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WATER GOVERNANCE IN QUEBEC: INTRODUCTION OF BILL 27 AIMED AT REINFORCING THE PROTECTION OF WATER RESOURCES

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On March 18, 2009, the Minister of Sustainable Development, Environment and Parks, Ms. Line Beauchamp, introduced Bill 27 – *An Act to affirm the collective nature of water resources and provide for increased water resource protection* (<http://www.assnat.qc.ca/eng/39legislature1/Projets-loi/Publics/09-a027.htm>) (the “**Bill**”). When the Bill becomes law, it will have repercussions on those with industrial or commercial activities requiring the use of water. The Bill’s main objectives are set out in the explanatory notes and break down into five main categories:

- The legal status of water;
- Recourse for damage to water resources;
- New water governance structure: watershed management;
- Surface water and groundwater catchment;
- The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.

Water: A Collective Resource

The Bill affirms the legal status of water. It provides that water, be it surface water

or groundwater, is a collective resource that is a part of "the common heritage of the Québec nation." Therefore, in principle, water cannot be appropriated. However, the Bill does make it possible to appropriate water in certain circumstances and on certain conditions which are set out in Article I of the Bill.

Recourse for Damage to Water Resources

Section 7 of the Bill grants the Attorney General of Québec the power to institute an action for recovery of damages caused to water resources. The power to institute legal proceedings against the perpetrators of the damage is granted specifically to the Attorney General on behalf of the State as custodian of the national interest in water resources and not to every person, as is the case with a right to a healthy environment and its protection as provided at Section 19.2 of the *Environment Quality Act* (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/Q_2/Q2_A.htm).

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Section 7 of the Bill is particularly noteworthy in view of the fact that the Attorney General's recourse is not limited to instances where there is a wrongful act. In fact, an action for recovery of damages may be instituted where damage is "caused by a person or through a person's fault or illegal act." Therefore, a person can be subject to an action in situations where such person has acted in accordance with the legislation, regulations, permits and authorizations and is not at fault. Consequently, compliance with the laws and regulations, permits and authorizations is not a protection against an action for recovery. However, that said, this regime does not amend the rules of the *Civil Code of Québec* which allows for the institution of legal proceedings to preserve water quality and quantity without proof of fault.

The Bill sets out three types of remedies that a court may impose on those responsible damage caused to water. A court may order:

- restoration of the water resources to their original state or to a state similar to their original state;
- reparation through compensatory measures; for example, where damage is caused to a wetland, a court can compel the offender to create another wetland having a similar area and with appreciably the same ecological functions;
- reparation by way of monetary compensation paid in a lump sum or otherwise; in this case, compensation will be paid into the Green Fund and will be used to finance water governance measures in Québec.

An action for recovery of damage to water resources is time-barred 10 years after the date on which the Minister of Sustainable Development, Environment and Parks becomes aware of the damage.

A New Structure for Water Governance in Québec: Watershed Management

Division IV of the Bill proposes a new structure for concerted, integrated water resource management of each watershed. This type of management already exists in Québec, but is not officially recognized by legislation.

The concerted and integrated watershed management is primarily based on the identification and description, by the Ministry of Sustainable Development, Environment and Parks ("MSDEP"), of various types of hydrological units (basins, sub-watersheds, watershed groupings) in Québec. As such, it should be noted that on March 5, 2009, the MSDEP announced the official zoning of Southern Québec into 40 watershed-based management zones, that will cover 100% of the territory.

<http://www.mddep.gouv.qc.ca/infuseur/communiquerie.asp?no=1463>

Once these hydrological units have been identified, the MSDEP will create or designate an organization whose mission will be to develop and implement a master plan for water. This organization will be known as a "watershed organization." There are currently 33 watershed organizations in Québec that cover approximately 25% of the geographic area of Southern Quebec. The MSDEP will therefore designate these organizations and create others for those zones not already represented by such an organization.

The Board of Directors of each watershed organization will be responsible for developing the master plan for water. This plan is the cornerstone of the proposed water governance structure. It is therefore essential that all groups of water users be adequately represented on the Board of Directors of each organization

Once developed, the plan must be approved by the MSDEP, which will then send a copy to the the public authorities so that they may take the steps to implement it.

Catchment of Surface Water or Groundwater

The legislative framework for water catchment will be created by amending the *Environment Quality Act*. A catchment is defined broadly at Section 31.74 of the Bill:

“[...] the removal of surface water or groundwater by any means whatsoever [...]” (Our translation)

The Bill provides that water catchment of 75,000 litres or more requires the authorization of the Minister. When deciding whether to issue an authorization, the Minister must take into account the consequences of the catchment on the rights of other persons to use water while ensuring that the ecosystem is able to meet demands. Apart from a few exceptions, the term of a water catchment authorization is capped at 10 years. Finally, with respect to existing catchment, the Bill sets forth transitional measures; one example of this is that

existing authorizations are deemed to have been issued under the proposed Section 31.75 of the Bill.

The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement

The Bill provides for the implementation in Québec of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (<http://www.mddep.gouv.qc.ca/eau/grandslacs-en/2005/index.htm>). The integration of this agreement into Québec’s legal framework allows the MSDEP to ensure that water catchment upstream will be managed so as to take into account its impacts on the St. Lawrence ecosystem.

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