



## ***Greenbelt Statute Law Amendment Act, 2023***

### **Comment on the Proposal to return lands to the Greenbelt – Greenbelt Statute Law Amendment Act, 2023 (ERO# 019-7739)**

**Submitted to:** Ministry of Municipal Affairs and  
Housing

**Submitted by:** Ontario Bar Association

**Date:** November 28, 2023



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## Executive Summary

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide comments on Bill 136, the *Greenbelt Statute Law Amendment Act, 2023* (the “**Bill**”), which proposes amendments to a number of pieces of legislation including the *Greenbelt Act, 2005*. The following is a summary of our comments, which are more fully set out below:

- **Eliminating Authority to Add/Remove Lands to the Greenbelt by Regulation:** The OBA supports the intent to increase transparency and debate on future changes to the Greenbelt (“**Greenbelt**”).
- **Consultation Process:** The OBA recommends focusing on bolstering the consultation process that will be utilized for changes to the Greenbelt, to ensure adequate and fulsome consultations will be undertaken in the future.
- **Limitations on Remedies:** The OBA is concerned with the proposed amendments in the Bill which expand extensive limitations of remedies provisions (“**liability immunity provisions**”) in a manner that implicates the rule of law. These provisions may also cause a chilling effect on parties considering business opportunities involving the Ontario government.

## Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and



the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared by members of the OBA's Aboriginal Law, Constitutional, Civil Liberties and Human Rights Law, Municipal Law, and Civil Litigation Law sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, as well as in-house counsel across every region in Ontario.

## **Comments & Recommendations**

### ***1. Comment on the removal of the authority to add or remove lands by regulation.***

The OBA supports the intent of the amendments to section 2 of the *Greenbelt Act, 2005*, which will increase transparency and debate on any future changes to the Greenbelt. By incorporating the subject lands directly into the legislation thereby requiring a legislative amendment to be passed by the legislature, the democratic role of the legislature will be strengthened when considering changes to the Greenbelt.

### ***2. Focus Should Be on The Consultation Process***

The OBA recommends adding into the legislation the framework of a consultation process that the government will be required to follow for any future changes to the Greenbelt.

While the Bill does increase transparency in a number of respects, it does not directly address the concerns raised over the lack of meaningful consultations that characterized



the changes made to the Greenbelt in 2022. Consideration should be given to legislating key elements of a robust consultation process that would apply to any future proposed changes, including specific obligations for consulting indigenous communities, so that decision makers have a clearly defined process to follow. Specific, legislated consultation processes increase predictability and provide an objective marker for the government's obligations when dealing with the Greenbelt in the future.

Additionally, in deciding whether to add further lands to the Greenbelt, the government should also consider integrating into its process consideration of other restrictions that may already be in place on the permitted use of lands stemming from regional and municipal governments. As stated in the Auditor General's Report<sup>1</sup>, much of the lands added in 2022 already enjoyed some form of protection on its use. Collaboration with lower levels of government can help to identify when it is necessary to add land to the Greenbelt, or when the lands are already subject to sufficient restrictions. To this end, we recommend the government consider details on other land-use restrictions when considering changes to the Greenbelt.

Furthermore, as part of the necessary consultations related to the additions to the Greenbelt, we recommend that consideration of the recommended boundaries for the land be included. By way of example, the addition of part of the Paris Galt Moraine lands in 2022 included a straight boundary line that did not account for natural boundaries necessary to protect the environmental functions of the land. It is important to recognize that the natural boundaries of lands will rarely result in neat, clear-cut boundaries, and consulting with environmental and land-use experts would assist in providing the intended protections for the natural features of the subject lands.

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<sup>1</sup> [Special Report on Changes to the Greenbelt \(auditor.on.ca\)](https://www.auditor.on.ca/en/reports/special-reports/special-report-on-changes-to-the-greenbelt). See the discussion on Urban River Valley Additions, for example, in page 57 of the report.



### ***3. Concerns with the Expanded Liability Immunity Provisions***

The OBA does not support the use of broad liability immunity provisions and does not recommend the further expansion of such existing provisions in this Bill.

In general, limits placed by government on the causes of action and remedies available to individuals undermines critical foundations that Ontarians count on like the rule of law in the use of legislation to overcome powers that are properly overseen by the courts. Rule of law considerations include the propositions that all are equal before the law, that laws govern the relationship of both private persons and government, and that the government must follow the laws it makes. The use of such broad provisions to extinguish causes of action and deny remedies sends a cautionary message to any party considering contracting or settling with the government in the future. Ontario may not be viewed as a good place to invest if contractual rights and legal remedies are routinely terminated through use of broad, retrospective provisions. The government's concerted effort to improve the business climate in Ontario and attract international businesses and homebuilders may be undermined by these actions and could lead to a chilling effect on parties considering contracting or settling with the government, who may reasonably be concerned that their agreements could be revoked at any time, and their ability to seek restitution eliminated.

The *Duffins Rouge Agricultural Preserve Repeal Act, 2022*, the *Greenbelt Act, 2005*, and the *Oak Ridges Moraine Conservation Act, 2001* already contain liability immunity provisions. Section 4 of Schedule 2, section 2 of Schedule 4, and section 3 of Schedule 1 of the Bill expand the scope of these existing liability immunity provisions.

We wish to highlight three areas of specific concern with the proposed expansion of the liability immunity provisions, and our recommended amendments.

First, **proposed new subsection 19(1)(f)(iv) of the *Greenbelt Act, 2005*, eliminates any cause of action stemming from, among other measures, the disclosure of privileged**



**or confidential information in relation to the settlement of the proceeding identified in Court File number CV-17-131956-00. We recommend that the reference to privileged and confidential information in this proposed new subsection be removed, as it compromises the protections that should be in place for solicitor-client privilege.** The safeguarding of privileged and confidential information, whether provided in the context of a settlement or otherwise, is a foundational and fundamental principle that underpins our legal system. The removal of any causes of action and remedies available in relation to the disclosure of privileged and confidential information is a concerning erosion of principles that the Supreme Court of Canada has held as “essential to the effective operation of the legal system”.<sup>2</sup> At a minimum, we strongly recommend that the following amendment be made to ensure the continued protection for privileged and confidential information exchanged in the context of a settlement agreement:

- *Schedule 4, Bill 132, new proposed subsection 19(1)(f) (vi), Greenbelt Act, 2005:* the settlement of the Superior Court of Justice proceeding commenced at Newmarket and identified as Court File number CV-17-131956-00, including the disclosure of any information relating to that settlement, ~~regardless of whether such information is privileged or confidential~~, or any purported breach of that settlement.

Second, **we recommend that proposed new section 19.1 of the *Greenbelt Act, 2005*, contained in section 2 of schedule of Bill 136, be deleted.** This provision terminates a specific settlement agreement entered into by the Crown, and in doing so, has the effect of undermining the principles of certainty, predictability and fairness that are central to both the rule of law and economic stability in the province. The termination of settlement agreements, while simultaneously also eliminating the affected party’s ability to re-start another action (which is contained in other proposed amendments to subsection 19(1)(f) of the *Greenbelt Act, 2005*), eliminates the finality and assurances that should attach to settlement agreements.

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<sup>2</sup> *R v McClure*, 2001 SCC 14, para 31.



**Third, we ask the government to reconsider the inclusion of new provisions in three of the Acts amendment by Bill 136 that protect the right of the Crown to bring proceedings in relation to the same subject areas where causes of action have been eliminated for all other parties.** By depriving private parties of a cause of action and meaningful remedy in many instances, while retaining the Crown's ability to undertake proceedings with respect to those same subjects, the proposed amendments would put people impacted by government action in a worse position than those harmed by private actors. The effect of the harm is the same regardless of the party imposing it, but the remedies available and the imbalance of power will result in drastically different outcomes. This is inconsistent with the rule of law and harms Ontario's position as a stable, predictable place in which to do business. **Accordingly, we recommend that:**

- **subsection 3(8) "Proceedings by Crown not prevented" of the proposed *Duffins Rouge Agricultural Preserve Act, 2023* contained in Schedule 1 of Bill 136 be removed;**
- **proposed subsection 19(8) "Proceedings by Crown not prevented" in the *Greenbelt Act, 2005* contained in Schedule 2 of Bill 136 be removed; and**
- **proposed subsection 20(8) "Proceedings by Crown not prevented" in the *Oak Ridges Moraine Conservation Act, 2001* contained in Schedule 4 of the Bill 136 be removed.**

As a final comment, liability immunity provisions often result in impacted parties looking to any possible other options through which to recoup their losses. In this case, this may result in claims being advanced against other parties, particularly if the provisions are scoped down or removed. We encourage the government to consider the impact this may have on municipalities and others across the province.

*The OBA would welcome the opportunity to provide additional input into draft language of the regulations.*