



# Canada: Environmental Law Overview

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## Jurisdiction

Environmental law is another area that falls partly under federal and partly under provincial jurisdiction in Canada. The federal government's regulatory regime comprises environmental assessment and review procedures, prohibitions on releases into the environment, licence and permit requirements, spill reporting and clean-up requirements, environmental emergency preparedness, ministerial powers to issue orders, and statutory offences. The principal federal environmental statutes are the *Canadian Environmental Protection Act, 1999*, which regulates, among other things, the manufacture, import, export, use, handling, release and disposal of toxic substances, the *Fisheries Act*, which regulates discharges into waters under federal jurisdiction, and the *Canadian Environmental Assessment Act*.

The provinces have a somewhat greater share of the authority in this area in virtue of their general right to legislate over real property matters and other matters that lack interprovincial or national significance. Provincial environmental legislation, which includes environmental assessment and environmental protection legislation, is therefore highly important.

## Environmental Laws

Canadian environmental protection legislation generally includes the regulation of air, soil and water pollution, transportation and storage of dangerous goods and hazardous wastes, underground storage tanks, pesticides, migration of contaminants, and radioactive substances. The statutes dealing with such matters are generally enforced by any or all of the following: criminal sanctions, abatement, remediation and restraining orders. Environmental protection legislation also provides courts with the power to strip profits, order licence suspensions and issue fines.

Environmental assessment legislation, depending on the nature of the project proposed, can require the proponent to produce an environmental impact statement describing the project and why it is needed, analyzing the project's likely effects on the environment, suggesting mitigating measures where mitigation is possible and describing residual adverse effects where it is not.

Small projects that are unlikely to have significant effects on the environment are exempted from the assessment process. Projects that could have significant adverse environmental impacts are usually submitted to an administrative agency for a structured review that may lead to the issuance of guidelines or general or specific directions. Major projects are also generally subject to public review by an independent board or panel, which may produce recommendations or a final decision.

## Health Issues

Health issues are also addressed through occupational health and safety legislation including asbestos control or removal requirements, in addition to the more familiar workplace safety matters.

## Personal Liability

There are also significant considerations with respect to the potential liability of directors, officers and lenders for environmental problems. Directors and officers may be held personally liable for the environmental consequences of a corporation's activities, particularly where the director is an inside director (that is, an officer or employee of the corporation or a major shareholder). Secured lenders who take no action to control or realize on security are not personally liable.

Potential risks of personal liability for receivers, trustees and monitors have been addressed in the federal *Bankruptcy and Insolvency Act*, *Companies' Creditors Arrangement Act* and in a variety of provincial legislation.

# About the Firm

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When Heward Stikeman and Fraser Elliott first opened the firm's doors in 1952, they were united in their pledge to do things differently to help clients meet their business objectives.

In fact, they made it their mission to deliver only the highest quality counsel as well as the most efficient and innovative services in order to steadily advance client goals.

Stikeman Elliott's leadership, prominence and recognition have continued to grow both in Canada and around the globe. However, we have remained true to our core values.

These values are what guide us every day and they include:

- Partnering with clients – mutual goals ensure mutual success.
- Finding original solutions where others can't – but they must also be grounded in business realities.
- Providing clients with a deep bench of legal expertise – for clear, proactive counsel.
- Remaining passionate about what we do – we relish the process and the performance that results from teamwork.

A commitment to the pursuit of excellence – today, tomorrow and in the decades to come – is what distinguishes Stikeman Elliott when it comes to forging a workable path through complex issues. Our duty and dedication never waver.

This is what makes Stikeman Elliott the firm the world comes to when it counts the most.

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