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ONTARIO WATER LAW Abouchar and McClenaghan Release No. 1, August 2022
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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 extensive legislative updates, including the addition of Ontario Regulation 102/20: Monitoring of Mercury Near Dams, under the *Lakes and Rivers Improvement Act*. Commentary and caselaw has been updated in Chapter 1 (Introduction – Recent Factors Shaping Evolution of Water Law in Ontario), Chapter 2 (The Roles of Agencies and Departments in the Regulation of Water), Chapter 3 (*Ontario Water Resources Act*), Chapter 4 (*Safe Drinking Water Act*), Chapter 8 (*Lakes and Rivers Improvements Act*), Chapter 9 (*Beds of Navigable Waters Act*), Chapter 10 (*Public Lands Act*), Chapter 11 (*Conservation Authorities Act*), Chapter 14 (*Municipal Act, 2001*), Chapter 16A (*Drainage Act*), Chapter 19 (*Fisheries Act*), and Chapter 20 (*Canadian Navigable Waters Act*).

Highlights

Ontario Water Resources Act—Water—Section 30 Discharge of Polluting Material Prohibited—Nova Chemicals (Canada) Ltd. hired a contractor to assist with construction of a new polyethylene manufacturing facility near its existing petrochemical facility. During excavation, the contractor unknowingly damaged an underground pipeline carrying brine. A leak detection warning alarm was triggered, but due to regular false alarms, Nova did not respond to shut down the brine pipeline. The next day, the contractor pumped storm water from the excavated area to an onsite ditch that discharged to the Allingham Drain, a municipal drain. Unbeknownst to the contractor, the storm water also contained brine that was leaking from the pipeline. Approximately 24 hours after the leak began, an employee of the Contractor noticed the damaged pipeline and reported to Nova. Nova took immediate actions to stop the leak and mobilized vacuum trucks to remove the brine water from the onsite ditch. Approximately 245,000 litres of brine discharged from the pipeline, and 15 dead fish were observed in the nearby dewatering ditch. Nova completed an internal investigation, took corrective actions to ensure all parties involved in future excavation work are properly trained, and installed a new alarm system. Nova was convicted of one count of discharging material into the Allingham Drain contrary to the OWRA, s. 30(1) and was fined \$125,000: *R. v. Nova Chemicals (Canada) Ltd.* (May 28, 2021) (Ont. C.J.).

Fisheries Act—Sections 35 and 36 Annotations—Section 36 Throwing Overboard of Certain Substances Prohibited—Gibson operated a large petroleum storage and pipeline terminal and was convicted of an offence under s. 36(3) of the *Fisheries Act*. In early March 2014, a catastrophic breakdown of the fire protection system at the Gibson terminal led to the release of over 30 million litres of municipal tap water from Gibson's property, which was used to supply the fire suppression system. Chlorinated water entered the North Saskatchewan River for approximately 45 hours. Gibson was unable to shut off the water due to serious design flaws and maintenance issues in respect to

their fire suppression system. It took approximately two-and-a-half days for Gibson, relying on significant assistance from employees of the County of Strathcona, to effectively dechlorinate the water escaping from their property. The water continued to be released until March 12, eight days after the spill began. Gibson was fined \$1,100,000 for the three days the offence continued. Additionally, Gibson was ordered to meet with members of the Strathcona Industry Association and the Strathcona District Mutual Assistant Program to deliver a presentation about the case, identify concerns regarding the introduction of chlorinated water into waters frequented by fish, and share steps, including those taken by Gibson, to prevent and respond to such occurrences: *R. v. Gibson Energy ULC*, 2021 ABPC 124, 2021 CarswellAlta 1155 (Alta. Prov. Ct.).

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
- Footnote text only appears in ProView-generated PDFs of entire sections and pages