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POLICY COMMENT: Proposals for Ontario's Solar Future

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POLICY COMMENT: Proposals for Ontario's Solar Future

Abstract

In Ontario, the protection of solar energy is both complicated and limited. In order to take advantage of evolving greener energy sources, and reduce our contribution to global warming, Ontario must better protect solar energy use and solar energy investments. This commentary evaluates the incentives for extending the use of solar technology as part of the *Green Energy Act, 2009*, SO 2009. The analysis focuses on the relationship between the provincial and municipal governments as it relates to the green energy industry, and the level of public engagement and awareness that is being achieved. Reform to municipal zoning bylaws are needed if Ontario is to be a leader in green energy, and to facilitate the overall success of this new and growing industry.

Keywords

Climate change, renewable energy, solar energy, covenant, easement, Ontario, Ontario's Green Energy Act

POLICY COMMENTARY: SEARCHING THE LAW FOR ONTARIO'S GREEN FUTURE

RASHIN ALIZADEH*

INTRODUCTION

Despite claims to the contrary,¹ our society relies on destructive, finite, and polluting energy sources that contribute to climate change. As a result of this climate change—although seemingly miniscule—the earth's temperature rise² has already had adverse effects on food production³ and has created rising sea levels that erode landmass and land fertility.⁴ These effects contribute to famines and forced migrations.⁵ All of the above climate change effects highlight the need to advance and utilize alternative energy sources that will have a less harmful impact on the earth's environment.

Since the effects of climate change transcend State boundaries, it is in the best interest of the international community to develop sustainable energy sources in order to reduce carbon emissions. One of the most obvious examples of such energy sources is solar power. Solar technology is a viable and renewable energy source that does not

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¹ See Patrick Michaels, "Perils Up in the Air" (2000), online:

<<https://www.cato.org/publications/commentary/peril-air>>; Frederick Seitz, "A Major Deception on Global Warming", *The Wall Street Journal* (12 June 1996) A16; Robert Jastrow et al, "Global Warming: What Does the Science Tell Us?" (1991) 16 *Energy* 1331.

² Lester R Brown, *Plan B 4.0: Mobilizing to Save Civilization*, 1st ed (New York: W W Norton & Company, 2009) at 56-57 [*Brown*].

³ Richard J Beamish, "Acidification of Lakes in Canada by Acid Precipitation and the Resulting Effects on Fishes" (1976) 6 *Water, Air, and Soil Pollution* 501; Gene Likens "Acid Precipitation" (1976) *Chemical and Engineering News* 29.

⁴ R Lal, "Soil Carbon Sequestration Impacts on Global Climate Change and Food Security" (2004) *Science* 1623; Akihiko Ito, "Simulated Impacts of Climate and Land-Cover Change on Soil Erosion and Implication for the Carbon Cycle, 1901 to 2100" (2007) 34 *Geophysical Research Letters* 1.

⁵ *Brown, supra* note 2 at 61-70; Luca Marchiori & Ingmar Schumacher, "When Nature Rebels : International Migration, Climate Change, and Inequality" (2009) 24 *Springer* 596; Jane McAdam, "Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer" (2011) 23:1 *Int J Refugee L* 2 at 4; Gene E Likens & Herbert Bormann, "Acid Rain: A Serious Regional Environmental Problem" (1974) 184 *Science* 1176; Gracios Gemenne & François Gemenne, "Climate-Induced Population Displacements in a 4°C World" (2011) 369: 1934 *Phil Trans R Soc A* 182 at 182.

feature many of the disadvantages of fossil fuels. By capturing energy from the sun, solar technology generates power and heat that does not directly cause pollution.⁶

This brief policy commentary suggests that, while a transition away from non-renewable energy sources is eventually unavoidable due to the inevitable depletion of resources, Ontario may be able to achieve this transition more quickly through government initiatives. In particular, the protection of private solar technology investments through zoning bylaws is the most viable way to ensure that Ontario successfully transitions to greener energy sources. Cooperation between the provincial government and municipalities—and the encouragement of public engagement in these initiatives—is essential to ensure successful reform. This commentary reviews this option and considers examples from other jurisdictions as well as jurisprudence to demonstrate how Ontario can achieve this goal.

I. IMPROVING ONTARIO'S CURRENT PLATFORMS

Improving Green Energy Efforts in Ontario

In 2009, the Ontario government established its commitment to renewable energy sources by passing the *Green Energy Act (Act)*.⁷ The *Act* utilizes incentives to encourage the use and installation of solar energy technology. One of the incentives implemented is the Feed-in Tariff (FIT) program.⁸ This government-run program provides incentives for the implementation of green energy, including wind, solar, hydroelectricity, and bioenergy. Those who opt in to the program will receive above-market rates for the power they produce over the term of their contract.⁹ According to the Ontario government, this endeavour has the capacity to power 1.2 million homes.¹⁰ The FIT program has brought new business investment to the province and has created 20,000 jobs; this number is expected to grow with the expansion of green energy technology.¹¹

There is empirical evidence showing that offering a financial incentive to increase green energy use, as the FIT program does, is a sound strategy. A study conducted across several American states examined factors that influence the adoption

⁶ *Brown, supra* note 2 at 122; J Otto Grunow, “Wisconsin Recognizes the Power of the Sun: *Prah v Maretti* and the *Solar Access Act*” (1982) 5 Wis L Rev 1263 at 1263 [*Grunow*].

⁷ SO 2009, c 12.

⁸ *Ibid* at preamble.

⁹ “FIT and MicroFIT Program”, Ministry of Energy, online: <<http://www.energy.gov.on.ca/en/fit-and-microfit-program/>>.

¹⁰ “Feed-in Tarrif Program Two Year Review”, Ministry of Energy, online: <<http://www.energy.gov.on.ca/en/fit-and-microfit-program/2-year-fit-review/>>.

¹¹ “Green Energy Act”, Ministry of Energy, online: <<http://www.energy.gov.on.ca/en/green-energy-act/>>.

of solar energy.¹² The results found that government tax credits and cost savings significantly contribute to the decision of homeowners to invest in solar energy.¹³ This is seen in California, where property tax is frozen for solar technology investors.¹⁴ The study concluded that the incentive was not a social commitment to tackle climate change, but rather the tangible financial benefits.¹⁵ While Ontario does provide a financial incentive to transition to green energy, this effort could be improved by additional support such as solar-friendly zoning bylaws or a California-like property tax freeze.

Improving Positive Public Discourse

A positive public opinion is important for the success of a green energy project. To accomplish this, the Ontario government must actively inform the public of the benefits of a sustainable energy transition.¹⁶ Green energy projects cannot follow in the footsteps of past efforts, which have failed due to adverse public reaction.¹⁷

One of Ontario's largest and most famous green energy initiatives is its introduction and promotion of wind turbines; however, public reaction was not positive. A quantitative study of newspaper articles on the public reaction to wind turbines in some communities revealed "a largely negative slant" regarding the consequences of such investments.¹⁸ While there are legitimate concerns associated with some forms of green energy (e.g., noise disturbance and farmland destruction resulting from the installation of wind turbines), the overall persistence of such attitudes in public

¹² Catherine A Durham et al., "The Impact of State Tax Credits and Energy Prices on Adoption of Solar Energy Systems" (1988) 64 *Land Economics* 4 [*Durham*].

¹³ *Ibid* at 354.

¹⁴ Cal Rev & Tax Code § 73(a).

¹⁵ *Durham*, *supra* note 12 at 354.

¹⁶ The preamble of the Ontario *Environmental Bill of Rights, 1993* SO 1993, c 19 obliges the government to engage the public in decision making related to the environment. The members of the provincial parliament must take this commitment seriously to ensure that the public is involved with, and supports, sustainable energy.

¹⁷ Former Ontario Premier, Dalton McGuinty, faced a massive backlash from Facebook users as a result of a bill proposing to restrict the number of teen passengers that young drivers could carry in their vehicles. The Facebook group gathered a large following and resulted in the withdrawal of the bill from the Ontario Legislature. The online opposition to the bill eventually led former Premier McGuinty to declare: "I think we need to find a way to get on Facebook. I think we need to find a way to engage [people] in dialogue in a social network where they are." According to then-Conservative leader John Tory, "the only reason" the public's reaction caught the Liberals by surprise is because "they didn't really bother to ask any people." Although this safety amendment was well-intentioned, it was received negatively and ultimately failed. See also "McGuinty Will Reach out to Young Drivers on Facebook" *Toronto Star* (25 November 2008) online: <http://www.thestar.com/news/ontario/2008/11/25/mcguinty_will_reach_out_to_young_drivers_on_facebook.html>.

¹⁸ Benjamin Deignan & Laurie Hoffman-Goetz, "Emotional Tone of Ontario Newspaper Articles on the Health Effects of Industrial Wind Turbines Before and After Policy Change" (2015) 20:5 *Journal of Health Communication* 531 at 537 [*Deignan & Hoffman-Goetz*].

discourse can hinder the speed of progress. This will inevitably be the case if proponents in favour of non-renewable energy, such as oil companies, are well resourced and have the capability to sway public opinion. In the current situation, the sustainable energy sector faces opposition from businesses that depend on the pre-eminence of non-renewable energy resources. In order to counter this momentum, it is crucial to develop public support for the transition towards green energy.

In addition to Ontario's specific projects, the public has not overwhelmingly supported the *Act* itself. The Fraser Institute, a libertarian Canadian think tank, released a report four years after the implementation of the *Act* that criticized the efforts undertaken by the Ontario government.¹⁹ A further study on the public's attitude towards wind turbines following the implementation of the *Act* indicates that the Fraser Institute report was not alone in its critique.²⁰ Although the study addresses opposition to wind turbines in particular, some of the findings may be applicable to solar energy since solar energy is also a green energy incentive and is regulated by the *Act*. The criticisms centred on aesthetic, economic, political, environmental, health, and technical concerns.²¹ The authors of the study observed a noticeable shift toward strong opposition to the *Act*, which was demonstrated through editorials and rallies by opposition groups in Ontario.²²

Overall, the unequal distribution of economic benefits is a significant public criticism.²³ Despite the current Liberal government's promise to create 50,000 jobs through the FIT program, there are concerns regarding the optimism of this estimate.²⁴ Uncertainty remains as to whether these will be permanent jobs or whether they will disappear in the near future. Sixty municipalities have already declared their resistance to the implementation of such technologies.²⁵ Municipalities are concerned that solar farms in their jurisdictions will cause property values to depreciate and reduce crop production as a result of land repurposing.²⁶ In the case of *East Durham Wind, Inc v The*

¹⁹ Daniel Altman, "With Interest: Turning the Tables on Reform", *The New York Times* (18 September 2004) online: < http://www.nytimes.com/2004/09/18/business/worldbusiness/with-interest-turning-the-tables-on-reform.html?_r=0>.

²⁰ *Deignan & Hoffman-Goetz*, *supra* note 18.

²¹ Mary Riley, "Landowner Defends Right to Allow a Solar Farm on Her Property", *Kawartha Lakes This Week* (29 July 2015), online: <http://www.mykawartha.com/news-story/5766207-landowner-defends-right-to-allow-a-solar-farm-on-her-property/> [Riley].

²² *Deignan & Hoffman-Goetz*, *supra* note 18.

²³ Emmanuel Songsore & Michael Buzzelli, "Wind Energy Development in Ontario: A Process/Product Paradox" (2015) 20:12 *Local Environment* 1428 at 1445 [*Songsore & Buzzelli*].

²⁴ Mark Stephen, "Green Energy Act Hurts Manufacturing? Color Me Unsurprised", *Canadian Plastics* (October 2013) 4, online: <www.canplastics.com/digital-archives/october-2013>.

²⁵ *Songsore & Buzzelli*, *supra* note 23 at 1445.

²⁶ Riley, *supra* note 21.

Municipality of West Grey,²⁷ the refusal of the respondent municipality to grant the necessary approval for the construction of wind turbines created a lengthy court battle. Although in that case the prohibitive bylaws of the municipality were found to be inoperative for frustrating the purpose of the *Act*, addressing green energy obstacles through the judiciary is both timely and costly. Instead, the provincial government must re-evaluate its strategy with respect to the implementation of the *Act* to ensure the involvement and, most importantly, the support of the public and municipalities throughout the process.

There is also criticism regarding the lack of opportunity for the public to influence decision-making surrounding the details and ultimate construction of a proposed green energy project.²⁸ The *Act* has been said to streamline green energy projects, and one of the only ways for the public to appeal the approved project is to invoke Ontario's *Environmental Protection Act (EPA)*.²⁹ Under the *EPA*, one must prove that the project will, on a balance of probabilities, cause serious and irreversible harm to humans or the environment.³⁰ Meeting this evidentiary burden likely requires expending money on environmental experts, which the average person is likely unable to afford. As a result, the president of the Ontario Wind Resistance, a group opposing the construction of industrial wind turbines, has called the *Act* an “undemocratic piece of legislation,” claiming “anything that shuts down public participation need[s] to be fought vigorously.”³¹ This opposition to the *Act* in turn affects the perception that people have regarding the projects that are governed within it. Evidently, in order to have an earlier transition to green energy, public support of both the project and the *Act* is needed.

II. TWO CASE STUDIES

To demonstrate that Ontario must attempt to improve the *Act* and to establish a more positive public perception of it and its projects, a review of models from other jurisdictions is helpful. Two American states provide interesting case studies that Ontario could look to for guidance: California and Wisconsin. Currently, the Ontario government subsidizes electricity costs for households and businesses.³² While this is

²⁷ *East Durham Wind, Inc v The Municipality of West Grey*, 2014 ONSC 4669, OJ No 3742, 2014 CarswellOnt 11055 at paras 1-2.

²⁸ *Deignan & Hoffman-Goetz*, *supra* note 18.

²⁹ 1990, RSO 1990 c E 19.

³⁰ *Ibid* at s 145.2.1(3).

³¹ *Songsore & Buzzelli*, *supra* note 23 at 1438; *Deignan & Hoffman-Goetz*, *supra* note 18.

³² *Grunow*, *supra* note 6 at 1286; Ontario, “Low-Income Energy Assistance Program (LEAP)”, Ontario Energy Board, online:

helpful for alleviating some of the financial burdens faced in accessing energy, further government intervention is needed in order to promote green energy investments.³³ Indeed, Ontario law is limited in its protection of solar technology investments and currently lags behind other jurisdictions, such as California and Wisconsin, which have enacted laws to ease the transition to solar energy.³⁴ Based on the examples outlined below, limiting complications related to solar technology investments will likely assist Ontario in making a smooth transition to expanding green energy.

California

Following the 1973 oil crisis, California enacted legislation related to solar technology protection.³⁵ The first piece of legislation enacted was the *Solar Rights Act (SRA)*.³⁶ The legislation aims to limit the power of homeowners' associations and governments from restricting solar installations through zoning bylaws, ordinances, and restrictive covenants.³⁷ It also requires some home developers to promote future use of solar energy technology through the design and placement of buildings.³⁸ These protections may be a voluntary marketing strategy by the developer, or they may be required as part of zoning criteria.³⁹ These measures provide an alternative to drafting and enforcing individual safeguards for each private solar panel owner, which is cost prohibitive and lacks certainty. Instead, applying zoning bylaws is more systematic protection and may be preferable.

Another California law, the *Solar Shade Control Act (SSCA)*, also supports green energy technology. It ensures access to sunlight by preventing shade from trees and shrubs that block solar panels.⁴⁰ If not complied with, the state may fine breaching parties by bringing an action in nuisance.⁴¹ The *SSCA* also prevents future growth of vegetation—i.e., that has grown following the installation of solar panels—from

<[http://www.ontarioenergyboard.ca/oeb/Consumers/Consumer+Protection/Help+for+Low-Income+Energy+Consumers/Low-Income+Energy+Assistance+Program+\(LEAP\)>](http://www.ontarioenergyboard.ca/oeb/Consumers/Consumer+Protection/Help+for+Low-Income+Energy+Consumers/Low-Income+Energy+Assistance+Program+(LEAP)>).

³³ "Ontario Throne Speech Promises Electricity Bill Rebates" (12 September 2016), CBC News, online: <<http://www.cbc.ca/news/canada/toronto/ontario-government-throne-speech-electricity-rates-1.3758002>>.

³⁴ Law Reform Commission of Saskatchewan, *Background Paper: Solar Access Legislation* (Regina, 2007) at 8-9 [*LRC Saskatchewan*].

³⁵ "How Gas Price Controls Sparked '70s Shortage", *The Washington Times* (15 May 2006), online: <<http://www.washingtontimes.com/news/2006/may/15/20060515-122820-6110r/>> [*Washington Times*].

³⁶ The *Solar Rights Act* is a compilation of several California law codes: California Civil Code ss 714 and 714.1, California Civil Code, ss 801, 801.5, California Government Code ss 65850.5, 66475.3, 66473.1, California Health and Safety Code s 17959.1.

³⁷ *LRC Saskatchewan*, *supra* note 34 at 9.

³⁸ *Ibid* at 8.

³⁹ *Ibid* at 8-9.

⁴⁰ *Ibid* at 4-9.

⁴¹ *Ibid* at 9.

blocking access to sunlight.⁴² California is currently the leading solar energy market in the United States, which suggests that the “supportive solar policies” of the *SSCA* and the *SRA* may be responsible for the state’s solar energy market success.⁴³

Wisconsin

The law in Wisconsin is more forcefully supportive of solar energy than in California. Two major developments in Wisconsin propelled the implementation of solar energy protection. First, following the oil crises of 1973 and 1979,⁴⁴ the Wisconsin government acted to “clarify” the law on solar access rights in order to expand “the use of solar energy systems” and to encourage such investments.⁴⁵ From this, several statutes such as the *Solar Access Act* and *Solar and Wind Access Permit Act* were born.

Wisconsin’s *Solar Access Act* aims to grant an owner of solar panels the right to sunlight in an ameliorative fashion before a conflict can result in litigation.⁴⁶ It allows for the registration of solar panel permits, which act as an easement registered against the title of the property. Once registered, the host of the solar technology will have a three-dimensional “building envelope” free of present and future obstructions, allowing sun rays to reach solar panels.⁴⁷ The registration freezes the zoning laws at the time of installation in an effort to protect solar access for the owner.⁴⁸ Breaches occurring will result in the awarding of damages, court costs, and legal fees.⁴⁹ Wisconsin’s implementation of this permit system simplifies the access to sunrays that are necessary for solar energy investment and use.

The second development in support of green energy occurred in the case of *Prah v Maretti*,⁵⁰ where the Court limited the building specifics of a neighbour’s construction plans to prioritize the adjacent neighbour’s access to his solar panels.⁵¹ In this case, Prah’s neighbour, Maretti, attempted to construct a home on the adjacent lot, which would have effectively blocked sunlight from Prah’s solar panels.⁵² The Wisconsin Supreme Court decision in favour of Prah looked to nuisance law to support the plaintiff’s “reasonable use” of his solar panels.⁵³ The Court’s decision was driven

⁴² *Ibid* at 4-9.

⁴³ *Ibid*.

⁴⁴ *Washington Times*, supra note 35.

⁴⁵ *Grunow*, supra note 6 at 1290.

⁴⁶ *Ibid* at 1290-1291.

⁴⁷ *Ibid*.

⁴⁸ *Ibid* at 1265.

⁴⁹ *Ibid* at 1291.

⁵⁰ 321 NW 2d 182 (Wisc SC 1982) [*Prah*].

⁵¹ *Grunow*, supra note 6 at 1264.

⁵² *Ibid* at 1268.

⁵³ *Prah*, supra note 50 at 192, 231.

predominantly by policy concerns related to solar energy⁵⁴ rather than adherence to the common law approach, which did not recognize a right to sun rays.⁵⁵

Prah provides an example whereby the court may use existing principles of nuisance such as “reasonable use” to address the need for the protection of alternative energy sources, despite overriding traditional property principles of autonomy.⁵⁶ Although criticized in the dissent for undermining the stability of property law, the majority held that these traditional policies “reflect factual circumstances and social priorities that are now obsolete.”⁵⁷ Canadian courts are not bound to follow *Prah*, and while this case has not always been followed in the United States,⁵⁸ it represents an example of what could be possible for Ontario in order to balance property rights with the need to access solar energy. Without further legal protection, as is the current case in Ontario, the unilateral decision of a solar technology owner’s neighbour can result in thousands of dollars in solar technology being wasted, and this also further deters others from making similar investments. Increased legal protection need not trump property rights, but it may allow for a more balanced approach between property owner autonomy and protection for solar technology.

III. TWO SUGGESTIONS FOR LEGAL REFORM

Easements and Covenants in Ontario

There are currently far too many uncertainties and risks to make it worthwhile for the average Ontario homeowner to invest in solar energy. Homeowners need assurance that future development on neighbouring properties will not block access to sunlight.⁵⁹ Although there is now statutory protection for restrictive covenants under the *Land Titles Act*, the enforceability of such a covenant is precarious because the burden of this type of easement or restrictive covenant will only be enforceable if it is precisely worded and sufficiently detailed.⁶⁰

⁵⁴ *Ibid* at 236.

⁵⁵ *Ibid* at 233-234.

⁵⁶ *Grunow*, *supra* note 6 at 1265-1266, 1272.

⁵⁷ *Prah*, *supra* note 50 at 192, 238.

⁵⁸ See generally, *Chatsworth Realty 334 LLC v Hudson Waterfront Co A LLC*, 2003 WL 1085888, NY Sup; *Schultz v Trascher*, (2001) 640 NW 2d 130, Wis App; *Regency Outdoor Advertising Inc v City of Los Angeles*, (2006) 46 Cal Rptr 3d 742.

⁵⁹ *LRC Saskatchewan*, *supra* note 34 at 3.

⁶⁰ *Land Titles Act*, RSO 1990, c L.5, ss 1, 119(4)(c).

A restrictive covenant that is considered vague, or that lacks the elements required by the respective legislation, will not be enforced.⁶¹ The covenant must be explicit about the dominant and servient tenements in question as well as the precise segment of the land that is servient, and the nature of the burden itself must be clear.⁶² Drafting any covenant or easement—whether at common law or registered against the title through the statute—requires attention to detail, especially when it concerns sunlight. According to Sandy F. Kraemer, there are a number of variables that make the creation of solar easements and covenants difficult:

[Easements and covenants] remain difficult to describe because of the relationship of the sun to the earth. Shadow variables include land slope, terrain, solar orientation, latitude, time of day, and height of potential obstructions. Lawyers, engineers, land planners, title companies and others have expressed concern over the complexity required to write a solar easement containing highly detailed, technical information often included in these easements.⁶³

Describing the trajectory of sunshine is an intricate task, and drafting legal protection for it requires a deep understanding of other relevant legislation and jurisprudence from competent counsel, because a minor inaccuracy can prove fatal.⁶⁴ Even once registered under the *Land Titles Act*, the enforcement of a covenant can be modified or discharged by the Superior Court of Justice.⁶⁵ Therefore, although legislative protections are available, these options may be costly and uncertain. In order to combat these limitations, solar-friendly zoning bylaws are recommended.

Zoning Reform

The examples from California and Wisconsin provide helpful frameworks for creating solar-friendly bylaws. Such bylaws are necessary because common law easements and covenants, as well as registered covenants on title through the *Land Titles Act*, are limited in their protection in two ways. First, no positive covenant can run with land, which makes solar panels susceptible to shade from neighbouring vegetation.⁶⁶ Courts do not often enforce this obligation because it imposes a positive duty on the burdened party for the benefit of the dominant tenement without

⁶¹ *Ibid* at s 119(4); *Conveyancing and Law of Property Act*, RSO 1990, c C 34, s 61(1) [*CLP Act*]; Albert J McClean, “Nature of an Easement” (1966) 5 *Western L J* 32 at 48 [*McClean*]; *National Trust v Midlands Electricity Board* [1952] Ch 380; *Grunow*, *supra* note 6 at 1263.

⁶² *McClean*, *supra* note 61.

⁶³ Sandy F Kraemer, *Solar Law*, 1st ed (Colorado Springs: Shepard’s, 1978) at 59.

⁶⁴ *Amberwood Investments Ltd v Durham Condominium Corp No 123* (2002), 58 OR (3d) 481, OJ No 1023 at para 50.

⁶⁵ *CLP Act*, *supra* note 61 s 61(1).

⁶⁶ Bruce H Ziff et al, *A Property Law Reader: Cases, Questions and Commentary*, 4th ed (Toronto: Thomson Reuters, 2016) at 751

consideration.⁶⁷ Second, the registration of a restrictive covenant on title does not guarantee its enforcement.⁶⁸

In order to bypass the limitations of the common law and current legislation, municipalities in Ontario can modify zoning bylaws in a manner similar to California's *SRA* in order to maintain limitations on building height and vegetation growth. This solution will bypass the positive obligations, which easements and covenants do not allow vis-à-vis servient landowners and their successors. Moreover, it will provide consistent protection to all those who invest in solar technology without the cost and uncertainties associated with drafting individual agreements with neighbours.

CONCLUSION

As a result of climate change, Ontario and all other jurisdictions will eventually be forced to adopt renewable sources of energy. This process could be expedited in Ontario by simple, pragmatic legal reforms. In fact, legal reform is necessary to protect solar technology in the long term, since the current law in Ontario is inadequate to encourage the average homeowner to invest in solar energy. Current dependence on easements and covenants may lead to costly litigation, limited rights to access sunlight, and the overall deterrence of solar energy investment. To compensate for the limitations in the common law and legislation, a widespread effort to transition to green energy through municipal zoning amendments is a viable option. To do this, the Legislature must engage in inter-governmental cooperation with local municipalities and encourage public involvement. Taking these steps to assert commitment to sustainable energy will highlight its importance as a policy priority. It will also serve to encourage judicial decisions to follow the balanced route of *Prah v Maretti* in recognizing the overriding concerns that require the need to re-evaluate our protection of traditional property rights. As well, financial incentives, such as freezes in property tax, must be offered to further encourage solar energy investment. By taking these steps, Ontario will be better positioned to prevent the problems associated with climate change instead of being forced to deal with the consequences.

⁶⁷ *Ibid*; Mary Jane Mossman & Philip Girard, *Property Law: Cases and Commentary*, 3rd ed (Toronto: Emond Montgomery Publications Limited, 2014) at 692.

⁶⁸ *CLP Act*, *supra* note 61 s 61(1).