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CANADIAN ENVIRONMENTAL
ASSESSMENT ACT:
AN ANNOTATED GUIDE

Beverly Hobby

Release No. 3, December 2023

This looseleaf service contains all the current case law and legislation and is your one-stop resource for a clear and complete understanding of the legislation and policies governing this area of law. Written by a team of experts who helped develop the Act, this resource includes: the historical context in which the *Canadian Environmental Assessment Act* was proclaimed; a detailed and practical commentary of each section of the Act with cross-references to other sections and regulations; a useful summary of relevant case law and cases pending before the courts; a useful summary of all important legal procedural issues addressed by the courts; as well as the text of the Act and main regulations. The full text of the *Impact Assessment Act* is now also included.

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What's New in this Update:

This release features updates to Appendix WP Words and Phrases.

Highlights:

- **APPENDIX WP: WORDS AND PHRASES** — The legal issues addressed in *Canadian Environmental Assessment Act: An Annotated Guide* extend beyond the substantive law of federal environmental assessment policy, and include administrative law issues and proceedings, statutory interpretation challenges, an understanding of Indigenous rights, and an appreciation of the constitutional issues inherent in Canada's federal system of government. In recognition of the unique confluence of legal issues at play in the text, Appendix WP: Words and Phrases has been expanded in this release to include significant judicial treatments of words and phrases of significance to litigators, advisers, and drafters engaged with any of those niches within the broader topic. The appendix will be updated on an ongoing basis. Significant new terms with recent judicial treatments added in this release include the following.
- **APPENDIX WP: WORDS AND PHRASES — ABORIGINAL TITLE** — “Aboriginal title is a true property right that may be maintained against the whole world, including the Crown. It is not held at the Crown's pleasure and it cannot be extinguished by a unilateral Crown act under the royal prerogative. Where aboriginal title has been extinguished by valid legislation, it benefits from the common law rule requiring just compensation. More specifically, Aboriginal title resembles or is at least *analogous* to the domestic institution of real rights because (1) it is a right in property, namely the land subject to Aboriginal title, and (2) it is a right enforceable erga omnes, that is, against ‘governments’ and ‘others seeking to use the land’.” *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam*, 2020 CarswellQue 641 (S.C.C.).
- **APPENDIX WP: WORDS AND PHRASES — HONOUR OF THE CROWN** — “In simple terms, the principle of the honour of the Crown means that servants of the Crown must conduct themselves with honour when acting on behalf of the sovereign ... the honour of the Crown, as it relates to Aboriginal matters, goes back to *The Royal Proclamation (1763)*, George R, Proclamation, 7 October 1763 (3 Geo III), reprinted in R.S.C. 1985, App II, No 1, with the Crown's assertion of sovereignty over lands held by Indigenous people ...” *Manitoba Metis Federation Inc. v. Brian Pallister et al*, 2021 CarswellMan 151 (Man. C.A.).

- **APPENDIX WP: WORDS AND PHRASES — IRREPARABLE** — “...the onus is on [the applicant] to establish that irreparable harm will be caused if a stay is not granted and speculation about possible harm is not sufficient to meet the test. As the Supreme Court held in [*RJR-MacDonald Inc. v. Canada (Attorney General)*], [1994] 1 S.C.R. 311 (S.C.C.)], “irreparable” refers to the nature, rather than the magnitude, of the harm that would be suffered if a stay were not granted.” *Hirsch v. Ontario (Environment and Climate Change)*, 2016 CarswellOnt 6611 (Ont. Environmental Review Trib.).
- **APPENDIX WP: WORDS AND PHRASES — LARGE AND LIBERAL INTERPRETATION** — “Way of life is about means of survival, as well as socialization methods, legal systems, trading patterns, cultural and spiritual beliefs and practices, patterns of land use, and ways of generating and passing on knowledge. ... mode of life involves looking at how a people make a living, group organization and the relationship between culture and ecology ... way of life, like culture, should not be about a fixed inventory of traits or characteristics.” *Yahey v. British Columbia*, (2021) CarswellBC 2062 (B.C. S.C.).
- **APPENDIX WP: WORDS AND PHRASES — WAY OF LIFE** — “A large and liberal interpretation is not simply the most expansive reading a statute can bear. It is constrained by the purpose, text and context of the legislation, as well as respect for legislative intent.” *Cardston (Town) v. Alberta (Municipal Affairs)*, 2022 CarswellAlta 3480 (Alta. K.B.).

ProView Developments

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