

# Chapter 4

## Improving the Performance of Governments

Early in our mandate, we started to receive letters about carp. Carp in large numbers were dying in the Kawartha Lakes and citizens were asking us what could be done about all the dead fish that were floating in the water and washing up on the shores. Dealing with hundreds and then thousands of dead fish was clearly a challenge that citizens and governments weren't prepared for.

We tracked the issue for a number of weeks hearing about it in our public meetings and reading about it in the newspapers. We watched as government agency after government agency at all levels patiently explained that they weren't responsible for cleaning up dead fish. Some even resorted to "taking shots" at other government agencies that they felt weren't stepping up to the mark to address the issue.

The dead carp issue graphically illustrated to us the challenge of governance on the waterway. There are a large number of government agencies at all levels with some interest or responsibility for management of the waterway. Nobody, including the government employees themselves, is entirely clear who is responsible for what.

The carp die-off also illustrated the importance of improving our knowledge of the natural world as an important contributor to decision-making.

Throughout our consultations, citizens, lake and industry associations and even government agencies expressed concern about fuzzy responsibilities and a lack of associated accountabilities. They provided examples of duplication and overlap in government services and regulatory responsibilities. They noted gaps where no government seemed to be in charge at all. They were frustrated by not knowing who to talk to about particular issues and commented on a "passing the buck" culture.

Government agencies, we heard, did not communicate well with the public or with each other. They certainly did not appear to provide adequate means or forums to permit citizens to communicate with them.

We encountered a similar lack of responsiveness. We had great difficulty determining which government agencies we ought to speak to about the many issues brought before us. We wrote letters and organized meetings with a number of government agencies to engage them in discussions about the future of the waterway with only modest success. Ultimately, we were able to speak meaningfully with municipalities, conservation authorities, First Nations and one or two federal departments. We had little success in engaging the Province.

A 1971 study authored by Professor George Rich of the University of Waterloo investigated jurisdictional and administrative characteristics of national waterways, including the Trent-Severn Waterway.<sup>5</sup> Professor Rich found that there were 11 federal government agencies and departments and 11 provincial government agencies and departments "whose concerns include waterways." These agencies and governments administered a total of 69 pieces of legislation relevant to waterways.

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<sup>5</sup> Rich, George S. 1971. *National Waterways: A Study of the Jurisdiction and Administrative Characteristics of Waterways and Proposals for their Future Administration*. Unpublished paper, p. 20.

We have little doubt that government and legislative complexity has increased since that time and the resources available to government agencies to deliver on their responsibilities have declined. Almost all government agencies have, in recent years, seen staffing and resource levels reduced both in relation to the cost of living and in real terms through deficit reduction programs. This splintering of jurisdictional and administrative responsibilities makes effective management difficult, to say the least.

Some parties we talked to advocated a single “one-window” organization that would have overall responsibility for the waterway and would provide a “one-stop shopping” approach to communication and service. They even advocated creating special legislation that would embrace and consolidate multiple pieces of federal and provincial legislation under a single Trent-Severn legislative banner.

While we understand the appeal of this approach, we concluded that performance, accountability and cost effectiveness would be more practically served by continuing to work for the most part within the existing government framework.

That being said, the existing framework needs to operate more effectively than it now does. Public submissions and research provided us with a set of principles for governance that underpin our recommendations. The principles are:

- Government agencies should do what they are mandated to do and what they are good at and must be supported by comprehensive legislation, policies and realistic capacity;
- Governance should be as simple, understandable and transparent as possible;
- Governance should emphasize strong two-way communication and those who are affected by the decisions should be involved in making them; and,
- Government agencies with a role in the management of land and water should demonstrate the qualities of collaboration and teamwork.

We believe that improving governance of the waterway will require greatly improved coordination and communication within and between government agencies and with citizens. In our first two recommendations, we offer a geographic framework and a mechanism to accomplish that. The federal and provincial governments also need to work together to resolve long outstanding ownership and jurisdictional issues. Finally, we believe there is a pressing need to put the federal house in order – particularly with respect to changing legislation and policy to reflect contemporary needs.

## **Considering a Heritage Region Approach**

In our Vision for the Trent Severn Waterway, we describe a new, exciting, and embracing vision built on the broader watersheds and the interrelationships that have influenced how they have developed. We believe that by establishing a heritage identity, permanent and seasonal residents as well as visitors will see themselves as part of a grander vision, and the distinctive qualities that make the Trent-Severn watersheds valued can be sustained as the region continues to evolve.

The “heritage region” concept is an expression of common identity and a framework for communities and institutions to work together. Within its system of parks and historic places, the U.S. National Park Service has formalized a protected areas category, the “Natural Heritage Area.”

*They are designated to preserve important aspects of America's past and share it with visitors. Based on partnerships, Heritage Areas provide opportunities for a broad range of constituents to work together to achieve a shared vision for the future of an area... They aim... to preserve their special natural and historic places as part of their communities' social and economic future.<sup>6</sup>*

Unlike a traditional national park, lands within the boundaries of a National Heritage Area are not owned or managed by a government agency. Instead, a commission works in partnership with a variety of federal, state and local agencies, and with many non-profit and private organizations, to protect the sites and resources of each area.

As part of this concept, the U.S. National Parks Service uses a "heritage corridor". The Erie Canal is a National Heritage Corridor as is the John M. Chaffee Blackstone River Valley. The latter is a 75 kilometre, 162,000-hectare corridor established by an Act of Congress to protect natural and cultural resources and provide recreational opportunities.<sup>7</sup> Promoting sustainable community economies and public education are also important goals.

The Trent-Severn region has a surprisingly common identity. It is an identity expressed through its natural features defined in many respects by water. It is an identity that is expressed by many, if not most, of the more than 500 historic places throughout the region designated by all orders of government.

It is an identity reflected in the economic traditions of the communities throughout the region most of which owe their origins to their place on the water and the resource development, transportation and power benefits that came from the water. Their economies continue to be linked today through the importance of what we call the lifestyle economy – people and businesses that come to those communities because of the attractive proximity of water.

Cultural institutions throughout the region tell stories and present the art and music and literature that make the region unique. Business organizations see the region, and particularly the navigation corridor, as a common brand as they promote tourism and encourage businesses to locate.

Citizens, communities and interest groups from the region have come together frequently to discuss topics of common interest – tourism and branding, water management, species at risk and others. These meetings are an expression of common identity and that forms the basis for a common and collaborative future.

The "heritage region" concept is an expression of common identity and a framework for communities and institutions to work together. Accordingly, we recommend designation of the two large Trent-Severn watersheds as a "National Heritage Region" within which communities and others would plan and work together.

As far as we are aware, no such designation currently exists in Canada. There are many examples, however of the idea of regional coordination being applied to the promotion of tourism destination areas and routes. Our recommendation is to expand on that concept to incorporate a broader range of shared goals.

Our own experience with similar initiatives and advice we received from others indicates that the heritage region concept should not be imposed by senior orders of government. Ideas such as this work better from the "ground up" rather than "top down". We suggest that leadership in advancing the heritage region come from communities themselves with technical and other support from federal and provincial governments.

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<sup>6</sup> National Park Service, "What is a National Heritage Area?". Retrieved from the World Wide Web: <http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM>.

<sup>7</sup> Brown, Jessica, Nora Mitchell and Jacqueline Tuxill. 2003. "Partnerships and lived-in landscapes: an evolving system of US systems of parks and protected areas," *Parks*, Vol. 13 (2).

Later in this report, we will speak to how the national historical significance of the waterway might be reflected in this heritage region.

#### **RECOMMENDATION 1**

**Provide a geographical framework that encourages communication and coordination by considering, through a community initiated and led process, the establishment of a Trent-Severn National Heritage Region.**

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## **A Trent-Severn Heritage Region Council**

The heritage region is a geographical area that embraces citizens, organizations and governments that share a common identity and hopefully a set of shared goals. This section suggests a mechanism for the formulation and advancement of those goals in a coordinated fashion.

This is not a new idea. As far back as 1971, Professor Rich argued that a mechanism was needed to coordinate the activities of the various agencies and orders of government involved in waterway management. He promoted the concept of waterways as “national” entities as opposed to federal or provincial ones. He encouraged simplicity, involvement of both the province and the federal government, citizen engagement and shared funding arrangements – separately and through existing programs.

In February of 1975, the federal Minister of Indian and Northern Affairs and the provincial Minister of Natural Resources signed an historic agreement to coordinate the activities of Canada and Ontario related to the Trent-Severn and Rideau corridors. That agreement resulted from years of collaborative work under the Canada-Ontario Rideau-Trent-Severn Study (CORTS) by the two governments. It recognized the heritage, recreational and environmental importance of the two corridors to both Canada and Ontario and acknowledged that a sustainable future depended on cooperative action.

This cooperative framework existed until 1982 and resulted in the publication of joint policies to guide both governments in their management of various aspects of the waterway including tourism, land use, water management, recreation, pollution control and heritage conservation.<sup>8</sup> The policy document, in describing the task ahead, gave priority to coordinating policy implementation and commented on the importance of engaging municipalities.

For reasons only partially understood, this cooperative framework largely disappeared in ensuing years.

**We believe that the need for coordination and communication between governments is greater now than ever before.** The challenges identified through the CORTS process have grown in magnitude due to population growth, extensive development, climate change, invasive species, and competing demands for scarce resources such as water and public access to the shore. Governments have become more complex while the resources available to achieve government programs have diluted. The expectations of citizens for transparency, real time communication, accountability and engagement have risen exponentially.

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<sup>8</sup> Canada-Ontario Rideau-Trent-Severn: CORTS. 1982. *Canada-Ontario Policies for Rideau-Trent-Severn Corridor*.

We believe that the cooperative framework and tools put in place during the CORTS process served Canadians and Ontarians well. With adaptation to modern circumstances and goals reflecting a culture of sustainability, a more robust and effective framework can serve well in the future.

We have examined a number of models that serve that role elsewhere. Specifically, we are attracted to the Fraser Basin Council and its vision of a Fraser River Basin “where social well-being is supported by a vibrant economy sustained by a healthy environment.”<sup>9</sup> We also support the concept embodied in the Hudson River Greenway in New York State that was created “to facilitate the development of a voluntary regional strategy for preserving scenic, natural, cultural and recreational resources while encouraging economic development and maintaining the tradition of home rule for land use decision-making.”<sup>10</sup> The Ontario Waterfront Regeneration Trust model has also worked well in bringing communities along the Lake Ontario shore together.

The idea of a coordinated approach already has some support. The Kawartha Lakes Community Future Development Corporation (CFDC) suggested a need to “link the communities along the Trent, creating a more cohesive and evident Trent Severn community of information, education, attraction and awareness of one of our greatest resources”.<sup>11</sup> The Eastern Ontario CFDC Network suggested a long-term corridor perspective linking economic activity to social and environmental health. And the Kawartha Lakes Chamber of Commerce urged the federal government to create a corridor economic development plan that would receive input from local agencies and governments but be administered federally.

We recommend that a formal Trent-Severn Heritage Region Council be established to promote, advocate and educate in support of heritage region sustainability with a focus on lakes, rivers and important landscapes. The council would draw its members from the federal government, provincial government, municipalities, First Nations and citizens at large and be the “guardian” of a heritage region Sustainability Charter. In the charter, members would commit to the essential concepts of sustainable development – advancement of economic and social goals within the context of a strong conservation ethic.

The Heritage Region Council would serve to promote understanding of the work of governments and foster communications and coordination between them. It would play an advocacy role; bring together communities of interest; serve as a repository for relevant research; and set goals and monitor progress against those goals. It would be established and funded by the federal and provincial governments with municipal and other contributions. A detailed description of our concept of the Council can be found in Appendix B.

## **RECOMMENDATION 2**

**Broadly coordinate the activities of government agencies and citizen organizations to achieve a set of common sustainability goals within the Heritage Region by collectively establishing a permanent Trent-Severn Heritage Region Council.**

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<sup>9</sup> Fraser Basin Council, *Fraser Basin Council Website*. Retrieved from the World Wide Web: <http://www.fraserbasin.bc.ca>.

<sup>10</sup> Hudson River Valley Greenway, *Hudson River Valley Greenway Website*. Retrieved from the World Wide Web: <http://www.hudsongreenway.state.ny.us>.

<sup>11</sup> Kawartha Lakes Community Future Development Corporation. 29 September 2007. *Submission to the Panel on the Future of the Trent-Severn Waterway*.

During our consultations, we were repeatedly told of significant ecological concerns on the waterway and were presented with several suggestions about how to address them. These suggestions could be subjects of interest for the council, and through this report are being passed along to the appropriate authorities to consider. They are:

- Coordinate education programs on environmentally sustainable shoreline practices and target them to shoreline residents, businesses and agriculture;
- Prohibit the use of pesticides and fertilizers near the shore along the waterway;
- Implement a continuing septic system inspection program and move toward 0% untreated discharge from municipal sewage treatment plants; and,
- Develop an integrated approach to the long-term management of aquatic vegetation.

## Clarifying Jurisdiction

In our discussion paper, "Jurisdiction for the Waterway – Authorities and Responsibilities", we describe the questions and uncertainties with respect to ownership and jurisdiction along the waterway. Jurisdiction, we observed, "is the essential path to defining both authorities and fiduciary responsibilities for the waterway."<sup>12</sup> Confusion about jurisdiction has almost certainly had a negative impact on the public interest.

Management of the waterway is made complex because it is not always clear who owns what and who has the authority to act.

Allow us to briefly describe our perception of the present ownership regime. We believe that the evidence supports federal government ownership of the beds of the lakes and rivers along the path of the marked navigation channels, with the exception of areas owned by First Nations and limited areas in private ownership. The Province, with the apparent tacit agreement of the federal government, is asserting ownership over the beds of Lake Simcoe and Lake Couchiching but we can find no legal authorities that support this. It seems that this provincial exercising of authority has been an administrative convenience in response to uncertainty.

We also believe, after reading a 1905 Provincial Order-in-Council, that there is legal uncertainty over ownership of the beds of the lakes and rivers that comprise the reservoir lakes system. The Province currently asserts ownership through the exercise of provincial authorities.

That there is uncertainty in these matters will come as no surprise to the Province. Efforts have been underway since 1938 to resolve these issues. In 1988, officials from Canada and Ontario discussed a course of action to achieve resolution. However, little action followed.

If we were designing the ownership and jurisdiction regime for the waterway from scratch, we would ideally vest most of the bed of the waterway with the Province. We don't believe that Parks Canada needs to own the beds of the lakes and rivers to carry out its responsibilities for managing a national historic site including a navigable waterway. We also think that the Province and municipalities are better placed to manage these lands<sup>13</sup> in the

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<sup>12</sup> Panel Secretariat. 2007. "Jurisdiction for the Waterway – Authorities and Responsibilities," *Discussion Paper 6*, p. 1.

<sup>13</sup> "Land" in this context includes the beds of water bodies.

public interest. Because they have similar responsibilities elsewhere in the province, they have the legislation, policy and expertise to manage land and resources. Confirming this would reduce confusion, duplication and overlap and, most probably, be more consistent with constitutional practice elsewhere in Canada.

We know, however, that vesting ownership of the beds of the lakes and rivers with the Province would have its own complications. Before accepting ownership, the Province would seek certainty as to current ownership including detailed data on privately held water lots. They would also want to understand any liabilities they might assume with ownership including provisions for dealing with known and unknown contaminated sites such as those near the mouth of the Trent River.

Provincial officials have also informally indicated that they would want formalization of the tenure and occupancy of commercial uses of the bed before accepting any transfer. First Nations have concerns about any transfer of the beds adjacent to their Reserves signalling that this would add to the complexity of their inter-governmental relations. Finally, some aspects of federal ownership may be entrenched through the 1867 Constitution Act. Amending this Act, should that be the case, would be no mean feat.

Although we believe that a transfer of ownership would serve Canadians best, we recognize that it would be difficult to achieve. Accordingly, we suggest that Canada and the Province apply their energies in the short term to resolving and **appropriately formalizing** the existing anomalies – the exercising of provincial jurisdiction over lakes Simcoe and Couchiching and the reservoir lakes. We expect that this would be of particular interest to the Province given its expressed desire to enact legislation to provide for the protection of Lake Simcoe.

### **RECOMMENDATION 3**

**Reduce jurisdictional uncertainty by resolving outstanding jurisdictional issues relating to lakes Simcoe and Couchiching and the reservoir lakes through discussions between the Province and the Federal Government.**

## **Rights in Waters**

In the previous section, we discussed clarification of ownership and jurisdiction along the waterway. There is one more jurisdictional issue that begs for resolution. Who has the authority to allocate a finite amount of water flowing through the Trent-Severn watersheds to serve an increasing number of demands?

Currently, the federal government through Parks Canada manages the storage and flow of water throughout the system while the Ontario Ministry of Environment issues “Permits to Take Water” under the provincial *Water Resources Act* to municipalities, quarries, and other users. Parks Canada is held publicly accountable for water quantities and flows while the Province has no evident accountability for many of the impacts of its water-taking permits. One estimate suggested that more than 6,000 permits had been issued although we have not been able to confirm that number.

We believe that all government agencies involved in the management of water should have the goal of fostering an integrated approach. It makes little sense for one agency to be responsible for storage and flows throughout the watersheds and another, reporting to a different order of government, to exert controls over withdrawal and use.

In the chapter on Assuring the Future of Our Water, we suggest a broad mechanism to improve water management. The success of that mechanism will depend on clarification of which government has the authority to make

decisions regarding storage, flows and allocation. We believe that the 1905 Provincial Order-in-Council effectively assigned that authority to the federal government and that the federal government should actively assert that authority.

#### **RECOMMENDATION 4**

**Work toward the goal of integrated water management by asserting Federal Government rights and responsibilities to control storage, flows and allocation of water from the two watersheds.**

## **The Need for Legislative Change and Policy Improvement**

Parks Canada assumed responsibility for Canada's historic canals in 1972. However, we believe that the Agency has never really embraced the historic canals within its heritage family. Parks Canada has seemed a somewhat benign foster parent for the historic canals. They were brought into the house but never given the family name.

Currently, canals are managed under the *Department of Transport Act*. This Act gives the canals an administrative home and enables Ministerial authority but does not accord them any mandate or purpose. Regulations for the canals under the *Department of Transport Act* are ancient and inadequate to support the effective management of the canals in the 21st century. We were perplexed to find that there are actually two sets of regulations pursuant to the Act – the *Canals Regulations* and the *Historic Canals Regulations*, with tremendous duplication between them. A major review of the regulations was underway within the last few years but has not advanced.

To be seen as a credible guide and parent to the historic canals, Parks Canada must take full ownership of the historic canal regulations in a legislative and policy sense. We understand that improved legislation for national historic sites is being considered. Parliament must seize this opportunity to make a clear statement on the heritage mandate of canals rather than relegating them to an “other protected areas” category as occurs with their reference in the *Parks Canada Agency Act*. We urge the federal government to review and modernize the historic canals regulations as a high priority of its legislative agenda.

#### **RECOMMENDATION 5**

**Enable Parks Canada to take “ownership” of the historic canals and improve management effectiveness by:**

- (a) Transferring historic canal legislation to Parks Canada;**
- (b) Incorporating a strong heritage mandate in new legislative instruments; and,**
- (c) Modernizing and strengthening the current regulations governing the management of Canada's historic canals.**

Parks Canada manages its historic canals pursuant to two major policy documents. The “Parks Canada Guiding Principles and Operational Policies” provide a general policy framework for all of Parks Canada operations and includes specific policy statements for national parks, national historic sites, historic canals and other resources. The second important policy source is the “Cultural Resource Management Policy.”

As with the legislation, we are of the view that the policies relating to historic canals require improvement. They are brief, narrowly framed and lack a sense of vision or breadth of perspective. They seem to speak, for example, to navigation as the generic role of canals and seem to convey the message that their primary role is to serve boaters. We respectfully disagree.

Objectives for historic canals must be expanded to include all visitors including boaters, land-based visitors, residents in communities along the waterway and the growing and diverse cities that are served by many of these canals such as Ottawa, Toronto, and Montreal. In fact, serving a changing mix of land-based visitors is a primary function of most of Canada's historic canals. Each year more people visit and enjoy the Trent-Severn Waterway from the land than from the water. This is the reality of waterways the world over.

Conservatively, 1.5 million land-based visitors visit and enjoy the lock stations along the waterway and millions more visit other parks and open spaces along its length to swim, fish, picnic, walk, enjoy nature and just breathe the air. More than 230,000 land-based visitors stop at the Big Chute Marine Railway each year. Historic canals policies should clearly state that Parks Canada is committed to engaging with and serving all of its visitors including land-based visitors.

Policies respecting cultural resources also need to be broader and reflect the importance of the cultural landscapes, the full range of human endeavour and invention associated with the water, the arts and the continuing evolution of the historic canals.

Natural and ecological functions of historic canals are also of immense importance to Canadians. We believe that the objectives for "Protecting Natural Resources" in the Historic Canals section of the Guiding Principles and Operating Policies fail to adequately acknowledge this important role. We draw your attention Section 1.1.6 of the Cultural Resource Management Policy.

*A cultural resource that derives its historic value from the interaction of nature and human activities will be valued for both its cultural and natural qualities.*

This statement speaks eloquently to our view of what the mandate of Parks Canada should be in operating historic canals. This mandate needs to be prominently positioned as a guiding principle.

We advocate a broader policy vision for historic canals than has been practiced in the past. Successful transition toward this vision will require the understanding and commitment of all Parks Canada staff. We urge Parks Canada to undertake the necessary actions to ensure that staff at all levels of the organization are aware of this vision and act as advocates for it in their day-to-day work.

#### **RECOMMENDATION 6**

**Improve Parks Canada's policies that guide the management of historic canals by:**

- (a) Revising "Parks Canada Guiding Principles and Operational Policies" to incorporate a broader and more assertive vision that embraces all visitors and speaks more specifically to the important role of the "historic canals" with respect to natural and ecological values; and,**
- (b) Ensuring that all staff are aware of and act as advocates of that broader policy vision.**