

# RECENT DEVELOPMENTS TO THE LAW APPLICABLE TO WATER IN QUÉBEC\*

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## INTRODUCTION

Despite Canada's apparent abundance of fresh water, much of it is situated in the Arctic and flows north—away from the population that is mostly established on a narrow strip of land along the border with the United States. In southern Québec, there is serious concern about the St. Lawrence River, which supplies half of its inhabitants with fresh water. Elsewhere, some localities face pollution or overuse of the groundwater reserves on which they depend. Against this backdrop, fresh water has been the object of much recent legislative attention. Having set up a commission of inquiry on the management of water in 1999, which delivered a monumental report in 2000,<sup>1</sup> the Québec Government is under pressure to act on its recommendations.

Within the structure of the Québec legal system, water can be viewed as a part of both private and public law, if that classical distinction is considered relevant. The Civil Code of Québec (C.C.Q.) has a number of articles on water which we will consider first as they provide the foundation on which other legislation on water is, in principle, elaborated.<sup>2</sup>

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\* Editor's Note: Citations herein generally conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). In order to make the citations more useful for Canadian practitioners, abbreviations and certain other conventions have been adopted from the CANADIAN GUIDE TO UNIFORM LEGAL CITATION [Manuel Canadien de la Référence Juridique] (McGill Law Journal eds., 4th ed. [Revue du droit de McGill, 4e éd.] 1998).

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1. BUREAU D'AUDIENCES PUBLIQUES SUR L'ENVIRONNEMENT, L'EAU, RESSOURCE À PROTÉGER, À PARTAGER ET À METTRE EN VALEUR, [WATER, A RESOURCE TO PROTECT, TO SHARE AND TO VALUE] (2000) (also known as the Rapport Beauchamp, Bureau des Audiences Publiques sur l'Environnement (or BAPE)).

2. The status of the Civil Code within the Québec legal order is formalized in its Preliminary Provision as follows:

The Civil Code of Québec, in harmony with the Charter of human rights and freedoms and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws,

The Code's provisions on water are found within the Book on Property (Book 4).<sup>3</sup> Their main object is to exclude water from the category of property. In addition, the Code formulates a few basic rules for owners of land having direct access to water.<sup>4</sup> The Code does not address issues related to the use of the watercourses themselves, such as rivers or lakes.<sup>5</sup> The focus of the Code's articles is to delimit the use of water by landowners with direct access to it. This points to a distinction that must necessarily be made, in Québec law at least, between the use of water and the use of a body of water. These two types of use rest on opposite legal premises: the use of water does not depend on a right of ownership, whereas it is ownership of land which largely determines the exercise of rights on a watercourse. We will first look at the attribution of the rights pertaining to a watercourse. It should be noted that issues related to the exercise of those rights were, until recently, the main object of legislation and litigation.

#### I. RIGHTS PERTAINING TO A WATERCOURSE

Watercourses may be used for various purposes such as commercial transportation and recreational navigation, fishing, the removal of surface mineral substance from the river bed, the construction of wharves or other works, and the development of hydroelectric power. In Canada, not all these activities are within the jurisdiction of the Provincial legislatures. The Constitution grants to the Federal Parliament exclusive powers to legislate over navigation and shipping, which may be carried on by anyone, provided that the framework established by the law is respected.<sup>6</sup>

The other uses listed above are within the jurisdiction of the Provinces. In Québec, ownership of the bed of a watercourse carries with it the ancillary rights to fish, to incorporate a construction, to take gravel or sand from the banks, and so forth—subject however to environmental and other

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although other laws may complement the Code or make exceptions to it.

*Civil Code of Québec*, 1991 S.Q., c. 64, Preliminary Provision.

3. *Id.* Arts. 899–1370.

4. *Id.* Arts. 979–982.

5. *See* Civil Code of Québec, 1991 S.Q., c. 64.

6. Constitution Act, 1867, 30 & 31, Vict. Ch. 3, § 91, para. 10 (U.K.). One might wonder if article 920 of the Civil Code of Québec encroaches on the exclusive jurisdiction of the Federal Parliament. *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 920 (“Any person may travel on watercourses and lakes provided he gains legal access to them, does not encroach on the rights of the riparian owners, does not set foot on the banks and observes the conditions of use of the water.”). It should also be noted that section three of the recent Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection, R.S.Q., c. C-6.2, § 3 [hereinafter 2009 Water Act] includes a reference to article 920 of the Civil Code of Québec.

regulatory constraints.<sup>7</sup> The same rule applies to hydraulic power, but this activity is reserved almost exclusively to Hydro-Québec, a company whose sole shareholder is the Province of Québec.<sup>8</sup> Generally, the Province is the owner of the bed of navigable watercourses.<sup>9</sup> It also owns the beds of non-navigable rivers or lakes unless the land bordering a watercourse was first transferred to a private person before 1918.<sup>10</sup> The bed of a watercourse extends to the high water mark.<sup>11</sup> Private persons, who do not own the bed of a river or a lake, may nevertheless exercise the activities mentioned above if a permit has been issued to them under the appropriate statute. Various statutes provide for such permits.<sup>12</sup> Early decisions of the courts dealing with the rights to the bed of a watercourse appear to have relied in some way on the concept of water as a *res communis*. However, further analysis shows that this concept is not relevant to determining whether a private person may lawfully exercise ancillary rights attached to the bed of a river.

## II. WATER IS NOT PROPERTY: WATER IS A *RES COMMUNIS*

The law of Québec incorporates the concept of *res communes* (common things) as formulated in Roman law.<sup>13</sup> The C.C.Q. and the Civil Code of Lower Canada (C.C.L.C.),<sup>14</sup> acknowledge that the notion of *res communes* is part of our law.<sup>15</sup> As a *res communis*, fresh water cannot be property. It is not susceptible of being appropriated or owned by anyone, either a private person or the State.<sup>16</sup> As a *res communis*, water is destined

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7. *Civil Code of Québec*, 1991 S.Q., c. 64, Arts. 919, 934, 979.

8. *Hydro-Québec Act*, R.S.Q., c. H-5; *Watercourses Act*, R.S.Q., c. R-13, § 3.

9. *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 919.

10. *Id.*

11. *Id.*

12. *The Watercourses Act*, R.S.Q., c. R-13; *An Act Respecting Agricultural Lands in the Domain of the State*, R.S.Q., c. T-7.1; *An Act Respecting the Lands in the Domain of the State*, R.S.Q., c. T-8.1; and *Mining Act*, R.S.Q., c. M-13.1, are the main pieces of legislation under which rights in State land are granted to private persons.

13. For the classification of things in Roman law, see JEAN DOMAT, *LOIX CIVILES DANS LEUR ORDRE NATUREL* (nouvelle éd., 1735 (1689) (Fr.)).

14. The Civil Code of Québec (C.C.Q.) replaced the Civil Code of Lower Canada (C.C.L.C.) in 1994. *Civil Code of Québec*, 1991 S.Q., c. 64, Final Provisions.

15. Article 913 of the C.C.Q. reads: "Certain things may not be appropriated; their use, common to all, is governed by general laws and, in certain respects, by this Code. However, water and air not intended for public utility may be appropriated if collected and placed in receptacles." *Id.* Art. 913. Former Article 585 of the C.C.L.C. read: "There are things which have no owner and the use of which is common to all. The enjoyment of these is regulated by laws of public policy." *Civil Code of Lower Canada*, 1865 S. Prov. C., c. 41, Art. 585.

16. *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 913.

for everyone's use. Ownership of land does not carry with it a right of ownership in the water that runs over the land or lies underground.

It is important to understand that the treatment the law reserves to water is different from the legal regime applicable to minerals found underground and to animals in the wild. In principle, minerals are owned by the owner of the land.<sup>17</sup> Mineral rights, however, may be attributed to another as a right distinct from ownership of the land.<sup>18</sup> In fact, the Province may have retained extensive mineral rights under land transferred in ownership to private persons.<sup>19</sup> Wild animals and aquatic fauna may be owned, although they are *res nullius*—that is to say, without an owner until they are captured.<sup>20</sup>

The Civil Code speaks generally of water as a common thing. The courts have confirmed authoritatively that the water of a lake or a river is a common thing, or a *res communis*, regardless of its status as a navigable or non-navigable watercourse.<sup>21</sup> It remains unclear, however, whether the status of *res communis* applies only to water running on the surface, and not to groundwater or water from a spring that is not the head of a watercourse. If *res communis* does not apply to groundwater and water from a spring, then such water is owned by the owner of the land above which it is found.<sup>22</sup>

This controversy, which was never directly considered by our courts, is resolved by the new legislation on fresh water. The Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection, in its Preliminary Provision, declares water resources to be a common heritage.<sup>23</sup> In addition, the first section of the Act expressly

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17. *Id.* Art. 951.

18. *Id.*

19. *Mining Act*, R.S.Q., c. M-13.1 § 3.

20. See *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 914 (“Certain other things, being without an owner, are not the object of any right, but may nevertheless be appropriated by occupation if the person taking them does so with the intention of becoming their owner.”); *id.* Art. 934 (“Things without an owner are things belonging to no one, such as animals in the wild, or formerly in captivity but returned to the wild, and aquatic fauna, and things abandoned by their owner.”); *id.* Art. 935 (“A movable without an owner belongs to the person who appropriates it for himself by occupation.”).

21. See, e.g., *Morin v. Morin*, [1998] R.J.Q. 23 (Can.) (noting that Article 981 C.C.Q. recognizes the right of everyone to use this resource).

22. Compare *Civil Code of Lower Canada*, 1865 S. Prov. C, c. 41, Art. 502 (“He who has a spring on his land may use it and dispose of it *as he pleases*.”) (emphasis added), with *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 980 (“An owner who has a spring on his land may use it and dispose of it”).

23. 2009 Water Act, *supra* note 6, pmb1. It should be noted that, although it did not attract much attention at the time, a 2002 statute, the *Act to Establish the Fonds National de L'eau*, R.S.Q., c. F-4.002 (repealed in 2006 when a Green Fund was instituted by the *Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs*, R.S.Q., c.M-30.001, § 15.1), had already in its preamble assimilated surface water and groundwater as “common heritage.”

states that surface water and groundwater share the same status of common resource and refers to Article 913 of the C.C.Q.<sup>24</sup> One can only welcome this clarification. Not only does it provide for the same protection wherever water is found, but it disavows a distinction between surface water and groundwater that is outdated and contradicted by current scientific knowledge. Today's hydrological science amply establishes that the physical state of water does not support a legal distinction between water on the surface, groundwater, and spring water. Since there is continuity in nature between surface water and groundwater, water must receive a single legal characterization.<sup>25</sup> We shall see how, by dissociating water from ownership, the concept of *res communis* constitutes an optimal legal tool for the preservation of freshwater resources.

### III. THE USE OF WATER IN THE CIVIL CODE OF QUÉBEC

Access to fresh water does not depend on ownership of land, but ownership of land may ensure easy access to the resource. Articles 980, 981, and 982 of the C.C.Q. broadly define the legitimate use of water by the owner of land bordering or overlying it. The legal regime there established derives from the character of water as a common thing or a *res communis*.

The first paragraph of Article 980 reserves the use of a spring arising on land to the landowner.<sup>26</sup> This rule recognizes that allowing public access to the spring would considerably impair the owner's exclusive enjoyment of the land. Even when only the landowner has access to a spring, and his use may consume it entirely,<sup>27</sup> its water remains a *res communis*.<sup>28</sup> The landowner's position with respect to a body of water entirely situated on his land is examined in the second paragraph of Article 980.<sup>29</sup> The owner of the land also has exclusive access to the water in a pond or a lake to meet his

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24. *Id.* § 1.

25. See Madeleine Cantin Cumyn, Michelle Cumyn, and Claire Skrinda, *L'eau, Chose Commune: Un Statut Juridique à Confirmer*, 79 CAN. B. REV. 398 (2000) (arguing that water's singular nature requires a single legal characterization); see also BUREAU D'AUDIENCES PUBLIQUES SUR L'ENVIRONNEMENT, *supra* note 1, at 267–72 (detailing the commission's recommendations).

26. *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 980.

27. The quantity of water provided by a spring is, by inference, limited, the spring which is the headwater of a watercourse being treated as such in Article 981 C.C.Q.

28. Cf. 2009 Water Act, *supra* note 6, § 1 (stating that all water is part of the common heritage); *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 980 (permitting landowner's to use and dispose of springs on their land). See *id.* Art. 982 (providing restrictions on personal action only in the event it is "contrary to the general interest").

29. *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 980 ("He [the owner] may, for his needs, use water from the lakes and ponds that are entirely on his land, taking care to preserve their quality.").

needs, but since his use will not consume it entirely, it is expressly stated that he has the obligation not to pollute the water.<sup>30</sup>

Article 981 addresses the situation of the owner of land that is bordered or crossed by a watercourse.<sup>31</sup> Again, the rule formulated is entirely consistent with the special status of water. The riparian owner's use of the water is limited with respect to both quality and quantity.<sup>32</sup> He may take the quantity of water required to meet his needs, providing that his riparian neighbours are not thereby prevented from making the same use.<sup>33</sup> The owner must return the water to its course without substantial alteration of quantity or quality.<sup>34</sup>

#### IV. THE ROLE OF THE STATE AS REGARDS FRESH WATER

The recognition that water, as a *res communis*, forms, with air, a distinct legal category establishes the authority of the State to act as custodian of the resource in the common interest of present and future generations. The role of the State is affirmed in the preliminary provision of the new statute on water, which reads: "the State, as custodian of the interests of the nation in water resources, must be vested with the powers required to protect and manage those resources . . .".<sup>35</sup> From a comparative law perspective, it is interesting to note that the intervention of the Provincial State in the protection and management of water is based not on rights that it may have in land, but in the powers vested in it as the State. This formulation accounts for the specific nature of the right of ownership in Québec. In 1854, a statute abolished the tenure system under which land was initially granted to individuals.<sup>36</sup> Estates in land were replaced by a full title based on the Roman law model of the *dominium*.<sup>37</sup> The owner of private land, therefore, has the ultimate title. The State cannot assert domain over private land in Québec. The State's power to expropriate land and its power to regulate land use does not derive from a title in the land, but rather from its mission as public authority to ensure the peaceful enjoyment of

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30. *Id.*

31. *Id.* Art. 981

32. *Id.*

33. *Id.*

34. *Id.*

35. 2009 Water Act, *supra* note 6, pmbl. The preamble of the 2009 Water Act and sections 1 to 17 are in force since June 18, 2009. *Id.*; see also *Act to Establish the Fonds National de L'eau*, R.S.Q., c. F-4.002, pmbl. (repealed 2006) (affirming the status of the State as custodian of water resources).

36. An Act Respecting the General Abolition of Feudal Rights and Duties, 18 Vict., Ch. 3 (U.K.), as reprinted in R.S.Q., c. 41 (1888).

37. *Id.*; see also DAVID JOHNSTON, ROMAN LAW IN CONTEXT 53–76 (1999) (discussing Roman law of *dominium*, or absolute ownership of property).

private property, public order, and the common good.<sup>38</sup> It follows that the Provincial State exercises legal powers as a custodian of water resources irrespective of where they are situated in Québec.

## V. THE LEGAL FRAMEWORK FOR THE MANAGEMENT OF FRESH WATER

In accordance with Article 913 of the C.C.Q., the 2009 Water Act declares that every natural person has a right to have access to safe water and that the protection and management of water resources are of general interest.<sup>39</sup> What are the present measures the Government has put in place to meet these objectives?

### A. Water Quality

Initially, the Province directed its attention towards the protection and restoration of water quality. Since 1972, Québec has addressed the problems of pollution of air, water, and the soil in a general statute for the protection of the environment.<sup>40</sup> A significant reduction in water pollution from municipal, domestic, and industrial sources was achieved.<sup>41</sup>

The other main source of pollution that remains to be addressed is agriculture. Raising the standards of agricultural practices is a sensitive political and economic issue in Québec (as elsewhere perhaps) since effective measures of preservation of water quality increase costs to both the producer and the consumer.<sup>42</sup> However, in the aftermath of a much publicized case of agricultural pollution of drinking groundwater in Ontario in 2000,<sup>43</sup> the government has started to tackle the so-called *pollution*

38. See *Civil Code of Québec*, 1991 S.Q., c. 64, Art. 952 (“No owner may be compelled to transfer his ownership except by expropriation according to law for public utility and in consideration of a just and prior indemnity.”); see also *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, Art. 6 (protecting private property).

39. 2009 Water Act, *supra* note 6, §§ 2–3; see *Sustainable Development Act*, R.S.Q., c. D-8.1.1 (setting forth principles of sustainable development to guide government action); *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (espousing similar principles).

40. *Environmental Quality Act*, R.S.Q., c. Q-2. The regulations adopted under this Act’s authority, in particular, were the *Regulation Respecting Hazardous Materials*, R.R.Q., c. Q-2, r.15.2, and the *Regulation Respecting Pits and Quarries*, R.R.Q., c. Q-2, r.2. Particular activities are also specifically regulated under separate statutes. See, e.g., *Regulation Respecting Permits and Certificates for the Sale and Use of Pesticides*, R.R.Q., c. P-9.3, r.0.1 (regulating pesticide use under the *Pesticides Act*, R.S.Q., c. P-9.3).

41. See ENVIRONMENT QUÉBEC, WATER. OUR LIFE. OUR FUTURE., QUÉBEC WATER POLICY 62, 64, 137 (2002) (detailing improvement in water quality in Québec since the 1970s).

42. AGRICULTURE AND AGRI-FOOD CANADA, AGRICULTURAL PRACTICES ARE AIMED AT IMPROVING WATER QUALITY (2006), [http://www4.agr.gc.ca/resources/prod/doc/env/greencover-verdir/pdf/QC\\_e.pdf](http://www4.agr.gc.ca/resources/prod/doc/env/greencover-verdir/pdf/QC_e.pdf).

43. *Inside Walkerton: Canada’s Worst-Ever E. Coli Contamination*, CBC NEWS ONLINE, Dec.

*diffuse* or pernicious pollution resulting from agriculture. It is adopting the multi-barrier approach, which involves protecting the source of water supplies,<sup>44</sup> treating water destined for human use,<sup>45</sup> and water's distribution by public or private water utilities.<sup>46</sup> Although one may regret the fragmentation of the legal response, the implementation of the right of Québécois to have access to safe water has been reasonably effective.<sup>47</sup>

### B. Water Governance

The 2009 Water Act officially establishes a system of governance based on concerted and integrated management of the common resource within hydrologic units or watershed basins.<sup>48</sup> In each hydrologic unit, a representative body that includes individual users and interested actors such as the government, municipalities, and economic, environmental, agricultural, and community groups, must be constituted.<sup>49</sup> It has the responsibility to develop, and later update, a master plan in which are recorded all relevant features of the unit, such as the state of waters and water-dependant natural resources, the water uses and their effects, an inventory of zones of ecological interest, and measures to protect and restore the qualitative or quantitative status of waters.<sup>50</sup> Once approved by the responsible member of government, the Minister of Sustainable Development, Environment and Parks, the plan is published and a copy sent to all public departments and bodies, and the municipalities situated in the

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20, 2004, <http://www.cbc.ca/news/background/walkerton> (reporting on the Walkerton tragedy, which caused seven deaths).

44. See, e.g., *Groundwater Catchment Regulation*, R.R.Q. c. Q-2, r.1.3 (regulating groundwater intended for human consumption); *Agricultural Operations Regulation*, R.R.Q., c. Q-2, r.11.1 (regulating most farming operations); *Regulation Respecting the Burial of Contaminated Soil*, R.R.Q., c. Q-2, r. 6.01 (regulating disposal of contaminated soils). The Groundwater Catchment Regulation (GWCR) will have to be modified when the new requirements for water withdrawals brought by section 19 of the 2009 Water Act come into force.

45. See, e.g., *Regulation Respecting the Quality of Drinking Water*, R.R.Q., c. Q-2, r.18.1.1 (requiring municipalities to filter and disinfect both surface and groundwater); see also Bruno Sylvestre & Manuel J. Rodriguez, *Protection Strategies for Drinking Groundwater Sources in Small Québec Municipalities*, 88 J. ENVTL. MGMT. 28 (2008) (describing the impact of the GWCR).

46. *Regulation Respecting Waterworks and Sewer Services*, R.R.Q. c. Q-2, r.7 (regulating water supplies and sewer systems).

47. For a complete assessment of the present situation, see H. Tremblay & P. Halley, *Le Droit de L'eau Potable au Québec*, 49 LES CAHIERS DE DROIT 333, 333-69 (2008).

48. 2009 Water Act, *supra* note 6, §§ 13-14.

49. *Id.* § 14.

50. *Id.* §§ 13-14; see also *id.* § 16 (creating a Bureau des Connaissances sur L'eau where an information system will collect data on water resources, aquatic ecosystems and water uses in each watershed for their preservation and dissemination); *id.* § 17 (requiring the Bureau to provide a report on the state of the water resources every five years).

hydrologic unit to which the plan applies.<sup>51</sup> However, these authorities are not bound to meet the objectives set out in the master plan. They are only required to take the plan into consideration when exercising their powers in the water sector or other sectors affecting water.<sup>52</sup>

The concept of *res communis* implies that legitimate uses of water resources are those compatible with that exceptional status. The legitimate uses of water must therefore be identified. As we have seen, the master plan must record all current uses of water in the hydrologic unit and, presumably, anticipate future requirements.<sup>53</sup> What happens if a current or anticipated use is not compatible with the character of water as a collective resource or if the quantity of available renewable fresh water cannot meet all legitimate demands? The Water Act begins to answer the question of which uses of water may be considered normal or legitimate within the meaning of a *res communis* but does not yet indicate how eventual conflicts are to be resolved.<sup>54</sup>

The legitimate uses of water are firstly those that satisfy human needs, including alimentary and sanitary requirements.<sup>55</sup> The legitimacy of the use of water for agricultural purposes should not be questioned, although modern industrial agriculture and the growing practice of irrigation for crops create a new context to be taken into account. The use of water in industrial processes also appears legitimate. These three sets of uses, which share the feature of not permanently removing substantial quantities of water from the hydrologic basin of origin, ought to be considered normal provided that their environmental impact is controlled.<sup>56</sup> On the other hand, there is a fourth use: withdrawal of water, mostly groundwater, for sale as bottled water by private interests. Clearly, this taking of water is not for the satisfaction of the essential needs of the individual taker, but an appropriation for profit. In addition, the water bottled and sold on the open market is irretrievably lost to the basin of origin.<sup>57</sup> It is difficult to argue that

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51. *Id.* § 15.

52. *Id.*

53. *Id.* § 14.

54. See BUREAU D'AUDIENCES PUBLIQUES SUR L'ENVIRONNEMENT, *supra* note 1, at 267–72 (recommending that these questions be addressed).

55. 2009 Water Act, *supra* note 6, § 2.

56. *The Regulation respecting the declaration of water withdrawals*, c. Q-2, r. 3.2.1., which has been in force since September 10, 2009, imposes a mandatory annual declaration of volume of water removed by all major withdrawals except those for domestic or agricultural use. This declaration opens the way for the imposition of a tariff on certain types of withdrawals, a declared intention of the present government.

57. The commercial bottling activities are currently carried out mostly in the populated part of Québec where the needs are greatest and the water resources more at risk of being polluted. A number of recent applications for a permit of withdrawal of groundwater for bottling have caused severe frictions in

the commercial activity of bottling water for private profit qualifies as a legitimate use of the *res communis*. Ill-advisedly, for a few decades, the government has condoned this activity by allowing groundwater withdrawal permits to be issued to bottling concerns.<sup>58</sup> This practice patently contradicts the purposes and principles stated in the preamble of the 2009 Water Act.<sup>59</sup>

However, the 2009 Water Act may indicate that the government is reassessing this conflicting activity, which the Government identifies as “commercial waters” in its documentation.<sup>60</sup> In section 19, not yet in force, the Act introduces modifications to the Environment Quality Act to subject all important withdrawals of surface or groundwater to the authorization of the Minister for the Environment.<sup>61</sup> It is stated that, in making the decision, priority must be given to public health concerns, sanitation, civil protection, and drinking water supply needs.<sup>62</sup> “Every such decision must also aim to reconcile (1) the protection needs of aquatic ecosystems; and (2) the needs of agriculture, aquaculture, industry, energy production and other human activities, including recreation and tourism.”<sup>63</sup> It is foreseeable that respecting these protected needs as well as the future needs of municipalities may lead the Minister to refuse to issue or renew a withdrawal authorization if it is in the public interest to do so. The Minister may even order the permanent cessation of previously authorized withdrawal without any compensation from the State. These recent provisions seem to indicate an order of priority of uses and open the way for a progressive elimination of withdrawals that are not consistent with the special status of water and the public interest.<sup>64</sup>

The law governing water in Québec is still a work in progress, even though it has seen significant advances recently. A major challenge in the future will be to ensure that the goals stated in the Water Act become a reality.

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local communities. BUREAU D’AUDIENCES PUBLIQUES SUR L’ENVIRONNEMENT, *supra* note 1, at 8–13.

58. See *Groundwater Catchment Regulation*, R.R.Q., c. Q-2, r.1.3, § 31(2) (providing for the government authorization of catchment projects to supply water for sale as spring water); *Regulation Respecting Bottled Water*, R.R.Q., c. P-29, r.1.1 (regulating bottled water under the *Food Product Act*, R.S.Q. c., P-29).

59. See 2009 Water Act, *supra* note 6, pmbl. (declaring that “it is important to preserve water and improve water management to meet the needs of present and future generations”).

60. ENVIRONNEMENT QUÉBEC, *supra* note 41, at 90.

61. *An Act to Affirm the Collective Nature of Water Resources and Provide for Increased Water Resource Protection*, 2009 S.Q., c. 21 § 19 (not in force).

62. *Id.*

63. *Id.*

64. One notes that Section 19 of the Water Act, which adds Sections 31.74–31.108 to the Environment Quality Act, does not mention commercial water bottling in its list of water needs or uses to be considered when deciding on an application for a water withdrawal permit. *Id.* On the other hand, all uses enumerated in the Act appear compatible with the special character of water.