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ONTARIO WATER LAW Release No. 2, October 2024

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.

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What's New in this Update:

This release features updates to the legislation in Chapters 14, 15 and 17. Additionally, case annotations have been added in Chapters 16–23.

Highlights

CHAPTER 19—FISHERIES ACT—In *Ontario (Ministry of the Environment, Conservation and Parks) v. Thomas Cavanagh Construction*, 2019 CarswellOnt 12959, developers built stormwater pond and drain enhancements as part of development. Accused construction company, director and numbered company were charged with offences under Ontario Water Resources Act (Act) arising out of excessive discharge of sediment. Numbered company was acquitted while construction company was found guilty of two counts of discharging or permitting discharge of material into watercourse that may impair quality of water, and failing to notify Ministry of Environment, and acquitted of discharge and failure to notify on other counts. Director was acquitted of failing to take all reasonable care to ensure that corporation not discharge, but was convicted of breach of obligation to notify of discharge, which was stayed. Director and construction company appealed convictions and fines, while Crown cross-appealed acquittal and stay of director's conviction and acquittal of construction company. Appeals dismissed; cross-appeal allowed. Construction company did not respect or implement approved plan for drainage, and could not rely on it to make out claim of due diligence. Construction company failed to adapt and provide alternative solutions for problems they encountered. Measures put in place by construction company in response to conditions were made without consultation, and when shortcomings were pointed out company did not respond. Weather conditions did not provide excuse for accused. Fisheries?Act-?did not prevent taking measures to fix issues.

CHAPTER 21—CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999—In *Egan v. National Research Council of Canada*, 2021 CarswellOnt 16708, plaintiffs claimed that National Research Council (NRC) and university allowed contaminants, perfluoroalkylated substances (PFAS), to enter surface water and groundwater at its National Fire Laboratory site and migrate onto adjoining properties owned by plaintiffs. Defendants alleged majority of proposed class members had not detected any contamination of their drinking water with PFAS compounds. Plaintiffs brought successful motion to certify action as class proceeding. Causes of action pleaded in nuisance, in negligence, under s. 99 of Environmental Protection Act and s. 40 of Canadian?Environmental?Protection?Act,?1999?all raised common issues. Whether NRC was liable to class members for diminution of value of their properties due to stigma as result of contamination and possibility of contamination of their drinking water by PFAS compounds was also common issue. Claim against university did not raise common issue or plead cause of action that had any possible chance of success. University's uncontested evidence was that it never used firefighting foams containing PFAS at site. Claim against NRC for punitive damages did not have any possible chance of success and was dismissed. Class proceeding was preferable procedure because it promoted objectives of access to justice and judicial economy and could be managed in fair

and efficient manner. Proposed representative plaintiffs would fairly and adequately represent class interests. Motion for leave to appeal dismissed with costs fixed in amount of \$10,000 all inclusive.