International Comparative Legal Guides

# Environment & Climate Change Law 2026

A practical cross-border resource to inform legal minds

**23rd Edition**

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# Canada

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## 1 Environmental Policy and its Enforcement

### 1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

Canada is a federal parliamentary democracy with a division of powers between a nationally elected federal government and locally elected provinces (10) and Northern Territories (three).

The federal government generally retains jurisdiction over matters that cross provincial or international boundaries, including fisheries and nuclear energy. The provinces and Northern Territorial governments have jurisdiction over property and civil rights within their boundaries, including land resources, mines, minerals, forestry and most power generation. Despite that division of powers, Canadian courts have determined that the federal and provincial/territorial governments share jurisdiction to adopt and enforce environmental legislation. Municipal entities and conservation authorities may enact local by-laws to protect environmental spaces (e.g. stormwater, noise and odour); however, those by-laws may not conflict with federal or provincial legislation.

Environment and Climate Change Canada is the federal environmental regulator for (among other matters) fisheries' habitat, transportation of hazardous materials, and persistent toxic substances. The federal government implements regulations giving effect to environmental treaties that Canada has ratified, including climate change, and hazardous materials.

The various provincial and territorial ministries of the environment are responsible for environmental policy and enforcement at the provincial level, with characteristics of those policies relating primarily to geographical priorities for those provinces. Every proponent that emits contaminants into air or water, or disposes of waste, must obtain permits from the relevant provincial department or ministry of the environment. Provincial ministries of the environment generally hold significant powers to regulate environmental issues and other resource activities including, but not limited to: waste; contaminated properties and Brownfields redevelopment; environmental permitting; and discharge approvals.

Modern land claims agreements with First Nations, Indigenous communities and Inuit include negotiated levels of self-governance, including environmental and resource management. Co-management of resources in those areas may include approvals and permits granted through land, water and wildlife boards. Canada adopted, through federal legislation, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), mandating that the Government of Canada align all federal laws with the UN Declaration.

### 1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

Both federal and provincial governments have broad powers to enact laws to regulate the environment and those who work with natural resources. Environmental statutes generally focus on broad environmental goals including conservation, pollution prevention, environmental liability for contamination ("polluter pays" principle) and, more recently, innovations in waste reduction, species at risk, contaminated land rehabilitation, and climate change/carbon reduction.

In a case of failure to comply with laws or approvals, or in the event of spills or other environmental harm, both federal and provincial levels of government have broad discretion in enforcement. Environmental regulators generally employ a staged approach to environmental enforcement that is responsive to the potential adverse effect to the environment and/or threat to human and animal life. Initial communications may include recommendations and coordination of remediation efforts. If compliance is not voluntary, both levels of government have broad order-making powers to compel compliance. For more significant violations and/or repeated offences, regulators may employ prosecution with fines and/or prison sentences determined upon conviction. In some circumstances, if the regulator is required to spend funds to undertake investigation and/or remediation, those regulators may undertake statutory and/or civil remedies to recover those funds.

### 1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Public registries provide information on contaminated sites, proposed legislative/regulatory amendments, proposed environmental approvals and permits, and the status of environmental/impact assessments for major projects. Many of these sites provide updates on the status of these matters/approvals and provide a mechanism for public feedback.

At the federal, provincial and municipal levels, any person may initiate a request for information from those public authorities through Freedom of Information legislation. Records may be refused based on a number of enumerated protections including legal privilege, sensitive commercial information or personal information.

## 2 Environmental Permits

### 2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Environmental permits/approvals within each province and territory will be specific to the regime and/or contaminant (e.g. waste, water, carbon). For example, provincial approvals are required where there is a discharge of contaminants into the air or water, water taking, and in waste management (transportation and storage). Federal permits are required for destruction of fish habitats. Energy facilities may also require approvals from the local or federal Energy Boards. Some jurisdictions are moving towards online self-registration approval systems for air discharge.

The ability to transfer a permit to another party depends on the jurisdiction and type of permit. Transferring a permit for the same operation at the same property may only require notice to the relevant regulator, or consent of the regulator. Some permits (higher risk of environmental harm) are non-transferable.

### 2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

The permit applicant may appeal a regulator's decision (refusal or onerous conditions) to an administrative tribunal or board. These tribunals exist at both the federal and provincial levels. Some decisions must be appealed to the government minister or cabinet, if so provided for in legislation. In the Northern Territories, decisions to grant permits and approvals are done by co-management boards. In those cases, a proponent would appeal or seek judicial review from the territorial court.

There may be a limited right for impacted third parties, such as neighbouring operators or property owners, to appeal a regulator's permitting decisions. Judicial review can be initiated in federal or provincial courts where an appeal is not captured by the applicable legislative framework.

### 2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Environmental/impact assessments may be required for major projects; i.e., those with significant anticipated environmental impacts, such as electricity generation, mines or marine terminals. Low impact projects may only require screening assessments, while higher impact projects are subject to comprehensive assessments, with public and Indigenous consultation as significant elements.

Environmental audits are not generally required by statute, but can be required in transactions or in the context of private financing or insurance. Brownfield legislation may require environmental assessments prior to land being re-designated for a more sensitive use.

### 2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

In all jurisdictions, regulators have broad powers to enforce permits and approvals. Powers are divided between abatement powers (working with a company to move into compliance) and enforcement. Abatement powers include written instructions, notices of violation, directions to comply and orders (stop-work, investigate, remediate). Enforcement powers include environmental penalties (fines), stop-work orders, and prosecutions (fines and/or incarceration).

## 3 Waste

### 3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Waste is primarily defined and managed through provincial legislation based on the type of waste. Waste can be categorised based on its constituent elements (hazardous *v.* non-hazardous), the industry or area in which the waste is generated (municipal or institutional), and more recently whether such waste may potentially be recovered and reused as part of a producer responsibility programme.

At the federal level, wastes are generally categorised with pollutants and are similarly managed, including prohibitions against the disposal of pollution wastes from various federally regulated industries, and the control of movement of hazardous wastes across provincial and national boundaries. Radioactive materials and radioactive wastes are solely the jurisdiction of the federal government.

### 3.2 To what extent is a producer of waste permitted to store and/or dispose of it on the site where it was produced?

Permissions to store waste will often be considered as part of an authorisation to generate or transport. Additional duties or controls on generation and storage will be required for waste with greater potential for adverse impacts to the environment such as hazardous, pathological, and persistently toxic. Restrictions on disposal will depend on the type of waste and the capabilities and capacity of the approved waste disposal site.

### 3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

The generator of waste does not generally retain ownership and liability for waste once the waste is transferred to and accepted by an approved/permitted third-party waste receiver. The termination of liability for the waste is the *quid pro quo* for managing, shipping and disposing of waste according to the applicable provincial regulatory requirements.

### 3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Several provinces and territories have recently adopted producer responsibility regimes that require manufacturers, distributors, and retailers of certain products (e.g. electronics) to establish or to fund recovery programmes for their products. Costs are incorporated into the sale price. Producers may fulfil obligations individually, or by joining an association

based on the recovery of similar products. "Blue Box" stewardship programmes are organised at the municipal level for the recovery of paper products, aluminium containers and glass.

## 4 Liabilities

### 4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Regulatory liability can result from a breach of environmental legislation or permits (either federal or provincial). Upon breach, environmental regulators may issue a warning or issue a demand/order to investigate, comply, or control various environmental processes or discharges. Those orders can be appealed or must be obeyed.

In conjunction with orders, or separately, regulators may prosecute individuals and/or corporations for a breach of statute. Such offences are quasi-criminal in nature, and do not require proof of intent to commit an offence (strict liability offences). These offences can proceed by way of tickets that demand a minor monetary penalty, or prosecuted by way of detailed indictment, which may result in significant fines and the potential for imprisonment. The Crown elects whether to proceed by ticket or by indictment, which decision may include considerations of minimum statutory fines, the magnitude of environmental harm as well as the particular statute or permit that is breached.

Once the Crown (prosecuting party) proves all elements of the offence beyond a reasonable doubt, the defendant may elect to lead evidence in defence. Defences include: procedural challenges and limitation periods; misconduct by a regulator (officially induced error or an abuse of process); and/or the due diligence defence. A due diligence defence must establish, on a balance of probabilities, that the defendant took all reasonable steps to prevent the commission of the offence by, for example, establishing a proper system to prevent the offence and by taking steps to ensure the effective operation of the system.

Private civil liability, for tortious environmental damages or other declaratory relief, may arise from a breach of environmental law or the common law. A breach of statute may be indicative of private nuisance or negligence by the breaching party.

### 4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Care must be taken to ensure that any environmental contaminating activity, even if conducted under an approval, is not in breach of environmental legislation at another level of government.

Even when subject to a permit, operators may be liable for potential adverse effects on plants, animals and persons within the natural environment. Civil liability for nuisance or negligence may result from damage to person or property even if the polluting activity is operated within permit issued by a regulating entity.

A party may be prosecuted for causing environmental damage over a substantial period of time notwithstanding that same person's compliance with a permit or condition at the time of the discharge. Parties must also be aware that environmental standards change over time and what was previously considered a non-contaminating activity may several years later be seen as contaminating and actionable.

### 4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Environmental statutes in Canada impose personal liability on directors and officers of corporations separate and apart from the liability imposed on the corporation. The corporation need not be charged or convicted.

A director/officer of the corporation who directed or authorised the commission of the offence may face liability. Some jurisdictions establish a positive obligation on officers and directors even if they did not authorise the environmental offence, but if they knew or ought to have known that the corporation was in contravention of environmental law. Directors and officers may be personally subject to the same administrative remediation or preventative orders to which the corporation can be named. This liability can be extended to senior management and/or those with management or control of the operational aspects of the corporation, property or project.

Indemnification from environmental liability is not generally found in the same insurance policies issued to directors and officers to cover corporate and commercial liability. Separate environmental and/or pollution policies are recommended and must address the specific environmental risks in the industry in which they work (e.g. mining, real property holdings). Certain statutes relating to business corporations limit the indemnification of directors and officers in the case of criminal, quasi-criminal or administrative actions.

### 4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In a share sale, environmental liability for acts and omissions of the corporation that pre-date the effective date of the transaction can carry forward and remain with the corporation. The same is true for an amalgamation of corporations into a single entity, whereupon environmental liabilities will flow to the new amalgamated corporation.

In contrast, liability does not generally flow to a new operating entity in the case of an asset deal. There may be an exception where real property is part of a transaction, and the new operating entity may be liable for historic contamination where there is a risk to human health and the environment onsite, or for continued offsite contamination onto neighbouring properties.

### 4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Provincial statutes generally contain protections against regulatory orders and prosecutions for lenders, receivers, trustees in bankruptcy, and the estates of those who own or owned contaminated property. These protections can be rendered moot if lenders direct or participate in actions that result in the commission of an environmental offence, or if they are found to have sufficient management and control of the land, waste, or pollutants at issue.

## 5 Contaminated Land

**5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?**

Regulatory liability includes Order and/or prosecutions where the contamination is the result of a spill or discharge, may cause an adverse effect at the property or neighbouring properties, or is not promptly reported to the regulator.

Regulatory liability can also include the costs of complying with regulatory orders to investigation, delineate and remediate contamination on and off-site. Those who can be ordered include current and former owners and tenants and those with management and control, including officers and directors. Owners and occupiers can be ordered even if they are not the source of the contamination.

Civil liability can arise where a neighbouring landowner sues for damages associated with migrating contamination, a property owner sues a tenant for contaminating a leased property, or a new owner sues former owners.

**5.2 How is liability allocated where more than one person is responsible for the contamination?**

Liability is typically joint and several. Any one responsible party can be ordered by a regulator, or sued in civil court, and be held responsible for the entire cost to remediate. That responsible party must subsequently obtain a civil remedy to recover contribution from other liable parties, which can be apportioned based on degree of fault.

**5.3 If a programme of environmental remediation is "agreed" with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?**

Subject to a formal contract or Minutes of Settlement, regulators retain the power to order parties to conduct additional remediation work, as necessary. Where a party remediates property under contaminated/Brownfields land regulations and obtains a certification (Record of Site Condition) that the property meets the applicable standard based on intended use, that party obtains a limited statutory exemption from regulatory oversight of the contamination. These certificates, once granted by the regulator, can be reopened under limited circumstances.

**5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination, and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?**

A person may initiate a civil claim to recover costs to remediate property from any party that caused or contributed to the contamination. Common law causes of action typically include nuisance, negligence, strict liability (doctrine of *Rylands v. Fletcher*) and trespass. There may also be a private right of action under environmental legislation to recover costs to remediate a spill of contaminants. In the province of Quebec, civil liability for environmental harms is governed by the Civilian Code, including the provisions for harms caused to another.

Liability can be transferred or allocated through purchase and sale agreements. This typically functions through a contractual indemnity to save and hold the indemnitee harmless. The seller could still be named in a lawsuit or pursued by an environmental regulator.

**5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?**

An award of monetary damages for public nuisance (involving unreasonable interference with public rights to health, safety, comfort, or property) exists. Damages for aesthetic harms to public assets has not occurred in Canada, although the potential for such a claim has been recognised.

## 6 Powers of Regulators

**6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?**

Abatement officers have broad authority to inspect, issue compliance orders, and collect samples in the course of carrying out their statutory abatement mandate. Abatement officers may also issue compliance orders to halt activities identified as contrary to environmental legislation or that require action to further investigate and/or mitigate environmental impacts. These actions cannot be used to collect evidence for use against a party in criminal or regulatory prosecutions.

Enforcement officers at the federal and provincial level may apply to a court of appropriate jurisdiction for a warrant to execute search and seizure upon lands or buildings, collect samples, require the production of documents, or conduct tests and analyses. These powers are granted when there are reasonable and probable grounds that an offence is being or has been committed. Such information can be used as evidence against an accused party.

## 7 Reporting / Disclosure Obligations

**7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?**

Environmental statutes and some general statutes with environmental considerations (e.g. fisheries legislation) require that the appropriate environmental regulator be notified forthwith of a discharge of a contaminant into the natural environment, that is out of the normal course of events (and beyond the scope of an exemption and/or threshold amount), and likely to cause an adverse environmental impact. Discharges can include dust, noise, heat, and light, as well as solids, liquids or gases that are more commonly associated with spills. The regulatory requirements for reporting the discovery of historical contamination, and/or contamination not caused by the reporting party, vary from province to province.

**7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?**

There can be an obligation to investigate for contamination in Brownfields and contaminated lands rejuvenation, when changing to a more sensitive use.

There is currently no common law duty creating an affirmative obligation to investigate land for contamination. In practice, investigation for contamination is generally advisable when there is a known or potential risk of off-site migration giving rise to an adverse environmental impact or a risk to human health or safety.

**7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?**

A vendor of property with environmental problems is not generally required to disclose environmental problems, absent specific representations and warranties. The principle of *caveat emptor* applies and the purchaser is responsible for undertaking environmental due diligence. Properties can and are commonly sold on an "as is, where is" or "without guarantee" basis as to quality and defects.

Vendors may not make misrepresentations as to the condition of the property or fail to disclose known latent defects (being a fault in the property that could not have been discovered by a reasonably thorough inspection).

## 8 General

**8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?**

Parties can contract to allocate environmental liability using an indemnity; however, the indemnity is limited to the parties. An environmental indemnity will not prevent an environmental regulator from pursuing one or both parties, nor does it prevent a neighbour or other third party from initiating a lawsuit against one or both parties.

**8.2 Is it possible to shelter environmental liabilities off-balance sheet, and can a company be dissolved in order to escape environmental liabilities?**

Typically, environmental liabilities must be disclosed by public issuers, according to securities regulators, and accounted for under accounting principles.

Dissolving a company will not necessarily eliminate environmental liability, and may put others involved in the company, such as employees and directors and officers, at risk. In some provinces, a dissolved company can be revived for civil litigation by the plaintiff, or litigation can continue against a corporation even if dissolved.

**8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?**

Shareholders of public companies are not liable for breaches of environmental law or pollution by a corporation. Shareholders of smaller, private corporations can be liable if they have sufficient day-to-day management and control, or use the corporate veil for a fraudulent or illegal purpose.

A Canadian corporation may be sued in Canada for the environmental actions of a foreign subsidiary. Similarly, parent companies may be subject to regulatory liability for subsidiaries, if a sufficient nexus of control is established. Environmental liability will depend on the strength of the parent's management and control (determining funding and assessing and directing remediation or operating requirements) over the subsidiary, or the use of the corporate veil for a fraudulent or illegal purpose.

**8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?**

Environmental legislation federally, provincially and territorially includes protections for individuals who report environmental violations.

**8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?**

Class actions are available in Canada for environmental claims. The court must certify, based on sufficient evidence of an identifiable class and common issues amongst the class, that a class proceeding is preferable. Common questions of fact or law must predominate over questions affecting only individual class members.

Punitive damages may be sought in any civil action (including class actions), but are only awarded in egregious circumstances involving high-handed or malicious conduct.

**8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?**

Costs are discretionary. There are no exemptions for public interest groups from liability to pay costs in civil claims, but there is jurisprudence that supports leniency for public interest litigation.

## 9 Climate Change and Emissions Trading

**9.1 What is the overall policy approach to climate change regulation in your jurisdiction?**

The Canadian approach to climate change involves shared federal, provincial and territorial responsibility, with collaborative bodies to set priorities and coordinate action across jurisdictions. Constitutional authority for environmental policy is divided, leading to cooperative governance on emissions reduction adaptation and resilience planning. This collaborative approach supports national strategies while

allowing provinces and territories to tailor policies to their own contexts and capacities, reflecting a federally coordinated but jurisdictionally diverse climate policy framework.

**9.2 What is the experience of climate change litigation in your jurisdiction?**

Climate change litigation is an evolving field across Canada. Young persons and indigenous groups have brought claims against both the federal government and a provincial government. In both actions, the plaintiffs allege that governments have violated their right to life, liberty and security of the person by allowing emissions levels that can lead to serious adverse consequences.

More recently, large public pension managers and utility companies have been subject to private actions based on deceptive marketing, ESG reporting and greenwashing allegations related to climate change reporting and renewable energy statements.

**9.3 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing?**

Canada has a pollution pricing system that places a price on greenhouse gas emissions. Provinces and territories can design their own industrial carbon pricing systems, but where they choose not to do so, or where their system does not meet the minimum federal standards, the federal system is put in place. Where the federal system applies, the fuel charge and industrial pricing backstop generate proceeds that are returned to the same province or territory through rebates. The system is revenue-neutral and aims to reduce emissions and encourage a transition to low carbon technologies.

**9.4 Aside from the emissions trading schemes mentioned in question 9.3 above, is there any other requirement to monitor and report greenhouse gas emissions?**

The GHG Reporting Program requires facilities that emit the equivalent of 10 kilotonnes or more of greenhouse gases per year to submit a report to Environment and Climate Change Canada. Several provinces have requirements to report greenhouse gas emissions. The federal government has developed the Pan Canadian Framework on Clean Growth and Climate Change with the provinces and territories. The Framework sets a price per tonne of greenhouse gases that must be implemented by each of the provinces and territories, unless the province or territory has an emissions trading system.

## 10 Environmental Insurance Liabilities

**10.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?**

Environmental insurance liability coverage has become common in Canada. Claims-Made policies provide coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place. An Occurrence-Based policy protects the insured from any covered incident (e.g. spill) that occurs during the policy period regardless of when a claim is filed.

These policies can provide indemnification for clean-up costs, damages assessment, environmental impairment, liability for third party claims due to off-site migration, and indemnity against future pollution events on properties or for yet undiscovered contamination. Products may also be available to address site-specific concerns such as underground storage tanks, transportation of hazardous waste, or financial assurance for secured creditors.

**10.2 What is the environmental insurance claims experience in your jurisdiction?**

Environmental claims coverage in Canada is generally separated into two elements: (a) expense costs (e.g. legal fees) associated with defending a regulatory and/or civil claim; and (b) indemnifying losses (e.g. remediation) associated with environmental harm. Products also began to expand based on the needs of corporate officers and directors, who may become subject to regulatory investigations.

## 11 Recent Developments and Forthcoming Trends

**11.1 Please provide a brief summary of the most significant recent new cases and developments in environmental law in your jurisdiction.**

A notable federal development is a 2026 decision by the Federal Court of Appeal to uphold a federal decision to add single-use plastic manufactured items to the List of Toxic Substances (Schedule 1) of the *Canadian Environmental Protection Act, 1999*. The decision recognised that plastic manufactured items may reasonably harm the environment. This decision permits the federal Single-Use Plastics Prohibition Regulations to remain in force and supports the federal authority to regulate plastics broadly under the *Canadian Environmental Protection Act, 1999*. The purpose of the act is to strengthen Canada's ability to curb plastic pollution and support initiatives that address the environmental and health impacts of plastics, consistently across the country. Industry groups have expressed concern about the broad regulatory scope of the decision and the potential impacts that it may have on Canada's ability to remain a competitive marketplace.

In the area of climate change law, in 2025 the Ontario Court of Appeal unanimously allowed an appeal by seven young Ontarians, some of whom are Indigenous, challenging the provincial government's decision to reduce greenhouse gas emission targets. The plaintiffs and moving parties presented evidence that the new targets fell short of the scientific consensus as to what is required to combat climate change, thereby infringing their *Charter* rights (S. 7 – Right to life, liberty and security of the person; and S. 15 – Equality before and under law and equal protection and benefit of law). The Court of Appeal found that since Ontario voluntarily assumed a statutory obligation to combat climate change, it was bound to ensure its emissions target and plan were *Charter*-compliant.

**11.2 Please provide your views on any forthcoming trends and "hot topics" in environmental law in your jurisdiction.**

At both the provincial and federal levels, environmental liabilities have become mainstream risks for Canadian business

leaders. Under federal and provincial statutes, officers and directors can be charged if they fail to take "reasonable care" to prevent or address pollution causing adverse impacts to the environment. This duty extends to preventing spills, reporting incidents and complying with regulatory orders. Courts and Tribunals have "pierced the corporate veil" in circumstances where the adjudicator believes it is warranted to give effect to environmental remedial legislation, or there is evidence that the corporate persona is a sham. There have been significant developments in respect to environmental obligations in insolvency proceedings. Creditors should be aware that environmental obligations can take priority over secured creditor claims and that regulatory orders can survive insolvency.

In addition to risks for directors and officers, businesses should also be aware that there have been notable recent amendments to the federal *Competition Act*. Companies are now required to ensure that *environmental benefit* claims are backed by adequate and proper testing or substantiation. The burden of proof for demonstrating that a claim about a product is true has shifted to the businesses making the claim. The amendments also broaden the definition of deceptive marketing practices and explicitly addressed greenwashing conduct. Claims that discuss the environmental benefits of a *product* are required to adhere to an "internationally recognized methodology". The fines available ($10 million for the first offence, or 3% of annual worldwide gross revenue), are some of the highest in environmental law. The amendments have received backlash across many sectors and the amendments have led to some businesses abandoning, at least publicly, previous ESG commitments. The federal government has signalled an intention to reform the *Competition Act*; however, until legislation to the contrary is passed, the amendments remain in force and affect.

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