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ONTARIO ENVIRONMENTAL PROTECTION ACT ANNOTATED

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Release No. 2, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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This text clearly explains the intentions and effects of almost every section of the *Environmental Protection Act* (EPA), its regulations, and the *Environmental Bill of Rights, 1993*. Annotations of more than 3,000 reported and unreported cases with expert commentary and analysis are included. This text includes: all regulations made under the *Environmental Protection Act* (EPA) and the *Environmental Bill of Rights, 1993*; the purpose and effect of the EPA and the *Environmental Bill of Rights, 1993* and their place in the overall legislative scheme; the penalty for any infraction; a convenient catalogue of reported and unreported cases from both the courts and administrative tribunals; and a Table of Cases to facilitate research.

What's New in this Update:

This release features updates to the caselaw in Chapter 1 (Ontario Environmental Protection Act – Introduction; General Provisions), Chapter 3 (Part II – General Provisions), Chapter 4 (Part II.1 – Environmental Compliance Approvals), Chapter 5 (Part II.2 – Registrations), Chapter 8 (Part V – Waste Management), Chapter 16 (Part X – Spills), Chapter 19 (Part XIII – Appeal to Tribunal), Chapter 22 (Part XV.1 – Records of Site), and Chapter 25 (Part XVII – Miscellaneous). Also included are case law updates to the Ontario Land Tribunal Rules of Practice and Procedure, and a new entry to the Words and Phrases appendix.

Highlights

Part XIII – Appeal to Tribunal – Section 145.6 – Appeals from Tribunal – Subsection 145.6(1) – Appeals from Tribunal – Case Law – Judicial review – Judicial review of the Environmental Appeal Board's decision pursuant to the *Water Sustainability Act* to preclude the comptroller from adjusting water rental fees paid in prior years. In dismissing the appeal, the court found that the Board's decision was reasonable as a comptroller's power to adjust rents billed and paid in prior years is inconsistent with the statutory scheme even if necessitated by a failure on the part of the licence holder to report changes in ownership: *British Columbia (Comptroller of Water Rights, Water Sustainability Act) v. Harrison Hydro Project Inc.*, 2022 BCCA 4 (B.C. C.A.).

Part XV.1 – Records of Site Condition – Section 168.2 – Interpretation, effect on cause of action – Case Law – Appeal concerning the certification of a class proceeding. The defendant owned and operated an oil pipeline and became aware of a rupture that caused a spill of light sour crude oil into a river. The plaintiffs did not suffer any direct physical property damage from the oil spill,

so they brought an action predominantly focused on negligence based on pure economic loss. The defendant accepted all fault for the oil spill but opposed certification on the grounds that it owed no duty of care to landowners claiming pure economic loss due to environmental damage to public lands. The Alberta Court of Appeal set aside the certification decision of the chambers judge, holding that the judge did not sufficiently consider the proximity between the parties under the *Anns/Cooper* test, recently clarified by the Supreme Court of Canada. Here, the plaintiffs' loss of use of a lake was the loss of use of a public place and their properties were not physically damaged by the oil spill. The court noted that, while certification does not require a *prima facie* successful case, it was plain and obvious that the plaintiffs' claim for pure economic loss could not succeed because the defendant did not interfere with a legally cognizable right that they held. Similarly, the court found that the plaintiffs did not have any other basis to ground a cause of action for certification. Moreover, the court held that the class definition was too large and arbitrary to be certified based on its geographic size and the area it covered being larger than classes considered in analogous environmental harm cases: *Rieger v. Plains Midstream Canada ULC*, 2022 ABCA 28 (Alta. C.A.).

ProView Developments

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