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<p>ONTARIO ENVIRONMENTAL PROTECTION ACT ANNOTATED</p> <p>Paula Lombardi</p> <p>Release No. 1, March 2024</p>

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.

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What's New in this Update:

This release features updates to Chapters 1, 3, 16, 19 and 25. Appendix N – Environmental Bill of Rights Concordance and Words and Phrases have been updated as well.

Highlights

Appendix N. Environmental Bill of Rights Concordance – Part VI—Right to Sue – Harm to a Public Resource – Section 84 Right of action – Subsection 84(8) Burden of proof: contravention] – The decision concerns two decisions of the Federal Court striking the appellants' statement of claim, *La Rose* and *Misdzi Yikh*, on the basis that the claims were not justiciable as they were political and not suitable for judicial determination. *La Rose* appeal concerns 15 children and youth initiating an action against Canada for its failure to address the problem of climate change. They sought remedies under ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* contending that the impacts of climate change “interfere with their physical and psychological integrity and their ability to make fundamental life choices,” and “climate change has a disproportionate effect on their generation and that they have suffered—and will continue to suffer—the consequences, given their vulnerability and age.” Meanwhile, the *Misdzi Yikh* appeal concerns two Wet'suwet'en House groups that comprise the Likhts'amisyu (Fireweed) Clan, Misdzi Yikh (Owl House) and Sa Yikh (Sun House) who contend that Canada has contributed to climate change in a way that poses a “threat to their identity, to their culture, to their relationship with the land and the life on it, and to their food security.” They maintain that the legislative response to climate change and executive actions exacerbate the threat and violate either protections and rights under ss. 7 and 15 of the Charter. Issues on appeal include the youth appellants arguing that Manson J. erred by concluding that their Charter claims were not justiciable based on the “broad and diffuse” nature of the asserted state conduct and that the Federal Court is able to apply a “judicially discoverable standard to a discrete and manageable aspect of the government's conduct”; the Dini Ze' appellants argue that the claims were justiciable and misconstrued as asserting a positive duty to legislate; and finally, Canada contended that the appellants' challenges are so broad as to disregard Canada's separation of powers, and the appellants' s. 7 and s. 15 claims are positive rights claims, which would obligate Parliament to act affirmatively. In its response, the court highlighted the fact that a pleading raising a novel point of law, has long and complex issues, or the defendant's ability to raise a strong defence does not justify striking it out. While on the facts, the appellants' s. 15 claims have no

jurisprudential root and they are outside the scope of s. 15, the appellants' s. 7 claims, even if construed as positive rights claims, rest on doctrine and have a reasonable prospect of success. There is a form of present harm that the youth are claiming – that the impending climate crisis causes psychological stress – such distress is best addressed under a s. 7 challenge as a threat to the security of the appellants' persons. The appeals were allowed in part – leave to amend was granted in respect of the claim that there has been a violation of s. 7 of the Charter: *Cecilia La Rose et al. v. His Majesty the King in Right of Canada and The Attorney General of Canada*, 2023 FCA 241.

Chapter 4. Part II.1—Environmental Compliance Approvals – Section 20.6—Terms and Conditions – Case Law – Application of the Environmental Assessment Act—20.6(3) – § 4:58.1 Application of the Environmental Assessment Act 20.6(3) – Ontario approved Terms of Reference for an Environmental Assessment related to an Access Road connecting Marten Falls First Nation to the provincial highway system, and a Webequie Supply Road connecting Webequie First Nation to the Ring of Fire mineral development area. The applicants sought general direction on the Duty to Consult and Accommodate, referencing inadequate consultations for a mining road in Neskantaga's homelands. The respondents argued the application should be dismissed as it didn't seek relief for past conduct and wasn't a judicial review or constitutional challenge. The court dismissed the application, because it was not properly brought under Rule 14.05(3)(d) and (h) and the court has no jurisdiction to rewrite the *Environmental Assessment Act* or provide a declaration on the extent of the Duty to Consult and Accommodate as it relates to the drafting of Terms of Reference for an environmental assessment. While the context of the Access Road is referenced, there must be a live issue for judicial interpretation and guidance in respect of the *Environmental Assessment Act* and Regulations governing consultations with First Nations on environmental assessments pursuant to Rule 14.05(3)(d) and (h) of the Rules of Civil Procedure: *Moonias v. Ministry of Northern Development*, 2023 ONSC 5942.

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