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ONTARIO ENVIRONMENTAL PROTECTION ACT ANNOTATED Paula Lombardi Release No. 3, September 2024
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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.

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What's New in this Update:

This release features updates to the case law and commentary in Chapters 16 (Part X—Spills), 19 (Part XIII—Appeal to Tribunal), and 25 (Part XVII. Miscellaneous). Additionally, there have been updates to Appendix WP. Words and Phrases and Appendix SLL. Selected Legal Literature.

Highlights

In *Bighill Creek Preservation Society v. Director, Regulatory Assurance Division South, Alberta Environment and Protected Areas, re: Mountain Ash Limited Partnership*, 2024 ABEAB 9 (Alta. Environmental App. Bd.), the Project site was located near the Big Hill Springs Provincial Park and within the surface water catchment of Bighill Creek. Though no surface water bodies exist within the Project site, there are wetlands in the area. The appellant's interest was related to the preservation of the ecological and historical values of the Bighill Creek region. The board considered if there was an adverse effect on the appellant's interest. The Board found the possibility of harm reasonable. The Board considered whether the adverse effect was direct. The appellant's involvement in environmental studies and stewardship activities directly linked the project to potential harm to the region. After evaluating all criteria, the Board concluded that the appellant met the test for being directly affected and therefore had standing in the appeal. The appellant raised concerns about groundwater contamination and provided evidence of ongoing mining activities. The approval holder argued against the stay, questioning the validity of the concerns and stating that the approval adequately addressed potential impacts. Both parties presented arguments regarding irreparable harm, the balance of convenience, and the overall public interest. The board found that while the appellant raised serious concerns, the evidence did not conclusively support irreparable harm or a greater harm to the appellant if the stay were refused. The Board concluded that granting a stay would not be just nor equitable.

In *Brown v. The Attorney General of Ontario and Lake Simcoe Regional Conservation Authority*, 2024 ONSC 2465 (Ont. S.C.J.), the defendant commenced an application for judicial review against the Lake Simcoe Region Conservation Authority ("LSRCA") and the Attorney General of Ontario. The LSRCA brought charges against the defendant for breaching the *Conservation Authorities Act*, R.S.O. 1990, c. C.27 ("CAA") and Ontario Regulation 176/09. The Justice of the Peace convicted the defendant on five counts for breaching the CAA and Ontario Regulation 179/06, finding that the property was

being used as a “commercial disposal site.” In addition to the two-year probation order and joint restoration order, requiring the subject property to be restored, the defendant was fined \$40,000 plus the victim fine surcharge. On several occasions during the defendant’s trial before the Justice of the Peace, the defendant brought several motions and interlocutory applications for prerogative remedies in the Superior Court of Justice. On four separate occasions, the defendant was told by various Justices of the Superior Court of Justice that complaints about the decision rendered by the Justice of the Peace, are appropriately raised as a potential ground of appeal to the Ontario Court of Justice. The court held that the defendant’s proposed application for judicial review was an improper collateral attack on the decisions of the Justice of the Peace, as well as the Ontario Court of Justice, the Superior Court of Justice, and the Court of Appeal decisions that dealt with the defendant’s various appeals and motions. The court found that these actions constituted an abuse of process.