

## **THE PROTECTED AREAS LEGISLATION IN CANADA**

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## Introduction

In Canada, parks range from small, intensively-used, green spaces in downtown metropolitan areas to large, low-use, wilderness areas with few facilities. Parks vary in the types of outdoor recreation and the degree of land protection that they provide. The various park types require different management strategies.

Park management in Canada is done through the legislation that exists at four levels of government (National, Provincial, Regional and Municipal). By doing a comparative analysis of the park legislation, it is possible to demonstrate the various priorities and approaches taken towards parks management in Canada.

This chapter discusses the governing park legislation at each of the four levels.

1. Canada has two national park systems: National Parks, including National Historic Parks, and National Canals and National Wildlife Areas. Only the national parks are discussed.
2. Canada has a provincial park system in each province. Only Ontario is discussed.
3. Canada has a series of regional park systems. As an example the oldest regional park agency is discussed, the Niagara Parks Commission. In addition, the unique conservation authority parks system in Ontario is covered in some depth.
4. Canada has a large number of municipal park systems. As an example the Ontario municipal park legislation is covered.

The chapter also contains an analysis of the following park legislation: the National Parks Act, the Ontario Provincial Parks Act, the Conservation Authorities Act

(Ontario), the Niagara Parks Act (Ontario), the Municipal Act (Ontario), the Public Parks Act (Ontario), and the Parks Assistance Act (Ontario).

It is important to recognize the difference between legislation and policy. Legislation is approved by a legislature. It must be followed by the government and by the citizenry. It is enforced by an independent court system. Policy is simply a statement of government intent. It should be followed by the bureaucracy. It is not enforceable by the courts. If policy is not followed by the bureaucracy or by the government the only recourse open to the citizenry is political action.

This chapter discusses the legislation, with only a few references to policy. One of the recurrent aspects of Canadian parks legislation is the fact that the legislation is written in very general terms. It provides a few, broadly-worded powers that are interpreted by government and bureaucratic policies. As one reviewer of this chapter commented: "Our governing legislation provides guidance to what we can do, it does not state what we actually do." This is a telling statement.

## **THE NATIONAL LEVEL OF PARKS ADMINISTRATION IN CANADA**

### The National Parks Act

This Act, first established in 1930 and amended in 1988, provides the legislation for National Parks in Canada. Previous to 1930 each National Park had been established by individual Acts. The management of such a park was then subject to the stipulations outlined in the establishing legislation. After 1930 the National Parks Act provided an organic set of rules for the operation of every National Park. New park establishment then became simply a designation of the park's boundaries. In 1988 a

major set of amendments were made to the Act. In this chapter references to these revisions will be made to a Canadian Parks Service official consolidation of the Act and the 1988 amendments.

## Purpose of Parks

The National Parks Act has a strongly worded purpose statement. Clause 4 of the Act states:

The National Parks of Canada are hereby dedicated to the people of Canada for their benefit, education and enjoyment . . . and shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.

There are noteworthy points in this purpose. First, the dedication of the parks is to the public. This suggests that even though the parks are aimed and managed by government their ultimate purpose is a public one. This section therefore implies that there should be some public say in the management of their parks. Second, the indication of protecting the natural area so it is "unimpaired" gives a strong conservation message. Further protection for the natural environment within a park is outlined in Section 5(1.2) that states:

. . . maintenance of ecological integrity through the protection of natural resources shall be the first priority when considering park zoning and

visitor use in a management plan . . .

Although there is some debate concerning the actual definitions of "unimpaired" and "ecological integrity", it is clear that the National Parks Act dictates that the protection of the natural environment is of primary importance.

The concept that National Parks are there for "enjoyment" provides direction for the development of leisure activities in parks. In the early decades of National Parks enjoyment was interpreted very broadly so as to include a wide variety of activities. As attitudes changed, the range of activities started to be limited to outdoor recreation. Later still, only those outdoor activities were allowed that had minimum or non-consumptive impacts on the environment.

The concept of "future generations" suggests that National Parks are to be around for a long time. Generally it is now recognized that once established, National Parks are permanently in place.

#### Park Establishment

National Parks are created and eliminated by the passage of legislation by the House of Commons and by the Senate (S14). This method of park establishment and delisting provides for the strongest level of tenure of any park system in Canada. Any change to park boundaries involves legislative action by both the House of Commons and the Senate. Typically the legislation docket of Parliament is full, with many pieces of legislation vying for attention. Only those with highest priorities get action. This

backlog mediates against changes that do not have strong government backing. If a piece of legislation containing a change to a National Park does reach the House, it is then subject to full exposure by the national media. These two factors, the Parliamentary structure and the media coverage, make it difficult to create a National Park, and makes National Park delisting a long, involved, and very public process.

Any addition of lands to an existing National Park can be done by cabinet as long as "agreement has been reached with the province in which the lands are situated that the lands are suitable for addition . . ." (S 3.1.1.b), notice of the addition has been published in the Canada Gazette, the Standing Committee on Indian Affairs and Northern Affairs has had hearings and made a decision (S 3.1.2 and 3.1.3) and the House of Commons agrees (S 3.1.5).

### Policy Plans

Although each National Park is required to have an official management plan, nothing in the legislation requires the Minister to create an overall system policy. However, the Act implies that some form of policy statements exists as every two years a report on the state of parks is required. Section 5.1.5 states that "The Minister shall report to Parliament every two years on the state of the parks and progress towards establishing new parks."

The "state of the parks" suggests that an overall benchmark or baseline exists to which park conditions can be compared. This probably requires an overall policy. It also requires both an ecological and a visitor use benchmark data set be collected for each and every park. In addition, if the establishment of new parks is to be systematic,

then any measurement of "progress" will be by reference to a systems plan. Fortunately, the Canadian Parks Service has both an overall policy statement and a systems plan now in place. What is possibly lacking is sufficient baseline information on the ecological and visitor use conditions.

### Park Management

Within each park, management is the responsibility of the Minister, but is implemented in the parks by park staff. Management plans for each National Park are required by law. In addition, the Minister is legally required to table the management plan in the House of Commons within five years of the park's establishment (S 5.1.1). This plan must, as mentioned earlier, protect "ecological integrity", and must also consider "resource protection, zoning, visitor use and other appropriate matters" and must be reviewed every five years (Sections 5.1.1, 5.1.2, 5.1.3.). Therefore, each plan must be reviewed every five years and any amendments to the plan must be tabled in the House of Commons.

### Public Access to Decision-making

The public has a say in the management of the parks. Section 5.14 of the Act requires the Minister to involve the public in many aspects of parks operations.

The Minister shall, as appropriate, provide opportunities for public participation at the national, regional and local levels in the development of parks policy, management plans and such other matters as the Minister

deems relevant.

This section requires public participation in the development of "parks policy", which is the overall governing statement of direction for the Canadian Parks Service and for the parks. In addition, each "management plan" for each park must be prepared with "opportunities for public participation." The Minister can undertake this participatory activity in the method he chooses, as he defines what is "appropriate." However, the word "shall" implies that he must provide the opportunities and thus his discretion is limited, probably to the method of application. The words "public participation" provide strong direction to the Minister. The public has the right to actively participate in decision-making. The exact form and approach of this participatory democracy will be developed over time as the bureaucracy gains experience with this new legislation direction.

The National Parks Act is the only Canadian Parks legislation that requires the Minister, and by deference, the bureaucracy, to provide opportunities for public participation in policy, planning and management decision-making.

### Park Regulations

Regulations for National Parks are made by the cabinet as outlined in Section 7 of the Act. The regulatory powers are very broad and deal with many aspects of parks and the activities that are allowed in occur in the parks. Examples of these regulation-making powers include the powers to make detailed rules governing the protection of flora and wild animals, management of fishing, public works, traffic, domestic animals

and control of fires, firearm discharge and licensing. However, it should be noted that the presence of town sites in parks, the use of parks by millions of visitors and the provision of many services to both groups results in a complex set of regulatory needs.

Section 2 of the Act states that a park warden is an "officer appointed under the Public Service Employment Act whose duties include the enforcement of this Act." The wardens have the powers of peace officers in regards to violations by the park regulations by park residents or visitors. Section 8(1) a states that a person who violates the Act or any regulation is, upon conviction, subject to a fine "not exceeding \$2,000." However, under the case of disturbance of certain listed species of wildlife the fine can be \$10,000 or 6 months in jail or \$150,000 or 6 months in jail for endangered or other special species.

## **THE PROVINCIAL LEVEL OF PARKS ADMINISTRATION IN CANADA**

Canada has a wealth of provincial parks. The provinces with the largest and most mature park systems have been chosen for discussion in this chapter.

### The Provincial Parks Act of Ontario

The first park established by the provincial government was at Niagara Falls in 1885. Other parks were established by individual acts of the legislature, such as Algonquin in 1890 and Rondeau in 1894. In 1913 the establishment of the Provincial Parks Act provided an organic act for the development of a system of parks (Ministry of Natural Resources, 1986). In 1954 the Provincial Government of Ontario established a Parks Branch in the Department of Lands and Forests. In addition, the organic Act

governing the establishment and operation of all Provincial Parks was amended in the same year. The 1954 Provincial Parks Act did two things: it gave the cabinet the right to make parks and gave the Minister the authority to operate them. The Act has not undergone major revisions since 1954. A detailed analysis of this Act has been undertaken by Eagles (1984a). In the early 1970's the Ministry of Natural Resources became the new name of the former Department of Lands and Forests.

### Purpose of Parks

According to Section 2 of Ontario's Provincial Parks Act, the purpose of parks is:

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.

This purpose statement outlines that the parks are established for the public. The parks are there for "healthful enjoyment and education". This phrase implies that recreation is to be encouraged, but only if it is healthful. The phrase also implies that education is to be a major focus of Ontario Provincial Parks. This probably means that outdoor education, where the parks resources are used for environmental learning purposes, is the intended focus. Nothing is said or implied about environmental protection in Section 2. In fact, natural resource protection is not mentioned in the Act until Section 19 where the Minister "may take measures as he considers proper for the protection of fish, animals and birds and any property of the Crown in a provincial park". This emphasis suggests that provincial parks exist mainly for recreational and

educational use. Environmental protection is not in the legislative purpose for Ontario Provincial Parks.

### Park Establishment

Creation of a Provincial Park in Ontario is a relatively simple process, as cabinet passes a regulation regarding a piece of land owned by the Crown. Such a regulation need not be passed by or presented in the legislature of Ontario. Cabinet also has the authority as stated in Section 3.2 to "increase or decrease the area of any provincial park".

The discretionary powers given to cabinet have several implications. First, any action by cabinet on parks will come through the Minister of Natural Resources. Therefore, by default the power of cabinet is transferred to a Minister. This means that the key person in regards to parks establishment or delisting in Ontario is this Minister. Second, theoretically, parks could be created or removed very quickly. No media or public disclosure or review is required. This happened in the mid-1980's when Holiday Beach Provincial Park was transferred to a Conservation Authority quietly and quickly. Third, major boundary changes can occur to a park in a similar secret and speedy fashion. However, it is the political reality of potential backlash that makes most Ministers move slowly and openly in the creation or delisting of Provincial Parks in Ontario.

### Policy Plans

The Ontario Provincial Parks Act does not require the creation or adherence to a

policy plan. However, an overall policy statement has been passed by cabinet. This policy has four objectives: protection, recreation, heritage appreciation and tourism. One useful feature of this policy is the designation of each park into one of six different classes (wilderness, nature reserve, historical park, natural environment park, waterway park, or recreation park). Each class is designed to fulfil a particular type of outdoor recreation experience.

Interestingly, the park classes listed in the approved policy differ slightly from those listed in Section 5 of the Act. Section 5 states that the Minister, with the approval of cabinet, may classify any provincial park. The names for these classes are listed in Section 5. The Act mentions a "natural environmental" class, while the Provincial Parks Policy (1978) mentions a natural environment class. The Act and Policy both discuss a "nature reserve" class. The Act lists a "primitive" class, while the Policy lists a wilderness class. The Act references a "recreational" class, while the Policy calls this a recreation class. The Act lists a "wild river" class, while the Policy has a "waterway" class of parks. The Act does not have reference to a historical class, as does the Policy; however, Section 5 gives discretionary powers to make up any "such other class of park".

The Provincial Parks Act does not define the purpose of park classes, does not define the words used for the park classes and does not give any guidance on how these classes are to be used. Such definitions are left to the Provincial Parks Policy (1978).

Park Management

Management within a provincial park is discretionary. The Minister, in Section 7(1), is given the power of park control and management.

If the Minister wishes to prepare a management plan for a park, Section 8 gives the authority to do this. Section 8(1) states that "The Minister may prepare a master plan in respect of any provincial park or proposed provincial park." Section 8(2) states that "The Minister may review a master plan from time to time and make amendments thereto."

One of the methods of managing a park is to prepare a map showing zones, with each zone dedicated to a particular purpose. Section 7(2) gives the Minister such power.

. . . in the management of a provincial park the Minister may from time to time define areas on maps or plans, designate such areas as zones, and classify any zone as an historic zone, multiple use zone, natural zone, primitive zone, recreational zone or otherwise as he considers proper.

There is, however, no requirement of the Minister to produce, table, review, follow or inform anyone about management activities or about a management plan.

#### Public Access to Decision-making

The Ontario Provincial Parks Act does not suggest or require public involvement regarding any aspect of the parks.

Section 6 of the Act states that the Minister may, with the approval of cabinet,

appoint "committees to perform advisory functions" (S6). This implies that some members of the public will be asked to provide advice in this formal manner.

The Minister has a standing advisory committee that is asked to collect and comment on issues referred to it by the Minister. The Minister often appoints local advisory committees to serve the role of collecting public opinions in regards to specific park management issues. In both situations the Minister typically appoints interested citizens.

### Park Regulations

The Minister has the power to create regulations concerning activities within a park. In Section 7(2) the Minister may designate and classify zones in a park; and in 7(3) he may approve construction of facilities for outdoor recreation and "the convenience of the public". Section 21 of the Act gives cabinet the power to make regulations for such purposes as: regulating . . . staking out of mining claims . . . development of mineral interest or the working of mines in provincial parks; . . . controlling the use or keeping of horses, dogs, or other animals in provincial parks;. . . controlling . . . notices, signs, signboards . . . ; . . . controlling . . . fires; . . . controlling pedestrian, vehicular, boat or air traffic . . . ; for issuing permits to persons to enter and travel in provincial parks; regulating, controlling and licensing and requiring the use of guides in provincial parks; prescribing the fees or rentals payable . . . ; prescribing the maximum periods of stay of persons, vehicles, boats, vessels or aircraft . . .

Enforcement of the rules and regulations is carried out by district managers, superintendents, assistant superintendents, park wardens and conservation officers

who, in Section 13, are given the "power and authority of a member of the Ontario Provincial Police force". With this authority, an official may seize private property and issue fines.

Section 22(1) states that a person who is convicted of a contravention of the Act or the regulations is liable to a "fine of not more than \$500".

## **THE REGIONAL LEVEL OF PARK ADMINISTRATION IN CANADA**

### The Conservation Authorities Act of Ontario

The Conservation Authorities Act was first passed by the Ontario legislature in 1946 (Higgs, 1977). The Act has undergone numerous revisions since that time. It provides for the creation of public agencies called Conservation Authorities. These agencies are created by the Ontario cabinet upon the receipt of a request to do so by two-thirds of municipalities in a particular watershed. The Authority has jurisdiction over certain matters within a defined watershed of one or more rivers.

Conservation Authorities are a unique government body to the province of Ontario. Originally designed to control and manage the province's watersheds, Conservation Authorities have, due to public demand, begun to play an increasing role in providing park areas and outdoor recreation opportunities. There are now 39 Conservation Authorities in Ontario. Each is operated by a board, some of the members of which are appointed by the Province and some by the local municipalities.

### Purpose of Parks

Section 20 of the Conservation Authorities Act states:

The objectives of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.

One of the methods of implementing this objective has been to establish parks. These are called Conservation Areas, presumably to differentiate them from Provincial Parks and Municipal Parks.

The Conservation Authorities Act does not have a stated purpose for the parks that a Conservation Authority may create.

#### Policy Plans

The Conservation Authorities Act does not require an overall park policy to be created. There is mention, in Section 24, that "before proceeding with a project, the authority shall file plans and a description thereof with, and obtain the approval in writing of the Minister ..." Therefore, Conservation Authorities, upon the urging of the Provincial Government, have developed policy plans for their activities in the watershed over which they have jurisdiction. Such plans usually refer to long-term Conservation Area development policies.

#### Park Establishment

Section 21(m) gives a Conservation Authority the power to establish and operate

park lands. It stated that the authority has power:

to use lands owned and controlled by the authority for park or other recreational purposes, and to erect, or permit to be erected, buildings, booths and facilities for such purposes and to make charges for admission thereto and the use thereof.

This section means that land owned by an Authority can be turned into a Conservation Area by a simple administrative decision of the governing Board.

#### Park Management

The management of a Conservation Area is discretionary. Basically, there is an "anything goes" approach to management as no plans are required for the park lands. The Minister of Natural Resources, who has some discretionary authority over certain actions of Conservation Authorities, has the power, under Section 24(1), to require the authority to "file plans and a description thereof with and obtain the approval in writing of the Minister" before "proceeding with a project". This power is most often used when creating large, water-control structures, such as dams. It is seldom used for Conservation Area development.

#### Public Access to Decision-making

There is no role outlined in the Act for the general public to be involved in decision-making in regards to Conservation Area planning or management. However,

the Conservation Authority is closely allied to local municipal governments. This fact usually dictates that public consultation be undertaken for Conservation Area development.

### Park Regulations

Section 29(1) states that an Authority can make regulations in various areas which must be approved by the Ontario cabinet. Regulations can be made for a broad range of measures including setting fees, regulating activities such as vehicular movement, lighting of fires and use of areas by pets.

At present the Provincial government is undertaking the development of an omnibus regulation to assist Authorities in their park management duties.

There is no specific person, or class of person, designated in the Act to enforce the regulations. However, park staff tend to use the Trespass to Property Act to enforce rules of behaviour.

### The Niagara Parks Act

The Niagara Parks Act was originally passed for the establishment of Queen Victoria Park in 1887. The Act established the first park agency in Ontario, the Niagara Parks Commission. The area of parks that the Niagara Parks Commission has under its control include: Queen Victoria Park, Queenston Heights Park, Niagara River Parkways, Butler's Burying Ground, Drummond Hill Burying Ground, and Lundy's Lane Battle Field and Cemetery, as stated in Section 1(c) of the Act.

## Purpose of Parks

There is an absence of an overall philosophy statement from the Act, concerning the purpose of the park. As well, nothing is stated about the purpose of the Parks Commission. However, Section 4 of the Acts states; "It is the duty of the Commission to manage, control and develop the Parks. . . ." Section 4 goes on to give the Commission specific powers. These include the powers to:

- (a) lay out, plant and enclose the Parks;
- (b) construct and pull down buildings and structures;
- (c) construct and operate incline railways, aerial cars, lifts and works to assist the public in reaching and viewing the points of interest in the Parks;
- (d) construct or acquire by purchase, lease or otherwise and operate bridges over the Niagara River . . . .;
- (e) construct and operate golf courses, bowling greens and swimming pools;
- (f) construct and operate restaurants, refreshment booths and stands for the sale of souvenirs and other wares;
- (g) construct and maintain toilet and other facilities . . . .;
- (h) acquire and operate buses and other vehicles . . . .;
- (i) operate a school for apprentice gardeners;

It is clear from Section 4 that the Niagara Parks Commission is very much in the business of operating scenic and recreational facilities in the parks of the Niagara area. The Commission has assumed the role of providing a scenic recreation corridor along the length of the Niagara Peninsula from Fort Erie on Lake Erie to Niagara-on-the-Lake on Lake Ontario.

## Park Establishment

Parks creation occurs as the Commission, with Cabinet's approval, purchases, leases or expropriates land. These powers are outlined in Section 7 of the Act.

## Policy Plans

The Niagara Parks Act does not require the development of any kind of overall policy. However, the Parks Commission has developed many types of written policy in regards to activities such as long-range planning and individual site developments.

## Park Management

The Niagara Parks Act does not require the Commission to have any form of management plan. All management decisions are made by a Commission which is composed of people appointed by Cabinet and by four nearby municipalities; Niagara Falls, Fort Erie, Niagara-on-the-Lake and the Regional Municipality of Niagara.

Section 5 of the Act gives the Commission power to borrow money and to issue securities. This section implies that the Commission should operate on a basis that is financially independent from the province. And this is what happens. Mr. D. Schafer, the General Manager of the Commission points out that "The necessity to raise our own funds, or course, influences the things we do, how we do them and much of our philosophy and policies." (Schafer, pers. comm.).

The operation of a School of Horticulture is a unique role of the Commission. The school trains people in the skills of applied horticulture.

### Public Access to Decision-making

Within the Niagara Parks Act, there is no requirement and very little opportunity for public involvement regarding park management. Individuals may be appointed to the Commission but their interests would likely reflect those of the municipalities or the province, rather than the general public. However, the Commission has a policy of involving the general public in major decisions regarding the parks (Schafer, pers. comm.).

### Park Regulations

The Commission, as the managing body, may create and acquire facilities as stated in Section 4 of the Niagara Parks Act. The Niagara Parks Commission can make regulations, but only with the approval of the Ontario cabinet. Section 21(1) gives the power to create regulations for regulating public use, setting fees, and licensing guides and taxis amongst other measures.

The Act does not state directly who has the power to enforce the Act or regulations. However, Section 4 (l) states that the Commission has the power to "appoint such auditors, officers, clerks, keepers, gardeners and other persons as may be required". The general interpretation section of the Regulations states "officer means a constable and any employee appointed by the Commission to enforce this Regulation". The Commission employs its own Park Police force.

## **THE MUNICIPAL LEVEL OF PARK ADMINISTRATION IN CANADA**

According to the Canadian constitution municipal affairs are a provincial power. All aspects of the operations of municipalities are governed by provincial legislation. The legislation governing municipal parks in Ontario has been chosen as example. However, there is a fair degree of similarity amongst provincial municipal parks legislation across the country.

#### Ontario Municipal Parks: The Municipal Act, the Public Parks Act and the Parks Assistance Act

Ontario was the first Canadian province to pass legislation governing the development and operation of municipal parks. The Public Parks Act was passed in 1883. This Act allowed cities and towns to establish parks, with the consent of the electors in that municipality. The Act provided for the establishment of board of park management. The boards were given the authority to purchase land for parks up to 1000 acres in size for cities and 500 acres for towns. It appears that this Act was passed upon the request of the City of Toronto (McFarland, 1982).

Municipal parks in Ontario are now governed by three Acts. The Municipal Act gives municipalities general powers, including that to manage parks. The Public Parks Act allows for the establishment of a Board of Park Management to operate the parks. The Parks Assistance Act allows the Ministry of Natural Resources to provide financial and other forms of assistance to municipalities.

## Purpose of Parks

Within the 3 governing acts, there is no overall purpose given for a municipal park. Section 208 of the Municipal Act gives Ontario municipalities the power to pass by-laws for a variety of purposes. Subsection 57, which outlines certain by-law powers in regards to parks and recreation, has an introduction that outlines the purposes for these by-laws. The by-laws can be passed:

For acquiring, erecting, altering, maintaining, operating or managing or granting aid for the acquisition, erection, alteration, maintenance, operation or management of monuments, memorial windows, tablets, parks, recreational areas, playgrounds, athletic fields, zoological or other gardens, natural history collections, observatories or works of art, or other places of recreation and amusement, arenas, auditoriums, health or community recreation centres, stadia, museums, including public historical museums and similar buildings, within or outside the municipality and any such undertaking may be for the purpose of commemorating or honouring persons or events.

The introduction to Section 208(57) nicely outlines the very broad context of activities and facilities surrounding municipal parks. Since the first establishment of municipal parks, as envisaged by the 1883 Public Parks Act, there have been many generations of people and ideas that have influenced the leisure activities that occur in parks. Typically, the purposes for these parks have been more social and cultural and

less environmental.

In recent years many municipalities are starting, due to changing public attitudes, to acquire more parkland in natural ecological conditions. The provision of storm water management facilities often result is green, passively managed park land. The protection of Environmentally Sensitive Areas (Eagles, 1984) cause forests and wetlands to become park land (Graham, pers. comm.).

#### Park Establishment

Section 1(1) of the Public Parks Act gives municipalities in Ontario the power to establish parks.

A park, or a system of parks, avenues, boulevards and drives, or any of them, may be established in any municipality, and the same, as well as existing parks and avenues, may be controlled and managed in the manner herein-after provided.

Section 208(51) of the Municipal Act gives municipalities in Ontario the power to pass by-laws "For acquiring land for and establishing and laying out public parks . . . Municipalities can obtain parkland by donation or purchase. In addition, under the Section 41(1) of Planning Act, 1983 municipalities have the power to:

require that land in an amount not exceeding, in the care of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cares 5 per cent of the land be conveyed to the

municipality for park or other public recreational purposes.

In many municipalities this parkland dedication of 5% of land under development is the primary method of new park establishment.

These sections, from 3 different Acts, provide the basis for quite different park establishment methods, acquisition and management by the Board of Park Management and accession and management by the municipal government. Therefore, across Ontario one finds municipal park management within both models. Typically, in recent years the larger municipalities have opted for having parks and recreation departments that operate the parks. Smaller municipalities tend to have parks boards, staffed by community volunteers.

### Policy Plans

No legislation requires municipalities in Ontario to produce overall policy plans for their park system or for individual parks. Nevertheless, many do such planning.

The provincial government provides grants for many recreation and park activities. These grants are usually conditional upon the municipality having an overall policy plan. This carrot approach is one factor in attracting municipalities towards the development of policy plans. Typically the larger, more urban municipalities have sophisticated policy plans. The rural municipalities may have little or no overall park and recreation plan.

### Park Management

In Ontario there are two basic means of parkland management; by the municipality directly or by a Board of Park Management. The Public Parks Act provides the rules for the establishment and operation for the Board. When a Board is established, the "head of the municipality and six other persons" (S4) are appointed by the municipal council. The Board then has the responsibility and authority for all park management in the municipality. Municipal parks are not legally required to have a management plan. Generally, the municipality or the Board of Park Management has very broad, discretionary powers as to how park management is carried out.

#### Public Access to Decision-making

The public can get access to parkland decision-making in several ways in municipalities.

Municipal councils and municipal park management staff are usually readily accessible to the average citizen. Therefore, concerns can be taken directly to those in positions of influence. And ultimately, the members of council are subject to the will of the electorate every three years.

Second, if a Board of Park Management is in place in a municipality, the Board must be composed of six citizens. Therefore, concerned individuals can play a direct role if appointed to the Board.

Third, there is a long tradition in municipal parks of public involvement in operation and management. This is often done by informal, voluntary arrangements. In addition, most municipalities have extensive public participation activities during parkland planning and management.

## Parks Regulations

Within municipal government actions are taken by by-law. Various sections of the Municipal Act give municipalities the power to set rules by the passing of by-laws.

Section 208(42) states that by-laws can be passed "for prohibiting . . . vehicles . . . in or upon any . . . park . . ." Section 234(1) states that by-laws may be passed for "regulating or prohibiting the playing of bands or musical instruments in any highway, park . . ." However, most visitor behaviours are governed by use of the Trespass to Property Act to remove offending persons.

The Public Parks Act gives the Board of Park Management, in Section 11(1), the power to "pass by-laws for the use, regulation, protection and government of the parks . . ." The Board also has the power "to attach penalties for the infraction" (S11(4)) of the by-laws. However, the maximum penalties are a fine of \$20.00 or imprisonment of not more than thirty days (S19(2)).

### SUMMARY

Within Canadian parks all actions of the government agencies and of the citizens is governed by the requisite legislation. Agencies can do, and can only do, what the legislation allows. The park user is governed by the rules established under the legislation.

Several basic principles are obvious from the Canadian park legislation reviewed in this paper and will be summarised below.

The National Parks Act is fundamentally different from the other park legislation in Canada. Only at the federal level are parks established by the legislature. Only in

national parks is an ecological factor given primary importance in parks management and the Minister required to prepare management plans for every park. Only in national parks are these management plans required to be tabled in the legislature, implying that they must be followed. Only at the national level is the Minister responsible for parks required to involve the public in decision-making in regards to park policy. The National Parks Act is the most progressive and ecologically conscious parks legislation in Canada.

The provincial parks Acts generally say very little about how the parks are to be managed. The Acts are written in very general language that is loose enough that a broad range of management actions can be justified. The bureaucracy appears to have extremely strong powers in making management decisions. These powers can be exercised in secret with no requirements for written statements of policy governing the actions and no requirements for public access to decision-making. In essence, the ancient discretionary power of the Queen over her lands is passed through the legislature, the cabinet and the Minister to civil servants. Very few civil servants have such immense, discretionary powers elsewhere in the Canadian government.

Eagles (1984) has documented the problem with the concept of locus standii in regards to parks management. There is a precedent in the Canadian courts that with certain legislation, such as the laws governing parks, an individual is restricted from taking action in front of the courts unless he can show that he has been impacted more than others. He must prove 'standing' before the court. This precedent virtually eliminates a citizen from taking a Minister to court to force compliance with the law. Therefore, there is a remarkable lack of case law dealing with the interpretation of many

park Acts in relation to their applicability to government management action.

The standing problem as well as the discretionary language of the Provincial Acts means that the parks business is really an incestuous relationship between a Minister and his bureaucracy. There is very little room for the park user or for the average citizen in this tight interrelationship. The power of the bureaucracy is very closely guarded by the civil servants. Therefore, at the provincial level in Canada the action by the public must be political, with the most emphasis at the Ministerial level.

Regional parks agencies such as the Niagara Parks Commission and the various Conservation Authorities operate in a legislative structure similar to the provincial level. The establishing legislation is loosely and powerfully written, the bureaucracy has strong discretionary power, the laws do not require public involvement in decision-making, the senior decision-makers are usually all appointed, and no policy or management plans for parks need be created or followed if written. The park visitors must follow the rules that the agency promulgates.

The municipal level is quite distinct from the other parks level of operation. The provincial legislatures make the rules in which municipalities operate. As a result the authority of municipalities is limited to only that which has been stipulated in legislation. And the laws are quite precise and detailed. For example, the Municipal Act for Ontario is 350 pages long and it is only one of several pieces of relevant legislation. The Provincial Parks Act, which governs almost 7% of the province, is nine pages long. In addition many decisions of municipal councils can be appealed to an independent administrative tribunal, The Ontario Municipal Board, for a hearing. The Board usually has the power to overrule the municipal decision. However, in Ontario Provincial Parks

the bureaucratic or the Ministerial decisions are final and not appealable. It is clear the Province keeps municipalities on a tight rein, while it gives itself broad, discretionary powers.

Municipalities are quite different from other park agencies in that their methods of operation are comparatively open. Every major decision is open to public scrutiny. In the case of Boards of Park Management citizens are given the authority of decision through membership on the Board. No such Board occurs at the Provincial or National level, but does occur at the Regional level such as with Conservation Authorities. And of course the municipal councillors must face the decision of the electorate every three years.

The municipal legislation is discretionary in that a very large number of land uses and activities is anticipated for the parks in the governing legislation. The mix of uses and activities is decided by the elected officials, usually after considerable public consultation.

The parks legislation varies widely in emphasis and scope in Canada. The recent important amendments to the National Parks Act may set a precedent for the upgrading of many of the Provincial Park Acts across the country in the future.

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