

What is the Water Management Mandate of the Trent-Severn Waterway?

CEWF's understanding as of December 2013

Some Coalition Members have recently expressed an interest in knowing the specific 'mandate' of the TSW. The following is a summary of CEWF's understanding.

Mandate, Legislation and Jurisdiction:

In establishing the Panel on the Future of the Trent-Severn Waterway, which subsequently released a report entitled "*It's All About the Water*", the following statement was made, suggesting that there is no explicit legal 'mandate' for the TSW:

There are many issues and challenges associated with the legislative and legal ownership framework for the waterway. No federal legislation ascribes a mandate for the canals. The associated regulations are outdated and generally not enforced. In geographic terms, the waterway is not legally defined. Ownership of the waterway and thus jurisdiction is uncertain while many traditional activities carried out by Parks Canada appear to fall constitutionally within the purview of the province. In other areas of Ontario these same activities have been delegated to the municipalities and conservation authorities. A number of regulatory administrative processes are duplicated by the various jurisdictions. This creates overlap and inconsistencies that do not meet goals and provide poor service to citizens.

(Reference: <http://www.tswpanel.ca/english/scope.asp>)

The Panel's final report (page 2) noted that Parks Canada's current day (2008) responsibilities far exceed the original 'mandate' for navigation on the canal:

The jurisdictional, governance and regulatory framework of the waterway does not appear to be well suited to its emerging roles or indeed to its current needs. The range of responsibilities far exceeds the 'mandate' of Parks Canada, the Agency that manages the waterway. The Historic Canals Regulations are outdated and largely unenforceable as Parks Canada's primary management tool. There is also uncertainty about the legal and jurisdictional responsibilities of Parks Canada compared to those of the province and adjoining municipalities, particularly in land management activities.

(Reference: <http://www.tswpanel.ca/english/report.asp>)

Lacking a specific 'mandate' the TSW is nonetheless required to conform to a number of Regulations such as Transport Canada's Canal Regulations and the separate Historic Canal Regulations. The Canal Regulations for example include the following 'draught limits': (1) Bay of Quinte to lower entrance Lock 19: 8.0 feet; (2) Lower entrance Lock 19 to Swift Rapids: 6.0 feet; (3) Swift Rapids and Big Chute Marine Railways: 4.0 feet; (4) Big Chute to Georgian Bay: 6.0 feet; (5) Lindsay to Lake Scugog 4.0 feet. These draught limits are presumably the basis for navigation charts of the waterway. (Note: the Canal Regulations have not been updated to reflect changes such as the removal of the Swift Rapids Marine Railway) and so some of the draught limits no longer apply.

(References: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c.1564/FullText.html
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-93-220/FullText.html>)

Water Management Goals and Objectives:

The TSW has extensive documentation on water management and their water management program on the Parks Canada website.

(Reference: <http://www.pc.gc.ca/lhn-nhs/on/trentsevern/plan.aspx>)

In addition, following the release of the Panel Report, Parks Canada updated their water management program goals as follows:

Parks Canada will seek to manage levels and flows of water throughout the Trent and Severn River watersheds with the objective of achieving an appropriate balance among the following broad goals by taking an integrated approach to water management at the watershed level:

- *Reducing threats to public safety and negative impacts to public and private infrastructure from over-bank flooding, extreme water level fluctuations and high and low volume flows;*
- *Contributing to the health of Canadians by managing the availability of water to be purified for residents, cities and towns throughout the watershed;*
- *Providing for safe boating and navigation along the marked navigation channels of the Trent-Severn Waterway;*
- *Conserving aquatic habitats and species;*
- *Facilitating the enjoyment of the water throughout the watersheds by shoreline residents and visitors; and*
- *Allowing hydroelectric generation plants to operate at plant capacity and meet demand for renewable energy insofar as is possible supporting the optimization of renewable energy through Hydro electric generation;*
- *Communicate to residents and visitors about the Water Management Program in order to build greater understanding and support.*

Memorandum of Understanding (MOU) with Ontario (2011):

A five-year non-legally-binding MOU with Ontario was signed by the federal Minister of the Environment in July 2011. This is silent on the TSW water management mandate other than to acknowledge the need for collaborative planning at the watershed level and agreement by both parties to participate in Parks Canada's Water Management Advisory Council. It is understood that any mandate changes resulting from activities undertaken under the MOU will require a provincial Order in Council.

(Reference: <http://cewf.typepad.com/MOU2011.pdf>)

2012 Evaluation of Parks Canada Through Waterway Management:

In 2012 Park's Canada's Office of Internal Audit and Evaluation released an evaluation of "Through Waterways" management, including the Trent-Severn Waterway. This went into some detail with regard to Parks Canada's 'core mandate' and 'non-mandate' obligations. The following is abstracted from the report (emphasis added).

The Constitution Act (1867) places –'canals' and 'rivers and lake improvements' under the jurisdiction of the federal government. ... The originally provincially-owned bridges, dams, and locks in the TSW were transferred to the federal government by federal and provincial Orders-in-Council in 1905 and 1906 along with legal responsibility in the Trent and Severn watershed basins.

The [Parks Canada] Agency operates waterways with three objectives: as National Historic Sites of Canada ...; as places set aside for the enjoyment of Canadians, contributing to the Visitor Experience Program; and as operations, providing a variety of public benefits unrelated to the Agency's core mandate (e.g., flood control, provision of water, the maintenance of municipal and provincial transportation infrastructure in the form of bridges, and the provision of hydro power in Ontario)....

Ensuring public safety and avoidance of damage to property is a widely shared objective in waterway management both within the Agency and among stakeholders and interested parties despite their other, often divergent, interests. In fact, this is generally acknowledged as the first priority of waterway management ahead even of PCA's mandate objectives (i.e. protecting the historic aspects of waterways and specific cultural resources in addition to providing a satisfying and meaningful visitor experience).

Short of full divestiture of the waterway program, the Agency has little alternative but to engage in activities contributing to non-mandate public benefits of waterway operations and would face significant opposition if it tried to limit or cease allowing the various activities. The option of divestiture of waterway operations has been examined but never formally pursued not least because of the practicalities involved in finding a willing partner/organization able to manage the waterways in a manner that respects both the Agency's mandate and the various non-mandate obligations.

(Reference: 2012 Evaluation of Through-Waterway Management:
http://www.pc.gc.ca/docs/pc/rpts/rve-par/77/index_e.asp)

Parks Canada Agency (PCA) Responsibilities - 2013 Gull River Flood Review:

The October 2013 Review by AECOM of the 2013 Gull River Flood contained a section on PCA Responsibilities relating to the management of water levels and flows and especially flooding. These touch upon the 'mandate' to some extent.

Nine sets of documents were reviewed:

- Lakes and Rivers Improvement Act & Guide (LRIA);
- Emergency Management and Civil protection Act (EMCPA);
- Municipal Act;
- Conservation Authorities Act
- Parks Canada Agency Act – Historic Canals Regulations;
- Parks Canada Guiding Principles and Operational Policies;
- Shoreline Policy and Regulation: Review and Recommendations
- TSW Water Management Program
- The County of Haliburton Emergency Response Plan.

Among the conclusions it was noted that:

- The LRIA does not bind the Crown;
- There is a general lack of clear responsibilities related to emergency management other than that MNR is responsible for declaring an emergency situation;
- PCA is solely responsible for water level management and is responsible for minimizing flooding - which may include flooding a given area with the intent of preventing greater incremental consequences elsewhere;
- PCA is responsible for maintaining the structural integrity of its structures.

(Reference: <http://www.pc.gc.ca/eng/lhn-nhs/on/trentsevern/plan/plan12.aspx>)

Summary and Conclusions:

Although the TSW often cites its 'mandate' as justification for particular aspects of its water management practices, it would appear that there is no single document that contains a legally-binding mandate for the TSW or for its water management activities.

Instead there is extensive documentation, from legal requirements, to 'non-mandate obligations', to operational guidelines, that touch upon aspects of TSW's responsibilities and which appear to be referred to by Parks Canada for convenience as the 'mandate'.

The Coalition proposes that the TSW consider articulating its broad mandate in a single public document, possibly as an activity under the MOU with Ontario.