

NATURE'S DAY IN COURT

After securing legal rights for one northern Quebec river, groups are fighting to make Canada's largest river next. Corporate polluters, beware.

By Roberta Staley





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A whitewater rafting expedition on the Magpie River in Quebec begins with a 14-hour drive by car from Montreal, followed by a floatplane ride that deposits you somewhere along the 300-kilometre-long waterway. The return journey, by raft or kayak – navigating rapids, gorges and waterfalls – can take from five days to three weeks, depending upon where the floatplane drops you off. It's little wonder that *National Geographic* calls the Magpie, whose tumultuous waters eventually tumble into the St. Lawrence River, one of the top 10 whitewater rafting expeditions in the world.

"You meet nobody; you're in total wilderness, surrounded by boreal forest," says Pier-Olivier Boudreault, a conservation director for the Société pour la nature et les parcs (SNAP), the Quebec arm of the Canadian Parks and Wilderness Society (CPAWS).

These pristine waters, also known by the Indigenous name Muteshekau-shipu, came under threat several years ago when Hydro-Québec included the river in a strategic plan for a hydroelectric dam project. Alarmed conservationists, whitewater rafters, a Côte-Nord municipality and a First Nation band formed the Muteshekau-shipu Alliance in 2018 to oppose the project. The coalition included the Indigenous Ekuanitshit Innu Council, the Minganie regional county municipality, Association Eaux-Vives Minganie and SNAP. "We had a common goal of protecting the river," says Boudreault.

Initially, the Muteshekau-shipu Alliance tried to create a protected area under provincial law, an initiative strongly opposed by the provincial government and Hydro-Québec. Inspired by an international Indigenous-led movement that supports the rights of nature, the alliance instead sought "personhood" for the Magpie. Montreal-based International Observatory on the Rights of Nature (IORN) drafted nine rights for the river, including the right to flow and be safe from pollution. In what was a first for Canada, early this year the Ekuanitshit Innu Council and the Minganie regional county municipality granted personhood to the river, which joined a small but growing list of rivers and wild spaces globally that have been granted the same fundamental right to exist that a human has. This time, there was no opposition from the province or Hydro-Québec.

Under common law, which is practised in the United States, the United Kingdom, India,

New Zealand, Australia and Canada, personhood means that an entity has rights ascribed to it. Corporations and churches have personhood. Everything else – animals and ecosystems – are considered "things" that, similar to property, can be owned and exploited. "The rights-of-nature movement is a paradigm shift," says Boudreault. "Nature has a reason to live."

Along with personhood comes the granting of legal guardians who uphold the rights of the river and can sue for damages on its behalf, should the need arise. This is crucial, says Boudreault, as Hydro-Québec may want to revisit its original plan to dam the river.

Bolstered by the Magpie achievement, environmental advocates have turned their sights on a much larger waterway, the 1,200-kilometre-long St. Lawrence River.

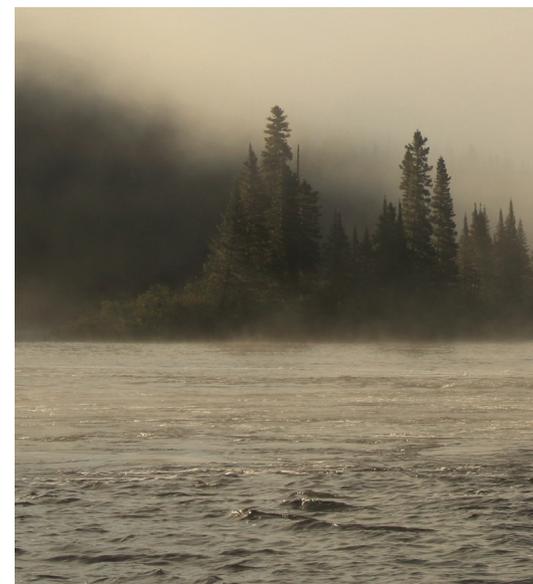
The river flows from Lake Ontario to the Atlantic, crossing two provincial, as well as the Canada-U.S., borders. Two years ago, IORN helped create the Saint Lawrence River alliance, which includes conservation groups, some Quebec municipalities and more than 10 Indigenous groups whose traditional territories touch upon the vast waterway. Attaining personhood will be more complex for the St. Lawrence than the Magpie; the river is highly industrialized and comes under provincial and federal jurisdiction. Undeterred, the alliance will table the motion with Quebec's provincial legislative body in 2022. Advocates plan to support their claim by including legal precedents from jurisdictions around the globe like Ecuador, Colombia and New Zealand. (See sidebar on pages 30/31.) The pursuit of the St. Lawrence's personhood received the backing of the federal New Democratic Party during the federal election campaign in September.

IORN president and lawyer Yenny Vega Cárdenas says a key objective of the personhood initiative is "starting a conversation" with industry and agriculture. Agriculture and corporate activities have devastated parts of the St. Lawrence, home to beluga whales, otters, multitudes of fish species, and migratory birds like snow geese. The river is afflicted by suffocating algae blooms linked to agricultural runoff and high levels of restricted pesticides such as neonicotinoids. Chemical pollutants from oil and gas drilling and hydraulic fracking that occur close to the river also affect water quality and are toxic to wildlife. Personhood would give the river fundamental rights, pressure industry and agriculture to stop polluting, and compel municipalities to improve water treatment facilities, Cárdenas says. "It's the best way to ensure a healthy environment for present and future generations."



"[Securing personhood rights for rivers] is the best way to ensure a healthy environment for present and future generations."

—Yenny Vega Cárdenas, IORN president and lawyer





A river runs through it.

If rivers like the Magpie in Quebec (left) or the Amazon in Colombia have rights, what are the potential implications for industry?

corporations – which is, on paper at least, a guiding principle for EU nations, none of whom, to date, have granted personhood to rivers. (An initiative is underway to grant personhood to Spain's Mar Menor, one of Europe's largest seawater lagoons, which was devastated in 2016 by agricultural discharge that sparked an algae bloom and killed off tens of thousands of fish.)

A judicial shift would have significant implications for corporations. Companies, such as those peddling tobacco and opioids, have already been found legally responsible for the harm their products cause. Globally, the Stop Ecocide Foundation is seeking to protect nature's rights even further by pushing the International Criminal Court in The Hague to adopt "ecocide" – an act causing severe or long-term damage to the environment – as a prosecutable crime on par with war crimes, crimes against humanity, genocide and the crime of aggression. Corporations would be found legally responsible for such things as deforestation and oil spills.

If rivers have rights, what are the potential ramifications for industry and infrastructure projects that interfere with waterways? Governments see hydroelectric dams as a way to generate clean renewable energy. But environmental advocates and First Nations communities don't necessarily agree. For example, British Columbia's Peace River is the contentious site of the Site C Dam, the \$16-billion hydroelectric megaproject set for completion in 2025. Federal and provincial scientists report that the dam, spearheaded by BC Hydro, a Crown corporation, will destroy the habitat of dozens of species of insects, mammals and plants, many on the brink of extinction. Colorado-based environmental lawyer Grant Wilson, founder of the Earth Law Center, says Site C is a "clear violation of the rights of the

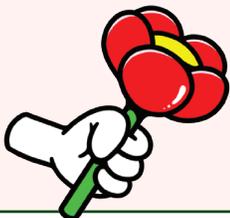
Constitutional change needed

Mumta Ito is one of the EU's leading advocates for codifying nature's rights into law. Ito, a Scotland-based lawyer who founded the charity Nature's Rights, warns that the Magpie River's personhood status doesn't protect it from a legal court challenge down the road by powerful economic or political forces. Ito emphasizes that, in order for nature to be considered equal to humans and corporations in the courts, rights must be embedded at the highest level, such as the Canadian Charter of Rights and Freedoms. Other countries, such as Ecuador and Bolivia, prioritized the rights of nature over economic development in their constitutions in 2008 and 2009 respectively. In 2019, Bangladesh's highest court granted every river in the country legal personhood, so that anyone damaging a waterway can be tried as if they have harmed a living entity.

The Bangladesh NGO Human Rights and Peace was consequently appointed guardian of all national rivers. The effect of the legislation has been imperfect, with politicians and businesses reportedly flouting riverside eviction notices. However, there have been successes, with the court ordering the closure of 231 unauthorized factories on the Buriganga River last year, according to the Rights of Rivers, a global survey of the rapidly developing Rights of Nature jurisprudence pertaining to rivers.

Currently, environmental law doesn't challenge "the way our societal systems operate," says Ito, who co-authored a 2020 study, *Towards an EU Charter of the Fundamental Charter for the Rights of Nature*, commissioned by the EU's European Economic and Social Committee. The study proposes a restructuring of law to enshrine nature as a rights-bearing subject equal to humans and

COURT VICTORIES FROM AROUND THE GLOBE



Ecuador & Bolivia

In 2008, Ecuador became the first country to create a constitution that recognizes the right of nature to exist and regenerate. Bolivia followed in 2010 with a Rights of Mother Earth Law.



United States

Last year, Orange County, Florida, granted legal rights to all waterways, including two rivers. It is but one of several American jurisdictions to enact rights-of-nature laws, beginning in 2006 with the borough of Tamaqua in Pennsylvania, which declared toxic sewage dumping to be a violation of the rights of nature.



“It’s seeing things that are not human as [having] equal stature from a moral perspective.”

—Ian Moore, Mack Law Corp.

Peace River, in addition to many Indigenous rights violations.”

Wilson’s Earth Law Center advises groups around the world that seek to establish legal rights for waterways. This year, the non-profit co-developed the Universal Declaration on the Rights of Rivers. Signed by nearly 200 organizations to date, the declaration serves as a legal template for anyone wanting to adopt the rights of rivers, Wilson says. The centre is poised to release a legal toolkit customized for B.C. that Wilson hopes will be helpful to those groups fighting the ongoing construction of the Site C dam. The toolkit incorporates a largely untested but powerful legal document: the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was enshrined into B.C. law in 2019.

Vancouver lawyer Ian Moore, an associate counsel at Mack Law Corp., an Indigenous-owned firm that works primarily with First Nations but represents Inuit and Métis groups as well, contributed to the B.C. toolkit. Moore says that a number of B.C. First Nations will be using the toolkit as they seek to emulate the Magpie River’s designation of personhood.

One B.C. First Nation has formally aligned itself with the concept of personhood for rivers. In 2020, Tilhqot’in First Nation released a document establishing Sturgeon River Law. (The Fraser River, also known as the Sturgeon River, supports trout, salmon, whitefish and sturgeon.) The Tilhqot’in refer to water as *tu*, declaring that it is “a life form, it has its own spirit with human qualities.” The document also sets out the responsibilities of the Tilhqot’in regarding *tu*, stating that the community is a steward for future generations and must ensure the river is kept clean. If it is degraded, they must take corrective steps to restore ecosystem health. “These relationships define us as a Nation and highlight our protection and stewardship responsibilities that are grounded in our inherent and self-government rights,” the document states.

Congested, constricted and polluted waterways also impact the rights of other wildlife. Industry, dams and urbanization along the lower Fraser River floodplains – critical to Pacific coho and Chinook salmon – have resulted in the loss of 85% of spawning grounds, a recent report by University of British Columbia researchers and the Raincoast Conservation Foundation revealed. Such spawning-grounds loss has a deleterious effect on wildlife higher up the food chain, including the endangered Southern Resident orca population. A coalition formed by Earth Law Center is working to advance a proposed bill before the Washington State Legislature to

recognize the rights of the Southern Resident orcas and the ecosystems upon which they depend, including the Salish Sea ecosystem, which spans the shores of Washington through to B.C.

The right to sue

Given the calamities that industrialization and corporations have inflicted upon the environment, how important is a river’s right to sue, should it attain personhood? Moore emphasizes that the primary value in recognizing legal personhood isn’t the ability of non-humans to sue but rather the opportunity to restructure our relationships with nature. “It’s seeing things that are not human as [having] equal stature from a moral perspective. It’s about relationship-shifting,” he says.

Precedence exists, however, with Ecuador’s Vilcabamba River, which, acting as a plaintiff alongside two property owners, stopped a damaging road construction project in 2011 by filing a constitutional injunction. The Rights of Rivers notes that, despite a raft of remedial and rehabilitation orders, the polluter ignored the directive.

Wilson hopes that establishing parameters and standards of operation will allow businesses to become partners in protecting the planet. “Companies like predictability,” he notes. The ultimate aim: a revolution that sees corporations, the public and Indigenous groups collaborating and working toward a common goal of respecting nature. Within this new zeitgeist, much ground needs to be made up. Wilson is optimistic, noting that even a river that is completely dead – as many are throughout the world – can be revitalized.

“Nature has an amazing capacity to restore itself to health when given the opportunity.” 🌱



New Zealand

In 2017, a treaty agreement between New Zealand’s parliament and a Maori tribe declared the Whanganui River a “legal entity,” along with a former national park, Te Urewera, and Mount Taranaki. That same year, India’s Ganges and Yamuna rivers were declared legal persons, a decision later overturned by the Supreme Court, as it was declared unsustainable at law.



Colombia

In 2018, 25 plaintiffs aged seven to 26 successfully sued the Colombian government in that country’s highest court for failing to protect the Amazon, claiming that deforestation violated their constitutional right to life and a healthy environment. As a result, the court granted the Amazon River ecosystem the same legal rights as a human being.

