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Brief submitted to

Impact Assessment Agency of Canada and Indigenous partners

Leading the Regional Assessment of the St. Lawrence River Area

By :

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March 29, 2024

The Importance of Recognizing the Rights of the St-Lawrence River to Address the Lack of Governance that Affects the Health of the River

The St. Lawrence River as a subject of rights

Introduction

The [International Observatory on Nature's Rights](#) (IONR) is a non-profit organization founded in 2018, whose mission is to promote the rights of Nature in Quebec, Canada and internationally. Composed of a team made up mainly of women, we work through three axes: research, legal interventions and a global approach. We firmly believe in collaboration, partnerships and the sharing of expertise, which is why we work through an extended network of experts and partners in various territories. The first river to receive legal personhood in Canada, the Magpie River is recognized with legal status thanks to IONR successfully participating in the draft of the mirror resolutions. IONR is now leading the St-Lawrence River Alliance to preserve the St. Lawrence watershed ecosystems via the recognition of its rights. The Assembly of First Nations Quebec-Labrador has taken measures to formally recognize the legal personhood of the River. This is widely seen as a gesture of self-determination regarding the protection of the River, which has been part of the traditional life and navigation of the First Nations since time immemorial.

Background

For nearly three decades, numerous organizations have been working together to restore, conserve and enhance the St. Lawrence River, particularly through the St. Lawrence Action Plan. While there have been tangible improvements in the environmental health of the river in the last decade, the river remains a vulnerable ecosystem subject to multiple pressures for both historic and current reasons.

Historic examples are the building of the Seaway which has fundamentally altered the watershed system. Current examples are demographic pressure, artificialization of banks, loss of wetlands, loss of habitat, native species vulnerable and threatened to extinction, pollution through contaminants (plastic microbeads, personal care and pharmaceutical products, PFAS, heavy metals and other toxic compounds, etc.). These pollutants have been left untreated and ended up in the water column or in the sediments, as well as fertilizers, pesticides, etc., leading to eutrophication of receiving water bodies.

All of this continued degradation points to a clear lack of regulation and enforcement and compliance. If we are to create meaningful change, it will require us to improve our relationship with the river and find governing models that will propose better ways of working together to support it. Therefore, it is important that the Regional Assessment Working Group consider the outcomes of their work together, as part of this Draft Terms of Reference.

Context

On July 29, 2020, the Mohawk Council of Kahnawà:ke (MCK) requested the Minister of the Environment to conduct a Regional Assessment of the St. Lawrence River, in accordance with sections 93 to 103 of the *Impact Assessment Act* (IAA). IONR is grateful for the Minister's decision to proceed with this request. It is clear that there are many impacts to MCK's constitutionally protected Aboriginal rights along the St. Lawrence River as a result of historic and systemic activities: building of the seaway, increased commercial shipping traffic and resulting habitat loss, fragmentation, sedimentation

and nutrient loading and pollution. It is the cumulative effects of these impacts that are of concern for MCK and as stated in their letter to the Minister, and the goal is “improving the environment beyond that status quo by directly addressing these effects, particularly those associated with the historic industrialization of the region at a time when environmental concerns and Indigenous rights were not considered.”

Within this context we respectfully provide the following comments on the Draft Terms of Reference for the Regional Assessment.

Draft Terms of Reference: Propose, Objectives and Scope

IONR understands that the Draft Terms of Reference for the St. Lawrence River Regional Assessment (RA) aims to gain a deeper insight into the state of the river (within the assessment area) by establishing baseline and targeted conditions, braided from Indigenous knowledge and modern Western science, to better evaluate the effects of activities as well as identify strategies to achieve environmental and social gains.

This goal will be achieved through the following objectives:

- a) Provide regional context for the assessment area.
- b) Provide an understanding of current positive and adverse effects of targeted physical activities and complementary activities on environmental, health, social, cultural and economic assessment priorities.
- c) Provide an understanding of cumulative effects in the region
- d) Identify information and knowledge gaps and opportunities to address them.
- e) Identify and recommend mitigation measures, follow up measures and other approaches including priority interventions and enhancement measures that would benefit assessment priorities.
- f) Describe how the findings and recommendations of the Regional Assessment could inform future planning and permitting processes for targeted physical activities in a manner that fosters sustainability and restoration and enhances the effectiveness and efficiency of their impact assessments.
- g) Gender-based Analysis Plus

The Draft Terms of Reference define the scope as: a) environment; b) health, social, cultural and economic conditions; and c) changes specific to Indigenous peoples, including the rights and interests of Indigenous peoples, the usage of lands for the exercise of rights and traditional activities, within the assessment area and study zone(s), and important components that support the exercise of rights and traditional activities including stewardship rights and responsibilities.

IONR understands the result of this work to be the final Regional Assessment Report which will include a set of non-binding recommendations for levels of government and decision-making bodies to consider. We also understand that the establishment of baseline and targeted conditions, will help reduce burden from collecting information for project-level assessments and inform scoping and that ultimately, the Regional Assessment will enable more effective and efficient future project assessments and other decision-making processes.

Further to the above, and with the outcome of this process in mind, the IONR provides the following four recommendations to the Draft Terms of Reference for the Regional Assessment of the St. Lawrence River.

IONR's Four Recommendations for the Draft Terms of Reference

Recommendation #1

THAT the TOR be amended to include the review, assessment and consideration of new governance models, such as legal personhood for the St. Lawrence River, as part of the identified *strategies for social gains, opportunities to fill gaps and supporting the exercising of rights and traditional activities for First Nations.*

The Purpose, Objective and Scope of the Regional Assessment captures many important goals, including an assessment of cumulative effects as requested by MCK. However, there remains ambiguity associated with *strategies for social gains, opportunities to fill gaps, and supporting the exercising of rights and traditional activities for First Nations for effective and future decision making processes.* It is our concern that the status quo will continue after the completion of the Final Regional Assessment Report if structural change does not transpire from the extensive work of this critical process. Therefore, we recommend that these terms within the Terms of Reference be further elaborated upon, to stave off ongoing and systemic issues into the future.

IONR recommends that **governance models** be included in the Terms of Reference under *social gains, opportunities to fill gaps and supporting the exercising of rights and traditional activities for First Nations.* We request this to ensure confidence from the public at the outset of this process that meaningful outcomes will transpire and positive change will successfully result after the work of the Regional Assessment Final Report is finalized. Loose policy recommendations from the Final Regional Assessment Report will not alter the status quo and inform effective and future decision making processes. We need to improve the state of regulation, oversight and compliance that leads to many of the ongoing and systemic issues that the river faces today.

To do this, IONR recommends that the **recognition of legal personhood** be assessed through this work as a governance model of the St. Lawrence River watershed through federal legislation, within the boundaries of Canada's jurisdiction. The IONR's recommendation to adopt the St. Lawrence River Bill of Rights is a clear call to action. This bill will serve as a guiding vision for the preservation of the river through a holistic approach. This recommendation could be incorporated within Section 3.2 subsection (d) under the second bullet and (e) under the first and second bullets as well as Section 4.1 subsection (b) and (c) within the Draft Terms of Reference.

The Regional Assessment can serve as a stepping stone towards a better future for the river. Our recommendation is bolstered by the fact that there is already a movement underway! First of all, the recognition of legal personhood for the St. Lawrence River was supported by the Assembly of First Nations Quebec-Labrador (AFNQL) on April 19, 2023 through [Resolution No. 04-2023](#). Chief Ghislain Picard announced this news to the UN General Assembly during the interactive dialogue organized by the Harmony with Nature Chapter on World Mother Earth Day, and it was included in the report of the Secretary General of the United Nations. Secondly, The St. Lawrence River Alliance, a coalition of many stakeholders, is committed to the adoption of a law recognizing the St. Lawrence River as a legal entity. The Alliance supported the drafted bills that were presented before the House of Commons of the Federal Parliament and the National Assembly of Quebec. This Alliance consists of 20 riparian municipalities, 12 NGOs, two university research centres, La *Fédération de travailleurs et travailleuses du Québec (FTQ)* and many national and international citizens (totalling almost 3 000 persons). Finally, we already have legal precedence in Quebec, Canada for rivers having legal personhood: the Magpie River/Mutehekau shipu in February 2021.

Further to the ground swell of support for this first recommendation, there is existing jurisprudence to support legal personhood for the St. Lawrence River in the *Act to affirm the collective nature of water resources and to promote better governance of water and associated environments* (hereinafter, the "Water Act") (Quebec 2009). Through the *Water Act*, the province explicitly recognizes the human right to water (art 2) on Quebec territory. To reinforce the importance of the human right to a healthy environment, the Quebec Parliament amended the *Charter of Human Rights and Freedoms*¹ through the 2006 *Sustainable Development Act* by adding section 46.1, which states that "[e]very person has the right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law." It is worth noting that the legislative affirmation of this right lies at the heart of the Quebec Water Strategy 2018-2030. Combined, this established jurisprudence supports IONR's recommendation to consider new governance models, including legal personhood. In other words, the conditions are highly favourable.

First Nations engagement within this Regional Assessment is paramount to the success of the process. The recognition of the rights of Nature through a legal pluralism context such as the one in Quebec and in Canada, favours the recognition of Indigenous legal traditions, because the legal norms enshrined in these traditions are based on a symbiotic relationship with the territory. In this way, this recognition ensures that First Nations' right to self-determination and bio-cultural rights are respected.

Recommendation # 2:

IONR strongly advises the Working Advisory Committee to serve as an example for initiating a River Guardian Council. This council must operationalize the model of the legal personhood of the St. Lawrence River through a two-eyed seeing approach. This approach will support more democratic decision-making processes for the benefit of the River.

Recognizing the St-Lawrence River as a legal person is a legal fiction that would allow the river - like corporations, states and people - to be recognized as having certain rights and to be represented before agencies, courts and tribunals. These guardians would carry the voice of the River and have at their heart the interests of the river as a living environment. Like parents or Board of Directors who look after the best interests of their children, or companies, the guardians would look after the best interests of the River. This Working Group is already on this path as identified in section 5 of the Draft Terms of Reference.

Around the world, the appointment of guardians varies according to the situation or the country. For example, in Colombia, where the Atrato River was recognized as a legal subject, the guardians came from the riparian environment communities, the scientific community and even from the State. In other places, such as New Zealand, the custodians were primarily from the Maori community as well as the New Zealand government. As in the case of the St. Lawrence River in Quebec and in Canada, given the size of the river and the major challenges it faces, several guardians could be considered involving people from various backgrounds, such as riverside communities, Indigenous Peoples, municipalities, environmental organizations and the public sector, which much of the Regional Assessment Working Group already consists of! Therefore, IONR recommends that the processes of the Working Group be assessed and recorded in an ongoing manner, so that they can segway into a working form of governance for the river, once legal personhood is established.

¹ The Charter is a quasi-constitutional document, derived from an ordinary statute but containing sections that prevent the Charter from being derogated by an ordinary statute, unless the statute makes an express derogation. This is a "notwithstanding" clause.

Supported by a committee of experts, these guardians would be responsible, among other matters, for asserting the rights of the river, whether through concerted action, participating in decision-making for projects that may affect its rights or defending before the courts the rights and interests of the St. Lawrence River. In this way, the guardians can claim that the river is being harmed and, consequently, that the person or company that caused the harm could be held responsible for making amends.

In summary, the model of the proposed working Group as identified in the Draft Terms of reference provides an excellent template for the creation of the River Guardians and should be approached through the course of this Regional Assessment with this end vision in mind.

Recommendation #3

That the Expert Committee that supports the Working Group provide information on the advantages of setting up a water tribunal to help manage water-related conflicts.

Many established River Guardians are supported by independent scientific water committees to ensure that the decision-making process with regards to water governance is informed by the latest scientific advancements. This ensures that all projects of development that could affect the river are informed by the work of this committee through a transparent and accountable mechanism for future decisions. Once again, this is the same approach that the Regional Assessment Working Group is already taking, further affirming the established alignment between these processes.

Additionally, many established River Guardians across the world, work in collaboration with First Nations communities that hold ancestral wisdom and knowledge about the complexity of the ecosystem through *two eyed seeing*. Once again, this mirrors the approach that the Regional Assessment Terms of Reference currently proposes. It is for these reasons that we see strong parallels between both the Regional Assessment model and the legal personhood governance model.

If Recommendation #1 and #2 are considered and incorporated into the Terms of Reference, the hope is that External Consultants and Advisory Groups (as reference on Page 14) could evolve through the work of the regional Assessment into an expert scientific water committee and even Water Tribunal that would review and advise River Guardians in relation to development projects on the river once legal personhood is obtained.

If the pursuit of legal personhood is obtained, which reflects genuine change from the status quo, and is supported by First Nations engaged and leading this Regional Assessment, it will enormously benefit from this current process. IONR encourages staff to therefore consider ways of making this advancement possible within the Draft Terms of Reference.

Recommendation #4

That the Draft Terms of Reference be amended to Include integrated watershed management as an identifiable term.

For many years, the St-Lawrence River has been reduced by Canadians to the status of a waterway, a natural resource, ignoring its ecosystem functions and the reality that it is first and foremost a living environment. In fact, the use of the term "resource" for water reinforces the perception of this vital element as a mere factor of production that satisfies the various needs of human beings. Water is an essential element that sustains life in all its forms and is not simply a tool to benefit agriculture/agriculture, industry and the domestic sector.

It seems clear that in order to improve the health of the river, there must be accountability as well as compromise and commitment on the part of the various actors and users of the water. For this reason, integrated management as a defined term within the Draft Terms of reference, would allow us to consider the cumulative impact of all anthropogenic activities on the St. Lawrence which is essential for the preservation of the entire ecosystem. Cumulative effects were a driving force in the creation of the Regional Assessment, and cumulative effects are the objective and guiding light behind integrated watershed management. Therefore, by including integrated watershed management as a defined term, it would expand upon and reinforce the MCK's core reason for requesting this process. This would also support expanding the social and cultural activities on the list of *non-exhaustive targeted physical activities and complementary activities*.

The application of integrated watershed management concepts will have to play a greater role in our future protection of the St. Lawrence ecosystem, which will truly reconcile and balance economic, social and environmental issues. Structural change beyond the status quo means leaning away from the current anthropocentric approach to an ecocentric approach to adapt to the challenges of the twenty-first century. This evolution is occurring around the world towards the recognition of water as not only a human right and a natural *resource*, but also as a *living environment*. Quebec and Canada have been inspired by the movements across the globe, such as the cases of New Zealand, Colombia, Spain, United States, India, Ecuador and Australia, which have recognized the rights of rivers and natural entities in general. Integrated watershed management is the function process behind making this structural change and upholds an ecocentric value system that considers human and environmental interactions.

Ecocentrism is inspired by Indigenous traditions and is the basis for recognizing the rights of Nature, which is why it is not surprising that the AFNQL supports the legal personhood of the St. Lawrence River. Further to this, John Borrows states: "Our treaties are to last as long as the sun shines, the river flows, and the grass grows. If we do not take care of our relationship to the sun, air, water, and plants, we are not going to be around much longer. However, if we view ourselves as fellow citizens with rock, water, plants, and animals, we will realize that our treaties are not only between the Crown and Anishinaabe people. Our treaties are actually with the natural world that surrounds us. They are a covenant with the earth, reminding us to live in ecocentric rather than ethnocentric ways."² From this point of view, all other species and ecosystems are also entitled to respect for their lives, as they also possess intrinsic dignity.³

² Our Long Struggle for Home: The Ipperwash Story, On Point Press: Toronto, 2022.

³ Espinosa Gonzalez, A. (2012). La justicia ambiental, hacia la igualdad en el disfrute del derecho a un ambiente sano. *Universitas: Revista de Filosofía, Derecho y Política*, (16), p. 53.

Conclusion

Meaningful change is possible through the promising work of this greatly needed Regional Assessment. As demonstrated through this submission, this Regional Assessment process can serve as a launch pad for transforming the river from an *object* to a *subject* of law through the recognition of *sui generis* legal personality. This recognition would attribute the river the right to protection, conservation, restoration and respect for its vital cycles⁴. It would advance decades of work that is not moving the needle and uphold Indigenous values towards ecocentrism that is critically needed to protect and conserve the St. Lawrence River.

MCK has requested that future impact assessments should strive to enhance the environment at the regional scale, and respond to the historic impacts to the rights and interests of the Mohawks of Kahnawà:ke which have already been incurred. It would become a part of a national trend, as shown in the courts in many nations (Colombia, Spain, Germany, India, Bangladesh, Peru, Argentina and the Inter-American Court of Human Rights)⁵ that have recognized the legal personhood and rights of Rivers. Indigenous communities around the world have strengthened this movement by also sanctioning declarations on elements of Nature as legal subjects.

In North America, there are several such ordinances: one passed by the Innu Community of Ekuanitshit in Quebec, the T̄silhqot'in *Nation* concerning the Fraser/Sturgeon River in Canada, the National Assembly of First-Nations (Quebec-Labrador) concerning the St-Lawrence River, and in the United States the White Earth Band of Chippewa, the Yurok Tribe, the Passamaquoddy Tribe, the Nez Perce Tribe and the Menominee Tribe. These communities have passed resolutions to recognize ecosystem rights following their cultural traditions⁶.

The movement, influenced by the Nature-centered epistemology of many Indigenous peoples, has been followed by many municipalities around the world that have recognized rights to Nature through various legal instruments such as constitutions, as was the case of Mexico City, resolutions, as was the case for the Regional County Municipality of Minganie in Quebec, Canada, but also in the cities of Santa Monica, Crestone and San Francisco in the United States.

This movement demonstrates that the time has come to take decisive action to protect collective rights and the rights of future human beings and more than human generations. It is time for Quebec and Canada to transform the structures and systems that are causing climate change and environmental degradation. The recognition of water as a living environment is already enshrined in the new Quebec legislation, therefore the subjectivization of Nature appears to be a very relevant step in the right direction.

The introduction of the eco-centered paradigm in a pluralistic legal system as Canada promises meaningful change from the *status quo*. Especially in the context of the recognition of the Mutehekau Shipu/Magpie River as a legal person by the Innu council of Ekuanitshit and the Regional County of Minganie and the recognition of the St-Lawrence river as a legal person by the Assembly of First Nations, Quebec-Labrador in 2023 (res.2023-004).⁷ Hence, we consider the conditions are

⁴ During spring in Ecuador, nothing is built near the River to respect flooding.

⁵ As for example, the Constitutional Court in Colombia declared the Atrato River as a subject of law in 2017 (Judgment No. T-622-16, November 10, 2016, paras. 9.27 to 9.3), India declared the same for the Ganges and the Yamuna River and Bangladesh granted legal rights to all of its rivers in 2020. It should be noted that in an advisory opinion, the Inter-American Court of Human Rights also recognized the intrinsic value of Nature and thus a legal interest separate from its benefit to humanity. In *Advisory Opinion OC-23/17*, issued in November 2017, the Inter-American Court of Human Rights emphasized that, as an autonomous right, environmental law protects the environment as a legal interest in itself, regardless of the benefit it provides to humanity: In this regard, the Court noted a trend in the judgments of constitutional courts of many countries and in their constitutions that recognize a legal personality for Nature (para. 62).

⁶ The Innu of Ekuanitshit granted legal personhood and rights to the Mutehekau Shipu/Magpie River, first case in Canada : <http://files.harmonywithnatureun.org/uploads/upload1072.pdf>.

⁷ Vega Cardenas, Y., & Mestokosho, U. (2023). Recognizing the Legal Personhood of the Magpie River/Mutehekau Shipu in Canada. Dans Y. Vega Cardenas, & D. Turp, *A Legal Personality for the St.Lawrence River and other Rivers of the World* (pp. 113-164). Montreal: JFD.

extremely favorable to take the step towards recognizing the St. Lawrence River as a legal subject with rights by the Federal government.

IONR RECOMMENDATIONS

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