

## MEMORANDUM

To: Theresa McClenaghan  
From: Amanda McAleer  
Date: May 26, 2021  
Re: Rights of Rivers in Ontario

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### **Executive Summary**

The Rights of Nature (RoN) movement has gained significant traction internationally in the past five years, with an important subset of the initiative involving the recognition of rights for water. While numerous countries have already recognized nature as having legal rights, Canada has been slow to adopt a similar perspective. The issue addressed in this legal memorandum is the feasibility of adopting a Rights of Rivers (RoR) project in Ontario, with a focus on the possibility of integrating pre-existing legal precedents into project planning for enhanced success. A successful RoR scheme will require a legislative arrangement that is rooted in the Indigenous perspective and focuses on the concept of reconciliation. Further, to achieve the most significant outcome, the selected river should be one that holds environmental and cultural significance to surrounding Indigenous and non-Indigenous communities, and potentially, one that could positively affect human health. Despite existing obstacles, a RoR project could be adopted in Ontario with sufficient community and government support to sustain the initiative.

### **Introduction**

The purpose of this legal memorandum is to provide a broad overview of the international perspective regarding the RoR and to assess the feasibility of adopting a RoR project within Ontario. The memo first highlights relevant international cases whereby legal personhood has been granted to rivers, followed by an overview and analysis of the recent Magpie River project in Quebec. Next, the various methods of legal recognition and project planning strategies will be compared to identify potential benefits and drawbacks from an international and Canadian perspective. The final section will discuss the suggested aims of the project, as well as factors to consider when planning an Ontario-based project, including the method of recognition, guardianship, and the importance of incorporating the Indigenous perspective.

## **Case Studies: International Recognition of Rights of Water**

The concept of granting legal rights to nature is not new but has only recently begun to receive international recognition and implementation.<sup>1</sup> Recognizing natural entities as “legal persons” with fundamental rights is the basis of the RoN movement in environmental law, with supporters seeking to grant nature with legal standing and human-like qualities, similar to those afforded to corporations.<sup>2</sup> A subset of the RoN movement is the RoR, which focuses on protecting the well-being of rivers by recognizing all nature as having its own unique identity, which is separate and distinct from the traditional Western view of nature being property.<sup>3</sup> The RoN movement has slowly gained traction internationally in countries like New Zealand, India, Ecuador, and Bolivia, but has been slow to transcend into North American law. Within this section, several influential international cases where rivers have been granted legal standing will be compared and contrasted to ascertain the evolving legal climate of the RoR.

### **A. Vilcabamba River: Ecuador**

#### *(i) Background and Method of Recognition*

In 2008, Ecuador became the first country to recognize the rights of nature in its constitution.<sup>4</sup> Article 71 of the Ecuadorian Constitution states that “Nature...has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes”, and further, it permits all persons and communities to enforce the rights afforded to nature through constitutional challenges.<sup>5</sup> Article 73 requires the State to “apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles” and forbids “the introduction of organisms and organic and inorganic material that might definitively alter the nation’s genetic assets.”<sup>6</sup> The constitutional entrenchment of rights is based on Indigenous perspectives or ties to the land, but rather, as means to improve sustainability and incorporate the

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<sup>1</sup> Christopher Stone, *Should Trees Have Standing?: Toward Legal Rights for Natural Objects* (Los Altos, Calif.: W. Kaufmann, 1974) at 3.

<sup>2</sup> *Ibid* at 4.

<sup>3</sup> *Ibid* at 9.

<sup>4</sup> Sofia Suárez, “Defending Nature: Challenges and Obstacles in Defending the Rights of Nature: Case Study of the Vilcabamba River” (2013) at 3, online (pdf): *Energia Y Clima* <<http://library.fes.de/pdf-files/bueros/quito/10386.pdf>>.

<sup>5</sup> Constitution of the Republic of Ecuador (2008), Arts 71 and 74.

<sup>6</sup> *Ibid* at Art 73.

traditional ideology of living in harmony with nature.<sup>7</sup>

Shortly after the constitutional amendments, the Provincial Government of Loja (PGL) commenced a project to widen the Vilcabamba-Quinara highway.<sup>8</sup> The construction project resulted in large amounts of rocks and debris being dumped into the Vilcabamba River, which caused significant damage to the riverbed, a narrowing of the riverbanks, and subsequent downstream flooding.<sup>9</sup> The flooding resulted in damage to an American couple's property, who filed a complaint to the Ministry of Environment requesting an assessment of the environmental impact of the project.<sup>10</sup> In 2010, the Vilcabamba continued to be inundated by pollutants, which caused the couple to file a protective action in defence of the rights of nature against the PGL, requesting that PGL stop polluting the river and that the river be restored.<sup>11</sup> At trial, the action was dismissed; however, on appeal, the Provincial Court found the PGL guilty of violating the rights of nature, and granted the Vilcabamba River judicial recognition of its constitutional rights.<sup>12</sup> The *Wheeler* case is fundamental in environmental law as it represents the first case in the world where a successful claim defending the rights of nature has been accepted.<sup>13</sup>

(ii) *Scope of Protection and Legal Representation*

The *Wheeler* decision called for enhanced protection of the river and an adjustment to procedural rules to permit the full recognition and enforcement of the constitutional rights of nature.<sup>14</sup> The court adopted a “precautionary principle” which places the responsibility on constitutional judges to “immediately guard and to give effect to the constitutional right of nature, doing what is necessary to avoid contamination or to remedy it” until it is clear that there is “no probability or danger to the environment of the kind of work that is being done in a specific place.”<sup>15</sup> Further, the court emphasized the importance of protecting the environment above all else, declaring that the rights of nature would prevail over any other constitutional right as a “healthy

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<sup>7</sup> Craig Kauffman & Pamela Martin, “Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail” (2017) 92 World Dev 130 at 130.

<sup>8</sup> Suárez, *supra* note 4 at 5.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Wheeler y Huddle c Director de la Procuraduría General del Estado en Loja y otros*, (2011) (Provincial Court of Justice of Loja, Ecuador) [*Wheeler*]; Suárez, *supra* note 4 at 6.

<sup>12</sup> Suárez, *supra* note 4 at 8.

<sup>13</sup> *Ibid.*

<sup>14</sup> Erin Daly, “The Ecuadorian Exemplar: The First Ever Vindications of Constitutional Rights of Nature” (2012) 21:1 RECIEL 63 at 64.

<sup>15</sup> *Ibid.*

environment is more important than any other right.”<sup>16</sup> In addition, the court set out a series of specific remedies to restore the river, including an order for the PGL to restore the riverbed and to publish an official apology.

Through legal representation, the claimants in *Wheeler* were able to achieve judicial recognition of the Vilcabamba River’s constitutional rights, setting a precedent for other rights of nature claims in Ecuador. As the rights of nature are constitutionally entrenched, a claim for the enforcement of the rights can be brought forth by any member of the public, as required.

### (iii) *Implementation and Outcomes*

The judgement appeared to provide expansive rights and remedial steps to restore the Vilcabamba, but the process of enforcement required by the court was not enforced. The PGL failed to abide by the court orders, and the inaction forced the Wheeler’s to expend significant time and resources to continue overseeing the remediation process.<sup>17</sup> Years after the *Wheeler* decision, the PGL continued with the construction project and refused to remove debris from the river or to seek alternative means of waste elimination.<sup>18</sup> In addition, while it appeared that the court ruling would provide a path towards the recognition of rights for nature on a broader level, developments within Ecuador have been slow and inconsistent. In 2011, the Interior Minister of the national government of Ecuador brought a claim against a private property owner, asserting the violation of the rights of nature due to illegal gold mining operations that were polluting the Santiago, Bogotá, Ónzole, and Cayapas rivers.<sup>19</sup> The Second Court of Criminal Guarantees of Pichicha ordered an injunction to stop all mining operations and instructed the armed forces of Ecuador and the national police to control the illegal mining by “destroying all of the items, tools, and other utensils [used in the mining activities] that constitute a grave danger to nature”; within two days, all mining-associated property was collected and destroyed.<sup>20</sup> In contrast with the *Wheeler* case, the enforcement of the court orders in the second case was significantly faster and more severe. This may be because the second case was supported by the government, while the *Wheeler* case sought action against the government, or because of the value associated with the natural entity itself. While all nature is meant to receive equal recognition under the

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *República del Ecuador Asamblea Nacional, Comisión de la Biodiversidad y Recursos Naturales* (2011); Daly, *supra* note 14 at 65.

<sup>20</sup> Daly, *supra* note 14 at 65.

Ecuadorian constitution, the enforcement of rights seems to vary based on who asserts the claim, and what resources are at risk of exploitation.

## **B. Whanganui River: New Zealand**

### *(i) Selection and Method of Recognition*

In 2017, the Parliament of New Zealand passed the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, which granted the Whanganui River legal personhood status under the name Te Awa Tupua (“river with ancestral powers”).<sup>21</sup> The Whanganui River flows across the native Indigenous land of the Māori, and as a navigable river, was previously “owned” by New Zealand while being managed by local authorities.<sup>22</sup> Since the 1800s, the local Whanganui Māori have brought forth ownership challenges on *Treaty of Waitangi* grounds, which is the main agreement dictating the relationship between the Crown and the Māori, asserting that the arrangement does not reflect their treaty rights.<sup>23</sup> The *Te Awa Tupua Act* was adopted to settle these ongoing debates, and realized the terms of the negotiated deed settlement signed by the Crown and representatives of the Whanganui River *iwi* (tribe) in 2014.<sup>24</sup> The legislative recognition of the rights of the Whanganui was not rooted in the RoN movement; instead, the purpose of the *Te Awa Tupua Act* was to incorporate the Whanganui *iwi* view of nature into the law. From this view, the Act recognizes the Whanganui River as an “indivisible and living whole...from the mountains to the sea, incorporating all its physical and metaphysical elements.”<sup>25</sup>

The *Te Awa Tupua Act* grants the Whanganui River and its catchment “all rights, powers, duties and liabilities of a legal person.”<sup>26</sup> This includes the right to sue and be sued, and the right to ownership of the riverbed.<sup>27</sup> The Whanganui *iwi* view is further incorporated in section 13, which sets out the four *Tupua te Kawa* (intrinsic values of the entity), which includes the River’s source of “spiritual and physical sustenance” to the health and well-being of the tribes, and the inalienable connection between the local tribes and the Te Awa Tupua’s health and well-being.<sup>28</sup>

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<sup>21</sup> *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ), s 14 [*Te Awa Tupua Act*].

<sup>22</sup> Erin O’Donnell & Julia Talbot-Jones, “Creating legal rights for rivers: lessons from Australia, New Zealand, and India” (2018) 23:1 *Ecol Soc* 1 at 4.

<sup>23</sup> *Ibid.*

<sup>24</sup> Anne Salmon, “Tears of Rangi: Water, power and people in New Zealand” (2014) 4:3 *HAU: J Ethnogr Theory* 285 at 285–286.

<sup>25</sup> *Te Awa Tupua Act*, *supra* note 21 at s 12.

<sup>26</sup> *Ibid* at s 14.

<sup>27</sup> *Ibid* at s 15.

<sup>28</sup> *Ibid* at s 13.

The legislative recognition of the Whanganui River as a legal person is considered a milestone in environmental law efforts and has been used to inspire a wide realm of legislative and judicial arrangements to support the recognition of the rights of rivers in other countries.

(ii) *Scope of Protection*

The language used in the *Te Awa Tupua Act* suggests the conferral of broad rights to the Whanganui River. As the legislation was intended to resolve the Treaty settlements to reflect Māori values and beliefs, the rights recognized in section 15 relate to the specific needs of the River through the perspective of the local Indigenous tribes. Despite the broad rights asserted, the Act also suggests a variety of limitations to those rights. While the river is declared “an indivisible and living whole,” section 16 protects “any existing private property rights in the Whanganui River” and “any rights to, or interests in, water... wildlife, fish, aquatic life, seaweeds, or plants.”<sup>29</sup> Further, the Crown maintains a proprietary interest in the riverbed minerals and a portion of the riverbed for electricity generation; such ownership rights would appear to interfere with the indivisible ownership rights afforded to the Te Awa Tupua.<sup>30</sup> As the rights of the river can be limited at the Crown’s discretion, there remains ambiguity in the terms of the legislation and the true rights belonging to the river.

(iii) *Legal Representation*

The Te Awa Tupua is legally represented by the office of Te Pou Tupua, described as the “human face” of the River, which is required to act on behalf of the River to uphold the rights afforded and answer to any liabilities.<sup>31</sup> The office is comprised of two individuals, mutually appointed by the Crown and the Whanganui tribes, who are required to act as one to promote the health and well-being of the River.<sup>32</sup> The representative framework also provides for support from a bicultural advisory group, the *Te Karewao*, and a bicultural strategy group, the *Te Kopukana Te Awa Tupua*, which develops, approves, reviews, and monitors the implementation of a strategy document, *Te Heke Ngahuru*, for Te Awa Tupua.<sup>33</sup> The strategy group is composed of 17 representatives, including “iwi with interests in the Whanganui River, local and central government representatives, tourism, conservation, recreation, and wild game interests, and

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<sup>29</sup> *Ibid* at ss 12 and 16.

<sup>30</sup> *Ibid* at s 69(17).

<sup>31</sup> *Ibid* at ss 18 and 14(1).

<sup>32</sup> *Ibid* at s 19(1).

<sup>33</sup> *Ibid* at ss 27–34.

Genesis Energy Limited, the operator of the Tongariro Power Scheme”, who together collaborate to share the views and opinions of the community.<sup>34</sup> The office as implemented is not a form of guardianship, but a form of legal representation; in this approach, the River is recognized as a legal entity in its own right with a human voice.

(vi) *Implementation and Outcomes*

The implementation of the legislative framework has been supported by a NZ\$30 million constable fund, *Te Korotete o Te Awa Tupua*, over 20 years to "support the health and well-being of Te Awa Tupua."<sup>35</sup> The financial assistance provided will help with the enforcement of legal rights and provide support to the Te Pou Tupua to facilitate decision-making in the river's interest.

The *Te Awa Tupua Act* gives effect to the Māori views and beliefs throughout the body of the legislation, integrating the Indigenous perspective within the common law system. The recognition of the Whanganui River as an entity with spiritual importance to the Indigenous communities permits for enhanced reconciliation, viewing the river not only from a traditional legal view, but also for its significance in Indigenous law. The main point of contention in the Act's implementation relates to the undetermined allocation of the rights to the river's water. Arguably, it would be difficult to sustain adequate protection of the River when its water source remains unprotected from harm, such as the creation of hydroelectric plants.

**C. Ganges and Yamuna Rivers: India**

(i) *Selection and Method of Recognition*

In 2017, the High Court of Uttarakhand in India declared the Ganges River and its main tributary, the Yamuna River, “juristic/legal persons/living entities” with the “status of a legal person with all corresponding rights, duties and liabilities of a living person.”<sup>36</sup> The legal recognition of the rivers was decided on the same day that the *Te Awa Tupua Act* received royal assent in New Zealand. The *Salim* judgement further extended legal personhood to status to “all of [the Ganges and Yamuna] tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers” to preserve and protect the Ganges and Yamuna rivers.<sup>37</sup> A second case was heard by the High Court in the same month where legal personhood

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<sup>34</sup> O'Donnell & Talbot-Jones, *supra* note 22 at 4.

<sup>35</sup> *Te Awa Tupua Act*, *supra* note 21 at s 57.

<sup>36</sup> *Salim v State of Uttarakhand & others*, (2017) (High Court of Uttarakhand, India) at para 19 [*Salim*].

<sup>37</sup> *Ibid.*

was extended to all other natural objects of Uttarakhand, declaring the Gongotri Glacier and all “rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls” to be “legal entity/legal person/juristic person/judicial person/moral person/artificial person having the status of a legal person.”<sup>38</sup>

The Ganges River originates at the Himalaya Mountains and ends at the Gongotri Glacier, flowing across numerous state borders in northern India.<sup>39</sup> The Ganges River and Yamuna rivers are highly important to the people of India, as they not only provide drinking water for over 500 million citizens, but are also considered sacred by India’s majority-Hindu population.<sup>40</sup> The recognition of the Ganges and Yamuna rivers as the legal persons resulted from ongoing environmental activism efforts in India, due to the high levels of pollution and degradation of the river ecosystems, including unlawful encroachment of the riverbeds.<sup>41</sup> Despite the religious and spiritual affliction for the rivers by the Hindu people, the river was treated “more like an open sewer”, with millions of litres of human sewage, animal waste, and toxic substances being dumped into the water daily.<sup>42</sup> With the ecosystem on the verge of collapse, and the poor health outcomes being inflicted on local communities that relied on the rivers as a water source, environmental reform was deemed a necessity for future environmental and human health. The recognition of legal personhood for the Ganges and Yamuna rivers, as well as all subsequent natural beings, was made possible due to a variety of existing legal precedents in India. First, the Constitution of India recognizes the RoN, imposing a duty on all citizens “to protect and improve the natural environment including forests, rivers, and wildlife, and to have compassion for all living creatures”, and requires governments to “protect and improve the environment and safeguard the forests and wildlife of the country.”<sup>43</sup> Further, Indian law has long recognized Hindu idols and religious temples as legal persons, with associated rights including the right to own property, the right to sue, and the duty to pay taxes.<sup>44</sup> The combination of these two factors

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<sup>38</sup> *Miglani v State of Uttarakhand & others*, (2017) (High Court of Uttarakhand, India) [*Miglani*].

<sup>39</sup> National Geographic, “Ganges River Basin”, (2019), online: *National Geographic* <<https://www.nationalgeographic.org/encyclopedia/ganges-river-basin/>>.

<sup>40</sup> David Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (Toronto: ECW Press, 2017) at 227.

<sup>41</sup> Erin O’Donnell, “At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India” (2018) 30:1 *J Environ Law* 135 at 136.

<sup>42</sup> Boyd, *supra* note 40 at 227.

<sup>43</sup> Constitution of India, arts 51(a)(g) and 48(A).

<sup>44</sup> *Yogendra Nath Naskar v Commission of Income-Tax, Calcutta*, [1969] SCR (3) 742 (Supreme Court of India).

created a legal environment in India that permitted the recognition of increased rights for the Ganges and Yamuna rivers.

(ii) *Scope of Protection*

The rights afforded to the Ganges and Yamuna rivers are broad, as are their liabilities. The court in *Salim* referenced the Whanganui legislation, and stated that the “integrity of the rivers is required to be maintained from Glaciers to Ocean,” and “the rivers, forests, lakes, water bodies, air, glaciers, human life are unified and are [an] indivisible whole.”<sup>45</sup> Further, the conferral of legal rights has a strong religious basis, as the Court described the rivers as “sacred and revered” bearing a “deep spiritual connection” to the Hindu peoples.<sup>46</sup> By rooting the conferral of rights in accordance with the recognition of traditional Hindu religious beliefs, the court adopted a moral view with the legal plane, which may be used as a strong precedent in the future for other countries as well. The rights afforded to the Ganges and Yamuna rivers are more extensive than the rights given to the Whanganui River, including both constitutional and statutory human rights, such as the right to life. However, in providing these broad rights, the Court failed to differentiate between the “human rights” of true humans versus the personified rivers, which has resulted in a plethora of litigation to ascertain the true extent of the rights afforded.<sup>47</sup> The rights primarily pertain to the preservation of the rivers, whereas the extent of liabilities remains unclear. The *Miglani* case is even broader, as the Court declared that “polluting and damaging the rivers, forests, lakes, water bodies, air, and glaciers will be legally equivalent to harming, hurting and causing injury to person” and imposed strict liability upon “any person causing any injury and harm, intentionally or unintentionally” to the recognized ecosystems.<sup>48</sup>

(iii) *Legal Protection*

In *Salim*, the High Court created a guardianship model to protect the legal rights of the Ganges and Yamuna rivers, establishing the rivers as minors under the law.<sup>49</sup> The Court appointed three government officials to fill the position, which included the Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand, and the Advocate General of the State of Uttarakhand.<sup>50</sup> As guardians, their duty as “*persons in loco parentis*” is to be the “human face” of the river, and

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<sup>45</sup> *Supra* note 36 at paras 3 and 9.

<sup>46</sup> *Ibid* at para 11.

<sup>47</sup> Erin O’Donnell, “Rivers as living beings: rights in law, but no rights to water?” (2021), Griffith L Rev 1 at 8.

<sup>48</sup> *Supra* note 38 at para 63; O’Donnell, *supra* note 41 at 140.

<sup>49</sup> O’Donnell & Talbot-Jones, *supra* note 22 at 4.

<sup>50</sup> *Ibid*.

to “protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries.”<sup>51</sup> The appointment of guardians was based on existing roles in government, as opposed to the creation of new positions that are distinct from the government, which brings into question the issue of conflicting interests.<sup>52</sup> In addition to the guardians, the Court suggested the adoption of the “Ganga Management Board” to serve an advisory function.

(iv) *Implementation, Outcomes, and Impact on Community Relations*

In 2017, the state government of Uttarakhand appealed the *Salim* decision to the Supreme Court of India, arguing that their responsibilities as guardians of the rivers were unclear, largely because the rivers extended beyond the borders of Uttarakhand, passing throughout India and into Bangladesh.<sup>53</sup> The appointed guardian’s unwillingness to exercise their duties worried that as guardians, they would be personally responsible for the liabilities of the rivers. As a result of the litigation, the current legal status of the rivers is uncertain.

Unlike the Te Awa Tepua Act, the declaration of personhood for the Ganges and Yamuna rivers was not based on an Indigenous perspective. The underlying purpose of the action was rooted in environmental protection efforts, which were assisted by the religious influence of the Hindu majority in India and human rights movements. Should the High Court’s decision be upheld, it would seemingly bring positive outcomes to India’s environmental protection efforts and community health. The declaration provides for enhanced protection of the highly polluted and fundamental water source for the region, and through judicial and legislative efforts, it may allow for improved relations between the human occupants and the sacred natural entities. The main point of contention that continues to prevail is the question of who can be prosecuted for harms against the identified ecosystems, and what exactly constitutes harm. The judicial appointment of rights lacks clear structure, governing rules, guardianship duties, and implementation scheme, which has led to issues with the enforcement of rights, and consequently, little change has been afforded to the health of the rivers.<sup>54</sup>

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<sup>51</sup> *Salim*, *supra* note 36 at para 19.

<sup>52</sup> O’Donnell, *supra* note 41 at 141.

<sup>53</sup> O’Donnell, *supra* note 41 at 142.

<sup>54</sup> *Ibid.*

## **D. Atrato River: Columbia**

### *(i) Background and Method of Recognition*

In 2016, Colombia's Constitutional Court declared the Atrato River basin as having the right to "protection, conservation, maintenance, and restoration."<sup>55</sup> The decision followed the 2015 RoN case related to the environmental degradation of Columbia's Tayrona National Park, where the Constitutional Court declared that "rivers, mountains, forests, and the atmosphere must be protected, not because of their utility to humans but because of their own rights to exist", and that society had a duty to "respect and guarantee the rights of nature."<sup>56</sup> The Atrato River was selected due to its poor environmental condition, largely related to heavy pollution associated with illegal gold mining.<sup>57</sup> Due to mining efforts, the Atrato is subject to over 60 tons of mercury and cyanide contamination every year, which consequently results in toxic poisoning to the river's fish populations, as well as to the people who feed on the fish.<sup>58</sup> The communities most affected by the river pollution are Indigenous and Afro-Columbian groups, which has led to a plethora of socioeconomic-related issues ranging from poor health outcomes and drug trafficking.<sup>59</sup> The movement towards the recognition of legal rights for the Atrato was initiated by the local community, including Indigenous and Afro-Columbian organizations, who partnered with the environmental NGO Tierra Digna to seek both environmental and human protection for those residing in the region.<sup>60</sup> In their judgement, the Constitutional Court the Atrato river was granted constitutional protection, and the Court further found the Colombian government responsible for "violating fundamental rights to life, health, water, food security, the healthy environment, culture and the territory of ethnic communities by their negligent conduct" in failing to stop the illegal mining the led to the humanitarian and environmental crisis of the Atrato river basin.<sup>61</sup> Not only did the Court grant rights to the river, but it also recognized the importance of safeguarding human rights for the occupants of the region.

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<sup>55</sup> Stacey Schmader, "Press Release: Colombia Constitutional Court Finds Atrato River Possesses Rights" (2017), online: *CELDF* <<https://celdf.org/2017/05/press-release-colombia-constitutional-court-finds-atrato-river-possesses-rights/>>.

<sup>56</sup> Boyd, *supra* note 40 at 225.

<sup>57</sup> *Ibid.*

<sup>58</sup> Laura Villa, "The Importance of the Atrato River in Colombia Gaining Legal Rights" (May 17, 2017), online (blog): *Earth Law Center* <<https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-in-colombia-gaining-legal-rights>>.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

(ii) *Scope of Protection and Legal Representation*

The Court decision does not explicitly refer to the Atrato River as being a legal person; rather, the case is more so representative of the expansion of the RoN movement towards broad, flexible rights to facilitate environmental protection. As a matter of implementation, the Court gave the government a one-year time frame to develop a plan for ending the pollution and creating a restoration plan for the river, as well as requiring the conduction of baseline studies and the implementation of protective measures.<sup>62</sup> There is no mention of associated liabilities for the river, which further indicates a lack of explicit personhood status of the Atrato. The Court indicated that a joint guardianship initiative should be implemented, which would consist of one government and one Indigenous representative.<sup>63</sup> Additionally, the guardianship will be assisted by an advisory council, made up of the Humboldt Institute and the World Wildlife Foundation.<sup>64</sup>

(iii) *Implementation and Outcomes*

The public has been reported as responding well to the adoption of legal rights for the Atrato; however, resource issues within Columbia have made the implementation of the project difficult. The restoration program for the Atrato lacks the funding and resources required to invoke change, and with more pressing human rights issues to surmount, it appears as though Columbia has chosen to direct their limited resources away from the Atrato. This highlights the practical issues associated with the adoption of RoN initiatives in countries that lack resources and are forced to decide between spending time and money resolving environmental issues or enforcing human rights. Further, the enforcement of the Atrato rights would require the closure of mines, which is a highly important industry in Columbia, especially for providing jobs to low-income communities.<sup>65</sup> The enforcement of rights may result in disproportionate harm to communities relying on the mining industry to survive, including the Indigenous and Afro-Columbian communities who petitioned for the implementation of the project. When recognizing the RoN, a balancing must occur between the positive environmental and human rights outcomes versus the negative impact on economic prosperity and the communities subject to regulations.

**E. Lake Erie Bill of Rights (LEBOR): United States**

(i) *Background Method of Recognition*

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<sup>62</sup> *Ibid.*

<sup>63</sup> Schmader, *supra* note 55.

<sup>64</sup> Villa, *supra* note 58.

<sup>65</sup> *Ibid.*

In 2019, residents of Toledo, Ohio, adopted the LEBOR, which became the first law in the U.S. to provide legal rights to a specified ecosystem. LEBOR arose from the combined efforts of a community organization, Toledans for Safe Water (TSW), and their partner organization, the Community Environmental Legal Defense Fund (CELDF), after a three-year-long endeavour to adopt legal rights to the lake.<sup>66</sup> In 2014, Lake Erie was substantially harmed by the bloom of algae, causing over 500,000 Toledo area residents to have no access to clean drinking water for three days.<sup>67</sup> Given the significance of Lake Erie to the community, TSW worked to draft LEBOR to secure the rights of the people to a healthy environment and the rights of the lake itself. TSW and CELDF engaged in municipal action to get the LEBOR petition on the ballot for Toledo's city charter amendment.<sup>68</sup> The city passed an ordinance, which would allow the citizens to sue on behalf of the lake.

(ii) *Implementation, Outcomes, and Impact on Community Relations*

Shortly after the adoption of LEBOR, the ordinance was immediately challenged as being constitutionally invalid in a federal lawsuit.<sup>69</sup> In *Drewes Farms*, the plaintiff, who grew crops counties near Toledo, asserted that the ordinance exposed farmers to massive liabilities when it fertilizes its fields "because it can never guarantee that all runoff will be prevented from entering the Lake Erie watershed."<sup>70</sup> The state of Ohio joined the lawsuit as an intervenor for the plaintiff, arguing that it was the State's responsibility, not municipal citizens, who had the legal responsibility of implementing environmental regulatory programs.<sup>71</sup> U.S. District Judge Jack Zouhary struck down LEBOR as it was "unconstitutionally vague and exceed[ed] the power of municipal government in Ohio."<sup>72</sup> Judge Zouhary stated that the ordinance "may trap the innocent by not providing fair warning" and "invite arbitrary enforcement by prosecutors, judges and juries."<sup>73</sup> Consequently, LEBOR was never enforced; however, the initiative remains a

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<sup>66</sup> Mari Margil & Ryan Dickinson, "Toledo Passed a "Lake Erie Bill of Rights" To Protect Its Water. The State Is Trying to Stop It", *In These Times* (15 August 2019), online: <<https://inthesetimes.com/article/rights-of-nature-toledo-ohio-state-industry-repression-lake-erie>> [In These Times].

<sup>67</sup> Timothy Williams, "Legal Rights for Lake Erie? Voters in Ohio City Will Decide", *NY Times* (27 February 2019), online: <<https://www.nytimes.com/2019/02/17/us/lake-erie-legal-rights.html>>.

<sup>68</sup> In These Times, *supra* note 66.

<sup>69</sup> *Drewes Farms Partnership v City of Toledo*, 441 F Supp (3d) 551 (2020) [*Drewes Farms*].

<sup>70</sup> Ashley Westerman, "Should Rivers Have Same Legal Rights As Humans? A Growing Number Of Voices Say Yes" (3 August 2019), online: *NPR* <<https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye>>.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Drewes Farms*, *supra* note 69 at 8.

<sup>73</sup> *Ibid* at 5.

hallmark case for the recognition of the RoN in Western law. Despite the limited lifespan of LEBOR, *Drewes Farms* gained significant international attention and demonstrates that communities are willing to embark on a drastic shift in mentality regarding how nature is provided rights and protection. The potential for granting legal personhood to at-risk bodies of water that are linked to human health disasters may provide for a path towards more expansive recognition of the RoR.

### **Canadian Perspective: Magpie River Project**

#### *(i) Background and Method of Recognition*

The first and only instance of legal rights and personhood being granted to an ecosystem in Canada is the Magpie River in Quebec.<sup>74</sup> In February 2021, the Innu Council of Ekuanitshit and the regional municipality of Minganie passed joint resolutions declaring that the Magpie River a legal person subject to rights and obligations.<sup>75</sup> The process for achieving increased environmental protection for the Magpie River was an ongoing, decade-long effort spearheaded by the Ekuanitshit First Nation community and local environmental groups who sought to prevent further hydroelectric development on the river.<sup>76</sup> As the RoN movement gained traction in countries like New Zealand, the Magpie River was selected as a suitable candidate for adopting a similar project in Canada due to 3 key reasons. First is the Indigenous perspective; the Magpie runs through the ancestral land of the Ekuanitshit community and bears deep cultural significance to the Innu peoples.<sup>77</sup> Second, the 300 km long river has received international recognition from notable institutions like National Geographic as being one of the top 10 white water rapid destinations in the world, which lends to its identification as a renowned tourist attraction.<sup>78</sup> Lastly, the strong flow of the Magpie River makes it a prime target for Hydro-Quebec, the provincial government's energy corporation, who would likely seek to continue to

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<sup>74</sup> For a complete discussion of the project, see Yenny Vega Cárdenas & Daniel Turp, *Une Personnalité Juridique Pour le Fleuve Saint-Laurent et les Fleuves du Monde* (Montréal: Éditions JFD, 2021).

<sup>75</sup> Chloe Rose Stuart-Ulin, "Quebec's Magpie River becomes first in Canada to be granted legal personhood", *Canadian National Observer* (24 February 2021), online: <<https://www.nationalobserver.com/2021/02/24/news/quebecs-magpie-river-first-in-canada-granted-legal-personhood>>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Focus Online, "A River as a Legal Person: McGill Law students lend a hand in Magpie River case" (April 2021), online (blog): *McGill Publications* <<https://publications.mcgill.ca/droit/2021/04/19/magpie-river-legal-person/>>.

<sup>78</sup> "Protect the environment/Right of nature" (15 April 2021), online: *Earth Law Center* <<https://www.earthlawcenter.org/blog-entries/2021/4/the-magpie-riverfirst-river-granted-rights-in-canada>>.

use the river in future hydroelectric projects.<sup>79</sup> The national and international recognition of the Magpie as a valuable body of water, as well as the importance of the river to the Indigenous Innu community, made the river a prime candidate for adopting the RoR in Quebec.

The Muteshekau-shipu Alliance, consisting of the Innu Council of Ekuanitshit, the regional municipality of Minganie, Canadian Parks and Wilderness Society Quebec, and the Association Eaux-Vives Minganie, came together to work on attaining enhanced protection for the Magpie River against further destruction by Hydro-Quebec.<sup>80</sup> The Alliance partnered with the International Observatory on the Rights of Nature (IORN), which assisted in drafting the resolutions.<sup>81</sup> The resolutions were modeled on New Zealand's initiative, adopting a legal personhood approach to legal rights that is supported by a guardianship program.

(ii) *Scope of Protection & Legal Guardianship*

The joint resolutions are similar, both granting the Magpie River nine rights in accordance with Innu customary law, including the right to flow, the right to maintain natural biodiversity, the right to be safe from pollution, and the right to sue.<sup>82</sup> The river will be represented legally by “guardians”, who will serve as the “human face” of the river and have the duty to “act on behalf of the rights and interests of the river and ensure the protection of its fundamental rights.”<sup>83</sup> The guardians will be appointed jointly at the discretion of both the regional municipality and the Innu Council.<sup>84</sup>

(iii) *Implementation, Outcomes, and Impact on Indigenous Communities*

The Magpie River resolutions follow in suit with environmental developments in other countries, but the current status of the enforcement of rights is yet to be determined. If the resolutions are upheld, the Magpie River will be afforded enhanced protection, including from hydroelectric projects, and the project has the potential to be used as a precedent for future Canadian RoR cases.

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<sup>79</sup> Focus Online, *supra* note 77.

<sup>80</sup> Stuart-Ulin, *supra* note 75.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> Morgan Lowrie, “Quebec river granted legal rights as part of global 'personhood' movement”, *CBC News* (28 February 2021), online: <<https://www.cbc.ca/news/canada/montreal/magpie-river-quebec-canada-personhood-1.5931067>>.

<sup>84</sup> *Ibid.*

## **Contrasting Methods of Recognition**

### **A. Creating Legal Rights for Nature**

The RoN movement has gained significant traction over the past two decades. In particular, the recognition of rights has been especially powerful in reconciliation efforts, allowing for the integration of ancient laws and cultural protocols of Indigenous peoples within traditional Western law frameworks. As such, identifying ecosystems that have strong cultural significance to local Indigenous communities will serve as an important selection factor for future RoN and RoR projects. The recognition of legal rights for natural entities is considered an innovative approach for advancing environmental protection efforts within environmental law, and imports a novel perspective of nature that is not been consistently recognized in most civilizations.<sup>85</sup> Internationally, the recognition of legal rights for rivers has been achieved through two primary mechanisms: legal personhood status or legal subject status.<sup>86</sup> The important distinction between the methods of recognition pertains to the extent of rights being given to the river. Deciding between legal personhood or legal subject status involves identifying the specific needs of the ecosystem, and what kinds of rights will be required to permit the most sustainable method of protection. The concept of legal personhood can be elusive, so the rights afforded must be narrowly defined. Legal personhood is the method used most often in common law jurisdictions, like New Zealand. With legal personhood status, there is flexibility as nearly any "thing" can be recognized as a person in law.<sup>87</sup> Recognizing a non-human entity as human is a legal definition, which permits governments and municipalities to tailor the rights afforded to fit the needs of the ecosystem, while also establishing appropriate restrictions on those rights to allow for the coexistence of the personhood status with other aspects of the community, as required. In contrast, the legal subject approach is more common in civil law jurisdictions, like South American nations. The recognition of an ecosystem as a subject of legal rights permits courts or to set out the specific rights of the subject, and is considered even more flexible than legal personhood status.<sup>88</sup> The subject of legal rights approach was used by Colombia's Constitutional Court in their recognition of the Atrato River, which gave the river specific "biocultural" rights to the "protection, conservation, maintenance and restoration", and intended to emphasize the

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<sup>85</sup> O'Donnell & Talbot-Jones, *supra* note 22 at 5.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

cultural link between the RoN and the rights of communities who depend on it. A third and less common method of granting legal rights to nature involves identifying rivers simply as legal entities, which does not necessarily confer any legal rights or duties to the system. In India, the Ganga and Yamuna rivers were recognized as “legal persons/living entities” with all duties of living persons. While the case was under appeal, similar methods of recognition were given to all streams and glaciers in Uttarakhand, with the language defining the subjects as “moral persons” as opposed to “living persons.”<sup>89</sup> The inconsistent language used by the Uttarakhand High Court “blurs [the] distinction” between a legal and living person, leading to subsequent problems, including whether the Yamuna could be “murdered.”<sup>90</sup> The recognition of a river as a “living entity” bears less significance than the legal personhood approach, and may weaken an argument in court in the defence of rights. Almost all living creatures are already viewed as living entities, so the absence of personification could limit the extent of legally enforceable protection; as such, pushing for a legal personhood or subject of rights approach is favourable.

Aside from the method of recognition, there are also different methods of creating legal rights. To date, the creation of legal rights for nature has mostly been through legislative efforts. In New Zealand, the creation of the *Te Awa Tupua Act* was a negotiated settlement between the Indigenous community and the government, which aimed to alter ownership without disrupting existing management structures.<sup>91</sup> The *Te Awa Tupua Act* references New Zealand’s leading environmental legislation, the Resource Management Act, and sets out how the new legislation is to be incorporated into the national law.<sup>92</sup> As such, the Whanganui was granted personhood through national-level legislation, which would likely be of greater force than the municipal resolutions passed in Quebec. In contrast, India created legal rights for rivers through judicial undertakings, which derived from pre-existing common-law precedents. The legal standing of the Ganges and Yamuna rivers was not created in a way that allows for the designation to be integrated into legislation, but instead, was “meant to provide a substantive shift in the way that the rivers are managed and protected in law.”<sup>93</sup> Through judicial undertakings, the State court explicitly intended to create legal rights for nature in a way that the New Zealand government

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<sup>89</sup> *Ibid.*

<sup>90</sup> O’Donnell, *supra* note 41 at 138.

<sup>91</sup> O’Donnell & Talbot-Jones, *supra* note 22 at 5–6.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

did not. In Columbia and Ecuador, the legal rights were established through judicial recognition of constitutionally entrenched rights of nature. In Canada, the best approach would likely be through legislative arrangements, as the Constitution is not readily amendable, nor is there any suggestion that the rights of nature will receive the same constitutional recognition as seen in Columbia or Ecuador any time soon.

## **B. Enforcing Legal Rights for Nature**

The primary issue arising from affording rights to nature is enforcement. The concept of legal RoN can only be of value when they are both recognized and respected by communities and the government. There are thought to be three key factors required to ensure the enforcement of rights to rivers, which include the appointment of a “guardian” to speak on the river’s behalf, the provision of resources (time, money, expertise) to ensure the rights can be supported in court, and guardianship that is independent from the government.<sup>94</sup> For example, the *Te Awa Tupua Act* created the office of the Te Pou Tupua and associated advisory groups, which are decentralized decision-making bodies. The Te Pou Tupua have a duty to serve as the voice of the river, and in return, are provided with a constable fund from the government to facilitate their duties. With these three components in place, the rights of the Whanganui River are well established and more likely to be enforced by the courts. In contrast, the rights of the Ganges and Yamuna rivers have been difficult to enforce due to an unclear guardianship program. The Ganges and Yamuna are transboundary rivers, crossing through India and into Bangladesh; as such, the recognition of the rights afforded in India may not translate into the rights afforded in Bangladesh, which may render the rights irrelevant if similar methods of recognition are not adopted in the neighbouring jurisdiction. When assessing the feasibility of a RoR project, identifying possible issues with the implementation and enforcement of rights surrounding regions should be considered. In addition, the guardians of the Ganges and Yamuna are court appointed government officials, which may result in a conflict of interest when enforcing the rights.<sup>95</sup> Creating a guardianship program that is distinct from local government is essential for facilitating the duties in a manner that is solely focused on upholding the rights of the river, without the worry that there may be political recourse for certain decision-making. Lastly, the lack of funding provided to the guardians of the Ganges and Yamuna rivers has created a scheme of rights that are less likely to be enforced.

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<sup>94</sup> O’Donnell & Talbot-Jones, *supra* note 22 at 1–2.

<sup>95</sup> *Ibid* at 6.

Without sufficient monetary support, it will be difficult for guardians to bring any action on behalf of the rivers, which brings into question the ability of the guardians to create any positive change for the rivers. In comparing the efficacy of the programs adopted for the Whanganui River versus the Ganges and Yamuna Rivers, it is evident that a clear set of rights, a strong guardianship program, and fair resource allocation are fundamental for ensuring the success of any RoR project.

Regardless of the strength of a RoR scheme, the success of a RoR project remains contingent on the amount of power vested in the organization bringing forth the claim. In New Zealand, the rights of the Whanganui River were granted by the federal government, which allowed for a strong recognition and enforcement of the rights. In contrast, the LEBOR in Ohio appears at the opposite end of the spectrum, whereby the local community efforts to create an ordinance were easily struck down by the court. Similar consequences may result in the enforcement of rights for the Magpie River. Although there exists greater outright support for the enforcement of rights when implemented or recognized by higher levels of government, community efforts should not be diluted to the point of irrelevancy. The community voice remains a strong avenue of advocacy to bring awareness to a particular topic, and to spark important conversations needed to bring forward consideration for RoR projects in the future.

### **C. Restrictions on the Rights Afforded**

In each case outlined, the rights attributed to the rivers are not all-encompassing. Instead, the selected rights have been tailored to best meet the needs of the specific river. From an environmental standpoint, it may be preferred to give limitless rights; however, to gain sufficient community support for the RoR movement, it is important to identify restrictions on rights that allow for the coexistence of other industries as well. One important right required for river health that is consistently omitted is the right to water. Rivers require flowing water to survive, but from a Western law perspective, the protection of water has been focused on its use for human consumption, rather than the protection of the water as an extension of the river.<sup>96</sup> Extraction of water for “drinking, irrigation, mining and energy generation is a key driver of poor river health”, and as a result, the proper protection of aquatic ecosystems is dependent on establishing

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<sup>96</sup> O'Donnell, *supra* note 47 at 9.

the rights to the water itself.<sup>97</sup> In many cases, providing legal personhood status bears little meaning if there is no right to manage the water that comprises the river.

## **Next Steps: Rights of Rivers in Ontario**

### **A. Suggested Goals for an Ontario Project**

There exist several difficulties in incorporating a RoR project in Ontario. Canada as a whole lacks legal precedents to support the rights of nature, and the *Constitution Act* does not specifically establish the rights of nature.<sup>98</sup> The Magpie River resolutions in Quebec serve as the sole pieces of legislation suggesting the RoR, and due to their recent incursion, the practical and legal effects of the resolutions remain undetermined. Despite the lack of precedents, the adoption of the RoR in Ontario is pivotal for advancing environmental law and for encouraging a paradigm shift in how the nation perceives natural entities.

The focus of an Ontario RoR project should be centred on selecting a river that would allow for improved community health, social wellbeing, and sustainability. These goals align with the Canadian Environmental Law Association's (CELA) core mission, and will allow for relevant interactions between CELA departments and their community partners. The incorporation of the social determinants of health along with the rights of rivers allows for the improvement of both environmental and human well-being, and will help bring awareness to regions that require assistance. While the RoN movement is the basis for many international cases, the focus for CELA should relate to the incorporation of Indigenous perspectives and their interactions with ecosystems as the method of grounding a RoR claim.

### **B. Factors to Consider in Project Planning**

#### *(i) Criteria for River Selection*

The RoR have been recognized around the world to address a variety of social, environmental, and economic dilemmas. To achieve success in granting rights to rivers in Ontario, the river selected should encompass a wide range of topics and issues. For example, the Magpie River resolutions were largely successful due to the widespread recognition of the river as being culturally and environmentally important to the Indigenous community and other local organizations. Ascertaining which rivers in Ontario could be associated with a similar level of

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<sup>97</sup> *Ibid* at 2.

<sup>98</sup> *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Constitution Act*].

notoriety is essential for selecting the first river candidate, as it would likely receive more support from local governments, environmental groups and Indigenous communities. To avoid issues with enforcement across borders, as experienced in India, the selected river should be situated within the confines of Ontario. This will limit issues with the enforcement of rights, as the recognition of legal personhood within Ontario law will not be hindered by the laws and level of recognition should the water source cross provincial or national borders.

(ii) *Indigenous Perspective*

In a Canadian context, incorporating an Indigenous perspective will be critical for success. The RoN movement in itself is rooted in the Indigenous perspective, whereby nature is recognized as a living entity, deserving of its own rights and legal recognition. Achieving support from Indigenous communities adds an additional element of support and legitimacy to the claim, while also incorporating aspects of Indigenous law to provide for improved reconciliation, as per section 35(1) of the *Constitution Act*.<sup>99</sup> As with the *Te Awa Tupua Act* or Magpie resolutions, the Indigenous perspective has been fundamental in the process of recognizing legal personhood, as it has allowed for a positive interplay between Indigenous laws and customs and the traditional Western view of nature as being property. Apart from the Canadian constitution, international law also dictates the necessity of recognizing incorporating Indigenous perspectives into national decision-making.<sup>100</sup> The UNDRIP uses language that suggests the criticality of affirming and emphasizing Indigenous viewpoints in order to contribute to regional diversity and societal enhancement, notably in connection to the organization of their ancestral land and resources.<sup>101</sup> From this perspective, it would seem illogical to adopt a RoR project without first consulting local Indigenous communities to identify their ancestral connection to the ecosystem in question and to gauge their willingness to participate in the project.

(iii) *Method of Recognition*

While there exist various methods of affording legal rights to rivers internationally, the successful adoption of a program within Ontario should be based on the legal personhood approach, as applied in other common law jurisdictions. While there exist differences between Quebec and Ontario law, the Magpie River project has the potential to serve as a legal precedent

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<sup>99</sup> *Constitution Act*, *supra* note 99.

<sup>100</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNAGOR, 61st Sess, UN Doc A/RES/61/295 (2007) 68 [UNDRIP].

<sup>101</sup> *Ibid.*

for subsequent Canadian RoR projects. Using the Magpie River project as a reference in Ontario will allow for an identifiable baseline that exists within the Canadian landscape, while also highlighting certain weaknesses to avoid. Additional guidance may be drawn from the success of New Zealand's treaty settlements, as it is a common law jurisdiction that created one of the most well recognized and established examples of the RoR internationally. Granting legal personhood status in Ontario will require legislative rather than judicial efforts, as well as the expertise of community organizations to assist with the mission.

*(iv) Scope of Protection*

The rights afforded to the selected river must be tailored to the specific needs of the ecosystem and surrounding communities. Before selecting which rights should be provided, a clear purpose for the action must be identified. This may include the goal of protecting an endangered species residing within the river, protecting the physical health or social wellbeing of communities who rely on the river for sustenance, or protecting the river itself from harmful developmental or industrial efforts. The title of legal personhood has the potential of being overly broad or ambiguous, as seen with elements of the *Te Awa Tupua Act*, so narrowly defining the scope of the rights is critical for an effective legislative regime. Clear language outlining to the rights of the river and the duties of guardians will limit problems that could arise in a court setting, and will better inform community members as to how they are permitted to interact with the river. The right to sue is important to permit the enforcement of rights, and focusing on the adoption of the rights of water, including the right to manage water, will be important in achieving an all-encompassing method of protection for rivers. Along with the selection of need-based rights, there should also be consideration given to local societal needs. Often, rivers can be used as an important source of hydroelectric power, as seen with the Magpie River, or as a source of important minerals and resources required to fulfill economic needs of the region. While it would be preferred to give limitless rights to rivers, such a tactic would effectively limit the legislation's lifespan and success. Balancing the economic needs of the community and the need for environmental protection is key to defining a sustainable program that will permit the prosperity of numerous sectors, within reason.

*(v) Legal Protection*

The selected river will require a legal guardian to speak on its behalf and to enforce its rights in court. The method guardianship must also be tailored to the needs of the river and the

surrounding Indigenous communities. In creating a guardianship model, it is important to incorporate as many perspectives as possible, starting with the views of the Indigenous peoples as the foundation. Reserving a certain number of seats for Indigenous peoples would be ideal, with the exact number being variable based on the size of the guardianship. It would also be beneficial to incorporate a local government official and a subject matter expert to allow for diverse representation of the river. The number of guardians will depend on the identified benefits and drawbacks of a larger or smaller model. While a larger number of guardians would provide for more diverse perspectives, there will be more viewpoints to coordinate, and it may be difficult to make uniform decisions. With fewer guardians, making decisions may be quicker, but there are fewer views taken into account. For this reason, it may be wise to create a central guardianship model with only a few guardians, which can be supported by an external advisory council that would provide direction as needed. In either case, the guardians should be appointed with caution, and there should exist sufficient separation between the selected guardians and the government. In India, the government-appointed guardianship was unsuccessful due to the unclear duties of the guardians and the individual's unwillingness to properly engage in the position. The legislation adopted should set out clear duties of the guardians, along with the method of appointment, so that it will be clear what the guardians will and will not be responsible for. Lastly, guardianship will be most successful when there is associated monetary funding. Without financial resources, the guardians will have limited ability to bring claims on the river's behalf or to initiate protective measures for the benefit of the river.

## **Conclusion**

The idea of granting rights to rivers is still very new and requires additional research to better support the adoption of a project in Ontario. New cases related to the rights of nature and the rights of rivers are arising more frequently, and as such, adopting a legal personhood approach aligns with the natural evolution of environmental law within Canada and abroad. Using international precedents, it may become feasible to incorporate legal personhood for rivers into Canadian law, which will allow for better protection of water, natural ecosystems, and human communities in the future. While there remain some uncertainties regarding the RoN in a Canadian context, the adoption of the RoR in Ontario will allow for significant advancements in the fields of environmental law and Indigenous rights.