Provincial Parks - Ontario

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ONTARIO'S PROVINCIAL PARKS

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The Citizens' Concern

Ontario's Provincial Parks have evolved since 1893 when the concept was introduced. The uses to which Parks may be devoted have never been clearly and authoritatively stated. Commercial exploitation has always been licensed as a park use but the policies supporting this are not visible and the decision to allow commercial exploitation is made in private. Since 1967 the Parks Branch of the Ministry of Natural Resources has exercised almost total effective control over the use of our parks by means of a classification technique which they developed themselves. The classification of any park as "natural environment" will permit commercial exploitation within the Park. Thus the power to classify has very serious consequences and should be made the subject of judicial review. This classification system has, at present, a heavy emphasis on recreational and multiple use parks.

Municipal recreational or Commercial interests are significant in 100 of Ontario's 110 parks. There is a danger that the continued administration by the Parks Branch of their classifying system will leave future generations in Ontario with only a small number of representative natural features or potential experiences, the rest of the parkland having been exposed either to commercial exploitation or substantial development for recreational activities.

What is a Provincial Park

Simply any area set aside by the Lieutenant Governor in Council for this purpose: s. 3(2) Provincial Parks Act R.S.O. 1970 c. 371. So far he has designated 110 provincial parks whose survey descriptions are found in Regulation 695, Revised Regulations of Ontario 1970, Vol. 4.

The following are not to be considered as provincial parks: national parks which remain under strict Federal Government control, municipal parks which are usually recreational areas for the municipality residents, any of the recreational parks declared in Ontario's thirty-six conservation areas, and finally, the wilderness areas designated and protected by the Wilderness Areas Act R.S.O. 1970 c. 498. The word wilderness in the Wilderness Areas Act is quite misleading, since the Act only protects areas up to one square mile which is usually considered to be too small to support a self-regulating eco-system.

Management and Control

The Lieutenant Governor in Council (L.G.I.C.) of Ontario can set aside any area in Ontario as a provincial park (s. 3(2) Provincial Parks Act (P.P.A.), R.S.O. 1970). Land may be acquired for parkland by the Minister of Public Works with or without the owner's consent (s. 13

Public Works Act R.S.O. 1970 c. 393). The public of Ontario, for whose benefit the parks are maintained, do not enjoy this benefit in perpetuity. The Lieutenant Governor can decrease the area of any provincial park by Order in Council s. 3(3).

The Lieutenant Governor has always had the regulation making power by which the particular powers granted by the Act can be articulated. The subject matter has changed since 1893. Today many of his powers are expressed in the formulae "prohibit, regulate or control". The word prohibit was adopted recently. However, it offers a false impression. Whereas the Lieutenant Governor has the power to prohibit a large number of activities such as trades, businesses, amusements and advertising devices, in general, he has not exercised this right. The Lieutenant Governor has almost the same effective power to permit exploitation and development of mining today as he had in 1893. The fact that mining is not generally permitted does not reflect a change in the law but merely a change in the political pressures on those responsible for our parks. The regulations today are wide enough to permit most uses of land, commercial or recreational, resource extractive or not. Just as in 1893, the Lieutenant Governor has his options left open for him. His only duty rests in ensuring that the current activities are licensed by himself.

Of course, the Lieutenant Governor in Council would not

introduce any new regulations. They would proceed from the Parks Branch of the Ministry of Natural Resources. The Lieutenant Governor's power is explained by the need for an external check and balance to the Minister's wide ranging powers under the Act. The same is true of his power to classify any provincial park (s. 5).

The second level of park control rests in the hands of the Provincial Minister of Natural Resources, explicitly with his Parks Branch. The Minister is empowered to control and manage each provincial park (s. 7(1)). By far the most important part of the Minister's de facto power rests with the Parks Branch's charge of classifying parks.

The Minister's powers have changed with the evolution of the Province. His power today to control fur bounties has become unimportant. However, with the increasing municipal demand made on provincial parks to provide recreation space for city dwellers, the Lieutenant Governor's right to license inns and shops in earlier days has evolved into a more comprehensive system. Since 1954 the Minister has had specific powers to operate sports and amusement facilities, refreshment, accomodation and transport services, as well as the right to enter into contracts with subcontractors. In this way a new force operating on parks was recognized by a licensing system designed to retain control for the Minister as well as legitimize park activities.

The district forest or park superintendent, appointed by the Minister, has the charge of his park area (s. 7(1)). He is the man on the spot and an examination of his powers shows that his main function is one of caretaking.

In everyday terms the mid-level civil servants administering the Parks Branch of the Ministry of Natural Resources and the caretaker-superintendent are the two sources of real power. The civil servants decide what policies are forthcoming and in particular, control classification decisions. The "caretaker" acquires his authority from his public image as the official arm of the law, within park boundaries, as well as from his duty to protect the park from any misuse.

Commercial Exploitation

There is no doubt that our provincial parks' resources have been commercially exploited since the day of their inception. It is also clear that the various laws passed to control our parks since the Algonquin National Parks Act of 1893, envisaged this commercial use on an increasing scale. For example, mining, timber cutting (pine only), 'mineral improvement' were all envisaged by the 1893 Act. By 1910, timbercutting had expanded to include spruce, hemlock, birch cedar, ash and tamarack (ANPA 1910 10 Edw. Vll c. 22).

In 1913, the then current Provincial Parks Act 3-4 Geo.

c. 15 expressed (s. 3) a power to aside land for park purposes which was "not suitable for settlement or agricultural purposes".

Those who expressed this criteria for parkland were obviously not challenging the primacy of commercial use of land where practicable. There is nothing in their criteria to suggest that a commercial use of parkland, if ever found, was incompatible with the various public benefits accruing from the parks. Substantial powers to license exploitation, such as in mining, logging and bounty hunting, have always rested in the Minister's responsibilities. More recently, the licensing of highway, railway, road transmission, pipelines, power developments, and industrial operations have also become his concern: P.P.A. S.O. 1950 c. 59 (s. 10).

The particular defect of the Provincial Parks Acts since 1893, has been ambiguity over the question of commercial use. Nowhere has a clear policy been enunciated. Commercial exploitation has been legitimized on a piecemeal basis, the extent of which is difficult to assess. For example, the Lieutenant Governor had, until 1950, a power to regulate water levels in parks. This is of great importance because of the effect hydro power dams have on park land and lakes. However, in 1950 the regulatory power was removed without reference and in s. 10, a power was given to the Minister to

to recover the cost of power development. As a result, the power to regulate water level has disappeared and is indirectly balanced by a power to recover costs of damage. Thus, with the removal of the power to control development by controlling water levels, an indirect sanction is granted to power developments.

Similiarly, the question of railway or other transmission lines, pipelines, mining or industrial operations in parks has never been directly confronted in legislation. The introduction in 1950 of a power to recover the cost of damage caused by these developments again provided some protection to the park but with the immediate result of legitimizing the development.

The ambiguities created by the piecemeal provision of specified commercial and industrial uses of parkland in the Acts have been compounded by the adoption in 1950, of section 2 which provides

> 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.

Again section 11 provides

> Except as provided by this Act or Regulations no person shall use or occupy any public lands in a provincial park.

The economic use of Ontario's parks then, presumably, must not impair the "maintenance of the park for future generations" and the extent to which an economic use is compatible is usually contentious.

This ambiguity is very important, considering the extent of commercial exploitation in some of Ontario's parks. Algonquin Park supports twenty-three logging companies, and twenty-four trap lines. In Lake Superior Park, three companies hold timber licences on five hundred of the five hundred and twenty six miles. Thirty eight mining claims (staked for nickel) are currently held under licence of occupation, s. 19(f) P.P.A. Three company operations currently cut ten million foot board of veneer logs and saw logs. Quetico Park supported extensive commercial logging until 1971 when articulate opinion led to the withdrawal of commercial logging which had extended over nine hundred and seventy nine square miles of the park. Given the economic impact of the mill on the area (in 1969 the gross payroll was $1,800,000.) the decision to prohibit logging was obviously controversial. It is also a possible explanation of the Minister's silence on the Advisory Committee's recommendation (in their report, presented August 1972) that the Minister permanently remove timber cutting and logging from Quetico Park. In fact, the Quetico Park Advisory Committee quoted the cost benefit timber values which could represent an annual sum of over 11,000,000 dollars. This economic significance has not been lost on the Minister. In 1961, the then Minister

in a submission to the Select Committee of the House on the Administration and Executive Problems of the Government of Ontario said, "In larger parks the forest resources cannot be disregarded in the general economy of the Province...."

While the Provincial Parks Act itself is ambiguous, a policy document formulated by the Parks Department is not. Titled, "The Classification of Provincial Parks", it lead to the amendment of the Act in 1968 to give the Lieutenant Governor in Council the power to classify provincial parks into named categories.

The Classification System and Park Control

Classification is the means used by the Parks Branch to control economic exploitation of provincial parks. The ambiguity of the Provincial Parks Act is resolved, in practice, by an abstraction. The planners created the fiction of a "park system." They defined this system as comprising various types of parks with significant differences in size, location, natural features, capacity for recreation and education, and finally, present levels of economic exploitation. The Parks Branch defined their objectives to firstly, protect "outstanding areas" and secondly to guide planning and development. They desired a "balanced system", referring presumably, to parks permitting recreation and education and parks permitting commercial exploitation.

The Parks Branch formulated five classes, four of which permit recreation and education, the fifth permitting economic exploitation as well. The multiple use approach adopted by the Parks Branch has given an explicit rationalisation for the economic exploitation of provincial parks. In so doing, it presents an unusually large degree of control to the middle-level civil servants who make the decisions as to classification and reclassification in any one case.

The Parks Branch's first category is the primitive park. There, a representative area of natural landscape is set aside for posterity, to provide experience in natural life conditions as well as a laboratory for the non-destructive study of natural resources. The natural resources within primitive parks are "reserved from exploitation". However, there is no guarantee that if and when any particular resource becomes economically valuable, it will not simply be de-reserved. One of the two present primitive parks is almost completely inaccessible to the public (Polar Bear Park). However, once roads and other means of transport and communication are established, it is quite possible that this park may also be faced with the threat of resource exploitation.

The second category was wild river parks of which Ontario again has two. These parks are designed to preserve significant rivers. Logging and river driving may be permitted as well as tree cutting, hunting and motor crafts.

The native reserve classification today protects six "unique natural areas". Public access is provided where the environment and the reserve suit it. Usually, native reserves are not expected to be more than one mile square.

The fourth class, the recreational park, accounts for sixty-six parks. Designed to facilitate extensive day use, within the day use range of significant populations or to provide campgrounds, these parks support large developments and modification of the natural environment. In both cases the parks are expected to be smallish, usually no larger than a thousand acres.

Finally there is the class which permits commercial exploitation. There are thirty four parks in this category. They are administered on a multiple-use approach, with low to moderate recreational uses also permitted.

Of the one hundred and ten parks in Ontario, one hundred rest in the two latter categories, which envisage, either substantial development of the natural environment, in terms of access roads, restaurants, campgrounds or commercial exploitation, logging, etcetera.

The classification system and its use is subject to very serious reservations. It rationalises the exploitation of park resources, where the legislation is piecemeal and ambiguous. Also, the criteria upon which a classification or

reclassification is made are not visible and are effectively in the hands of a fairly anonymous Ministerial Branch.

Public Input So Far

Public hearings have been held in four cases in Ontario. They are held at the discretion of the Minister who may appoint an Advisory Committee (s. 6) as in the case of Quetico Park (1970). The Minister sets the frame of reference which in this case required the Committee to interpret public hearings (3), briefs (263) as "part of the planning process". The Committee did so and returned a recommendation that "no commercial logging be permitted within the park". The fundamental weakness of this procedure is reflected in the Minister's freedom to ignore the public input. In the Quetico case, he formally accepted the report but then postponed his decision as to acceptance of the report, until Christmas 1972. Of course, Quetico has dropped from the public's sight and mind in the meantime.

A second fundamental criticism of the discretionary hearings held by the Minister is exemplified by the case of Killarney Park. After the park had already been classified as primitive, a decision arrived at without the holding of public hearings, the Minister requested individuals and groups to present their views on park boundary proposals. Thus the Minister was not required to justify his park classification, nor were the criteria upon which the classification was made ever discussed

in public. The Minister drew up a three plan choice. The public was asked to comment on its preferred boundary. The interesting point is that two options permitted the commercial exploitation of park resources, while the third did not. The first two proposals were detailed and fully linked to the stated planning guidelines. The third choice which would have prohibited commercial exploitation was not related to the planning guideline. Had the third plan been adopted, the economy of the nearby townships might have been affected.. However, the extremely vague presentation of the third option did not permit full public discussion of its planning implications, which creates some doubt as to the value of the entire procedure. In addition to the vague presentation of option three, it was also clear that local employment interests were very involved in the decision of setting park boundaries. This involvement would have been better assessed and balanced if it has been fully disclosed.

The so-called public input to help in the preparation of plans for the future of Lake Superior Provincial Park reveals the third weakness in discretionary hearings.

A forced choice questionnaire offered the reader the option of stating a preference for designating Lake Superior Park a natural environment (permitting industry) or a recreational park (usually around one thousand acres). The Minister circulated the questionnaire to a small number of people who

could make a "meaningful contribution". As the basic choice of classification was already decided before the public input (minimal though it was)was sought, it is doubtful what meaning could be given to the response.

Again in the case of Lake Superior Park, commercial exploitation was established in the Park and the Parks Branch were merely choosing between two approaches, neither of which would require industry to relocate.

A fourth instance of public input occurred in the case of Pinery Park. Again, a questionnaire response sought limited public input.

There are a number of very important questions implicit in the classification process but which are not available for public comment or discussion. For example, how will non-conforming uses within the park be treated? Does the parkland require controls on adjacent land use, for example, buffer zones? What degree of road or trail development is desirable? Again, what degree of recreation and tourism is desired? How many access points shall be provided and what sort of facilities should be provided at such points? What user capacity does the park have? Are there special area considerations regarding sports, fishing, wildlife, snowmobiles, motorboats, etcetera. What degree of fire protection does the park and the surrounding area require? Similiarly, is there

a need for the suppression of destructive insects and disease? Are there any plans to alter the water level by dam construction for hydro or other projects? Shall interpretation services be provided?

Clearly, public input guarantees nothing in the few occasions where a hearing has been granted. There has been no standard procedure and that which has been adopted to date - three, three hour meetings at which up to one hundred briefs and presentations have to be made, is not adequate. At present, public input is limited to providing planners with insights which may provide guidance for the future.

The Policing of Our Parks

The direct caretaking control of our parks rests in the hands of the district forester or park superintendent (s. 7 P.P.A.). He exercises authority given to him by a number of provincial Acts of Parliament: the most important of which, again, is the Provincial Parks Act. He is given all the power of an Ontario provincial policeman (s. 12). Recently, the Minister has called in the Ontario Provincial Police to provide regular patrols in some parks, because of policing difficulties.

The park officer may seize any vehicle or equipment (for example, a gun) in the possession of a person suspected of committing an offence. The vehicle or equipment must be returned

unless the person is convicted of the suspected offence and the judge orders confiscation (s. 13 P.P.A.). The person in charge of a park may dispose of lost, mislaid or abandoned property, unclaimed after three months (14(1)).

The person in charge may also open or close any road, trail or portage within the park, apart from those subject to the Highway Department (s. 15).

General policing powers are set out in Regulation 696 R.R.O. 1970 Vol. 4. Section 20(1) of the Act provides the provisions may be enforced by summary proceedings which may attract a fine up to $500 or conviction. Thus, the following provisions may be enforced by private prosecution, should this become necessary.

The provisions control the conduct of park users, as well as damage to plants, shrubs, buildings. Littering is controlled by the provisions and firelighting is permitted only in specified sites.

The regulations control the use and occupation of campsites and provide additional powers to stop, grant, or divert traffic in parks for safety purposes. Boats and aircrafts are also subject to the Minister's control. However, he has adopted a piecemeal approach by controlling or limiting boat use in designated parks, with the result that no general policy is apparent.

Snowmobiles are supposed to be used only in specially designated areas (s. 23(2)) Regulation 696, except where used for trapline access or supervision (s. 24(3)) Regulation 696. Another Act of Parliament, the Motorized Snow Vehicles Act R.S.O. 1970 c. 283 requires the owner to register his vehicle with the Department of Transport and display a conspicuous number plate.

The special regulations which apply to areas declared as fire districts under the Forest Fires Protection Act apply to provincial parks throughout the year. Hence, firelighting is prohibited except in specially provided fireplaces and the carrying and lighting of fireworks is prohibited (s. 2(b) Reg. 696).

Sports hunting is prohibited in designated provincial parks under the Game and Fish Act R.S.O. 1970. However, licence holders may hunt designated game on certain days between October and March in any provincial park which the Lieutenant Governor may specify. In fact, hunting is permitted in certain parks subject to Parks' Department control. Bounties are permitted for wolves but not bears, killed in provincial parks. (Wolf and Bear Bounty Act R.S.O. 1970, c. 500)

The caretaking effect of these various controls is designed to protect the park from possible damage from thoughtless or ignorant users. The beneficial result of the effort may be lost if means are not adopted to allow public participation in the control of park use.

Conclusion

1. Present user trends show large increases in the demands to use provincial parks.

2. Parkland is a scarce commodity.

3. The present classification system with two primitive, two wild river, six native reserve, sixty six recreational and thirty four multiple use (natural environment) parks, shows the overwhelming emphasis is on recreational and multiple use parks.

4. The interests which make demands on these latter classes are largely private although they might make representations on behalf of others. For example, a logging company would point to their employees' incomes and regional employment as a bargaining factor. A municipal planning authority would represent their demands on behalf of municipal rate payers.

5. The benefit of future generations is insecure as long as commercial exploitation is permitted to remain in provincial parks. At present, licences, leases and permits sanctioning exploitation must be subject to annual or bi-annual review by a licensing authority charged with assessing the operations at a public hearing against the criteria of environmental impact.

6. The power to classify or reclassify must be redefined in legal terms expressing a mandatory duty upon the Minister to classify parks according to the criteria of reasonableness and impartiality, as well as environmental impact. By this means, the private interests which bear on park development are opened to public scrutiny. Similiarly, disparate private, exploitive interests are brought into line with the interests of future generations.