
It's in Our Nature – An Introduction to the Provincial Parks and Conservation Reserves Act*

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Abstract

The Provincial Parks and Conservation Reserves Act was passed by Ontario's Legislative Assembly on June 19, 2006. The new act provides a legislative framework for provincial parks and conservation reserves managed under the 1954 Provincial Parks Act and the Public Lands Act. Highlights of the new act include:

- *Inclusion of high level policy direction in legislation;*
- *Aboriginal and treaty rights are recognized;*
- *Protected areas planning with consultation, and state of protected areas reporting, are mandatory;*
- *Industrial uses are prohibited with limited exceptions;*
- *Any significant reduction in the size of a protected area must be endorsed by the Legislative Assembly;*
- *Administrative and enforcement authorities are updated.*

The Provincial Parks and Conservation Reserves Act will provide a firm foundation for managing the Ontario protected area system consisting of more than 600 areas with almost 9.4 million hectares.

Background

Ontario's system of protected areas includes 329 provincial parks, 292 conservation reserves and 10 wilderness areas with a combined area of almost 9.4 million hectares. These areas are currently managed under three separate pieces of legislation.

The current Provincial Parks Act was passed in 1954 when there were only 8 provincial parks. Since that time much has changed. The number of provincial parks has grown tremendously. Equally important, there is better understanding of the importance of protection, conservation science, and the broader social benefits provided by protected areas. To address concerns associated with the growing park system, and the increasing complexity of park

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planning and management, Ontario was a leader in developing comprehensive system planning and management policies. Yet, while the 1954 act was amended from time to time, it was not subjected to a full review.

The Wilderness Areas Act was passed by Ontario's legislature in 1959. A total of 33 areas were regulated under this Act, but 23 of them were subsequently included within provincial parks. The Wilderness Areas Act allows resource extraction in any area that exceeds 270 hectares and provides limited protection, because no supporting regulations or policies are in place.

The first conservation reserves were regulated in 1994 when an enabling regulation (Regulation 805/94) was approved under the Public Lands Act. This regulation provides that mining, logging and aggregate and peat extraction are not permitted in conservation reserves, but otherwise the legislative and regulatory framework for their management is the same as for other Crown lands. The Ontario Living Legacy Land Use Strategy, approved in 1999, led to the regulation of 352 new protected areas including 259 new conservation reserves. Consequently, conservation reserves have become a much more important component of the protected areas network.

Given the expansion of the protected areas network, and the shift in public expectations about how protected areas should be managed, pressure began building for a review of the Provincial Parks Act. In April 2003 Dalton McGuinty, as leader of Ontario's Liberal Party, made a commitment to review Ontario's legislation for provincial parks, with the intention of enhancing protection of natural heritage. In October 2003 Mr. McGuinty became Premier when the Liberal Party won the majority of seats in the provincial election and formed Ontario's government. Consequently, in September 2004 the Ministry of Natural Resources launched a review of the legislative framework for provincial parks, conservation reserves and wilderness areas.

This review began in September 2004 with consultation about eight legislative proposals. The review included legislation for provincial parks, conservation reserves and wilderness areas. Input was gathered via an Internet-based consultation tool and by more conventional means. Meetings were held with stakeholders, First Nations, and Ministry of Natural Resources employees. The Ontario Parks Board of Directors, a public advisory committee, made recommendations for new legislation after meeting with key stakeholders.

Based on the eight legislative proposals, a review of external and internal input, and consideration of the advisory committee's recommendations, the Ministry of Natural Resources drafted proposed legislation. Bill 11: An Act to Enact the Provincial Parks and Conservation Reserves Act was introduced in Ontario's Legislative Assembly for First Reading on October 25, 2005. After Second Reading the bill was referred to the Standing Committee of the Legislative Assembly, which held a day-long hearing, undertook clause by

clause review and considered amendments. Bill 11, as amended, received Third Reading on June 19, 2005 and received Royal Assent the next day.

As of January 30, 2007 the Ministry of Natural Resources is preparing a set of regulations under the Provincial Parks and Conservation Reserves Act. Once the regulations are approved the new act will come into effect.

Highlights of the Provincial Parks and Conservation Reserves Act

A comparison of the new Provincial Parks and Conservation Reserves Act with the 1954 Provincial Parks Act shows many differences. The overall flavour of the changes can be found in the dedication statement of each act. The 1954 Provincial Parks Act dedication states:

All provincial parks are dedicated to the people of the Province of Ontario and others who may use them for their healthful enjoyment and education, and the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations.

The concept of natural heritage protection is not recognized in any way. The Provincial Parks and Conservation Reserves Act includes a dedication that is more explicit:

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.

The Section 1 purpose statement of the new act reads:

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

The purpose and dedication make explicit the Legislative Assembly's intentions in passing the new act and will guide interpretation of the act by the courts, in the event of litigation.

The Provincial Parks and Conservation Reserves Act applies to both provincial parks and conservation reserves. No longer will conservation reserves be managed under the Public Lands Act. Rather, under the new act these two types of protected areas are to be equal partners in a protected areas system. While it is not addressed in the act itself, the government has stated

its intentions to consider the 10 remaining wilderness areas through a public planning process, and make decisions to regulate them under the new act, where warranted, or let them revert to general use Crown land. Once this process is completed the Wilderness Areas Act could be rescinded. At that point there would be one legislative framework for Ontario's protected areas, rather than three, as is now the case.

Ontario's legislation now includes objectives for establishing and managing protected areas. For provincial parks these are:

- 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.
- To provide opportunities for ecologically sustainable outdoor recreation opportunities and encourage associated economic benefits.
- To provide opportunities for residents of Ontario and visitors to increase their knowledge and appreciation of Ontario's natural and cultural heritage.
- To facilitate scientific research and to provide points of reference to support monitoring of ecological change on the broader landscape.

For conservation reserves the objectives are:

- 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.
- To provide opportunities for ecologically sustainable land uses, including traditional outdoor heritage activities and associated economic benefits.
- To facilitate scientific research and to provide points of reference to support monitoring of ecological change on the broader landscape.

These objectives recognize that a wider range of ecologically sustainable land uses typically occur in conservation reserves, consistent with policies developed since the first conservation reserves were regulated in 1994. As well, there is explicit recognition that parks play an active role in natural heritage education, with many parks providing education programs. Both sets of objectives recognize for the first time the important role protected areas play in supporting scientific research.

Section 3 of the new act states that:

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

- *Maintenance of ecological integrity shall be the first priority and the restoration of ecological integrity shall be considered.*

- *Opportunities for consultation shall be provided.*

The act goes on to define ecological integrity. Section 3 makes it clear that maintenance of ecological integrity (EI) must be embedded in planning and management policies and practices. As well, the need to undertake appropriate consultation – hitherto a requirement of other legislation and protected areas policy but not the Provincial Parks Act itself – is now embedded in the act.

During consultation First Nations and some other stakeholders asserted strongly that aboriginal and treaty rights should be explicitly recognized in the new act. While the bill tabled for First Reading did not include such a provision, an amendment approved at third reading provides explicit recognition. Section 4 states that:

Nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.

Since 1978 Ontario has had a policy framework for provincial parks that recognizes six park classes: wilderness, natural environment, nature reserve, historical, waterway and recreation. The Provincial Parks Act allowed parks to be designated to classes, but did not specify the classes or state objectives for each. The new act does both. Now that objectives for the six classes are established in legislation there is general guidance for development of lower level policies associated with each park class. The act also would allow the government to establish a new aquatic class park in the future. This would be done only after consultation about a science and policy framework for the new class.

Under previous legislation protected area boundaries were established by Cabinet by regulation. Cabinet *also* had unlimited authority to deregulate protected areas and could approve the elimination (deregulation) of a protected area. The new act allows Cabinet to continue to regulate protected areas and make small deletions, sometimes described as housekeeping boundary amendments. However, any deletion from a protected area of more than 1% of its area, or 50 hectares, whichever is less, would have to be endorsed by the Legislative Assembly. This ensures that any major deletion from a protected area will be subject to public scrutiny and debate.

In the first half of the 20th century land in some provincial parks was made available for private use. This practice was so extensive in Long Point and Presqu'île provincial parks that eventually some lands were removed from the parks. To ensure that land in protected areas remains a public trust, the new act does not allow creation of new leases, land use permits or licences of occupation for private use. In fairness to those who now have leases, licences of occupation or land use permits in protected areas, the act allows existing tenure to be extended, subject to the act and regulations. New commercial tenure can be permitted. The rationale for this is that in some cases commercial tourism facilities can

support outdoor recreation and associated economic benefits. Any decisions to allow commercial tourism would be made through a planning process with consultation. Privately owned lands are not regulated as part of protected areas, and the act would not apply to such lands. The longstanding policy is that private lands may be purchased on a willing seller – willing buyer basis for inclusion as part of a protected area, but will not be expropriated.

The Provincial Parks and Conservation Reserve Act requires that management direction be approved for each protected area within 5 years of each area's establishment, or if the area already exists, within 5 years of the act's coming into effect. Previously there was a policy requirement for producing plans, but not a legislated requirement. Management direction is defined in the act. While the act does not mandate a mandatory review period, it does require that each management direction be assessed every 10 years and a determination be made about whether a public review of the management direction is warranted. The Ministry of Natural Resources will then make the results of the assessments public. With more than 600 areas under management, it is critical that management planning efforts be focused where there is a real need for public review. There is a provision that a new protected areas planning manual will have to be developed within two years of the act coming to effect.

The new act mandates state of protected areas reporting and general direction is provided regarding what must be reported. Reporting must be undertaken on a 5-year cycle, with the option of addressing some components each year, rather than issuing a full report every 5 years and nothing in the interim.

Inclusion of industrial use prohibitions in the new act is a significant advance. Mineral exploration and mining, commercial timber harvest, aggregate and peat extraction, and electrical power development are prohibited with some specific exceptions. Important exceptions include:

- Timber can be harvested for resource management purposes, such as habitat management for a species at risk;
- Existing electric generation facilities can remain and may be upgraded or maintained;
- Waterpower sites can be developed for use by communities not connected to Ontario's electrical grid, subject to some stated conditions;
- Existing aggregate pits authorized under the Aggregate Resources Act can remain in use;
- Timber and mining access roads or trails can be permitted, also subject to stated conditions;
- Commercial timber harvest can continue in Algonquin Provincial Park only and new aggregate pits can be established to support forest management operations, subject to some conditions intended to limit use of aggregate on forest access roads.

Only a relatively small number of Ontario's 621 protected areas will be affected by exceptions.

Aside from industrial uses, the Provincial Parks and Conservation Reserves Act does not generally address other activities or “permitted uses”. Rather, it allows Cabinet, or in some cases the Minister of Natural Resources, to make regulations to control activities where required. This provides flexibility to adapt to changing needs and expectations. For example, if, after consultation, policies are changed and decisions are made to allow or restrict a specific activity, it will be much easier to develop or amend a regulation than to amend the act itself.

With regard to hunting the new act maintains the status quo. Hunting is not permitted in parks unless there are specific regulations under the Fish and Wildlife Conservation Act to allow it. Conversely, hunting is permitted in conservation reserves unless there are regulations under the Fish and Wildlife Conservation Act to prohibit it.

A second area where the Provincial Parks and Conservation Reserves Act deals with permitted activities is with regard to mechanized travel in wilderness class parks. The Section 8 objective for wilderness class parks says that “... visitors travel by non-mechanized means...” The act allows the Minister to make exceptions to allow mechanized travel by regulation in certain limited circumstances, based on policies first approved in 1978. In essence, existing policies regarding mechanized travel in wilderness parks will have to be reflected in regulations.

The new act provides a number of new administrative and enforcement authorities. It also maintains the status quo with regard to current Ontario Parks financial authorities, so that provincial park fees and other park revenues will continue to be dedicated to supporting provincial park programs. There is provision to set up a fund to provide financial support for natural heritage protection and education for both provincial parks and conservation reserves. This could support future fund raising programs that would encourage donations and bequests.

Conclusion

The 1954 Provincial Parks Act provided a flexible framework for expanding Ontario’s provincial park system and developing an extensive and respected policy framework. More than half a century later the Provincial Parks and Conservation Reserves Act recognizes the progress made in protected areas planning and management, and 21st century expectations and attitudes about our treasured natural areas. The new act solidifies in legislation the most fundamental protected areas policies and provides a solid foundation for future progress.

References

Provincial Parks Act, Revised Statutes of Ontario 1990, Chapter P.34

Provincial Parks and Conservation Reserves Act, Statutes of Ontario 2006, Chapter
12

Public Lands Act Ontario Regulation 805/94, Amended to Ontario Regulation
240/03

Wilderness Areas Act, Revised Statutes of Ontario 1990, Chapter W.8