REVIEW OF THE ONTARIO PROVINCIAL PARKS AND CONSERVATION RESERVES ACT, 2006

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SUMMARY

The 1954 Ontario *Provincial Parks Act* was in force for 52 years until the *Provincial Parks and Conservation Areas Act, 2006* came into force on September 4, 2007. The basic functions of the Act remain, that is, to provide the Government of Ontario with: 1) the ability to create parks, and 2) the ability to manage parks. This new Act provides more conservation direction to the planning and management of Ontario's system of protected areas. It provides a more powerful set of planning instruments. It solidifies many former policy initiatives into law. The new Act brings Conservation Reserves under this Act, rather than being under the *Public Lands Act*. The Act provides improved directions in the purposes of parks, the definition of the park class structure, the role of ecological integrity in management, a prohibition on most resource extraction, a requirement for State of the Parks' reporting, and increased fines for engaging in prohibited activities. The Act has some major deficiencies. There is no requirement that management planning documents be followed or that all activities be mentioned in the plans. There is no appeal of management plan policies to an independent body, such as a hearing board. The Ontario Parks Agency is not given status in the Act. Logging and road building for logging continue to be allowed in Algonquin Provincial Park. Hunting and private cottages are still allowed in many parks, but the ecological integrity requirements may restrict some of these activities. This Act is an improvement over the previous Act of 1954, but it is still not fully supportive of an open, transparent and consultative management philosophy for parks and protected areas for parks.

1. INTRODUCTION

Ontario's parks system is one of the finest in Canada, with 329 parks containing 7,868,368 hectares of lands and waters plus another 292 Conservation Reserves covering 1,422,299 hectares (1). This system is larger in area that all of the state parks in the USA combined. In 2007 the operating budget was approximately $68,700,000, of which $15,300,000 (22%) came from Provincial Government. The majority of the remainder came from various fees and charges assessed for visitor use and tourism (2).

In 2007 the system catered to 10,377,359 visitor days of recreation. The system's 19,266 front country campsites provided 5,198,164 visitor days of recreation, the rest being interior camping and day use (1).

This system largely developed after the *Provincial Parks Act* was passed by the Ontario Parliament in 1954, a time when the system contained only 8 parks. That Act provided for two basic functions. It provided the government with an ability to create parks by regulation. It also established a legal system for the management of the parks so created. The Act provided little direction to the government on planning and management. As the decades elapsed, it became increasingly obvious that the legislation was limited in scope and needed improvement.

Scholars commented on the needs for a new Act. In 1978 (3), 1982 (4) and 2001 (5) John Swaigen, a lawyer, provided suggestions for new legislation. In 1982 (6) and 1984 (7) Paul Eagles, a planner, analyzed planning issues in parks and concluded that the planning and management problems observed could be best solved through new legislation (6). However, there was no progress in the 1980s and 1990s in getting the succeeding governments to make Act revision a priority. An attempt by the Ministry of Natural Resources in the early 1990s to get a new Act failed due to a lack of public and political support (8,9,10,11). None of the major Environmental Non-Government Organizations made the revision an issue in their lobby activities in that period.

The political conditions favouring Act revision started to change in 2001 when the Wildlands League, an Environmental Non-Government Organization (ENGO) associated with the Canadian Parks and Wilderness Association, started lobbying the government and the political parties for a new Act, with the support of Ontario Nature, the World Wildlife Fund and the Sierra Defense Legal Fund. In 2001 Anne Bell prepared a paper for the Wildlands League that outlined the elements of a new Act (12). In 2002 the Wildlands League published a report outlining in detail the changes needed in a new Act (13). Evan Ferrari the Director of the Parks and Protected Areas Program of CPAWS-Wildlands League headed a multi-group, multi-year lobby effort on obtaining new parks legislation. The Conservative Governments headed by Mike Harris and Ernie Eves showed no interest in revisions of the *Provincial Parks Act* during their time in power from 1995 to 2003. However, background lobby work with the opposition Liberal Party was more successful and Act revision became a policy emphasis for that party in their election platform in 2002. In 2003 a Liberal Government headed by Dalton McGuinty was elected.

The newly-elected McGuinty Government started work on *Provincial Parks Act* revisions in the first year of its mandate in 2003. In 2004 David Ramsey, the Minister of Natural Resources, released a paper outlining a proposal for a new Act (14). After extensive public consultation, new legislation was brought to the Ontario Parliament for first reading in the Ontario Legislature on October 25, 2005. The Government requested the Ontario Parks Board of Directors to undertake public consultation on the proposed Act and to prepare recommendations. The resultant document was released in late 2005 (15). Revised legislation was given second reading and then subjected to clause by clause

debate. The Wildlands League consortium was very active in pushing for amendments throughout this phase. The Wildlands League consortium utilized an advisory committee of ENGO officials, academics and interested citizens throughout this 2002 to 2006 period. This committee provided advice to the League in regards to all aspects of the work on lobbying for legislative change. The legislation to establish a new legal framework for the planning and management of Ontario Provincial Parks and Ontario Conservation Reserves was assented to on June 20, 2006. The *Provincial Parks and Conservation Areas Act, 2006* along with Regulations came into force on September 4, 2007.

2. METHODS

This paper comments on the major features of the *Provincial Parks and Conservation Areas Act, 2006.* It compares this new Act to the former 1954 *Parks Act* and to the literature on the content of parks legislation, most specifically the work of Swaigen (3,4,5), Eagles (6,7), Attridge (9,10,11) and Bell (12,13). Comparison is made to criteria for good Governance (16) (Table 1). This paper does not undertake a comprehensive review. Only the most important legal concepts and changes from the earlier Act are discussed.

(Table 1 here)

The paper will review the most important concepts, using the analytical structure similar to Eagles (17).

3. RESULTS

3.1 Introduction

After the legislative change, the basic functions of the Act remain, that is, to provide the Government of Ontario with: 1) the ability to create Provincial Parks; and, 2) the ability to manage Provincial Parks. With the *Provincial Parks and Conservation Areas Act, 2006,* Ontario Provincial Parks and Conservation Reserves come under one piece of legislation. Previously, Conservation Reserves had been managed under the *Public Lands Act.* Management of these reserves stays with the Ministry of Natural Resources and does not transfer to Ontario Parks.

3.2 Purpose and Dedication Statements

Any *Provincial Parks Act* should include clearly worded statements about the purposes, objectives and principles guiding the establishment and management of protected areas (7, 13)

The Purpose Statement in the 1954 Act stated in Section 2:

All provincial parks are dedicated to the people of the Province of Ontario and others who may use them for their healthful enjoyment and education, and the provincial parks

shall be maintained for the benefit of future generations in accordance with this Act and the regulations. R.S.O. 1990, c. P.34, s. 2.

A 1973 court decision determined, that this dedication "does not establish a public trust which would obligate the government not to take any actions that harmed parks" (18). Numerous authors suggested new wording was needed to provide explicit commitment to maintain and restore the health of natural systems, features and values found in parks (7,11,12,17). The new *Provincial Parks and Conservation Reserves Act, 2006* includes strengthened purpose and dedication statements that provide context and directions to the protected areas system.

In the 2006 Act, the Purpose Statement in Section 1 states:

1. The purpose of this Act is to permanently protect a system of provincial parks and conservation reserves that includes ecosystems that are representative of all of Ontario's natural regions, protects provincially significant elements of Ontario's natural and cultural heritage, maintains biodiversity and provides opportunities for compatible, ecologically sustainable recreation.

This purpose section of the 2006 Act uses the phrase "permanently protect," which is a strong statement of conservation intent. It recognizes that both parks and conservation reserves will be managed within one system. The ecosystems within the parks and reserves shall be "representative" of "provincially significant elements of Ontario's natural and cultural heritage." This system shall maintain "biodiversity", a new term that is an important addition to the Act. This system shall also provide "opportunities for compatible, ecologically sustainable recreation." The statement makes clear that recreation is a purpose of parks, but only if it is ecologically sustainable. These phrases in Section 1 of the 2006 Act provide much more detail on the purposes of parks and reserves than found in the 1954 Act. It puts management context within "ecosystems" and "biodiversity," concepts not found in the previous Parks Act.

In addition, the 2006 Act has a dedication statement in Section 6:

6. Ontario's provincial parks and conservation reserves are dedicated to the people of Ontario and visitors for their inspiration, education, health, recreational enjoyment and other benefits with the intention that these areas shall be managed to maintain their ecological integrity and to leave them unimpaired for future generations.

Section 6 contains three important concepts. First, the people of Ontario and the visitors shall receive from the parks "inspiration, education, health and recreational enjoyment." These statements provide a more expansive focus than was found in the 1954 Act which stated simply that the visitors "may use them for their healthful enjoyment and education." In addition, Section 6 states that the parks "shall be managed to maintain their ecological integrity." This statement about ecological integrity first appeared in Canada in parks law with amendments to the National Parks Act of Canada in 1988. Since that time, a large amount of scientific literature and management practice has accumulated which can be brought to bear by Ontario Parks' managers as they operate according to this statement. Also the famous phrase "leave them unimpaired for future

generations" that first appeared in the 1916 organic Act that set up the National Park Service in the USA and was copied in the 1930 National Parks Act of Canada entered Ontario parks law in 2006. The concept of "unimpaired for future generations" is forward looking and provides a high standard for planning and management. The purpose and dedication statements provide clearly-worded statements about the purposes, objectives and principles guiding the establishment and management of protected areas that are much more directive and specific than that of the older legislation. These statements provide strategic direction for the protected areas and for the parks agency.

3.3 Park and Conservation Reserve Objectives

The *Provincial Parks and Conservation Reserves Act, 2006* introduces the new concept of legal definitions for the objectives for both provincial parks and conservation reserves. Section 2(1) gives status to park objectives for provincial parks and Section 2(2) for conservation reserves. This is the first time that park objectives have been given legal status in Ontario. Previously, park objectives were in policy only.

Objectives: provincial parks

2. (1) The following are the objectives in establishing and managing provincial parks:
    1. To permanently protect representative ecosystems, biodiversity and provincially significant elements of Ontario's natural and cultural heritage and to manage these areas to ensure that ecological integrity is maintained.
    2. To provide opportunities for ecologically sustainable outdoor recreation opportunities and encourage associated economic benefits.
    3. To provide opportunities for residents of Ontario and visitors to increase their knowledge and appreciation of Ontario's natural and cultural heritage.
    4. To facilitate scientific research and to provide points of reference to support monitoring of ecological change on the broader landscape.

Objectives: conservation reserves

2. (2) The following are the objectives in establishing and managing conservation reserves:
    1. To permanently protect representative ecosystems, biodiversity and provincially significant elements of Ontario's natural and cultural heritage and to manage these areas to ensure that ecological integrity is maintained.
    2. To provide opportunities for ecologically sustainable land uses, including traditional outdoor heritage activities and associated economic benefits.
    3. To facilitate scientific research and to provide points of reference to support monitoring of ecological change on the broader landscape.

The movement of objectives from policy into law implies that governments and managers should follow these statements. The objectives of provincial parks and those of conservation reserves are virtually the same, except that conservation reserves are not required to provide opportunities for visitors to "increase their knowledge and appreciation of Ontario's natural and cultural heritage." It appears that the framers of the Act did not want to commit future governments to the operation of education and recreation programs in Conservation Reserves. However, as of the passage of this Act only 111 Provincial Parks were operating parks, that is parks with on-the-ground staff

and functioning visitor use programs. So with 329 parks now in place, this implies that the 218 provincial parks without visitor programs may be required to have such programs in the future due to Section 2(1.3).

In regards to park objectives, the wording in the 2006 Act has some differences from that in policy in place in 2006. The tourism objective was removed. This loss is not substantive because fully-fledged tourism policy for provincial parks had never been developed.

3.4 Park Classes

Ontario is almost unique in Canada in adopting a classification system for the provincial parks. The concept of a classification system for Ontario Provincial Parks had been first recommended by the Federation of Ontario Naturalists in 1958 (19). The validity of such classification is internationally recognized with the IUCN category system for parks and protected areas (20).

The older 1954 Act stated that parks may be classified, but no definitions of classes were in the law. The park classification section in the *Provincial Parks Act* was found in Section 5.

5. The Lieutenant Governor in Council may classify any provincial park as a natural environment park, a historical park, a nature reserve, a wilderness park, a recreation park and a waterway park or such other class of park as the Lieutenant Governor in Council may designate. 1998, c. 18, Sched. I, s. 42.

The 2006 Act lists six park classes in Section 8(1).

8. (1) The Lieutenant Governor in Council may classify provincial parks in one of the following classes:

1. Wilderness Class Parks.
2. Nature Reserve Class Parks.
3. Cultural Heritage Class Parks.
4. Natural Environment Class Parks.
5. Waterway Class Parks.
6. Recreational Class Parks.

The natural environment, nature reserve, wilderness class, and waterway names remain unchanged from the previous legislation. In the new Act, recreation class is changed to recreational class. A major wording change is the historical class changing to the cultural heritage class, signifying a change in focus for this park class.

A major change from the earlier legislation is the addition of legally-defined objectives for each of the 6 park classes. In the past, park class definitions had been in policy only. The addition of legally-defined objectives provides more direction for management of the parks in each class and more authority for the management organization in developing detailed policy plans for each park. The objectives in the 2006 Act are given below.

Objectives: wilderness class parks
(2) The objective of wilderness class parks is to protect large areas where the forces of nature can exist freely and visitors travel by non-mechanized means, except as may be permitted by regulation, while engaging in low-impact recreation to experience solitude, challenge and integration with nature.

Objectives: nature reserve class parks
(3) The objectives of nature reserve class parks are to protect representative ecosystems and provincially significant elements of Ontario's natural heritage, including distinctive natural habitats and landforms, for their intrinsic value, to support scientific research and to maintain biodiversity.

Objectives: cultural heritage class parks
(4) The objective of cultural heritage class parks is to protect elements of Ontario's distinctive cultural heritage in open space settings for their intrinsic value and to support interpretation, education and research.

Objectives: natural environment class parks
(5) The objectives of natural environment class parks are to protect outstanding recreational landscapes, representative ecosystems and provincially significant elements of Ontario's natural and cultural heritage and to provide high quality recreational and educational experiences.

Objectives: waterway class parks
(6) The objectives of waterway class parks are to protect recreational water routes and representative and significant terrestrial and aquatic ecosystems and associated natural and cultural features and to provide high quality recreational and educational experiences.

Objectives: recreational class parks
(6) The objective of recreational class parks is to provide a wide variety of compatible outdoor recreation opportunities in attractive natural surroundings.

Calls had been made for upgraded attention on aquatic parks (22). A new Aquatic Class included in the 2006 Act will be brought into force at the discretion of the Minister at some future time. The definition of this class is listed in the Act in Section 8. The use of the name Aquatic Class is different from the earlier name of Marine Class that had been used in policy. This law anticipates the development of a system of aquatic class parks in Ontario at some time in the future.

Objectives: aquatic class parks
(8) The objectives of aquatic class parks are to protect aquatic ecosystems and associated natural and cultural features for their intrinsic value, to support scientific research and to maintain biodiversity.

The *Provincial Parks and Conservation Reserves Act, 2006* continues the role and strengthens the functions of classification within the Ontario Provincial Park system. This Act enables Cabinet to create Regulations for "classifying provincial parks" (Section

54.1a). This means that the uses and activities under this classification system could be upgraded to legal prohibitions by Regulation.

3.5 Ecological Integrity

The 1954 *Provincial Parks Act* did not mention the concept of ecology or ecological integrity. Numerous calls had been made to incorporate these concepts within a revised Act (13,21,22) and these were heeded. Section 3 of the *Provincial Parks and Conservation Reserves Act, 2006* makes ecological integrity the first priority for planning and management of both provincial parks and ecological reserves. This inclusion copies the landmark 1988 amendment to the National Parks Act for Canada in regards to the priority for ecological integrity for planning and management. Section 3 is listed below.

3. The following principles shall guide all aspects of the planning and management of Ontario's system of provincial parks and conservation

> 1. Maintenance of ecological integrity shall be the first priority and the restoration of ecological integrity shall be considered.
> 2. Opportunities for consultation shall be provided.

Section 3 states that "ecological integrity shall be the first priority" in "planning and management" of "parks and conservation reserves." Ecological integrity is defined in Section 4 (2) and Section 4 (3).

4 (2). Ecological integrity refers to a condition in which abiotic and biotic components of ecosystems and the composition and abundance of native species and biological communities are characteristic of their natural regions and rates of change and ecosystem processes are unimpeded.

4 (3). For the purpose of subsection (2), ecological integrity includes, but is not limited to,

> (a) healthy and viable populations of native species, including species at risk, and maintenance of the habitat on which the species depend; and
> (b) levels of air and water quality consistent with protection of biodiversity and recreational enjoyment.

The addition of the ecological integrity objective to Ontario Provincial Park planning and management is an important change. It is a major strengthening of the legal requirements for ecological protection requirements for Ontario Provincial Parks and Conservation Reserves since there had been no mention of ecology or ecological integrity in the previous legislation. One might assume that this new objective may be implemented through all aspects of planning and management, with the management planning process having particular importance.

There could be a problem when ecological integrity is the first priority for the Cultural Heritage Class of Provincial Parks. This presumably could lead to cultural heritage conservation values being compromised when ecological concerns are given a higher priority. Given that cultural heritage is a non-renewable resource, while biological

features are renewable; it is unreasonable to have ecological integrity as the first priority for cultural heritage conservation.

A similar problem may occur in the recreation class of Provincial Parks. The recreation class parks are an important part of the system in that they allow for intensive outdoor recreation activities to occur in areas of lower ecological importance. If this led to less intensive use of this park class because of a strong emphasis on ecological integrity conservation, such a policy could shift the outdoor recreation demand to other and less suitable classes of Provincial Park or to the extensive system of Conservation Areas operated by the 38 Conservation Authorities in Ontario.

3.6 Industrial Activities

The 1954 *Provincial Parks Act* did not prohibit industrial activities in Ontario Provincial Parks. Appeals had been made to prohibit industrial activities (12,13). The Wildlands League in 2002 had recommended inclusion in a revised Act an explicit prohibition of timber harvest, mining, and aggregate extraction (13). This request was agreed to by the Liberal Government and by the Ontario Parliament leading to the inclusion of Section 16. Section 16(1) explicitly prohibits timber harvesting, the generation of electricity, prospecting and mining development, aggregate extraction and other industrial uses in Ontario Provincial Parks and Conservation Reserves. Section 16(1) is listed below.

16. (1) The following activities shall not be carried out on lands that are part of a provincial park or conservation reserve:

1. Commercial timber harvest.
2. Generation of electricity.
3. Prospecting, staking mining claims, developing mineral interests or working mines.
4. Extracting aggregate, topsoil or peat.
5. Other industrial uses.

Section 16(1) is a major upgrading of the protection of park and reserve resources from industrial activities. However, utility corridors are still allowed in parks and reserves according to Section 20(1).

Logging (Section 17.1) and aggregate mining for road building (Section 18.3) are still allowed in Algonquin Park, the only park with such activities. Existing hydro-electric generation facilities, oil wells, gas wells and aggregate pits are allowed to continue. Hunting occurs in provincial parks when allowed by Regulation in the Fish and Wildlife Conservation Act, 1997 (Section 15.1). This section is an artifact of past involvement in park policy by the Wildlife Branch of the Ministry. For example, the duck hunting in Rondeau Provincial Park is managed by the Wildlife Branch, often with scant attention given to park management concerns. In the future, recreational hunting will be harder to justify under the ecological integrity aspects of the new Act, except where it is explicitly required for management purposes, such as deer population reduction in the southern Ontario parks.

Summer logging and summer road building have a negative environmental impact on Algonquin Provincial Park. Both activities are still allowed under this new Act. However, the recent debate on the protection of migratory bird's nests under the federal *Migratory Bird Convention Act 1994* from summer logging (23) may require a change in park policy in the future. Also, it can be argued that the ecological integrity sections of this new Act are in contradiction to the current policy of allowing damage to the flora and fauna of Algonquin Park by summer logging and road building which could conceivably lead to litigation.

3.7 Creation and Removal of Parks

The 1954 *Provincial Parks Act* provided for park creation and delisting by Regulation. This made park creation and delisting relatively straight-forward for government. National Parks in Canada are created by Regulation but can only be delisted by Parliament. This provides for more secure long-term tenure. Calls had been made for a similar procedure for provincial parks (13). In the 2006 Act, park creation continued to be by Regulation, but park delisting can only occur through Parliament.

All parks are created, delisted or changed in size by regulation according to Section 9(1) of the *Provincial Parks and Conservation Reserves Act, 2006.*

9. (1) The Lieutenant Governor in Council may by order set apart as a provincial park or a conservation reserve any area in Ontario, may decrease or increase the area of any provincial park or conservation reserve and may prescribe the boundaries of any provincial park or conservation reserve.

However, any removal of parkland of 50 ha or more or 1% of the park or more must be tabled in Parliament and must be approved by a vote of Parliament according to Section 9(4).

9. (4) The Lieutenant Governor in Council may not order the disposition of an area of a provincial park or conservation reserve that is 50 hectares or more or 1 per cent or more of the total area of the provincial park or conservation reserve, unless,

(a) the Minister first reports on the proposed disposition to the Assembly;

(b) the Minister tables the proposed new boundaries of the provincial park or conservation reserve with the Assembly; and

(c) the Assembly endorses the proposed new boundaries of the provincial park or conservation reserve.

The implications of Sections 9(1) and 9(4) are that parks and reserves are relatively easy to create by government regulatory authority, but the Ontario Parliament must approve any removal. This approach mimics that of the approach in *Canada National Parks Act* (Sections 5 and 7). This is a major strengthening of the long-term tenure of provincial parks and conservation reserves since only the Ontario Parliament can delist a park or conservation reserve.

3.8 Management Planning

Management plans are important policy statements that outline the site specific policies for each park. They enable the provincial-level of policy to be assigned to site specific landscapes and situations. They are important public accountability documents, providing transparency to site management. Provincial Parks' policy stipulated that management planning documents would be prepared for all existing and new protected areas (24) but many parks did not have such plans (25). There had been calls for upgrading the requirement for management plans for each park from policy to law (13,21,22)

The concept of management plans is continued and expanded in the *Provincial Parks and Conservation Reserves Act, 2006*. Under the previous legislation the Minister of Natural Resources, under the authority of the *Provincial Parks Act*, had the discretionary power to create management plans for provincial parks. Ministry of Natural Resources policy stated that a management plan would be developed for each park (24). The Wildlands League requested in 2002 (13) that a revised Act should contain:

- a requirement to produce a management plan for each park within a specified time frame.
- direction on the purpose of plans and the priority that each plan must give to ecological protection
- a requirement that management plans reflect the best available science on protected areas and biodiversity conservation
- a requirement for public consultation
- a requirement that each plan be reviewed within a specified time frame (e.g. every ten years as specified in policy).

There had been criticism of the management planning process by the Environmental Commissioner of Ontario (25) who stated in his 2003-2004 report that:

Only 125 out of 314 provincial parks (40%) currently have an approved management plan. Ontario's Provincial Auditor raised similar concerns in his 2002 annual report, noting then that only 117 of 277 provincial parks (42%) had approved management plans in place. At the current rate of approvals, it will take MNR another half-century to complete management plans for the remaining parks – assuming that no new parks are created.

The 2006 Act outlines three types of management planning: Management Direction, Management Statement and Management Plan. The new concept of management direction is defined in Section 10(1):

10. (1) The Minister shall ensure that the Ministry prepare a management direction that applies to each provincial park and conservation reserve,

(a) by the fifth anniversary of the day this section is proclaimed in force, for provincial parks and conservation reserves that exist on the day this section is proclaimed in force and for which no management direction has been deemed to have been approved under this section; or

(b) by the fifth anniversary of the date of the order creating the provincial park or conservation reserve, for provincial parks and conservation reserves that do not exist on the day this section is proclaimed in force.

Section 10(2) states that a "management direction may apply to one or more provincial parks, one or more conservation reserves or to a combination of provincial parks and conservation reserves".

Section 10(3) gives details on the Management Directions' contents and approval.

(3) A management direction,

(a) shall be approved by the Minister;

(b) shall identify site specific management policies for a provincial park or conservation reserve to cover the 20-year period commencing from the day the direction is finalized; and

(c) may include a management statement or a management plan.

Section 10(4) introduces the second type of management planning, the Management Statement.

(4) A management statement is a document approved by the Minister that provides a policy and resource management framework that addresses a limited number of non-complex issues or proposals or both for limited capital infrastructure or resource management projects for one or more provincial parks or conservation reserves or for a combination of them.

Section 10(5) introduces the third type of management planning, the Management Plan.

(5) A management plan is a document approved by the Minister that provides a policy and resource management framework that addresses substantial and complex issues or proposals or both for substantial capital infrastructure or resource management projects for one or more provincial parks or conservation reserves or for a combination of them.

The legislation therefore sets up a three-pronged system for management planning. The broadest level is a Management Direction, presumably to be done for all parks. This may be something like the existing blue book of management policies that provide a comprehensive set of management policies for all provincial parks (24). The next level is a Management Statement; this is for parks that do not have complex management issues. This may be appropriately aimed at nature reserves where very little development or human activity is allowed and where one statement could conceivably hold for many similar parks. The more detailed statement of intention is a Management Plan which deals with the specific and complex issues within a particular park.

This multilevel planning system may have been incorporated in the new Act in an attempt to placate complaints about previous non-compliance that required a plan for each park in the old act. To comply with the new Act, in the absence of specific government guidance, it seems reasonable to conclude that a Management Direction might be an overarching provincial level policy statement that applies to each park or reserve. It also seems reasonable to conclude, again without the benefit of specific guidance, that only when sufficient financial resources become available will one of the two more detailed

planning instruments be utilized. This may be a watering down of the previous policy requiring a management plan for each park.

There is no explanation given why the three separate types of management plan documents are needed. The impetus for this multifaceted policy planning process seems to have come from the bureaucracy, since it is not mentioned in any publicly accessible academic or ENGO papers. Section 10(1) ensures that every provincial park or conservation reserve must have a management direction completed within five years of Act proclamation (Section 10.1a), or five years after park creation (Section 10.1b), with a twenty year planning horizon (Section 10.3b). However, there is no requirement that each park have one of the more specific Management Statements or Management Plans. The Act makes explicit that Management Directions must be prepared within five years, but Management Directions and Management Plans need not be prepared within the same time period, if at all.

One legislative provision of particular note is that all Management Directions, Management Statements, and Management Plans must be approved by the Minister. This addition to the Act should increase policy effectiveness since field managers tend to pay more attention to policies that are formally approved by the Minister.

Importantly Management Directions must be reviewed every ten years (Section 10.7); however, there is no review cycle listed in the Act for Management Statements or Management Plans.

A criticism of the 1954 legislation was that Management Plans were not legally-competent documents, meaning that the there was no penalty in the Act if the plans were not implemented, were varied, or activities took place that were not approved in the plan (7). This same deficiency still occurs in the 2006 Act since none of the management planning documents need to be followed once developed. They do not bind the Crown to particular actions. There is no penalty if plans are not prepared, not followed, not revised, or if an activity occurs that is not mentioned in the document. Nothing of critical importance to provincial parks management hinges on the prescribed planning process or stated planning outcomes. There is nevertheless, a well-documented history of planning implementation problems in Ontario Provincial Parks (7). There are for example, many parks without plans (25) and there are ratified plans that were not followed (1). There are examples of management actions that are in variance with an approved plan or not sanctioned by a Management Plan (7). Despite these historical failures, , the legislation did not upgrade the status of Management Plans from policy statements to legal obligations.

The 2006 Act nevertheless requires some level of park planning for all parks. The force of this requirement is unclear; however, since there is no sanction for avoiding park planning. It is interesting to note that these park planning instruments are weaker than the Official Plans prepared by municipalities to govern land use planning under the *Planning Act*. For municipalities, the Official Plan must be developed, ratified by the provincial government, and must be followed once ratified. In essence, the Province of Ontario

requires municipalities to prepare and follow plans, but does not bind itself to a similar standard with its own parks and park reserves.

The Ontario Cabinet can provide greater legal weight to all aspects of these various types of plans since Regulations can be created under Section 54(1.c) “in respect of management directions, management plans and management statements.” Presumably, these planning instruments could be upgraded to a higher level of legal authority if the government so desired. Most of the recommendations aimed at improving the park planning process and the legal authority of management plans coming from concerned interests (7, 13, 21, 22) could be implemented through a new set of Regulations under this Section and it is argued here that this is an issue worthy of serious consideration.

Zoning of provincial parks is optional, as revealed in Section 12(2) and establishing Zone categories, definitions and application are also optional. This discretion in adopting zoning as a planning tool is likely to be unfortunate as zoning has proved to be a powerful management planning process, especially in meeting conservation objectives, mediating recreational activity conflicts and concentrating high impact uses. Given that the zoning is optional, it is conceivable that activities allowed under the zoning are also not legally compulsory. Zoning with the associated compulsory restrictions on development and use similar to the process used in Ontario municipalities under the *Planning Act* would have led to more certainty by managers and citizens.

3.9 Public Consultation in Planning

The 1954 *Provincial Parks Act* did not suggest or require public involvement regarding any aspect of the parks, except for Section 6 which stated that the Minister may, with the approval of cabinet, appoint "committees to perform advisory functions". There were numerous calls for increasing public consultation in all aspects of planning and management (7,12,13,21,22). Section 10(6) of the *Provincial Parks and Conservation Reserves Act, 2006* requires public consultation during the preparation of a Management Statement and a Management Plan.

10 (6) During the process for producing, reviewing and amending a management statement there shall be at least one opportunity for public consultation and during the multi-stage process of producing, reviewing and amending a management plan, there shall be more than one opportunity for public consultation.

No public consultation is required during the preparation of a Management Direction. There is no direction in the Act what might be involved in public consultation.

Under the *Environmental Bill of Rights* there is a registry, now available on the internet, on which certain government ministries must post proposals for new environmental Acts, regulations, and policies under development. This registry recognizes that “the people of Ontario have the right to participate in government decisions about the environment and the right to hold the government accountable for those decisions” (26).

Access to the registry under the *Environmental Bill of Rights* is limited under the *Provincial Parks and Conservation Reserves Act, 2006*. Section 10.8 requires the Ministry to post reviews of Management Statements that have been in place for 10 years. But it also enables the Ministry to ignore the posting of the review of the management directions with the register if the information was made available to the public "by other means." There is no posting required for the initial Management Directions, Management Statements, or Management Plans, only for review of Management Statements. Section 11(1) requires that the "Minister shall report publicly on the state of the provincial park and conservation reserve system." This report must be produced after 5 years, and subsequently every 5 years (Section 11.3). These reports are also to be placed on the registry, or "made available for public information by other appropriate means." It is apparent that the good governance elements of responsiveness and transparency espoused under the *Environmental Bill of Rights* have not been applied to all park and reserve policies and plans.

The public consultation elements under the *Provincial Parks and Conservation Reserves Act, 2006* are lower than those suggested by reviewers of the Ontario Park system (7,12,13).

3.10 Planning Manual

Section 10(9) of the *Provincial Parks and Conservation Reserves Act, 2006* requires the preparation of a planning manual that will guide the preparation of Management Statements and Management Plans for provincial parks and conservation reserves. Oddly, this manual does not mention Management Directions.

10 (9) The Minister shall require that the Ministry prepare and make public, by the second anniversary of the day this section is proclaimed in force, a planning manual to guide the preparation of management statements and management plans for provincial parks and conservation reserves.

Ontario Provincial Park planning had previously operated according to a standard planning approach and manual (27). In the new Act, there is no requirement that this manual be followed once produced. Unfortunately, this document will not have the legal authority similar to the Policy Statement published under the *Planning Act*, which is similar to a Regulation in prescribing compulsory procedures on all legally involved parties. Once again, there is a dichotomy in planning practice. Under Ontario law all municipalities and individuals must follow the Policy Statement prepared under the *Planning Act*, but government agencies, including Ontario Parks, are not required to follow the Planning Manual prepared under the *Provincial Parks and Conservation Reserves Act, 2006.* Eagles (7) had requested that all management plans should bind the Crown; however, this principle was not incorporated into the Act during revision.

3.11 Ontario Parks Agency

The Ontario Parks Agency is not mentioned by name in the *Provincial Parks and Conservation Reserves Act, 2006*. The Ministry of Natural Resources is also not

specifically identified. This means that this Act does not stipulate which Minister, which Ministry, or which agency within the Ontario Government has the authority and responsibility for the management of Provincial Parks and Conservation Reserves. This is in marked contrast to the legislative provisions for the Parks Canada Agency and the National Park Service of the USA which are agencies created by statute. The removal or restructuring of the Parks Canada Agency can only be done through Parliament. Conversely, Ontario Parks can be dissolved or changed at will by the government in power without reference to the Ontario Parliament. Past experience with park management in other jurisdictions has lowered management effectiveness when governments or senior bureaucrats reduced autonomy by integrating park agencies within resource management or environmental agencies (need references). One of the most important aspects of the 1995 restructuring of Ontario Parks Agency (28,29), was its removal from the integrated line authority within the Ministry of Natural Resources and its structure as a stand alone entity within that Ministry. This enabled a reduction in the administrative layers of the agency, better communications between field personnel and head office, an increase in administrative effectiveness, and an increase in financial efficiency (30). These valuable administrative activities could be at risk with future governments.

3.12 State of the Parks Reporting

State-of-the-Parks reporting provides all stakeholders with the information needed to assess the management activities and effectiveness of parks and reserves. There had been calls for such reporting to be included in the new Act (13,18). The Wildlands League had asked for the law to require reports on each park and for the system as a whole (13). These calls were partially headed in the revised law. Section 11(1) of the *Provincial Parks and Conservation Reserves Act, 2006* states that the Minister must publish a report on "the state of the parks and conservation reserve system" after five years and every five years after that. This is a new responsibility not found in the earlier legislation. The contents of this State of the Parks Report are dictated in Section 11(2):

11 (2) The report shall provide, but shall not be limited to, a broad assessment of the extent to which the objectives of provincial parks and conservation reserves, as set out in this Act, are being achieved, including ecological and socio-economic conditions and benefits, the degree of ecological representation, number and area of provincial parks and conservation reserves, known threats to ecological integrity of provincial parks and conservation reserves and their ecological health and socio-economic benefits.

This report may be posted in the Environmental Registry or made available by other means. The Wildlands League's request for reporting on individual parks (13) was not included in the legislation.

State-of-the-Parks reporting is a positive addition to the Act since it will require ongoing monitoring. Such monitoring can provide very useful data to managers, to scientists and to park visitors in regards to the park system. The publication of the State-of-the Parks Report will provide a measure of transparency and accountability on management activities. However, there is no penalty for not producing a State of the Parks Report.

3.13 Use of Land

Sections 13(1) and 13(2) state that all land shall be used according to the Act and the Regulations. These powers are necessary for the implementation of all policies and Regulations. Are the Minister and the Ministry a “person” under this Act? In other words can the Ministry or the Minister be charged under this Act for not following the Act?

3.14 Leasing and Land Use Permits

Parks utilize a permit system for concessionaires, recreational use activities and commercial tourism operators that provide services in parks. Section 14(1) gives the Minister the authority to “enter into commercial agreements with respect to the use and occupation of land in provincial parks and conservation reserves.” This is a necessary requirement since Ontario Parks manages hundreds of cottage leases, children’s camps, and concessionaires on park land.

In addition Section 14(2) gives the Minister the authority to “lease land” or “issue a land use permit or licence of occupation” for “non-commercial purposes.” This section provides the legal basis for the cottage leases in Rondeau, Presqu’ile and Algonquin.

3.15 Work Permits

Section 22(1) introduces a new concept of a “work permit” for all construction, development or clearing of land in a Provincial Park or Conservation Reserve. It says “no person shall” do a whole list of activities without such a permit. This is a potentially important addition to the Act since it requires all contractors, concessionaires, permittees, and licensees to obtain a work permit before undertaking construction. The park managers often undertake construction activities and it is unclear if the Ministry must obtain such a permit for its own activities by its own staff.

This work permit is a useful new authority that can limit the expansion of cottages, the building of trails by individuals, or the actions of contactors. There is regulation authority, in Section 54(2a), given to the Minister to make regulations on the granting and management of these work permits.

3.16 Fees, Charges and Permits

Under the 1996 changes that moved Ontario Parks towards higher levels of financial efficiency and effectiveness, a much higher amount of income was demanded from park tourism and recreation (28,29). This new management model requires flexibility in setting fees. Under the new Act levels of fees and charges are set by the Minister but “service fees” are set by the Park Superintendent (Section 26.4). Service fees appear to be money from “any lease, licence of occupation or land use permit granted or issued under this Act” (Section 26.4). This section gives some flexibility to the field manager in setting specific fees for specialized leases, licences, or land use permits.

Ontario Parks does not have a published policy governing a licences, leases, concessions, and land permits. Presently all such instruments are implemented by the Superintendent at his/her own discretion, with little public notice or scrutiny. Lack of public information on the thousands of such licences, leases or land permits previously in place reveals a lack of transparency and accountability in a substantive part of the Ministry's operations and the 2006 Act does nothing to improve this aspect of park administration.

3.17 Special Purpose Account, Fines and Financial Reporting

Starting in 1996 Ontario Parks could function more like a business, with the ability to retain all income and year-over-year carry over (2,28,29). This approach proved to be useful and it was continued and reinforced by inclusion in the 2006 Act. All park income will continue to be placed into a special purpose account (Section 27.1).

Fines are increased to a maximum of $50,000 and or 1 year in jail (Sections 52.1 and 52.2). If the activity was for "commercial purposes," the fine can be up to $100,000 and/or two years in jail. This increase in fines should assist with enforcement. When the new Act came into force on September 2, 2007 (31), all fines were also added to this special purpose account. This is a potentially dubious activity when the legal system can be used to bolster agency revenue.

Each year the Minister must prepare an annual report on this special purpose account (Section 27.4). This is a valuable addition to the Act that makes financial issues more transparent and leads to increased accountability, assuming this report is made widely available.

3.18 Donations and Gifts

Under the 1954 *Provincial Parks Act*, the Ontario Parks Agency had no legal ability to receive gifts. For the first time with the new legislation, the Ontario Provincial Parks can now receive gifts of money (Section 25.1) and may lead to the creation of an Ontario Provincial Park Foundation. A step in this direction was the official launching of a donation program by Ontario Parks in early 2008.

3.19 Park Superintendent

Under Ontario Provincial Park law, the Park Superintendent position has been a vital administrative role for some considerable time. Given legal authority in the 1954 Act, this approach is continued in the 2006 Act by legally defining the Park Superintendent position and listing the powers of this person. Under the definitions in Section 5 the "superintendent" means a person who is designated by the Minister as a Superintendent to have charge of a provincial park. In addition:

12. (1) The Minister is responsible for the control and management of provincial parks and conservation reserves and shall designate a superintendent to have charge of each

provincial park and a district manager or conservation reserve manager to have charge of each conservation reserve.

The Superintendent has "charge of each provincial park." This person can determine the service fee for lease, licence of occupation or land use permit (Section 26.4b). This person can close roads 33(1) and has additional responsibilities outlined in Sections 35(1) and 35(2).

35. (1) The superintendent in charge of a provincial park and the district manager or conservation reserve manager in charge of a conservation reserve may develop and operate facilities and provide services in accordance with the purpose and objectives of this Act and subject to the management direction for the provincial park or conservation reserve.

35. (2) The superintendent in charge of a provincial park and the district manager or conservation reserve manager in charge of a conservation reserve may enter into agreements for the development and operation of facilities and the provision of services in respect of the provincial park or conservation reserve.

Each Superintendent is also an officer under the *Provincial Parks and Conservation Areas Act*, 2*006.* An officer, other than a conservation reserve manager or a district manager, has all the power and authority of a member of the Ontario Provincial Police within a provincial park or conservation reserve (Section 37). An officer has several explicit powers mentioned in the Act, including the ability to obtain a search warrant, search without a warrant, seize evidence, arrest any individual, and use force to make an arrest. The Superintendent is a very powerful individual in charge of virtually all on-the-ground activities in a Provincial Park. Oddly, the District Manager or the Conservation Reserve Manager in charge of Conservation Reserves lacks some of the powers of a Superintendent.

3.20 Delegation of Powers

Section 24(1) gives the Minister the right to enter to agreement with any person to "exercise any power or perform any duty that is granted to or vested in the Minister or the superintendent, district manager or conservation reserve manger." This power was not found in the 1954 *Provincial Parks Act* and was not requested by any of the ENGOs or scholars writing on Act amendments.

24. (1) The Minister may enter into an agreement with any person authorizing or requiring the person to exercise any power or perform any duty that is granted to or vested in the Minister or a superintendent, district manager or conservation reserve manager under this Act.

Section 24(1) is potentially problematic. The Minister can enter into an agreement that gives away any power assumed in the Act to any person. Presumably the Minister could lease out entire parks to private companies, or allow private security companies to operate them. If this is not the intended purpose of this section, it is difficult to judge from the wording what its proposed purpose is.

3.21 Enforcement

Sections 37 to 52 give all the powers necessary for policing and enforcement of the Act. Those powers are typically aimed at activities of the public in parks, not at the activities of park staff in the parks. Regulations for provincial parks and conservation reserves came into effect at the time that the 2006 legislation came into effect on September 4, 2007 (31).

4.0 DISCUSSION

This *Provincial Parks and Conservation Areas Act, 2006* is a major upgrade from the previous 1954 *Provincial Parks Act*. It provides much more conservation direction to the planning and management of Ontario's protected areas system. It provides a more powerful set of planning instruments and solidifies many former policy initiatives into law. The basic functions of the Act remain, that is, to provide the Government of Ontario with: 1) the ability to create Provincial Parks; and, 2) the ability to manage Provincial Parks. The new Act brings Conservation Reserves under this Act, rather than being governed under the *Public Lands Act*. The new Act provides much improved directions in the purposes of parks, the definition of the park class structure, the role of ecological integrity in management, a prohibition on most resource extraction, a requirement for a State of Parks' reporting, and increased fines for engaging in prohibited activities.

However, there are deficiencies in the proposed legislation. It is unfortunate that the Management Directions, Management Statements and Management Plans are policy statements only, without authority in law. Accordingly, there are no penalties for non-compliance with planning processes or planning outcomes. Even though Management Directions must be completed for all provincial parks within five years, there is no penalty for not doing so. A reasonable approach could have been to prohibit capital construction or major management activities in Provincial Parks or Conservation Reserves until Management Directions, Management Statements or Management Plans were approved by the Minister. To ensure compliance, there could have been penalties imposed if such activities took place before Ministerial approval. Prohibitions and fines are in place under the *Environmental Assessment Act* to ensure that all planning and approvals are in place before development occurs and similar approach could have been used in the *Provincial Parks and Conservation Areas Act, 2006*.

The planning of Ontario Provincial Parks and Conservation Reserves is not subject to a hearing in front of an administrative tribunal, such as the Environment Hearing Tribunal, before final approval. This means that stakeholders are limited in their ability to influence plan contents. If all planning and management was brought fully under the *Environmental Assessment Act*, rather than through the existing Class Environmental Assessment, development prohibitions, fines, and access to a hearing body would be in force.

Not only is zoning optional in plans, there is no legal authority to require zone policies to be followed. This is in marked contrast to the situation with the zoning powers given to municipalities under the *Planning Act.*

Transparency in planning is lowered since Management Directions, Management Statements and Management Plans need not be posted with the Environmental Commissioner of Ontario in the Environmental Registry if the Ministry makes these documents available "by other means."

The lack of recognition of the Ontario Parks Agency in the *Provincial Parks and Conservation Areas Act, 2006* means that the Agency is continually subject to the threat of loss of identity and influence through dissolution or integration within the larger Ministry of Natural Resources or another Ministry.

Having ecological integrity as the first priority for the cultural heritage class of parks is problematic. This could lead to the loss of cultural integrity for these non-renewable resources.

The new ecological integrity requirements in the *Provincial Parks and Conservation Areas Act, 2006* may conflict with the renewal of all cottage leases in several parks and the summer logging and road construction in Algonquin Provincial Park.

The Section 23(1) authority for the Minister to devolve any powers to any other party is potentially very dangerous. This allows a Minister to turn any or all planning and management authority to any other body, including for-profit corporations.

There are no penalties if the Minister or his or her staff does not comply with any section of the Act. For example, if Management Directions, Management Statements or Management Plans are not created or complied with, no penalties can be ordered. This is a major weakness. One can imagine the problems that would result if the *Planning Act* governing private lands in Ontario provided no penalties for the lack of planning compliance. Unfortunately in regards to planning, the Province has one rule for itself, and another more stringent rule, for everyone else,

There is no formal approval process for any of the planning products. The Ministry creates, reviews, and amends all plans. There is no process for review or approval by an independent body such as the Environment Review Tribunal of Ontario. Why is it that planning decisions by municipalities in Ontario are subject to a formal appeal process but the provincial park planning decisions are not open to an independent process? If any person disagrees with any plan or policy, there is no access to a hearing or an independent decision process under the *Provincial Parks and Conservation Areas Act, 2006*. However, individuals continue to have the ability to make comment under the *Environmental Bill of Rights* in a process operated by the Environmental Commissioner of Ontario. But this process does not lead to a hearing.

The Ontario Parks Agency is not given explicit legal recognition in the Act. This means that this agency could in the future be dismantled and merged with some other agency. This has happened in Australia with federal national parks, New South Wales national parks, and Alberta Provincial Parks with damaging impacts on management effectiveness. One of the major reasons for the 1995 restructuring of Ontario Parks in a form of parastatal was to create a stand alone agency that would have more management effectiveness and financial efficiencies (28,29).

Summer logging or road building is not banned in Algonquin Park, but this activity will be harder to justify under the new ecological integrity sections of the Act.

It is not clear why Conservation Reserves were not included as a provincial park class, rather than a separate category of protected area. These areas could have been another class of Ontario Provincial Park.

The District Managers of Ministry of Natural Resources' District offices continue to manage conservation reserves rather than a Park Superintendent. This implies that on-the-ground managers will not be coming to conservation reserves any time soon.

This Act is a major and welcome improvement over the previous Act of 1954, but it is still not supportive of an open, transparent, and consultative management philosophy.

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Table 1 Governance Criteria

Combined Categories	***Basic Governance Principles***
Legitimacy and Voice	• Public participation • Consensus orientation
Direction	• Strategic vision
Performance	• Responsiveness to stakeholders • Effectiveness • Efficiency
Accountability	• Accountability to stakeholders • Transparency
Fairness	• Equity • Rule of Law