

Overview of Ontario's Most Recent Addition to Environmental Legislation: The Great Lakes Protection Act, 2015

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On November 3, 2015, Ontario's Great Lakes Strategy^[1] was adopted by the province in the form of the *Great Lakes Protection Act, 2015* (the "**GLPA**").^[2] The stated purpose of the GLPA is to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin and to create opportunities for individuals and communities to become involved in this undertaking.^[3] The key features of the GLPA are discussed below.

PROTECTION AND RESTORATION OF THE GREAT LAKES-ST. LAWRENCE RIVER BASIN

The GLPA requires that Ontario's Great Lakes Strategy, a Government of Ontario document issued in December 2012 setting out a strategy focused on empowering action to ministries, municipalities, industries and local communities to restore the ecological health of the Great Lakes-St. Lawrence River Basin,^[4] be maintained and updated by way of programs or other actions to monitor and report on the ecological conditions in the Great Lakes-St. Lawrence River Basin. The Minister of the Environment and Climate Change (the "**Minister**") is required to promote this purpose by creating targets to achieve the purposes of the GLPA, directing public bodies to propose and carry out geographically-focused initiatives and preparing progress reports on recent actions, targets, progress made and the results of each program under the GLPA.^[5]

The GLPA also establishes the Great Lakes Guardians' Council (the "**Council**") whose role it is, among other things, to identify priorities for actions to achieve the purposes of the GLPA, set targets, identify potential funding measures and partnerships as well as develop and implement initiatives and interjurisdictional agreements.^[6]

Consistent with the GLPA's stated purpose of creating opportunities for community involvement, the GLPA encourages the Minister to invite people to participate in the Council meetings including Great Lakes ministers,^[7] representatives of municipalities, environmental

organizations, the scientific community, industrial, agricultural and tourism sectors, Conservation Authorities and First Nations and Métis communities.[\[8\]](#)

DIRECTOR AND OFFICER LIABILITY

Similar to other environmental legislation in Ontario, the GLPA allows for individual liability when a corporation commits an offence under the Act.[\[9\]](#) An offence is committed under the GLPA when a person contravenes a regulation or an order issued in accordance with a regulation under the Act. In that case, any director, officer, employee or agent of the corporation who directed, authorized, assented to, acquiesced in or failed to take all reasonable care to prevent the commission of the offence or who participated in the commission of the offence is also guilty of the offence. This charge can be laid whether or not the corporation itself has been prosecuted for the offence.[\[10\]](#) Note that as yet no regulations have been enacted under the GLPA.

The GLPA provides for fines for an individual guilty of an offence of not more than \$25,000 for each day on which the offence occurs or continues in the case of a first offence and up to \$50,000 in the case of a subsequent offence. With respect to a corporation guilty of an offence, the fine is up to \$50,000 on each day on which the offence occurs or continues in the case of a first offence and up to \$100,000 in the case of a subsequent offence. Therefore, the fines for a contravention of a regulation by a director, officer, employee or agent of a corporation can be quite significant, particularly when the contravention was continuous.[\[11\]](#)

GLPA'S PURPOSE TO PREVAIL

The GLPA is specifically drafted to override any laws or decisions that conflict with its authority and stated purpose. It states that if there is a conflict between a provision of the GLPA and a provision of another Act with respect to a matter that affects or has the potential to affect the ecological health of the Great Lakes-St. Lawrence River Basin, the provision that provides the greatest protection to the ecological health of the Great Lakes-St. Lawrence River Basin will prevail.[\[12\]](#)

Similarly, where there is a conflict between a designated policy set out in an initiative under the GLPA and a plan or policy in a policy statement under section 3 of the *Planning Act*,[\[13\]](#) the Greenbelt Plan, the Niagara Escarpment Plan, the Oak Ridges Moraine Conservation Plan, a growth plan approved under the *Places to Grow Act, 2005*[\[14\]](#) or a plan or policy made under the GLPA, the provision that provides the greatest protection to the ecological health of the Great Lakes-St. Lawrence River Basin will in this instance prevail as well.[\[15\]](#)

The GLPA requires that decisions under the *Planning Act*[\[16\]](#) or the *Condominium Act, 1998*[\[17\]](#) made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, conform with designated policies set out in any applicable initiative under the GLPA. In addition, despite any other Act, an initiative under the GLPA prevails in the case of a conflict with an official plan or zoning by-law or with a policy statement issued under section 3 of the *Planning Act*.[\[18\]](#)

The GLPA also bars municipalities and municipal planning authorities from undertaking any public work or improvement of a structural nature or passing a by-law that conflicts with a designated policy set out in an initiative under the GLPA.[\[19\]](#)

The GLPA goes so far as to require municipal councils and planning authorities that have jurisdiction where an initiative applies *to amend* its official plan to conform with the designated policies in the initiative. Where this non-conformity is not resolved, the Minister may proceed with amending the official plan by way of an order.[\[20\]](#)

ENGAGING FIRST NATIONS AND MÉTIS COMMUNITIES

Ontario's Great Lakes Strategy recognizes that First Nations and Métis communities have a historic relationship with the Great Lakes-St. Lawrence River Basin. The GLPA requirement to maintain, update and review Ontario's Great Lakes Strategy requires that it include principles intended to guide decisions under the GLPA that reflect this historic relationship.[\[21\]](#)

Like the *Endangered Species Act, 2007*,[\[22\]](#) the GLPA seeks to draw on traditional Aboriginal knowledge from affected and interested communities as part of achieving the purposes of the Act. However, the GLPA goes a step further and creates a forum for consultation and engagement with First Nations and Métis communities at each stage of planning and implementation of initiatives under the Act.

For example, the GLPA provides that a proposal for initiatives under the GLPA requires a description of the proposed consultation that would be undertaken during the development of the initiative including a plan for engaging First Nations and Métis communities that may be affected by the initiative.[\[23\]](#) In addition, before directing a public body to develop a proposal for an initiative, the Minister is required to identify any First Nations or Métis communities that have a historic relationship with the geographic area to which the proposal would relate and to consult with representatives of those First Nations and Métis communities along with other ministers and interested parties.[\[24\]](#)

The GLPA also provides that First Nations and Métis communities who have a historic relationship with the Great Lakes-St. Lawrence River Basin may offer their traditional ecological knowledge for the purpose of assisting in anything done under the authority of the Act. This provision further requires the Minister to take into consideration the traditional ecological knowledge offered by a First Nations or Métis community in reviewing or amending Ontario's Great Lakes Strategy, establishing targets, preparing plans, deciding whether to approve a proposal for an initiative or to refer a draft initiative to the Lieutenant Governor in Council under the GLPA.[\[25\]](#)

PUTTING THE GLPA INTO PRACTICE

The GLPA takes a unique approach to the environmental protection of Ontario's Great Lakes-St. Lawrence River Basin by creating a focused strategy and a dedicated forum for protecting one of Ontario's defining features. It is also unique in the planning role it provides for the wide number of initiatives to be carried out under the authority of the Act to affected and potentially

affected Aboriginal interests and concerns. While the GLPA provides a specified process for carrying out Ontario's Great Lakes Strategy through geographically-focused initiatives, targets and programs, the Minister's progress reports of the status and results of these actions are only required to be prepared every three years (though the Minister is certainly entitled to issue a progress report before then).^[26] We will therefore have to wait until then to determine whether this forward thinking legislation has had the intended result of making great strides in the protection and restoration of the ecological health of the Great Lakes-St. Lawrence River Basin.

^[1] The Government of Ontario, "Ontario's Great Lakes Strategy" (Queen's Printer for Ontario, December 2012), online: Government of Ontario <<http://www.ontario.ca/document/ontarios-great-lakes-strategy>> [Ontario's Great Lakes Strategy].

^[2] SO 2015, c 24 [GLPA].

^[3] GLPA, s 1.

^[4] Ontario's Great Lakes Strategy.

^[5] GLPA, ss 5-9.

^[6] GLPA, s 4.

^[7] GLPA, s 3 defines "Great Lakes ministers" as "the ministers responsible for the ministries that were involved in the development of the [Ontario's Great Lakes] Strategy or that are involved in the implementation of the Strategy". This would include, but is not limited to, the Ministry of the Environment and Climate Change, the Ministry of Natural Resources and Forestry and the Ontario Ministry of Agriculture, Food and Rural Affairs,

^[8] GLPA, s 4(3).

^[9] See *Environmental Protection Act*, RSO 1990, c E19, s 194; *Ontario Water Resources Act*, RSO 1990, c O40, s 116; *Clean Water Act, 2006*, SO 2006, c 22, s 106(7); *Toxics Reduction Act, 2009*, SO 2009, c 19, s 44(6); *Provincial Parks and Conservation Reserves Act, 2006*, SO 2006, c 12, s 49; *Endangered Species Act, 2007*, SO 2007, c 6, s 37 [*Endangered Species Act*].

^[10] GLPA, s 26(10).

^[11] GLPA, s 26(8)-(9).

^[12] GLPA, s 37.

^[13] RSO 1990, c P13 [*Planning Act*].

^[14] SO 2005, c 13.

^[15] GLPA, ss 20(4)-(5).

[16] *Planning Act*.

[17] SO 1998, c 19.

[18] GLPA, ss 20(1)-(3).

[19] GLPA, s 20(6).

[20] GLPA, ss 21-22.

[21] GLPA, s 6.4.vi.

[22] See *Endangered Species Act*, ss 1.1, 3(4), 5(3), 48(f).

[23] GLPA, s 12.2.iii.

[24] GLPA, s 10.

[25] GLPA, s 28.

[26] GLPA, s 8.