

Natural Resources

Granting Quebec river legal personhood, 'changes our relationship with nature,' lawyer says

By Luis Millán

(March 16, 2021, 9:53 AM EDT) -- An internationally renowned white water river in Quebec was granted legal personhood, a first in Canada, in an effort to protect its ecosystems from future development following the adoption of two parallel resolutions by a local Indigenous community and municipality, setting the stage for a similar effort for the St. Lawrence River.

The initiative, part of a growing global movement that has taken root particularly in Ecuador and New Zealand, may beckon a paradigm shift in environmental law, may bolster the integration of Indigenous law into the Canadian legal system and has the potential of transforming the legal concept of property, according to legal experts.



Yenny Vega Cardenas, Montreal lawyer who heads International Observatory on the Rights of Nature

"Granting legal personhood to the Magpie River represents a paradigm shift as it changes our relationship with nature," noted Yenny Vega Cardenas, a Montreal lawyer who heads International Observatory on the Rights of Nature, a non-profit organization that last month drafted the resolutions in collaboration with the Innu Council of Ekuanitshit, the Minganie Regional County Municipality and several environmental groups. The federal and Quebec governments were approached but discussions were fruitless. "It gives voice to the river through legal guardianship, like a corporation, who will oversee interests and protect its rights."

The purpose behind granting legal personality to a body of water and its ecosystem is to strengthen its legal protection, "which generations of environmental laws have failed to provide," and to spark a cultural shift from regarding nature as a "warehouse of commodities for human use," remarked David Boyd, UN Special Rapporteur on Human Rights and Environment.

The hydroelectric potential of the 200-kilometre Magpie River (*Muteshekau-shipu* in Innu) in the Côte-Nord region of Quebec, recognized worldwide for its rapids and white-water expeditions, with the *National Geographic* ranking it among the top 10 destinations for white-water rafting, was harnessed by Hydro-Québec to build a generating station that was formally inaugurated in 2008. The provincial utility planned to build six hydroelectric dams according to its 2009-2013 strategic plan, but backed off after it deemed it had surplus capacity.

Intended to thwart future development, the move to grant the Magpie River and its ecosystem nine distinct legal rights — ranging from the right to maintain its integrity to the right to be safe from

pollution to the right to sue — is anchored by provincial and international law, said Cardenas. "It took two twin resolutions because there are two legal systems at play, with different legal frameworks, one based on Aboriginal law, the other municipal law," said Cardenas. "That provides a more solid legal underpinning, and demonstrates the important collaboration between the Indigenous people and the people living in the municipality who share the same territory."

Under Quebec civil law, the new legal personality bestowed to the Magpie River would be considered to be a moral person, said Sarah-Maude Belleville-Chénard, a Montreal environmental lawyer with Dionne Schulze LLP. Moral persons, a concept comparable to juristic persons in common law, are a group of persons considered as a collective subject of private or public law that can hold rights and obligations. "It is a moral person who will represent the guardians," said Belleville-Chénard, who described the initiative as a great grassroots example that is seeking to create new law and legal norms. "I liken it to a person who is under curatorship in the sense that they have rights but must be represented by others."

As is the case in New Zealand where the Whanganui River and its ecosystem were granted a legal standing in their own right, with the *Te Awa Tupua* (Whanganui River Claims Settlement) Bill declaring it to be "an indivisible and living whole, incorporating all its physical and meta-physical elements," the parallel resolutions also recognize the Magpie River as having physical, cultural and spiritual characteristics, concepts that are foreign to civil and common law, pointed out Brettel Dawson, a law professor at Carleton University.

"It's an innovative and creative way to address a couple of problems," said Dawson, who teaches persons and property law, and has an interest in ecology and law. "One problem being environmental degradation through thinking of natural resources as being available for economic development, as something that is to be exploited.

"It's also a mechanism of collaboration with Indigenous people, a recognition of their kinship and relationship to natural resources and land, and the way to move more rapidly ahead on settling claims about Indigenous rights and relationships to land and natural resources. Those are very big things," said Dawson.

The "fascinating" development may also foster more "innovative" ways to integrate Indigenous law into the Canadian legal system which has for "far too long" failed to acknowledge that Canada has three founding legal systems, "not two as many are still taught in law school," remarked Boyd, a law professor at the School of Public and Global Affairs at the University of British Columbia.

It also has the "transformative" potential to spur a change in the way that property is viewed because it shifts a resource from being an object to being a subject, from "being dead to being alive in the law," said Dawson. When a society recognizes nature as a subject of law, its status shifts from being considered as a private good, common resource or a resource in the public trust to a specific person under the law, "with all the consequences that entails," noted Alexandre Lillo, a part-time law professor at the University of Ottawa and assistant director of Centre for Environmental Law and Global Sustainability, in an academic article titled "Is water simply a flow — Exploring an alternative mindset for recognizing water as a legal person."

"The first time you think about it it is just utterly incomprehensible," said Dawson. "But once something has been given rights, then we start thinking about it in a different way. To think of natural features, mountains, rivers and geographical areas as having a legal life is transformative. Once we start mucking around and shift our understanding of the legal person and the legal concept of property, then we may well come up with a different approach which steps out from what's been called the anthropomorphic of our current law, very human-centred, very much about economic development. It's certainly a mind bender for the conventional legal mind."

Still up in the air is how the courts will view this development, and what happens if there is a violation or potential violation of the rights of the Magpie River. Nobody knows, assert legal experts. The only certainty is that it is the guardians, whose composition and makeup has yet to be defined, who bear the responsibility of seeking judicial recourse to enforce the rights and obligations of the river. "The courts had precious little difficulty recognizing corporations as legal persons," said Dawson. "So I would like to think that the courts will be open to recognizing natural features too."

Boyd has a different take. He points out that given the growing recognition of Indigenous law as one of Canada's three founding legal systems, along with common law and civil law, "I think there is a strong case to be made for recognizing the legal personhood and rights of the Magpie River."

In the meantime, Cardenas is seeking to create momentum and generate pressure to strengthen the legal protection of the St. Lawrence River in hopes it too will be granted legal personhood. The International Observatory on the Rights of Nature intends to publish a book this fall that will explore the implications of such a move, and will include a bill that could be adopted.

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