Granting An Ontario River Legal Personhood: Possibility and Future

by
Nicole Kinley

supervised by
Mark Winfield

A Major Paper
submitted to the Faculty of Environmental and Urban Change
in partial fulfillment of the requirements for the degree of Master in Environmental Studies York University, Toronto, Ontario, Canada

July 31st, 2022

Table of Contents

Abstract ii

Foreword iii

I) Introduction 1

II) Methodology 3

III) Legal Personality and Rights of Nature 5

- i) Granting natural entities legal rights: Ideological context 5
- ii) Legal personality 7
- iii) Roots in Indigenous ontologies? 9
- iv) Contemporary recognition of legal personality and RoN 10
- v) Other legal mechanisms 11

IV) Rivers & Legal Personality 13

- i) The Whanganui River **14**
  - a) Legal and Cultural Context 15
  - b) Operation: Granting of Legal Personality 16
  - c) Challenges & Benefits: Cultural & Environmental 17
- ii) The Atrato River 19
  - a) Legal and Cultural Context 19
  - b) Operation: Granting of Legal Personality 20
  - c) Challenges & Benefits: Cultural & Environmental 22
- iii) The Vilcabamba River 24
  - a) Legal and Cultural Context 24
  - b) Operation: Granting of Legal Personality 26
  - c) Challenges & Benefits: Cultural & Environmental 26

V) Granting Legal Personhood: Future Application to the Wabigoon River 28

- i) Legal and Cultural Context 28
  - a) Reconciliation 32
  - b) First Canadian River Granted Legal Personality: Muteshekau Shipu 33
  - c) The Wabigoon River 34
- ii) Operation: Granting of Legal Personality 37
  - a) Court Declaration: Benefits & Challenges 37
  - b) Constitutional Amendment: Benefits & Challenges 40
  - c) Legislative Recognition: Benefits & Challenges 42

VI) Conclusion 46

- i) Recommendations 48
- ii) Other options 50

Abstract

This paper investigates whether or not legal personhood should be granted to a river in the province of Ontario, Canada, and the feasibility of doing so given its specific legal context. The answer to this research question is reached through the insight gained from three cases, including both civil and common law jurisdictions, in which legal personhood has been granted to rivers. The Whanganui River, Atrato River, and Vilcabamba River cases will be analysed and compared for the purpose of gaining a greater understanding of this relatively novel legal tool and its potential application to rivers in Ontario. This paper considers the cultural and environmental challenges and benefits of granting rivers rights, in each case within their respective legal, cultural, and political contexts in New Zealand, Colombia, and Ecuador, respectively. In each case, different legal mechanisms were used to recognize the river's rights. These include a court declaration, constitutional amendment, and legislative recognition. The challenges and benefits of translating these mechanisms into an Ontario legal context are discussed and guidance from the insights gained from the cases analysed. Largely for reconciliatory reasons versus the consequent impact on remediating or preventing environmental harms, legal personhood should be pursued for the Wabigoon-English River system in Ontario. Specifically, despite the advantages that the mechanisms used in the other countries discussed may confer, the mechanism best-suited to the granting and protecting of this river system's rights in the Ontario legal context is legislative recognition. This legislation should recognize the Wabigoon-English River system as a legal person and living entity, as well as appoint 'guardians' to act on its behalf and in its best interests. Concomittantly, constitutional recognition of the river's rights should also be pursued to increase the likelihood of environmental protection and governmental compliance with the legislation.

Foreword

The nature and role of this research fulfills the requirements of the MES degree by meeting the learning objectives within components structuring my area of concentration as laid out in my Plan of Study. This research covers all three components of my area of concentration; environmental law, environmental governance, and sustainability. By theorizing how granting legal personhood to a river could operate in the Ontario legal context, I gained a more profound understanding of the Canadian legal system and the field of environmental law. I uncovered strengths and weaknesses within the system and how these factors ultimately impact environmental protection. I assessed the approach to legal personality under other legal systems around the world and their relevant environmental laws, including New Zealand, Colombia, and Ecuador, as rivers and their rights must be analysed within their respective legal contexts. If granting legal personhood has been an effective environmental legal tool in eliminating or mitigating harm in these countries, an argument can be made that Canada should follow suit. A common sentiment in the contemporary body of research around this topic is that "Indigenous laws are well positioned to conceptualize the decision-making structures needed to breathe life into legal personhood" (The Conversation, 2021). While being careful to not foster the assumption that rights of nature are synonymous with ecocentric ideologies in Indigenous ways of thinking, I also took into account Indigenous laws and jurisdiction as they relate to rivers in order to ensure that they are included, unaltered and unassimilated, in the process of granting rights to a natural entity. That being said, one must be cognizant of the multiple ethical considerations related to fulfilling this learning objective in my Plan of Study. My research topic enabled me to explore how environmental law and governance impact each other. For instance, how innovative governance strategies may come about from granting natural entities with rights, like the management board for the protection of the ancestral forest Te Urewera in New Zealand (The Conversation, 2021). As Christopher Stone remarked in his pivotal article on the rights of nature, humans "suppose the rightlessness of rightless "things" to be a decree of Nature, not a legal convention acting in support of some status quo". There will need to be societal and perceptual shifts in order to "steer, control or manage sectors or facets of society" (Evans, 2012). This shift will be crucial to "push[ing] parameters, alter[ing] norms, and driv[ing] change" to ultimately change governance regimes (Margil, 2017). If it does not occur, there will not be sufficient pressure in order for the Canadian legislatures or courts to acknowledge and codify the

legal rights for nature. My research topic allowed me to look into the creation of more sustainable ideologies and practices. The ideology of natural resources as humans' property that needs to be conserved is consistent with the extractive nature of our economy. In addition, I gained a strong working knowledge of sustainable principles; principles that will ultimately help guide the creation of environmental legislation and policy.

Positionality

I am a Western, white, female, Euro-Canadian scholar. This research paper is being researched and written in Toronto; the territory of the Métis, the Haudenosaunee and the Mississaugas of the Credit River. This territory is covered by Treaty 13 and the Dish With One Spoon Wampum Belt Covenant. This territory has not been surrendered nor unceded.

Being a Western scholar means that I have learned primarily through a Western research paradigm; a paradigm that emphasizes the objective of knowledge is to explain an objectified universe (Latulippe, 2015). In my prior use of the term 'knowledge', I am referring to the Western meaning of the term; knowledge that is divisible from the knowledge holders or keepers and from the environment in which it is embedded (Peltier, 2018). In discussing Indigenous knowledges and Indigenous laws in this research paper, I will be cognizant to preclude generalization of Indigenous laws and pan-Indigenization of Indigenous knowledges. Indigenous laws and knowledges are unique and distinct across different Indigenous communities.

I) Introduction

Rivers, their waters, riverbeds, tributaries, banks, flats, and catchments currently face significant threats from climate change in concert with anthropocentric demand for their economic services. A rapidly growing population that generates ever-increasing human, industrial and agricultural wastes, threatens to pollute rivers past their functional and habitable thresholds (Trigueros, 2012). These threats wreak havoc on freshwater ecosystems and biodiversity. Hydrologic cycles ensure many of these harmful effects are eventually spread to other bodies of water (Bailey, 2008). International recognition of the much-needed protection of river health has increased. For instance, the bulk of the United Nations' Sustainable Development Goals (SDGs) are related to water; "it is well recognized that water underpins most aspects of economies and sustainable development" (UN et al., 2021). The 2021 UN World

Water Development Report stresses that the current status of water resources, including rivers, "highlights the need for improved water resources management" (UN et al., 2021).

However, competing values contribute to this management. Traditionally, the values of authoritative figures with the most capital and economic interest are prioritized (Environmental Law Centre of Alberta, 2014). There is a desperate need for re-prioritization and a shift in our societies' values, as well as innovative government approaches to balance economic, social, and environmental considerations. Recognizing, measuring and expressing water's worth in and of itself, and incorporating this into decision-making, is necessary for positive change.

This need for change is inclusive of novel legal tools in the ever-evolving body of environmental law that governs our societies; a complex field of law "devoted both to preservation and to change" (Muldoon et al., 2015). The basis of current environmental legislation can be summarized as "environmental reductionism, manifested by compartmentalisation, fragmentation and anthropocentrism" (DARPÖ, 2021). In Canada, environmental laws were built on the Western view that the natural world is the property of human beings (Garrett & Wood, 2020). This conflicts with the Indigenous view of water as "sacred" and the "most life sustaining gift on Mother Earth", as maintained by the Canadian Assembly of First Nations (Assembly of First Nations. (n.d.). The need for reconciliation and the recognition of Indigenous water-related laws is what makes the protection of water resources especially complex in Canada. The advent of the movement for the rights of nature (RoN) has increased societal awareness that natural entities' own rights are traditionally not on the radar of legal systems. A new tool on the horizon that may reshape the law's anthropocentric orientation, advance reconciliation, and reflect rivers' inherent and relational values, among other changes, is the granting of legal rights and personhood to rivers. An interesting place to posit the effectiveness of this tool is in Ontario; a Canadian province home to over 100,000 km of rivers and 23% (approximately 1/5) of all Indigenous peoples in Canada (Northern Ontario Travel, 2020, Government of Canada, 2011).

This paper is proposed as a starting point for the discussion of granting legal personhood to rivers in Ontario. Section III will explore the ideological underpinnings of legal personhood and consider the question of what it would mean to grant a natural object like a river legal personhood. It will also address the contemporary recognition of this concept and explain why other legal tools with the potential to confer environmental protection, like the public trust

doctrine, were not chosen to be explored. Section IV will investigate how granting legal personhood is possible in common law and civil law jurisdictions through an exploratory, empirical, comparative study of the Whanganui, Atrato, and Vilcabamba Rivers. These rivers are often found in contemporary literature regarding this topic because they provide useful commentary on approaches that can be successful in granting legal personhood status to rivers and the lessons learned regarding the environmental and cultural outcomes of doing so. Essentially, section IV will explore the question of how the granting of legal personhood to rivers has worked thus far. The significance of these cases will be analyzed in their respective historical, political and cultural contexts. The insights drawn from section IV, as well as the recent granting of legal personhood to the Magpie River in Québec, are brought together in section V to theorize granting legal personhood to the Wabigoon River through either the use of a declaration through the courts, a constitutional amendment, or legislative recognition. Furthermore, the challenges and benefits of each mechanism will be discussed. Finally, section VI will summarize the takeaways and observations from section V and answer the following question: should granting legal personhood be pursued for the Wabigoon River? If not, why not? If so, what steps should be taken to successfully implement this concept?

II) Methodology

This paper will first provide a literature review of the existing research on legal personhood. The research was conducted with the aim of being exploratory and analytical. Online and physical secondary resources provided by York University will be used for this literature review. Primary resources will be sought, where available, that relate to the specific cases and legal systems that are referenced. Discussion on the history of granting nature legal rights will provide context to this topic. Considering the broad nature of this topic, I will specifically look at cases where legal personhood has been granted to rivers; in both common law and civil law jurisdictions. To focus this review, a comparative analysis will be conducted on three rivers that have been granted legal personhood status; the Whanganui River, the Atrato River, and the Vilcabamba River. Researching three case studies in greater depth will provide a better understanding of how this status can be granted within different legal systems and legal cultures. Furthermore, through comparison and analysis, this paper assesses whether or not

granting this status has been effective in mitigating/eliminating cultural and environmental harms. The case of the Magpie River will also be discussed, but it will be analyzed in less detail since it has only been recently put into effect and therefore provides less data for analysis. Furthermore, the legal rights of the Magpie River were only recognized by a less formal and authoritative resolution, in comparison to the other cases. From my analysis, recommendations will be made for granting the Wabigoon River legal personhood status. Steps that need to be taken in order to do so will be explored in theory and different variables will be considered. This paper contemplates areas where legal personhood will be insufficient to protect rivers and their related ecosystems. Areas where further research needs to be done to remedy these shortcomings will be identified.

This paper attempts to avoid being grounded in Western epistemologies in which authority is assigned "uniquely to knowledge production that is founded in Euro-Western dominant social viewpoints and histories of colonialism" (Edwards et al., 2020, p. 8). However, given its nature as a literature review, it may unavoidably contain some components of these epistemologies. By undertaking research involving the primary and secondary use of data from research databases, this paper avoided duplicating research and was better able to point to where future research should be directed. Perpetuating more harmful Indigenous research and putting myself and others at risk of COVID-19 infection by conducting in-person research were also avoided. The former is important as a scholar who is new to the subject of Indigenous jurisdiction and Indigenous research in general. Going into an Indigenous community, or virtually reaching out to Indigenous community members, seeking interviews to answer predetermined research questions would be disrespectful, especially given the relatively short duration to write this major paper. Throughout this Master's of Environmental Studies program, it has been made clear that relationships with Indigenous communities of focus need to be regarded as lifelong commitments and established long before choosing a research topic as a non-Indigenous researcher. Furthermore, Indigenous research needs to be reciprocal, meaning that the research should be desired and beneficial to both parties. A research question concerning the effectiveness of granting rivers legal rights to preclude environmental harms is not necessarily a major priority for Indigenous communities in Canada, including the Grassy Narrows peoples. This considered, this paper used research from primary and secondary sources concerning and/or involving Indigenous peoples that were gathered through respectful means.

III) Legal Personality and Rights of Nature

i) Granting natural entities legal rights: Ideological context

The introduction of the idea of natural entities having their own rights, like a tree, a mountain, or a river, is often met with hysterics (Fisher, 2017). History suggests that this is not an uncommon reaction. When a proposal to confer rights onto some new "entity" arises, Stone argues, in his seminal article 'Should trees have standing – toward legal rights for natural objects', that the "proposal is bound to sound odd or frightening or laughable" (Stone, 1972). The latter likely stems from the belief that granting rights to natural entities is unthinkable, therefore laughable. However, "throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable" (Stone, 1972). The granting of legal personhood was also historically deployed as a "legal mechanism to reinforce social control" (Lahey, 1998). This was demonstrated by granting the powers and privileges of a natural person to professional bodies, regulatory agencies, and other non-human entities, except natural entities, early on in the constitutional personhood discourse. This enabled these non-human entities to be counted jurally, meaning that were legally recognized for their "worth and dignity in [their] own right" (Stone, 1972). Labelling the rights of nature as unthinkable was favourable to authoritative figures who were threatened by the notion that the recognition of nature's rights could 'dangerously' help "level the playing field between humans and nature" (O'Donnell, 2020). Many people, as rights holders, do not see a river and other *in situ* water resources as worthy of somewhat similar, inherent rights of their own. They do not value them for their inherent nature as "dynamic physical, chemical and biological entities" (O'Donnell, 2020); they value them for their anthropocentric use or benefit. There is resistance to giving any new entity rights "until it can be seen and valued for itself" (Stone, 1972).

Utility, or the use value of a good or service, is one of the main ways the term value is used in the context of natural resources (Water Report, 2021). These values are equivalently categorized as instrumental values; for example, values assigned to the services or utility a river provides and consequent benefits. Rivers have traditionally been managed for "a set of narrow values, including hydropower, navigation and water supply for cities, industry and agriculture" (Opperman et al., 2018). This followed logically from the fact that land around rivers was regarded as an ideal

location for human settlement due to the navigation networks they provide, as well as a water source for irrigation and industry (National Geographic, 2022). Valuing rivers in the context of water governance was largely a matter of water allocation, which mostly ignored the social dimensions of allocation and the wider benefits of rivers, including their cultural services, as well as their inherent nature (Opperman et al., 2018). Valuing rivers purely for their utility entrenched the belief that they are natural resources at the disposal of society. This instrumentalism is reflected in many facets of society, including our environmental laws. In the anthropocentric ethic, "the human subject stands at the centre of the juridical order as its only true agent and beneficiary" (Grear, 2015). Many laws "assume the ownership and capitalization of the natural world" (Margil, 2017).

Giving instrumental values the greatest consideration and integration in traditional management regimes of rivers has caused rivers' intrinsic and relational values to be overlooked. Intrinsic value refers to the value derived from a river's inherent nature; for its own sake. Relational value, even less considered in contemporary water management regimes, refers to the value derived from relationships between the river and people (James, 2020). These 'hidden' values, prominent across a wide swath of humanity (Chan et al., 2016), are often not incorporated in management decision-making processes because they are not fully understood or recognized (Opperman et al., 2018). Relational ontologies "conceptualize the world as a series of relations: the primary beings of the world are not individuals separated by identity criteria, but rather are the relationships between inherently changeable beings" (Tănăsescu, 2020). These ontologies have long been present in Indigenous communities, in their own respective forms, around the world. Many Indigenous philosophies "encompass both intrinsic values, and instrumental uses, through the wide deployment of anthropomorphism" (Tănăsescu, 2020).

Some argue that to engage more with these 'hidden' values they need to be "framed as relevant to the broader economic trends and sectors they prioritize, such as economic growth and financial returns" (Opperman et al., 2018). The framing in this context would likely involve 'commoditising' the natural environment and using "private property rights and market mechanisms in water regulation and allocation" (Macpherson, 2019). Translating these values into economic terms would enable them to be "more easily compared with other economic assessments" (Water Report, 2021). Others argue that natural entities have important values that cannot, or should not, be defined or constrained by monetary-based approaches. This argument is

more consistent with giving consideration to inherent and relational values in their own right, instead of continuing to value natural entities like rivers under an anthropocentric ethic. Furthermore, the former argument may encourage the manifestation of ontological hybridization, which will be discussed further below.

No matter the strategy, the arguing parties seem to agree that the 'hidden' values of rivers demand recognition and that their valuation "remains an absolutely necessary step in addressing water-related challenges worldwide" (Water Report, 2021). With a growing understanding of the significance of recognizing multiple values, new initiatives have been developed. This includes the Bellagio Principles on Valuing Water devised by the High-Level Panel on Water (HLPW) in 2016 intended to "motivate and encourage governments, business, and civil society to consider multiple values" and to incorporate these values into decision-making processes (Global Water Partnership, 2021).

Values underly paradigms in society; they influence human behaviour and remain a central aspect of power. They have the ability to "steer, control or manage sectors or facets of society" (Evans, 2012). In order to recognize natural entities in a way that gives them precedence over humans and the economy, there must be a paradigmatic shift, and thus a shift in values. This shift is necessary to "push parameters, alter norms, and drive change" in prevailing legal systems (Margil, 2017). As proposed by Thomas Berry's concept of "Earth Law", there needs to be a "subjectification" of nature in contrast to humans' historical "objectification" of it (DARPÖ, 2021). Such "subjectification" has already lent credence in some parts of the world to the previously unthinkable; granting a river legal personhood.

ii) Legal personality

To preface the ensuing discussion on this topic, only a brief overview of legal personality will be given; one of the reasons being that there are various aspects to the concept of granting natural entities with legal rights that cannot all be sufficiently covered. These include the legal-philosophical, environmental constitutionalism, and representation issue aspects (DARPÖ, 2021). It is also important to first clarify the two formulations of legal personality - legal persons and legal subjects - as well as touch on the legal significance of 'living entities'. Legal subjects or legal persons are often used interchangeably since both are defined by "the capacity to bear rights and

duties" (O'Donnell, 2020). However, a legal person is a construct typically used in common law jurisdictions, while a legal subject is more prevalent in civil law jurisdictions (O'Donnell, 2020). A 'living entity' in law, without any status as a person, does not necessarily confer any legal rights or duties. Its recognition can however "increase the visibility of the [entity] to the law", which may lead to special protections being awarded, and shift language in management regimes to focus on the entity as a 'whole' (O'Donnell, 2020). This clarification will be useful in section IV, where we discuss the Whanganui River (recognized as a legal person and as a living entity), the Atrato River (recognized as a legal subject), and the Vilcabamba River (recognized as a legal subject). Legal person will be used predominantly throughout the paper, since the application of personhood will be further explored in the Canadian common law context.

According to Stone, a pioneer of the idea of granting natural objects with legal rights, a natural entity is said to be a legal person when it can "institute legal actions at its behest", its injury is taken into account by the court in the determination of granting legal relief, and it benefits from the granting of this legal relief. Furthermore, a public authoritative body must be prepared to "give some amount of review to actions that are colorably inconsistent" with the natural entity's rights (Stone, 1972). The Supreme Court of Canada uses legal personhood to refer to the "bundle of civil capacities that construct legal personality" (Lahey, 1998). The idea of legal personhood holds significant importance in the Euro-Canadian legal discourse since being classified as "persons" in common law jurisdictions identifies entities that have been accorded "juridical existence". This means they have the legal capacity to "act" in law (Lahey, 1998). With the legal capacity to "act", a natural entity with legal personhood theoretically has "legal standing to challenge decisions and activities that impact its being" (DARPÖ, 2021).

Legal standing is the "legal status necessary to receive a hearing from a court or an administrative board or tribunal that holds hearings" (Environmental Law Centre of Alberta, 2014). With standing, an entity is theoretically able to institute actions in court on its own accord. An inevitable afterthought in considering a natural entity having standing is that the entity itself could not possibly argue on its own behalf. Someone would need to represent its interests - an organization, group, or any individual. The ability of 'anyone' to defend the natural entity is also known as "*actio popularis*" (DARPÖ, 2021).

The rule of standing has often been a barrier to Canadian environmentalists seeking redress in court (Muldoon et al., 2015). They often "lack the legal rights that support the standing of other

parties like industry, landowners, and First Nations" (Environmental Law Centre of Alberta, 2014). In most legal systems, in relation to the doctrine of standing, a judicial review action can be brought on if the plaintiff can demonstrate that their "individual rights had been affected by the administrative action" (Fisher, 2017). This creates a problem for a natural entity whose damage and subsequent environmental impacts likely affect more than one individual, or none in the case that the entity itself was the only victim of damage. However, the requirements for standing have been "liberalized" in recent decades and Canadian courts have allowed for exceptions in certain situations by applying a public interest standing test (Fisher, 2017). This has made it somewhat easier for environmental advocates to sue, so long as the proposed public interest plaintiff can assert a serious issue is being raised, they have a "genuine interest" in the litigation, and the plaintiff is in the best position to bring the issue before the court (Fisher, 2017).

In his infamous dissent in the *Sierra Club v Morton* case, Justice William O. Douglas argued that in order for a natural entity's interests to be protected, it should be able to "sue for [its] own preservation" (Stern, 2018); the "critical question of 'standing' would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where the injury is the subject of public outrage" (Fisher, 2017). The question of standing could be simplified if legal personhood is recognized through either judicial, constitutional or legislative mechanisms.

iii) Roots in Indigenous ontologies?

Some proponents of the rights of nature (RoN) argue that the idea of granting natural entities with rights stems from Indigenous ontologies. Indigenous laws stemming from these ontologies are considered "well positioned to conceptualize the decision-making structures needed to breathe life into legal personhood" (Townsend et al., 2021). These assumptions are encouraged by the fact that natural entities are often recognized ecocentrically in Indigenous ways of thinking and RoN are considered to be synonymous with ecocentrism (Tănăsescu, 2020). Ecocentrism is "an ethic premised upon nature's intrinsic value, wholly independent of its instrumental value to humanity" (Calzadilla & Kotzé, 2018). Correspondingly, ecocentric recognition is recognition of natural entities' "hidden" values. The assumption that the two are synonymous is harmful as it

may facilitate the mixing of Indigenous conceptions of law and Western law in the discourse of RoN; a process referred to as ontological hybridization. It is incorrect to suggest Indigenous communities have long held the belief that nature has inherent rights, because the conception of rights themselves is understood as anthropocentric and stems from an undeniable Western origin.

Furthermore, conceptions of granting natural entities with legal rights often suggest a court-appointed guardian protect these rights. As per Stone's suggestion, the guardian would protect the "incompetent" in its legal affairs – in this case, the natural entity (Stone, 1972). The guardian would be entitled to raise the entity's rights on its behalf, be given rights of inspection, or "a host of other protective tasks". This notion of a legal guardian, following traditional guardianship lines, is not synonymous with Indigenous ontologies' conception of guardianship. For instance, in the case of Te Urewera, a former national park in New Zealand whose legal rights were recognized, the Western use of the term guardian seemed to misinterpret the Māori peoples' concept of *kaitiaki* (usually translated as 'guardian') and *kaitiakitanga* (the ethic of care of *kaitiaki*, translated as 'guardianship' or 'trusteeship'). In the Western sense of the term, guardians are viewed as people who hold accountability for the environment. However, in the Māori use of *kaitiakitanga*, the guardians themselves are equally held accountable; it is "as much about managing resources of the environment as it is about managing people" (Tănăsescu, 2020). There is "no textual legal basis" for the concept of guardianship in the *Te Urewera Act*; the act that establishes Te Urewera as a legal entity and its relationship with a "particular Māori group" (Tănăsescu, 2020). Granting legal personality to natural entities is still a work in progress in terms of incorporating Indigenous philosophies on an equal footing (Tănăsescu, 2020).

iv) Contemporary recognition of legal personality and RoN

The RoN are beginning to enter into international law concomitant with an increase in environmental concerns due to climate change; an increase in the development of humans' "social instincts and sympathies" towards natural objects (Stone, 1972). The idea of granting legal personhood status to a natural entity like a river is vehemently supported by proponents of the present-day RoN movement; a movement that contends inherent rights exist for natural entities and humans' survival is dependent on the protection of these rights (DARPÖ, 2021). In 2006, in Tamaqua Borough, Pennsylvania, the RoN in law were recognized for the first time (CELDF,

n.d.). The CELDF (Community Environmental Legal Defense Fund) was largely responsible for initiating the adoption of a "bill of rights", leading to the drafting of a Rights of Nature Law. This was the first US RoN ordinance (Macpherson, 2019). In 2008, Ecuador introduced the RoN in its constitution. To date, it is the only country in the world to establish these rights at a constitutional level (DARPÖ, 2021). In 2009, Bolivia recognized the importance of RoN in its constitution, but the RoN were not entrenched (Calzadilla & Kotzé, 2018). The Universal Declaration of the Rights of Mother Earth (UDRME) was adopted in 2010. This "soft law" instrument – without legally binding force - recognizes nature's intrinsic value. It stipulates that Mother Earth and "all beings of which she is composed, have a number of rights", which include "the right to water as a source of life and clean air" and "the right to be free from contamination and pollution". (DARPÖ, 2021).

Notably, there are a growing number of rivers and related ecosystems that have recently been recognized as legal persons in nations around the world. In early 2017, the New Zealand parliament, with the Whanganui *iwi*, finalized the Te Awa Tupua Act which codifies the legal status of the Whanganui River (Margil, 2017). The same year, the rights of the Ganga and Yamuna rivers were recognized by the High Court of Uttarakhand in India. In 2019, the Plata River in Colombia was deemed a "subject of rights" (CELDF, n.d.). In 2021, the Magpie River in Québec was the first Canadian river to be designated as a "legal person" under the law (D'Amours, 2021). The list of rivers whose legal rights or personalities have been recognized also includes, without limit, the Yarra River in Australia, the Atrato and other rivers in Colombia, and all rivers in Bangladesh (Macpherson et al., 2021).

Regardless of this progress, the most relevant pieces of EU environmental legislation, including the EU Habitats Directive, do not contain a direct reassertion of the intrinsic value of nature (Schoukens, 2019). In Canada's adversarial system of law, there is currently no recognition of the RoN "in any meaningful way" (Garrett & Wood, 2020).

v) Other legal mechanisms

Aside from legal personhood, other legal mechanisms could potentially be well-suited to protecting natural entities' rights. There is a doctrine considered by some to "present a next-best option for environmental activists in combatting environmental harm *per se*" (Evans, 2016). This is known by leading water experts as the Public Trust Doctrine (PTD). Environmental harm *per*

se is “based in the ethic of ecocentrism” and refers to “damage to the natural environment that does not directly implicate people or property” (Evans, 2016). Since the discussion of the legal recognition of PTD on an international scope is too broad for the purpose of this discussion, this paper only acknowledges its indirect and slight recognition in Canada. Despite having yet to be significantly articulated in Canada, the PTD has been recognized as a “legal mechanism that can be used to require governments to hold and protect vital natural resources for the benefit of present and future generations” (Wruck, 2020). This requirement is reinforced by providing “grounds for individuals and public interest organizations to challenge the Crown and the choices it makes in the management of public resources” (Evans, 2016). This doctrine has been proposed to compensate for environmental damage in situations where tort law and statutory regulation fail to in the Canadian legal landscape. Under the PTD, the trust embodies the natural resources to be managed; the “collection of assets committed or entrusted to one to be managed or cared for in the interest of another” (The Wildlife Society, 2010). The beneficiaries of this trust are the public; the “owners” of the resources (The Wildlife Society, 2010). Finally, the trustee is the government; “the party to whom the trust assets are committed” (The Wildlife Society, 2010).

Although it is not “well-known in Canada” (Zubrycki, 2011), the “basic attributes of the doctrine are found throughout Canadian law” (Public Interest Law Centre, 2015). For instance, it has been recognized in the public right to navigation, the application of concepts underlying the PTD to municipalities, and the *parens patriae* jurisdiction (Wruck, 2020). The latter, *parens patriae* jurisdiction, gives the government standing to represent “the collective interests of the public” (Public Interest Law Centre, 2015); “those who cannot care for themselves” in the face of climate change and its catastrophic environmental impacts (Wruck, 2020). Consequently, as Canada is part of the British Commonwealth, “common or public property is referred to as assets of the “Crown” (The Wildlife Society, 2010). The Crown’s holding of “inalienable public rights in the environment” was “accompanied by the procedural right of the Attorney General to sue for protection representing the Crown as *parens patriae*” (Public Interest Law Centre, 2015).

Some proponents of the PTD believe that if it were adopted for water management in Canada, it would make the roles of different levels of government explicit with regards to managing “renewable natural resources within their respective areas of authority in such ways as to support the long-term use and enjoyment of them for the whole public” (Brooks, 2010). Furthermore, if it was secured in the Canadian constitution, it would provide a “constitutional

mechanism available to citizens to require government to protect those essential resources or to hold government accountable for its participation in the degradation of those resources" (Wruck, 2020). However, the use of the PTD as a tool to combat environmental harm *per se* seems problematic. The language of public trust is "heavily concerned with collective, anthropocentric interests", despite some scholars feeling this would not preclude its effectiveness (Evans, 2016). This underlying anthropocentrism is consistent with the fact that PTD is considered to be foundational to the "North American Model of Wildlife Conservation" (The Wildlife Society, 2010). This model has been widely criticized for employing a "fortress conservation" approach; a top-down, state-based approach based on regulation and enforcement that establishes exclusionary, uninhabited national parks and other protected areas (Mulrennan et al., 2019). There has been a call for translating a new paradigm of conservation based on greater collaboration with Indigenous peoples, which may be more difficult to achieve if a heavily anthropocentric doctrine like PTD is further promoted and incorporated into the Canadian legal system. In addition, some elements of classical trust law are incorporated in Canadian public trust litigation that require "the property included in the trust, and the beneficiaries of the trust all be certain" (Evans, 2016). While the beneficiaries with respect to the public trust doctrine are more established, property included in public trust is variable and "far from certain" (Evans, 2016). This may hinder the Crown's potential to act as a trustee. The hope that *parens patriae* jurisdiction will be used in these types of situations, where the government is unable to act to claim damages for environmental harm, is misplaced. The probability of governments using their *parens patriae* standing to litigate and actually bring forward actions is unlikely, as demonstrated in Canadian case law thus far (Evans, 2016).

Thus, this paper turns to explore legal personhood as a legal, novel strategy in protecting rivers as natural entities. Many questions concerning the potential operation and ultimate environmental impacts of granting natural entities with legal rights remain unanswered. In the next section, various cases where legal personality has been conferred to different rivers, in different countries and legal contexts, will be compared to provide further insight.

IV) Rivers & Legal Personality

A river and its water, the riverbed, the tributaries, the banks, the flats, and the catchment are considered a "specific, identifiable, bounded natural feature" (O'Donnell & Talbot-Jones, 2018). As "distinct mass[es] of water elapsing across terrain" with "quasi-permanent shape[s] and presence[s]", rivers are a somewhat more tangible natural entity than others to legally define as an object that can become a person or subject with rights (Pecharroman, 2018). Fortunately, there are already empirical cases of legal rights and personality being granted to rivers for legal and/or environmental scholars to analyze for their inquiries into the concept for potential, future application in a Canadian legal context. These empirical cases have each arisen from a somewhat "different world-view or paradigm" that "adopts a relationship of respect for the earth and its natural systems" (Magallanes, 2019). Each case illustrates interesting comparisons and lessons on the viability of this legal mechanism. This paper excludes certain cases from its analysis for reasons including the current legal status of the river being in "in limbo". For example, the High Court of Uttarakhand in India dubbed the Ganges River with the "status of a legal person with all corresponding rights, duties and liabilities of a living person" (O'Donnell & Talbot-Jones, 2018), however, India's Supreme Court decided to stay the order of the High Court of Uttarakhand and is pending the appeal and was not included in this paper's analysis.

The three cases that will be analyzed in this paper for comparison are the Whanganui River in New Zealand, the Atrato River in Colombia, and the Vilcabamba River in Ecuador. All involve legal, political, institutional, cultural and social differences. The Whanganui River was chosen because it provides the most "substantive" institutional arrangement that "may have the capacity to influence the provision of environmental flows to varying degrees" (O'Donnell, 2020). It is one of the best examples of legal personhood status being accompanied by an "institutional framework, and funding, to give the new legal arrangements force and effect" (O'Donnell, 2020). The Atrato River was chosen for its recognition of legal personality through the country's judicial system, and the Vilcabamba River was chosen to look at how the recognition of constitutional RoN can also lead to the recognition of a river's legal rights. Analysis of these cases will provide a much-needed foundation for a discussion on the potential feasibility of according similar rights to an Ontario river.

i) **The Whanganui River**

a) Legal and Cultural Context

The British settled Aotearoa, New Zealand, known by the Indigenous Māori *iwi* and *hapu* (tribes and subtribes, respectively), "after the signing of *Te Tiriti o Waitangi* (The Treaty of Waitangi or the Treaty) in 1840. The Treaty is regarded as the "most important document in New Zealand's history" (Tănăsescu, 2020), however, its potential "in terms of constitutional law remain[s] only partly realised" (Macpherson et al., 2021). There is no single constitution in New Zealand; constitutional norms are "spread across a number of pieces of legislation, rules of the common law, conventions and custom" (Macpherson et al., 2021). These norms include the first laws or *tikanga* Māori. New Zealand is largely governed by English common law; a system of law "which relies on precedent rather than on codified rules" (Muldoon et al., 2015).

The Treaty only significantly gained legal status or force when the Waitangi Tribunal was established by the crown in 1985 (Macpherson et al., 2021). This Tribunal was established for the purpose of "inquir[ing] into and mak[ing] recommendations for the settlement of historical and contemporary breaches of the Treaty of Waitangi" (Macpherson et al., 2021). The legal powers set out in the Treaty have been contested as there are "significant differences" between the English and Māori versions signed. The Crown maintains, from the English provisions, that sovereignty or 'full exclusive and undisturbed possession' was granted to them. The Māori chiefs, from the Māori provisions, are under the "understanding that they had retained *tino rangatiratanga*" (Tănăsescu, 2020). *Tino rangatiratanga* or 'unqualified exercise of chieftainship' is not synonymous with the power understood from the English translation; this definition necessitates more self-governance for the Māori.

The Whanganui River is the "longest navigable river in New Zealand" (Magallanes, 2019); it passes through the *whenua* (lands) of three related tribal groupings of the Whanganui *iwi* (Mika & Scheyvens, 2021). The indivisibility of the Whanganui *awa* (river) and the identity of the local *iwi* is recognized in tribal proverbs. '*Ko au te Awa, ko te Awa ko au*' translates to 'I am the River and the River is me' (Mika & Scheyvens, 2021). The Whanganui *iwi* regard the river as their tupuna (ancestor) (Magallanes, 2019). In contrast, the Crown regards the "single and indivisible entity comprised of water, banks, and bed" of the river as having been vested in them on behalf of the New Zealand public, since "no one can 'own' water" under New Zealand common law (Macpherson et al., 2021). The Waitangi Tribunal felt ownership should be returned to the

Whanganui *iwi*. Through contestation, the granting of legal rights and personhood status to the Whanganui River occurred as part of a "Treaty settlement between the Crown and the Whanganui River *iwi*" on the grounds of the Treaty of Waitangi (Macpherson et al., 2021).

b) Operation: Granting of Legal Personality

The Whanganui River was granted legal personhood through a legislative mechanism; the *Te Awa Tupua* (Whanganui River Claims Settlement) *Act* (The Act). The Act has been described as constitutional, although there has been no formal adoption of the rights of the river into constitutional law in New Zealand. The *Te Awa Tupua Act* recognizes "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements", instead of just the Western sense of the term 'river' (Magallanes, 2019). The *Te Awa Tupua Act* was passed in 2017 and proclaims that the Whanganui River is a legal person, with "all the rights, powers, duties, and liabilities of a legal person". Unlike other examples of legal personality and rights of nature, the ownership of the riverbed is vested in Te Awa Tupua itself (Magallanes, 2019). Theoretically, this Act transfers 'ownership' of the river from the Crown back to the river itself (DARPÖ, 2021). The deed of the settlement comprises two distinct documents; '*Te mana o Te Awa Tupua*' and *'Te mana o te iwi o Whanganui'* (Mika & Scheyvens, 2021). The former recognizes the "mana (status, power, and authority) of the Whanganui River and its tributaries as a single physical and spiritual entity (Whanganui Iwi & The Crown, 2014a). The latter recognizes the "mana of the tribes of the Whanganui River (Whanganui Iwi & The Crown, 2014b). The Act recognizes a management strategy (*Te Heke Ngahuru*), a river fund to support the well-being and health of the river (*Te Korotete o Te Awa Tupua*), a strategy group (*Te Kopuka na Te Awa Tupua*) to "approve, review, and monitor the implementation" of a strategy document (*Te Heke Ngahuru*), and an advisory group (*Te Karewao*) among other elements (O'Donnell & Talbot-Jones, 2018).

The rights of the Whanganui River are exercised by the "human face of the river" or *Te Pou Tupua* (Macpherson et al., 2021). *Te Pou Tupua* consists of one individual appointed by the Crown and the other by Whanganui *iwi*; two individuals expected to act as one in this joint council (O'Donnell & Talbot-Jones, 2018). *Te Pou Tupua* is required to "act and speak to the benefit of the river's health and well-being" (O'Donnell & Talbot-Jones, 2018) through decisions by

consensus (Macpherson et al., 2021). *Te Pou Tupua* must uphold the status of *Te Awa Tupua* and *Tupua te Kawa* (intrinsic values), "as the natural law and values which bind the people to the river and the river to the people" (Mika & Scheyvens, 2021). As discussed in section III of this paper, the Māori use of *kaitiaki* and *kaitiakitanga* is not equivalent to the Western use of the term guardian and guardianship, respectively. Accordingly, there is no textual legal basis in the *Te Awa Tupua Act* for guardianship, but instead the entity to represent the river is conceptualized as the "human face of the river".

c) Challenges & Benefits

Cultural

Dissatisfaction has been expressed by some Māori towards the model of non-ownership the Act embodies (since the river "owns its bed"); they have taken legal action seeking *tino rangatiratanga* for sovereignty over all freshwater within their territory (Macpherson et al., 2021). Since the riverbed has been "separated from the water, and the ownership of the water is not included as part of the settlement", the granting of personhood status thus is not quite consistent with the Māori cultural concept of the river as an indivisible whole (Magallanes, 2019). The parts of the riverbed owned by the Crown are the only parts vested in *Te Awa Tupua*; parts of the river used by other public or private river users are not affected (Macpherson et al., 2021). Furthermore, they feel the granting of the status of legal personhood is not quite aligned with Māori concepts since they see themselves as "users of something controlled and possessed by gods and forebears" (Magallanes, 2019).

Others feel that legal personhood aligns with the Indigenous Māori worldview and "neutralises the hotly contested issue of ownership of lands and water" (Ruru, 2018). It seems to better reflect relational values than any predating management regimes or pieces of legislation. It has been a "ground-breaking vehicle for the exercise of Indigenous responsibility" (Magallanes, 2019). The use of legal personality is an "amazing way" to "meaningfully reconcile with Indigenous peoples to displace legal assumptions of Crown ownership and governance of lands and waters" (Ruru, 2018). It has the potential to transform New Zealand's legal system by placing

"Māori understanding of the world and our responsibilities as human beings" at the forefront (Ruru, 2018).

Environmental

In the 5 years since legal personhood status was granted, there has yet to be a significant display of this legal tool in practice. As Albert Gerard - the chair of Ngā Tāngata Tiaki o Whanganui or the post-settlement governance body for the local Māori - puts it, there is no rush to "take polluters or anyone else to court, at least not at the moment" (Hollingsworth, 2020). He feels punitive action is triggering for his people that are in the process of recovering from harm that has been inflicted over the last 150 years (Hollingsworth, 2020). This hesitation to exercise legal power has been demonstrated in recent instances of decision-making, including *Te Pou Tupua*'s seeming indifference towards the introduction of a bicycle bridge over the river (Hollingsworth, 2020).

Some scholars feel that legal personhood status in this case possesses "significant shortcomings in terms of the ability to transcend dominant regulatory regimes" (Macpherson et al., 2021). The legislation "explicitly states that no existing rights to water are created or affected" (O'Donnell, 2020). The Whanganui River's newfound rights do not reverse pre-existing laws. For example, the *Te Awa Tupua Act* does not significantly affect the "existing governance arrangements for the river under the *Resource Management Act* 1991" (Macpherson et al., 2021). Despite being considered New Zealand's leading piece of environmental legislation, the *Resource Management Act* is also argued to have little environmental impact and a "lack of support for Māori participation" (Macpherson et al., 2021). Additionally, a government consent that granted Genesis Energy, a major hydroelectric power energy company in New Zealand that exacerbates one of the major environmental threats to the Whanganui, the siphoning of the river's headwaters for power, the right to divert water for hydroelectric power until 2039, has not been affected (Lurgio, 2019). As this suggests, environmental constitutionalism is only weakly implemented by the *Te Awa Tupua* model (Macpherson et al., 2021); one of the aspects of granting natural entities with legal rights that has not been explored in depth by this paper due to its already broad scope. To touch on it briefly, environmental constitutionalism "embodies the recognition that the environment is a proper subject for protection in constitutional texts, and for vindication by

constitutional courts worldwide" (May & Daly, 2017). The idea of entrenching environmental rights, including rights for natural entities, in constitutional law appeals to legal scholars because of its potential to set "high-level norms" (Macpherson et al., 2021). The advantages of constitutional recognition of rivers' rights will be discussed further in section V. In short, if rights conferred by legal personhood do not transcend other laws that cause environmental harm, positive environmental changes may not be realized.

There is also a feeling that the Whanganui River was not primarily granted legal personhood status for its protection, as New Zealand laws were "already providing layers of environmental protection against degradation" (Ruru, 2018). The key contribution of the *Te Awa Tupua Act* arguably "concerns legal arrangements that support relationships between people and place" (Macpherson et al., 2021). The real focus is on "responsibility rather than rights" (Magallanes, 2019). This may be because granting legal personality to the Whanganui River was "borne from the heartache and struggle to survive the onslaught of European colonisation" (Ruru, 2018). Notwithstanding, other scholars feel that "there may be greater protection for nature" as a result of the Whanganui River's legal personhood status. The Act represents a step towards "more fundamental environmental reforms"; a "constitutional experiment" capable of invoking more change (Macpherson et al., 2021). Some say they have already witnessed "tangible change", including an improvement in people's relationships with the river and the set-up of "environmental projects along its banks (Hollingsworth, 2020). Even if legal personhood does not ensure iron-clad protection for the river, it helps it stand a better chance (Lurgio, 2019). Both perspectives leave us to consider whether legal personhood status is symbolic with respect to protecting the river against environmental harms.

ii) The Atrato River

a) Legal and Cultural Context

The Spanish settled Colombia, bringing slaves and sickness with them as well as a civil law tradition. Colombia has a written constitution, the 1991 *Constitución Política de Colombia*, and primacy of legislated law (Macpherson et al., 2021). The latter means that, just like in other civil law jurisdictions, decisions made in Colombia are based on a civil code, not precedent

(Muldoon et al., 2015). Despite the typical application of strict Roman law notions as a country that practices civil law, "Colombia's progressive judiciary (especially the Constitutional Court) has played a key role in developing expansive and emancipatory justice in Colombia" (Macpherson et al., 2021). This is exemplified in the case of granting the Atrato River legal personality.

The Atrato River originates in the Western cordillera of the Colombian Andes, travels north as it crosses the department of Chocó, and flows into the Caribbean Sea (Wesche, 2021). It is one of Colombia's most extensive rivers and is native to one of the most biologically diverse ecosystems in the world (Magallanes, 2019). Regrettably, the Chocó region has been plagued by both an environmental and humanitarian crisis "due to the contamination of the [Atrato] river with toxic substances, erosion, accumulation of waste, deforestation and loss of biodiversity" (Magallanes, 2019). High mercury and cyanide contamination has rightfully generated concerns about poisoned water in communities living along the river (Magallanes, 2019). Chocó is considered the country's "most socio-economically disadvantaged region"; almost half of the population lives in abject poverty (Macpherson et al., 2021). 87% of the population living alongside the river are Colombians of African descent and 10% are Indigenous peoples; both marginalized communities in Colombia (Wesche, 2021). These communities have been targeted by armed groups who are interested in displacing them for their land and the groups' own illicit activities. (Macpherson et al., 2021). Illicit activities notably include illegal mining exploitation which affects the upper and middle basin of the Atrato river through extraction methods such as dredging that destroys the riverbed (The Atrato River Case, 2016). One of the most serious implications associated with this illegal activity is the dumping of "mercury, cyanide and other toxic chemical substances related to mining" (The Atrato River Case, 2016). The decision to grant legal personhood status to the Atrato River "cannot be understood independently from the history of violence in the region" (Macpherson et al., 2021). Ultimately, the detrimental nature of the crisis motivated a protection action to be filed by the Center of Studies for Social Justice "Tierra Digna" on behalf of Indigenous communities and communities of African descent living on the Atrato River" (Magallanes, 2019).

b) *Operation: Granting of Legal Personality*

The Atrato River was granted legal rights through a declaration by the Constitutional Court of Colombia in the 2016 *Atrato River Case*. The Court's ruling recognized the Atrato River, its basin, and tributaries as "an entity subject to rights of protection, conservation, maintenance and restoration by the State and ethnic communities" (*The Atrato River Case*, 2016). This recognition was based on "superior constitutional interest in the environment and the notion of biocultural rights" (Wesche, 2021). The court inferred biocultural rights into constitutional law, which are rights that "result from the recognition of the profound and intrinsic connection that exists between nature, its resources and the culture of ethnic communities" (Wesche, 2021). The protection of cultural diversity is enshrined in the Colombian Constitution, which necessitates the protection of biological diversity and vice versa. The legal rights of the Atrato River were articulated as biocultural rights to "emphasize the connection between the rights of the river and the rights of the people who depend on it" (O'Donnell, 2020).

Coupled with the recognition of the Atrato River's legal rights, the Court issued a comprehensive set of procedural orders to a wide range of state entities at the national, departmental and municipal levels regarding the formulation of public policies to protect the river's rights and monitoring mechanisms (Wesche, 2021). The procedural orders included the development and initiation of a river remediation plan by the Ministry of the Environment, the appointment of guardians, a panel of experts to assist the guardians, "an integrated watershed management governance body comprised of national and regional administrative authorities", and a commission for the eradication of deforestation and illegal mining in the affected areas (Magallanes, 2019). Two guardians were ordered by the Court to be appointed; a member from the "ethnic communities that inhabit the basin of the Atrato River in Chocó" and a delegate of the Colombian Government (*The Atrato River Case*, 2016). Similar to *Te Pou Tupua*, the Atrato River's guardians are tasked with speaking to the benefit of the river's health and well-being. Having a representative from the community was intended to enable them to administer guardianship "according to their own laws and customs" (*The Atrato River Case*, 2016).

The Court's recognition of the Atrato river as a legal person was "surprising" because, as a civil law country, it has typically applied "strict Roman law notions" of legal personhood in previous cases (Macpherson et al., 2021). However, the courts have developed "a long line of jurisprudence in which they use the concept of the *Estado social de derecho* to broaden the notion of legal personality/subjectivity" to protect river rights (Macpherson et al., 2021). *Estado social*

de derecho refers to the overarching framework of the 1991 Colombian Constitution that defines a social state, under the rule of law, based on the respect for "human dignity, the work and solidarity of the individuals who belong to it, and the prevalence of the general interest" (Macpherson et al., 2021).

Another reason the ruling was surprising was that it ruled in favour of "people from the most neglected region of Colombia"; groups typically not granted favourable outcomes (Macpherson et al., 2021). The Court justified their actions by emphasizing they were necessary to address serious environmental threats, "in the face of government inaction", to the Atrato River and bordering communities (Macpherson et al., 2021).

c) Challenges & Benefits

Cultural

The creation of the guardianship body, which is inclusive of a representative from the local communities, has led to a "more coordinated and participatory formulation of more integral public policies to enforce the river's rights to protection, conservation, maintenance and restoration, as well as the related biocultural rights of the local communities" (Wesche, 2021). Historically, Chocó community members have been left out of decision-making processes or are often represented by figures unfamiliar with their situations and perspectives. The granting of the Atrato River's rights has given these members a stronger voice in policymaking. This is demonstrated in the action plan submitted by the Ministry of the Environment on the remediation of ecological damages to the river, which according to the claimants and community guardians, was "constructed on the basis of their integral participation and fully incorporates their perspectives and positions" (Wesche, 2021).

While community members may understand their role as 'community guardians', their role as 'river guardians' is less clear. There is a general sense among these communities that they do not possess the legal capacity to act as legal representatives of the river and do not fully understand the implications of the river's legal rights (Wesche, 2021). The focus of the Court's declaration and procedural orders seems to be "coordinating existing government departments and other organisations to improve water quality, rather [than] empowering the river guardians themselves

to play a direct role in river management" (O'Donnell, 2020). Furthermore, the court's decision has yet to have any "direct impact on existing legal or illegal uses of the river" (Macpherson et al., 2021). Community guardians may be hesitant to initiate legal action since it could make them a target to organized armed and criminal groups whose illicit activities they are precluding.

Environmental

Recognition of the Atrato River's legal rights has led to enhanced environmental awareness among the communities along the river and "important advances with respect to the formulation of environmental policies" (Wesche, 2021). The Atrato River's legal personality is wielded "as a tool for implementing responsibility to ensure that [its] rights are respected and the clean-up measures adopted and implemented" (Magallanes, 2019). Nonetheless, the status of implementation of these policies remains uncertain given the "complexity of the problem and continuing inabilities of local state institutions" (Wesche, 2021). Chocó has been a place of "conflict and contestation due to its history of plantations, mining, drug production, armed conflict and slavery", making it difficult for public officials to implement the river's rights or proper remediation and rehabilitation in the face of these humanitarian conflicts (Macpherson et al., 2021). While there have been some advances with respect to the Ministry of Environment's action plan, it remains in the early stages (Wesche, 2021). Expectations for the impacts of the river's rights on environmental protection should be lowered in weak governance settings (Wesche, 2021).

The activities of the guardianship body have so far not included instituting legal proceedings on behalf of the river, which should be explored further in the future. As proponents of the rights of nature would argue, one of the added values of granting rights to natural entities is legal standing, so action should be pursued due to this advantage and its potential benefits. For example, legal actions against private actors could afford compensation funds for the river; funds that would support the implementation of the river's rights or remediation. Given the current lack of resources and funds from unrealized legal actions, the community guardians' ability to comply with their role is greatly limited (Wesche, 2021).

Similar to the *Te Awa Tupua* model, the Atrato River case only weakly implements environmental constitutionalism as it also possesses "significant shortcomings in terms of the

ability to transcend dominant regulatory regimes" (Macpherson et al., 2021). Since the Colombian civil and procedural codes do not contemplate legal rights for natural entities, there may be a significant "implementation gap" in Colombia's legal system considering laws made prior will still apply (Magallanes, 2019). If pre-existing laws are unable to deter illicit activities causing environmental harm to the river, as discussed above, it is difficult to see how the Court's ruling will benefit the health of the Atrato River. There was also no recognition made of the river's right to own property, or any rights to water, by the Colombian Constitutional Court. In the prominent water scholar Erin O'Donnell's mind, without also recognizing the river's rights to water, the Court "not only fails to address the existential threats already facing rivers, but creates the legal settings in which the threat of extinction (of rivers) is intensified" (O'Donnell, 2020).

iii) The Vilcabamba River

a) Legal and Cultural Context

Similar to Colombia, the Spanish settled Ecuador and introduced the civil law tradition. Ecuador is governed by the 2008 *Constitucion Politica de la Republica Del Ecuador*. This Constitution recognizes all of Earth's ecosystems as living spiritual beings and outlines the RoN in four articles, which were intended to "portray Nature's rights as being inherent to all of the Earth's ecosystems" (Kauffman & Martin, 2018). Article 71 states that *Pacha Mama*, the Andean Indigenous term most similar to the term 'Mother Earth' in English, "has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" (Magallanes, 2019). It also establishes "every citizen or nation's right to demand the authorities the compliance with the rights of nature" (Pecharroman, 2018).

Three pillars are understood to underly these articles in the amended constitution; the rights of nature, plurinationality, and *sumak kawsay*. The idea behind plurinationality is establishing "indigenous peoples politically as nations alongside nonindigenous peoples, seeking "unity in diversity" (Akchurin, 2015). *Sumak kawsay* is a kichwa phrase used to refer to a "development regime based on well-being as opposed to neoliberal economic growth" (Akchurin, 2015). Its closest translation in Spanish is the term *buen vivir* or good living in English (Magallanes, 2019).

Under the concept of *sumak kawsay*, to achieve good living, people must live in harmony with nature (Magallanes, 2019).

The combination of the recognition of plurinationality, the recognition of collective rights, having an open mindset, and the political influence of the Indigenous movement are posited as instigating the introduction of RoN in Ecuador's Constitution (Akchurin, 2015). Although Indigenous uprisings had occurred "since the arrival of Spain in the New World", by the late twentieth century, Ecuadorian Indigenous groups were "powerful political actors organized into a national movement, led by the Confederation of Indigenous Nationalities of Ecuador (CONAIE)" (Akchurin, 2015). The intensifying of this national movement called for the recognition of Ecuador as a plurinational polity; "a form of multiculturalism that incorporates politicized versions of [I]ndigenous beliefs about the environment along with demanding respect for [I]ndigenous territories and ways of life" (Akchurin, 2015). Changes in the political structure, including the election of a new president in 2006, are what ultimately enabled the RoN provisions' entrenchment.

Arguably, no country needed constitutional amendments, recognizing the inalienable rights of the environment to "exist, persist, regenerate, and be respected", more (Whittemore, 2011). Ecuador is home to an environmentally devastating oil industry that has produced deforestation in the Amazon, water contamination, and rampant illness (Whittemore, 2011). Notwithstanding, the Vilcabamba valley in the Ecuadorian Loja Province is known for its extraordinary biological diversity, making it a desirable lifestyle and tourism destination (Berros, 2017, Hayes, 2015). Property in the valley has been "bought up by foreigners, most from North America" since the twentieth century, which has introduced the mix of Northern ideologies with the ideologies underlying "established traditions and institutions of the Ecuadorian Andres" (Hayes, 2015). While accounts of Indigenous peoples ties to the river are not accessible, the region is regarded as sacred to the local peoples. The Vilcabamba River is native to the southern region of this province, and so was appropriately named; *Vilca* means sacred, *Bamba* means valley (Berros, 2017). The sudden disruption of the river's natural course in 2008 was inextricably linked to the excavation for the expansion of the Vilcabamba-Quinara highway (Berros, 2017). Stones were dumped in the river, among other debris, resulting in abnormal flooding in 2009 and 2010 (Magallanes, 2019). Further influenced by the fact that no environmental impact assessment had been conducted or environmental license acquired from the necessary environmental authority for the government's

highway expansion project (Suárez, 2013), two resident US citizens decided to file a protective action on behalf of the Vilcabamba River against the Provincial Government of Loja (PGL).

b) Operation: Granting of Legal Personality

The Vilcabamba River was recognized as a legal subject by the Provincial Court of Justice in Loja through rights afforded by Ecuador's constitution; the 2011 *Vilcabamba River* case. This case is considered one of the most notable cases involving the "application of the constitutional rights of nature provisions" (Magallanes, 2019) and one of the first instances of these rights being recognized by a court (Pecharroman, 2018). In 2010, the first-instance judge denied the protective action due to a lack of legal standing. However, the decision was appealed and the judges in the court of the second-instance ruled that "the claimants did not have to prove damage to themselves, but only damage to Nature", and thus did have legal standing per the constitution's RoN provisions (Suárez, 2013). This is a reference to the principle of the reversal of the burden of proof; the PGL needed to provide evidence "that the highway widening work was harmless to the environment" instead of the plaintiffs needing to prove that they had suffered harm as a result of the work (Suárez, 2013). Since the PGL had the burden of proof, the court ruled the case could not be rejected (Suárez, 2013).

The ultimate ruling from the criminal division of the Provincial Court of Loja was that the PGL's activity did violate the rights of the Vilcabamba River, specifically the rights articulated in Article 71 of the Constitution (Gellers, 2021). The Provincial Court of Justice in Loja recognized the "importance of nature, raising the issue that damages to nature are generational damages, defined as such for their magnitude that impact not only the present generation but also future ones" (Greene, 2011). The Court's interpretation of RoN in their ruling also reflects rights granted to natural non-human entities in the Ecuadorian context are bestowed upon whole ecosystems or natural communities (Gellers, 2021). Ecuador's Constitution recognizes all of the Earth's ecosystems as living spiritual beings, not necessarily just an individual living entity on its own (Gellers, 2021). Consequently, since nature or *Pacha Mama* is the subject of rights, the Vilcabamba is a subject of rights.

c) Challenges & Benefits

Cultural

Unlike the cases of the Atrato and Whanganui Rivers, no guardians were appointed in the Provincial Court of Justice's decision. Article 71 of the Constitution enables all persons, communities, peoples and nations to call upon public authorities to enforce the rights of Nature, even if they are not Ecuadorian citizens (Kauffman & Martin, 2018). This brings us back to the concept of *actio popularis*, addressed in section III, according to which any individual or group of individuals can defend the Vilcabamba River's rights. This grants greater access to Ecuador's legal system to anyone affected by environmental harm.

The definition of nature or *Pacha Mama* in Ecuador's constitution is expansive. The provisions of the constitution were created with the intent to "portray Nature's rights as being inherent to all of the Earth's ecosystems, including those beyond Ecuador's borders" (Kauffman & Martin, 2018). *Pacha Mama* is also inclusive of humans, although they possess the ability to act upon nature as well (Gellers, 2021). The Court's decision asserts that "individual and collective human rights must be in harmony with the rights of other natural communities on earth" (Gellers, 2021). However, it is unclear how this inclusive concept of *Pacha Mama*, fits in with existing environmental laws that recognize distinct territories; natural areas and urban and productive ones (Berros, 2017). The struggle in defining "territories" is an inherent problem in many RoN recognition cases (Berros, 2017). How will traditional settlements, cultures, and protected places be protected in comparison to more industrial human activities and places?

It is also not clear how human activities will be prioritized in the context of the rights of *Pacha Mama*. In the Court's decision, the Court did not deny the execution of the highway-widening project. They instead only required that the "project respect the rights of nature and comply with environmental rules and regulations" (Suárez, 2013). The Provincial Court of Justice of Loja believed this requirement avoided a collision of constitutional rights; rights of citizens versus rights of nature (Environmental Justice Atlas, 2018). The road's construction was postulated as serving the interests of the local communities and thus beneficial (Environmental Justice Atlas, 2018). However, it is difficult to speculate how construction would avoid infringement of the river's rights. Some also thought that it was problematic that it was not concerned local community members that had made the claim, but rather two "wealthy foreigners"

who had a vested interest in maintaining the value of their property (Environmental Justice Atlas, 2018).

Environmental

This case, as one of the first instances of these rights being recognized by a court, has provided an excellent reference point for other related cases since the ruling. Nonetheless, it was not easy for the plaintiffs to fight on behalf of the Vilcabamba; they faced “significant legal barriers”, including Ecuador’s “history of judicial corruption and dysfunction”, thus delaying environmental impacts (Whittemore, 2011). Another barrier some have identified was the judiciary members’ limited knowledge about the rights of nature and their importance, leading to decisions (like the first-instance ruling) that demonstrate they do not accord great importance to environmental cases (Suárez, 2013).

Effective implementation of the rights of the Vilcabamba river has also been a challenge. A constitutional injunction was issued by the Court on the basis that RoN had been disregarded and the provincial government of Loja was liable for damages (Gellers, 2021). The PGL was ordered to “prevent any future such dumping and to submit a plan to remedy and rehabilitate the existing damage” (Magallanes, 2019). This was consistent with the plaintiffs’ request that the PGL immediately cease dumping debris, restore the natural course of the river, and remove the “rocks, earth, gravel and vegetation” that had already been deposited (Suárez, 2013). Nonetheless, in 2012, the plaintiffs filed an action of non-compliance because they felt the PGL had not engaged in “true remediation” to fix the damage caused by the road expansion (Suárez, 2013). Nor had the affected area and riverside population been rehabilitated (Environmental Justice Atlas, 2018). This may be due to the challenge that the rights of nature represent for public authorities in charge of implementing them (Suárez, 2013). Environmental impacts that the river likely still faces due to the government’s incomplete remediation and rehabilitation include biodiversity loss, surface water pollution, decreasing water quality, and reduced ecological/hydrological connectivity.

V) Granting Legal Personhood: Future Application to the Wabigoon River

i) Legal and Cultural Context

Canada was settled by European explorers but inhabited first by Indigenous peoples. These settlers exercised disproportionate power over Indigenous peoples through "ongoing violations of Indigenous rights and self-determination" (Whyte, 2018). Canada was largely built through "structural racism and colonialism, supported by corresponding nation-building ideologies promoting Christianity and whiteness" (Deckha, 2020). Along with the introduction of violence and disease, the establishment of this settler society also introduced the settlers' legal principles and practices.

Canada is primarily governed by English common law, with the exception of Québec's system of civil law. The primary law-making bodies in Canada are the legislatures and the courts; administrative tribunals, boards, and officials are secondary (Muldoon et al., 2015). The 1982 *Constitution Act* (the amended constitutional text following the initial text enacted in 1867) is the supreme law; "all other regulations must be consistent with it or face being struck down" (Boyd, 2013).

With regards to its Constitution and the incorporation of environmental rights and responsibilities, Canada is regarded as an "international laggard" (Boyd, 2013); it has failed thus far to do so. What's more is the fact that the *Constitution Act* "does not expressly allocate environmental management powers (Muldoon et al., 2015). No level of the government is explicitly given the power to legislate regarding water resources and their management (Mason & Chalupovitsch, 2021). Federal jurisdiction over water is related to navigation, federal lands, sea coast and inland fisheries, and international relations (Government of Canada, 2020). These powers are enumerated in the Constitution, which also includes jurisdiction over "Indians and lands reserved for Indians" (section 91(24)) (*Constitution Act*, *1982*). The general power enumerated in section 91 that enables the federal government to make laws for the "Peace, Order, and Good Government of Canada" may be invoked in relation to interprovincial waters if some harm of a national dimension is imminent or present, as demonstrated in *Interprovincial Co-operatives v. Manitoba* (Bailey, 2008). Significant pieces of legislation in federal river and water management include the 1999 *Canadian Environmental Protection Act (CEPA)*, *Canada Water Act*, *Fisheries Act*, the *Navigation Protection Act*, and the *Department of Environment Act*. The latter gives the Minister of Environmental national leadership over water management (Government of Canada, 2020). Provincial jurisdiction related to water includes management and

sale of public lands (section 92(5)), property and civil rights in the province (section 92(13)), and generally all matters of a merely local or private nature in the province (section 92(16)) (*Constitution Act*, *1982*).

For the most part, intergovernmental cooperation has been necessary for successful water management; a particular aspect of water management "can be the responsibility of the federal government, provincial legislatures, or both" (Mason & Chalupovitsch, 2021). The *Canada Water Act* was passed in 1970 "as a means through which to provide consultations between the federal and provincial governments on cost sharing and other management issues" (Bailey, 2008). However, the trend in the interactions between the federal government and the provinces on water management issues is "deference to the provinces" (Bailey, 2008). For example, the *Canada Water Act* allows the provincial government, but not the federal government, to run or implement management plans to deal with interjurisdictional waters. Provincial and territorial governments are considered as occupying the leading roles in freshwater management and protection.

Historically, constitutional reforms to include environmental provisions have proven to be unsuccessful. Consequently, attention was shifted to legislative or statutory environmental rights (Boyd, 2013). Some provinces throughout the mid-1970s, 1980s, and early 1990s enacted laws or adopted policies to "incrementally provide either limited and specific environmental rights of broader public rights" (Muldoon et al., 2015). Notably, the first province to legislate environmental rights was Québec. Québec first recognized an individual's right to a healthy environment in its 1978 *Environmental Quality Act*, which has since been conceptually expanded in the 2006 amendment of the provincial *Charter of Human Rights and Freedoms* of Québec (Boyd, 2013). The nature of this provincial Charter requires all legislation passed by the provincial government to be consistent with its provisions. Thus, the inclusion in the Charter of a "right to live in a healthful environment in which biodiversity is preserved" translated into "a significant expansion of the scope of environmental rights for Québec's citizens" (Boyd, 2013).

In response to the often slow and inadequate response of the government to environmental harms, two types of legislation were introduced as an alternative to the government-centred approach to environmental protection; environmental bills of rights and access to information statutes. With respect to the former, a federal, Canadian Environmental Bill of Rights has long been considered. Most recently, Bill C-438 was presented by NDP MP Linda Duncan; "An Act to enact the Canadian Environmental Bill of Rights and to make related amendments to other Acts"

(Parliament of Canada, n.d., a). This would include enacting a right to a healthy and ecologically balanced environment. In 2019, it received a second reading in the House of Commons, but has since progressed no further. In the meantime, elements from various proposals for a Canadian Environmental Bill of Rights have been incorporated into Canadian law in different ways. However, these elements do not include a "substantive right to a healthy environment" nor rights for rivers recognizing their inherent and relational values.

Ontario is currently the only province with a comprehensive Environmental Bill of Rights (EBR), which came into force in 1994. The preamble states "the people of Ontario have a right to a healthful environment" (Boyd, 2013). The bill then contains a section outlining the purposes of the Act, which include: "protecting, conserving, and where reasonable, restoring the integrity of the environment", protecting the right to a healthful environment, and "preventing, reducing, and eliminating the use, generation, and release of pollutants that pose an unreasonable threat to the integrity of the environment" (Muldoon et al., 2015). To achieve these purposes, the EBR enables greater "public participation in government action that impacts the environment" (*Greenpeace Canada v Minister of the Environment (Ontario), 2019*). This includes increasing the legal opportunities for Ontario residents to initiate lawsuits for the protection of the environment and establishing participation rights that expand the ability of Ontario residents to participate in government decisions about the environment (Muldoon et al., 2015). The EBR enables the former by establishing a statutory right to sue for harm to natural resources and making the rules around the common law action of "public nuisance" less restrictive (Muldoon et al., 2015). This statutory right allows any resident to bring legal action against another person that has put a public resource in Ontario in harm's way as a result of the "contravention of a statute, regulation, or instrument by that person" (Muldoon et al., 2015). This right is mirrored in *CEPA*; Canada's first comprehensive pollution law (Muldoon et al., 2015).

While the EBR is considered an incredibly valuable tool and the rights it confers should not be taken for granted (Miron, 2020), it is critiqued for its focus on a narrow range of procedural rights, which are subject to very significant limitations (Boyd, 2013). It "misses the mark on substantive environmental rights" (Miron, 2020); it does not provide the Ontario public with substantive rights to clean air, clean water, or a healthy environment. Lawyer Richard Lindgren, of the Canadian Environmental Law Association, asserts that "there is little or no evidence at the provincial level

that the EBR has directly led to the conservation of natural resources, protection of biological diversity, or provision of environmental sustainability" (Boyd, 2013).

a) Reconciliation

The division of powers set out in the Canadian Constitution inadequately addresses the power of other governments that have recently taken on more significance in Canada; territorial, municipal, regional, and First Nations governments (Muldoon et al., 2015). Concerning the latter, failing to recognize Indigenous autonomy or sovereignty, knowledge, and legal orders precludes reconciliation in the context of water resources and their management.

Reconciliation is a "process of formerly opposed parties moving towards some sort of forgiveness or coming-to-terms with one another" (Deckha, 2020); the transformation of violent and harmful relationships into respectful ones (Whyte, 2018). As acknowledgement of the wrongs of colonial policy and laws has risen in recent years, so have the efforts for reconciliation at all levels of the government. Environment and Climate Change Canada is currently investing "over $100 million in nature conservation projects led by Indigenous communities across Canada" (Townsend et al., 2021). The Indigenous Leadership Initiative (ILI) was launched in 2013; an Indigenous-led organization with the aim of supporting "Indigenous Nations in honouring [their] responsibility to care for land and waters" (The Indigenous Leadership Initiative (https://www.ilinationhood.ca/)). The Truth and Reconciliation Commission (TRC) was established in 2008 with the aim (one of) to "make recommendations as to how non-Indigenous Canadians and Canada would have to change to foster respect for and reconciliation with Indigenous peoples and nations in Canada" (Deckha, 2020). Recommendations (a.k.a Calls to Action) #27, 28, 45(iv) and 50 from the TRC maintain that in order to advance reconciliation, Indigenous laws and their embedded worldviews should be mainstreamed into national understandings of Canadian law (TRC, 2015). "When the cultures, customs, symbols, and traditions of Indigenous peoples form part of Canadian law, this helps to facilitate two kinds of reconciliation: with the earth, and between humans who occupy particular places on that earth" (Borrows, 2018). However, it is important that legal regulators, educators, and scholars remain cognizant of the processes used to mainstream and/or integrate Indigenous legal orders and

worldviews into the justice system, as they could promote ontological hybridization (discussed in section III).

Furthermore, as Māori legal scholar Jacinta Ruru argues, "reconciliation also necessitates assigning personhood to elements of the natural world that are central to Indigenous worldviews of ecological interdependence and Indigenous identities and kinship networks" (Ruru, 2018). The largely anthropocentric, nationalist reconciliation narrative forgets that harm was also done to the relationships with nonhumans under colonialism. This demonstrates reconciliation also requires contesting the "anthropocentrism and human exceptionalism central to colonial praxis" (Deckha, 2020). While ideas like extending the rights granted to Indigenous peoples in article 27 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have been proposed, since these entities are already treated as legal and social peoples within many Indigenous laws (Deckha, 2020), explicit granting of legal personhood may secure a more favourable outcome.

b) First Canadian River Granted Legal Personality: Muteshekau Shipu

So far, there is only one case in Canada of a river being granted legal rights and/or personality; Muteshekau Shipu or the Magpie River located in the Nitassinan (the ancestral territory of the Innu people), in Eastern Québec and the Regional County municipality (MRC) of Minganie (Cárdenas, 2021). The Magpie River forms an important part of the Innus of Ekuanitshit First Nation's traditional territory (Raymer, 2021). Treasured by their people, this First Nation has been an active part in the movement towards recognition of personhood in Western law. The Innus of Ekuanitshit, environmentalists, and other invested parties felt there was a lack of commitment to prevent Hydro-Québec from pursuing future hydroelectric dam projects along the treasured Magpie River; one of the river's biggest threats (Nerberg, 2022). This sparked action and the inception of the Muteshekau-shipu Alliance in 2018 (Nerberg, 2022). In 2021, the Alliance, municipal governments and other invested environmental groups produced a joint declaration recognizing the legal personhood and rights of the Magpie River. Inspiration for granting legal personhood was drawn from the Atrato River and Whanganui River cases (Nerberg, 2022). With the help of the Montreal-based International Observatory on the Rights of Nature, two mirror resolutions were drafted; one by the MRC of Minganie and the other by the Innu Council of Ekuanitshit (Cárdenas, 2021). The Innu Council of Ekuanitshit is the Ekuanitshit First Nation's

governing body (Nerberg, 2022). The resolution relies on both "inherent Indigenous rights, such as those under UNDRIP, and municipal jurisdiction over the waters" (Mason & Chalupovitsch, 2021). Translations of the rights granted in the resolution were drawn from credible sources as an English version was not accessible. Nine rights were granted in the resolution; "1) The right to live, exist and flow; 2) the right to respect its natural cycles; 3) the right to evolve naturally, to be preserved and to be protected; 4) the right to maintain its natural biodiversity; 5) the right to maintain its integrity; 6) the right to perform essential functions within its ecosystem; 7) the right to be protected from pollution; 8) the right to regeneration and restoration; 9) the right to take legal action" (Cárdenas, 2021). The resolution also establishes river "guardians" to ensure the protection of the rights of the river by acting in its best interests. Guardians will be appointed both by the MRC of Minganie and the other by the Innu Council of Ekuanitshit (Jang, 2021). The powers are delegated to the guardians by the province; the powers are not constitutionally protected (Mason & Chalupovitsch, 2021).

The 'Magpie River Resolution' exemplifies Indigenous and non-Indigenous actors "coming together to fight for the survival of an ecosystem, as well as the survival of Indigenous and local settler communities" (Jang, 2021). Using the example of this Canadian-specific case, as well as the cases discussed in section IV, a theory can be constructed on how granting legal rights to an Ontario River could operate. Specifically, can the learnings from these examples be applied to an approach to granting legal rights to the Wabigoon River, an Ontario River that has experienced significant environmental damage over the past decade due to the failure of government actors and the Canadian legal system, and help secure a successful outcome?

c) The Wabigoon River

The Wabigoon River, part of the English-Wabigoon River system, originates at the outflow of Wabigoon Lake and flows through northwestern Ontario (Fig. 1; Rudd et al., 2021). Asubpeeschoseewagong First Nation, or the Anishinaabe group Grassy Narrows, is an Ojibwe First Nation band situated on land northeast of Kenora, Ontario, along the English-Wabigoon River system. Their territory is 'protected' by Treaty #3; an agreement signed in 1873 between various Ojibwe Nations and the federal government (Filice, 2020). Treaty 3 was intended to provide the

government access to traditional lands while maintaining Indigenous hunting, fishing, and natural resource rights on their land (Filice, 2020).

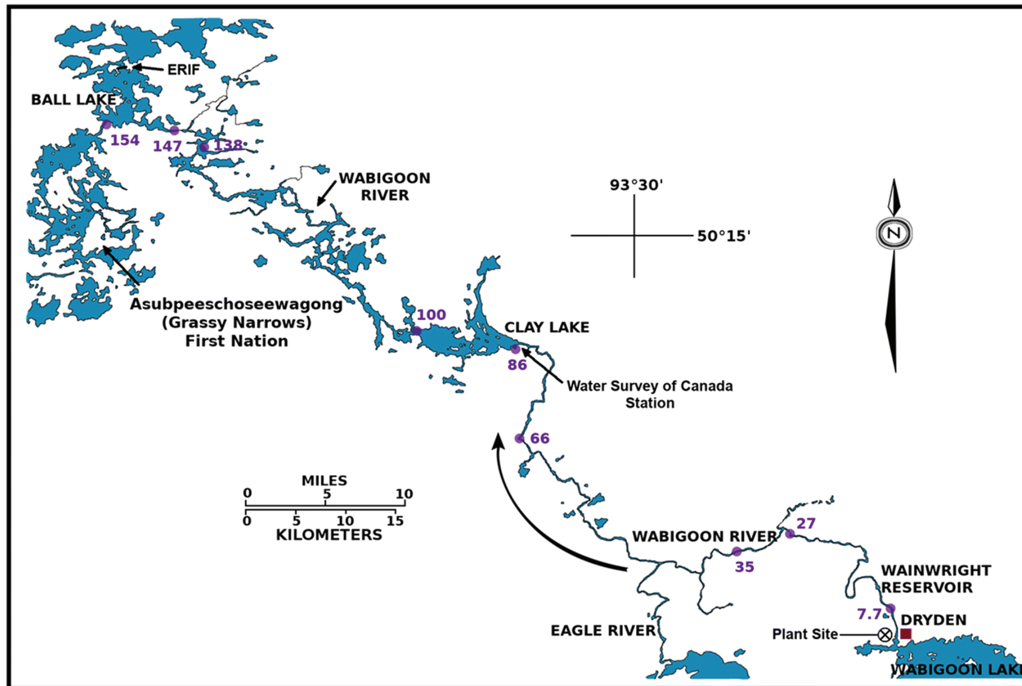

Fig. 1. Map of the English-Wabigoon River system (Rudd et al., 2021)

The Wabigoon River is interestingly poignant due to the fact that its remediation and care have been a crux in the Grassy Narrows' fight for environmental justice for over 50 years. Grassy Narrows peoples are *still* seeking justice for environmental damages (including prolific mercury contamination of the Wabigoon River) and "the exclusive use of, or the control over access to, land and resources"; resources like the river and its ecosystem that are fundamental to the future economic and social development of the community (Vecsey, 1987).

The river's mercury contamination was caused by the dumping of mercury effluent by the chlor-alkali plant in Dryden, Ontario (the Dryden Chemical Company's pulp and paper mill) between 1962 and 1970 (Mosa & Duffin, 2017). Although the Ontario government ordered the cessation of effluent release in 1970, contamination continued until 1976 since the plant was still operational (Anderson, 2019). The consequences were, and continue to be, devastating to the peoples of Grassy Narrows. To name a few, their fishing activities, crucial for economic autonomy, were virtually eliminated (Vecsey, 1987). Their community was poisoned by mercury-

contaminated fish and water, resulting in an outbreak of Minamata disease (Hachiya, 2006). This sparked a civil action by the Grassy Narrows peoples, and the neighbouring Wabaseemong (White Dog) peoples, against the owners of the plant (West, 1987). Some legal actors at the time felt that this type of environmental tort case, where a large number of people were affected, was not well suited to the Canadian legal framework and thus would result in an unfavourable outcome (West, 1987). The settlement reached in 1986 confirmed their suspicions; the *Grassy Narrows and Islington Indian Bands Mercury Pollution Claims Settlement Act* provided negligible compensation and failed to provide a long-term solution. Additionally, indemnity was agreed to by the parties pursuant to the settlement of litigation brought by the Grassy Narrows and White Dog peoples (*R v Resolute FP Canada Inc.*, *2019*).

In an attempt to kickstart an improved, formalized plan for river remediation, the English and Wabigoon Rivers Remediation Funding Act and corresponding trust of $85 million were established by the Ontario government in 2017 (*English and Wabigoon Rivers Remediation Funding Act*, 2017). A panel of representatives, from both Grassy Narrows and White Dog communities and appointees from the Ontario government, was put in place to oversee the implementation of the plan and submit a report each year on its progress (Maharaja, 2021). However, little action has followed this Act. The last made available report is for the year 2019-2020, since there is no time limit for when the Environmental Minister needs to table the report in the provincial legislature, after which it is made public (Maharaja, 2021). This report shows that over $10 million has been disbursed from the $85 million fund but actual implementation of the remediation plan has not begun, and may not even begin until 2025. Furthermore, the report states that "remediation professionals have advised that projects of this scale often require more funds than the current Trust balance provides"; a balance of $74.7 million on the date of this report (Maharaja, 2021).

The Grassy Narrows peoples will not be able to begin healing of their own until their land is 'healed'; as former Grassy Narrows Chief Steve Fobister puts it, "when we talk about the environment, we are the environment" (Porter, n.d.). The traditional legal tools in the Canadian justice system have been demonstrably futile to the Grassy Narrows peoples, which is what makes the exploration of novel legal tools like legal personhood worthwhile. In fact, collaboration between the Anishinaabe Nation of Treaty #3 and international Indigenous partners "is already underway to collectively discuss the merits of this approach" (Craft & King, 2021). As previously

discussed, the primary law-making bodies in Canada are the legislatures and the courts. Thus, the use of a declaration through the courts, a constitutional amendment, and legislative recognition in granting the Wabigoon River rights and legal personhood will be explored in the Canadian legal context. The challenges and benefits of each will be theorized in using the cases discussed in section IV, as well as the Magpie River case briefly touched on above.

ii) Operation: Granting of Legal Personality

a) Court Declaration: Benefits

A declaration is a "statement made by a court clarifying the law, or the rights and obligations of one party to another" (Centre for Constitutional Studies, 2008). It is a form of equitable relief or remedy that may be available at the court's discretion when "monetary compensation is inadequate or inappropriate" (Muldoon et al., 2015). It is also useful since it is not possible to get an injunction against the Crown, so the plaintiff may seek declaratory relief instead (Ecojustice, 2008). However, for a declaration to be granted, the "activity complained of that leads to the harm must be recognized by the court as a civil wrong in order to be granted relief" (Muldoon et al., 2015). In other words, the elements of the civil wrong (cause of action) must be proven, then redress can be ordered by the court to the plaintiff in the civil case.

Common law causes of action, or civil wrongs, justify civil litigation. The most recognized and relevant civil wrongs in environmental matters are; nuisance, trespass, strict liability, negligence, and riparian rights (Lindgren, 2019). These can theoretically be used to sue polluters, like the past and present Dryden plant owners. The common law wrongs that may be most likely to justify civil litigation in the case of the Wabigoon River are public nuisance, negligence, and strict liability. In 1977, the year the civil action was commenced by the Grassy Narrows and White Dog peoples, retired Supreme Court judge Emmett Hall said that the resolution of environmental tort cases that affect large numbers of people (or public nuisance cases) was not well suited to the Canadian legal framework and that a negotiated settlement should be reached outside of the court system (West, 1987). However, this was before the EBR was enacted which has since "established laws to remove public nuisance as a barrier to bringing a lawsuit" (Muldoon et al., 2015). Furthermore, the Indemnity from the 1986 settlement agreement, as decided by the Supreme Court

in a later decision regarding the 2011 Remediation Order issued by the Government of Ontario Ministry of Environment and Climate Change, does not buffer corporations from liability (Buckley, 2020). Statutory causes of action are created by legislatures, including *CEPA* and the Ontario EBR, that “give people the specific right to commence a lawsuit if certain conditions are met” (Muldoon et al., 2015). For instance, one of the causes of action is that remedies may be ordered to address any harm done. Statutory civil wrongs can be pleaded alongside common law civil wrongs in the same Statement of Claim (Lindgren, 2019).

A claim, of similar grounds to the one filed on behalf of the Atrato River, could be made. The environmental crisis faced by the Grassy Narrows peoples and the Wabigoon River shares similarities to the crisis faced by the Indigenous and African descent communities in Chocó and the Atrato River. There is significant mercury waste contamination from previous activity in both rivers. In theory, if a similar civil wrong is recognized by the court, this may give the Wabigoon River’s rights a chance of being inferred into constitutional law and so declared by the judiciary, as in the case of the Atrato River.

At this stage in the Grassy Narrow and Wabigoon River’s fight for environmental justice, monetary compensation awarded has proven to be a non-satisfactory and arguably inadequate remedy. Seeking a remedy like a declaration may be more desirable. The declaration could pronounce the Wabigoon River, similar to the case of the Atrato River, a legal person subject to rights of “protection, conservation, maintenance, and rehabilitation” (Magallanes, 2019). A court declaration recognizing these rights could lay the foundation for a much-needed body of precedence for similar cases in the future. This is also arguably an advantage over judicial decisions made in civil law countries like Colombia or Ecuador, where a court’s decisions are only binding for the parties involved.

Challenges

It is very unlikely that inferring the Wabigoon river’s rights from the *Constitution Act* would be possible. Colombia’s constitution dedicates more than 30 articles to environmental protection. Articles 79 and 80 of the Colombian Constitution recognize the “collective right of all people to a healthy environment and the responsibility of the State to: protect the diversity and integrity of the environment; conserve areas of special ecological importance; plan the management and use of

natural resources to guarantee their sustainable development, conservation, restoration or substitution; and prevent and control environmental deterioration" (Macpherson et al., 2021). The granting of the Atrato River's legal rights and its personhood logically follow from the Colombian Constitution's entrenched provisions, as confirmed by the Colombian Constitutional Court's ruling. In addition, the Vilcabamba River's personhood status followed from the rights of nature entrenched in Ecuador's 2008 Constitution. There is nowhere near this type of recognition in the *Constitution Act*, including no recognized right of all people to a healthy environment.

Sections 7 and 15 of the *Constitution Act* have been proposed as provisions that could be used to infer personhood; "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" and "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability", respectively. However, simply inferring rights from these anthropocentric sections may be counterintuitive because it could superimpose the idea of the human person onto nature. Nature should not be constructed on the traditional model of the human person if we wish to shift from old paradigms of thinking and reshape law's anthropocentric orientation. Furthermore, the Canadian courts would be less inclined to infer personhood from these provisions, unless there was a clear signal from the federal Parliament or provincial legislative assemblies in the form of legislation. This reluctance is likely influenced by critics who that argue only Parliament should be able to set out the fundamental constitutional principles of the nation; the invocation of unwritten rights/norms instills "unelected and unaccountable judges with illegitimate power" (McLachlin, 2005).

Some feel that the "concept and scope of rights of nature laws and discourse are being built by articulating rights of nature through the judicial decisions that uphold them and by issuing the arguments for rights of nature in the legal arena" (Berros, 2017). While this may be the case in the civil law nations of Colombia and Ecuador, this may not be the case in the common law nation of Canada. For instance, the federal and provincial statutory causes of action set out in *CEPA* and EBR have not often been used in claims due to their limited scope and the complexity of their governing provisions (Muldoon et al., 2015). Before an action can be brought under the EBR, an EBR investigation needs to be requested to demonstrate that the responsible ministry has failed to

respond or has delivered an unreasonable response, which complicates and extends the process (Muldoon et al., 2015). Rivers' interests and the common law are seen as existing in separate boxes; "they lack any central organising principle or overarching rationale" (Page & Pelizzon, 2022). A river's essence is not properly reflected in the common law, "whose doctrines and discourse marginalise the river and privilege land" (Page & Pelizzon, 2022). For instance, the riparian rights doctrine encourages the Western notion of natural resources as property by asserting that "river waters are the exclusive domain of riparian landowners" (Page & Pelizzon, 2022). It underscores the river's subsidiarity to the law and offers "little if any scope for rivers to evolve or become the *subject*", thus failing to ascribe the rivers their legal worth (Page & Pelizzon, 2022).

b) *Constitutional Amendment*: *Benefits*

The procedure to amend the Canadian Constitution is set out in the *Constitution Act* itself. An amendment can be made by "proclamation issued by the Governor General", where authorized by a resolution from a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required (*The Constitution Act, 1982*).

Many feel it is due time for the constitutional silence on environmental issues to be lifted, proponents of environmental constitutionalism included. Back in 1912, Prime Minister Wilfred Laurier's Commission on Conservation reported that "constitutional uncertainty about environmental protection was undermining efforts to address water pollution" (Boyd & Macfarlane). The entrenchment of the Wabigoon river's legal personhood status and rights in the Constitution would give them the highest legal status. As mentioned earlier, the *Constitution Act* is the nation's supreme law, meaning that its provisions set high-level norms. Normative superiority, as well as the implied legitimacy of these constitutional rights, paints environmental constitutionalism, to some proponents of the RoN school of thought, as a way forward when ordinary legal mechanisms fall short; a "[vehicle] for transformative changes" (Macpherson et al., 2021). A "constitutional right to a healthy environment will have far greater legal, symbolic and practical importance than a legislated right" (Boyd, 2013). The same can be said for a river's legal personhood status and rights. Recognizing the rights of the Wabigoon River in the constitution could establish a priority for its rights that is equal to that of the "political and legal rights set out in the proposed Charter of Human Rights" (Boyd, 2013). The combination of the recognition of

the Wabigoon River's rights in the constitution and common laws, or judge-made laws, in the Canadian legal system may help environmental problems related to rivers be dealt with far more efficiently. Canada's commitment to UNDRIP (the United Nations Declaration on the Rights of Indigenous Peoples) may also offer the river some protections (Nerberg, 2022). Despite not being legally binding, UNDRIP is considered to have an authoritative moral force. Similar to the Atrato River Case, UNDRIP serves as an "additional criterion of interpretation within our legal system" (*The Atrato River Case*, *2016*).

Challenges

The division of powers discussed earlier demonstrates one of the problematic elements of the Canadian Constitution; it does not address the power of other levels of governments that have recently taken on more significance in Canada, "including territorial, municipal, regional, and First Nations governments" (Muldoon et al., 2015). Therefore, it is not clear as to which section of the Constitution rivers' rights should be added to make their enforcement effective. Additionally, if rights for natural entities are too broad, their enforcement may be unclear. This is demonstrated in the case of the Vilcabamba River and Ecuador's Constitution; some scholars feel it is unclear as to how they should be "exercised, and whether or when nature would hold *locus standi* to defend these rights" (Pecharroman, 2018).

As mentioned earlier, constitutional reforms to include environmental provisions has proved to be unsuccessful in the past in the Canadian legal context. In the debates leading up to the 1982 *Canadian Charter of Rights and* Freedoms, the proposal to include a specific reference to a clean and healthy environment in the Canadian Charter of Rights and Freedoms did not gain political traction and was ultimately rejected (Muldoon et al., 2015). This rejection was likely reinforced by the "slow and politically arduous" road to any constitutional amendment in Canada (Muldoon et al., 2015). Retired judge Barry Strayer identified other factors contributing to the unlikeliness that environmental rights would be recognized in the Constitution; "opposition from provincial governments, concerns about transferring environmental policy decisions from elected legislators to unelected judges, the difficult choices that judges could face in environmental cases and constitutional fatigue" (Boyd, 2013). Similar barriers that faced legislators then, including a largely unbothered political climate, may still face legislators now.

Due to bias and the inadequate training judges have to properly integrate the principles and provisions of legal personhood for the Wabigoon River, it makes a judicial outcomes like those seen in the cases of the Atrato or Vilcabamba even less likely. Judges have issued decisions that have demonstrated bias towards polluters throughout the age of the industrial revolution (Sollner, 1994). Judicial perceptions of nature certainly played a role in determining the rejection of common law norms in the field of environmental law (Sollner, 1994). With the construction of this kind of precedent, it seems this tendency will be "incapable to change direction despite undesirable or inefficient outcomes" (Sollner, 1994). If Canadian judges lack access to the correct data and information, they may continue to undervalue the rights of rivers at hand or make decisions based on interpretations that misconstrue the severity of environmental damage. The enforcement of a river's legal rights requires money and expertise to be made available to uphold those rights in the court (O'Donnell & Talbot-Jones, 2018). However, less money may be invested if the claim is perceived as less urgent. "The legal system ought to be built upon the possibility for the public to go to court and claim the rights of nature have been breached" (DARPÖ, 2021). Given the idea of legal personhood for rivers has not yet been tested in Canadian courts, it may be too soon to predict how the judiciary would respond to a constitutional right recognizing this personhood.

c) Legislative Recognition: Benefits

The predominant, substantial form of environmental law in both civil and common law systems is statutory; passed by Parliament or provincial legislatures in Canada. In Canada, there was a push for legislative reform that expanded environmental rights in the early 1970s and 1980s after constitutional amendment for environmental rights proved to be unsuccessful (Muldoon et al., 2015). Statutory laws and their respective regulations can supplement, change or overturn common laws, as demonstrated by the EBR. Some feel that establishing the parameters of legal personhood through the enactment in a statute is more solid than having courts decide through "hearing a set of arguments on one particular pleading" (Magallanes, 2019). Over the long term, a statute is more likely to be effective than ad hoc orders to ensure compliance with court decisions. Another factor in favour of statutory recognition is the democratic mandate that it can provide for the protection of nature (Magallanes, 2019). When immediate protection is needed, the time required to amend the constitution and create constructive precedent in favour of the rights of

rivers is less than ideal. Moreover, “legislated environmental rights and responsibilities could serve as a stepping stone to future constitutional change and could also flesh out the details of the constitutional right” (Boyd, 2013). For instance, if the EBR was amended to include a river’s inherent rights and legal personhood status, this could be relied upon to help “promote the fulfillment of environmental obligations, and to help maintain and strengthen our regime of environmental protection in Canada” (Boyd, 2013).

The *Te Awa Tupua Act* was borne out of a resolution of a claim to the “ownership, management, and control” of the Whanganui River. It altered ‘ownership’ arrangements, which is what arguably needs to occur in the situation of the Wabigoon River. The claim had been brought to the Waitangi Tribunal which was tasked with inquiring into breaches of the Treaty of Waitangi of 1840. A somewhat analogous body in the case of the Wabigoon River is the Grand Council Treaty #3; the “political and administrative body that represents the 28 signatories to the treaty” (Filice, 2020). It aims to “protect and preserve Indigenous rights to the land, while also continuing to pursue goals of self-government” (Filice, 2020). A claim could be brought to Grand Council Treaty #3 that the ongoing failure to remediate the river infringes on their Treaty #3 rights, notwithstanding the *English and Wabigoon Rivers Remediation Funding Act*. While the Treaty involves the sharing of natural resources, it does not mean the Grassy Narrows peoples have given up sovereignty of their sacred lands, which is how it seems to be interpreted in the case of the Wabigoon River.

As was the case for the Whanganui River, nation-to-nation negotiations and consultations with the aim of legislating the Wabigoon River’s rights and legal personhood could be progressive to reconciliation. This legislation could include mandating the establishment of a body to undertake guardianship and “act on the river’s behalf, to uphold the rights, and speak for nature”; one of the factors important for the enforcement of the rights of nature (O’Donnell & Talbot-Jones, 2018). Guardians could also facilitate the co-existence of two separate systems of law or legal pluralism; Anishinaabe *Inakonigaawin* (law) and Western laws. If ‘guardians’ are not designated by legislation, the actors representing the Wabigoon River’s rights in court are left up to chance and may not include representatives from Grassy Narrows (Magallanes, 2019). The legal mandate to advocate for Nature’s interests would also be removed. This is the case in Ecuador, where all persons, communities, peoples and nations *can* call upon public authorities to enforce RoN, but unlike appointed guardians, they are not required to do so (Kauffman & Martin, 2018).

Furthermore, the statute could include the provisions from the Nibi Declaration; the declaration that affirms/recognizes the Anishinaabe Nibi Inaakonigewin (water law principles) (Grand Council Treaty #3, 2020). It reaffirms the Anishinaabe view of nibi as "a living entity with its own agency and ability to govern itself (Craft & King, 2021). This declaration is not legally binding and cannot be used to enforce legal action through the Canadian Court systems. However, its proper legislation could offer more force, especially if its rights are eventually incorporated into the *Constitution Act*. The Nibi Declaration can "provide the legal and regulatory framework from an Anishinaabe legal perspective and engage the principles of decision-making relating to the territory" (Craft & King, 2021). Recognition of the Wabigoon River's legal personhood through thoughtful legislation could give effect to the Grassy Narrow's "sacred relationship with water and the recognition of spiritedness and agency" (Craft & King, 2021).

Legislation may be enforceable under pre-existing constitutional provisions. For example, Section 35 of the Constitution has been proposed as a potential way to confer constitutional status on Mutehekau Shipu's personhood resolution (Nerberg, 2022). The section recognizes and affirms the "the existing aboriginal and treaty rights of the aboriginal peoples of Canada" (*Constitution Act*, 1982). The idea behind the use of this section is that if Indigenous communities like the Grassy Narrows peoples have a right to their cultural identity, this should theoretically recognize the river's rights as the Grassy Narrows' rights would be infringed upon if the river suffers environmental harm. The Grassy Narrows peoples "have a sacred relationship with nibi" (nibi meaning water); "nibi unites [them]" (Grand Council Treaty #3, 2020). They have responsibilities to the lakes and rivers around them, as well as important relationships with them (Grand Council Treaty #3, 2020). If the river suffers environmental harm, it ultimately fragments the cultural identity of the Grassy Narrows peoples, thus infringing upon this constitutional right.

If Indigenous peoples are part of declaring the personhood of a river, a resolution or other executive order may be afforded a more significant authority than if only environmental lobby groups and non-indigenous resident groups are involved. A resolution is a type of executive order issued by an agency, or other body, to establish regulations (Privy Council Office, Government of Canada, 2001). A declaration by Indigenous peoples brings "a more detailed and alternative history, in Aboriginal laws and traditions" (Raymer, 2021). This is said to be true of the Magpie River Resolution, which has a wide array of authoritative support and legitimacy (Raymer, 2021). Regulations, or subordinate legislation, have binding legal effects under their enabling Acts.

Consequently, the river's "right to live, exist and flow" (Cárdenas, 2021) is binding, making greater environmental protection of the Magpie River more likely.

Challenges

If constitutional rights do not uphold the legislation in court, it may have limited legal force. An illustration of this is when critical provisions of *CEPA* were almost struck down in 1977 because they lacked a clear constitutional basis for the law (Boyd & Macfarlane, 2014). As touched on in the argument for the passing of a Canadian EBR, unlike a constitutionally entrenched principle, a piece of legislation would not be able to "override other legislation, nor would it apply to provincial, territorial, municipal or aboriginal governments" (Boyd, 2013). The enforceability of legislation is also dependent on the level of government that enacts it. For example, since New Zealand's political system recognizes parliamentary supremacy, the national *Te Awa Tupua Act* has superior legal standing (Kauffman & Marin, 2018). However, the *Te Awa Tupua Act* can still conflict with other acts of parliament, as demonstrated in with the *Resource Management Act*. Additionally, if legislation for the Wabigoon River's rights is not designed so that it can "be integrated with existing legislative frameworks", it also risks serving little function.

Another challenge of legislation is that if a river's rights to water are not included, less environmental protection is likely to be conferred and the statute may serve a primarily symbolic function. Prominent water scholar Erin O'Donnell also feels that how a river's right to flow is enforced in legislation or regulations is "very unclear" and serves a limited function if it is "not actually embedded within water law" (Barkham, 2021). This may be a challenge faced by the Magpie River Resolution. It is also unclear how the appointed guardians for the Magpie River will be treated by courts or by the provincial and/or federal governments since their powers are not constitutionally protected (Mason & Chalupovitsch, 2021). Instead, their powers have been delegated to them by the province of Québec.

The passing of legislation to recognize a river's legal rights and personhood may not be high on either the federal or provincial governments' agendas; the "list of subjects to which officials are paying serious attention at any given time" (Kingdon, 2003). This is especially relevant with the advent of COVID-19 in Canada in 2020 which has unavoidably caused attention to be shifted away from environmental priorities for rivers to ones related to public health. The

different processes through which authoritative figures or government participants affect agendas are: problem recognition; generating proposals for change (e.g. new statutes); and engaging in political activities like pressure group lobbying for environmental demands (Kingdon, 2003). The simultaneous occurrence of these processes enhances the odds that a subject will become fixed on a decision agenda, but this occurrence is unpredictable (Kingdon, 2003).

Finally, similar to upholding constitutional rights, adequate financial resources are required to engage in the challenge of enforcing a river's legal rights. This is why a fund was established for the Whanganui River; in order to ensure that its health and well-being could be supported (Jackson, 2018). Theoretically, financial resources could be sourced from a fund already established for the remediation of the Wabigoon River. However, the size of this fund is arguably already inadequate to meet its current objectives. More money would need to be sourced and allocated to the river's legal protection. From past experience, the probability seems low that the Ontario Government would be willing to provide the necessary additional funds.

VI) Conclusion

The idea of legal personhood is "arguably not revolutionary in [its] own right"; it is in the way it has arisen from a paradigm shift (Magallanes, 2019). This shift is in the "relationship between humanity and rivers away from seeing rivers as a resource to be exploited" (O'Donnell, 2020). Recognition of rivers' legal personality is accompanied by greater recognition of their inherent and relational values. This shift will be essential in dealing with the emergencies of climate change and biodiversity loss, which have the "same root cause: old paradigms of thinking, structures and systems that separate human beings from the rest of the interconnected web of life" (DARPÖ, 2021). UN Special Rapporteur on human rights and the environment David Boys believes "all Canadians need to rethink our fundamental relationship with nature if we are going to achieve a sustainable future" (Nerberg, 2022).

The construct of a legal person or legal subject is arguably constructed according to predetermined and human-centric characteristics, which can be inconsistent with Indigenous ontologies that "naturalize the human person, bringing her into genealogical relations with particular lands" (Tănăsescu, 2020). Legal person or subject formulations may carry moral and legal notions that stifle the "politically radical act of extending the circle of entities recognized

by law" (Tănăsescu, 2020). In contrast, a legal entity does not already bring with it a substantive or moral being. However, legal personality is important in Canadian jurisprudence because no human being or non-human entity, can function, without legal capacity. The "combination of legal personhood (with the associated rights, powers and duties) with living entity may be a way to harness both legal rights as well as more holistic protections and the moral status of living beings" (O'Donnell, 2020).

Analysing the cases of the Whanganui, Atrato, and Vilcabamba Rivers has led to a few insights which guide the proceeding suggestions. Firstly, granting of rights to the three rivers analyzed did not purely arise from environmental motivation. The recognition of the Whanganui and Atrato Rivers' rights occurred largely as a consequence of "power relations between old rivals". The push for the inclusion of the RoN in Ecuador's Constitution and subsequent recognition of the Vilcabamba's rights occurred in concert with the push for inclusion of "a package of rights that would strengthen Indigenous authority" (Tănăsescu, 2020). It is controversial whether the legal tool of legal personhood is considered environmental, or rather one that predominantly advances reconciliation through affording greater recognition to Indigenous knowledges.

A court declaration in the Ontario legal context is not only unlikely due to the lack of constitutional support and legislative direction to accord this equitable relief, but also an unfavourable means of redress to the peoples of Grassy Narrows because it would mean they would have to 'go back' to court to make their claim; a situation that has historically not been conducive to their needs and one that could perpetuate intergenerational trauma. Constitutional amendment may be a challenging and politically arduous process. Constitutional protection of the river's rights, as well as the powers of 'guardians' appointed to act in the river's interests, will make them more likely to be well-received by provincial and federal judiciaries in the face of their likely inadequate environmental backgrounds and training. Various extant court cases using the RoN entrenched in Ecuador's Constitution, not addressed due to the already broad scope of this paper, as well as our analysis of the Vilcabamba River case, have revealed "the problems inherent in a formulation of nature's rights based on a universal subject (nature as a person) and wide standing" (Tănăsescu, 2020). This includes the lack of clarity of when nature' s rights, including those of rivers, should be "exercised, and whether or when nature would hold locus standi to defend these rights" (Pecharroman, 2018). Ultimately, the role of the court and

the rules and practices of the context of the common law legal system "will likely determine how effective a court can be when undertaking such assessments of rights" (Magallanes, 2019). Legislative recognition is likely to be a more tangible solution in the near future and one that could serve as a stepping stone to constitutional changes and entrenched rights for rivers. Its respective regulations provide opportunities to supplement, change or overturn common laws. Legislation could offer a more straightforward articulation of the Grassy Narrows peoples' rights and autonomy, as per Treaty #3, and of the values they ascribe to water as per the Nibi Declaration. The appointment of legal 'guardians', as seen in the cases of the Whanganui and Atrato Rivers, is beneficial due to the legal mandate it introduces to advocate and enforce the river's interests. However, it is important to be cognizant of situations where there are discrepancies between the local Indigenous understanding of the concept of guardians or guardianship and the Western understanding of these terms. This is important as differences in the understanding of this terminology can translate into differences in the roles and responsibilities of the 'guardians', as in the case of the *kaitiakitanga* for the Whanganui *iwi*. By contrast, in the case of the Vilcabamba River, anyone can go to court to defend the river's right. This does not introduce a legal mandate, nor does it necessarily assert standing, which is left up to chance. The constitutional provisions are thus rendered less enforceable. Furthermore, the actor who chooses to represent the river may be unequipped to "act and speak to the benefit of the river's health and well-being" (O'Donnell & Talbot-Jones, 2018).

i) Recommendations

The following recommendations are made with regard to the granting of legal personhood to the Wabigoon River in the future. First and foremost, legal personhood should be pursued for the Wabigoon River. Legal personhood offers one of the best hopes of changing legal education "and, more broadly, law as we know it" (Ruru, 2018). It is regarded as a step in the right direction, necessary for the rivers' protection (Magallanes, 2019). It will be important to ensure that no attention or energy is detracted away from "radical Indigenous social and political agendas, including the struggle for Indigenous sovereignty, control and ownership over natural resources and related political authority", as some critics have suggested might occur with the granting of legal personhood (Macpherson et al., 2021). In order to avoid simply constructing

nature's rights on the traditional model of the human person, legal scholars should also consider the recognition of rivers as living or legal entities, as demonstrated in the case of the Whanganui River. The Wabigoon River should be recognized as both a legal person and living or legal entity, to better capture the ways in which Indigenous philosophies personify nature.

Secondly, the Wabigoon River should be granted legal personhood and recognized as a living entity through legislative recognition. Rights should not only be bestowed to the Wabigoon River through legislation, but instead the entire English-Wabigoon River System. This would better reflect the Wabigoon River's interconnectedness with the system and may help avoid problematic situations. Such situations include accountability issues if pollution occurs in different parts of the river system; a situation that contributed to the Supreme Court's Decision to stay the order of the High Court of Uttarakhand that granted the Ganges River legal personhood (The Times of India, 2017). Pollution currently also affects the neighbouring White Dog peoples, which is why rights for their sacred portion of the English-Wabigoon River System should also be granted and upheld.

Within legislation, the river's right to flow should be included (as in the Magpie River Resolution); the 'environmental flows' of rivers includes "not only water quantity, but quality, timing, frequency and duration of water flow" (O'Donnell, 2020). The right to their own water should also be included, since omission may lead to the legislation failing to "address the existential threats already facing rivers" (O'Donnell, 2020). However, if not explicitly stipulated in legislation, the recognition of the river as a legal person and entity may still "provide a future legal avenue to argue that this recognition implicitly included rights to water" (O'Donnell, 2020). Furthermore, legislation should be created in a way that complements traditional, established legal tools so that pre-existing laws do not cancel out the rights conferred in the legislation (Berros, 2017). Alternatively, pre-existing legislation could be strengthened to avoid having to create novel legislation. For example, the 1999 CEPA could be strengthened by including an unqualified legal right to a healthy environment and river's rights. An effort to do so is already underway with Bill S-5 (Ecojustice, 2022). This legislation should also require the appointment of guardians; one by the federal or provincial government (depending on which level of government enacts the legislation) and the other by the peoples of Grassy Narrows. Before this appointment, there should be respectful consultation with the peoples of Grassy

Narrows on whether or not the terms guardians or guardianship embody their own Indigenous conception of guardians or guardianship.

Despite the likelihood of being a slow and politically arduous process, entrenchment of the legal rights of rivers and a healthy environment in the constitution should also be pursued in concert with legislative recognition. The legislation will help "flesh out the constitutional principles that recognize nature's basic rights", which was arguably missing in the case of the Vilcabamba River. Provisions in the constitution should specifically outline the legal rights of rivers and their respective standing, while also leaving room for flexibility.

ii) Other Options

Directions other than legal personhood could include bolstering laws that actively support restoring environmental flows, water quality, and catchment ecologies (O'Donnell, 2020). Legislative reform of pre-existing law may prove necessary in reversing the harmful environmental impacts they promote and/or cause. Education and economic incentives are also powerful in governing behaviours towards better protecting the environment (Muldoon et al., 2015). A novel category of legal personality for natural elements could be devised to avoid anthropocentric connotations; an environmental or ecological person. A Rule of Law for Nature could be created that "establish[es] a governance regime for the enhancement of the health of ecological systems" (DARPÖ, 2021).

The possibility of granting legal personhood to the Wabigoon River, and other rivers in Ontario, should continue to be pursued and researched by environmental and legal scholars. However, if and when a new Canadian Constitution might be considered for amendment or legislation drafted is unclear. As alluded to above, action towards recognizing legal personality will require political motivation and influence. However, the Ontario government's "proposed dismantling of the province's climate change legislation" has been startling (Miron, 2020). Given the political climate in the province, it is likely the recognition of legal personality is low on the provincial government's agenda.

Nonetheless, if not now, when? The discussion of the challenges of granting legal personality in a civil versus common law jurisdiction provides an excellent focus for future research as more cases of rivers in Canada arise and as time reveals how existing cases, like the Magpie River, are

able to confer (or not) environmental protections. This research will provide a better understanding of the implementation of river's rights using the legal options discussed in this paper. Ultimately, "what will be best for any particular country is the method that will best fit the domestic legal and political system" (Magallanes, 2019).

References

Akchurin, M. (2015). Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador. *Law & Social Inquiry*, *40*(4), 937-968. https://doi.org/10.1111/lsi.12141

Anderson, C. (2019). Grassy Narrows. In *Canadian Encyclopedia Online* (Academic ed.). https://www.thecanadianencyclopedia.ca/en/article/grassy-narrows

Assembly of First Nations. (n.d.). *Honouring water*. https://www.afn.ca/honoring-water/#:~:text=As%20Indigenous%20peoples%2C%20First%20Nations,water%20all%20life%20will%20perish.

Bailey, A. (Aug. 1, 2008). *Water law: The interjurisdictional context*. Centre for Constitutional Studies. https://www.constitutionalstudies.ca/2008/08/water-law-the-interjurisdictional-context/#_ftn4

Barkham, P. (2021, July 25). Should rivers have the same rights as people? *The Guardian*. https://www.theguardian.com/environment/2021/jul/25/rivers-around-the-world-rivers-are-gaining-the-same-legal-rights-as-people#:~:text=After%20Ecuador%20incorporated%20rights%20of,required%20to%20remediate%20the%20pollution

Berros, M. V. (2017). Defending Rivers: Vilcabamba in the South of Ecuador. *RCC Perspectives*, *6*(1), 37-44. https://www.jstor.org/stable/10.2307/26268374

Borrows, J. (2018). Earth-Bound: Indigenous Resurgence and Environmental Reconciliation. In M. Asch, J. Borrows, & J. Tully (Eds.), *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (pp. 49-82). University of Toronto Press.

Boyd, D. R., & Macfarlane, E. (Mar. 3, 2014). *Enshrine our right to clear air and water in the Constitution*. Policy Options. https://policyoptions.irpp.org/fr/magazines/second-regard/boyd-macfarlane/

Boyd, D. R. (2013). *Right to a healthy environment: A series of discussion papers*. David Suzuki Foundation. https://davidsuzuki.org/wp-content/uploads/2013/11/history-right-healthy-environment-canada.pdf.

Brooks, D. (2010). Whither (or whether) water policy in Canada. *Canada–United States Law Journal*, *34*(2), 280-302.

Buckley, L. (Jan. 21, 2020). *Resolute v Ontario*: *Corporations no longer indemnified from provincial order to remediate mercury contamination*. The Court. https://www.thecourt.ca/resolute-v-ontario/

Calzadilla, P. V., & Kotzé, L. J. (2018). Living in Harmony with Nature? A critical appraisal of the rights of mother earth in Bolivia. *Transnational Environmental Law*, *7*(3), 397-424.

Cárdenas, Y. V. (Mar. 6, 2021) *The recognition of the Magpie/ Muteshekau Shipu River as a non-human person*. International Observatory on the Rights of Nature. https://observatoirenature.org/2021/10/05/the-recognition-of-the-magpie-muteshekau-

shipu-river-as-a-non-human-person/
Chan, Balvanera, P., Benessaiah, K., Chapman, M., Diaz, S., Gomez-Baggethun, E., Gould, R., Hannahs, N., Jax, K., Klain, S., Luck, G. W., Martin-Lopez, B., Muraca, B., Norton, B., Ott, K., Pascual, U., Satterfield, T., Tadaki, M., Taggart, J., & Turner, N. (2016). Why protect nature? Rethinking values and the environment. *Proceedings of the National Academy of Sciences (PNAS)*, *113*(6), 1462–1465. https://doi.org/10.1073/pnas.1525002113
Chipello, C. (Sep. 30, 2020). *Protecting Canada's rivers and lakes: A love of canoeing and a passion for science guide grad student's journey*. McGill Channels. https://www.mcgill.ca/channels/article/protecting-canadas-rivers-and-lakes#:~:text=%E2%80%9CThey%20support%20immense%20biodiversity%2C%20provide,to%20both%20nature%20and%20ourselves.%E2%80%9D
Community Environmental Legal Defense Fund (CELDF). (n.d.). *Rights of Nature: Timeline.* https://celdf.org/rights-of-nature/timeline/
The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11. https://canlii.ca/t/ldsx
Craft, A., & King, L. (2021). Building the Treaty #3 Nibi Declaration using an Anishinaabe methodology of ceremony, language and engagement. *Water*, 13(4), 532. https://doi.org/10.3390/w13040532
DARPÖ, J. (2021). Can Nature Get it Right? A Study on Rights of Nature in the European Context. https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf
D'Amours, J. K. (2021, April 3). *This river in Canada is now a 'legal person'*. Aljazeera. https://www.aljazeera.com/news/2021/4/3/this-river-in-canada-now-legal-person
Deckha, M. (2020). Unsettling Anthropocentric Legal Systems: Reconciliation, Indigenous Laws, and Animal Personhood. *Journal of Intercultural Studies, 41(1)*, 77-97. https://doi.org/10.1080/07256868.2019.1704229
Ecojustice. (Feb. 9, 2022). *Parliament must prioritize passage of strong environmental protection bill*. https://ecojustice.ca/pressrelease/parliament-must-prioritize-passage-of-strong-environmental-protection-bill/
Ecojustice. (2008). *Ecojustice Legal Toolkit: Notes and Resources*. https://ecojustice.ca/wp-content/uploads/2014/11/Ecojustice-Legal-Toolkit.pdf
English and Wabigoon Rivers Remediation Funding Act, *2017*, SO 2017, c 34, Sch 14, https://canlii.ca/t/53nl0
Environmental Justice Atlas. (Jan. 30, 2018). *Road widening at Vilcabamba River and recognition of rights of nature, Ecuador*. https://ejatlas.org/conflict/first-successful-case-of-rights-of-nature-ruling-vilcabamba-river-ecuador
Environmental Law Centre of Alberta. (2014). *Standing in Environmental Matters*. CanLIIDocs (375). https://canlii.ca/t/2ffx.
Evans, J. P. (2012). Environmental governance (1st ed.). Routledge.
Evans, M. (2016). Parens patriae and public trust: litigating environmental harm per se. *McGill International Journal of Sustainable Development Law and Policy*, *12*(1), 1-24.
Filice, M. (2020). Treaty 3. In *Canadian Encyclopedia Online*. https://www.thecanadianencyclopedia.ca/en/article/treaty-3
Fisher, E. (2017). *Environmental Law: A Very Short Introduction*. Oxford University Press.

Garrett, R., & Wood, S. (2020). *Rights of Nature Legislation for British Columbia: Issues and Options. CLE Working Paper Series. Working Paper No. 1*. https://allard.ubc.ca/sites/default/files/2020-08/RON%20Legislation%20Working%20Paper%20-%20FINAL%20-%2019%20August%202020.pdf

Gellers, J. C. (2021). Earth system law and the legal status of non-humans in the Anthropocene. *Earth System Governance*, *7*(1), 100083. https://doi.org/10.1016/j.esg.2020.100083

Global Water Partnership. (2021, August 24). *Valuing Water Initiative*. https://www.gwp.org/en/we-act/campaigns/high-level-panel-on-water-valuing-water-initiative/

Government of Canada. (Jun. 6, 2022). *Indigenous environmental leadership, funding, and initiatives*. https://www.canada.ca/en/environment-climate-change/services/nature-legacy/indigenous-leadership-funding.html

Government of Canada. (Nov. 4, 2011). *Indigenous communities in Ontario*. https://www.sac-isc.gc.ca/eng/1603371542837/1603371807037

Grand Council Treaty #3. (2020). *Nibi Declaration of Treaty #3: Toolkit*. https://watergovernance.sites.olt.ubc.ca/files/2020/04/Nibi-Declaration-Toolkit.pdf

Grear, A. (2015). Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity". *Law and Critique*, *26*(3), 225–249.

Greene, N. (May 21, 2011). *The first successful case of the Rights of Nature implementation in Ecuador*. Global Alliance for the Rights of Nature. https://therightsofnature.org/first-ron-case-ecuador/

Hachiya, N. (2006). The history and the present of Minamata disease: Entering the second half a century. *Japan Medical Association Journal*, *49*(3), 112-118. https://www.med.or.jp/english/pdf/2006_03/112_118.pdf

Hayes, M. (2015). Into the Universe of the Hacienda: Lifestyle Migration, Individualism and Social Dislocation in Vilcabamba, Ecuador. *Journal of Latin American Geography*, *14*(1), 79–100. http://www.jstor.org/stable/24395751

Hollingsworth, J. (Dec. 11, 2020). *This river in New Zealand is legally a person. Here's how it happened*. CNN. https://www.cnn.com/2020/12/11/asia/whanganui-river-new-zealand-intl-hnk-dst/index.html

Jackson, S. (2018). Water and Indigenous rights: Mechanisms and pathways of recognition, representation, and redistribution. *WIREs Water*, *5*(6). https://doi.org/10.1002/wat2.1314

Jang, M. (Sep. 2, 2021). *Rights of nature and Indigenous peoples: Navigating a new course*. Peter A. Allard School of Law: The University of British Colombia. https://allard.ubc.ca/about-us/blog/2021/rights-nature-and-indigenous-peoples-navigating-new-course

James, S. P. (2020). Legal rights and nature's contributions to people: Is there a connection? *Biological Conservation*, *241*(1), 108325. https://doi.org/10.1016/j.biocon.2019.108325

Judgment T-622/16 (The Atrato River Case). Constitutional Court of Colombia (November 10, 2016), translated by the and available at Dignity Rights Project, Copyright © 2019. https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf

Kauffman, C. M., & Martin, P. L. (2018). Constructing Rights of Nature Norms in the US,

Ecuador, and New Zealand. *Global Environmental Politics*, *18*(4), 43–62. https://doi.org/10.1162/glep_a_00481
Kingdon, J. W. (2003). Wrapping Things Up. In *Agendas, alternatives, and public policies* (2nd ed.) (pp. 196-208). Longman.
Lahey, K. A. (1998). Legal "persons" and the charter of rights: Gender, race and sexuality in Canada. *Canadian Bar Review,* 77(3-4), 402-427. https://heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/canbarev77&id=418&collection=journals&index=journals/canbarev
Lindgren, R. D. (2019, October 1). *Common law tools for protecting the environment* [Powerpoint slides]. Canadian Environmental Law Association. https://cela.ca/wp-content/uploads/2019/10/Common-Law-Tools-Oct2019.pdf
Lurgio, J. (2019, November 29). Saving the Whanganui: can personhood rescue a river? *The Guardian*. https://www.theguardian.com/world/2019/nov/30/saving-the-whanganui-can-personhood-rescue-a-river
Macpherson, E., Borchgrevink, A., Ranjan, R. & Vallejo Piedrahíta, C. (2021). Where ordinary laws fall short: 'riverine rights' and constitutionalism. *Griffith Law Review*, *30*(3), 438-473. https://doi.org/10.1080/10383441.2021.1982119
Macpherson, E. J. (2019) *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience* (Cambridge Studies in Law and Society). Cambridge University Press. doi:10.1017/9781108611091
Magallanes, C. I. (2019). From rights to responsibilities using legal personhood and guardianship for rivers. In B. Martin, L. Te Aho, & M. Humphries-Kil (Eds.), *ResponsAbility: Law and Governance for Living Well with the Earth* (pp. 216–239). Routledge.
Maharaja, D. (2021, November 4). Ford government and opposition parties to blame for lack of action on Grassy Narrows remediation. *Toronto Star*. https://www.thestar.com/opinion/contributors/2021/11/04/ford-government-and-opposition-parties-to-blame-for-lack-of-action-on-grassy-narrows-remediation.html
Margil, M. (2017). The standing of trees: Why nature needs legal rights. *World Policy Journal*, *34*(2), 8–11. https://doi.org/10.1215/07402775-4191552
Mason, R., & Chalupovitsch, M. (Apr. 22, 2021). *The rights of nature: Canadian and International developments in granting legal rights to rivers.* Library of Parliament. https://hillnotes.ca/2021/04/22/the-rights-of-nature-canadian-and-international-developments-in-granting-legal-rights-to-rivers/
May, J. R., & Daly, E. (2017). *Judicial Handbook on Environmental Constitutionalism*. United Nations Environment Programme (UN Environment). https://wedocs.unep.org/bitstream/handle/20.500.11822/20766/judicial-handbook-environmental-constitutionalism.pdf?sequence=3&isAllowed=y
McLachlin, B. (Chief Justice of Canada). (Dec. 1, 2005). *Unwritten Constitutional principles: What is going on?*. Supreme Court of Canada. https://www.scc-csc.ca/judges-juges/spe-dis/bm-2005-12-01-eng.aspx
Mika, J. P., & Scheyvens, R. A. (2021). Te Awa Tupua: peace, justice and sustainability through Indigenous tourism. *Journal of Sustainable Tourism*. doi: 10.1080/09669582.2021.1912056
Miron, I. (Jul. 17, 2020). *The importance of Ontario's Environmental Bill of Rights: What you need to know*. Ecojustice. https://ecojustice.ca/the-importance-of-ontarios-environmental-bill-of-rights-what-you-need-to-know/

Mosa, A., & Duffin, J. (2017). The interwoven history of mercury poisoning in Ontario and Japan. *CMAJ*, *189*(5), E213–E215. https://doi.org/10.1503/cmaj.160943
Muldoon, P., Lucas, A., Gibson, R. B., Pickfield, P., & Williams, J. (2015). *An introduction to environmental law and policy in Canada* (2nd ed.). Emond Montgomery Publications Limited.
Mulrennan, M., Scott, C., & Scott, K. (2019). *Caring for Eeyou Istchee: Protected Area Creation on Wemindji Cree Territory*. UBC Press.
National Geographic (2022, May 20). *Floodplain*. Resource Library: National Geographic Encyclopedia. https://education.nationalgeographic.org/resource/flood-plain
Nerberg, S. (2022). I am Mutehekau Shipu. *Canadian Geographic*, *142*(2), 60–72.
Northern Ontario Travel. (Aug. 17, 2020). *The big list of all major waterways in Ontario*. https://www.northernontario.travel/boating/major-waterways-of-ontario
O'Donnell, E. (2020). Rivers as living beings: rights in law, but no rights to water. *Griffith Law Review*, *29*(4), 7. doi: 10.5751/ES-09854-230107
O'Donnell, E. L., & Talbot-Jones, J. (2018). Creating legal rights for rivers: lessons from Australia, New Zealand, and India. *Ecology and Society*, *23*(1), 7. doi: 10.5751/ES-09854-230107
Opperman, J. J., Orr, S., Baleta, H., Dailey, M., Garrick, D., Goichot, M., McCoy, A., Morgan, A., Turley, L., & Vermeulen, A. (2018). *Valuing Rivers: How the diverse benefits of healthy rivers underpin economies*. WWF. https://awsassets.panda.org/downloads/wwf_valuing_rivers__final_.pdf
Page, J., & Pelizzon, A. (2022). Of rivers, law and justice in the Anthropocene. *Geogr J*, 1–11. https://doi.org/10.1111/geoj.12442
Parliament of Canada (n.d., a). *C-438*. https://www.parl.ca/LegisInfo/en/bill/42-1/C-438?view=progress
Parliament of Canada (n.d., b). *Glossary of Parliamentary Procedure*. https://www.ourcommons.ca/procedure/glossary/index-e.html#resolution_e
Pecharroman, L. C. (2018). Rights of Nature: Rivers That Can Stand in Court. *Resources*, *7*(1), 13. doi:10.3390/resources7010013
Porter, J. (n.d.). Children of the poisoned river. *Canadian Broadcasting Corporation (CBC) News*. https://www.cbc.ca/news2/interactives/children-of-the-poisoned-river-mercury-poisoning-grassy-narrows-first-nation/
Privy Council Office, Government of Canada. (2001). *Guide to making federal acts and regulations* (2nd ed.). https://www.canada.ca/content/dam/pco-bcp/documents/pdfs/fed-acts-eng.pdf
Public Interest Law Centre. (2015). Appendix VII: The Public Trust Doctrine. In the Public Interest Law Centre's *Equity and Balance in the LWR dialogue* submission to the Clean Environment Commission. https://www.legalaid.mb.ca/wp-content/uploads/2017/03/Consumers-Association-of-Canada-Lake-Winnipeg-Regulation-Appendix-7-Public-Trust-Doctrine_-April-14.15-1.pdf
R v Resolute FP Canada Inc., 2019 SCC 60, [2019] 4 SCR 394.
Raymer, E. (Mar. 9, 2021). *Quebec's Magpie River is granted personhood*. Canadian Lawyer. https://www.canadianlawyermag.com/practice-areas/esg/quebecs-magpie-river-is-granted-personhood/353752
Rudd, J. W. M., Kelly, C., Sellers, P., Flett, R. J., & Townsend, B. E. (2021). Why the English-

Wabigoon River system is still polluted by mercury 57 years after its contamination. *Facets*, *6*(1), 2002–2027. https://doi.org/10.1139/facets-2021-0093
Ruru, J., 2018. First Laws: Tikanga Māori in/and the Law. *Victoria University of Wellington Law Review*, *49*(2), 211–228.
Schoukens, H. (2019). Granting legal personhood to nature in the European Union: Contemplating a legal (r)evolution to avoid an ecological collapse? (Part II). *Journal for European Environmental & Planning Law*, *16*(1), 65–90. https://doi.org/10.1163/18760104-01601005
Sollner, F. (1994). The role of common law in environmental policy. *Public Choice*, *80*(1), 69–82. https://doi.org/10.1007/BF01047948
Stone, C. (1972) Should trees have standing? – Towards Legal Rights for Natural Objects. *Southern California Law Review*, 450-501.
Tănăsescu, M. (2020). Rights of Nature, Legal Personality, and Indigenous Philosophies. *Transnational Environmental Law*, *9*(3), 429-453. doi:10.1017/S2047102520000217
The Times of India (Jul. 7, 2017). *Supreme Court stays Uttarakhand high court's order declaring Ganga and Yamuna 'living entities'*. https://timesofindia.indiatimes.com/india/supreme-court-stays-uttarakhand-high-courts-order-declaring-ganga-and-yamuna-living-entities/articleshow/59489783.cms
Townsend, J., Bunten, A., Iorns, C., & Borrows, L. (2021, June 11). *Why the first river in Canada to become a legal person signals a boon for Indigenous Rights*. The Narwhal. https://thenarwhal.ca/opinion-muteshekau-shipu-magpie-river-personhood/
Townsend, J., Bunten, A., Iorns, C., & Borrows, L. (2021, June 3). *Rights for nature: How Granting a river 'personhood' could help protect it'*. The Conversation. https://theconversation.com/rights-for-nature-how-granting-a-river-personhood-could-help-protect-it-157117
Trigueros, A. (2012). The human right to water: Will its fulfillment contribute to environmental degradation? *Indiana Journal of Global Legal Studies*, *19*(2), 599–625. https://doi.org/10.2979/indjglolegstu.19.2.599
Truth and Reconciliation Commission of Canada (TRC). (2015). *Calls to Action*. https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf
United Nations (UN), Food and Agriculture Organization (FAO), United Nations Development Programme (UNDP), United Nations Industrial Development Organization (UNIDO), United Nations Educational, Scientific and Cultural Organization (UNESCO), UN-Water, UN-HABITAT, World Water Assessment Programme, & World Bank Group. (2021). *The United Nations World Water Development Report 2021: valuing water*. https://unesdoc.unesco.org/ark:/48223/pf0000375724
Vecsey, C. (1987). Grassy Narrows Reserve: Mercury pollution, social disruption, and natural resources: A question of autonomy. *American Indian Quarterly*, *11*(4), 287–314. https://doi.org/10.2307/1184289
Wesche, P. (2021). Rights of nature in practice: A case study on the impacts of the Colombian Atrato River Decision. *Journal of Environmental Law*, *33*(3), 531–555. https://doi.org/10.1093/jel/eqab021
West, L. (1987). Mediated settlement of environmental disputes: Grassy Narrows and White Dog revisited. *Environmental Law*, *18*(1), 131-150.
Whanganui Iwi, & The Crown. (2014). *Ruruku Whakatupua—Te mana o te Awa Tupua:*

Whanganui River deed of settlement. https://www.govt.nz/assets/Documents/OTS/Whanganui-Iwi/Whanganui-River-Deed-of-Settlement-Ruruku-Whakatupua-Te-Mana-o-Te-Awa-Tupua-5-Aug-2014.pdf

Whanganui Iwi, & The Crown. (2014, b). *Ruruku Whakatupua—Te mana o te Iwi o Whanganui: Whanganui River deed of settlement.* https://www.govt.nz/assets/Documents/OTS/Whanganui-Iwi/Whanganui-River-Deed-of-Settlement-Ruruku-Whakatupua-Te-Mana-o-Te-Iwi-o-Whanganui-5-Aug-2014.pdf

Whittemore, M. E. (2011). The problem of enforcing nature's rights under Ecuador's Constitution: Why the 2008 environmental amendments have no bite. *Pacific Rim Law and Policy Journal*, *20*(3), 659–91.

Whyte, K. P. (2018). On resilient parasitisms, or why I'm skeptical of Indigenous/settler reconciliation. *Journal of Global Ethics*, *14*(2), 277–289. https://doi.org/10.1080/17449626.2018.1516693

Wildlife Society. (2010). The Public Trust Doctrine: Implications for wildlife management and conservation in the United States and Canada. *Technical Review*, *10*(1). https://wildlife.org/wp-content/uploads/2014/05/ptd_10-1.pdf

Wruck, H. J. (2020). The Time Has Arrived for a Canadian Public Trust Doctrine Based Upon the Unwritten Constitution. *The George Washington Journal of Energy & Environmental Law*, *10*(2), 67–.

Zhai, T. (2022). Double-faceted environmental civil liability and the separate-regulatory paradigm: An inspiration for China. *Sustainability*, *14*(1), 4369. https://doi.org/10.3390/su14074369

Zubrycki, K. (2011). *Water security in Canada responsibilities of the federal government*. International Institute for Sustainable Development.