



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

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Manager
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Lands and Water Branch
Ontario Ministry of Natural Resources

**A Preliminary Proposal to Undertake an Evaluation of Great Lakes Charter
Annex Consultations in Ontario**

Thank you for the opportunity to work with the Ministry of Natural Resources (MNR) staff on this project to evaluate your unique Great Lakes Charter Annex Advisory Panel process as a case study for a new approach to consultation for the Ontario government. As participants in that process and the events leading up to its formation, the Canadian Environmental Law Association (CELA) shares your belief that there are valuable approaches and outcomes from this process that could be effectively applied to improve many other Ontario public policy initiatives. Please consider this letter as an initial outline for further discussion of how to best shape this work to meet your objectives.

Project Objectives

Increasingly public policy issues are complex, multi-faceted, highly technical and political and involve regulatory components. There is usually a broad cross section of stakeholders with direct and indirect interests whose perspectives need to be taken into consideration when policy is developed. Consulting each of these sectors individually can be very time consuming, expensive and ineffective in building an informed and enduring constituency for public policy reform. Stakeholders with more resources inevitably are able to be more involved than those with less. This often leads to perceptions of inequity, secrecy and undue influence on decision-making on public policy. Often one section of a Ministry undertakes public consultation while another puts that policy into regulation and practice. Directly involving legal staff in consultations on law and policy reform could have advantages for both stakeholders and government regulators.

The MNR Great Lakes Charter Annex Advisory Panel broke down many of these barriers to effective consultation and it created consent on Ontario's input at the international negotiating table that significantly influenced the outcome of those negotiations. As

well, it developed a broad-based constituency who have expressed interest in continuing to shape the implementation of the Charter Annex in Ontario as well as in other jurisdictions.

Project Components

We have given some thought as to how best to communicate the lessons and innovations of this consultation in a project design that could be completed by the end of January 2007. This deadline would be in time to inform efforts underway to reform consultations in the Ontario Public Service. We understand a policy forum with this aim is being planned by the Centre for Leadership in Government for February 2007.

- A. We propose that CELA write a Report on the MNR Great Lakes Charter Annex Advisory Panel as a Model for reform of Public Consultation in Ontario. See the section on the report outline for a fuller description of the report components.
- B. Additionally we would provide a shorter summary report and background materials including interviews of key participants involved in the process as project deliverables.
- C. We would also be prepared to speak publicly about this research.

Project Steering Committee

We prefer to work with a project steering committee to further shape and advise on this project. We understand that MNR Staff Kay Morgan from the ADM's office and the Lands and Water Branch will be involved. From a CELA perspective we would like to involve three people.

Sarah Miller, our water policy researcher and Co-ordinator would direct the project as well as contribute to the deliverables and serve on the project steering committee. Due to the fact Sarah was involved in all stages of the Great Lakes Charter Annex negotiations, we feel it would be best that an arms length researcher conduct the informant interviews and assist with writing the report.

We are recommending researcher and writer Anne Wordsworth for this work. As you can see from her attached resume she has worked both as a journalist and within the Ontario Government. This means she writes very well and is able to communicate complex policy issues clearly. Her government experience has given her an insider understanding of policy and regulatory development. Recently, CELA has relied on Anne as a researcher on numerous projects, several of them involving water and public policy. Anne has indicated she is available for the project time period.

We would also like to involve CELA Board Member John Jackson as a member of the Advisory Committee, not only because of his extensive involvement in consultations in the Great Lakes and other environmental matters, but also because he has written guides to and analysis of public consultation for the ENGO Community. He is about to

publish a study of the role of the public advisory committees in the Ontario Remedial Action Plans.

We may also want to involve other interested members of the Great Lakes Charter Annex Public Advisory Committee on the Steering Committee. The first job of the Steering committee would be to develop clear project objectives and goals.

Report Outline

a. Background and context

The early stages of the Great Lakes Charter Annex consultation were initially shaped by the international negotiations convened by the Council of Great Lakes Governors between the eight Great Lakes States and the two Canadian Provinces and the Advisory Panel to the international process. The report would chronicle that process to set the context leading up to the formation of the MNR Great Lakes Charter Advisory Panel. Key components of the two Advisory Panels could be compared and contrasted throughout the paper. The story of these negotiations cannot be told without an account of the political climate during the process and how it shaped the key issues under discussion and the final agreements. An account of these negotiations should also touch on constitutional and governance differences and imperatives between the Parties. Some care will need to be taken to avoid all of the complexities and details of this negotiation in order not to overwhelm our central message. This message will focus on how Ontario successfully adapted its consultative process to be more inclusive and strategic and how these strategies could benefit other consultations.

b. Exploring unique components of the Advisory Panel

Participants in the MNR Great Lakes Charter Panel would be interviewed to elicit responses to key questions about the formation, makeup, operations, techniques and outcomes of the Committee's work. Efforts would be made to interview all members as well as some outside informants such as others involved in the international negotiations. Government staff as well as other stakeholders would also be interviewed. A list of potential interviewees as well as a set of questions will need to be developed as one of the first priorities of the Steering Committee.

The Steering Committee will need to consider if a separate questionnaire should be developed for government and non government stakeholders and if the questionnaire should be administered by personal interview or electronically or both. The unique aspect of confidentiality and of transparency used for the Panel's work will be a particular focus of the questionnaire. Methodologies and techniques used to reach consensus will be explored.

The questionnaire will also explore the participants' level of satisfaction with the process and with the outcome and identify where they would suggest improvements. Willingness of stakeholders to be involved in the implementation process should be

explored as an indicator of the success of this model. Cradle-to-grave consultation from policy to practice could present its own set of problems. It is likely that many agencies might be wary of creating too great expectations. We will consider techniques to avoid disappointing outcomes.

Adequate resources for new consultation ventures will be key to their success. This project could evaluate actual and avoided costs if this model were used. How a new model for consultation would fit within existing frameworks would be an issue too large for this paper as each Ministry probably has its own systems in place. For instance, if a similar consultation were to take place on another Great Lakes environmental initiative the EBR registry would need to be integrated into the process. Ideally we would hope this model would prompt each of those Ministries to examine how best to apply the lessons learned to their existing systems.

Techniques used in the MNR Panel consultations will be explored in detail. These could include use of a facilitator, trends analysis, regular updates on developments at the negotiating table, emergency calls between meetings, circulation of minutes and background materials, and sharing of stakeholders work on the issues and how Panel discussions informed the Province's positions at the bargaining table.

c. First Nations Consultation

Because CELA was not party to the parallel efforts to consult with and involve First Nations we would have to rely on MNR staff and these First Nations involved to characterise those discussions and outcomes. Some thought should be given to including a First Nations person or persons on the Steering Committee of this project or to setting up a parallel project. The exclusion of First Nations by the Council of Great Lakes Governors in the first phase of negotiations was hard to overcome particularly as it reflected on all State and Provincial governments (regardless of their efforts and actions to inform and consult regionally). This came at a time when the Canadian courts had ruled on "duty to consult" and First Nations were trying to hold governments to a higher standard for full participation. This standard of participation has not yet been well defined.

A positive outcome was that First Nations did come together in the Great Lakes for the first time and issued a collective Tribal and First Nations Great Lakes Water Accord articulating the need for full participation in this and future consultations. The governments have now been put on notice on the need for participation and have a pledge that the Tribes and First Nations want to work together to secure a healthy future for the Great Lakes. Next steps will be very important to explore with First Nations Representatives so their participation can shape the next substantive steps.

d. Style of Report

We would endeavour to make this report accessible to all readers, not only members of the Ontario Public Service. It should be of interest to the concerned public, actively

involved in consultations. We will use as many quotes as possible from those we interview. We will need to ask if informants we interview want to be named or if they would prefer their responses be anonymous. The Steering Committee should discuss how to circulate the Report to groups outside government that could benefit from it.

e. Conclusions and Recommendations

A draft of the final report would be shared with the project Steering Committee so the Committee could collectively determine what conclusions and recommendations to draw on from the findings. Care will be taken to make these finding generic so that they can be used to build a new model for future Ontario Public Service stakeholder consultations.

These are my preliminary thoughts on how we can approach this project with its tight time frame to get results that will be useful and hopefully transformative and informative in future Ontario policy initiatives. Thank you for the opportunity to be involved in this research. I have attached a draft project budget and timetable as well as Anne Wordsworth's resume. I can provide a resume for John Jackson if necessary as well. I have verified that he is interested in participating.

Yours truly,
Canadian Environmental Law Association

Sarah Miller

Sarah Miller
Co-ordinator and Water Researcher

**The Great Lakes Charter Annex Advisory Panel: a model for successful
consultation on Ontario public policy**

Draft Budget

Principle researcher Anne Wordsworth 26 days @ \$500.00 per day	13,000.00
GST	780.00
Project Co-ordinator Sarah Miller	<i>in kind donation</i>
Project team member John Jackson honoraria	500.00
Long distance phone	500.00
Travel	600.00
Overhead	2,307.00
Total budget	\$ 17, 687.00

Study components and work plan

December 7, 2006 to February 2, 2007 (less week around Christmas)

- Week 1-3** Background Research and Project Scoping meeting with MNR Staff
- Week 2** Design and approve interview questions
- Weeks 2-5** Conduct interviews
- Weeks 5-8** Write full report findings, conclusions and summary report
- Week 7** Submission of draft report to meeting MNR staff
- Week 8** Final revisions