

## **Tools at the disposal of municipalities to protect lakes and rivers (a summary of the conference)**

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### Introduction

The Summit on the Protection of the Gatineau Valley Lakes and Rivers is that much more important and current, as we are presently contending with a crisis situation with the proliferation of blue algae, about which numerous questions have been asked and solutions sought. We can ask ourselves what municipalities can do about it and what tools can they use to protect the lakes and rivers.

### The splintering of decision-making authority

The main difficulty confronting us when the topic of municipal powers relating to lakes and rivers is discussed is that the decision-making authority in our federal system is shared between four levels of government, i.e., the federal, provincial, regional (RCM) and the local (local municipalities) governments.

By using the electronic interactive consultation tool, it was possible to establish at the beginning of the conference that participants could be roughly divided into four equal groups as to which level of government should have priority when it comes to protecting waterways. This lack of consensus mirrors reality in our society where all levels of government play a role and derive support from within the population for the actions that they take.

### The federal government

As far as the federal government is concerned, it can intervene and take action against other stakeholders essentially by virtue of the constitutional powers it has in the area of navigation and fisheries. In *St-Denis de Brompton vs. Filteau*, the Court of Appeal struck down a bylaw regulating boats on the ground that it was a matter of federal jurisdiction. The federal authority to intervene to protect the fisheries when a waterway is polluted was recognized by the Superior Court in the *Attorney General of Canada vs. Vernon Houses*. Needless to say, the federal government's capacity to intervene is likely to affect the municipality's ability to issue bylaws in this particular domain.

### The provincial government

The provincial government has very broad-based powers with respect to its territory (including water) under the Canadian Constitution, which allows it to intervene to protect the environment.

One must understand that the RCMs and local municipalities (cities, towns, village and parish municipalities) only have powers delegated by the provincial government under the terms of numerous pieces of legislation, the most important of which are the *Cities and Towns Act*, the *Municipal Code*, the *Municipal Powers Act* and the *Land Use Planning and Development Act*.

These powers are "loaned" to the municipalities and can be taken back at any time by the provincial government. In fact, local and regional municipalities are the doing of the provincial government. It created them and can abolish them, as it did with numerous municipalities during the forced amalgamation episode. The Supreme Court in *Baie D'Urfé* confirmed the provincial government does have the power to wipe out municipalities as it sees fit. Of course, this severely limits the ability of municipal officials to act autonomously when protecting lakes and rivers. In short, they only have the powers the provincial government opted not to retain and decided to delegate to them.

### Local and regional municipalities

Solutions are difficult to come by when the issue is protecting the environment and water. On the one hand, the provincial government exercises its powers directly on the citizens in certain cases. For example, under the *Environment Quality Act*, a certificate of authorization must be obtained from the Minister in certain cases when any work must be done in a lake or river. That is one instance where provincial powers come directly to bear on citizens who must get a certificate.

However, Regulations adopted under that Act exempt people in certain cases from having to obtain a certificate when "specific authorization for such work, construction or projects has been given by a municipality pursuant to a zoning, subdivision or construction by-law". Of course, the local municipalities are the ones that are issuing these authorizations. This is an example where provincial legislation "adapts" to local decisions in the area of zoning, construction or subdivisions. Moreover, in other cases, the provincial government adopts specific standards (e.g., the Regulation respecting wastewater disposal systems for isolated dwellings) but leaves the monitoring and enforcement of these standards up to the municipalities.

However, the main tools at the disposal of municipalities are described in some provincial legislation that gives them specific powers. Subsections 113(16) and 115 (4) of the *Land Use Planning and Development Act* confer on municipalities the powers to prevent any structure from being built near waterways and lakes, among others, for environmental considerations. It is, of course, an important tool. Furthermore, the new *Municipal Powers Act* consolidates and groups together numerous legislative provisions in the area of the environment, safety and nuisances that are part of the arsenal of the local municipality.

The same act gives regional municipalities specific powers to enact bylaws governing waterways.

One must not lose sight of section 2 of the *Municipal Powers Act* which must produce a broad and liberal interpretation of the legislation in order to give full effect to the powers extended to the municipalities. Though this legislation has only been in force since January 2006, it does provide hope that the courts will respectfully deal with the powers granted for the purpose of implementing measures to protect lakes and rivers.

### Conclusion

Aside from the regulatory, inspection and monitoring powers which regional and local municipalities may have, the protection of lakes and rivers will always depend on how much

citizens are aware of the importance of protecting this heritage. In this sense, the Summit is a special meeting place where participants can reflect on the issue and draw attention to the need for urgent action. Although the legal considerations of this particular matter are important, they cannot and will not be enough on their own to ensure the future health of our lakes and rivers.