



Aggregate Resources Act Review

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Submitted to: **The Standing Committee on
General Government**

Submitted by: **the Ontario Bar Association,
Environmental Law Section**



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide input in connection with the Standing Committee on General Government’s Review of the *Aggregate Resources Act* (“ARA”). Further consultations will, of course, be required as government and the legislature develop specific legislation, regulations and policies to modernize this regime. We look forward to providing further input at that stage. We have provided below some general considerations that should be taken into account when considering changes to the ARA and its attendant regulations and policies.

The OBA

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 17,500 lawyers, judges, law professors and law students in Ontario. OBA members practice law in no fewer than 37 different sectors. In addition to providing legal education for its members, the OBA has assisted government and other policy makers with countless policy initiatives - both in the interest of the legal profession and in the interest of the public.

Our Environmental Law Section has approximately 400 members who would count among their clients every stakeholder in the aggregate resource development process, including aggregate companies, community groups, neighboring property owners and environmental protection groups.

Issues to Address in a Review of the ARA

(i) Financial Assurance for Performance of Mitigation Measures

Certain mitigation and rehabilitation requirements are imposed on quarries. These requirements must be supported by some kind of financial assurance, particularly to ensure compliance after the quarry is spent and the quarry operator is no longer actively involved with the site. While the ARA currently has a trust fund requirement to support mitigation and rehabilitation, thought should be given to whether the ARA could be strengthened in this regard by adopting financial assurance provisions similar to those in the *Mining Act* and the *Environmental Protection Act* (“EPA”).

(ii) Rationalized Legislative and Regulatory Framework for Approvals

The approvals process for aggregate resources development is piecemeal. Multiple approvals are required under multiple statutory regimes for proposed quarries (EPA, *Ontario Water Resources Act*, ARA, *Planning Act*). Inefficiency, inconsistency and ineffectiveness result. The aggregate resource development approvals process needs to be rationalized such that there is a single processes that looks comprehensively at all of the impacts of a proposal. A rationalized single assessment with respect to aggregate resources development would be more likely to both better protect the environment and foster a more productive business climate.



(iii) Ensuring Sufficient Resources for Review

There are concerns with respect to whether the Ministry of Natural Resources ("MNR") has sufficient resources to adequately enforce the legislation. The Environmental Commissioner of Ontario (the "ECO") has raised this concern in the past. In an April 24, 2007 ECO Special Report to the Legislative Assembly of Ontario, Mr. Miller concluded that:

MNR is responsible for managing Ontario's sand and gravel resources, in order to minimize environmental damage, require site rehabilitation and promote conservation. There is abundant evidence that for at least 10 years MNR has lacked the capacity to carry out core responsibilities related to its aggregates program. Program staff numbers and budget have both been significantly reduced compared to the mid-90s, and technical expertise has been lost as well. Areas of inspection, compliance, oversight of rehabilitation, and long-term planning have all been compromised....ⁱ

A recent Ontario Municipal Board decision addressed this issue. In *James Dick Construction Limited v. Town of Caledon*, the applicant proposed an Adaptive Management Plan that would require ongoing involvement and oversight of MNR staff. The Board heard evidence from two witnesses from the MNR regarding MNR's capacity to review and monitor aggregate operations. The Board made the following findings about that evidence:

[An] Aggregate Technical Specialist with MNR testified that she has responsibility for 'the administration and inspection of 146 licensed pits and quarries' in the district in which the subject property is located.... Under cross-examination, [the MNR witness] acknowledged that she tries to visit most active aggregate sites once per year. Her District meets a target of 'field-checking' 20% of licensed applications per year. Most inspections take one or two days.... There was nothing in the evidence of [the MNR witnesses] that gives the Board any certainty that even if it decided that it would be appropriate for MNR to take on the responsibilities assigned to it in the AMP, that MNR has the resources to deal adequately with those responsibilities....

The Board will not approve an aggregate proposal which leaves an issue like the protection of the natural environment to be dealt with by a third party with demonstrably inadequate resources, like MNR...ⁱⁱ

Adequate resources are necessary in order to ensure that the system has the faith of both developers and the community.

Conclusion

Once again, the OBA appreciates the opportunity to comment on the ARA Review and looks forward to continued dialogue on the many important issues raised by the subject of aggregate development.



ⁱ Doing Less with Less: How shortfalls in budget, staffing and in-house expertise are hampering the effectiveness of MOE and MNR, A Special Report to the Legislative Assembly of Ontario, April 24, 2007. Available at http://www.eco.on.ca/eng/uploads/eng_pdfs/LessWithLess.pdf

ⁱⁱ *James Dick Construction Limited v. Town of Caledon*, Ontario Municipal Board Decision (November 12, 2010). Available at <http://www.omb.gov.on.ca/english/eDecisions/eDecisions.html>.