



Environment

in 30 jurisdictions worldwide

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

The Dominion of Canada has both a federal government, along with 13 Provinces and Territories (Provinces). Jurisdiction over environmental law is shared between the federal and provincial governments. Municipalities are created by provincial statutes, and their jurisdiction is limited to powers within provincial jurisdiction that are delegated to municipalities. Environment Canada is the principal federal department responsible for environmental regulation and enforcement of federal laws and regulations. Other significant federal agencies include the Department of Fisheries and Oceans (DFO), Natural Resources Canada, the Canadian Environmental Assessment Agency and the Canadian Nuclear Safety Commission.

Key federal statutes are:

- the Canadian Environmental Assessment Act;
- the Canadian Environmental Protection Act 1999 (CEPA);
- the Fisheries Act;
- the Species at Risk Act (SARA); and
- the Transportation of Dangerous Goods Act 1992.

Provincial statutes and regulations affect every manufacturer and industrial company's day-to-day operations. Every company that emits contaminants into the air or water, or disposes of waste, has to obtain permits from the relevant provincial department or ministry of the environment. Each provincial ministry operates under its own environmental acts and regulations. The main provincial statutes in Ontario are:

- the Clean Water Act 2006;
- the Environmental Assessment Act;
- the Environmental Protection Act;
- the Nutrient Management Act;
- the Ontario Water Resources Act;
- the Pesticides Act; and
- the Safe Water Drinking Act 2002.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

There is no overall system of integrated control of pollution. Large infrastructure or resource projects at the federal level, and in many of the provinces, are subject to environmental assessment (EA) requirements as a condition of approval. For more information on environmental assessment, see questions 19 and 20.

However, most industrial facilities are not subject to an EA or other type of integrated approval. Approvals for emissions and discharges are mainly granted by provincial environment officials, and usually assessed and issued according to the receiving media – air,

water or soil. Thus a facility will have separate approvals for wastewater discharges, for air emissions and for waste treatment and on-site disposal (if applicable). Emission and discharge limits are most often prescribed by regulation. Where parameters are not prescribed, regulations may specify modelling procedures for establishing site-specific standards that are not likely to cause an adverse effect on human or animal health, nuisance or environmental harm.

3 Soil pollution

What are the main contents of the rules applicable to soil pollution?

At the federal level, Environment Canada is mandated to provide environmental guidance to federal agencies on contaminated site assessment, remediation and decommissioning activities on federal lands.

Provinces have exclusive jurisdiction over lands other than federal lands and aboriginal lands. Each province has its own soil pollution and the contaminated land regime. The Canadian Council of Ministers of the Environment has published non-binding Environmental Quality Guidelines that have been adopted in some provinces.

Generally the 'polluter pays' principle prevails in Canada. Environmental authorities have statutory power to make regulatory orders against polluters to remediate contaminated property. In most Canadian jurisdictions legislation authorises orders against anyone who owns or owned a property or a business, or who has or had charge, management or control of the source of the contamination.

For example, Ontario and British Columbia have their own distinct brownfield regimes governing the remediation and redevelopment of contaminated sites. Conversely, the Atlantic provinces have banded together to establish the Atlantic Risk-Based Corrective Action (RBCA) process.

4 Definition of waste

How is waste defined?

At the federal level, the Canadian Environmental Protection Act, 1999 defines 'waste or other material' in schedule 5 to include:

- dredged material;
- fish waste and other organic matter resulting from industrial fish processing operations;
- ships, aircraft, platforms or other structures from which all material that can create floating debris or other marine pollution has been removed to the maximum extent possible if, in the case of disposal, those substances would not pose a serious obstacle to fishing or navigation after being disposed of;
- inert, inorganic geological matter;
- uncontaminated organic matter of natural origin; and
- Bulky substances that are primarily composed of iron, steel, concrete or other similar matter that does not have a significant

adverse effect, other than a physical effect, on the sea or the seabed, if those substances:

- are in locations at which the disposal or incineration at sea is the only practicable manner of disposing of or thermally destroying the substances; and
- in the case of disposal, would not pose a serious obstacle to fishing or navigation after being disposed of.

Federal regulations that govern interprovincial transportation and international export and import of hazardous waste and hazardous recyclable materials include definitions that are consistent with the Basel Convention.

Waste management and disposal within each province is defined and regulated by the applicable provincial environmental protection statute and regulations.

5 Regulation of waste

What types of waste are regulated and how?

Federal waste regulation is focused on transportation of dangerous wastes, export and import of hazardous wastes and hazardous recyclable materials across provincial and national boundaries. The federal government has established a national transportation of dangerous goods regime, harmonised with the provinces, for coordinated regulation of air, rail and highway movement.

All shipments of hazardous waste in Canada must be accompanied by a waste manifest or movement document. In some provinces there are both generator registration fees and manifesting or tonnage fees applicable to the movement of hazardous waste. Special regulations apply to PCB wastes.

All wastes are captured by a combination of federal and provincial waste and dangerous goods laws and must be transported, managed and disposed by licensed waste management haulers, treatment operators and treated or disposed at approved facilities and sites. The approval process is undertaken by provincial governments.

Generally, in Canada waste generators can contract out the transportation and disposal of waste to properly licensed waste management companies and waste disposal sites. Absent fraud or misrepresentation, once waste is disposed at an authorised facility, the generator is no longer liable.

6 Regulation of air emissions

What are the main features of the rules governing air emissions?

Industries may be subject to both federal and provincial legislation that limit emissions of certain substances. Environment Canada has principal jurisdiction over transboundary air pollution issues, and emissions of federally designated toxic substances listed in the Canadian Environmental Protection Act, 1999 (CEPA), schedule 1. In addition to toxic substance regulations, key transboundary pollutants are greenhouse gas (GHG) reduction, acid rain and ozone depleting substances (ODS).

Monitoring and inventory programs also compose a key part of the federal air regulation regime. The national emissions inventory for air pollutants includes the emissions from industrial sources compiled by the National Pollutant Release Inventory (NPRI) and other sources.

Within each province, industrial air pollution is regulated under individual provincial statutes that establish requirements for permits or approvals. In Alberta, the Environmental Protection and Enhancement Act is the main statute. In British Columbia, the provincial Environmental Management Act governs air pollution; however, significant pollution control jurisdiction has been delegated to the Greater Vancouver Regional District (GRVD).

In Ontario, O Reg 419/05 (Air Pollution-Local Air Quality) establishes emission standards and adopts USEPA dispersion models that must demonstrate likelihood of compliance in order for an industrial facility to obtain approval for emission of air pollutants.

7 Climate change

Are there any specific provisions made for climate change?

Canada was one of the first signatories to the Kyoto Protocol. At the time of ratification, Canada had committed to a target of six per cent reduction of GHG emissions below 1990 levels in the years between 2008 and 2012.

The commitment to this target has collapsed in the ensuing years. Currently, Canada is still in the process of adopting GHG reduction regulations. As currently conceived, the regulations will impose mandatory reduction of emissions intensity (not absolute emission reductions) in the 2010 to 2020 period. Eventually, these reductions of emissions intensity are expected to result in reductions in absolute emissions. However, under current targets Canada will be well behind the Kyoto targets.

A cap and trade system has also been proposed. Non-regulated industries that reduce their GHG outputs may be able to earn offset credits, which can then be eligible for sale to regulated emitters.

The current federal initiative may ultimately be irrelevant. A number of provinces have signed on to participate in the Western Climate Initiative (WCI). The WCI is a North American regional initiative that aims to integrate individual state and provincial initiatives on GHG reductions. The WCI has developed a regional market for carbon-emissions trading with a target of lowering GHGs by 15 per cent from 2005 levels by 2020.

8 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

The federal government of Canada has jurisdiction related to fisheries, navigation, federal lands, and international relations, including responsibilities related to the management of boundary waters shared with the United States, including relations with the International Joint Commission. The key acts at the federal level are:

- the Canada Shipping Act, which provides the authority for federal regulators over shipping and navigation in inland and territorial waters, and provides for prevention of pollution to Canadian waters by oil and other pollutants resulting from marine activities;
- the Canadian Environmental Protection Act 1999, which provides for life cycle control of toxic substances, controls for nutrients, and promotion of pollution prevention;
- the Canadian Environmental Assessment Act sets out responsibilities and procedures for the environmental assessment of projects involving the federal government;
- the Fisheries Act provides for the regulation of fishing and management of fish stocks, including provisions for controlling obstacles to fish passage, water for the safety of fish, protection of fish habitat from physical impacts, control of deposition of substances deleterious to fish populations, and regulations covering waste effluent standards for industrial groups; and
- the Navigable Waters Protection Act protects the public right to navigation and provides authority to control construction and dumping of wastes where they might interfere with navigation in navigable water.

Water situated solely within a province's boundaries falls under the constitutional authority of that province. Provincial protection of fresh water varies by province. In Ontario, which has borders on

the Great Lakes, the Ministry of the Environment oversees water protection for both drinking water and other issues under the following acts:

- the Clean Water Act, which enables communities to identify potential risks to their drinking water supplies, and take action to reduce those risks;
- the Ontario Water Resources Act, which sets out procedures and permit requirements for extracting groundwater;
- the Safe Water Drinking Act, which provides for the protection of human health and the prevention of drinking water health hazards through the control and regulation of drinking water systems and drinking water testing; and
- Acts and agreements regarding the protection of the Great Lakes water system.

9 Protection of natural spaces

What are the main features of the rules protecting natural spaces?

The National Park System protects natural environments representative of Canada's natural heritage. The National Park System includes 157 national historic sites, which, like the parks, are operated by Parks Canada. The parks are legally protected under the Canada National Parks Act.

Provincially, natural spaces may be protected through conservation easements which are legally binding gifts of ecological conservation. Provinces have conservation easement legislation and heritage legislation to protect natural environments.

Most provinces with expansive forests have taken initiatives to protect natural forests. In Ontario, the provincial government announced in July 2008 a plan that will protect at least 225,000 square kilometres of the Far North Boreal region under the Far North Planning Initiative. British Columbia's government runs the Forest Investment Account (FIA). The FIA provides funding to forest sector stakeholders to support sustainable forest management practices.

10 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Protection of biodiversity is undertaken both at the federal and provincial levels in Canada.

Canada's Species at Risk Act (SARA) was created to protect wildlife species in Canada from becoming extinct. It does this in two ways: by providing for the recovery of species due to human activity; and by ensuring through species management practices that species of special concern do not become endangered or threatened. SARA sets out an official list of wildlife species at risk. The species are designated by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

Provinces have individual legislation such as Ontario's Endangered Species Act (ESA) and Alberta's Wildlife Act. Official species lists are developed by expert panels constituted under the legislation.

11 Noise, odours and vibrations

What are the main features of the rules governing noises, odours and vibrations?

Noise, odour, and vibration regulation are environmental nuisances principally regulated by the provinces, and regulated either by provincial statute or municipal by-law. Often industrial approvals are integrated with approval of air emissions.

12 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Federal and provincial environmental legislation authorises prosecution of companies, corporate directors and officers, managers and employees for environmental offences. Persons charged with environmental offences are innocent unless proven guilty beyond a reasonable doubt. On conviction corporations can be fined and be subject to profit-stripping and other court orders. Maximum fines are set as high as \$10 million. The highest fine for an environmental offence in Canada to date was in *R v Tioxide Canada* (1993): \$1 million plus a mandatory \$3 million contribution to local conservation and protection, for violations of the Fisheries Act, involving industrial discharges into the St. Lawrence River. An individual can be fined and also be incarcerated.

13 Environmental taxes

Is there any type of environmental tax?

The provinces of Quebec and British Columbia have recently introduced an environmental carbon tax on gasoline, aimed at providing incentive for citizens to reduce consumption. Depending on the outcome of the 2008 election, the federal government may introduce a national carbon tax.

Hazardous activities and substances

14 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Hazardous activities in the environmental context often centre on resource extraction in Canada, for example, explosives or mine tailings. Regulations of these activities are generally regulated provincially, and vary by province. In conjunction with the regulation of the hazardous activity itself, provincial occupational health and safety legislation regulates workers and workplace safety associated with any activity defined as 'hazardous'.

Federal environmental emergency (E2) regulations require reporting of prescribed quantities of designated hazardous substances.

Provincial legislation regulates storage tanks and delivery systems for petroleum hydrocarbons and flammable and combustible liquids. Construction and maintenance of flammable and combustible liquid storage facilities is also regulated at the federal level by the Canada Fire Code, and at provincial and municipal levels by provincial fire code legislation and building code legislation.

15 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

Key federal statutes include:

- Hazardous Products Act that defines materials that are included in the Workplace Hazardous Materials Information System (WHMIS);
- Pest Control Products Act; and
- Canadian Environmental Protection Act 1999.

Environment Canada has established a chemicals management plan to assess and regulate hazardous chemicals (harmful to human health or the environment). This programme includes the establishment of a virtual elimination list.

Environment Canada also requires large industrial emitters to report annually to the National Pollutant Release Inventory. Companies meeting the size or emission quantity thresholds must annually report on several hundred listed pollutants released to air, water, soil

or transported offsite for disposal. The data is publicly posted for each facility on the Internet.

Any movement of dangerous goods into or out of Canada is regulated by federal regulations on hazardous wastes or hazardous recyclable materials under the Canadian Environmental Protection Act 1999, or the Transportation of Dangerous Goods Act.

Provincially, waste management and disposal is governed by environmental regulations. Hazardous substances in the workplace are regulated by labour ministries and occupational health and safety legislation.

Industrial accidents

16 Industrial accidents

What are the measures to prevent industrial accidents?

The federal Canada Labour Code applies to any workers, trade unions or employer's organisations that are employed on or in connection with the operation of any federal work, undertaking or business. Part II of the Code outlines occupational health and safety. The Code applies to those industries where the federal government has jurisdiction over the provinces, including broadcasting, telecommunications, airports, and shipping and navigation.

Industrial accidents and environmental health concerns not covered by the Canada Labour Code are generally regulated by provincial labour ministries. Employers have a duty under provincial occupation health and safety legislation to take every reasonable precaution to protect workers from injury.

Inspectors and investigators are designated under provincial labour legislation. They have broad powers to, among other things, inspect any workplace, investigate any potentially hazardous situation and work refusal, order compliance and initiate prosecutions.

Environmental aspects in transactions

17 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

For asset transactions, the main environmental concerns are:

- the extent that the property is contaminated; and
- the extent of potential regulatory and civil liability of the purchaser for contamination that has moved off-site in soil or groundwater.

Environmental due diligence is mainly limited in this type of transaction to environmental site investigations.

Where the transaction involves the transfer of an operating business, whether by share purchase, court order or otherwise, the purchaser acquires more extensive potential liability. In addition to liability from contaminated assets, the purchaser may be liable for breaches of regulatory compliance, as well as for regulatory and civil liability arising from historic and ongoing operations of the acquisition.

Due diligence in a share transaction requires not only environmental site investigation, but may also involve an audit of environmental operations and an environmental management system audit. It also requires detailed investigation into potential claims by and against the company, and detailed history of operations.

18 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

Real estate transactions are governed by provincial laws. Some provinces have contaminated site or brownfield legislation that may limit

the future use of land unless contaminant concentrations are below provincial standards. In addition, many provinces have environmental land use protection restrictions that restrict development of certain land uses. These may include local restrictions as well as regional greenbelt or moraine protection plans.

Environmental impact assessment

19 Activities subject to environmental impact assessment

Which types of activities are subject to environmental assessment?

Environmental assessment requirements in Canada range from a full environmental planning process to a simpler environmental impact assessment. Generally, large projects with potential for significant environmental impacts (airports, mines, nuclear power plants, land-fill sites) require an integrated study of potential environmental impacts on air, soil and water. In addition, some legislation requires assessment of economic, social and cultural impacts – as part of a wide definition of 'environment'.

An EA is a project specific approvals process. Federally, the Canadian Environmental Assessment Act (CEAA) sets out the responsibilities and procedures for carrying out the EAs of projects which involve federal government decision making. A number of regulations have been established under the Act. Some are essential to the functioning of the Act. Others apply in special circumstances. The CEAA is applicable where projects involve:

- federal lands;
- federal operations;
- federal financing;
- federal agency as proponent;
- federal power of decision; and
- Law List Regulation

At the other end of the spectrum, provincial legislation, such as Ontario's Environmental Assessment Act (EAA) establishes an environmental planning process with requirements that go well beyond environmental impact assessment. The EAA applies to most public-sector undertakings (the proposed project or activity) and to private-sector undertakings designated under the EAA.

The EAA requires a planning process requiring an assessment of needs, alternatives to the 'undertaking' and alternative methods of carrying out the undertaking.

20 Scope of environmental impact assessments

Do environmental assessments act as a licence? Do they only cover industrial projects, or other non-industrial projects and programmes and plans as well?

EAs do not supersede permits where a permit or approval is required by legislation. Once they are completed, they are submitted to the appropriate regulatory authority for approval. EAs are not limited to purely industrial projects, and are prescribed within federal and provincial environmental assessment legislation. They are almost always applied to public sector projects, but are limited in private sector projects.

Class EAs do not require approval because they typically apply to smaller projects where the outcomes of the project are predictable. Adherence the steps in undertaking the Class EA satisfies EA legislative requirements. However, other environmental approvals for applicable air emissions, water discharges or waste management are required, notwithstanding compliance with the Class EA requirements.

Each province has different criteria for what projects fall within the scope of an EA, and what approvals or certificates may be granted upon completion of an EA.

21 Environmental assessment process

What are the main steps of the environmental assessment process?

EAs may be extremely detailed depending on the project scope and potential adverse effects to the environment. Depending on the jurisdiction and the potential environmental effects of the undertaking, the EA may simply require self-evaluation by the proponent. On the other hand, with large infrastructure projects such as mines or pipelines, the EA may involve extensive public hearings. All EAs provide mechanisms for public consultation. EAs require proponents of projects to consult with persons that may be interested, including any individual that may be affected by the project, including aboriginal peoples and communities.

EAs may be done on project specific basis, or may be applied under a class environmental assessment basis (class EA). Class EAs can apply to projects that are subject to screening under the CEAA and or provincial EA statutes and have predictable and mitigable environmental effects. These projects are often carried out routinely, and are relatively small in scale and size.

Where a project falls under the jurisdiction of both the federal and provincial governments, the CEAA allows the Minister of the Environment (Canada) to enter into agreements with provincial and territorial governments relating to the EAs of projects where both governments have an interest. The agreements provide guidelines for the roles and responsibilities of each government in the assessment of such projects.

Regulatory authorities

22 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

In Canada, the courts have interpreted the constitution to find that 'environment' is an area of shared jurisdiction. Both levels of government can regulate and enforce, so long as they avoid conflicts, and relate their legislation to one of their heads of power allocated under the constitution.

Federal responsibility for environment is primarily exercised by Environment Canada and Fisheries and Oceans Canada. Health Canada also contributes scientific and regulatory responsibility where human health is at issue. Federal jurisdiction extends to federal lands and undertakings, and to interprovincial and international environmental matters.

Provinces have responsibility for local issues ranging from real estate and natural resources to land use planning and municipalities. Provinces have jurisdiction over waste management and disposal, regulation of drinking water and waste water, and industrial air emissions. (The federal government has authority and has passed some national regulations for some industrial emissions and effluents that have been assessed to be toxic under the Canadian Environmental Protection Act 1999, or have been regulated under the Fisheries Act.)

23 Investigation

What are the typical steps in an investigation?

An 'investigation' should be distinguished from a regulatory 'inspection' (see question 24). An 'inspection' is conducted under statutory powers for the purposes of abatement and compliance. The purpose of an 'investigation' is to gather evidence of a contravention for the purpose of prosecution. Under Canadian law, whether the alleged contravention is of a federal or provincial law, an investigation should be conducted under the authority of a search warrant or other judicial authorisation, absent consent or exigent circumstances.

An environmental investigation consists of the gathering of evidence by authorised environmental officers, and may proceed with

the assistance of law enforcement officers if necessary. Officers may seize and detain anything that they reasonably believe was used to commit the offence, is related to the commission of an offence or will provide evidence of an offence. Officers may also conduct interviews, require copies of documents and utilise other investigative technologies and techniques.

The decision on whether to prosecute, and the conduct of prosecution is conducted by legal officers of the Crown in right of the federal government or of the province. The federal government and many of the provinces have developed and published compliance and enforcement policies to guide prosecutors in determining the appropriate abatement and enforcement tools. See, for example, the federal government's Compliance and Enforcement Policy for the Canadian Environmental Protection Act 1999.

24 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

In Canada environmental officers have regulatory powers of inspection provided by individual environmental protection statutes. These powers are for the purposes of achieving abatement and compliance. These powers usually authorise officers to enter regulated premises without a warrant, ask questions, take samples, request copies of documents and require production of information.

Search powers can range from a formal search warrant authorised by a judge to less intrusive means such as production orders, or simply authority to ask questions. Most federal and provincial environmental statutes set out the limits granted to inspectors or investigators.

25 Administrative decisions

What is the procedure for making administrative decisions?

Regulators make decisions on the issuance or refusal of approvals. In some circumstances the environmental statute requires the regulator to hold a public hearing.

Even where there is no public hearing, an approval applicant generally has a right to appeal the decision to an administrative tribunal. The tribunal can accept, revoke or alter the regulator's decision. In addition, parties can seek leave from the courts to appeal the tribunal decision, by way of judicial review. Examples of environmental tribunals include Ontario's Environmental Review Tribunal (ERT) and Alberta's Environmental Appeals Board (EAB).

26 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Administrative sanctions or remedies can be imposed by regulators under federal or provincial environmental legislation. Administrative orders can be made either where there is a contravention of environmental legislation, or in some circumstances, in order to prevent environmental harm.

Sanctions or remedies include:

- directions to deal with or to prevent illegal releases of regulated substances;
- tickets for offences such as failure to report;
- various types of orders, including stop or control orders, prevention orders, study and radiation orders, waste disposal site clean-up orders, orders to pay costs of remediation or of spill response;
- Ontario has established environmental penalty orders that can impose a significant administrative monetary penalty on industrial polluters for environmental contraventions;
- injunctions; or
- prosecution.

Update and trends

Canadian environmental enforcement agencies at both federal and provincial levels are using limited resources to enforce a wide range of environmental laws.

One trend is to prosecute individual directors and officers when companies contravene environmental laws, to encourage corporate guilty pleas to environmental offences.

Legislatures are introducing legislation with higher fines, stiffer jail terms and harsher sentencing options. Prosecutors are targeting prominent corporations using multiple counts and seeking high fines. Environment ministries are introducing innovative alternatives to prosecutions, such as Ontario's Environmental Penalties scheme. This imposes significant environmental penalties (up to \$100,000 per day) by way of administrative order, with limited appeal rights and defences.

Governments have introduced new legislation for sharing of complaint and compliance information (for example, Ontario's Regulatory Modernization Act).

Governments have passed Environmental Bills of Rights that provide citizens with the right to request that environment ministries investigate contraventions of environmental laws by companies.

Provinces and municipalities are developing right-to-know reporting requirements for emitters of pollutants. These obligations are intended to include many emitters that are exempt from reporting under the federal NPRI.

Securities regulators are more closely scrutinising environmental reporting in corporate securities disclosure documents, and new liability provisions have been introduced for individuals who fail to disclose material environmental liabilities.

An increasing number of environmental class actions are being certified, many based on solvent contamination of soil and groundwater.

There is an increasing number of cross-border regulatory actions and lawsuits against industrial companies over cross-border pollution.

Compliance records, fines and penalties are regularly published on federal and provincial environment ministry websites.

tory rights to bring civil actions for damage to public resources, for example in Ontario's Environmental Bill of Rights.

27 Appeal of regulators' decisions

To what extent may decisions of the regulator be appealed, and to whom? What are the grounds and procedures for appeals?

Provincial environmental statutes set out procedures for appealing a regulatory authority decision to some form of administrative decision-maker, usually in the form of a tribunal or board. In Ontario, appeals of regulatory authorities are principally made to the Ontario Environmental Review Tribunal. In Alberta, it is the Environmental Appeals Board.

Judicial proceedings**28 Judicial proceedings**

Are environmental law proceedings in court civil, criminal or both?

Both regulators and private citizens can prosecute environmental offences in the criminal and quasi-criminal courts. In addition, governments, industries, institutions and individuals can sue under the common law of tort for damages or injunctive relief (civil lawsuits).

29 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

Canadian courts may convict companies and individuals who breach environmental laws. Penalties include fines and financial penalties such as profit stripping, as well as court orders to cease activities. Individuals who breach environmental laws are subject to both financial penalties and to incarceration.

30 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Civil claims made regarding environmental matters are normally brought under some form of tort law, the most common being nuisance. Other tort law that lends itself to the prosecution of environmental matters include negligence, trespass, and strict liability, also known as the rule in *Rylands v Fletcher*. There are some statu-

31 Defences and indemnities

What defences or indemnities are available?

Defences applied in environmental matters will vary depending on whether the case is a breach of environmental law, or a defence to an environmental tort.

The most common defence to environmental torts is that the plaintiff has no standing to sue, in other words their interest or proximity to the matter is too remote to afford them legal standing. In private matters, where the defendant is a government agency, there may also be the defence of statutory authority. This defence applies in nuisance cases where the public government agency is given the 'authority' to cause the nuisance through legislation. Other proven defences include acquiescence and prescription. A less proven and more controversial defence that is emerging in the area of contaminated land is where the defendant purchased land knowing of the existence of the nuisance or contamination.

Offences under environmental law statutes are public welfare offences. These offences fall within the category of strict rather than absolute liability. A person or company charged with an environmental offence can successfully defend by proving the exercise of 'due diligence'. The essence of the due diligence defence is that the accused person took all reasonable care to prevent the specific act or omission that caused or constituted the offence. A related defence is the mistaken belief in facts, which, if true, would not have constituted an offence. However, ignorance or mistake of law is not a defence.

32 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Many Canadian environmental statutes impose a duty on corporate directors and officers to take all reasonable steps to prevent the corporation from committing an environmental offence. Directors and officers may be prosecuted even if the company is not.

The defence of due diligence is available to officers and directors. However, the onus is on the individual who is charged to prove that he or she exercised all reasonable care.

33 Appeal process

What is the appeal process from trials?

The appeal process from trials of environmental matters is similar to any other matter that falls under the jurisdiction of legislation dealing with courts and appeals process. At the federal level, this is the Federal Courts Act. In British Columbia, it is the Provincial Court Act, and in Ontario the Courts of Justice Act.

Each Act sets out procedures and limitation periods for appeals from lower-court decisions. Generally, some deference is afforded to lower court decisions.

Further appeals may be made with leave of the court to the federal or provincial courts of appeal. On matters of broad public or legal importance, leave to appeal from federal or provincial courts of appeal can be sought from the Supreme Court of Canada.

International treaties and institutions**34 International treaties**

Is your country a contracting state to any international environmental treaties, etc?

Canada is a signatory to a number of bilateral and multilateral environmental treaties and agreements. The most well recognised and significant ones include:

- the Protocol to the Vienna Convention on Substances that Deplete the Ozone Layer (the Montreal Protocol);

- the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal;
- the Canada–USA Agreement on the Transboundary Movement of Hazardous Waste;
- the United Nations Framework Convention on Climate Change;
- the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- the North American Agreement on Environmental Cooperation; and
- the United Nations Convention on Biological Diversity.

35 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

The federal government has a policy on tabling of treaties in parliament. The objective of this policy is to ensure that all instruments governed by public international law, between Canada and other states or international organisations, are tabled in the House of Commons following their signature or adoption by other procedure and prior to Canada formally notifying that it is bound by the Instrument.

Canada has implemented regulations to comply with obligations under many international agreements. For example, there are regulations under the Canadian Environmental Protection Act 1999 to implement obligations under the Basel Convention and the Montreal Protocol.



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