

Legal Framework for Protected Areas:

Ontario (Canada)

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Information concerning the legal instruments discussed in this case study is current as of December 2009.

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Abstract

This case study examines the newly revised statutory framework applicable in Ontario, Canada's largest province. Key aspects of the modernization initiative include the introduction of an ecological integrity standard, and a refined distinction between parks and conservation reserves, the latter offering significantly greater opportunities for traditional land use activities on the part of aboriginal or First Nations communities. The very wide range of protected areas across Ontario is not comprehensively integrated and steps have been taken only recently to assess these against common standards, including IUCN protected area management categories. The province has now embarked upon a new initiative in the 'Far North' to substantially increase the coverage of protected areas through community-based planning. The new measures, not yet operational, are responsive both to the expectations of First Nations residents of this remote region and to the provincial commitment to address climate change challenges, notably the objective of storing carbon in large tracts of the boreal forest.

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Acronyms and abbreviations

MNR	Ministry of Natural Resources
O. Reg	Ontario Regulation
PPCRA	Provincial Parks and Conservation Reserves Act
RSO	Revised Statutes of Ontario
SO	Statutes of Ontario

1 Background and introduction

1.1 Legislative developments

- 1 In Canada, a federal state, provincial governments own Crown lands and natural resources within the boundaries of their jurisdictions, and exercise significant additional constitutional authority with respect to environmental matters. It is therefore important to an understanding of the overall national protected areas framework to consider provincial arrangements alongside federal legislation, as described in a companion case study.¹
- 2 Provinces themselves differ in the manner in which they approach protected areas legislation and management. This case study of Ontario, Canada's largest and most populous province, is offered as illustrative rather than fully representative.
- 3 Parks development in Ontario dates back to the creation of the Algonquin Park² in 1893 and Rondeau in 1894. General provincial parks legislation was introduced some 20 years later, in 1913. The Provincial Parks Act was revised in 1954, at a time when only eight provincial parks existed in Ontario. Subsequently, additional legislative measures were adopted in the form of the Wilderness Areas Act 1959.³ A 1994 regulation under the Public Lands Act 1990 provided for the designation of conservation reserves, where more flexible land use practices operate.⁴
- 4 Public debate about safeguarding provincial lands intensified in the early years of the present century, as concern mounted over Canada's efforts in relation to species conservation and biodiversity. Following public consultations and the work of an advisory group constituted as the Ontario Parks Board of Directors, substantially revised legislation, the Provincial Parks and Conservation Reserves Act (PPCRA), was enacted in 2006.⁵ The new legislation, which came into effect on 4 September 2007, has been well received. In the words of the Environmental Commissioner of Ontario, an independent officer of the provincial legislative assembly, the PPCRA represents "a dramatic improvement to the legislative framework governing Ontario's protected areas."⁶
- 5 Although this case study focuses on the new legislation for parks and protected areas, some reference will be made to other essential elements of the wider statutory framework. This legislation includes Ontario's Environmental Assessment Act 1990, Fish and Wildlife Conservation Act 1997, Algonquin Forestry Authority Act 1990, Lakes and Rivers Improvement Act 1990, Endangered Species Act 2007, and Ontario Environmental Bill of Rights 1993 as well as the Crown Forest Sustainability Act 1994. The last statute, with its requirements for the use of forest sustainability indicators, represents a major landmark in the evolution of land use and resource policy in the province.⁷ Other legislative regimes apply to distinct protected areas within the province and are briefly noted where appropriate.⁸

1 This report does not address the operation of Canada's national protected areas regime within the confines of Ontario. The Bruce Peninsula National Park, Georgian Bay Islands National Park, Pukaskwa National Park, Point Pelee National Park and St Lawrence Lowlands National Park are all located in Ontario. In addition, the Lake Superior National Marine Conservation Area, believed to be the largest freshwater reserve in the world, was established in 2007 and covers one million hectares of Ontario waters.

2 Algonquin Park remains in several important respects subject to distinctive management arrangements that have evolved independently of the general framework for provincial parks in Ontario. Governing instruments include the Algonquin Forestry Authority Act 1990, the Crown Forest Sustainability Act 1994 and the Algonquin Provincial Park Management Plan (1998).

3 The current law on the subject is the Wilderness Areas Act 1990. There are 33 designated wilderness areas in Ontario, only 10 of which are located outside the boundaries of provincial parks or conservation reserves; see Environmental Commissioner of Ontario (ECO), 2007, p. 101.

4 Conservation Reserves Regulation (O. Reg. 805/94). For a survey of provincial parks development in Ontario, see Killan, 1993.

5 For a critique of the limitations of the earlier legislation, prior to the reforms of 2006, see Swaigen, 2001, p. 223.

1.2 Administrative arrangements and the scope of Ontario's protected areas

Initially under the supervision of the Department of Crown Lands, then the Ministry of Natural Resources (MNR), and now the Ontario Parks branch of that ministry, Ontario's parks and protected areas system has grown over time to encompass 330 provincial parks and 292 conservation areas covering roughly nine per cent of the provincial land base.⁹ Provincial parks, spread over roughly 7.8 million hectares, were visited by approximately 9.5 million people in the year 2007–08.¹⁰ A significant element of the recent growth may be attributed to a comprehensive parks expansion in 1983,¹¹ and to the Lands for Life initiative of 1999.¹²

The Lands for Life initiative emerged following a period of significant public controversy over the use and disposition of public land in the province, with debate oriented around forest management, the protection of old growth forest stands, and the broad allocation of Crown lands to forestry, mining, recreational and ecological purposes. The goals of the Lands for Life initiative were formally articulated in a policy decision from the MNR, the Ontario's Living Legacy: Land Use Strategy (1999):¹³

- Completion of the provincial park and protected areas system;
- Recognition of the land use planning requirements of resource-based tourism;
- Increased land and resource use certainty for the forest and mining industries; and
- Enhancement of recreational opportunities, including fishing and hunting, on Crown lands.

The Land Use Strategy included a stated intention to create or expand 378 provincial parks and conservation reserves.

Growing apprehension over the impact of climate change, and increased understanding of the capacity of forest lands to store carbon, constitute a new dimension of protected areas planning in Ontario. These considerations figure prominently in the most dramatic announcement in the history of Ontario protected areas development. In July 2008, the provincial government indicated that an area of roughly 225,000 sq km, representing about half of Ontario's boreal forest lands, or something approximating 20 per cent of the provincial land mass, would be safeguarded from mineral exploration and forestry over a 10- to 15-year period.¹⁴ As noted below, some legislative changes are anticipated in connection with the implementation of this initiative as well as the overall development of climate change law and policy in Canada.

2 Protected areas policy

2.1 Statutory purpose

The purpose of the provincial legislation is set out explicitly in section 1 of the PPCRA:

6 ECO, 2007, p. 105.

7 For discussion, see Lawson et al., 2001, pp. 297–8; and Benidickson, 2000.

8 The Kawartha Highlands Signature Site Park Act 2003 establishes the framework for the first of nine "signature sites" identified in the Ontario's Living Legacy: Land Use Plan of 1999. Ecological integrity is given priority. For discussion and commentary, see ECO, 2004, pp. 88–94.

9 ECO, 2007, p. 100.

10 Ontario Parks, 2009a.

11 One hundred and fifty-five parks encompassing roughly two million hectares were established in 1983.

12 Castrilli, 2002.

13 Ontario Ministry of Natural Resources, 1999.

14 Howlett, 2008.

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.

- 10 The dedication section, which includes a specific reference to ecological integrity, is also of general importance in connection with overall policy:

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.¹⁵

An earlier formulation of this provision failed under judicial examination to establish an enforceable public trust.¹⁶

- 11 Management policies designed to address a range of activities within protected areas were formulated in 1978 and revised in 1992.¹⁷ It is noteworthy that a statement of management principles is now embedded in the legislation. Section 3 provides that "all aspects of the planning and management of Ontario's system of provincial parks and conservation reserves" will be guided by the principle that "[m]aintenance of ecological integrity shall be the first priority and the restoration of ecological integrity shall be considered."¹⁸

- 12 As statutorily defined, ecological integrity refers to "a condition in which biotic and abiotic 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."¹⁹ By way of elaboration, 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.²⁰

The introduction of ecological integrity to the Ontario legislative framework following its earlier adoption within the Canada National Parks Act 2000 illustrates one valuable dimension of inter-jurisdictional exchange within the overall national biodiversity and protected areas framework.

2.2 Policy context

2.2.1 Policy statements

- 13 In addition to specific legislative direction within the framework of the PPCRA, the management and administration of provincial parks and conservation reserves is carried out with reference to other relevant policies and governance documents.
- 14 As required by the Ontario Environmental Bill of Rights, the MNR has formulated a Statement of Environmental Values (1994). This statement, with which the ministry must conform, acknowledges the

15 Provincial Parks and Conservation Reserves Act (PPCRA) 2006, s. 6.

16 *Green v. R.* [1973] 2 O.R. 396 (HCJ). Section 2 of the Provincial Parks Act then indicated that parks were "dedicated to the people of the Province of Ontario [...] 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."

17 Ontario Ministry of Natural Resources, 1978 and 1992.

18 PPCRA, s. 3.1.

19 PPCRA, s. 5(2).

20 PPCRA, s. 5(3).

MNR's overall responsibility as steward of a diverse array of provincial resources, and incorporates a commitment to ecological sustainability and the conservation of biological diversity.

Our Sustainable Future (2005) outlines the MNR's mandate in relation to protected areas in a manner that encompasses the protection of natural heritage, implementation of environmental assessment guidelines and provision of community economic development associated with parks, alongside auditing, monitoring and reporting obligations. 15

The Interim Report on Ontario's Biodiversity Strategy: Protecting What Sustains Us (2008) refers generally to a range of public and private initiatives associated with biodiversity, and specifically to both federal and provincial protected areas within the province. These areas, it is noted, include 651 regulated or recommended areas that "have been created to conserve ecosystems that represent all of Ontario's natural regions, to protect significant elements of Ontario's natural and cultural heritage, to maintain biodiversity, and to provide opportunities for ecologically sustainable recreation."²¹ 16

2.2.2 Consultation

Providing opportunities for consultation is explicitly presented as an overall planning and management principle for Ontario's system of parks and conservation reserves,²² while specific consultations are set out in relation to certain decision-making functions such as the formulation of management plans for provincial parks and conservation reserves.²³ Other opportunities for consultation and public participation are available on the basis of general principles of administrative law or by virtue of specific statutory regimes including the Ontario Environmental Bill of Rights and the Ontario Environmental Assessment Act. 17

2.2.3 Aboriginal rights

Existing aboriginal and treaty rights as recognized and affirmed in section 35 of Canada's Constitution Act 1982 are not affected by Ontario's new parks legislation.²⁴ Certain regulation-making authority under the legislation, notably in relation to vehicular access to protected areas, may be exercised in a manner that contributes to meeting the needs of aboriginal or First Nations communities in the province. 18

It is one consequence of the constitutional recognition of aboriginal rights in Canada that the Crown is under an obligation to consult with indigenous communities in circumstances where its actions or decisions may affect aboriginal rights and interests. These circumstances include matters related to the establishment and administration of provincial parks and conservation reserves.²⁵ Consultations involving natural resources, land use, wildlife management and protected areas are therefore ongoing. In some parts of Ontario, particularized regimes—including co-management arrangements—have evolved in recognition of the distinctive interests of local aboriginal communities.²⁶ Maintenance agreements have also been formulated in order to provide opportunities for local First Nations communities to participate in employment opportunities associated with provincial parks and conservation reserves.²⁷ 19

21 Ontario Ministry of Natural Resources, 2008a, p. 35.

22 PPCRA, s. 3.

23 PPCRA, s. 10(6).

24 PPCRA, s. 4.

25 Ontario Parks, 2005b.

26 Benidickson and Hodgins, 1989.

27 Other aspects of aboriginal rights are discussed in section 6 below.

2.2.4 Cultural heritage

20 The objective of cultural heritage protection is recognized repeatedly in the legislation in relation to both provincial parks and conservation reserves.²⁸ The potential classification of provincial parks includes “Cultural Heritage Class Parks”, which may be established to “protect elements of Ontario’s distinctive cultural heritage in open space settings for their intrinsic value and to support interpretation, education and research.”²⁹

3 Protected areas objectives

3.1 Provincial parks

21 Four objectives are explicitly stated for the creation and management of 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 provide points of reference to support the monitoring of ecological change on the broader landscape.³⁰

22 The PPCRA also provides for several distinctive protected area classifications, the use of which is discretionary, to highlight particular conservation objectives:

- Wilderness Class Parks may be used “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.”³¹
- Nature Reserve Class Parks may be used “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.”³²
- Natural Environment Class Parks may be used “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.”³³
- Waterway Class Parks may be used “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.”³⁴

28 For example, PPCRA ss. 1 and 2.

29 PPCRA, s. 8(4).

30 PPCRA, s. 2(1).

31 PPCRA, s. 8(2). There are eight Wilderness Class Parks in the Ontario system: Kesagami, Killarney, Lady Evelyn-Smoothwater, Opasquia, Polar Bear, Quetico, Wabakimi, and Woodland Caribou.

32 PPCRA, s. 8(3).

33 PPCRA, s. 8(5).

34 PPCRA, s. 8(6).

The legislation further anticipates Aquatic Class Parks which may be used “to protect aquatic ecosystems and associated natural and cultural features for their intrinsic value, to support scientific research and to maintain biodiversity.”³⁵ 23

3.2 Conservation reserves

Objectives for the creation of conservation reserves are similar to those for provincial parks, except that recreational opportunities and public education are replaced by the goal of providing opportunities for ecologically sustainable land uses. The statutory objectives are set out as follows: 24

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 provide points of reference to support the monitoring of ecological change on the broader landscape.³⁶

It will be apparent from the foregoing that the pursuit of conservation is embraced as an objective alongside other goals encompassing the economic benefits from recreational activity and ecologically sustainable land uses. 25

In addition, the general regulation-making power set out in the legislation explicitly confers authority to make regulations for the purpose of “protecting provincial resources in provincial parks and conservation reserves, including, but not limited to, flora, fauna, habitats, geological features, cultural features and archaeological features.”³⁷ Moreover, subject to the provisions of the Fish and Wildlife Conservation Act and its regulations, “the Minister may take such measures as the Minister considers proper for the protection in a provincial park or a conservation reserve of fish, wildlife and invertebrates.”³⁸ 26

3.3 Relationship to IUCN protected areas categories

It is generally understood that Ontario lands designated either as provincial parks or conservation reserves fall within IUCN categories I and II. A comprehensive overview of roughly 40 types of protected areas in the province is currently underway with a view to classifying all of these within standard categories, including IUCN designations. 27

4 Institutional arrangements

4.1 Overall responsibility and management

The Minister of Natural Resources has overall statutory responsibility for the control and management of provincial parks and conservation reserves,³⁹ a responsibility that is carried out in practice through the work of the Ontario Parks branch of the MNR. Ministerial authority extends to the power of approval for management directives, as described below, and includes responsibility for periodic public reporting. 28

35 PPCRA, s. 8(8).

36 PPCRA, s. 2(2).

37 PPCRA, s. 54(1)(e).

38 PPCRA, s. 34(1).

39 PPCRA, s. 12(1).

The report, a significant contributor to public accountability for protected areas management, is required to include:

a broad assessment of the extent to which the objectives of provincial parks and conservation reserves, as set out in [the PPCRA], 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.⁴⁰

- 29 Immediate operational responsibility is assigned to a superintendent in the case of provincial parks, and a district manager of the MNR or conservation reserve manager in the case of conservation reserves.

4.2 Advisory bodies

- 30 Subject to provincial Cabinet approval, the Minister is authorized to appoint committees with responsibility “to perform such advisory functions as are considered necessary or desirable in connection with the administration of one or more of the provincial parks or conservation reserves.” Responsibility for determining the terms of reference and procedure for such committees is also assigned to the Minister.⁴¹ For example, in connection with the legislative review initiated in 2004, the government made use of a consultation and advisory process carried out by a citizen committee constituted as the Ontario Parks Board of Directors. Independent of the existence at any given time of formal advisory procedures, Canadian non-governmental organizations participate actively in environmental policy making, including policy making associated with protected areas and endangered species.⁴²

5 Protected areas system planning

- 31 The emergence of an understanding of Ontario’s provincial parks as constituting elements of a system is the result of incremental policy developments associated with the general objectives or goals of protected areas. The most elaborate statement of the system concept is found in the MNR’s Parks Planning and Management Policies document (see Box 1).
- 32 The Lands for Life initiative described earlier in this report subsequently produced a broad overview and general framework for land use, including the establishment or expansion of a number of protected areas across Ontario. Apart from this wide-ranging initiative, informal reference is periodically made to the concept of representation or representativeness as underpinning what is commonly referred to in the jurisdiction as a protected areas network rather than system. Thus, in connection with the legislative review carried out in 2004, ‘representation’ was referred to as “the primary concept used to identify Ontario’s network of protected areas.”⁴³
- 33 Within the overall framework of land use and planning in Ontario, public attention has shifted from time to time to areas of particular interest, controversy or vulnerability. This has resulted in a number of distinct regional responses to decision making and the preservation of landscapes and environmental values, generally in relation to ongoing demands for industrial, residential, agricultural or resource development:

40 PPCRA, s. 11(2).

41 PPCRA, s. 23.

42 See generally, Wilson, 2002, pp. 47–57.

43 Ontario Parks, 2004, p. 6.

- The responsibilities of the Niagara Escarpment Commission extend throughout a landscape designated in 1990 as a UNESCO biosphere reserve and encompassing approximately 130 existing or proposed parks.⁴⁴
- The Oak Ridges Moraine Conservation Plan applies under special legislation to a particularly vulnerable feature of southern Ontario.⁴⁵
- The Greenbelt Plan seeks to safeguard and enhance environmental features across a heavily populated band surrounding the greater metropolitan region of Toronto, including some areas also covered by the arrangements applicable to the Niagara Escarpment and the Oak Ridges Moraine.⁴⁶

Box 1: System planning

Excerpts from the Ontario Provincial Parks: Planning and Management Policies (1992 update).

The park system, rather than the individual parks, provides the diversity of experiences and landscapes which are sought. [...]

A given park may contribute towards the achievement of one, two, three or all four program objectives. To understand the significance of that park's natural, cultural or recreational resources, they must be evaluated in terms of the contributions which they make to the provincial system.

[C]lassification and zoning are the key elements in determining the type and extent of management activities which may take place in a park. Classification sets the direction for the types of zones a park may contain and the general approach used in formulating management policies. Park zoning permits further refinement in the development of alternative methods by setting limits on the range of management activities that can be considered. [...]

The phrase "provincially significant natural, cultural and recreational environments", the essence of the park system in Ontario, has meaning on a variety of levels. The words *provincially significant* imply a qualitative measure. The classification systems (biological, geological and cultural resources) not only help "categorize" resources based on their distribution across the province, but they also evaluate the *quality* of a feature or resource as compared with others.

The terms *biological*, *geological* and *cultural* take in more specialized fields of study such as botany, zoology, limnology, geology, geomorphology, archaeology, anthropology, and history. [...]

[T]he principle of *representation* cannot be achieved until protection is assured. The principles of *classification* and *zoning* provide park managers with the means to tailor management policies to suit resource importance. Through the careful application of these, the other principles such as *permanence*, *distinctiveness*, *variety* and *coordination* can be achieved in a *system* of parks.

Finally, there is the principle of accessibility. [...] It is important that elements of the park system can be found throughout the Province, and that many are accessible to the general public. They foster an understanding and appreciation of the need to protect important natural and historical resources.

Source: Ontario Ministry of Natural Resources, 1992, pp. 14–15 and 19–21.

6 Establishment, amendment and abolishment of protected areas

Authority in connection with the designation of new provincial parks or conservation reserves is exercised by the provincial Cabinet.⁴⁷ Although lands allocated for these purposes will ordinarily be taken from provincial Crown lands, land may be acquired pursuant to the Ministry of Government Services Act 1990.⁴⁸ The Cabinet also exercises authority to prescribe boundaries and to increase or decrease the area of any provincial park or conservation reserve.⁴⁹

34

44 Niagara Escarpment Planning and Development Act 1990; see also Niagara Escarpment Commission, 2008.

45 Oak Ridges Moraine Conservation Act 2001; see also Ontario Ministry of Municipal Affairs and Housing, 2009.

46 Greenbelt Act 2005; see also Greenbelt Plan (Ontario Ministry of Municipal Affairs and Housing, 2005).

47 PPCRA, s. 9(1).

48 PPCRA, s. 9(2).

49 PPCRA, s. 9(1).

- 35 In the case of the disposition of land previously set aside for a provincial park or conservation reserve, rules vary depending on the total area in question. Where the area to be disposed of is less than 50 hectares in extent or amounts to less than one per cent of the total area of the relevant park or reserve, the provincial Cabinet may, by order, dispose of the lesser area.⁵⁰ The process applicable in the case of a larger disposition is more elaborate and calls for the participation of the elected provincial Legislative Assembly. In such cases, before the Cabinet may order the disposition of provincial park or conservation reserve land, the Minister must report to the Legislature on the proposed disposition and must table before the Legislature the proposed new boundaries of the provincial park or conservation reserve for legislative approval.⁵¹
- 36 The involvement of the Legislature in dispositions exceeding 50 hectares in size or one per cent or more of the land area of a provincial park or conservation reserve is not required in three exceptional circumstances:
- (a) the disposition is made as part of a settlement of a claim in respect of aboriginal rights;
 - (b) the land being disposed of is being added to a national park under the *Canada National Parks Act* or a marine conservation area under the *Canada National Marine Conservation Areas Act*; or
 - (c) the disposition is being made as part of a transaction that increases the size of the provincial park or conservation reserve and enhances ecological integrity.⁵²
- 37 Arrangements for a disposition under the aboriginal rights exemption have been pursued in connection with the management of O'Donnell Point Provincial Park on Georgian Bay, a protected area with significant natural heritage value. On the basis of an extended treaty claim pursued by the Moose Deer Point First Nation, agreement has been reached to convey additional lands to the community, including lands currently encompassed within the boundaries of the provincial park. Simultaneously, the Moose Deer Point First Nation is engaged in development planning that is expected to result in a legally enforceable community land use plan that would protect from development that portion of the First Nation lands adjacent to the reconfigured boundaries of O'Donnell Point Provincial Park. Advisory bodies and notification procedures have been established with a view to ensuring consultation in the interests of safeguarding natural heritage values.⁵³
- 38 In the extensive northern area of Ontario covering the Hudson and James Bay watersheds, and often referred to as 'the Far North', draft legislation tabled in June 2009 anticipates the creation of protected areas through a land use planning process heavily reliant on the participation of First Nations. Within the Far North, a protected area will be "an area of land that is designated as such by a land use plan [...] if the plan is approved as a community based land use plan." Following approval of a community-based land use plan for a planning area, "the council of each of the First Nations may jointly request that the Minister make a regulation specifying the boundaries of the protected area in the planning area."⁵⁴

7 Requirement for management plans

- 39 Subject to the statutory management principle noted above, that ecological integrity shall be the first priority and restoration shall be considered, it is the responsibility of the Minister to ensure that a "management direction" is prepared within five years of the coming into force of the new legislation

50 PPCRA, s. 9(3).

51 PPCRA, s. 9(4).

52 PPCRA, s. 9(5).

53 ECO, 2008.

54 Far North Act, Bill 191, 2009, s. 10(1).

for existing provincial parks and conservation reserves, and within five years of the creation of new provincial parks and conservation reserves in Ontario.⁵⁵ Management directions may apply to one or more provincial parks or conservation reserves.⁵⁶

Management directions set out specific management policies applicable for a 20-year period. These must be approved by the Minister and may include a management statement or a management plan.⁵⁷ In the context of approving management directions, the Minister has the authority to designate zones within a provincial park or conservation reserve and to prescribe policies applicable within such zones.⁵⁸

A management statement is a document approved by the Minister that provides a policy and resource management framework to address a limited number of non-complex issues or proposals for limited capital infrastructure or resource management projects in provincial parks or conservation reserves.⁵⁹

A management plan is a document approved by the Minister that provides a policy and resource management framework to address substantial and complex issues or proposals for substantial capital infrastructure or resource management projects in provincial parks or conservation reserves.⁶⁰ Plans may address the needs of individual parks, or may apply to neighbouring or contiguous parks and conservation reserves. For example, a recently completed management plan for the Temagami region of north-eastern Ontario encompasses five provincial parks.⁶¹

Preparation of management statements and plans is guided by a planning manual that is to be completed and made available to the public within two years of the coming into force of the legislation.⁶² (At the time that this case study was being prepared, MNR's statement of 1978 on Parks Planning and Management Policies, as revised in 1992 and updated in 1998, remained a point of reference for the planning process.) Existing statements and plans are deemed to be applicable under the new legislation.⁶³

Public consultation is required both in connection with the initial production of management statements and management plans, and also in connection with amendments to this documentation. Management directions are subject to assessment for review and amendment after 10 years, and the results of that examination are to be made available to the public on an electronic registry established under the Ontario Environmental Bill of Rights, or by some other appropriate means.⁶⁴

For reference purposes, a 2004 description of the contents of a park management plan and the stages involved in preparation are set out as follows:⁶⁵

- A definition of the park's role, significance and classification in the context of the provincial system.
- A statement of policy, including classification and zoning, addressing the protection, planning, development and management of the significant resources and values within each park. Amendments to the park boundary (additions or deletions) are also prescribed.

55 PPCRA, s. 10(1). This requirement may present a significant administrative challenge since, as recently as 2004, up-to-date and approved management plans were in place for only 38 of the 548 protected areas in Ontario (ECO, 2007, p. 102). For further discussion, see ECO, 2004, pp. 41–47.

56 PPCRA, s. 10(2).

57 PPCRA, s. 10(3).

58 PPCRA, s. 12(2).

59 PPCRA, s. 10(4).

60 PPCRA, s. 10(5).

61 Ontario Parks, 2007. For details, see Annex 1.

62 PPCRA, s. 10(9). See also Ontario Parks, 2009c.

63 PPCRA, s. 10(10).

64 PPCRA, s. 10(6)–10(8).

65 This general description of park management plans based on the Ministry of Natural Resources (MNR) 1994 manual is taken from Ontario Parks, 2005a, p. 83.

- Documented evidence that planning, development and management activities reflect the need for environmental protection and sustainability, and are responsive to public interests.
- Guidance in preparing subsidiary implementation plans for the various activities and projects needed to achieve park objectives.
- A rationale and priorities for the long-term funding of capital development and operations.
- A record of issues identified through internal and public consultation, and their resolution through the management planning process.
- A basis for auditing the development, operations and resource management activities in a park.
- Assurance that proposed management activities and projects are assessed for Environmental Assessment Act compliance.

46 The park management planning process is also used to re-examine any boundary concerns. Additions or deletions to a park boundary are identified during the process.

8 Activities within protected areas

8.1 General

47 The range of activities permitted or prohibited within Ontario's protected areas is determined on the basis of the framework legislation, regulatory elaboration and policies, each of which may provide for exceptions available in particular circumstances.

48 In general, the following activities are statutorily prohibited within provincial parks and conservation reserves:

- commercial timber harvesting;
- generating electricity;
- prospecting, staking mining claims, developing mineral interests or working mines;
- extracting aggregate, topsoil or peat; and
- other industrial uses.⁶⁶

49 It is also specified in the PPCRA that no one may undertake any of the following activities within a provincial park or conservation reserve without a permit:

- construction, expansion or placement of a building, structure or thing;
- construction of trails or roads;
- clearing of land; and
- dredging or filling of shore lands.⁶⁷

50 By way of an exception, certain pre-existing activities that would otherwise be prohibited may continue to be carried out:

- commercial timber harvesting in Algonquin Park;⁶⁸
- pre-existing or pre-authorized oil and gas wells and aggregate pits;⁶⁹

66 PPCRA, s. 16(1).

67 PPCRA, s. 22(1).

68 PPCRA, s. 17.

69 PPCRA, s. 18(1).

- pre-existing hydroelectricity generation facilities;⁷⁰ and
- pre-existing resource access roads, trails and utility corridors.⁷¹

The legislation makes provision for further exceptions to the general prohibitions, as follows:

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- Aggregates may be produced and used within a provincial park or conservation reserve where they result incidentally from authorized construction activities.⁷²
- Facilities for generating electricity for provincial park or conservation reserve purposes are permitted with the approval of the Minister, and subject to applicable policies and management directions.⁷³
- Resource access roads and trails for non-provincial park and conservation reserve uses in provincial parks and conservation reserves are permitted, subject to the policies of the Ministry and the approval of the Minister, with or without conditions, in the following circumstances:
 - Roads and trails required for reasonable access to existing mining tenure or claims within a provincial park or conservation reserve or surrounded by a provincial park or conservation reserve.
 - Roads and trails required to access minerals or Crown timber outside a provincial park or conservation reserve.⁷⁴
- Utility corridors, including but not limited to utility corridors for electrical transmission lines, are permitted in provincial parks and conservation reserves, subject to the policies of the Ministry and the approval of the Minister, with or without conditions.⁷⁵

In connection with approvals for electricity generation facilities, resource access roads and utility corridors, even more stringent safeguards apply. Specifically, the Minister must be satisfied that the following conditions are met:

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- There are no reasonable alternatives;
- Lowest cost is not the sole or overriding justification; and
- The environmental impact has been considered and all reasonable measures will be undertaken to minimize harmful environmental impact and to protect ecological integrity.⁷⁶

Moreover, any of the approved activities or exceptions noted above “that causes, results or is expected to result in a major disruption or impairment of the ecological integrity of a provincial park or conservation reserve” requires a work permit setting out applicable terms and conditions.⁷⁷ In the case of resource access roads and utility corridors, these must be closed, and provision made for rehabilitation and removal of infrastructure, when they are no longer required or in use.⁷⁸

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The administration of exemptions and approvals is subject to regulations, including Cabinet regulations governing “activities that may be undertaken in provincial parks and conservation reserves”, and Ministerial regulations concerning work permits and applicable procedures. These regulations may

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70 PPCRA, s. 19(1).

71 PPCRA, s. 20(4).

72 PPCRA, s. 18(2).

73 PPCRA, s. 19(4). In September 2008, terms of reference were approved for a process to amend the management plan of Sandbanks Provincial Park in order to allow wind turbine research. Following consultations, this would involve re-zoning parts of the park from environment to development.

74 PPCRA, s. 20(1).

75 PPCRA, s. 20(2).

76 PPCRA, s. 21(1).

77 PPCRA, s. 22(1).

78 PPCRA, ss. 20(3) and 22(1).

be general or particular in application, and may distinguish between classes of provincial parks and conservation reserves and areas or zones within provincial parks and conservation reserves.⁷⁹

- 55 Regulations accompanying the coming into force of Ontario's new legislation in 2007 were to a considerable extent "carried over" from the previous regime.⁸⁰ Provisions with respect to hunting and endangered species as well as the regulation of mechanized transport have attracted critical comment, as noted below.

8.2 Hunting

- 56 The General Provisions regulations for parks and conservation reserves are consistent with the legislative intent that hunting is allowed in all conservation reserves by default and may be authorized on an exceptional basis in provincial parks. The regulations specifically require that hunting, where allowed, must be carried out in compliance with Ontario's Fish and Wildlife Conservation Act as well as federal legislation, the Migratory Birds Convention Act 1994 and the Fisheries Act 1985. Although the Ontario Parks Guide 2009 promotes awareness of species at risk, the PPCRA regulations do not address compliance with the recently enacted provincial Endangered Species Act.
- 57 As observed critically by the Environmental Commissioner of Ontario, with reference to one notorious situation involving hunting of the eastern wolf, an endangered species in the province, the regulations are:

silent on any specific protections for species at risk. However, MNR policy prohibits the hunting and trapping of all species at risk in all provincial parks, unless a special exemption is issued for species of special concern. [A second] MNR policy then exempted the eastern wolf, a species of special concern, and allowed them to be hunted and trapped in provincial parks. These provisions and its exceptions are not reflected in these regulations, the *Provincial Parks and Conservation Reserves Act*, the *Endangered Species Act, 2007* or the *Fish and Wildlife Conservation Act*.⁸¹

8.3 Regulation of vehicular access

- 58 Vehicular access to protected areas has historically provoked significant controversy across Ontario in relation to such issues as wilderness preservation, the commercial viability of tourist service operations, and hunting or other traditional land uses by aboriginal peoples.
- 59 The provincial Cabinet, by regulation, exercises authority with respect to vehicles, boats and aircraft in provincial parks and conservation reserves.⁸² It is noteworthy that the General Provisions regulations⁸³ prescribe general prohibitions regarding all-terrain vehicles, aircraft and powerboats, the effect of which has been severely limited by a wide range of exceptions.⁸⁴
- 60 Wilderness designations, as noted above, serve "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." In connection with such areas, the Minister may authorize mechanized travel to achieve one of the following purposes:

79 PPCRA, s. 54.

80 Provincial Parks: General Provisions (O. Reg. 347/07); Conservation Reserves: General Provisions (O. Reg. 319/07); Designation of Conservation Reserves (O. Reg. 315/07); Designation and Classification of Provincial Parks (O. Reg. 316/07); Mechanized Travel in Wilderness Parks (O. Reg. 346/07); Fees (O. Reg. 344/07); and Work Permits (O. Reg. 345/07).

81 ECO, 2008, p. 68. Despite this statement by the ECO, the Provincial Parks: General Provisions Regulation (O. Reg. 347/07), s. 7 is intended to prohibit the introduction of invasive species to provincial parks.

82 PPCRA, s. 54(1)(j).

83 Provincial Parks: General Provisions (O. Reg. 347/07).

84 ECO, 2008.

- To permit uses associated with land occupied in accordance with the PPCRA and the regulations.
- To permit existing non-conforming uses to continue, pending the approval of a management direction applicable to the park.
- To permit access through access zones identified in the management plan applicable to the park.
- To permit access to privately owned or leased land that is surrounded by, but is not part of, the park.
- To permit First Nations to address their needs.
- To permit commercial aircraft to land in order to allow visitors to access remote areas, in accordance with the management plan applicable to the park.⁸⁵

The regulations dealing specifically with Mechanized Travel in Wilderness Parks⁸⁶ also provide extensively for exemptions. Aircraft landings are permitted in all or parts of every wilderness class park. Powerboat use is authorized within sections of all but one wilderness park. Park superintendents are authorized to establish conditions for mechanized travel with reference to the following considerations:

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- Possible effects of such travel on the opportunity for wilderness travellers to experience solitude, challenge and integration with nature;
- Potential harm or benefit to the natural environment or wildlife caused or produced by such travel, or its potential to support or impede the maintenance of ecological integrity;
- Protection of human safety; and
- Potential economic and social impact of such travel.⁸⁷

Arrangements of the kind noted above to permit hunting, including hunting species of special concern, and those providing for extensive mechanized access to provincial protected areas have attracted criticism for their policy-based and ad hoc adoption, possibly attributable to the delay in addressing the full implications of ecological integrity in the new legislation.⁸⁸

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9 Environmental impact assessment

In contrast with the individualized or case-by-case application of environmental assessment procedures to decisions or activities affecting specific protected areas, many basic park management activities are subject to general requirements set out in the Class Environmental Assessment for Provincial Parks and Conservation Reserves.⁸⁹ In the case of an activity governed by the class assessment, there is no need to undertake individualized or park-specific environmental assessment. Since the class assessment framework may be subject to further revision in the context of the new PPCRA, only an outline is provided here.

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The class environmental assessment applies when any one of the following activities is proposed:

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- Establishing, amending and rescinding boundary regulations for a new or existing provincial park or conservation reserve, including areas recommended in an approved land use direction document (such as Ontario's Living Legacy: Land Use Strategy, 1999).
- Acquiring and disposing of land for a new or existing provincial park or conservation reserve.

⁸⁵ PPCRA, ss. 54(2)(j) and 54(3).

⁸⁶ Mechanized Travel in Wilderness Parks (O. Reg. 346/07).

⁸⁷ Mechanized Travel in Wilderness Parks (O. Reg. 346/07), s. 3.

⁸⁸ ECO, 2008, pp. 68–73.

⁸⁹ Ontario Parks, 2005a; approved 23 September 2004, amended 31 December 2004.

- Managing existing and recommended provincial parks or conservation reserves.⁹⁰
- Management activities broadly encompassing resource stewardship, development and related operations, and general operations.⁹¹

65 Activities are classified, based on a broad scale intended to capture low to high potential for negative environmental effects, according to four categories to which increasingly rigorous and comprehensive assessment and evaluation procedures apply. Factors relevant to the assessment of potential negative effects include:

- magnitude or relative severity of the effect;
- value of the feature or situation affected;
- geographic extent of the impact;
- duration and frequency of the effect;
- likelihood; and
- reversibility or irreversibility.⁹²

66 The draft Far North legislation expressly eliminates the application of the provincial environmental assessment regime.

10 Integrated land use planning for protected areas

67 It is now widely acknowledged that the fate of protected areas and of natural heritage values within their boundaries is intimately connected with activities in adjacent lands and the surrounding landscape, sometimes referred to as buffer zones. Accordingly, mechanisms and opportunities to promote integrated approaches or coordinated responses are of increasing importance. Concern about the contribution of comprehensive or integrated approaches to the maintenance of protected areas and natural heritage values arises in a range of settings. Those noted here include issues related to the coordination of environmental assessment regimes, the integration of planning for protected areas and surrounding lands, connectivity and corridors, and arrangements for transboundary protected areas management. Although the language of buffer zones is not officially employed in the Ontario framework, the following initiatives address broadly analogous objectives.

10.1 Managing the impact of external activities

68 Debate about the adequacy of coordination arrangements for environmental assessment within and outside protected area boundaries is ongoing.⁹³ At an operational level, Ontario Parks promotes the ecosystem approach, and encourages efforts of adjacent landowners to protect significant natural and cultural features outside park boundaries (see Box 2).

69 In connection with a related matter—the interpretation of management plan guidance with reference to its implications for neighbouring properties—a majority of the Ontario Court of Appeal in a judicial review proceeding determined that an acting park superintendent had not acted unreasonably in denying permission to utilize a park road for access to land immediately adjacent to Lake Superior

90 Ibid., p. 9.

91 Ibid., pp. 58–67.

92 Ibid., p. 86.

93 For discussion of the arrangements in place for coordinating internal and external environmental impacts in the environmental assessment process, see Ontario Parks, 2005a, pp. 14–18.

Provincial Park.⁹⁴ The impact of activities external to park boundaries is therefore judicially recognized as relevant to park management decisions.

The potential impact on protected areas of external activities and land use has attracted critical commentary from the Environmental Commissioner of Ontario whose report for 2006–07 concludes that parks officials cannot effectively address such issues: “the Government of Ontario has no explicit mechanisms to restrict incompatible land uses near the boundaries of its protected areas.” Accordingly, the Environmental Commissioner called for more systematic consideration of “an ecologically sensible landscape-level approach” to the management of Crown lands so that provincial parks and conservation reserves can more effectively contribute to the protection of Ontario’s biodiversity.⁹⁵

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Box 2: The impact of external activities

Ontario Parks has expressed its views on the management of external impacts as follows:

The Provincial Parks Act, which governs activities within provincial parks, pertains only to lands and waters within park boundaries. An ecosystem approach allows park management to consider the relationship between the park and the surrounding environment. Park managers may consider potential impacts on park values and features from activities occurring on adjacent lands, and potential impacts from park activities on land uses in adjacent areas. Ontario Parks will encourage efforts of adjacent landowners to protect significant natural and cultural features outside park boundaries.

Ontario Parks will work closely with the MNR districts in the area to protect significant natural and cultural features outside park boundaries and to enhance the backcountry recreational experience throughout the entire area. This will include ongoing cooperation in the integration of backcountry maintenance as well as contributing in the forest management planning process, annual work schedules and resource management plan reviews.

Ontario Parks will support in principle the acquisition of property for the purposes of addition to the park, if acquisition will enhance the values of the park. Acquisition or securement will be subject to funding and willingness of the owners to sell or lease their properties or enter into a conservation easement.¹

1 Ontario Parks, 2007, p. 4.

Source: Ontario Parks, 2007.

10.2 Integrated land use planning

An important example of a comprehensive approach to the management of parks and conservation reserves in conjunction with adjacent Crown lands has recently been concluded in the Temagami region of north-eastern Ontario. Rich in natural heritage and valuable resources, the Temagami region has been subject to a succession of official designations and evolving management regimes for over a century. Aboriginal claims to parts of the area continue to elude final resolution despite recurring rounds of negotiation.⁹⁶

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Within the context of an overall regional land use plan that designated about 60 distinct management areas zoned for protection, special management, integrated management or development,⁹⁷ the MNR launched the Temagami Integrated Planning Project in 2004. The resulting management plan is

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94 2016596 *Ontario Inc. v. Ontario (Minister of Natural Resources)* (2004) 72 O.R. (3d) 360. The approach taken by Canadian courts to the standard of review of administrative decisions has recently been revised in the *Dunsmuir* decision whose specific implications for this type of case have not been considered here.

95 ECO, 2007, p. 106. The Ministry of Natural Resources is of the view that “[e]xisting mechanisms provide an opportunity to consider potential impacts that activities on lands adjacent to provincial parks and conservation reserves may have on the ecological integrity of these protected areas” (ECO, 2007, p. 216).

96 Benidickson and Hodgins, 1989.

97 Ontario Ministry of Natural Resources, 1997.

intended to formulate a coherent response to common issues arising in a number of Temagami parks, conservation reserves and Crown lands used for recreational purposes, notwithstanding the distinctive legislative requirements applicable to each of these areas. While questions remain concerning the priority accorded to ecological integrity in the areas encompassed within the integrated planning project, and while protected areas remain vulnerable as a result of persistent vehicular activity within their boundaries and from resource extraction in surrounding lands, the comprehensive approach to planning for the Temagami region represents a commendable advance.⁹⁸

10.3 Connectivity and corridors

73 Ambitious corridor and connectivity initiatives in Ontario have vastly broadened the vision of protected areas advocates by establishing aspirations that encompass extensive eco-regions. In the case of the northern boreal forest, as previously noted, government acceptance of the vision has recently resulted in a commitment to address the long-term protection of public lands by means of a series of yet to be finalized legal instruments and associated policies. In the case of the Algonquin to Adirondack proposal (A2A), emphasis is currently being placed on education and on the utilization of existing mechanisms to support related conservation measures on private lands.

74 The A2A region extends from Ontario's Algonquin Park along the Frontenac Arch into the US state of New York and the Adirondack Park in that state. A Canadian-registered charity operating as the Algonquin to Adirondacks Conservation Association has as its mission "to restore, enhance and maintain ecological connectivity, ecosystem function and native biodiversity, while respecting sustainable human land uses" across the region.⁹⁹ In addition to promoting public awareness of the importance of the corridor and the vulnerability of resident species to habitat fragmentation, the association actively promotes the work of land trusts operating in the region.

10.4 Transboundary protected areas

75 Apart from the emerging A2A initiative, efforts to support transboundary protected areas have been undertaken for many years, both on the basis of public interest group activity and at a more official level.

76 The most longstanding cross-border effort to safeguard transboundary protected areas centres on the Quetico Provincial Park in north-western Ontario. After years of informal cross-border collaboration with their American counterparts, Canadian supporters of the Quetico wilderness formed the Quetico Foundation in 1954. It has continued to work in parallel with efforts on the US side of the border to safeguard the transboundary protected area encompassed within the Quetico–Superior region.

77 In connection with a broader boreal forest protection initiative, the governments of Ontario and Manitoba, represented by the Ontario MNR and Manitoba Conservation, respectively, signed a memorandum of understanding in 2008 to establish and safeguard a Manitoba–Ontario Interprovincial Wilderness Area. The two departments have undertaken to pursue coordinated management of an area extending over 9,400 sq km and including previously designated protected areas on both sides of the interprovincial border. The parks involved include the Woodland Caribou Provincial Park and the Eagle-Snowshoe Conservation Reserve in Ontario, along with Manitoba's Atikaki and Nopiming provincial parks.¹⁰⁰ To

98 ECO, 2008.

99 See Algonquin to Adirondacks Conservation Association (undated).

100 Ontario Ministry of Natural Resources and Manitoba Conservation, 2008; and Ontario Ministry of Natural Resources, 2008b.

a significant degree, these transboundary governmental arrangements have emerged in conjunction with prior initiatives of First Nations communities on opposite sides of the interprovincial border to safeguard their traditional lands from inappropriate resource development.¹⁰¹ Manitoba legislation designed specifically to accommodate protected areas development involving aboriginal communities on the east side of Lake Winnipeg, bordering Ontario, is anticipated, and a World Heritage application encompassing the broader landscape is currently being prepared.

11 Enforcement and penalties

Within a provincial park or conservation reserve, all the powers of a member of the Ontario Provincial Police are conferred upon conservation officers, park wardens, park rangers, superintendents and assistant superintendents.¹⁰² Officers are also specifically authorized to seek the assistance of police officers in the execution of a warrant.¹⁰³ 78

Enforcement powers under the PPCRA include the inspection of firearms; the inspection of vehicles, boats and aircraft; and the inspection of buildings and places other than dwelling places.¹⁰⁴ Search powers with and without a warrant are conferred on officers. The statute authorizes the removal of documents, access to computers, and powers of seizure, forfeiture and arrest.¹⁰⁵ 79

The MNR employs what it describes as a risk-based enforcement strategy in order “to assure that ecological integrity is protected to an optimal degree.” It is of the view that “this strategy aims enforcement where it is necessary to protect ecological integrity and public safety.”¹⁰⁶ 80

The PPCRA makes it an offence to contravene or fail to comply with designated provisions of the legislation and regulations.¹⁰⁷ It is an offence, for example, to use or occupy land within a provincial park or conservation reserve in a manner that contravenes the Act or regulations.¹⁰⁸ It is also an offence to contravene a work permit, to fail to comply with an order to cease work,¹⁰⁹ and to use roads or trails in a provincial park or conservation reserve with knowledge that they have been closed.¹¹⁰ Other offences are associated with violations of the enforcement provisions, such as failure to stop a vehicle, boat or aircraft when signalled to do so,¹¹¹ and failure to operate or provide access to a computer.¹¹² It is an offence as well to mislead or obstruct an enforcement officer.¹¹³ 81

As is customary in Ontario, the PPCRA contains its own penalty provisions. Conviction for a first offence involves liability for a fine of up to 50,000 Canadian dollars and imprisonment for up to one year, or both. In the case of a subsequent offence, the fine may rise to 100,000 dollars. Where the offence is committed for commercial purposes, both fines and potential liability for imprisonment are doubled.¹¹⁴ 82

101 The communities spearheading the initiative are the Poplar River First Nation in Manitoba and the Pikangikum First Nation on the Ontario side.

102 PPCRA, s. 37.

103 PPCRA, s. 41(2).

104 PPCRA, ss. 38–40.

105 PPCRA, ss. 41–43.

106 Ministry of Natural Resources comment in ECO, 2007, p. 216.

107 PPCRA, s. 46.

108 PPCRA, s. 13(2).

109 PPCRA, s. 22.

110 PPCRA, s. 33(2).

111 PPCRA, s. 39(2).

112 PPCRA, s. 41(4).

113 PPCRA, s. 45.

114 PPCRA, s. 52(1).

83 It may be noted that this penalty regime is less severe than in other environmental legislation in the jurisdiction, and that the strength of administrative enforcement arrangements is not widely known at the moment.¹¹⁵ Imprisonment for environmental offences has been extremely rare in Canada.

84 In the absence of statutory guidance, Canadian courts generally determine sentencing in the environmental context with reference to a series of principles that allow for flexibility depending on the nature of the damage, the remorsefulness of the offender and other considerations. In addition to the possibility of imposing a fine, a court may order a convicted offender

- (b) to take action, within such time as the court may fix, to rehabilitate the lands,
 - (i) in accordance with a plan approved by the Minister, or
 - (ii) if the Minister has not approved a plan, in such manner as the court considers appropriate; and
- (c) to obtain a work permit in order to effect the rehabilitation of the lands in accordance with the order of the court.¹¹⁶

In the absence of compliance with the order, the Minister may undertake appropriate rehabilitation measures and recover the costs and expenses as a debt due to the Crown.¹¹⁷

12 Finance

85 Three categories of fees are authorized under the legislation:

- fees for entrance into provincial parks of persons, vehicles, boats or aircraft;
- fees for the use of provincial parks or facilities and services in provincial parks; and
- fees and rentals for a licence, permit, lease or other right issued with respect to a provincial park.¹¹⁸

In the case of provincial parks, the Minister may set these fees directly, while in the case of conservation reserves, fees are to be prescribed by regulation.¹¹⁹

86 All leases, licences of occupation or land use permits under the legislation are subject to an express or implied term requiring payment of a service fee, in addition to the payment of rent under the lease or the fee charged under the licence or permit. Service fees are determined in the case of a provincial park by the superintendent, and in the case of a conservation reserve by the manager or district manager. Service fees are set in relation to:

- the cost to construct, operate and maintain the services provided in connection with the property being leased or occupied; and
- the cost incurred in the administration of the lease, licence of occupation or land use permit.¹²⁰

87 For the purposes of financial management, a separate account is established for provincial parks within Ontario's Consolidated Revenue Fund. It contains the following:

- All fines, fees and rentals paid under the PPCRA or the regulations;
- All amounts received by the Crown under agreements made under the PPCRA or the regulations;

115 As noted, the Provincial Parks and Conservation Reserves legislation is the result of a recent legislative review and consultation process, and is therefore understood to be up to date. Ontario has periodically re-evaluated its environmental penalty regime and did so not long ago with reference to the Environmental Protection Act 1990, the Ontario Water Resources Act 1990 and the Pesticides Act 1990.

116 PPCRA, s. 52(6).

117 PPCRA, s. 52(7).

118 PPCRA, s. 26(1).

119 PPCRA, ss. 26(1) and 26(2). For details on park fees, see Ontario Parks, 2009b, pp. 39–41.

120 PPCRA, s. 26(4).

- All costs or expenses recovered by the Crown in proceedings to recover court-ordered rehabilitation costs from persons who failed to comply with the order; and
- All other revenues generated by provincial parks.¹²¹

In addition, the Minister may receive and take from any person by grant, gift, devise, bequest or otherwise, any property, real or personal, or any interest in property, to support research, monitoring, education or any other related purpose in respect of a provincial park or conservation reserve.¹²² The Minister reports annually on the operation of the provincial parks account to the provincial Cabinet and to the Legislature.¹²³

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The Environmental Commissioner of Ontario has expressed concern about the adequacy of funding for the provincial parks programme. Linking the financial framework for cost recovery to operational requirements, the Commissioner remarked that “if a protected area is not paying for itself, there is no assurance that the statutory requirement to maintain ecological integrity is being upheld.”¹²⁴

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13 Private protected areas

Conservation programmes operate in Ontario under the auspices of a number of non-governmental organizations. These organizations may acquire land directly or work in partnership with landowners to establish stewardship or conservation regimes applicable to privately held properties.¹²⁵ Non-government organizations involved in conservation include the following:

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- Ducks Unlimited Canada is engaged in the conservation, management and restoration of wetlands and waterfowl habitat. Through partnerships, including the involvement of roughly 1,700 private landowners, it has helped to conserve more than 350,000 hectares of wetland habitat across the province.
- The Eastern Habitat Joint Venture, whose Canadian partners include Ducks Unlimited, the Nature Conservancy of Canada, Wildlife Habitat Canada, Environment Canada and the government of Ontario, has operated in Ontario since 1986 in connection with the North American Waterfowl Management Plan and, more recently, to pursue the objectives of the North American Bird Conservation Initiative.
- The Nature Conservancy of Canada, on the basis of donations, land acquisition and conservation easements, works to preserve ecologically significant sites across Canada. Through its Legacy 2000 programme, initiated in collaboration with Ontario Parks, the Nature Conservancy may acquire properties for transfer under long-term lease to Ontario Parks. It also contributes research and prepares policy guidance such as the recently completed Great Lakes Conservation Blueprint.

Other more localized arrangements have occasionally been established such as the Rideau Waterway Land Trust and the Georgian Bay Land Trust.

Statutory reforms in Ontario, as in a number of Canadian jurisdictions, have alleviated certain historic constraints on the use of easements or covenants to protect environmental values on private land. It is now possible for private landholders to grant easements for conservation purposes to public bodies or to recognized non-governmental conservation organizations. Ontario’s Conservation Land Act 1990

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121 PPCRA, s. 27(1).

122 PPCRA, s. 25(1).

123 PPCRA, s. 27.

124 ECO, 2007, pp. 105–6.

125 For a case study of the tools available to safeguard environmental values on private lands, see Campbell, 2006, p. 47.

permits a landowner to “grant an easement to or enter into a covenant with a conservation body [...] for the conservation, maintenance restoration or enhancement of all or a portion of the land or the wildlife on the land; or [...] for access to the land for these purposes.”¹²⁶

- 92 An easement or covenant under the Conservation Land Act is valid whether or not the conservation body or assignee owns appurtenant land or land capable of being accommodated or benefited by the easement or covenant. The easement or covenant is enforceable against the owner of the land and, if registered, against any subsequent owner of the land.¹²⁷
- 93 Other programmes and initiatives have introduced a range of incentives for landowners in Ontario to support natural heritage conservation:¹²⁸
- the Conservation Land Tax Incentive Programme,
 - the Areas of Natural and Scientific Interest designation, and
 - the Ontario Nature Trust Alliance.

14 Conclusion

- 94 The new statutory framework applicable to Ontario under the PPCRA is widely regarded as a major advance over the preceding arrangements. The proposed Far North Act will offer additional opportunities for significant extension of the province’s protected areas regime, with adaptations specifically designed to accommodate the involvement of Ontario First Nations in associated land use planning.
- 95 To the extent that the long-term well-being of protected areas in Ontario depends on the strength of the legislative framework, both the PPCRA and the proposed Far North Act substantially enhance the statutory foundations of the system. Public opinion, now informed by formal reporting requirements and the invaluable work of the Environmental Commissioner and several sophisticated non-governmental organizations, is also supportive. Far less certain, however, is the availability of provincial financing in the light of the severe recent damage to several key sectors of the provincial economy as a result of the financial turmoil of 2008.

126 Conservation Land Act 1990, s. 3(2).

127 Conservation Land Act, s. 3(6).

128 Attridge, 1998, pp. 130–1.

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Legal instruments

Most legal instruments discussed in this case study are available online. Readers may view the full text on the ECOLEX web site using the hyperlinks below, or at the URL provided.

Federal Acts

Constitution Act 1982 http://laws.justice.gc.ca/eng/Const/Const_index.html

Fisheries Act 1985, RS 1985, c. F-14

[LEX-FAOC093752](#)

Migratory Birds Convention Act 1994, SC 1994, c. 22 [LEX-FAOC023776](#)

National Parks Act 2000, SC 2000, c. 32 [LEX-FAOC054040](#)

Ontario Acts

Algonquin Forestry Authority Act 1990, RSO 1990, c. A.17 [LEX-FAOC002880](#)

Conservation Land Act 1990, RSO 1990, c. 28 [LEX-FAOC063721](#)

Crown Forest Sustainability Act 1994, SO 1994, c. 25 [LEX-FAOC067258](#)

Endangered Species Act 2007, SO 2007, c. 6 [LEX-FAOC081227](#)

Environmental Assessment Act 1990, RSO 1990, c. E.18 [LEX-FAOC041871](#)

Environmental Bill of Rights 1993, SO 1993, c. 28 [LEX-FAOC064744](#)

Environmental Protection Act 1990, RSO 1990, c. E.19 [LEX-FAOC063723](#)

Far North Act, Bill 191, 2009

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2205

Fish and Wildlife Conservation Act 1997, SO 1997, c. 41 [LEX-FAOC041867](#)

Greenbelt Act 2005, SO 2005, c. 1 [LEX-FAOC093756](#)

Kawartha Highlands Signature Site Park Act 2003, SO 2003, c. 6 [LEX-FAOC093757](#)

Lakes and Rivers Improvement Act 1990, RSO 1990, c. L.3 [LEX-FAOC041749](#)

Ministry of Government Services Act 1990, RSO 1990, c. M.25

<http://www.e-laws.gov.on.ca/Download?dID=238605>

Niagara Escarpment Planning and Development Act 1990, RSO 1990, c. N.2 [LEX-FAOC069102](#)

Oak Ridges Moraine Conservation Act 2001, SO 2001, c. 31 [LEX-FAOC041447](#)

Ontario Water Resources Act 1990, RSO 1990, c. O.40 [LEX-FAOC041416](#)

Pesticides Act 1990, RSO 1990, c. P.11 [LEX-FAOC041396](#)

Provincial Parks and Conservation Reserves Act 2006, SO 2006, c. 12 [LEX-FAOC093740](#)

Public Lands Act 1990, RSO 1990, c. P.43 [LEX-FAOC081224](#)

Wilderness Areas Act 1990, RSO 1990, c. W.8 [LEX-FAOC093755](#)

Ontario Regulations

Under Provincial Parks and Conservation Reserves Act

Designation of Conservation Reserves, O. Reg. 315/07 [LEX-FAOC093741](#)

Designation and Classification of Provincial Parks, O. Reg. 316/07 [LEX-FAOC093738](#)

Conservation Reserves: General Provisions, O. Reg. 319/07 [LEX-FAOC093743](#)

Fees, O. Reg. 344/07 [LEX-FAOC093742](#)

Work Permits, O. Reg. 345/07

<http://www.e-laws.gov.on.ca/Download?dID=243094>

Mechanized Travel in Wilderness Parks, O. Reg. 346/07

<http://www.e-laws.gov.on.ca/Download?dID=243096>

Provincial Parks: General Provisions, O. Reg. 347/07

[LEX-FAOC093763](#)

Under the Public Lands Act

Conservation Reserve, O. Reg. 805/94

[LEX-FAOC068660](#)

Cases

Green v. R. [1973] 2 O.R. 396 (HCJ)

2016596 Ontario Inc. v. Ontario (Minister of Natural Resources) (2004)
72 O.R. (3d) 360

<http://www.canlii.org/en/on/onca/doc/2003/2003canlii30021/2003canlii30021.pdf>

Annex 1: Temagami Area Park Management Plan 2007

The Temagami Area Park Management Plan applies to five adjacent or interconnected parks in the region covering 104,248 hectares, as established by regulation:

- Lady Evelyn-Smoothwater Wilderness Park, O.Reg. 343/83
- Makobe-Grays River Provincial Park, O.Reg. 45/85
- Obabika River Provincial Park, O.Reg. 52/97
- Solace Provincial Park, O.Reg. 256/89
- Sturgeon River Provincial Park, O.Reg. 256/89.

Within these parks, land has been further subdivided or zoned into four classifications: wilderness, natural environment, access and nature reserve. The general management implications are as follows:

Wilderness Zones include wilderness landscapes of appropriate size and integrity which protect significant natural and cultural features and are suitable for wilderness experiences. They support back-country recreation such as canoeing or hiking. Development is limited to wilderness campsites, portages, trails and signs necessary for route identification. Wilderness campsites (canoe- or hike-in) are established at a very low density and offer limited facilities such as designated fireplaces and pit privies, in keeping with the character of the landscape which the zone protects.

Resource management policies are directed where possible toward achieving minimum human intervention and the maintenance of evolving natural succession.

Nature Reserve Zones protect provincially significant earth and life science features which require management distinct from that in adjacent zones, and permit minimal development. Development is generally restricted to trails, necessary signs, interpretive facilities (where warranted) and temporary facilities for research and management.

Natural Environment Zones include natural landscapes which permit the minimum level of development required to support low-intensity recreational activities. Development is generally limited to backcountry campsites, portages, signs and minimal self-use interpretive facilities.

Resource management policies for natural environment zones may be more permissive than those for wilderness and nature reserve zones in allowing human intervention to maintain or improve aesthetics, wildlife habitat, etc.

Access Zones serve as staging areas where minimum facilities support use and access to nature reserve or wilderness zones and natural environment zones. Access zones provide, and regulate, use in areas of a park geared towards more extensive recreation. Development is generally limited to roads, visitor control structures and group campgrounds. There may be limited orientation, interpretive or educational facilities, which are generally self-use. Limited facilities for research and park management may also be present.

Infrastructure is intended to meet the needs of park visitors entering or exiting from the park's interior. As such, only very basic facilities are provided. Throughout the five parks in Temagami's backcountry (wilderness and waterway) the overall intent is to provide minimal facilities in order to preserve the remote backcountry experience.¹²⁹

The application of these zoning guidelines to numerous sub-areas within the parks results in management directions relating to motorized vehicles, ice huts, camp sites and aircraft access, among other activities.

Resource management policies address the following considerations:

- adaptive management,
- land management,
- industrial and commercial uses,
- vegetation,

¹²⁹ Ontario Parks, 2007, pp. 4–5.

- forest fire management,
- wildlife,
- aquatic ecosystems,
- non-native and invasive species,
- species at risk, and
- cultural heritage.

Policies with respect to these considerations apply equally to conservation reserves and Crown lands in the region used for recreational purposes, with the intent that wilderness travellers will experience a 'seamless' transition across boundaries, notwithstanding the existence of distinctive statutory underpinnings.