



# Panel on the Future of the Trent-Severn Waterway Commission sur l'avenir de la voie navigable Trent-Severn

## **DISCUSSION PAPER #5** **IMPROVING GOVERNANCE**<sup>1</sup>

*These discussion papers do not represent the conclusions or positions of the Panel. They are intended to stimulate discussion of some of the broad issues facing the waterway.*

### **Historical Context**

Construction of the Trent-Severn Waterway began before Confederation and lasted until 1920. The federal government built parts of the system, while the province built other parts. Provincially-owned bridges, dams, and locks were transferred to the federal government in 1905. At that time, the federal government was given the right to use many lakes and rivers as a reservoir system to maintain water levels for navigation.

The Constitution Act of 1867 placed “canals” and “river and lake improvements” under the jurisdiction of the Dominion of Canada.

After Confederation, the waterway was primarily operated by the Department of Transport (formerly the Department of Railways and Canals) ultimately under the authority of the Department of Transport Act and the Historic Canal Regulations. The regulations provide broad guidance in managing activities including navigation and other recreational activities on canal lands. They also provide some guidance for the protection of natural and cultural resources.

In 1972, the historic canals were transferred to the Conservation Program of the Department of Indian Affairs and Northern Development. Subsequent federal government reorganizations shifted Parks Canada to the Department of Environment and then to the newly formed Department of Canadian Heritage in 1993.

The 1998 Parks Canada Agency Act confirmed the historic canals as “other protected places” and assigned their management to the Minister responsible for the Agency.

Practically speaking, however, there are many federal, provincial and municipal agencies that play significant roles in governing and operating the waterway. They rely on a broad range of legislation, policies and municipal by-laws. These include the Fisheries Act, the Species at Risk Act, the Navigable Waters Protection Act, the Water Resources Act, the Dominion Water Power Act, the Energy Act, the Conservation Authorities Act, the Planning Act and many more.

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<sup>1</sup>Separate discussion papers on water management and jurisdiction/ownership will also address governance issues.

## **The Current Situation**

Numerous federal, provincial and municipal government agencies and First Nations are involved and interested in the administration of aspects of the waterway corridor. So are hundreds of citizen-driven organizations and industry associations advocating on behalf of the environment, cultural heritage, economic sustainability, cottagers, and residents.

As many as ten different agencies issue permits for in-water work in the waterway corridor. They all apply different regulatory instruments and policies. Almost all have public information and education programs promoting stewardship of aquatic and shoreline resources. A similar number of different organizations promote tourism along the corridor. Virtually all of them use the “Trent-Severn Waterway” brand in their promotions.

Both the provincial and federal governments play important roles in administering the 18 hydro electric generation facilities along the waterway. Each has different priorities, legislative instruments, and policies. A similar situation exists when considering new power developments. In overall water management, the Province regulates and monitors water use and quality however Parks Canada governs how much surface water moves through the two largest watersheds in central Ontario – with minimal communication and coordination between the two governments.

The Official Plans of municipalities along the waterway regulate waterfront development. Development work below the high water mark is regulated by the Historic Canals Regulations and Parks Canada policies. Informal bilateral relationships provide the main mechanism for advocating the integration of broad waterway goals and policies into Official Plans.

Commercial operations that occupy water lots on the waterway are also subject to different regulatory regimes and occupancy requirements depending on location. Some are administered by the province and some by the federal government.

## **Initiatives Toward Improved Coordination and Communication**

In 1967, Canada and Ontario recognized that in North America, the Rideau Canal and Trent-Severn Waterway corridor(s) were unique in terms of human and natural history, historic sites, and proximity to major population centres. The canals were recognized as important recreational corridors threatened by development and pollution. A detailed plan, “The Rideau Trent-Severn: Yesterday, Today and Tomorrow”, was completed in 1972 as the first major product of the CORTS programme. CORTS recognized that common goals and strategies were needed to assure the future of the waterway and of its values.

Ontario and Canada signed a cooperation agreement in 1975 establishing broad goals and a coordinating mechanism for these two waterways. The Provincial Secretary for Resources Development, observed at the time that “the need for intergovernmental cooperation is most important in managing the future development of one of North America’s most beautiful and popular recreation areas.” A further agreement in 1982 delineated areas of responsibility for implementing actions to ensure waterway health. Existing government departments were to implement the responsibilities through existing

budgets. For a variety of reasons, little was achieved following the signing of this agreement.

Collaboration (in an informal sense) was an important theme of Parks Canada's 2000 Management Plan for the waterway. The plan identified a range of issues requiring collaborative and cooperative action. However the recommended strategies relied heavily on a large number of informal and bilateral relationships. Establishing and maintaining these informal relationships has been difficult given the range of issues, the number of jurisdictions and interests, and agency resource limitations. A more formalized framework would likely offer better opportunities for success.

Recent corridor workshops have discussed water management, species at risk, and tourism. Participants in these workshops representing government and citizens' organizations have agreed that improved coordination would facilitate information sharing, the development of common goals and strategies, the elimination of duplication and overall management of these important activities.

Despite good intentions, relevant agencies have not been able to identify and commit to common goals and strategies to manage the waterway. Since the end of the CORTS era, there has been little in the way of fully collaborative planning and management. This is particularly true in development planning and control, water management, natural resource management, and economic planning. As a result, risks and impacts are not always identified and opportunities for positive change are not always recognized and capitalized upon.

### **Ideas For Collaborative Governance<sup>2</sup>**

**Governance involves the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens and other stakeholders have their say.**

Plumptre and Graham

The following ideas cover a range of governance models that have been either suggested or are in practice along other waterways or elsewhere in North America. They are presented in order of increasing cooperation, coordination, collaboration, and comprehensiveness.<sup>3</sup>

#### Multiple Agencies with separate responsibilities

This model reflects the current governance approach wherein responsibilities stem primarily from assumed jurisdiction arising from unique agency legislation and mandates. In the case of the waterway, Parks Canada administers a large portion of the waterbed, as well as lands it owns (lock stations, canal cuts, and other lands). Cooperation, coordination and collaboration, either within the federal government, or

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<sup>2</sup> Tim Plumptre and John Graham, *Governance and Good Governance: International and Aboriginal Perspectives*, p. 3.

<sup>3</sup> Cooperation: agencies maintain separate mandates but informally discuss and exchange information on areas of mutual interest, acting where opportunities exist to the benefit of each other.  
Coordination: agencies maintain separate mandates but establish formal mechanisms to coordinate their individual programmes, responsibility for which remains with the original administering agency.  
Collaboration: agencies establish formal partnerships and work jointly, sharing resources, to achieve a common end.

between the federal government, the province, conservation authorities, and municipalities is limited and informal.

This model permits agencies to focus on achieving their specific mandates, however, it is limited by a number of factors. Parks Canada's historic resources mandate incompletely covers the range of overall public benefit provided by the waterway. Other waterway values may rest or be shared with agencies with other mandates. Some waterway values can only be peripherally addressed by existing agencies. In other cases, no agency, legislation, or "champion", is in place to address them.

### Voluntary Coordinating Bodies

This model has become increasingly popular in dealing in areas of complex webs of multiple jurisdictions, particularly in the United States. The intent of this model is to engage disparate communities and agencies to devise and coordinate the implementation of a shared vision for a large geographic area with common characteristics. Two examples serve to illustrate.

The **John M. Chafee Blackstone River Valley National Heritage Corridor**<sup>4</sup> is a 75 kilometre, 162,000 hectare corridor with 24 cities, towns and villages and more than one million residents between Worcester, Massachusetts and Providence, Rhode Island. It was established by an Act of Congress to protect natural and cultural resources and provide recreational opportunities. Promoting sustainable and appropriate community economies and public education are also important goals.

*Unlike a more traditional National Park, the Heritage Corridor does not own or manage any of the land within its boundaries. Instead, the Heritage Corridor Commission works in partnership with a variety of Federal, State and local agencies, along with many non-profit and private organizations to protect not only the sites and resources of the Blackstone Valley, but to maintain the spirit of innovation and ingenuity that makes this a special place.*<sup>5</sup>

The Commission has 25 members from state and federal governments, communities, and organizations. It estimates that it has generated more the \$500 million in partnership projects over its history.

The **Hudson River Greenway** in New York was created "to facilitate the development of a voluntary regional strategy for preserving scenic, natural, historic, cultural and recreational resources while encouraging compatible economic development and maintaining the tradition of home rule for land use decision-making."<sup>6</sup>

Established by state legislation, the Greenway provides a framework for voluntary cooperation among 242 communities engaging citizens in what they describe as a "participatory planning approach." The Greenway is also involved in regional planning, public access, and heritage and environmental education.

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<sup>4</sup> See Jessica Brown, Nora Mitchell and Jacquelyn Tuxill, "Partnerships and lived-in landscapes: an evolving US system of parks and protected areas". *Parks*. Vol. 13. No. 2. 2003.

<sup>5</sup> <http://www.nps.gov/blac/parkmgmt/whats-a-corridor.htm>.

<sup>6</sup> <http://www.hudsongreenway.state.ny.us/overview.htm>.

The Greenway Communities Council has 27 members appointed by the State and municipalities who guide overall direction. A variety of funding and technical programs support the work of the Council.

These and other similar organizations are created through special purpose legislation; typically have a broad mandate but are small in size and budget; are coordinating, technical and advisory organizations with no land ownership or regulatory responsibilities; and rely on common goals, partnerships, and leveraged funding via existing organisations to advance their work.

### Formal Coordination Mechanisms

The three examples below illustrate types of formal agreements in which organisations share or transfer responsibility for administering legislation or regulations. This can involve existing or the creation of new organisations, but no additional regulatory tools.

#### *Single Service Centre Approach*

Service Canada offices provide a “one-stop shopping” approach where citizens can obtain information and service related to many pieces of federal and provincial legislation. While there is no transfer of responsibility, service to the public is simplified and more effective. More streamlined application of regulations typically occurs.

#### *Inter-Agency Regulatory Protocols*

Where two or more different jurisdictions have regulatory regimes with similar processes and goals, precedent exists which permits by agreement the application of one process to satisfy all requirements. This has occasionally occurred in the application of environmental assessment processes where there is both a federal and a provincial or territorial requirement. The governments involved simply agree on which agency will take the lead and which process will be applied.

#### *Single Agency Administration of Multiple Jurisdiction Legislation*

It is common for one agency to administer and enforce the legislation of another agency. Parks Canada enforcement officials, for example, are able to apply a broad suite of federal and provincial statutes. By agreement or “contract”, several federal agencies can act on behalf of Fisheries and Oceans to administer aspects of the Fisheries Act.

### Special-Purpose Agencies – With Oversight Mandates

A more comprehensive, integrated form of administration involves special-purpose bodies with formal regulatory powers. They may work in collaboration with existing agencies, or consolidate responsibilities formerly held by other agencies. Typically, they possess an overarching, wide-ranging legislated mandate and supporting regulations covering public and private lands and/or waters; have an appointed board with public meetings; but do not own or manage land.

#### *CORTS – National Waterways Board*

In 1971, Professor George Rich of the University of Waterloo looked at the jurisdiction and administration of the Rideau Canal and Trent-Severn Waterway. Professor Rich defined a waterway as a “corridor” including water and adjoining lands. He spoke of a “national waterway” with great recreational, historical, and conservation value to the nation, the province, and particularly to communities along its length.

Rich found that 21 different agencies were administering 37 pieces of federal legislation and 32 pieces of provincial legislation. A number of “sub-provincial” agencies such as municipalities and special purpose agencies were also identified as having an administrative interest. He concluded that responsibility for waterway administration rested with both the federal and provincial governments and observed that similar situations were normally covered by some form of formal coordinating framework.

Professor Rich recommended a National Waterways Board with federal, provincial, and citizen representation whose primary function was to serve as “an agent of intergovernmental integration”.<sup>7</sup> It would coordinate the engagement of a wide array of government and citizen interests and determine policy direction. Individual agencies would maintain responsibility for managing and funding their own related programs.

Although the board would primarily be a coordinating body, Rich also suggested that a land use policy statement limited to matters of waterway concern would take precedence over local official plans. In practical terms Rich felt this power would more often complement – and not override – local planning direction. The Board would also have the ability to acquire land.

#### *Niagara Escarpment Commission*

The NEC was created in 1973 as an agency of the Ontario government. It administers what has been described as “Canada’s first large-scale environmental plan”<sup>8</sup> covering the “Escarpment Planning Area”, which includes both the escarpment and adjacent lands. Apart from all lands falling under provincial jurisdiction, this approach is somewhat analogous to the waterway and adjacent lands. Municipal plans must conform to the NEC plan (the latest version of which the province approved in 2005). The NEC also issues development permits.

The Commission is made up of 17 provincially-appointed members. Nine, including the Chairman, are members “at-large” while the remaining eight members represent various local areas. The Commission meets once a month.

#### *Adirondack State Park Agency*

This agency was created in 1971 by New York State to develop and administer land use plans for Adirondack State Park. The Park boundary encircles six million acres, 48 percent of which is state-owned, and 52 percent privately-owned. The agency does not own land. One set of shoreline regulations applies on most water bodies within the park, regardless of the municipality in which they are located.

An 11-member Board directs the agency. Eight members are appointed by the state Governor; the other three members are the political heads of various state departments.

#### *California Coastal Commission*

The California Coastal Commission is a state agency established in 1976 to administer 1,100 miles of Pacific coastline. Its mandate is to “Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally

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<sup>7</sup> Rich, George S. 1971. *National Waterways*, p. 44.

<sup>8</sup> [http://www.escarpment.org/pdfandword\\_files/nec\\_permitbooklet.pdf](http://www.escarpment.org/pdfandword_files/nec_permitbooklet.pdf).

protected rights of private property owners.”<sup>9</sup> It plans and regulates development and natural resource use in partnership with local governments.

Three features stand out. Firstly, the Commission and local governments jointly develop coastal plans. Development permitting authority is transferred to the local level once the Commission approves the plan; public access to the coast is a condition of most permits. Secondly, the “Coastal Zone” over which the Commission has jurisdiction includes 1.5 million acres of land and extends three miles into the Pacific Ocean. Finally, because the Commission meets the provisions of the federal Coastal Zone Management Act, it has authority over federal activities that affect the Coastal Zone.<sup>10</sup>

The Commission works in partnership with the California Coastal Conservancy, another state agency. The Conservancy funds, acquires, develops, and manages access in line with the Commission’s planning and regulatory regime.

The Commission has 12 voting members and four non-voting members. Six voting members are “public members,” and six are local elected officials from coastal districts. All voting members are appointed either by the Governor or state political bodies.

#### Special-Purpose Agencies – With Oversight Mandates and Ownership

The most comprehensive administration involves special-purpose bodies that also own lands and assets to help them implement their mandates.

##### *Niagara Parks Commission*

The NPC owns and operates a series of linked parks and attractions on more than 1,720 hectares of land extending 56 kilometres between lakes Ontario and Erie along the Niagara River. It is an agency of the Ontario government, but is entirely self-funded. Its parks, open spaces, parkways, and trails are free, but it derives revenue from gift shops, golf courses, restaurants, attractions, and parking, and from water-taking permits and land leases related to hydro generation along the Niagara River.

The NPC operates its own police force and conducts all land management services such as road maintenance and waste collection. The NPC may borrow money and purchase land, and has expropriation powers. The province may also “vest in the Commission any portion of the foreshore or bed of the Niagara River or land covered with water” already owned by Ontario.<sup>11</sup> The NPC can enact regulations governing uses, activities, and fees, and has approval authority for signs within 400 metres of its property.

The province appoints a 10- to 12-member board. Each of the four municipalities along the Niagara River is represented by a single member of its elected council.

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<sup>9</sup> <http://www.coastal.ca.gov/access/accndx.html>.

<sup>10</sup> [http://www.coastal.ca.gov/publiced/Comm\\_Brochure.pdf](http://www.coastal.ca.gov/publiced/Comm_Brochure.pdf); [http://www.cr.nps.gov/local-law/FHPL\\_CstlZoneMngmt.pdf](http://www.cr.nps.gov/local-law/FHPL_CstlZoneMngmt.pdf).

<sup>11</sup> [http://www.niagaraparks.com/files/Niagara\\_Parks\\_Act.pdf](http://www.niagaraparks.com/files/Niagara_Parks_Act.pdf).

### *National Capital Commission*<sup>12</sup>

The NCC owns 100,000 hectares within Canada's Capital Region in and around the cities of Ottawa and Gatineau in Ontario and Quebec. Land holdings include a 33,000-hectare nature park, three-quarters of a federally-owned 20,000 hectare Greenbelt, and many urban parks, parkways, open space corridors, and heritage buildings. Most land is available for public use, but lands are also leased for farming, commercial use, and recreation. Regulations govern activities on its lands.

The NCC holds broad land use policy coordination responsibilities for its own and other federal lands in the Capital Region. The National Capital Act gives the NCC the authority to approve the sale of land and development/construction on all other federal lands in the National Capital Region. The federal government appoints its board of directors, with representation from across Canada as well as the cities of Ottawa and Gatineau. Recently-proposed reforms, if implemented, will enhance the transparency of its decision-making.

### **Summary**

This paper deals with several key aspects of governance relating to the Trent-Severn Waterway. At a fundamental level, it assumes the distinct and varied cultural and natural characteristics of the waterway will continue to merit special governmental attention. The paper describes various governance models that have been adopted elsewhere to achieve public policy goals for other unique regional-scale landscapes. This discussion raises some key questions:

- Are the public policy goals for – and geographic definition of – the waterway clearly articulated, and do they encompass its full potential? If not, is a renewed vision called for?
- Can the current governance structure effectively respond to a broad range of potentially desirable public policy goals associated with a sustainable future for the waterway? Does this governance structure serve citizens effectively and efficiently?
- If not, what might an appropriate governance model look like? What aspects of one or more of the models presented in this paper would it feature?
- What powers and processes – including citizen involvement – would most effectively build and maintain broad, inclusive support for a sustainable waterway future, in terms of a common understanding of its purpose, a vision, and the governance structures and tools required to achieve the vision?

A list of the beneficial characteristics within the governance models described in this paper includes:

- Public visibility and accessibility, and a focus on the customer/user of its services
- Decision-making that is democratic, consistent, transparent, and accountable
- Operations that are efficient, results-oriented, and involve measurable goals

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<sup>12</sup> Panel on the NCC Mandate Review, *The National Capital Commission: Charting a New Course*, December 2006, available at: [http://www.mandatccn.ca/en/CCN\\_report\\_e.pdf](http://www.mandatccn.ca/en/CCN_report_e.pdf).

- Visibility and communications with the outside world
- Arms-length authority and strong leadership but coordination with others
- The ability to plan for the future
- Continuity of historical relevance and the application of sustainable principles and resource protection as pillars in the management of the public trust

In order to maximize the public value of the waterway, its management could involve the following activities:

- Planning (visionary, capital, and land use)
- Operations (water & lock management)
- Preservation
- Protection
- Promotion
- Programs
- Education
- Communication
- Enforcement
- Conflict resolution

The panel's exploration of the need for, and the potential nature of, improvements in the governance of the waterway touches upon topics that affect most everyone that interacts with the waterway. What do you think?