
Addressing Transboundary Issues at Parks Canada

Matt G. Scoular¹ and Tomasz L. Wlodarczyk²

¹Master's of Environmental Studies candidate, University of Waterloo,
Faculty of Environmental Studies, School of Planning
mscoular@fes.uwaterloo.ca (formerly with Gartner Lee Limited)

²Principal, Gartner Lee Limited, 300 Town Centre Blvd., Suite 300,
Markham, Ontario L3R 5Z6 Email: twlodarczyk@gartnerlee.com

Abstract

The Panel on Ecological Integrity of Canada's National Parks revealed that national parks are suffering from stresses internal and external to their boundaries. When a project or other activity occurs outside of the park boundary it may threaten the ecological integrity of the park, or at a minimum, be an additional stressor on the park's ecosystem. In such cases, Parks Canada is faced with a 'transboundary' issue that typically requires attention. In some instances, the transboundary issue may be of such significance that an environmental assessment in accordance with the Canadian Environmental Assessment Act is warranted. Parks Canada has determined that the development of a consistent approach to evaluating and managing potential transboundary issues affecting national parks is important to ensure that Parks Canada is effectively applying its available resources, particularly when the issue may warrant the application of the Canadian Environmental Assessment Act. To this end, Gartner Lee Limited was retained by Parks Canada to review the circumstances in which potential transboundary issues have been identified and addressed by Parks Canada. The review of this experience informed the development of a consistent approach to the identification, evaluation and management of potential transboundary issues affecting national parks. This review also documented lessons learned, including what has worked well and what hasn't worked for Parks Canada.

Background

While the *Canada National Parks Act* mandates that ecological integrity (EI) is to be given the highest priority in park management decisions, the federal government generally does not have jurisdiction over activities outside of park boundaries. When a project or other activity occurs outside of the park boundary it may threaten the EI of the park, or at a minimum, be an additional stressor on the park's ecosystem. In such cases, Parks Canada is faced with a 'transboundary' issue that may require attention.

Sections 46 to 53 of the renewed *Canadian Environmental Assessment Act* (CEAA) provide for the assessment of “transboundary and related environmental effects”, by panel review or mediation, when there is a project that may cause significant adverse environmental effects that will cross an international, inter-provincial or federal-provincial boundary. Of particular interest to Parks Canada is the opportunity for the Minister of the Environment to use section 48(1) of CEAA to establish a panel review or mediation process for a project which may cause significant adverse environmental effects on a) the EI of a gazetted national park or park reserve, or b) federal land (i.e., a non-gazetted park or national historic site).

The Canadian Environmental Assessment Agency (CEA Agency) investigates and provides advice to the Minister of the Environment with respect to petitions or requests asking that projects be referred to a review panel or mediator under the provision of CEAA. Recent amendments to CEAA have removed a legal impediment to the use of the provisions and the expectation has been created that requests to use the provisions will increase significantly. The Agency has developed a set of internal procedures to help it manage the investigation process in a consistent and timely manner.

Parks Canada has been involved in the investigation and review of a number of transboundary issues involving such projects as new logging plans and roads, new residential and commercial developments, mines, waste facilities, and others. These projects and their associated transboundary issues have affected numerous National Parks and commemorative sites across Canada. While none of the transboundary issues that have emerged over the years have resulted in the establishment of a review panel or mediation in accordance with the requirements of CEAA, all have involved the expenditure of considerable effort and resources. The development of a consistent approach to evaluating and managing potential transboundary issues affecting national parks will be important to ensure that Parks Canada is effectively applying its available resources and that it is responding in a manner consistent with its mandate.

Key Characteristics of Transboundary Issues

No two transboundary issues are alike. Nevertheless, it is important to understand their key characteristics and how they emerge and are identified in order to best develop ways they could be investigated, analyzed, managed and resolved.

Transboundary issues, by definition, are inter-jurisdictional conflicts that can involve Provincial, Territorial, municipal or First Nation planning and decision-making processes. Often the federal government does not have any decision-making authority over a specific project proposal.

- Transboundary issues are not necessarily only of interest to Parks Canada.

- Transboundary issues are essentially land use conflicts (e.g. “conservation” vs. “development”)
- While Parks Canada’s mandate is centred upon the concepts of EI and Sustainability, the mandates of external stakeholders (e.g., Provincial authorities) are often more focused on regulatory approvals and enforcement issues, than planning, conservation or stewardship.
- Transboundary issues are most often associated with a specific project that is proposed adjacent to or nearby a national park.
- Transboundary issues can also be associated with a policy, plan or program of another jurisdiction (e.g., provincial or territorial government, municipal government or First Nation).
- Private sector projects that have potential to generate a transboundary issue are difficult to anticipate or identify early in their planning phase.
- Transboundary issues typically involve a wide range of stakeholders that have an interest in the land, as owners, managers, regulators, stewards or users.
- Transboundary issues are often controversial, generating a high public profile with substantial media attention.

Not all transboundary issues result in a petition for the application of the *Canadian Environmental Assessment Act*. However those that do, become very politically sensitive within the federal government, as they involve issues of jurisdiction.

Lessons Learned

Through a number of interviews with Parks Canada staff and other stakeholders involved in nine transboundary issues across Canada, Gartner Lee reviewed and documented the experience to date in dealing with transboundary issues and identified approaches and actions that would enable an effective and consistent approach for the future evaluation and management of potential transboundary environmental effects affecting national parks (Gartner Lee 2005). Based on these interviews several key lessons learned were identified:

- The time to identify potential transboundary issues and develop management responses is before a specific project is proposed, approved or constructed.
- Identify and take advantage of all opportunities to participate within external review and approval processes.
- A champion with authority and credibility is critical to the success of any effort to resolve transboundary issues.
- The potential for the use of a third party (e.g., mediation expert, the CEA Agency) to convene and co-ordinate a conflict resolution process should be considered as part of a strategic plan for issue management/resolution.
- Parks Canada’s activities to resolve an issue are likely to be ineffective without active and timely support from senior management.

- Any formal request by Parks Canada to invoke Section 48 provisions of the CEAA and any successful issue-management effort must have credible sources of information, credible analysis and definitive conclusions regarding the effects on EI.
- Attention needs to be given to communications and collaboration with the broader community on specific transboundary issues.
- Attention needs to be given to the media.
- Attention needs to be given to ongoing public education, not only regarding the larger value of parks in the ecosystem, but also their economic and social value to local communities.
- Creation and/or participation in formal, collaborative planning and decision-making processes are the best mechanism to keep informed about regional issues of concern, avoid projects with transboundary implications, identify new projects and subsequently manage issues that arise.
- Issues are resolved more easily when there is trust and open and honest communications. Trust among stakeholders does not need to exist for a successful collaborative process to be initiated.

Towards a More Structured Approach to Transboundary Issue Management

Based on the lessons learned from previous cases, it became clear that Parks Canada could benefit from a more formalized and restructured process to the management of transboundary issues. Gartner Lee's research and experience suggested that Parks Canada move toward a more formalized and strategic approach to transboundary issue management. A restructured approach to transboundary issue management would involve:

- strategic planning to guide external stakeholder liaison, operational monitoring, research and data management activities at individual parks to support transboundary issue management;
- ongoing issue scanning to assist in issue identification;
- creating an explicit decision-making step early in the process to determine whether or not an issue warrants Parks Canada's action or response;
- a more formal, team approach to issue investigation/analysis;
- creating an explicit decision-making step early in the process to determine the merits of a petition and/or a Section 48 recommendation to the Minister of Environment;
- integrating a requirement for the development and approval of a "strategic plan" for implementing issue management/resolution activities on a case by case basis;
- conducting an internal evaluation of each transboundary issue following its resolution, whether the issue was successfully resolved or not;
- applying a set of tools to assist in the issue investigation/analysis and issue management/resolution steps in the process; and
- providing staff with training and guidance regarding issue management

tools and approaches and to enhance skills in the areas of alternative dispute resolution and media relations.

Figure 1 illustrates a restructured approach to transboundary issue management. The following sections describe the key elements of this restructured approach.

Strategic Planning

Some form of strategic planning is required at each park that would include a review of the various operational activities undertaken by Parks Canada that could provide useful data/information to determine whether or not a transboundary issue is likely to have a significant adverse effect on the park's EI. The goal of this review would be to identify gaps in scientific knowledge and ways in which operational activities could be undertaken to ensure that data/information is available to support decision-making concerning EI, if and when a transboundary issue arises.

Issue Scanning

Issue scanning is an anticipatory or foresight activity. Issue scanning would involve periodic and systematic identification and assessment of the environmental, social, political/regulatory, technological and economic issues, trends and activities that have the potential to affect a park's EI. The results of the issue scanning process could be formally documented either through a regular "watching brief" or a specific issue review/briefing note that would be provided to the park's Superintendent and other senior management. Within the context of a watching brief, issues would be analyzed, classified, prioritized for management review and action.

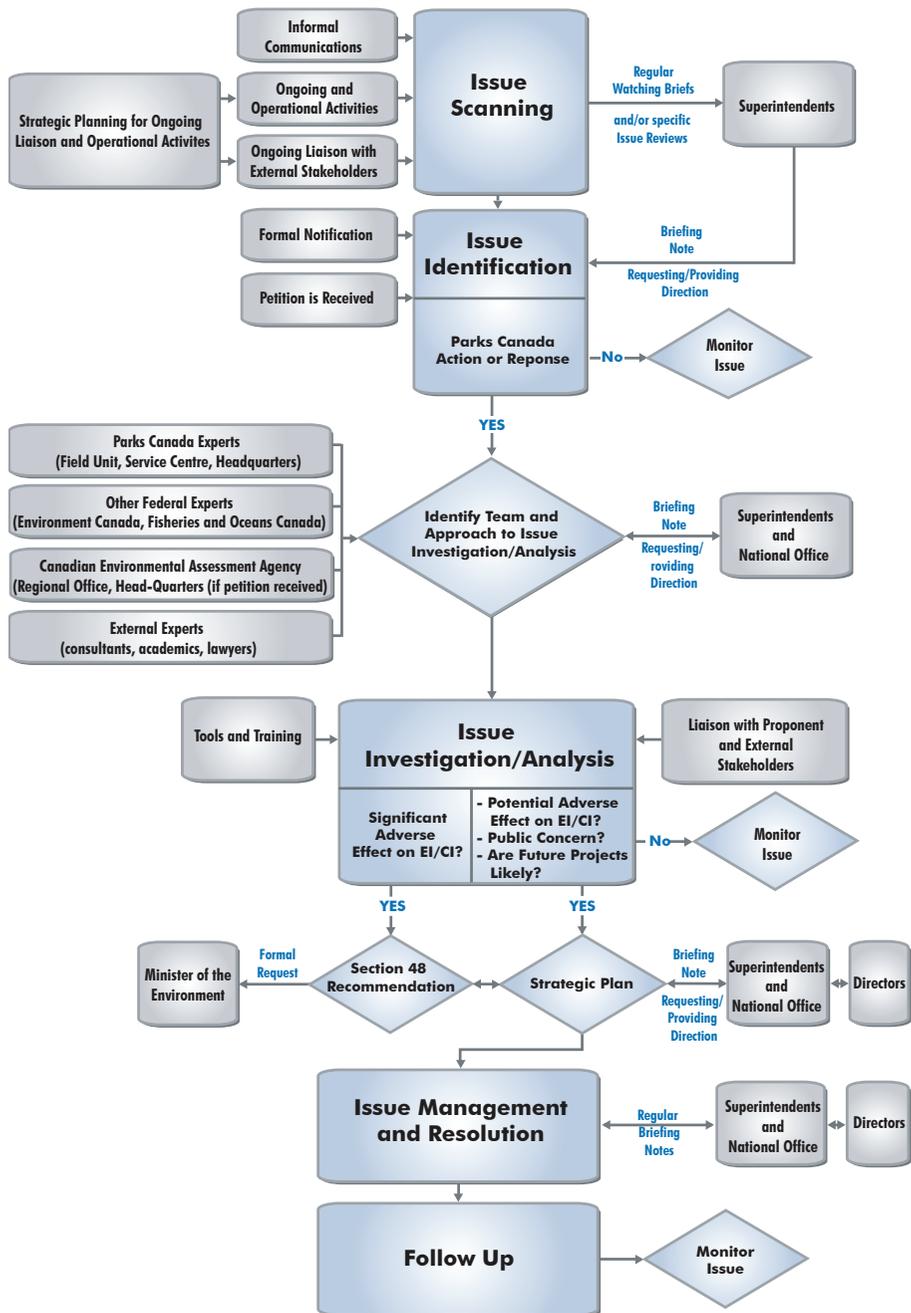
Issue Identification

Issue identification is the stage in the overall issue management process when a Park Superintendent or other senior management official decides that some sort of action or response from Parks Canada is required. Issues for which a Parks Canada action or response is desirable could be identified from the "watching brief" or briefing notes prepared by staff on a regular basis. Receipt of a formal notification or petition would automatically trigger action by Parks Canada. In both cases, formal documentation of the issues that require action is desirable.

Issue Investigation/Analysis

Once a transboundary issue has been identified for which some sort of action or response is desired, Parks Canada would initiate the issue investigation/analysis step. A team comprised of Parks Canada experts (i.e., Field Units, Service Centres and National Office staff) and other federal government experts (other federal authorities and the CEA Agency as required) would be assigned the responsibility to investigate and analyze the issue in detail. Decisions regarding

Figure 1. Restructured Approach to Transboundary Issue Management Process



the need for external expertise (e.g., consultants, academics and/or lawyers) would be made at this time. The issue investigation/analysis step should be guided by a formal work plan to ensure that the most relevant and up to date information regarding the issue is obtained in a timely manner. Ultimately, the result of the issue investigation/analysis step would be an answer to the question of whether or not the transboundary issue (i.e., a project, plan, program or policy) is likely to cause a significant adverse effect on the park's EI or commemorative integrity (CI). Consideration would also be given to whether there is significant public concern regarding the transboundary issue and whether there is potential for adverse cumulative effects from future projects.

Section 48 Decision-making

If the issue investigation/analysis step determines that there may be a significant adverse effect on the park's EI, this should be documented in a briefing note with a clear recommendation regarding the need to invoke Section 48 of the CEEA. In making a Section 48 decision, consideration would need to be given to the likelihood that a panel or mediator would be able to complete its work and contribute to resolving the transboundary issue (e.g., are people willing to participate, is negotiation a possibility, are there enough time and resources for such a process?).

Strategic Planning for Issue Management/Resolution

If the issue investigation/analysis step determines that a significant adverse effect on the park's EI or CI is not likely, a strategic plan would nevertheless be developed to either collect more information to make a firm determination of effect, and/or to determine the course of action that should be taken by Parks Canada and others to manage and/or resolve the issue.

Issue Management/Resolution

Issue management/resolution involves putting into action the strategic plan and applying to the extent possible the various approaches available to resolve the transboundary issue in the short term or otherwise manage the issue over the longer term. Some of the approaches that are available to Parks Canada staff include:

- participation in consultation processes (e.g. liaison committees and working groups, public/town hall meetings etc.);
- joint planning agreements;
- mediated solutions using negotiations;
- regulatory negotiations;
- policy dialogues;
- regional studies and cumulative effects assessments;
- proactive coalition building;
- speaking engagements and park tours; and
- proactive communications/media programs.

Evaluation and Follow-up

Parks Canada's success in managing a transboundary issue needs to be evaluated. Measures of success will vary depending upon the purpose and objectives of Parks Canada, however some of the measures of success offered by those interviewed included:

- degree to which the Parks Canada's objectives were achieved;
- degree to which the objectives of other parties involved in the issue were achieved;
- degree of broader community support/buy-in to Parks Canada's position;
- degree of collaboration among stakeholders that was achieved;
- number or degree to which specific commitments by stakeholders were obtained;
- number of 'agreements' achieved or issues 'resolved' within the framework of the agreement;
- number of issues requiring the application of formal conflict resolution procedures; and
- number of, or willingness to consider extensions or supplementary agreements.

Acknowledgement

The authors wish to acknowledge the contribution of Parks Canada staff at the National Office in Ottawa, the various park's Superintendents, staff at Parks Canada's Service Centres and the CEA Agency for their insight and assistance to Gartner Lee in completing this project.

References

- Government of Canada. 2000. Canada National Parks Act. In *Consolidated Statutes and Regulations of Canada*, c.32. Ottawa: Department of Justice Canada. <http://laws.justice.gc.ca/en/N-14.01/index.html>
- Government of Canada. 1992. Canadian Environmental Assessment Act. In *Consolidated Statutes and Regulations of Canada*, c.37. Ottawa: Department of Justice Canada, 1992. <http://laws.justice.gc.ca/en/C-15.2/index.html>
- Gartner Lee Limited, 2005. Addressing Transboundary Issues at Parks Canada. A report prepared for Parks Canada, June 2005.