



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

**Submission to the Standing Committee on Justice Hearing May 9, 2007
Re: Bill 198 Safeguarding and Sustaining Ontario's Water Act 2007**

The Canadian Environmental Law Association (CELA) is a public interest legal aid clinic with a mandate to represent low income Ontarians on environmental matters and to improve the Province's environmental laws and the public's access to environmental justice. CELA was founded in 1970 and worked since then to improve the sustainability of the protection Great Lakes through the protection of water quality and quantity. We worked to strengthen the original Great Lakes Charter in 1985, published studies on the threats to the sustainability of the Great Lakes, and have strived for decades to get a legal framework for water conservation in Ontario. Recently we served on two Advisory Panels that led to the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement. One Panel convened in 2002 by the Council of Great Lakes Governors and the Advisory Panel to the Ontario Ministry of Natural Resources that was able to assist Ontario's negotiators to turn around the first unsatisfactory drafts of the Agreement into an international Agreement that now bans large scale diversions of water from **all** of the Great Lakes Basin with a few exceptions.

CELA is very supportive of this Bill because we feel not only that it is long overdue but that its passage will be crucial to changing the culture of water wastage in North America and in the Great Lakes Region into a culture that protects and lives within our natural water budgets. The conservation programmes required by the Agreement being implemented into law in Bill 198 have the potential to go along way to **preventing** future water shortages and water conflicts.

There are a few things we would like to point out that are important about this legislation and make it imperative that we pass it now.

1. **To achieve full protection of the Great Lakes ecosystem.** Bill 198 protects the ground water portion of the Great Lakes for the first time. It is estimated that the groundwater portion of the ecosystem may be as large as Lake Michigan. Already we are finding that we are draining groundwater reserves within the basin and this is placing more stress on and demands for surface waters of the Great Lakes for communities considering growth. Both the federal *Boundary Waters Treaty of 1909* and the main Great Lakes *US Water Resources Development Act* omit protections for the vulnerable groundwater portion of the ecosystem.

2. **Political forces could still derail these efforts.** It is my observation that this agreement could be still be vulnerable to interests who would rather not see it passed. Most Great Lakes jurisdictions have worked hard to put it in place but at least one US State has not fully participated in the negotiations and maybe influenced to procrastinate. In the US the companion agreement the *Great Lakes Great Lakes–St Lawrence River Basin Water Resources Compact* must also pass Congress. Early passage of both agreements could be very important. Research shows that there will be growing political influence in the US Sunbelt areas where populations continue to shift even though the underground water supplies are being permanently depleted. Only one state Minnesota has passed implementing legislation. It is important for Ontario to follow suit so that the transboundary aspect of the commitments is established.
3. **Ontario needs to continue to lead by example.** Throughout this negotiation Ontario has been able to bring their considerable water management experience to the discussions. This is because they have one of the best systems in place in the Basin. The permit to take water regime has required tracking of all uses over 50,000 litres a volume far below any agreed to by the Parties to this Agreement. Once this Bill is passed Ontario's Premier, who is the current Chair of the Regional Body overseeing the implementation of the Agreement, can continue this leadership by starting the Province's work on important new obligations required by the Agreement. These include:
- establishing a baseline of current water use,
 - tracking cumulative use of Great Lakes waters including groundwater,
 - requirements to return water from large withdrawals back to the source watershed and track return flow,
 - provisions that discourage transfer between one Great Lake watershed to another Great Lake watershed with some exceptions,
 - the drafting of a conservation program ,
 - the collection and sharing of new water use data and,
 - development of a scientific strategy to address our knowledge gaps on such areas as the relationship between ground and surface water and the impacts of climate change and water shortages on the integrity of ecosystems.

We applaud the modernisation aspects of this Act that will allow the Director and the Lieutenant Governor in Council to address these new requirements and the addition of the Precautionary Principle in Bill 198 section 34.4(2).

Your Committee today has the difficult job of trying to balance what features of this Agreement to put into the changes to the Ontario Water Resources Act and what provisions to spell out in detail in regulations. Ontario has the right to have stricter provisions than those set out in the Agreement. Indeed, the geography of the Great

Lakes and past practices will mean that Ontario will have some special problems that they will need to address. Bill 198 is meant to give the Province the powers to implement the **existing** terms of the Agreement. Regulations that follow will help us deal with many of the strengthening provisions identified in submissions on this Bill and by staff. Indeed, the fifty members of the Advisory Panel on the Agreement have chosen to continue their involvement in discussions on these regulations and to continue to be active in the full implementation of this Act. Several Panel Members are here today. I am confident that the undertaking that our Panel have been given by the Deputy Minister of Natural Resources Kevin Wilson for input into the regulations will be honoured. CELA has just finished a report for Mr. Wilson on the precedent setting successes of this Advisory Panel. In the crucial period between 2004 and 2005 the Advisory Panel worked collaboratively with Ontario's negotiating team to influence the outcome. This went a long way to restoring public support for the Agreement. This report is to serve as a model for a workshop of the Ontario Public Service on new models for public consultation on May 18, 2007.

Suggestions we have made for additions to this Bill in our recent submission to the EBR are:

- 1. We recommend that the OWRA prescribe in the Act that a plain language Interpretive Manual be written and updated regularly to explain the intent, the provisions, implementation and timetables associated with the provisions of the Act implementing the Agreement.**
- 2. We support the new provisions of this act that allow the Minister to require that grandfathered water users (prior to the April 1961 commencement of the permit to take water system) to obtain a permit for any new or increased water takings. We ask that the Act make it explicit that the Director can require that any new permit be for the cumulative amount and not be limited to the increase. Giving the Minister these additional authorities and other discretionary powers will enhance our ability to track and understand our current use of water (which we are not able to do now). This will assist in establishing the baseline required in the Agreement and assist us in understanding cumulative and adverse impacts.**
- 3. We ask that the provisions of this Act explicitly mandate that a public website be created on the Agreement Provisions and the permit to take water system Province wide. This website should include data on the baseline of water use required by the Agreement, information on consumptive use and on return flow, permits by sector, cumulative impacts and other relevant scientific information as it becomes available and in a timely manner. This will build public understanding and support for water conservation and other programs.**

- 4. We recommend the immediate passage of this Act so that the important work of framing a conservation program in regulation can commence immediately. Early action by Ontario on a strong conservation plan could deflect future water conflicts and shortages within our Province and influence the other Great Lakes jurisdictions to follow our lead.**

- 5. Our Group supports the amendment to section 75 of the *Ontario Water Resources Act* ("OWRA"), to allow the Lieutenant Governor in Council to make regulations for water charges. A process is needed to assure these charges are adequate. We recommend:**
 - (a) The MOE and MNR immediately undertake a comprehensive and thorough review of their water management programmes with a view to assessing the actual costs required for implementing an effective water management programme in the province;**
 - (b) The Ministries expand their water management programme as necessary to ensure that they has the appropriate budget and staff to carry out their regulatory responsibilities; and**
 - (c) The MOE forthwith reassess the charges for water takings once it has expanded its water programme and undertake further assessments every three years thereafter.**

In conclusion we expect that Ontario will be considering and consulting on further strengthening provisions to be placed in regulation. These should include strengthened provisions discouraging Intra-basin transfer, lower thresholds for return flow in the PTTW program, provisions to control wastewater transfer from source water, a process and timetable for a comprehensive Province-wide water conservation program with mandatory targets for all sectors of users. All Ontario applicants requesting an exception should be required as a condition of their permit to have a water conservation plan.

Additionally, we ask that the Ontario law mandate that the five year program review and cumulative impacts assessment in the Agreement be linked to a parallel assessment of climate change impacts during that period. We were very concerned that one of the last minute changes to the Agreement made by US negotiators was to remove all but one reference to climate change. CELA recommends Ontario reassert it into this legislation by linking it to the five year review.

Respectfully submitted,
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