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# Legislative amendments regarding conservation of wetlands and bodies of water: troubled waters for developers?

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**Bill 132 respecting the conservation of wetlands and bodies of water, passed unanimously by the National Assembly on June 16th of this year, is in keeping with the context of a significant modernization of environmental laws in Québec. Most of its provisions come into force immediately.**

Described by the Ministry of Sustainable Development, Environment and the Fight against Climate Change as providing gains for all,[1] the amendments considerably refine the responsibilities of developers with respect to the presence of wetlands and bodies of water when carrying out their projects. A few amendments this Act makes to the *Environment Quality Act*[2] (**"EQA"**) are worthy of attention.

First, the Act introduces a duty of developers to determine whether a project is located in a wetland or body of water, which expression shall henceforth be defined by the EQA. It is to be expected that the interpretation of terms such as "marshes", "swamps", "ponds" and "peatland" will be further defined by caselaw, so that developers don't stay stuck in the mud!

As regards the environmental authorizations required for a proposed activity in a wetland or body of water, these shall be modulated based on the environmental risk posed to the affected area according to four risk levels, ranging from negligible to high. The regulations defining these environmental restrictions should come into force over the course of the coming year, thus refining the framework established by the Act.

The Act implements a method for calculating the contribution which may be required as financial compensation for the loss of wetlands and bodies of water. In an effort to provide guidelines to a calculation that will necessarily be effected on a case by case basis, a mathematical formula has been adopted, which includes notably a multiplier based on a "rarity factor" of these wetlands and bodies of water depending on certain identified zones. While developers may consequently find themselves liable to pay financial compensation in amounts largely exceeding the value of the land encompassing the affected wetlands and bodies of water, the prior identification of zones also affords developers an opportunity to plan beforehand, which was not the case previously.

Finally, the amendments to the EQA provide for the identification and conservation of certain remarkable or rare wetlands and bodies of water, which shall be protected by way of a special legal status and in which no activity likely to adversely affect their integrity will be allowed. As maps of these wetlands and bodies of water have yet to be drawn up, their identification may come

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assurprises to some landowners. Caution and proper planning are most advisable!

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1. Québec (MDDELCC), **“Une nouvelle loi qui fait du Québec ‘un premier de classe’ en matière de conservation des milieux humides et hydriques [A New Act Makes Québec the ‘Head of the Class’ in the Conservation of Wetlands and Bodies of Water]”**(June 16, 2017), (French only).
2. **CQLR, c. Q-2** (“EQA”).

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