



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

Backgrounder on Integrated Governance for Proposed Great Lakes Protection Act

Introduction

This Backgrounder reviews some of the essential issues that arise for governance in the Great Lakes context and recommends that the Ontario government adopt an Integrated Governance approach within the proposed Great Lakes Protection Act. We briefly review the types of issues that integrated governance is meant to solve. We then look at the importance of governance and some of the recent reviews which have stressed the necessity of good governance models for water protection. We look at the necessity to take account of multiple scales of impacts from actions and measures in the Great Lakes in a governance context. We review the necessity to involve multiple sectors in any successful water governance model. We discuss the importance of transparency and "buy-in" across sectors including the necessity of strong public participation. We examine reviews undertaken of water governance models and lessons that have been gleaned in those prior experiences. And finally we conclude with a list of principles that we recommend, to underlie approaches to governance in the Great Lakes.

I - Issues to be solved with integrated governance solutions

According to the International Joint Commission (IJC), 40 million people access the Great Lakes for drinking water, food, recreation, and work. While containing 20% of the planet's fresh water, only 1% of the Great Lakes' water is renewed annually.¹ It is also a significant economic region for Ontario.

Stresses and impacts on the Great Lakes are multi-faceted and arise from combinations of factors. Many past approaches dealt with these stresses issue by issue, rather than in an integrated way. To give one example of an alternative view, the *Prescription for the Great Lakes* recommended dealing with human alterations of both tributary hydrology and Great Lakes shoreline structure as one mechanism to deal with basin-wide sources of stresses on the Lakes.² Despite strong efforts over the past four decades, many of these stresses are continuing or returning, and many new ones are arising.³

At the same time, the financial benefits of protecting water resources far exceed the costs.⁴ Isobel Heathcote stressed the importance of multi-media approaches to water management in describing the

¹ *Protection of the Waters of the Great Lakes, Review of the Recommendations in the February 2000 Report*, August 2004, International Joint Commission at 1

² *Prescription for Great Lakes Ecosystem Protection and Restoration (Avoiding the Tipping Point of Irreversible Changes)*, December 2005, Bails, Beeton, Bulkely, DePhilip, Gannon, Murray, Regier, Scavia

³ *Great Lakes Regional Collaboration Strategy*, December 2005, at 3

⁴ Frind et al p. 2 citing Canadian Geoscience Council, *Groundwater Issues and Research in Canada*, 1993

mercury poisoning experience of the residents of the Wabigoon-English River system in northwest Ontario; specifically in noting that while the point source effluent levels of mercury were reduced 35 years ago, the damage still continues today for the residents and the ecosystem since the methyl mercury continues to move around the food system and release from sediments continues to this day. Focussing only on the point source of the contaminant to water misses the full picture⁵. Similarly, the State of the Great Lakes Reports note that human health is impacted in the Great Lakes in a variety of ways including drinking the water, consuming fish containing contaminants in the edible fish tissue, from air quality in the Basin, and from bacteriological exposures when swimming⁶. This variety of impacts can only be dealt with by integrated, multi-media solutions to Great Lakes governance.

The biennial reports published by the IJC, particularly those reports in the 1990s which focused on the impacts of persistent toxic substances in the Great Lakes were also integral in demonstrating the need for a multifaceted, multi-level government approach that stressed the importance of source prevention to address pollution problems facing the Great Lakes Region.

II – Importance of Governance

The importance of governance to solving the multi-faceted issues facing the Great Lakes has been repeatedly stressed. The U.S. Regional Collaborative took this approach in its recommendation to “align governance to enhance sustainable planning and management of resources” while at the same time arguing for outreach that “brands the Great Lakes as an exceptional and competitive place to live, work, invest, and play.”⁷

In a 2006 Public Dialogue on the Great Lakes, conducted for the ECO⁸ participants noted the need for changes in governance and cited the “perceived lack of clear and direct accountability in the current structure” of Great Lakes governance.

An important observation made at a workshop on good water governance in the Netherlands noted that a significant impediment to innovation in water management is the historical “compartmentalization of authorities, including the division of financial means along the lines of departments.” Rather, they thought, “We need new institutional arrangements in which different authorities, different departments, the business community and research institutes work together on common goals.”⁹

⁵ Heathcote, I., *Integrated Watershed Management, Principles and Practice*, (John Wiley & Sons) 2009 at 11

⁶ For example, see *The State of the Great Lakes 2001* at 59, (U.S. Environmental Protection Agency and Environment Canada 2001)

⁷ *Great Lakes Regional Collaboration, Draft Action Plan*, July 2005 at 2

⁸ See *infra* at footnote 19, Executive Summary

⁹ Bert Satijin and Wilfried ten Brinke, *Governance capacities for adaptive water management*, in Proceedings of Principles of good governance at difference water governance levels, Papers presented at a workshop held on Mar 22 2011 in Delft, the Netherlands: UNESCO Institute for Water Education; UNESCO International Hydrological Programme at 52, 53

Muldoon and Botts reached a similar conclusion in their 2005 review, the *Evolution of the Great Lakes Water Quality Agreement*.¹⁰

Karen Bakker aptly summed up the problem in the concluding chapter of *Eau Canada*:

“Water does not respect administrative boundaries. It is subject to competing demands for agriculture, energy production, industry, urban water supply, recreation, tourism and ecosystem services; and each sector has very different needs. Allocating responsibility for different aspects of water to different government agencies has been the norm in Canada, but this can lead to bureaucratic stalemates because no one agency has responsibility for the big picture.”¹¹

III - Relationship of watershed / regional scale to local, regional, bi-national scales in Great Lakes governance

As is now widely recognized, it is not possible to protect the Great Lakes based on singular actions, nor by focussing on point sources and geographically specific legacy issues alone. As the Regional Collaborative paper pointed out, the five most significant nonpoint stressors in the Great Lakes¹² arise from a diversity of actions throughout the Great Lakes basin; these are intimately tied to land use patterns and activities, and permitted emissions from a variety of activities. The barriers to effectively addressing these issues are clearly understood¹³, and integrated governance approaches provide a mechanism to overcome these barriers.

As noted in the February, 2004 Province of Ontario White Paper on Watershed-Based Source Protection Planning, “watersheds are generally considered to be the most practical unit for managing water. This is because impacts are felt at the watershed level, rather than at the level of political boundaries such as municipal boundaries.”¹⁴ This is true for both water quantity issues affecting the Great Lakes, as well as for water quality issues. As the White Paper noted, the effects are cumulative. As Ontario moves beyond watershed based drinking water source protection, and grapples with protecting the Great Lakes and the variety of issues affecting the Lakes, this insight is even more apt.

This theme was echoed in the 2009 Great Lakes Discussion Paper issued by Ontario’s Ministers of Environment, Natural Resources, and Agriculture in which it was noted that lake-based and watershed

¹⁰ Muldoon, P. and Botts, L., *Evolution of the Great Lakes Water Quality Agreement*, 2005, Michigan State University Press, at 234

¹¹ Karen Bakker, *Governing Canada’s Waters Wisely*, in *Eau Canada: the Future of Canada’s Water*, Karen Bakker, ed. 2007 at 360

¹² Consisting of “nutrients, contaminants, pathogens, sedimentation, and altered flow regimes.” *Collaboration, Strategy* p. 41

¹³ The Collaboration summed these up as a) dispersed authority over a variety of jurisdictions relying primarily on voluntary programs; b) inadequate funding; and c) lack of integration and coordination of the programs and agencies implementing responses, *Collaboration, Draft*, at p. 30-1

¹⁴ Ontario, White Paper on Watershed-based Source Protection Planning, February 2004, at p. 8; See also the Water Charter, August 2010, Council of the Federation, preamble clause 9

planning approaches are essential for protection of the lakes and for decision making and stewardship, and that regional collaborators are integral to any Great Lakes Strategy given that they “reflect different voices and know their communities.”¹⁵

The importance of the “major watershed” as the appropriate geographic scale for groundwater protection, specifically, was also reported in the findings of a workshop commissioned by the Walkerton Inquiry in 2001¹⁶. The cited groundwater objectives cited there would also extend to the whole Great Lakes basin and also apply to surface water: to maintain the water cycle, provide base-flow for streams and aquatic habitats, promote a healthy ecosystem, and provide safe drinking water.

A thorough review of this subject conducted by the Polis Project in 2005 similarly noted that “A consensus is emerging among academics, fresh-water resource managers and policy analysis that water management should begin at the watershed level.”¹⁷

IV – Necessity of Inclusion of multiple sectors in governance models

The range of issues affecting the Great Lakes demonstrates the necessity for inclusion of multiple sectors on any effective governance framework. A typical list, while not exhaustive included degraded wetlands, population growth, impacts on flows, phosphorous impacts, contaminated sediments, need for wastewater treatment upgrades, brown-fields, drinking water risks, invasive species and health of fisheries¹⁸. The range of actors involved in all of the aspects of this suite of issues is evident, including municipalities and their residents, public health professionals, businesses, agricultural operators, First Nations, water-front and trail users, the environmental and conservation community, educators and many others.

The experience of Ontario’s *Clean Water Act* illustrates both the importance and the effectiveness of a multi-stakeholder approach to water governance. Both during the development of the policy framework for that legislation, and in the establishment of the Committees who are responsible to develop drinking water source protection plans across much of Ontario, representatives were sought from diverse sectors including municipal, agricultural, industrial, conservation, academic, environmental, water professionals, health and general public.¹⁹

¹⁵ *Healthy Great Lakes, Strong Ontario: Discussion Paper*, Ontario 2005 at 17

¹⁶ *The case for Groundwater Protection in Ontario: Results of a Workshop held at the University of Waterloo*, May 1, 2001, E.O. Frind, D.L. Rudolph, J.W. Molson, Department of Earth Sciences, University of Waterloo at iv

¹⁷ Polis Project on Ecological Governance, *At a Watershed: Ecological Governance and Sustainable Water Management in Canada*, Oliver Brandes et al, May 2005 at 38

¹⁸ *Ibid*, Collaboration, *Draft Action Plan*, at 7

¹⁹ As recommended by Frind, Rudolph, Molson cited *supra* at footnote 4 at 38; see Ontario’s *Clean Water Act*, S.O. 2006, c. 22 section 7, regulation 288/07

Similarly the *Lake Simcoe Protection Act* established a Lake Simcoe Coordinating Committee which is representative of multiple sectors and among other things provides advice on coordinating implementation of that Plan, and in identifying and resolving issues that arise in its implementation.²⁰

As Prof. Rob de Loe noted in a 2008 paper on a national water strategy, however, the very diversity of interests in water management and governance present both opportunities and challenges. For example, while capacity is distributed among many actors, there are many distinct interests which he notes “vary widely and are not necessarily compatible”, and he pointed out, this characteristic is true both of governmental and non-governmental actors.²¹ As Prof. de Loe noted, these varying interests must be respected and reconciled.

V- Importance of transparency, participation, connection, and buy-in in governance

In a public dialogue on the future of the Great Lakes hosted by the Environmental Commissioner of Ontario in late 2006, held in Kingston, Windsor, Hamilton and Thunder Bay, participants noted that a main over-arching theme was the need for greater public engagement on the Great Lakes.²²

Similarly, Pollution Probe conducted a visioning exercise on water management in Canada in 2008 in which the summary report stressed the important of a “Sense of Place” in fostering a strong “ethic of stewardship and shared responsibility for its protection”.²³

Lessons can also be learned from previous experiences. In the ECO’s 2006 Backgrounder to a series of Great Lakes Roundtables, a rhetorical question was posed: “What Happened to the Great Lakes Heritage Coast.” According to the ECO, this initiative was “largely unimplemented” and its promise lost.²⁴ Care must be taken in developing the proposed Great Lakes Protection Act to ensure that it will be meaningfully implemented, and provide lasting benefit to the Great Lakes and Ontario’s residents.

As was noted in a 2006 article, water governance, to be successful, must include citizens, NGOs, and other stakeholders and not be envisaged as “the purview of governments alone.” The insights that a broader range of participants bring to decision making, governance and protection are lost if Great Lakes governance remains primarily within and between provincial and federal governments²⁵.

²⁰ *Lake Simcoe Protection Act*, S.O. 2008, c. 23

²¹ De Loe, Rob, *Toward a Canadian National Water Strategy*, Final Report, May 13, 2008, at p. 11

²² Crawhall, Nicola, *A Public Dialogue on the Future of the Great Lakes, Proceedings from the ECO-Pollution Probe Great Lakes Roundtables and Public Forums*, Nov 28-Dec 7 2006

²³ Pollution Probe, *A New Approach to Water Management in Canada – Vision and Strategy*, March 2008 at 6

²⁴ Environmental Commissioner of Ontario, *Great Lakes Roundtables, Backgrounder*, Fall 2006, at 3 see text box on this initiative in which 2900 km of Great Lakes shoreline was to be identified for special planning and management in a manner that “prioritized its protection and enjoyment”.

²⁵ Muldoon, P., McQenaghan, T. *A Tangled Web: Reworking Canada’s Water Laws*, in *Eau Canada: the Future of Canada’s Water*, Karen Bakker, ed. 2007 at 258

Recent approaches involving public consultations and public engagement on a range of environmental issues have faced additional challenges from budgetary cuts, framing of issues and role of public input into government decision making process. Effective engagement of the public and the NGO sector will be directly affected by the level of resource available for such engagement.

VI - Examples of governance frameworks

Specific to the Great Lakes context, Remedial Action Plans (RAPs) were established for each “area of concern” in the Great Lakes as identified under the Great Lakes Water Quality Agreement. In particular, Public Advisory Committees (PACs) as they were usually called, were established to provide for multi-stakeholder participation and input into the progress of the RAPs. A 2006 evaluation which reviewed in part the functioning of the PACs noted that they played important roles in advancing the RAPs including bringing stakeholders together, forging consensus, increasing public awareness and support for the RAPs’ work, advocating with decision makers, participating in planning and implementing solutions to the RAP issues, and acting as watchdogs and public commentators on AOC progress.²⁶ Challenges with the PAC model included insufficiency of funding, getting an appropriate mix of stakeholders involved in the PACs, issues in the mix of roles they play, and keeping members involved over the long-haul.²⁷ These lessons should be addressed in any new governance frameworks established under the proposed Ontario Great Lakes Protection Act.

In the United States, a widely respected “Great Lakes Regional Collaboration of National Significance” was instituted, putting together federal, state, local, and aboriginal governments and other stakeholders. Their task was to develop a strategic action plan for the Great lakes.²⁸

A useful review of varying governance frameworks and water strategies is contained a 2008 paper by Prof. Rob de Loe, including Alberta’s Water for Life Strategy, Quebec’s National Water Policy, New Zealand’s Sustainable Water Programme of Action, Australia’s National Water Initiative and National Plan for Water Security, Brazil’s National Water Resources Policy, and the European Union Water Framework Directive.²⁹ In comparing these initiatives, he concluded specifically with respect to governance, that

“Reflecting a global shift in the nature of water governance, a broad range of stakeholders beyond governments was involved in every case study examined. Where legal responsibility for water was shared... all played key roles...Non-governmental stakeholders with

²⁶ Ontario Public Advisory Council, John Jackson, *Great Lakes Hotspots – Ontario Citizens Speak Up*, pp. 37 ff

²⁷ Ibid OPAC, pp 42-48

²⁸ *Great Lakes Regional Collaboration, A Strategy to Restore and Protect the Great Lakes, Draft Action Plan*, July 2005 at 1,

²⁹ De Loe, *supra* fn 18 at pp 13 - 21

a direct interest in water normally were deeply involved in the process of developing overarching water strategies, policies or frameworks.”³⁰

The National Roundtable on the Environment and the Economy reviewed collaborative water governance in a recent process, and included cases studies on the Okanagan Basin, the North Saskatchewan River Watershed, the Bras D’Or Lakes and the Saint Francois River Watershed. Their review and accompanying research noted that it useful to illuminate the elements of successful examples. These included: a focus on clear outcomes; finding the right convenor; bringing the right people together; ensuring real commitment; creating clear rules and scope; fostering shared ownership and accountability; building legitimacy; and establishing ongoing dialogue³¹. While space does not allow a more thorough review of the NRTEE findings in that report, it is well worth examining them as the province considers governance frameworks for a Great Lakes Protection Act.

Conclusion

The above discussion allows us to draw certain principles against which to test any proposed approaches to governance with the aim of better protecting Ontario’s portions of the Great Lakes. These include the following:

- allow for integration of actions and decisions between scales (local, regional, provincial and beyond), among jurisdictions, and among actors and stakeholders
- provide for exchange of best available information and practices resulting in action on watershed / regional scales
- provide for timely multi-media (air, land, water), multi-use, and multi-value assessments of Great Lakes issues and resulting responses
- establish effective and accountable leadership within a multi-sectoral / multi-departmental governance framework
- allow for flexibility, response to emerging issues, and for the governance model to change dynamically over time with different pressures and issues
- provide for resilience of governance and resulting decisions; provide room to learn from experiences, to explore and innovate for solutions
- avoid irrevocable decision making;

³⁰ De Loe, supra, fn 18 at p 21

³¹ Canada: National Round Table on the Environment and the Economy, *Chapter 7, Collaborative Water Governance*, in *Charting a Course, Sustainable Water Use by Canada’s Natural Resource Sector*, NRTEE 2011 at 123-125 and 132-133

- provide for modular decision-making, responsive integrated decision making and action across disciplines, actors and agencies;
- encourage development of a Great Lakes stewardship ethos based on a strong sense as a Great Lakes community, appreciation of the issues and a shared set of values to protect the Great Lakes
- ensure that participants would find that participation in a governance framework is worth their while; that their inputs will be valued and reflected in decisions, and that the governance framework leads to effective implementation
- allow for renewal of the governance framework by entry of new participants, and for openness and transparency in general to allow for public and stakeholder participation beyond any “official” status
- allow for renewal of governance to accommodate emerging issues and developments
- provide that recommendations or results of deliberations within a governance framework will result in the alignment of decisions and actions other decision makers in the relevant part of the Great Lakes basin, that is to align municipal, local, regional, provincial, First Nations and private decision making with respect to Great Lakes issues

The Great Lakes community in Ontario is looking forward to the promised introduction of a Great Lakes Protection Act in the province. We will be bringing these ideas forward and anticipate providing constructive responses and input as the legislation is tabled. A Great Lakes Protection Act is a huge opportunity for the province and we provide these comments, along with lessons learned from prior experiences in order to assist in the process.