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ONTARIO WATER LAW Abouchar and McClenaghan Release No. 3, November 2021
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Publisher's Special Release Note 2021

The pages in this work were reissued in November 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 November 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.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Ontario Water Law provides a thorough examination of the current provincial and federal regulatory framework for all aspects of water in Ontario — all of which is expertly annotated with cases from the courts and tribunals along with the prosecution disposition reports.

What's New in this Update:

This release features updates to the case digests and legislation in the *Conservation Authorities Act*, *Safe Drinking Water Act, 2002*, *Ontario Water Resources Act* and the *Canadian Navigable Waters Act*.

Highlights

Safe Drinking Water Act, 2002 — Section 13-6.1(1) — Haloacetic Acids — The owner of a drinking water system that provides chlorination or chloramination and the operating authority for the system shall ensure that at least one distribution sample is taken in each calendar quarter, from a point in the drinking water system's distribution system, or plumbing that is connected to the drinking water system, that is likely to have an elevated potential for the formation of haloacetic acids.

Conservation Authorities Act — Section 28(16) — *Douglas Lake Cattle Company v Nicola Valley Fish and Game Club*, 2021 BCCA 99 — This case involved a dispute over public access to two lakes on the Douglas Lake Ranch. Douglas Lake Cattle Company argued that the lakes can only be accessed by crossing its lands and therefore it can lawfully regulate, limit or preclude access to the lakes. One issue in the dispute depended on whether the lakes were “navigable waters” as defined by federal legislation. The British Columbia Court of Appeal considered the definition of “navigable water” in the Canadian Navigable Waters Act and held that the two lakes were not navigable waters. There is no public access to the lakes and there are not multiple riparian owners. Accordingly, there was no evidence to support a conclusion that either lake will be used as a means of transport or travel for commercial or recreational purposes or as a means of transport or travel for Indigenous peoples. Additionally, the Court stated that the fact that one of the lakes was a pothole lake with a small catchment area speaks strongly against it having a role as a means of travel or transport.

Ontario Water Resources Act — Section 1(1) — *Poltawa Country Club Corporation v. Ontario (Environment, Conservation and Parks)*, 2020 CarswellOnt 15173, 38 C.E.L.R. (4th) 176 (Ont. Environmental Review Trib.) — Poltawa Country Club Corporation (“Poltawa”) appealed the issuance of an Amended Environmental Compliance Approval for the establishment of sewage works for the collection, treatment, and disposal of domestic sewage from single family homes being developed on lots on Poltawa's property. At issue was whether the Director had jurisdiction under the OWRA to issue the amended approval. The Environmental Review Tribunal stated that whether the Director had jurisdiction to issue the Approval depended on whether the residential septic systems are “sewage works” under s. 1(1) of the OWRA or whether they are a “sewage system” under O. Reg. 332/12 under the Building Code Act, 1992. The Tribunal noted that the OWRA entrusts the regulation of “smaller” systems

to municipalities under the *Building Code Act, 1992* and “larger” systems to the Ministry of the Environment, Conservation and Parks. The evidence in this case demonstrated that the sewage works at Poltawa’s property would collectively have a design capacity greater than 10,000 litres and was therefore a sewage works within the meaning of the OWRA. Accordingly, the Director had jurisdiction to issue the Approval. The Tribunal also held that Poltawa’s property was a “lot” within the meaning of s. 53(6.1) of the OWRA, and therefore the Director had jurisdiction under s. 53(1) to issue the approval. The Tribunal rejected Poltawa’s argument that the lots on its property were owned by individuals, rather than Poltawa. The Tribunal found that, as the ultimate owner of the land on which the sewage works exist, Poltawa was the entity using, operating, establishing, altering, extending or replacing new or existing sewage works as stipulated in s. 53(1) of the OWRA. As the owner of the lot and parcel of land where more than one sewage works is located with a total design capacity in excess of 10,000 litres per day, the OWRA applies and the Director has jurisdiction to issue the Approval.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
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