
1-1-2020

Conclusion by the Authors

Dr. Kathryn Bryk Friedman

Dr. Irena F. Creed

Follow this and additional works at: <https://scholarlycommons.law.case.edu/cuslj>

 Part of the [Transnational Law Commons](#)

Recommended Citation

Dr. Kathryn Bryk Friedman and Dr. Irena F. Creed, *Conclusion by the Authors*, 45 Can.-U.S. L.J. 48 (2021)
Available at: <https://scholarlycommons.law.case.edu/cuslj/vol45/iss1/8>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Canada-United States Law Journal by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

CONCLUSION BY THE AUTHORS

Speakers: Dr. Kathryn Bryk Friedman & Dr. Irena F. Creed

MR. PETRAS: Well, we're now at that point. I think we've managed to cover the questions from our attendees, at least the subject matter of those questions, and the categories. And it's now time to turn this discussion back to the two people who brought us here with their sub-federal, binational approach to harmful algal blooms, and to get their responses, at least preliminarily, to the dialogue that we've had today. So, I am going to turn it back to Irena and Kathryn.

DR. CREED: Thanks, Stephen, very much. Can you hear me?

MR. PETRAS: Yes.

DR. CREED: Great. So, I'm going first because I wanted to basically provide the highlights of what I heard, and how I think it might influence our proposal for a sub-national agreement. I have four slides to share, and I'll start immediately and then Kate will come through with an overall summary.

What we heard today was, there is basically an expression of the Great Lakes community needs. We need to share data and predictive tools to get ahead of the curve, and we need a hammer to ensure that data-gathering and sharing is done. We also need to share regulatory approaches, and this is at the local to regional levels—how do jurisdictions reduce nonpoint sources and have hotspots? And we also need monitoring, modelling, and prediction approaches across the entire Great Lakes, but also a localized strategy to deal with the diversity of causal pathways that create some of these harmful algal blooms.

In terms of the science needs, what I heard was that we need to consider climate change and invasive species in a bigger way. Land-to-water pathways under a changing climate are increasing the risk of these algal blooms. But we also need to know that the Great Lakes is a very heterogeneous entity, and we need to recognize that the Great Lakes may suffer from too little phosphorus, for example, in the open waters, but too much phosphorus in the nearshore areas.

We also heard the need to integrate diverse knowledges, and in particular Indigenous and non-Indigenous knowledges into any framework, whether it's a binational, sub-national, or local.

We need convergent approaches, and I am thinking of convergence, here, in the spirit of the National Science Foundation in the United States—one of their *10 [Big] Ideas* report—which is a bringing together of all different disciplines to create new approaches and new ways of addressing problems. So, I say that we need convergent approaches to understand the causal pathways, integrating evolving and emerging data science and models into any proposed framework.

What was very interesting, in particular to me, was the need for place-based strategies. A one-size-fits-all approach clearly will not work because the causal pathways are complex. And given this, and the different areas of a given lake as well as among lakes, you need to think, you know, about frameworks for developing these, or criteria for developing these types of place-based strategies. And how would we then, in turn, include them into a framework?

And, finally, the idea that we all have limited resources, particularly given the day that we're living in with the pandemic, and climate change, and all those other demands. Can we identify hotspots or have priority areas of concern, so that we can focus on controlling point and nonpoint sources to these areas of concern?

In terms of the policy needs, what I heard repeatedly was that there are many regulatory instruments. And some may argue that some are strong, where others feel that they could be improved, but I still maintain that we need to harmonize the regulatory instruments at different jurisdictional levels.

Next, we need to have innovative and agile policies to reflect advancing science. And here lies the question of, what kind of framework lends itself most to being able to be nimble and responsive to these advancing science developments?

And then, finally, we need incentive programs. Someone once told me that, in any given problem, ten percent of the solution is provided by science, and ninety percent is about human behavior, and how you affect that change on the ground. And so, people talked about the need of how you change behavior in managing this harmful algal bloom wicked problem. So, I think we need to consider more robustly the incentive programs to support evidence-based policies for strong on the ground actions.

In my final slide, I want to just kind of revisit the question that we started with: do we need a new sub-national agreement, perhaps? I heard arguments that the binational agreements are important—and by this I mean at the federal level—because it allows us to focus on shared objectives that bring stability and resilience to the two countries working together, and I fully agree with that.

I also heard that Annex 4 is a sub-national agreement for western Lake Erie. And the question would be, is it more agile than a federal-federal approach, and I think everybody would agree that it is. But then I think the question then becomes, can the sub-national agreement devise methods that are more effective in dealing with HABs? How do we get resources for science, monitoring, implementation, and both the effectiveness and efficiency of compliance monitoring to achieve the goals? How do we deal with power differentials? And how can we incorporate—basically, getting down there to Willie Sutton and going to where the money is—how can we incorporate the economics into that compliance?

And, throughout all of this, we always need to consider both the upstream and downstream factors for what contributes to harmful algal blooms.

Next, I want, you know, when Diane was speaking about the enabling conditions for either an improved or expanded sub-national agreement, are these in place? She referred to it as a coalition. A coalition needs a common culture, a coalition needs shared goals, and a coalition needs members with leadership and budgetary resources to help them get the job done.

And then finally, a recurring theme that I think, to me, is perhaps the most interesting takeaway that I got today goes back to Willie Sutton—you go to where the fertilizer is. You go to where the power is. And where the power is, in this case, is largely in agriculture. Farmers are the ones who have to deal with the end-of-pipe consequences, but there are much larger sectors, with the food and energy sectors, that play a role. And Todd spoke about that.

So, while many regulatory elements already exist, they are not working optimally to reduce the risk of the wicked problem of HABs. And I still wonder, and would like to hear Kate's comments, if a modified or expanded sub-national agreement may help reduce the risk of HABs. In part, because it may bring the marketplace, in terms of the food and energy sectors, to the table, and they absolutely need to be part of the solution.

Kate, I turn it over to your thoughts now.

DR. FRIEDMAN: Thank you. I am neither as organized nor as brilliant as Irena.

(Laughter.)

I have no slides to provide. I wrote my comments down on plain old yellow legal pads. Very, very briefly, I can't thank you all enough. I am in awe of your expertise, and your comments, and your insights, all of which both of us, obviously, have taken dutiful notes on and will incorporate to the extent possible and practical into our paper.

One of the really key points that I heard is, you know, a sub-federal agreement would have to be a real value-add. Tracking the Great Lakes Water Quality Agreement is not going, really, to add anything. So, the collective, you know, aspirational 40%—I haven't talked to Irena about this—but in my view is out.

That being said, with regard to the comments about really focusing on enforcement and accountability. On the one hand, while I get that, and in the paper we will elevate that to a different place. You know, Howard, your point about it really being a political problem leaves me a little depressed, right?

(Laughter.)

I don't know, even if there were that value-add, and this magically came together, if there is no political will to implement, that's a real problem. So, I have to really, sort of, process that.

And, really, several folks commented on this, and it's sort of the tension—and something that Irena and I have grappled with—the tension between the solutions being very much place-based, right? Like very much place-based, and we get that. But wondering if there is a role, right? So, I heard—and Irena provided some of this feedback—I heard, you know, information sharing. I heard maybe, you know, science. I heard best practice, right? I'm not aware that you all get together on, you know, an ongoing basis and share that way. I don't know. I mean obviously, there are professional conferences and things like that, but I just wonder if that might be a role. And, again, clearly we wouldn't have a compact for something like that, but maybe there is something there. So, Irena and I will process all of your thoughtful feedback and comments and insights. And I just really want to thank you all for your participation. It's been terrific.

MR. PETRAS: Thank you, Kathryn, and thank you, Irena. I would like to say that we're right on schedule. I have one minute to wrap up.

But, I think it's true, if you put a lot of good people into a room, even if it's virtual, and you focus them on a problem, hopefully solutions will arise. And I think that's what's happened today. You know, this is a big issue, there are a lot of complicating factors to it. It's different across the Great Lakes, it's a huge area, it's 22% of the world's surface fresh water, and it's probably not one-size-fits-all.

But we had a lot of brain power today looking at the issue, and for that, the Canada-U.S. Law Institute is very grateful.

I'd like to say on behalf of our co-chairs, Jim Blanchard and Jim Peterson—Jim Peterson, former Minister of International Trade for Canada—as well as myself, as the U.S. national director and my counterpart, Chi Carmody, the Canadian national director, and all the support staff here, Eric Siler, [Martin], as well as Clare, for all their help in doing this. Thank you very much to all our panelists. We had a fabulous group of panelists. You all did a good job. Thanks for your hard work and reading the report, commenting on it, and giving some direction to our two authors. We hope that this is the beginning of a solution, that things are going to get better, that harmful algal blooms will be solved.

And with that, at this time, I'd like to adjourn this symposium and hope that we are going to have some healthy waters in the Great Lakes in the years to come.

Thank you again, everyone.