired. Essentially all the climate programs are being cancelled.⁵⁵ Most of the energy conservation programs have been cancelled, and electricity conservation is also now on the block.⁵⁶

In addition, they are shooting the watchdog—that's me. They had a mini budget bill in November 2018, they call this act the *Restoring Trust, Transparency and Accountability Act*, and they put in, at the back of that, some amendments to weaken the *EBR* with no notice and no effective consultation.⁵⁷ They won't tell us when it's going to come into effect. It's how they show their level of respect for our work, that they won't even tell us when we're being eliminated. It'll be on or before May 1, 2019.⁵⁸ So, our report this year will not likely be the same. We have an obligation to report about the operation of the *EBR*, so I have been doing a report card every year about how well ministries comply with it. That is the only part of my job that the Auditor General must actually take on.⁵⁹ She will publish some kind of report. She will have the authority, but not the obligation to report on energy conservation and on greenhouse gas emissions,⁶⁰ and I'm sure she doesn't come at those from the same point of view that I do.

The outreach work that we do will be over. Responsibility for outreach about the *EBR* itself is going to the Ministry of Environment.⁶¹ In other words, they are supposedly going to be encouraging the public to use a tool that is intended to hold the government to account. How high a priority do you think that is going to be for them? In terms of outreach on substantive issues of environment, climate, and energy, I think that is over. I gave 125 talks mostly on climate change in 2017; the Auditor General doesn't do that. So, environmental rights will still exist in Ontario, but they won't be as well-known, they will be harder to use, and they will be much less likely to produce results.

⁵⁵ ECO, *Climate Action*, *supra* note 16 at 11.

⁵⁶ See *ibid* at 210–35. The cancellations were announced on 21 March 2019 by the Honourable Greg Rickford (Ministry of Energy, Northern Development, and Mines, News Release, “Ford Government Taking Bold Action to Fix Hydro Mess: Comprehensive Reform to Conservation Programs, Ontario Energy Board and End of Fair Hydro Plan” (21 March 2019), online: <news.ontario.ca/mndmf/en/2019/03/ford-government-taking-bold-action-to-fix-hydro-mess.html>.

⁵⁷ Bill 57, *An Act to Enact, Amend and Repeal Various Statutes*, 1st Sess, 42nd Leg, Ontario, 2018, Schedule 15 (assented to 6 December 2018), SO 2018, c 17 [Bill 57].

⁵⁸ The Office of the Environmental Commissioner of Ontario became part of the Office of the Auditor General of Ontario on April 1, 2019. Materials released before this date are available as of the time of publication at *Environmental Commissioner of Ontario*, *supra* note 12, online: <eco.auditor.on.ca>. Materials released after this date are available as of the time of publication at *Office of the Auditor General of Ontario*, online: <auditor.on.ca>.

⁵⁹ Bill 57, *supra* note 57, Schedule 15, cl 6.

⁶⁰ *Ibid*.

⁶¹ *Ibid*, Schedule 15, cl 2.

6. CLIMATE CHANGE IS HERE NOW

I thought I would tell you a little bit about my climate work because that is probably why we're being eliminated and it's even more important to you, as young people, than it is to me. If you don't remember anything else I said: climate change isn't as bad as we think, it's worse. I was an environmental and energy lawyer for 40 years before I became Commissioner and I thought I had a pretty good sense as to how bad climate change is; I was wrong. I have been blown away as Commissioner by how much worse it is, and how much faster it's coming than I knew. We also know that most people in Canada know that climate change is real, but they often don't yet think, "It matters to me." A lot of people still think it's about polar bears, or people on little islands somewhere far away, or people in the future, but in fact it's here already. You read a lot in official reports about 2100. Lots of reports say, "This is going to happen by 2100, that is going to happen by 2100." By and large, no one cares about 2100. It's too far away. But today's young children, if they have the kind of life expectancy that we enjoy, they are going to see 2100. So, I ask every audience, are there any young people you care about? I'm very fond of my grandchildren even though they are really noisy. Most people have some young person they care about. Climate change work is really hard, it's like walking a knife edge between hope and despair every day,⁶² so you have to do it for somebody.

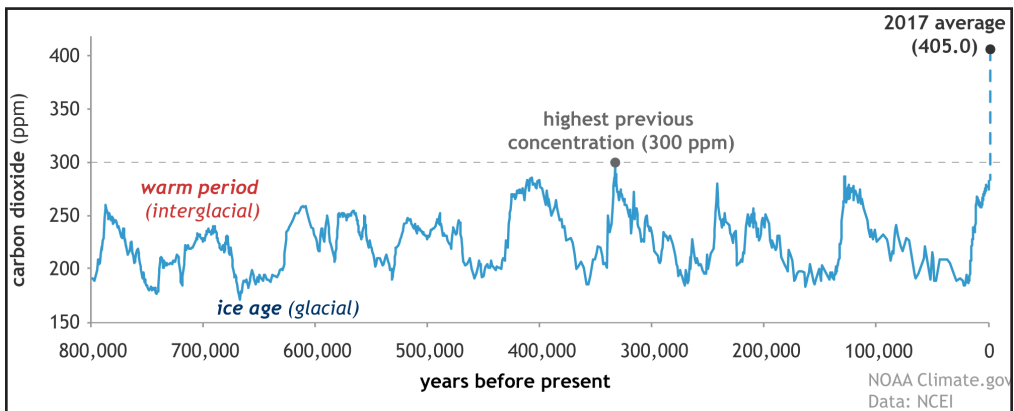


Figure 1: The estimated concentration of atmospheric CO₂ (carbon dioxide) during the past 800,000 years, including ice ages and warm periods.⁶³

The most important greenhouse gas that we put out is carbon dioxide.⁶⁴ People who don't want to take action say, "Maybe it's just natural cycles." So, let's look at natural cycles. There are lots of natural cycles, e.g. orbital wobbles, solar cycles, volcanoes, ice ages, ocean oscillations. They have been happening for many millions of years; they will continue to happen. By and

⁶² Seth Klein, "Final Farewell to the CCPA" (20 December 2018), online (blog): *PolicyNote* <www.policynote.ca/final-farewell-to-the-ccpa>.

⁶³ National Oceanic and Atmospheric Administration, based on EPICA Dome C data (D Lüthi et al, "High-resolution Carbon Dioxide Concentration Record 650,000–800,000 Years before Present" (15 May 2008) 453 *Nature* 379) provided by NOAA NCEI Paleoclimatology Program, online: *NOAA* <www.climate.gov/sites/default/files/paleo_CO2_2017_2000.gif>, cited in Rebecca Lindsey, "Climate Change: Atmospheric Carbon Dioxide" (1 August 2018), online: *NOAA* <www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>.

⁶⁴ ECO, *Climate Action*, *supra* note 16 at 20.

large, carbon dioxide, through all those natural cycles, stayed between 180 and 280 parts per million (ppm).⁶⁵ As shown in Figure 1, the difference between 180 and 280 ppm is enough for the difference between ice ages and a habitable environment for dinosaurs.⁶⁶ We blew past 280 ppm in 1860.⁶⁷ 350 ppm is our best guess as to the highest level of carbon dioxide that we can have in the atmosphere for long and still have the kind of world that existed when I was young, a world with coral reefs and mountain glaciers, and fairly stable weather.⁶⁸ It takes about a generation between the time we put climate pollution in the air and the time we start to feel it.⁶⁹ We are now about a generation after 1988 and what is happening to coral reefs around the world, and mountain glaciers, and predictable weather?

It's really scary that we are now permanently over 400 ppm. I'm from an evidence-based profession, and I guess you as future lawyers all aspire to evidence-based professions. The great thing about evidence is that it tells us something about what has happened already, but the bad thing about evidence is also that it only comes from what has happened already. What happened to humans the last time carbon dioxide was over 400 ppm? It's never happened before, there were no humans the last time.⁷⁰ So, we are now in completely uncharted territory, and we are getting there faster, and faster, and faster. The curve is going up two and a half times as fast now as it did in the 1990s, and that is not that long ago.

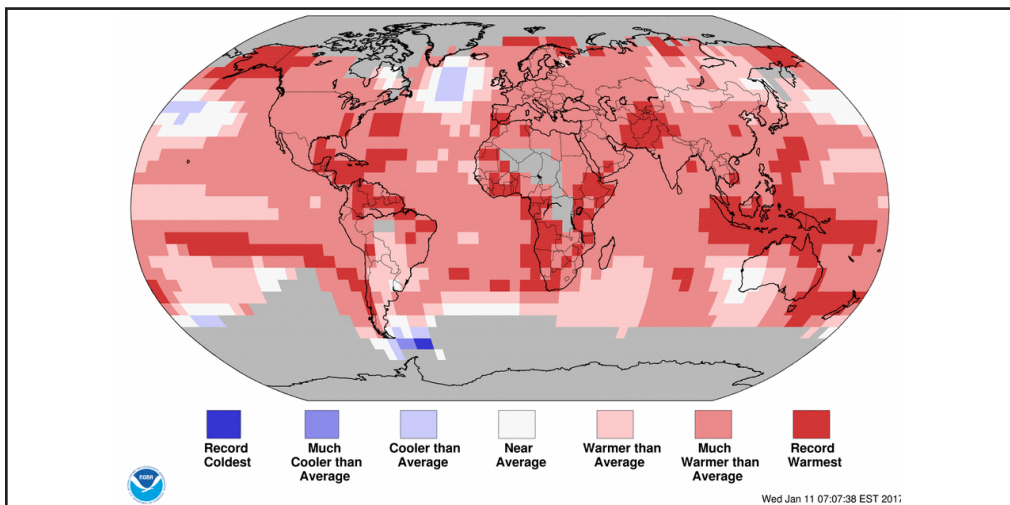


Figure 2: 2016 average annual temperatures compared to historical averages.⁷¹

⁶⁵ Lindsey, *supra* note 63.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ ECO, *Climate Action*, *supra* note 16 at 20.

⁶⁹ *Ibid* at 21.

⁷⁰ Lindsey, *supra* note 63.

⁷¹ NOAA's National Centers for Environmental Information (NCEI), online: [NOAA <www.ncdc.noaa.gov/monitoring-content/sotc/global/map-percentile-mntp/map-percentile-mntp-201601-201612.gif>](http://www.ncdc.noaa.gov/monitoring-content/sotc/global/map-percentile-mntp/map-percentile-mntp-201601-201612.gif), cited in NOAA's National Centers for Environmental Information (NCEI), "State of the Climate: Global Climate Report for Annual 2016", *NOAA's NCEI* (January 2017), online: www.ncdc.noaa.gov/sotc/global/201613.

What does that extra carbon dioxide do? It acidifies the oceans, but most of it is trapping extra heat. Where is all that heat? The last four years were the four hottest years in human civilization. Figure 2 is from 2016, and the dark red is record heat.⁷² We blew away records all around the world for heat, we blew away records for how many records we blew away, we blew away records by how much we blew away records.

Notice that, in Figure 2, there is a lot of dark red at the top where the Arctic is;⁷³ the Arctic is warming faster than most of the world. There are only a couple of places in Figure 2 that are blue, cooler than average.⁷⁴ What is happening there? We are melting the ice caps and putting cold fresh water on top of the ocean where it interferes with ocean currents. This reduces the temperature difference between the Arctic and the mid-latitudes and the equator. One of the things that temperature difference drives is the winds. That is probably why we are starting to see the jet stream be slower and wavier. I'm told that Ontario, and Canada, used to be famous in weather circles for 'hit-and-run' weather. What was hit-and-run weather? It meant that we could generally count on weather only lasting three days. If it's raining, it's only going to rain for three days. If it's really cold, it's only going to be really cold for three days. The jet stream would push the weather through, and you would have something else. Now, it can stay longer, and because the jet stream is slower and wavier, sometimes polar air can fall out of the Arctic, causing a deep freeze where we are, while warm air goes up to the Arctic.⁷⁵ Last year at Christmas it was 50 degrees Fahrenheit above normal at the North Pole.⁷⁶ It is all getting wacky.

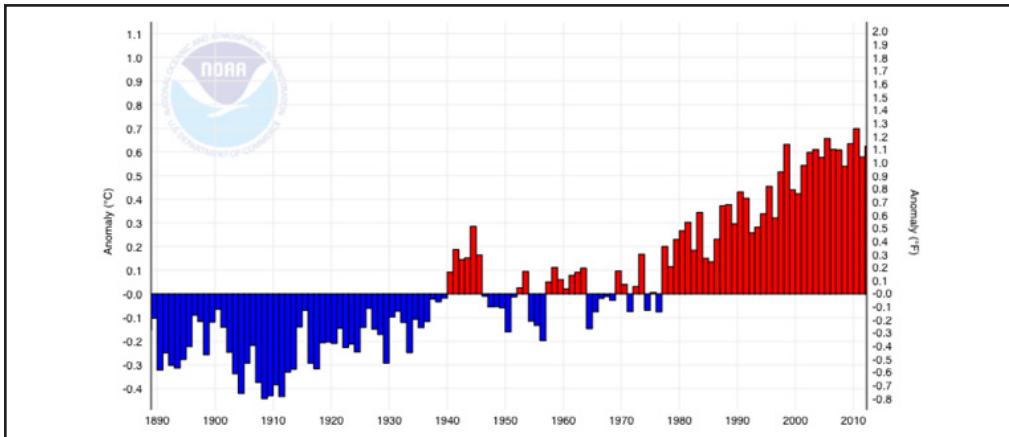


Figure 3: Anomalies in global average annual temperature compared to the 20th century average.⁷⁷

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ ECO, *Climate Action*, *supra* note 16 at 23.

⁷⁶ Jason Samenow, "North Pole Surges above Freezing in the Dead of Winter, Stunning Scientists", *The Washington Post* (26 February 2018), online: *The Washington Post* <www.washingtonpost.com/news/capital-weather-gang/wp/2018/02/26/north-pole-surges-above-freezing-in-the-dead-of-winter-stunning-scientists/?utm_term=.31a274604c0c>.

⁷⁷ NOAA National Centers for Environmental Information, "Climate at a Glance: Global Time Series" (last visited 13 May 2019), online: NOAA <www.ncdc.noaa.gov/cag/global/time-series/globe/land_ocean/>.

Where is all the extra heat? Amazingly, very little of it is in the air: on average only one percent.⁷⁸ That is the average over the entire world. The world is big, air temperature goes up and down because the weather is chaotic. It's still chaotic, but we have this extra heat on top. Think about it like a dog with a really long tail. If you focus on the tip of the tail (short term air temperature), it wags all over the place. But the other end of the tail is attached to the dog (the global stock of heat) and eventually where the dog goes, the tail has to go. As you can see in Figure 3, average air temperatures increase over time.⁷⁹ Where is the other 99 percent of the heat? Three percent is in soil and vegetation, three percent is in ice, the rest is in the oceans and lakes.⁸⁰ Can you think of three things that happen when you warm up water? Warmer water holds less oxygen, important for anything that breathes.⁸¹ Warmer water takes up more space. When the oceans take up more space, sea level rises.⁸² What else happens when you heat up water? Storms are heat engines, they get their energy from the temperature of the surface of the water. The warmer the surface of the water, the crazier the storms.⁸³

I have noticed that when people get bad news they usually want to hang on for “normal” to come back. By and large, especially for lawyers, normal is the average of the 20th century. That is what our culverts are designed for, our engineering standards are designed for, our water laws are designed for, our insurance—it is all designed for the average of the 20th century, which is that zero line in Figure 3.⁸⁴ As Figure 3 shows, we don't live there anymore.⁸⁵ And we know it can't come back because it is going to take about a generation before we really feel the effects of the additional climate pollution that we have been emitting faster and faster for the last generation.⁸⁶

ytd/12/1880-2016> [NOAA].

⁷⁸ ECO, *Climate Action*, *supra* note 16 at 21.

⁷⁹ NOAA, *supra* note 77.

⁸⁰ ECO, *Climate Action*, *supra* note 16 at 21.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ NOAA, *supra* note 77.

⁸⁵ *Ibid.*

⁸⁶ ECO, *Climate Action*, *supra* note 16 at 21.

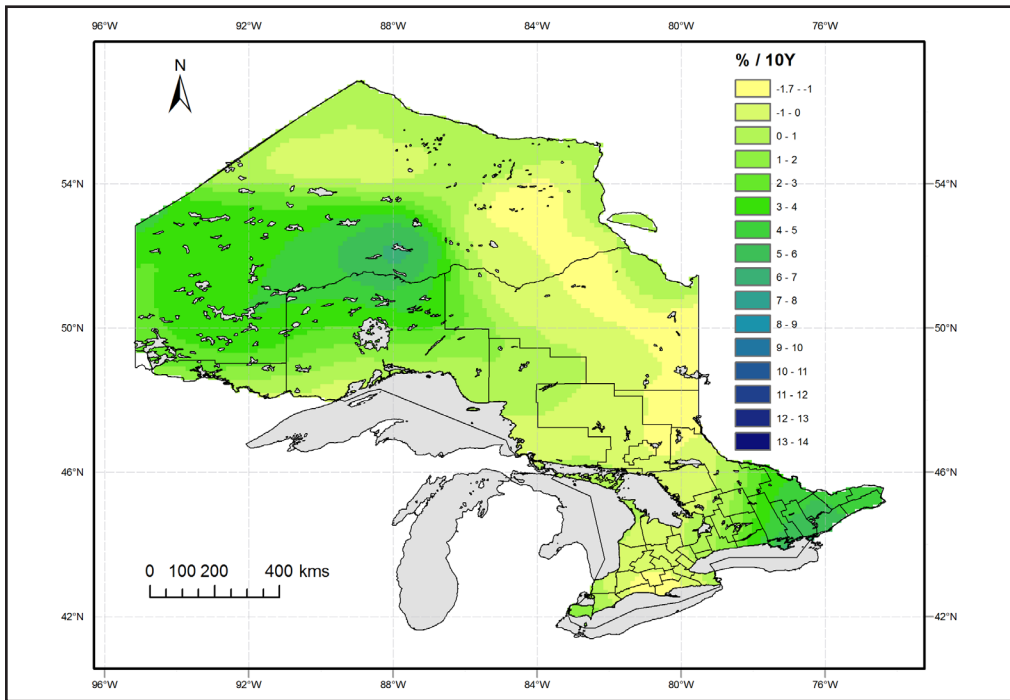


Figure 4: Trends in summer precipitation across Ontario measured from 1979–2016 and shown in percentage change per ten years.⁸⁷

Ontario is warming faster than the world average. The world average temperature has increased by about one degree Celsius in the last century and a half.⁸⁸ Toronto has warmed more than three degrees in the same time.⁸⁹ Precipitation is already changing; there are some places that are drier in the summer than they used to be. The light yellow in Figure 4 represents areas that are drier.⁹⁰ We also have areas that are a lot wetter in the winter.⁹¹ And some areas that used to always get winter snow now also get rain.⁹²

So far, I have talked about averages, but averages are not the whole story. If your head is in the oven and you have third-degree burns, and your feet are in the freezer and you have frostbite, on average you are fine. But, in fact, you have burns and frostbite. It's the extremes that do a lot of the damage. Climate change didn't start weather extremes, but it loads the

⁸⁷ Zhu et al, online: *LAMPS Climate Change Group, York University* <lamps.math.yorku.ca/OntarioClimate/PrecipitationTrends/PrcPrecipitationTrend1979to16_ref1981to2005_sum.png>, cited in Zhu et al, "Trends of Precipitation in Ontario" (last visited 13 May 2019), online: *LAMPS Climate Change Group, York University* <lamps.math.yorku.ca/OntarioClimate/PrecipitationTrends/index.htm> [Zhu et al, "Precipitation Trends"].

⁸⁸ NOAA, *supra* note 77.

⁸⁹ ECO, *Climate Action*, *supra* note 16 at 253.

⁹⁰ Zhu et al, "Precipitation Trends", *supra* note 87.

⁹¹ *Ibid.*

⁹² See generally Zhu et al, "Ontario Frost Free Season (FFS)" (last visited 13 May 2019), online: *LAMPS Climate Change Group, York University* <lamps.math.yorku.ca/WorldClimate/OntarioClimate/FFS/>.

dice and makes them more common. We are seeing this already all over Canada and much of the rest of the world. According to the Insurance Bureau of Canada, up to ten percent of Canadian properties may soon be too high risk for private sector flood insurance, if no protective measures are taken.⁹³ That is a lot of people.

It's not just money of course, there are also impacts on health. Quebec did a better job than the rest of the country last year tracking the dozens of people that died from extreme heat in the hot summer.⁹⁴ Lyme is often called the first epidemic of climate change.⁹⁵ We see other kinds of health impacts too.

7. IS IT TOO LATE?

People ask me, is it too late? And I have to say, too late for what? Is it too late for the young person you care about to have the same kind of life and chances that I had growing up? Yes, it's too late for that. Is it too late for us to avoid having big changes and adjustments ahead of us? Yes, it's too late for that, we threw that away. But is it too late to make a difference in what is coming? Not yet. We have a small handful of years right now to still have a big impact on what is ahead and what Canada does this year really matters. The crazy thing about all of this is we actually have much to gain if we reduce our use of fossil fuels, which is the main source of our climate pollution. It would be better for our health, it would be better for the environment, it would be better for our resilience, it would be better for reducing our bills. Ontario spends \$11 billion every single year just importing fossil fuels.⁹⁶ That is money that just drains out of the economy every single year. If we were ten percent more efficient, if we kept another \$1 billion in the economy, it would mean more jobs for young people.

Until mid-2018, Ontario was doing so much right: closing the coal plants, putting a price on carbon, spending the money on reducing emissions, getting started on adaptation.⁹⁷ Closing the coal plants is still the largest single reduction of climate pollution in North America.⁹⁸ We were lucky, actually. Coal use went down around 1992 because we opened new nuclear plants and people got used to clean air.⁹⁹ Then when the nuclear plants had to close after a safety problem, coal use went way up again.¹⁰⁰ It went up so far and so fast that people noticed the filthy air and complained about it. So now we have closed all the coal plants.¹⁰¹

⁹³ ECO, *Climate Action*, *supra* note 16 at 30.

⁹⁴ See Marco Chown Oved, "Canada's Changing Climate: Life and Death Under the Dome", *Toronto Star* (23 May 2019), online: *The Star* <projects.thestar.com/climate-change-canada/quebec>. See generally ECO, *Climate Action*, *supra* note 16 at 25.

⁹⁵ See Mary Beth Pfeiffer, *Lyme: The First Epidemic of Climate Change* (Washington, DC: Island Press, 2018). See generally ECO, *Climate Action*, *supra* note 16 at 26.

⁹⁶ ECO, *Climate Action*, *supra* note 16 at 85.

⁹⁷ *Ibid* at 10, 236.

⁹⁸ *Ibid* at 56.

⁹⁹ See Brad Cundiff, "Ontario's Coal Phase Out: Lessons Learned from a Massive Climate Achievement" (April 2015) at 15, online (pdf): *Clean Air Alliance* <www.cleanairalliance.org/wp-content/uploads/2015/04/CoalPhaseOut-web.pdf>.

¹⁰⁰ *Ibid* at 5.

¹⁰¹ ECO, *Climate Action*, *supra* note 16 at 56.

Ontario knows what works to reduce climate pollution, and it's really only three things: making polluters pay, investing in solutions, and regulation.¹⁰² Ontario stopped pricing carbon just before the Nobel Prize for economics was awarded to William Nordhaus for proving that carbon pricing is the cheapest, most effective way of moving the economy to a low-carbon future.¹⁰³

Cap and trade was working really well in Ontario. More than three-quarters of the money was going to taxpayer-funded entities—schools, universities, hospitals, public transit—to make them more efficient so that their operating costs would go down.¹⁰⁴ A classic example is the Elliot Lake General Hospital. They got a little bit of money from cap and trade, and they were able to update their old building and furnace.¹⁰⁵ They are now saving \$300,000 every year, which they are putting back into patient care.¹⁰⁶ These investments were making things better all over the province. But now it's all cancelled: the innovations, the programs, the opportunities for young people, the opportunities for First Nations.

What can we all do? We can't just leave it up to government. There are three things that anybody can do at any level—as individuals, as families, as organizations, as cities, as schools: (1) figure out your climate pollution and reduce it, ideally five percent every year; (2) get ready to adapt to the wilder, weirder, wackier weather that is on its way; and (3) the most important thing of all, which lawyers should be really good at, is to speak up. Canadians tend to be too deferential. We tend to assume that if we know something, everybody knows it, and that if something needs to be said, somebody else will say it. These are not safe assumptions, but speaking up can be scary. How do you do it? Simple, clear messages, repeated often, by a variety of trusted voices.

How many of you would like to have some hope? I think there is only one formula for hope that works. You have to start with knowledge, you have to look the facts in the face, even though they're not pretty. Ignoring facts doesn't make them go away. But just looking the facts in the face isn't enough either; if we just do that, it leads to despair. The second step is to look at other people and find something concrete to do together. It's only knowledge plus action that I think can lead to hope. Start now: find somebody to support, find somebody to work with. Be a trusted voice, be a bridge to someone who can't be because you folks know how to do it. Thank you.

¹⁰² *Ibid* at 118.

¹⁰³ "William D. Nordhaus – Facts" (last visited 13 May 2019), online: *Nobel Prize* <www.nobelprize.org/prizes/economic-sciences/2018/nordhaus/facts/>.

¹⁰⁴ ECO, *Climate Action*, *supra* note 16 at 215.

¹⁰⁵ "St. Joseph's General Hospital Elliot Lake Improving Hospital Infrastructure While Lowering Energy Costs" (29 November 2017), online (blog): *St Joseph's General Hospital Elliot Lake* <sjghel.ca/index.php/welcome/recent-news/343-st-joseph-s-general-hospital-elliott-lake-improving-hospital-infrastructure-while-lowering-energy-costs>.

¹⁰⁶ *Ibid*.

8. QUESTION PERIOD

8.1. ON ENVIRONMENTAL CLASS ACTIONS AGAINST THE GOVERNMENT

I don't have a crystal ball, but I do think that litigation can play an important role. Acid rain may be a good example. Lawyers brought lawsuits trying to stop acid rain and mostly they failed. They failed, and they failed, and they failed, but they helped change the conversation and eventually the United States and Canada got serious about acid rain. The *Urgenda* case,¹⁰⁷ the *Juliana* case,¹⁰⁸ these kinds of litigation are worth a try. My preference is for government to deal with large issues of public policy, not judges. But when governments refuse and we are running out of time, which is the case, we have to try everything else. And sometimes litigation works. If you think about the Oldman Dam case,¹⁰⁹ this was a crazy case. It had no chance of success. They won anyway, and they changed the rules of federal environmental assessment.¹¹⁰ If you lose most of the time and every once in a while you get a big win that is pretty good.

8.2. ON MESSAGING WITHIN ENVIRONMENTAL GROUPS

We are all in a battle for attention. We are deluged with alleged facts from various sources and many of them are not true. So, if someone on the side with which we identify says something that turns out not to be true, that damages the credibility of "our" side. I don't think it's easy to communicate simple, clear messages. The fact is that climate change is not that simple. Some of the basics are straightforward but there is a lot that isn't simple. It's hard to do this: simple, clear messages repeated often. But we can all aspire to it, we can help each other, we can challenge each other, we can find ways to speak to other people. Climate change affects so many things, there are so many different ways to come at it. Vegans can come at it from the point of view of eating less meat, and energy efficiency people can come at it from that way. It's important to stay credible, don't overstate, don't say what you're not sure of.

8.3. ON THE FUTURE OF FOSSIL FUELS

I don't think we are going to have a future with no fossil fuels any time soon, but neither can we continue with the world economy being 80 percent dependent on fossil fuels.¹¹¹ If we do, we are going to be toasted, roasted, and grilled. I don't know what all the changes are going to be like. We are incredibly fortunate that we now have forms of energy that don't require fossil fuels: solar, wind, nuclear, and biomass. We have access to energy to give us good lives.

¹⁰⁷ Gerechtshof Den Haag [Hague Court of Appeal, Civil-law Division], 9 October 2018, *Urgenda Foundation v The State of the Netherlands*, Case No. C/09/456689/HA_ZA 13-1396 (Netherlands), online: *Environmental Law Alliance Worldwide* <elaw.org/system/files/attachments/publicresource/Urgenda_2018_Appeal_Decision_Eng.pdf> (decision requiring the Netherlands to reduce its greenhouse gas emissions upheld on appeal) [*Urgenda*].

¹⁰⁸ *Juliana et al v United States of America et al*, (Or Dist Ct 2015) (petition requiring the United States to reduce its greenhouse gas emissions currently pending at the preliminary motion stage) [*Juliana*].

¹⁰⁹ *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, 1992 CanLII 110 (SCC).

¹¹⁰ *Ibid.*

¹¹¹ IEA, "Fossil Fuel Energy Consumption (% of Total)", online: *The World Bank* <data.worldbank.org/indicator/eg.use.comm.fo.zs>.

We don't have to be going down the road of catastrophe, if we work to dramatically reduce it. There are some things that at the moment we cannot do without fossil fuels. For example, wind turbines are really important as a way of making electricity, but you can't make a wind turbine only with electricity. The kind of high-temperature metallurgy that you need to make the parts, you need fossil fuels for. But we do not need to be using fossil fuels to heat buildings, or to make cars and buses go around. We should be getting rid of the fossil fuel uses that we already know how to do without. We should do the easy things first and then we can do harder ones.

8.4. ON THE IMPACT OF A SHIFT TO A LOW-CARBON ECONOMY ON WORKERS IN FOSSIL FUEL EXTRACTION AND THEIR FAMILIES

Yes, that is a really good question. Transition that is just must absolutely be part of the story. One of the examples that I sometimes use is a group of oil sands workers saying: "We want to be part of the low-carbon economy. Give us a path." Some of that \$11 billion that just drains out of the economy every year could go into energy efficiency jobs that can't be offshored.¹¹² There is a lot of inertia in the way we are doing things now. When motor vehicles were invented, what happened to the buggy-makers and the enormous number of people who made their living looking after horses? It was terrible for them. Change can be really hard, but we know we have to make the change and so that means we have to try to find a path into that change that works for as many people as possible. We can't just say: "Alberta, we don't care. You don't count."

8.5. ON MAKING CLIMATE-FRIENDLY LIFESTYLE CHOICES FUN AND TRENDY

These are great questions and I struggle with this all the time. It's hard to avoid falling into the trap of either, "It's not that important so I don't have to do anything," or, "It's too late so I don't have to do anything." There are lots of reasons why people don't want to do something. Seth Klein talked about this knife edge between hope and despair,¹¹³ and I feel I'm cutting my feet on it every day. Usually what makes things fun and trendy are what young people choose. People are social animals and respond when they hear other people say, "I'm doing this, and this is great." A lower-carbon economy can be fun and trendy. Think about an electric car, for example. By and large, anyone who has driven an electric car doesn't want to go back to a fossil fuel car because an electric vehicle has more get-up-and-go. It's quieter, there are fewer vibrations. It's nice driving by all those gas stations and never having to stop. It's just a really nice car to drive and it can last longer with fewer moving parts. My next-door neighbour moved my car and said, "Ooh, I really like that."

What else is more fun? I feel better when I walk to work than on the rare occasions when I have to drive. I'm stuck in traffic the whole way, and it's miserable and unpleasant. Biking to work is fun, mostly. There is more and more vegan food available all the time. People can tell their friends: "Listen, I'm having this great meal. I'm saving this much money because my home is more efficient. I've got a better life because I'm doing this, that and the other."

I think we also need artists. It can't be just scientists and it can't be just lawyers. We need songwriters, artists, playwrights, other people who know how to translate this new life into

¹¹² ECO, *Climate Action*, *supra* note 16 at 85.

¹¹³ Klein, *supra* note 62.

something people can recognize and understand. So maybe one of you, or one of your sisters, or brothers, or cousins will be the one to spark a movement. We all have to do what we can.

8.6. ON CHOOSING BETWEEN A TECHNOLOGICAL SOLUTION AND A SOCIAL ONE

Definitely, technology helps. We are all benefitting from the fact that the Chinese put \$86.5 billion into taking over world solar manufacturing and driving the costs down.¹¹⁴ But, technology itself isn't enough. We need to have the social will, we need to have the tax structures, we need to have the legal structures. Maybe, we need a couple of really great lawsuits. We are going to need everything we have. From where I sit, we are at the brink of a precipice fighting for our life. I think we are going to use every tool we can find because that is what we need to do. So sorry, I can't pick one!

8.7. ON WHAT CITIZENS CAN DO TO ENSURE ENFORCEMENT OF GOVERNMENT ACCOUNTABILITY IN ONTARIO WITHOUT THE OFFICE OF THE ENVIRONMENTAL COMMISSIONER OF ONTARIO

In the last few years I have spent much more time with politicians than I ever did before. Politicians at every level—municipal, provincial, federal—tell me the most powerful thing they can say to their colleagues is “my constituents say”. Politicians are human. By and large, they are humans who like approval and attention, and they are quite sensitive to what people tell them. They are a little bit sensitive to written letters, but they are much more sensitive to what people tell them face to face. So, one of the most powerful things anybody can do is take a few other people who aren't like you—if you are an older person take young people, if you are a young person take older people, if you are a lawyer take business people—take people who are not like you so you can't just be dismissed as “oh them” and go see your politicians. It is always important. It's particularly important in election years. You also want to think hard about how to have those conversations. It helps to remember that the people you are going to talk to are humans. Generally, people don't go into public life intending to be evil. So, can you make a human bridge to these folks? Can you ask them good questions? Can you ask them what they are doing? Could they do more? What is getting in their way? Can you be of some help? Can you provide them with information? Can you introduce them to people? What can you do to help them so that they do more? Another approach is, I heard a municipal counsellor talking about how intensely affected he had been because every single kid in a Grade 3 class at the local school wrote him a hand-drawn Valentine to thank him for voting on something. He is still talking about these Valentines years later. So, thank people who have done good things. Approach people who aren't yet doing the good things. Don't get tired. Don't be shy. Take other people with you.

8.8. ON GETTING PAST POLARIZATION

Climate change is moving faster and faster. The Arctic and Antarctic ice are collapsing faster and faster. Wildlife populations are collapsing faster and faster. Yes, we do need to be moving much, much faster than we are. I can't overstate how urgent it is that we do and so any

¹¹⁴ Anmar Frangoul, “China Becomes a ‘Driving Power’ for Solar Energy with \$86.5 Billion Invested Last Year”, *CNBC* (6 April 2018), online: *CNBC* <www.cnbc.com/2018/04/06/china-becomes-a-driving-power-for-solar-energy-with-86-point-5-billion-invested-last-year.html>.

kind of mechanism that will make it happen is what we need to do. One of the challenges is precisely because climate and energy policy have become so politicized, just at the time when we most need to be able to work across divisions. At a certain level, surely we all ought to agree that human survival is a value we could share even if we approach it differently. I had a really interesting conversation about this with the president of the Union of Concerned Scientists last week, because he has the same challenge I have. Where is the space for a shared, non-partisan, science-based approach to these issues? How can we build human bridges and find some ways to be open to each other's ideas? For example, in my electricity report we looked at nuclear energy,¹¹⁵ which my predecessors had never been willing to touch. I do worry about nuclear waste, but nuclear waste is a big problem and climate change is a huge problem. We have to be able to talk with people who have different ideas for solutions and see if we can find ways for them to work together.

8.9. ON NUCLEAR ENERGY

As I say, there is a lot that worries me about nuclear energy. I wish we were building safer reactors. We *can* build safer reactors. It's because of our legal structure of risk aversion that we keep building the old style of reactors instead of building better new ones. We already know how to build the old ones and so insurance companies, and contractors, and so on, are used to them. I think we should be building better ones. But if the choice is between operating coal plants or nuclear, I'm voting for nuclear. It was really hard for me to get to that position. One of the things that is seared into my brain is walking through a plant that was processing nuclear fuel many years ago and seeing the appalling conditions in that plant. I have also had the somewhat dubious pleasure of putting my hand on a container as high as that ceiling of nuclear waste. These containers were engineered to last 50 years;¹¹⁶ some of them are over 30 years old already, and we don't have any place else to put them yet. Lots of things about that worry me. I think it's immoral for us to be creating waste that is going to be dangerous for 100,000 years for our own short-term convenience, but we can't do without it, yet.¹¹⁷ I don't know if I have a better answer than that.

8.10. ON SUBSTANTIVE ENVIRONMENTAL RIGHTS

That is a great question. I have really struggled with this, because substantive environmental rights move decision-making, or at least they provide the capacity to move decision-making, on extremely complex social questions, from elected governments assisted by the civil service, to judges. My experience of judges, with all due respect to the judges, is that they didn't like science in high school, they don't understand the big public policy trade-offs that must be made and they are not accountable for the consequences. I look at some of the decisions of the Supreme Court on environmental issues and I tear my hair. Obviously I'm very unhappy with a lot of the decisions being made by the current elected government in Ontario. I'm very concerned about the influence on that government of certain very wealthy sectors of the economy. But I also know that money speaks as loudly in courts as it does in government

¹¹⁵ ECO, *Making Connections*, *supra* note 15 at 212–25.

¹¹⁶ Ontario Power Generation, "Pickering Waste Management Facility" (last visited 17 June 2019) at 2, online (pdf): *ONTLA* <www.ontla.on.ca/library/repository/mon/15000/267803.pdf>.

¹¹⁷ ECO, *Making Connections*, *supra* note 15 at 213, 220.

hallways. Who is it who can afford good experts, good lawyers, extensive preparation, multiple cases? Who can afford to appeal? That is not everybody. By transferring decision-making to the courts, we don't necessarily make it fairer, we definitely don't make it better informed, and it tends to be a one-way door. So, I have sat firmly on the fence on the Blue Dot campaign.¹¹⁸ But the current government is doing so much damage that I have finally decided to support the Blue Dot campaign. It's time to try substantive environmental rights.

8.11. ON FUNDING FOR ENVIRONMENTAL LITIGATION

You are right: it's very difficult to stand up for the environment without government resources, because these things are expensive and difficult and complicated and slow, and they have many angles. When I was running a practice, I could do a certain amount of pro bono work, but I couldn't do a lot of it, because I had to run my practice, and look after my family, and pay my bills, and pay my staff, and litigation can consume everything. It is amazing to me, the cases like *Urgenda*¹¹⁹ and *Juliana*,¹²⁰ where lawyers and experts put in a lot of time for free, and funders put in some money, and some of those cases make good things happen. We do have class action firms in Canada who have been able to make a living, but not on environmental issues. It's very hard to do. One of the tragedies of the elimination of our office is that we were one of these rare bright spots who were allowed to use public money to actively speak for the environment, against the wishes of the government. That I guess is why we are being silenced.

Anyway, thank you all very much and I hope that was helpful.

¹¹⁸ The Blue Dot campaign advocates for amendment of the *Canadian Charter* to include the right to a healthy environment ("About Us" (last visited 13 June 2019), online: *Blue Dot* <bluedot.ca/about>).

¹¹⁹ *Juliana*, *supra* note 108.

¹²⁰ *Urgenda*, *supra* note 107.