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GREAT LAKES LAW: THE ROLE OF THE LEGAL INSTITUTE OF THE GREAT LAKES AT THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

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I. INTRODUCTION

The Legal Institute of the Great Lakes (LIGL) at the University of Toledo College of Law is a research and educational center dedicated to the study of legal issues of particular importance to the Great Lakes region. While still in its infancy, the initial mission of the LIGL is to assure greater awareness of Great Lakes issues by the region's legal community. Several months after LIGL was formed and publicized, several law firms, all located in different shoreline cities, announced their intention to practice "Great Lakes Law." Is there such a thing?

II. THE DEVELOPMENT OF GREAT LAKES LAW

Unquestionably there is a body of law unique to the Great Lakes. A significant portion of the findings, decisions, and recommendations of the International Joint Commission, since its inception in 1909, has been concentrated in the Great Lakes region.¹ The various agreements, accords, charters, and compacts entered into since World War II, all bearing "Great Lakes" in their titles or preambles, represent a broad range of themes,² if not exactly personifying our usual notion of laws and statutes. Specific provisions pertaining to the Great Lakes are

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1. Barry G. Rabe & Janet B. Zimmerman, *Cross-Media Environmental Integration in the Great Lakes*, 22 ENVTL. L. 253, 260 (1992). The International Joint Commission, which has been in operation since the 1909 Boundary Waters Treaty, is given by its charter great potential to ensure water quality on a region-wide basis. *Id.* at 260.

2. See, e.g., Council of Great Lakes Governors, The Great Lakes Toxic Substances Control Agreement (1988); Great Lakes Critical Programs Act of 1990, Pub. L. No. 101-595, 104 Stat. 3000 (amending 33 U.S.C. § 1268); Great Lakes Water Quality Agreement of 1972, Apr. 15, 1972, U.S.-Can., 23 U.S.T. 301; Great Lakes Water Quality Agreement of 1978, Nov. 22, 1978, U.S.-Can., 30 U.S.T. 1383; Treaty Relating to Boundary Waters and Boundary Questions, Jan. 11, 1909, U.S.-Gr.Brit. (for Can.), 36 Stat. 2448.

scattered throughout the U.S. Code, including mainstay laws like the Clean Water Act,³ the Clean Air Act,⁴ the Rivers and Harbors Act,⁵ and various Water Development Acts.

An even larger body of law superficially has no special relationship to the Great Lakes, but is significantly rooted there. This observation is based on the historic and current character of the entire Great Lakes region as an industrial, agricultural, and transportation heartland. Laws governing employment relationships, environmental concerns, modes of inland transportation, water rights, and trade with Canada, have had their genesis in the Great Lakes region and continue to be influenced by what happens there.

During the past decade, there has been a growing number of American law review symposia devoted to the Great Lakes. Not surprisingly most of these have focused on environmental and natural resource issues. Articles on U.S.-Canadian relations, which have particular focus on the Great Lakes, enlarge the list.⁶ Furthermore, in the Spring of 1993, a new law review, the *Buffalo Environmental Law Journal*, began publication at the University at Buffalo School of Law. This review focuses specifically on issues of concern to the Great Lakes region of the United States and Canada.

While LIGL's descriptive brochure does not refer to the term "Great Lakes Law," it is arguable that considerable benefits might be derived from spreading and developing the concept.

III. LAWYERS AND THE GREAT LAKES

One explanation for the relative absence of the practicing bar from involvement in Great Lakes' affairs is that most of the law unique to the region is public law, i.e., understandings between nations, states, and provinces. Considerable portions of these laws are founded on the best efforts and good will of the parties, leaving such action as takes place inconsistent and difficult to evaluate. Even offshoots with potential bite, like Remedial Action Plans, fail to capture the serious attention of private interests because of inadequate financing and the absence of specific penalties. These observations are not intended to suggest a new fusillade of legislated rules, but something else.

3. 33 U.S.C. §§ 1251-1376 (1988).

4. 42 U.S.C. §§ 7401-7642 (1988).

5. 33 U.S.C. §§ 402-403 (1988).

6. See, e.g., George Francis, *Binational Cooperation for Great Lakes Water Quality: A Framework for the Groundwater Connection*, 65 CHI.-KENT L. REV. 359 (1989).

Some public law pertaining to the Great Lakes appears to have been largely reactive. The first Great Lakes Water Quality Agreement was a long-overdue response to eutrophied lakes.⁷ The Great Lakes Charter⁸ was arguably a reaction to *Sporhase v. Nebraska*.⁹ But most of the public agreements have a more forward looking, purposeful aspect. For example, the Great Lakes Water Quality Agreement¹⁰ and amendments¹¹ discard rigid adherence to artificial boundaries and more pragmatically advance ideas for dealing with entire ecological systems.

The legal profession possesses many of the best trained minds and influential people in the United States. If it is critical that the Great Lakes governments act cooperatively, responsibly, and quickly to resolve the region's concerns and reignite its growth potential, then the area's legal minds must become more aware, more involved, less adversarial, and more cooperative. All sectors of the profession ought to be concerned about the region's dwindling representation in the U.S. House of Representatives. While we tussle amongst ourselves over matters like the Great Lakes Water Quality Initiative,¹² other interests may engineer schemes to divert Great Lakes water with catastrophic

7. See generally Jennifer Woodward, *International Pollution Control: The United States and Canada--The International Joint Commission*, 9 N.Y.L. SCH. J. INT'L & COMP. L. 325 (1988).

8. Water Resources Development Act of 1986, Pub. L. No. 99-662, § 1109, 100 Stat. 4082, 4231 (1986). The Council of Great Lakes Governors (COGS) negotiated the agreement on the common issues to be addressed by a regional effort. The final step in the process, obtaining the consent of Congress, was accomplished by amending the charter to the Water Resources Development Act of 1986:

No water shall be diverted from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion is approved by the governor of each of the Great Lakes States.

See Peter V. MacAvoy, *The Great Lakes Charter: Toward a Basinwide Strategy for Managing the Great Lakes*, 18 CASE W. RES. L. REV. 49 (1986).

9. 458 U.S. 941 (1982). In *Sporhase*, the Court reversed a decision of the Nebraska Supreme Court and held that ground water is an article of commerce and therefore subject to regulation by Congress.

10. Great Lakes Water Quality Agreement of 1972, Apr. 15, 1972, U.S.-Can., 23 U.S.T. 301.

11. Great Lakes Water Quality Agreement of 1978, Nov. 22, 1978, U.S.-Can., 30 U.S.T. 1383; 1987 Protocol Amending the Great Lakes Water Quality Agreement of 1978, Nov. 18, 1987, U.S.-Can., Hein's No. KAV 255.

12. See Great Lakes Critical Programs Act, Pub. L. No. 101-596, 104 Stat. 3000 (1990) (amending 33 U.S.C. § 1268).

consequences to the region's well-being. Great Lakes states should not engage in self-defeating competition to attract a few new jobs, at the cost of opportunities for long-term, region-wide sustainable growth.

The Great Lakes region needs to build on the structure that is already present. The legal profession needs to be part of creative leaps forward, not regressive sprawls backward. The profession can be especially useful in stimulating public discourse on such challenging notions as regional licensing and regional economic development.¹³ The profession can advocate resolution rather than delay, foster compromise rather than litigation, and offer innovative ideas rather than legal complexities.

IV. CONCLUSION

LIGL will incorporate many Canadian ideas into its activities. In certain areas, such as conflict resolution and sustainable development, the Canadians appear far more advanced in discourse and experience. With LIGL's presence already a factor at the Toledo College of Law, an early next step will be the offering of courses particularly relevant to the Great Lakes. There are also enormous possibilities for using these courses to examine public policy issues in a manner rarely possible.

To foster an increased awareness of the environmental importance of the Great Lakes region, organizations such as LIGL will play an innovative role. By sponsoring conferences, distributing newsletters, supporting visiting scholars, and eventually assisting in policy-making and conflict resolution, LIGL promises to be a valuable research and educational center.

13. See Rabe & Zimmerman, *supra* note 1, at 260. "In recent years, there has been evidence of a revival of interest in regional approaches to environmental governance...." *Id.* The growing recognition of transboundary and intermedia pollution and a declining environmental leadership role played by the U.S. Federal branch provide greater impetus for regionalism in the Great Lakes Basin.