

# Lake Simcoe Protection Act Committee Hearing Highlights

## Campaign Lake Simcoe

November 17, 2008

From Hansard

INNISFIL DISTRICT ASSOCIATION

**Mr. Don Avery:** No member of the public should have to endure what I and the members of my association have had to endure over the past five years. Lawsuits outstanding against our members, lawyers and other critics of the Big Bay Point projects now total over \$90 million. This act and other statutes like the Planning Act or the Environmental Assessment Act are meaningless unless residents can speak out openly against projects that threaten the environment.

CAMPAIGN LAKE SIMCOE

**Ms. Claire Malcolmson:**

**Mr. Peter Tabuns:** Claire, thanks very much for that presentation. One of the things you noted was a distance between the recommendations of the scientific advisory committee and the direction that was taken in the drafting of this bill. If the scientific advisory committee recommendations aren't heeded, aren't implemented, do you believe that the bill would then still be strong enough to protect the lake?

**Ms. Claire Malcolmson:** No, because the province appointed a scientific advisory committee to bring together all of the reports. Basically, a lot of scientific data has been collected by the MOE, the MNR and the conservation authority, to name a few, over the last 30 years, and someone, some group, needed to bring it together to make sense of it and to provide some recommendations.

They set those recommendations based on the goal of reducing phosphorus in the lake to a target that was going to be sustainable. The target right now is 75 tonnes a year that can go into Lake Simcoe. It turns out that it's more like 40 that we need to actually achieve in order for the lake to survive.

So we are going to need some very drastic changes to the way we do business, the way we build to our shorelines and the way we treat them around the lake. That was what the scientific advisory committee was charged with establishing, and to disregard their recommendations goes against the intent of the act: to protect the ecological health of the watershed.

## EARTHROOTS

**Mr. Josh Garfinkel:** ... there are activities that are allowed to take place within the Greenbelt that completely compromise the most important objectives of the plan and undermine the very notion of a protected area. The fact that golf courses and aggregate operations are permitted in ecologically sensitive areas of the greenbelt is a fundamental problem that is completely at odds with the most integral goals of this highly lauded act. Since the Lake Simcoe Protection Act is modelled on acclaimed laws that already exist in Ontario, notably the Niagara Escarpment plan and the Oak Ridges Moraine Conservation Act, it is imperative that our government learn from the mistakes and omissions from these pieces of legislation.

Hydrological integrity is emphasized in the Oak Ridges Moraine conservation plan as an overriding priority, yet water-intensive operations such as aggregates and golf courses are allowed to take place within many parts of this key land form. Earthroots and Ecojustice have recently completed reports entitled Ontario's Water Hazard, a case study that examines golf courses on the Oak Ridges Moraine and how they are routinely allowed to flout rules surrounding the Ministry of the Environment's permit-to-take-water process. With the inordinate number of golf courses in ecologically sensitive watersheds and the Ministry of the Environment's lack of enforcement, it comes as no surprise that places such as Newmarket and Aurora have been experiencing declining groundwater levels for years—for over 10 years, specifically.

To bring this back to the Lake Simcoe protection plan, one of the key tenets is to protect the ecological and hydrological integrity of a protected area. Let's think about what these terms mean. This sounds impressive, and it appears that the government is going in the right direction toward affording strong protection. However, due to the ambiguity of the terms "ecological" and "hydrological integrity," it is unclear how these critical concepts will hold up when put to the test. It is absolutely essential that the government address the urgent need to protect this vital watershed and prohibit any new golf courses or any new aggregate operations in this protected area. In the case of expanding an existing golf course, it is essential that the Ministry of the Environment conduct cumulative impact assessments, environmental impact assessments and regularly monitor water levels.

**Dr. Anne Golden:** I'm speaking more or less for me. I am an active member of the West Oro Ratepayers' Association, but I'm actually speaking as someone who has been on Lake Simcoe since I was three years old.

This is very important, this next point. Ensure that shoreline policy is even-handed. It is not even-handed now. If my family and my neighbours cannot build a cement dock—I can tell you, we can't move a rock without permission from provincial and federal authorities—but a

developer can carve a 30-acre hole in the shoreline for 1,000 marina slips, that is not even-handed.

This leads me to comment on Big Bay Point, as an example and for itself. This particular development is offensive. It's offensive due to its scale—thousands of fractional ownership units—and the enormous basin that's going to be created for the most massive marina on a lake already overloaded with motorboats.

If the numbers that the last deputant gave you are correct, you're talking a 15% or 20% increase in the number of boats from a single development. It's not right. This is inconsistent with any plan to save the lake.

Given all the efforts that you're making through legislation so enlightened, why would the government grandfather this development and allow this particular application to be an exception to the standards you are now establishing under the Lake Simcoe protection plan?

I'm hoping that you will make the effective date of the Lake Simcoe protection plan December 2007—I can't stress to you enough; this is really why I'm here—because if you don't, you're going to be undermining your plan before you start. It must have an early effective date and a period of transition. I have heard developers refer to the land north of the greenbelt as the Wild West of development. Without clear transition rules, without stopping the grandfathering of projects that lack final permits or regulatory approvals, you're going to be undermining your whole purpose.

What's happening right now in Big Bay Point—as you know, there's the case before the OMB. If this, what really amounts to a SLAPP suit, is successful—you're all aware of this, I'm hoping—you will basically destroy citizen participation at this level. So you need to do something that makes the Lake Simcoe act impervious to the appeals of developers who have endless supplies of money—endless supplies.

...I've had a lot of experience with research and generally good planning. This government is doing the right thing. I'm here to say, please don't undermine yourselves by not enforcing it and implementing it in the right way. That is my message: Provide adequate funding, an enforcement regime that tracks and monitors to make sure that the strategy is implemented.

GEORGIAN COLLEGE/MOON POINT HOMEOWNERS ASSOCIATION

**Ms. Mary O'Farrell-Bowers:**

At a personal and local level, we as taxpayers of the province of Ontario and the township of Oro-Medonte, and as local neighbourhood associations supported by the larger community and

renowned environmentalists, should not have to give up three years of our life to fight a development that had been approved at both the municipal and county council level on one of the last remaining undeveloped parcels of land on Lake Simcoe. As mentioned in the introduction, this pristine piece of natural heritage abuts onto a provincially significant wetland and experts believe is the home of the Jefferson salamander, a species at risk.

At a personal level, as a Moon Point homeowners' representative who signed two of the three appeals, I should not have to check with my lawyer and I should not have to check with my insurance company to establish if I will lose my home and other assets my husband and I have worked hard for 25 years to develop. I should not be concerned that I will lose my home. I should not be faced with constant threats from lawyers who have big pockets when going through an Ontario Municipal Board hearing.

As taxpayers in the province of Ontario, we should not have to organize silent auctions and community fundraisers and seek additional donations to cover the costs incurred because our belief, supported by environmentalists and Environmental Defence Canada, that this type of irresponsible, unnecessary and totally non-environmentally sound development was approved. What we need is a law that will ensure that local, municipal and provincial governments have the teeth to stop this very disturbing and destructive pattern of unacceptable development on our beautiful Lake Simcoe. There is such an urgent need for the Lake Simcoe Protection Act, one that will be a model for other jurisdictions in the future, one that the residents in the province of Ontario will truly support and, finally, one that will stop the degradation of Lake Simcoe and its watershed.

If I were to push it a bit further, I hope that after you successfully pass this legislation, you'll start to consider SLAPP legislation because, having gone through this terribly brutal process, it is unacceptable that people in the province of Ontario have to deal with this.

**Mr. Peter Tabuns:** Mary, thanks for the presentation. I understand that the Lake Simcoe conservation authority supported the Moon Point development.

**Ms. Mary O'Farrell-Bowers:** Yes.

**Mr. Peter Tabuns:** Are you concerned about having more citizen representation on governing bodies here to ensure that those sorts of things don't happen?

**Ms. Mary O'Farrell-Bowers:** Very concerned, yes. I think it would be a great idea, and-

**Mr. Peter Tabuns:** No, no. Go ahead.

**Ms. Mary O'Farrell-Bowers:** I won't go there. I don't know who's in the room.

**Mr. Peter Tabuns:** Well, it doesn't matter if they're in the room or not. It's on the record.

**Ms. Mary O'Farrell-Bowers:** I think a lot of people are pressured by developers and their lawyers, and that could include conservation authorities, and our previous speaker spoke about local municipal governments.

#### KIDS FOR TURTLES ENVIRONMENTAL EDUCATION

**Mr. Bob Bowles:** There are now more than 43 species at risk that live in the Lake Simcoe watershed, and you can expect that number to increase every year. Since I've been doing environmental inventories, spotted turtles are now an endangered species-very hard to find. These species are declining rapidly, so the species-at-risk list will increase in the next few years. It's very important that those habitats are protected for those species.

**Mrs. Julia Munro:** I have a couple of questions with regard to the material you gave us. In the bullet point about shoreline protection, you indicate that we have very few natural shoreline areas. Can you give us any idea what that is? Are we talking 10%, 50%, 80%? Do you have any idea?

**Mr. Bob Bowles:** We went through this in the OMB hearing for Moon Point at that time. That was even before the Big Bay Point development. I'd hate to give you a figure, Ms. Munro, but we did study a satellite study at that time, and we are talking about 15% of the shoreline being natural-less than 15% now, more like 10%.

#### BUILDING INDUSTRY AND LAND DEVELOPMENT ASSOCIATION

**Mr. Joe Vaccaro:** ... the membership of the scientific committee should include representatives from the scientific practitioner community, such as aquatic scientists, along with scientific expertise to address methods of restoration, better engineering of storm water and sewage treatment or planning and building sustainable communities. Instead, the scientific focus is restricted to identification and quantification of problems.

**Mr. Peter Tabuns:** My understanding is that in most cases we're not talking about projects-I'll take Big Bay Point, that's got all its approvals, environmental and otherwise. If it doesn't have all its approvals, then I don't see any reason for us not to act-in fact, make sure it doesn't go forward. Are you saying that a project that has partial approvals should be treated as if it's got its permits and all the licenses and certificates it needs to go ahead?

**Mr. Joe Vaccaro:** I would ultimately leave that decision to the government, but at the end of the day, the reality is that it's on a go-forward basis. The Premier has commented in the media and to reporters, indicating that projects that are currently in the pipeline-obviously, there will have to be some sort of distinct cut-off of what that means-where significant investment has been made and, more importantly, where end users will be affected, have to be considered. Traditionally, it has been on a go-forward basis.

## LAKE SIMCOE REGION CONSERVATION AUTHORITY

### **Ms. Virginia Hackson and Ms. Gayle Wood**

**Mr. Peter Tabuns:** Thank you for coming and presenting today. It's my understanding that your conservation authority supported the development at Moon Point and didn't oppose Big Bay Point. We've had a number of deputants today talking about Big Bay Point-I think a 100-acre clear-cut and 30 acres of artificial lake that has been dug out, and people consistently saying that what happened there is inconsistent with, and in fact undermines, the act that's under consideration. Do you agree with the earlier deputants, and if you do, why didn't you take the steps necessary to protect Lake Simcoe?

**Ms. Gayle Wood:** Madam Chair, would you permit me, as chief administrative officer, to answer that question? I'd like to clarify the conservation authority's role under the Planning Act. We are one of many commenting agencies on municipal developments. The ultimate approval authorities are the municipalities themselves. We concurred that both the Moon Point and the Big Bay Point developments did have significant impacts on the environment, and substantially had fisheries biologists, our aquatic biologists, our terrestrial biologists, our engineers, etc. take a look at the developments and try to mitigate them to the best of our ability, based on the policy and legislation that existed. The problem, in our opinion, is that we needed stronger policy and stronger legislation on which the authority would base their comments in order to take a look at the developments. We think the Lake Simcoe Protection Act and plan will afford that opportunity, and if it comes into effect, we will be very pleased to comment based on a strong plan and policy.

**Mr. Peter Tabuns:** Given your commentary, would you support a coming into effect date of December 2007 as a way of protecting the lake?

**Ms. Gayle Wood:** That's an area that is tricky, and the authority has quite frankly not taken a position on that, the reason being that you, as the provincial government, have the very difficult task of trying to reconcile the Places to Grow Act and the Lake Simcoe Protection Act. What we, as an agency, have done for you is take a look at the lake-we did this two years ago under the intergovernmental growth plan for Simcoe county. We were asked to take a look at projecting development into your settlement areas around Lake Simcoe to 2030, and to tell you, if that development was build to 2030, would there indeed be an impact on Lake Simcoe? The answer is yes-we've said that very clearly-there would be a \$163-million impact to the lake that would need to be restored.

So you've got the tough decision to determine what's going to be the balance between the growth plan and the act. Our position is to be the scientific agency and advise you, on various scenarios you wish to consider, what's going to be the impact of that development on the lake.

**Mr. Peter Tabuns:** I know it won't be your decision. That's why I asked for your advice.

**Ms. Gayle Wood:** The conservation authority has not taken a position on that issue.

**Mr. Kevin Daniel Flynn:** Thank you for your presentation, and thanks for the hospitality ....

[Re. governance] At the end of the day, everybody on any side of this issue would be looking for some form of accountability-the buck has to stop somewhere on this. My feeling is that the buck should stop with the minister. I don't know if you feel the same way or not.

**Ms. Gayle Wood:** Absolutely, the buck has got to stop with the minister when it comes to the Lake Simcoe Protection Act, and I think the authority has supported that.

What we're saying is that, under section 27, because we would now be subject to three pieces of legislation, that in essence means we have three different boards of directors to deal with, with various pieces of processes that deal with Lake Simcoe.

We believe that there can be a more efficient way of dealing with that, and we think the more efficient way is to amend the Conservation Authorities Act to allow us to have one board of directors to deal with all the issues related to the Lake Simcoe Protection Act, the Conservation Authorities Act and the Clean Water Act. Thank you.

#### LADIES OF THE LAKE

**Ms. Annabel Slaight:** The government demonstrated its appreciation of this [inappropriate developments in progress] danger by announcing the interim phosphorus regulation, December 6, 2007. If this act and plan are really going to help Lake Simcoe, can there be any question that this act and plan must also affect development proposals now in the pipeline and that all of these developments should also meet the rigorous environmental and development standards we hope will be outlined in the plan?

In the past, government has tried to go it alone to help Lake Simcoe with LSEMS, led by the conservation authority. The complete public frustration about being shut out except for time-to-time consultations is probably what got us to the point where we are today, at one table, talking about helping Lake Simcoe. However, what a waste of public energy. Harnessing public energy so that it helps the lake and makes good things happen is so much better than it is being spent railing against bureaucracy and backward-looking thinking.

....Some have suggested that leadership of the lake's protection should be local; namely, the conservation authority which was leader of LSEMS. The conservation authority, we all know, has accomplished many things, but this idea of the conservation authority as the leader will simply not work, the reason being that we need something fresh that empowers all stakeholders so we can truly come together. We should be led and supported by the highest government with the most power to influence, and that is the province.

**The text below is not from Hansard (strangely there is no Hansard for November 19<sup>th</sup>). These are notes from written deputations.**

## **ENVIRONMENTAL DEFENCE**

**David Donnelly:** "...Yet many of the citizens who have been integral to the movement to create this Bill are fearful of speaking out to protect the Lake they love. Strategic Lawsuits Against Public Participation ("SLAPP" suits) are a serious and real threat to continued citizen led advocacy to protect the Lake. It would be a cruel and perverse outcome to launch new rights and responsibilities to protect the Lake in a community paralyzed by the sight of their neighbours having to pay millions in cost awards and legal fees.

Without action, our legacy to our children will be a Lake choked with weeds, a shoreline paved beyond a sustainable limit, advocates silenced and a growing list of species at risk that stands at an all-time high of at least 32 species."

## **RESCUE LAKE SIMCOE COALITION**

**Jon Johnson:** "To the extent that the Lake Simcoe Protection Plan is comprised of policies that are "designated policies", the Plan will achieve the purpose and objectives of the Act through providing effective protection to Lake Simcoe and its watershed because these policies will have legal effect. However, to the extent that the Plan is comprised of policies that are not designated, the Plan will be meaningless because these policies will not have legal effect....

We do not doubt the Government's sincerity in bringing the *Lake Simcoe Protection Act* forward and in its stated desire to provide meaningful protection to Lake Simcoe and the Lake Simcoe watershed. However, power to cherry pick protection through designating or not designating policies in the Plan leaves the Government vulnerable to pressure from interest groups whose interests are economic rather than ecological.

We respectfully submit that the distinction between "designated policies" and other policies should be eliminated and that all policies in the Lake Simcoe Protection Plan should be given legal effect in the manner that "designated policies" are given legal effect in the current bill. Alternatively, we propose that the Act require that all policies in the Plan that are relevant to furthering the purpose of the Act..."

**Sources:**

[http://www.ontla.on.ca/web/committee-proceedings/committee\\_transcripts\\_details.do?Date=2008-11-17&ParlCommID=8856&BillID=2043&Business=99%2C+Lake+Simcoe+Protection+Act%2C+2008&locale=en#P395\\_105444](http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?Date=2008-11-17&ParlCommID=8856&BillID=2043&Business=99%2C+Lake+Simcoe+Protection+Act%2C+2008&locale=en#P395_105444)

[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2043&detailPage=bills\\_detail\\_debates](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2043&detailPage=bills_detail_debates)