

Third Time Lucky as Great Lakes Protection Act is Finally Passed

By [Julie Abouchar](#), Partner and Certified Environmental Law Specialist, and [Nicole Petersen](#), Associate. © Willms & Shier Environmental Lawyers LLP.

October 16, 2015

After two earlier versions died on the order paper, the Ontario Legislature finally passed Bill 66, the latest iteration of the Great Lakes Protection Act, on October 7, 2015. Bill 66 passed Third Reading on October 7 and will take effect upon the day it receives Royal Assent.

The *Great Lakes Protection Act* provides a statutory home for Ontario's Great Lakes Strategy.¹ Ontario published the Great Lakes Strategy in 2012 after engagement with and feedback from Great Lakes experts, First Nations and Metis communities and other stakeholders.

The Act is designed "to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin," as well as "to create opportunities for individuals and communities to become involved" in such protection and restoration initiatives. In addition, the Act requires the Minister to set targets, establish monitoring and reporting programs and appoint the members of a new Great Lakes Guardians Council.

In practice, much of the responsibility for undertaking protection and restoration work may be delegated to municipalities and other local authorities.

The Bill received some criticism from the opposition because it failed to impose a ban on offshore wind turbines, gave the Minister the sole power to select the members of the influential Guardians' Council, and did not detail how any geographically-focused initiatives ("Initiatives") would be funded. Some opposition members raised the specter of the *Green Energy Act*, complaining that the Guardians' Council, in particular, could potentially "usurp municipal autonomy and burden local folks with red tape." Critics further find the broad discretionary power of the Minister to prescribe exemptions from the legislation to be disconcerting.

Great Lakes Strategy

A review of Ontario's Great Lakes Strategy must be undertaken before December 17, 2018, and at least every six years thereafter.² This review must include consideration of "cumulative stresses and impacts," the precautionary principal, and an adaptive management approach.

To date, the *Ontario Water Resources Act* is the only statute that requires consideration of cumulative adverse impacts (in connection with water transfers from a Great Lakes watershed). The Ministry of the Environment and Climate Change's ("MOECC") Statement of Environmental Values also requires that the MOECC consider cumulative environmental effects when making environmentally significant decisions.

¹ Government of Ontario, "Ontario's Great Lakes Strategy" (Queen's Printer for Ontario: 2012). Online at: <https://dr6j45jk9xcmk.cloudfront.net/documents/896/5-1-5-great-lakes-strategy-en.pdf>

² Ontario Bill 66, *Great Lakes Protection Act*, 2015 at ss 5 and 6. [GLPA]

New Geographically-focused Initiatives

Under Part V and VI of the Act, municipalities, local boards, conservation authorities, provincial ministries and agencies, and other prescribed public bodies may be required to develop and undertake Initiatives to achieve the ecological protection policies set out in the Schedules to the Act.

Initiatives will contain policies or recommendations for regulations. Official Plans, municipal by-laws and certain municipal actions will need to conform with designated policies.³ Certain provincial approvals will also need to be amended to conform with designated policies and to have regard to other policies.⁴

The Act requires that, prior to requesting an Initiative be developed, the Minister identify First Nations and Metis people with a historical relationship to the geographic area that will be affected by the Initiative, and may consult with them and with others at the Minister's discretion.

Great Lakes Guardians Council

Under Part II of the Act, a Great Lakes Guardians' Council is established to identify priorities for action, potential funding measures and partnership opportunities, facilitate information sharing, and advise the Minister of the Environment and Climate Change on any matters relating to the purposes of the Act. The Minister may invite representatives of municipalities, First Nations and Métis communities, conservation authorities, environment groups, the scientific community and the industrial, agricultural, recreational and tourism sectors to attend meetings of the Great Lakes Guardians' Council.

Setting Targets

The Minister may set qualitative or quantitative targets to achieve one or more purposes of the Act. While this power is otherwise discretionary, the Minister must, within two years of the Act coming into force, set a target to assist in the reduction of algae blooms in all or part of the Great Lakes-St. Lawrence River Basin. In addition, the Minister of Natural Resources and Forestry may establish targets to prevent the net loss of wetlands in the basin.

Once a target has been set, the Minister must prepare a plan setting out the actions to be taken to achieve that target. The Minister may also direct public bodies to provide information to assist in establishing a target, dividing a target between the areas to which it applies and/or determining the actions required to achieve it.

When establishing a target (in addition to certain other actions under the Act) the Minister must consider any Traditional Knowledge that has been offered by Aboriginal people.⁵ Traditional Knowledge is not defined in the Act but is generally understood to be the body of knowledge held by indigenous people about the environment, cultural practices, and use of the land.

Monitoring and Reporting

The Minister will establish and maintain monitoring and reporting programs on ecological conditions in the lakes. These programs are to address: harmful pollutants (including microplastics), water quality, hydrology, biological communities, the impacts of climate change and any other conditions prescribed by regulation.⁶

³ GLPA at ss 21 and 22.

⁴ GLPA at ss 23 and 24.

⁵ GLPA at ss 10(a), 12(2)(iii), and 28.

⁶ GLPA at s 7.

Every three years, the Minister must prepare a progress report describing the recent actions taken and the initiatives planned or implemented, any targets set, the results of monitoring and reporting programs, and a description of any new or emerging threats.⁷

Enforcement

The Act provides for fines for non compliance. An individual who is guilty of a first offence under the Act is liable, on conviction, to a fine of up to \$25,000 for each day (or part of a day) on which the offence occurs or continues, while a corporation is liable to a fine of up to \$50,000 a day. Upon subsequent convictions, fines jump to a maximum of \$50,000 per day for individuals and \$100,000 per day for corporations.⁸

Conclusions

The *Great Lakes Protection Act* sets out a framework for further actions to protect the Great Lakes. It will be interesting to watch as the Ministry directs Initiatives for the protection of the Great Lakes. The Ministry will play a similar role as with the development of Source Protection Plans – providing guidance to local governments to develop binding policies on a geographic basis.

***Julie Abouchar**, BSc., LL.B., LL.M., is a partner at Willms & Shier Environmental Lawyers LLP in Toronto and a member of the firm's Northern Team. Julie is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She has been named annually by her peers to Best Lawyers in Canada, Environmental Law and Energy Regulatory Law and rated Repeatedly Recommended in the Canadian Legal Expert Directory, Aboriginal Law and Environmental Law. She can be reached at 416-862-4836 or by e-mail at jabouchar@willmsshier.com.*

***Nicole Petersen**, B.A., J.D., is an associate lawyer at Willms & Shier Environmental Lawyers LLP in Toronto and a member of the firm's Northern Team. Nicole has a broad environmental law, environmental litigation, Aboriginal law and energy and natural resources law practice. She can be reached at 416-642-4872 or by e-mail at npetersen@willmsshier.com.*

The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.

The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.

⁷ GLPA at s 8.

⁸ GLPA at ss 26(8)-(9).