

The PEI Water Act

Volume 9 of the East Coast Environmental Law Summary Series is a guide to the PEI Water Act (the “Act”). The goal of this publication is to help citizens understand their **Water Act** and to provide information about the anticipated **Water Act** regulations. ECELAW wishes to acknowledge the significant knowledge of water problems and solutions that Islanders already have. ECELAW does not mean to replicate this work, but rather to supplement it. Please note this is not a fully comprehensive review of the Act or of best practices. Rather, this publication is meant to highlight some of what ECELAW considers the most key aspects of the Act.

The Water Act: An Overview

The PEI *Water Act* was passed on December 20, 2017. The Act governs the Province’s water resources and the ecosystems that support them. There are sections in the Act that are transferred from the *Environmental Protection Act* (or “EPA”) and meant to consolidate existing legislation. Other sections are new and respond to specific issues. The Act will be proclaimed in force and implementation of the Act will begin when regulations are developed. Before the regulations are enacted, public consultation in some form is required.

Some of PEI’s Key Water-Related Challenges

NITRATES IN WATER

Ground and surface waters can be contaminated by a variety of substances, including nitrates. Nitrates are found in sewage, manure, and fertilizer.¹ At high levels, nitrates can cause sickness in infants and may be contributing factors in the development of cancer. The effects of consuming low levels of nitrates from drinking water over long periods of time are unknown.² When nitrates flow into water bodies they can cause algae blooms that deplete the oxygen in the water, causing numerous fish to die at once (fish kills).³

PESTICIDES IN WATER

Pesticides can also contaminate water. They are used by farmers and residents to kill pests on crops and lawns.⁴ Pesticides have been linked to fish kills when high concentrations enter a water body. They are, in fact, believed to be the primary cause of fish kills on PEI. Between 2000 and 2010, there were 17-recorded pesticide-related fish kills.⁵

EROSION AND SILTATION

Erosion occurs when wind and rain carry away loose soil, such as from a tilled field. Deforestation, urban development, and road construction can also lead to erosion. Soil swept into waterways via erosion can cause nitrates in fertilizers and pesticides to enter water.

Erosion is also problematic because as soil or silt enters a waterway, it can destroy fish habitat and cause water bodies to become muddy and shallow. Some fish lay their eggs in rocky-bottomed streams. If these streams become muddy-bottomed over time, fish reproduction suffers.⁶ Dealing with erosion after-the-fact is also very expensive. For example, Wrights Creek near Charlottetown has been dredged multiple times, at a cost of over \$130,000, to reduce the amount of silt and return it to a good fishing spot and recreation area.⁷

GROUNDWATER DEPLETION

Overdrawing water can deplete groundwater faster than it can be recharged. As a result, the water table can become lowered and the risk of saltwater contaminating freshwater increases.⁸ This is especially an issue for PEI because residents rely exclusively on groundwater for drinking water.⁹ As well, overdrawing water reduces river and stream flows which impacts ecosystem health. For example, fish that travel upstream to spawn need enough water to allow them to get back to their spawning grounds. In addition, some aquatic species require specific water levels to lay their eggs. Decreased flows and dry riverbeds can therefore have an effect on reproduction.¹⁰

INEFFECTIVE LAND-USE PLANNING

Poor land-use planning can cause or exacerbate water contamination, erosion, and the depletion of water. Decision-makers often do not effectively collaborate to consider the cumulative or long-term impacts of proposed projects. For example, erosion caused by a new road might not have a significant impact on a stream. Separately, clear-cutting further downstream may not either. However, together, the impact of the two projects could be enough to damage the ecosystem.¹¹

CLIMATE CHANGE

Climate change will likely exacerbate most, if not all of PEI's water problems. As the climate changes, more severe weather is expected such as heavy rains and drought conditions. Sea levels are also predicted to rise; coastal erosion will likely increase; and aquifer recharge rates are expected to slow. These extreme conditions will put an increased strain on PEI's water. For example, heavy rains can increase erosion, drought can increase the possibility of groundwater depletion, and sea-level rise can increase the risk of saltwater contaminating freshwater wells.¹²

The Water Act: Purpose and Goals

WHAT IS THE PURPOSE OF THE ACT?

The overall purpose, as stated in section 2, is to “support and promote the management, protection and enhancement of the water resources within the jurisdiction of the province.”¹³

WHY HAVE A PURPOSE SECTION?

As the Government of PEI explains, “this section is intended as a series of short, high-level statements explaining the core beliefs and rationale for the development of the Act. It provides insight into the context and spirit in which the Act and its regulations are being developed.”¹⁴

Furthermore, the purpose section provides guidance for those who will interpret the Act later on, such as the Minister of Communities, Land and Environment or a judge. For example, section 7 of the Act states that the Minister can decide not to issue an approval if “it is not in the public interest having regard to the purpose of [the] Act.” In this instance, the purpose section may play an important role in determining what counts as the public interest. As well, when a judge is reviewing a decision made by the Minister under the Act, he or she can consider the purpose section to interpret what a specific section means.

WHAT ARE THE PRINCIPLES OF THE ACT?

The purpose of the Act is based on recognition of principles:

1. The role of government as a guardian to manage water in the interests of a common good;
2. Public access to safe and affordable water is essential;
3. Water withdrawal decisions must be transparent and ensure long-term sustainability of water resources;
4. Every person has a duty to look after water; and
5. Where there are serious threats to water resources, steps to prevent harm should not be postponed owing to scientific uncertainty.

WHAT ARE THE GOALS OF THE ACT?

Sections 2(f)-(i) describe the goals the Act aims to fulfill. These include:

- present and future generations have sufficient, safe, affordable, and accessible water;
- access to and use of water be sustainable and not harm water quality, water security, or the ecosystems that support it;
- public involvement in and available information about the state of water resources; and
- a consistent, science-based approach be taken with respect to water management and allocation.

It should be noted that the purpose section does not recognize Indigenous peoples' rights to water.

The Water Act: Prohibitions

POLLUTING WATER

The key prohibition under the Act is set out in section 20: no person can pollute water. If someone discharges a substance into water that may cause pollution, they must notify the government and clean up the contamination, as outlined in section 21.

ACTIVITIES REQUIRING AN APPROVAL

Section 6 prohibits any person from engaging in an activity that requires an approval under the Act unless the person holds the required approval.

FRACKING

Section 19 prohibits fracking anywhere in the province. This is a new prohibition for PEI.

LARGE WATER WITHDRAWALS

Section 40 prohibits withdrawing more than 25 cubic metres of water per day for any reason, unless you have an approval.

EXPORTING WATER FROM PEI

Section 41 prohibits bulk water removal from the province, such as water bottling for export.

DISCHARGING WASTEWATER

Section 42 prohibits release of wastewater except as permitted by regulations.

OTHER PROHIBITIONS

The Act prohibits operation of a water supply system or wastewater treatment system (section 43), drilling of a well (section 48), or installing a sewage disposal system (section 51) unless you follow the requirements outlined in the regulations.

PENALTIES

Penalties include fines as high as \$10,000, imprisonment for 90 days, or both, under section 73. If a corporation violates one of the sections, the range of fines is between \$10,000 and \$100,000. As well, the directors, officers, or agents of a corporation can be liable.

The Water Act: Water Withdrawal Approvals

WHY REQUIRE APPROVALS?

As a means of protecting the long-term sustainability of water resources it is important for government to be aware of and regulate water withdrawal. Requiring water withdrawal approvals can reduce conflicts between water users, avoid groundwater depletion, and protect aquatic ecosystems. This is especially important in the face of sporadic rain and decreased aquifer recharge rates associated with climate change.¹⁵

WHO NEEDS AN APPROVAL?

Section 40 states that any water withdrawal above 25 metres cubed (25,000 litres) per day requires an approval. To put this into context, the average Charlottetown resident uses 305 litres per day.¹⁶ Other activities, under 76(1)(b), may be deemed to require approval in the regulations.

WHEN CAN APPROVALS BE DENIED?

Section 7 allows the Minister (with the consent of Cabinet) to deny an approval if it is contrary to “the public interest having regard to the purpose of [the] Act.” Before making this decision, the Minister must consider whether the activity in question goes against a government policy, whether the location in question is unacceptable, and whether the activity is having adverse effects. Section 1(a) of the Act defines an “adverse effect” as an effect that damages water resources or one that changes resources in a way that negatively affects human or animal health or an aquatic ecosystem.

The Minister may deny an approval if the approval would interfere with domestic or environmental flow needs (section 8).

The Minister may deny an approval for water withdrawal to reserve water for use in the future (section 9).

WHEN CAN APPROVALS BE REVOKED?

Section 10 allows the Minister to amend, suspend, or revoke an approval that is not in line with the purpose of the Act. Additional grounds for denying, amending, suspending, or revoking an approval are set out in section 11, and include the following:

- The approval-holder is not in compliance.
- New relevant information is discovered after the approval is issued.
- The activity in question is impacting water resources in an unexpected way, such as interfering with the use of water by others.
- The activity is causing or worsening an adverse effect.
- Natural conditions, such as a drought, cause domestic water-use to be threatened.
- Water withdrawals are exceeding established withdrawal limits.

WHAT HAPPENS TO OLD APPROVALS?

Sections 77(5) and (7) of the Act create a 5-year transition period. Any person who received an approval or authorization (under the EPA) before the *Water Act* was passed can continue to follow that approval or authorization for 5 years or until it expires, whichever happens first. Any person who is engaged in an activity that did not require an approval before the *Water Act* was created can carry on with the activity for 5 years. After that period has passed the activity can only be undertaken in accordance with the *Water Act*.

The Water Act: Water Management Areas

WHAT ARE WMAs?

Part IV of the Act discusses what it calls Water Management Areas (WMAs). These are areas that can be designated by the Minister to have specific regulations apply to them. These regulations can limit, prohibit, or even allow certain activities that would be unlawful in areas of the province outside the WMA. For example, Part IV of the Act would likely allow the Minister to impose special conditions on water withdrawal approvals, and limit or prohibit specific industrial or agricultural activities in certain WMAs.

HOW WILL WMAs BE ESTABLISHED?

The Minister can establish WMAs when it is in the public interest to do so (s 25(1)) and must seek public input and the input of experts when deciding if and where to establish one (s 25(2)). For each type of WMA, the Minister is required to set out rules regarding consultation with stakeholders, residents of the area, or others who may be potentially affected by the plan. As well, the Minister can choose who will prepare the plan for that area, and what the content and the timeline of the plan will be.

The Minister is required to establish a public registry with information on WMAs (s 27) and is also required to monitor and assess the status of WMAs over time (s 28). Section 30 states that if a WMA is established over a part of someone's private land, the government is not obliged to compensate that person and that person does not have the right to sue the government over the establishment of the WMA.

TYPES OF WMAs

The Act outlines four different types of WMAs that can be established.

WATER SUSTAINABILITY PLAN AREA

The purpose of the Water Sustainability Plan Area (WSPA) is to prevent or address threats to water quality, water quantity, environmental flow needs, and the health of aquatic ecosystems (s 31). The Minister can make regulations specific to WSPAs that regulate or prohibit activities that may negatively affect water quality, quantity, or that may create an adverse effect (s 32).

AQUATIC ECOSYSTEM PROTECTION AREA

The purpose of the Aquatic Ecosystem Protection Area (AEPAs) is to protect watersheds that contain "provincially significant aquatic ecosystems" (s 33). The Minister can make regulations specific to AEPAs that regulate or prohibit activities that may negatively affect water quality, quantity, or that may create an adverse effect. In addition, the Minister can specifically prohibit, limit, or attach extra conditions to water withdrawals (s 34).

MUNICIPAL WATER SUPPLY AREA

The purpose of the Municipal Water Supply Area (MWSA) is to ensure the "long-term security" of municipal water supplies from watersheds (s 35). What makes this type of WMA unique is that it gives the Minister the authority to make regulations for the area that would allow a municipality to withdraw more water than it would be allowed to if it were outside a MWSA (s 36(b)).

WELL-FIELD PROTECTION AREA

The purpose of the Well-Field Protection Area (WFPA) is to preserve and protect the well water relied upon by a municipality (s 37). The Minister can create regulations in WFPAs to limit or prohibit activities that may negatively affect the quality of groundwater (s 38). Currently all municipalities on PEI that own public drinking water supply facilities must have well field protection plans as required by section 20 of the *Drinking Water and Wastewater Facility Operating Regulations* under the EPA.¹⁷ These plans are directed at preventing contamination of the water sources relied upon by municipalities.

The Water Act: Access to Information

WHY REQUIRE PUBLIC ACCESS TO INFORMATION?

The public should have access to information about the state of their water so that they know the water they use is clean and safe. As well, strong public reporting requirements help keep government accountable to ensure environmental flow needs are considered and contamination is being addressed.¹⁸

The Government acknowledges the importance that the public is kept informed about and is involved in the state of water resources in section 2(h), by making it a goal of the Act.

PUBLIC INFORMATION

Unfortunately, the sections discussing public access to information are not grouped together, but instead are spread throughout the Act.

Under section 18, the Minister must establish a public registry that includes information on approvals, compliance of approval holders, and the state of water resources reports prepared by government, which are required by section 17. Additional information can also be added to the registry through regulations.

Section 27 also requires the Minister to establish a public registry, but this registry is specifically about water management areas.

Section 53 requires the government to make their research or assessments on any aspect of water resources in the province accessible to the public.

Information made available to the public through the *Water Act* is subject to the provincial *Freedom of Information and Protection of Privacy Act*.

The Water Act: Public Involvement

WATER MANAGEMENT AREAS

The Minister must seek public input before deciding to establish a Water Management Area (s 25(2)(a)). As well, the Minister is required to set out rules regarding consultation with stakeholders or others who may be potentially affected by the WMA plan, and for consultation or notification of people living within the WMA (ss 31, 33, 35, 37).

The Act does not detail the extent of public consultation needed or even explicitly require consultation with stakeholders when forming a WMA. Subsection 25(3) says the Minister shall not make a recommendation for a WMA until specific regulations are made. The Act requires the Minister to seek public input before passing any new regulations. The scope of and process for public input is unclear.

REPORTING

The *Water Act* (s 70) allows anyone who reasonably believes that someone has violated or will violate the Act or its regulations to report this to the Department of Environment. If the department chooses to, it can investigate the complaint and make certain orders, revoke or amend an approval, or press charges.

The Act includes protections for the complainant. The complainant cannot be sued for making a complaint, and no one can be disciplined or fired from their job for making a complaint.

ENFORCEMENT ACTIONS

The Minister or an environment officer can issue a water protection order if they believe that someone is contaminating water, causing an adverse effect, or violating the Act or regulations (s 22). As well, the Minister or officer can issue such an order to protect water or avoid an adverse effect. A water protection order can require someone to meet with the Department of Environment, allow the Department to inspect their land and do testing on it, or require them to do testing themselves. Also, the order can require that person to stop an activity and to clean up any contamination.

If immediate action is required an environment officer can issue an emergency field order to stop or mitigate water pollution (s 23). This type of order requires the person

responsible to stop an activity or clean up any contamination immediately. As mentioned above, sections 10 and 11 allow the Minister to revoke or suspend an approval if the approval-holder is not complying with the Act, regulations, or an order issued under the Act.

APPEALS

Section 68 allows a person who has been issued a water protection order or an emergency field order to appeal the order to the Island Regulatory and Appeals Commission. However, subsection 68(3) states that even if someone launches an appeal, they still have to abide by the water protection or emergency field order in the meantime. There are no provisions in the Act that enable a person who has been refused an approval to appeal the decision. As well, there are no provisions that enable a person who is aggrieved by a decision to issue an approval (i.e. a concerned citizen or affected property owner) to appeal the decision. Section 68 does indicate that a person may be given a right of appeal under the regulations.

REGULATIONS

As mentioned above, section 76(5) requires that the public be consulted before new regulations or substantial amendments to regulations are made. See below for more information on this.

Indigenous Peoples: Legal Context

Prince Edward Island lies within the traditional territory of the Mi'kmaq.

Today in Canada, there are at least three strong bases upon which Mi'kmaq can assert unique legal rights to water:

- Aboriginal rights, including Aboriginal title;
- treaty rights; and
- the rights of Indigenous peoples.

In Canada, Aboriginal rights are rights that flow from Indigenous peoples' historical use and occupation of their traditional territories. A community may assert an Aboriginal right to harvest a resource within its territory, and it may also assert rights that are "reasonable incidents" of the Aboriginal right claimed.¹⁹ For example, because an Aboriginal right to

engage in subsistence fishing will be jeopardized if the fish habitat is corrupted by contamination, it could be argued that a right to clean water is a reasonable incident of an Aboriginal right to fish.

The Supreme Court of Canada has constructed Aboriginal title as a "distinct species" of Aboriginal right.²⁰ Aboriginal title claims may also clarify Indigenous communities' rights with respect to the water within their traditional territories.

Unlike Aboriginal rights, which flow from historical cultural practices, treaty rights stem from agreements made between nations. In the 1700s, the British Crown made Peace and Friendship Treaties with the Mi'kmaq and other nations of the Wabanaki Confederacy to foster favourable international relationships in politically volatile times. Those treaties form the basis for a number of rights to land, water, and resources that Mi'kmaq claim today.

Section 35 of Canada's Constitution Act, 1982 recognizes and affirms "the existing aboriginal and treaty rights of the aboriginal peoples of Canada." The Supreme Court of Canada has determined that this constitutional protection creates solemn duties for Canada's federal and provincial governments. When the Government of Canada or a provincial government wants to do something that could have an adverse effect on a community's Aboriginal or treaty rights, the government has a duty to consult—and, potentially, accommodate—the community that stands to be affected. Importantly, the duty to consult exists when Aboriginal or treaty rights have been asserted by a community, or when the government has real or constructive knowledge of a potential claim, even if that claim has not yet been proven or resolved.²¹

In 2016, the Government of Canada adopted the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and affirmed that it would take steps to implement the Declaration in Canada. Bill C-262, "An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples", was passed by the House of Commons in May 2018 and is currently before the Senate. Indigenous peoples' rights to water are among the rights that the UNDRIP asserts,²² and harmony between the laws of Canada and the Declaration will require recognition of those rights.

WHERE THE WATER ACT FAILS

The *Water Act* does not recognize a relationship between Aboriginal rights, treaty rights, the rights of Indigenous peoples, and the management of water resources and supporting ecosystems on and around Prince Edward Island.

The Water Act: Regulations

Part VIII of the *Water Act* (s 76) enables the creation of regulations that will support the Act. The government has indicated that the Act will be in force and implemented once the first set of regulations have been developed.

PUBLIC CONSULTATION IS REQUIRED

Subsection 76(5) of the *Water Act* requires public input before new regulations are enacted or substantial amendments are made to the regulations. This could offer opportunity for public to engage with and shape the regulatory effects of the Act as it comes into force. Section 76 stipulates that all new regulations and proposed amendments will be referred to a Standing Committee no less than 90 days prior to enactment. This may provide an additional avenue for public to engage in the regulation-making process, as these committees often undertake hearings and meetings that are public and recorded. It is unclear at this stage, however, whether the formal public consultation process will run before, after, or at the same time as the Standing Committee's review.

PUBLIC CONSULTATION MAY BE LIMITED

Section 76 does not, however, guarantee consultation for all changes to existing regulations. For example, any minor changes, such as legal wording and clarification on regulations, may be done independently. Furthermore, the way in which public consultation is carried out is within the Minister's discretion. In the fall of 2017 the Minister indicated that consultation on the regulations might be similar to the public consultation for the Act, which were quite broad and received much accolade.²³ However, more recently the new Minister has been less clear with his intentions. This, with the discretion built into subsection 76(5)(c), suggests that full public consultations may not be sought for every regulation, and smaller avenues may be preferred. Factors to be considered in determining the breadth of consultation include the expectation of public interest in the matter in question, the number of people a regulation or amendment may affect, or whether the issue is industry-specific.

Water Act: Regulations-Making Authorities

ULTIMATE AUTHORITY RESTS WITH THE LIEUTENANT GOVERNOR IN COUNCIL

The *Water Act* is assigned to PEI's Department of Communities, Land and Environment. The Minister has the authority under the Act to develop regulations, however; the final regulation-making authority rests with the Lieutenant Governor in Council (LGIC). The Lieutenant Governor in Council means the Lieutenant Governor acting on and with the advice of the Executive Council (Cabinet). Section 76(1) of the PEI *Water Act* allows the LGIC to make regulations considered necessary or advisable for the purposes of the Act.

IMPORTANCE OF THE LGIC'S ROLE

The LGIC's role is particularly important as it ensures decisions are not unilaterally made and not partial to one interest group. For example, under Part IV of the Act, which addresses Water Management Areas, sections 25, 32, 34, 36 and 38 stipulate that the Minister may make recommendations to the LGIC with respect to regulations to designate a WMA. This is a good safeguard as WMAs invoke considerable divergent interests among groups. Industry (e.g. the agricultural sector) and individual interests must be balanced. The LGIC, who represents all Ministers of the Crown, can objectively weigh these competing interests in making a final decision on regulations.

The Water Act: How Regulations Will Come into Effect

THE INITIAL REGULATIONS

We anticipate three priority areas to be addressed through the initial *Water Act* regulations: water withdrawals; water and wastewater systems; and water wells.²⁴ Currently, the EPA captures all three of these matters under section 25, with the *Water Well Regulations* and *Drinking Water and Wastewater Facility Operating Regulations*.²⁵ The *Water Act* will amend and transfer these regulations from the existing EPA.

WATER WITHDRAWAL REGULATIONS

Part V of the *Water Act* addresses water withdrawals (and wastewater discharges). Sections 39-40 prohibit anyone from withdrawing from a well, except at the permitted daily rate, subject to exceptions allowed by regulations. Section 41 prohibits withdrawal for the purpose of removal from the province, except for some ordinary or humanitarian purposes. Section 76(1)(c) allows the LGIC to make recommendations respecting approvals required to withdraw more than the daily limit, 25,000 litres per day, under section 40, or for other activities as they see fit. Section 76(1)(w) allows the LGIC to make regulations with respect to the limits and activities around withdrawal or use of water from any natural or artificial water source.

Contentious issues on PEI, which might be expected to be addressed in this set, include regulations for irrigation ponds and high-capacity wells for irrigation, the latter of which has seen a moratorium since 2002, however the government has promised more scientific research would be done.²⁶

WATER AND WASTEWATER SYSTEMS REGULATIONS

Part VI, Division 1 of the *Water Act* specifically addresses water supply systems and wastewater treatment systems. Sections 43-44 state no one shall establish or operate a water supply system or wastewater treatment system except as permitted by the regulations. Section 46 grants the Minister authority to order that an area be served by a water supply system or wastewater treatment system, or to prohibit the construction of wells or sewage disposal systems for the purpose of protecting water resources or preventing an adverse effect. Section 47 allows the LGIC to create water and wastewater corporations to acquire, construct, establish, alter, extend, control, manage, maintain or operate a water supply system or wastewater treatment system.

Regulations for certain types of infrastructure, including water supply systems and wastewater treatment facilities, sewage disposal systems, and wells are enabled by the Act. Section 76(1)(x) allows the LGIC to regulate water quality with respect to water from any source, including any water supply system. These regulations can include water quality standards or objectives, quality monitoring, and the storage and handling of water. Section 76(1)(z) provides for regulations for water supply systems and requirements for their design, construction, modification and operation. Section 76(1)(y) allows regulations around wastewater discharges and requirements including standards, objectives and monitoring, while (aa) authorizes regulating wastewater treatment systems and the design, construction, modification and operation requirements.

WATER WELL REGULATIONS

Part VI, Division 2 of the Act deals specifically with the technical aspect of well operations. Section 48 prohibits the drilling, construction, reconstruction or decommissioning of a well, except as permitted by the regulations. Section 76(1)(bb) pertains to the regulations that may be established for wells, such as requirements for drilling, construction, decommissioning, abandonment, and operation of wells, including those installed for geothermal purposes.

THE LOOK AHEAD

Currently, these are the three areas the government is focused on in order to begin the implementation of the *Water Act*. Future regulations are likely to include sewage disposal system regulations, fee regulations, and Water Management Area regulations. For a detailed list of recommendations by ECELAW, including recommendations for inclusion in future regulations, visit our website: www.ecelaw.ca

REFERENCES

- ¹ Prince Edward Island, Department of Environment, Energy and Forestry, *2010 State of the Environment*, (Charlottetown: DEEF, February 2011) at 16 [*Department of Environment*].
- ² Prince Edward Island, Commission on Nitrates in Groundwater, *The Report of the Commission on Nitrates in Groundwater* (Charlottetown: The Government of Prince Edward Island, June 2008) at 6 [*Commission on Nitrates*].
- ³ *Department of Environment*, supra note 1 at 22.
- ⁴ *Ibid* at 20.
- ⁵ *Ibid* at 54.
- ⁶ *Ibid* at 30.
- ⁷ "Dredging of Andrews Pond/Wrights Creek continues: Project should be complete by mid-August", *CBC News* (8 July 2014), online: <<https://www.cbc.ca/news/canada/prince-edward-island/dredging-of-andrews-pond-wrights-creek-continues-1.2699575>>.
- ⁸ Prince Edward Island, Department of Environment, Labour and Justice, *Saltwater Intrusion and Climate Change: a primer for local and provincial decision-makers*, (Charlottetown: DELJ, 2011) at 9, 11 [*Labour and Justice*].
- ⁹ *Department of Environment*, supra note 1 at 15.
- ¹⁰ Canada, Council of Canadian Academies, *The Sustainable Management of Groundwater in Canada: Report of the Expert Panel on Groundwater* (Ottawa: Council of Canadian Academies, June 2009) at 24.
- ¹¹ Canada, Council of Canadian Academies, *Water and Agriculture in Canada: Towards Sustainable Management of Water Resources: The Expert Panel on Sustainable Management of Water in the Agricultural Landscapes of Canada* (Ottawa: Council of Canadian Academies, 2013) at 152-59.
- ¹² *Labour and Justice*, supra note 10 at 10-13.
- ¹³ *Water Act*, SPEI 2017, c 17, s 2.
- ¹⁴ Prince Edward Island, Department of Communities, Land and Environment, *Inside the Water Act*, (Charlottetown: DCLE) at 2.
- ¹⁵ *Labour and Justice*, supra note 10 at 9.
- ¹⁶ Prince Edward Island, City of Charlottetown, "Our Water", (Charlottetown: CoC, 2011), online: <www.bewaterfriendly.com/our-water.php>.
- ¹⁷ PEI Reg EC710/04, s 20.
- ¹⁸ Oliver M. Brandes et al., *Awash with Opportunity: Ensuring the sustainability of British Columbia's new water law* (Victoria: POLIS Project on Ecological Governance, 2015) at 24-27.
- ¹⁹ See *Assembly*, supra note 17 at 13. See also *Simon v The Queen*, [1985] 2 SCR 387, 71 NSR (2d) 15 at paras 31, 40; *R v Sundown*, [1999] 1 SCR 393, 170 DLR (4th) 385, at paras 27-33.
- ²⁰ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 66 BCLR (3d) 285, at para 2.
- ²¹ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511, at paras 35-38.
- ²² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Annex), UNGAOR, 61st Sess, Supp No 49 (2007) I at 25, 32.2.
- ²³ Prince Edward Island, Legislative Assembly, Hansard, 65th, 3rd Sess (30 November 2017) at 578-579 and 630 (Robert Mitchell).
- ²⁴ Prince Edward Island, Department of Communities, Land and Environment, "Presentation on Prince Edward Island: Water Act", (Prince Edward Island: Department of Communities, Land and Environment, January 2018), online: <https://www.princeedwardisland.ca/sites/default/files/publications/water_act_presentation.pdf>.
- ²⁵ *Supra* note 23.
- ²⁶ Krystalle Ramlakhan, "Cavendish Farms reiterates call to lift moratorium on high-capacity wells", *CBC News* (14 May 2018), online: <<https://www.princeedwardisland.ca/en/information/communities-land-and-environment/water-act>>.

DISCLAIMER

Please note that this volume cannot cover all PEI water-related or *Water Act* issues, nor should it be interpreted as legal advice.

EAST COAST ENVIRONMENTAL LAW ASSOCIATION

This guide was developed by the East Coast Environmental Law Association (ECELAW), a non-profit organization.

ECELAW envisions a future where innovative and effective environmental laws and the just application of those laws provide Atlantic Canadians with a clean, healthy environment, which will make a positive contribution to the quality of life of Atlantic Canada's present and future inhabitants and visitors.

ECELAW promotes the development and just application of innovative and effective environmental laws in Atlantic Canada through:

- Awareness & Understanding - increasing public awareness of and access to environmental laws;
- Education - aiding in the education of future environmental law professionals; and
- Collaboration - working with the public, community groups and government to strengthen environmental laws in Atlantic Canada.

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FOR MORE INFORMATION

Please visit www.ecelaw.ca for other legal resources and information library. To find the full text of the federal and provincial Acts and Regulations, visit: Canadian Legal Information Institute: www.canlii.ca

For current information on the Water Act visit:
PEI Department of Communities, Land and Environment:
<https://www.princeedwardisland.ca/en/topic/communities-land-and-environment>

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