Introduction: What Is Environmental Law?

Environmental law is the body of statutes and common law that is and will continue to be used to protect and improve environmental conditions. Some of it deals with pollution control, waste management, endangered species preservation, and other issues that clearly involve the natural environment. The term environment is often defined broadly to cover land, water, air, and living organisms, including humans and their built environment, and the interaction of these elements. The scope of this definition is sensible because many aspects of the biophysical environment and the human social and economic environment are deeply intertwined.

environmental law the body of legislated statute and common law that can be used to protect and improve environmental conditions
**CASE STUDY**

**Who Is Responsible for Environmental Law in Canada?**

*R v. Hydro-Québec*

In the 1980s and 1990s, the courts were increasingly called on to determine whether the federal or provincial government has jurisdiction to address particular environmental issues. Consider, for example, the case *R v. Hydro-Québec*. In 1990, Hydro-Québec was charged with dumping polychlorinated biphenyl (PCB) contrary to regulations under the *Canadian Environmental Protection Act, 1999* (CEPA 1999). Hydro-Québec challenged the authority of the government to charge it with an offence under CEPA on the grounds that the toxic substance provisions of the legislation fell outside federal powers. A majority of the Supreme Court of Canada ultimately held that the provisions were within the jurisdiction of the federal government under its criminal law power. As part of its decision, the court made the following statement about the importance of the environment and the need to address environmental concerns:

LA FOREST J: This Court has in recent years been increasingly called upon to consider the interplay between federal and provincial legislative powers as they relate to environmental protection. Whether viewed positively as strategies for maintaining a clean environment, or negatively as measures to combat the evils of pollution, there can be no doubt that these measures relate to a public purpose of superordinate importance, and one in which all levels of government and numerous organs of the international community have become increasingly engaged.*

**Questions**

Canada’s Constitution does not refer specifically to environmental jurisdiction. How can the matter of environmental jurisdiction be addressed? What are the appropriate roles of each level of government?


Although a number of environmental laws exist, many laws of more general application can be used to advance environmental objectives. Examples include the body of *common law* that focuses on property and *tort* law (centred on private legal actions concerning harm to person or property), both of which may be used to prevent environmental harm or compensate those harmed.

*common law* A system of law based on the English legal tradition, which relies on precedent rather than on codified rules; may also refer to (1) decisions by courts exercising their “common law” jurisdiction as opposed to their “equitable” jurisdiction based on broad principles of fairness, or (2) case law generally as opposed to legislation

*tort* Civil wrong other than a breach of contract, for which damages may be sought to compensate for any harm or injury sustained
Some environmental laws focus on the prevention of damage. Others are intended to require, or at least to facilitate and encourage, the rehabilitation of degraded environments or the correction of environmentally damaging or dangerous behaviour. All of these laws have a positive environmental agenda. They aim to make things better or, at least, less bad. In this respect, environmental law is unlike the neutral rules of, for example, contract law, which is used to resolve disputes involving individuals or corporations. Environmental law is highly and openly value-laden.

Most of this positive agenda centres on human purposes, including immediate economic interests as well as long-term health and well-being and the democratic benefits of participation in decisions that affect our lives. At least to some degree, environmental law also seeks to benefit the environment itself and the ecosystems that sustain it. But this agenda too serves human interests ultimately, since we are permanently dependent on our environment for the basic prerequisites of survival and for the foundations of most of what enriches our lives.

Another way to understand environmental law is this: environmental law is the process whereby the common resources of society—the air we breathe, the water we drink, the minerals in the ground, the trees, and the lakes—are allocated to those public and private interests that use those resources to provide goods and services for the public at large. Hence, licences are granted to extract aggregate from the ground for highway construction; permits to take water are granted to industry for manufacturing bottling water; and discharge approvals are granted to steel-making facilities to emit pollutants into the air. Environmental law addresses whether such

**BOX 1.1 » Environmental Protection: “One of the Major Challenges of Our Time”**

As part of its decision in *Friends of the Oldman River Society v. Canada (Minister of Transport)*, La Forest J stated:

The protection of the environment has become one of the major challenges of our time. To respond to this challenge, governments and international organizations have been engaged in the creation of a wide variety of legislative schemes and administrative structures. In Canada, both the federal and provincial governments have established Departments of the Environment, which have been in place for about twenty years. More recently, however, it was realized that a department of the environment was one among many other departments, many of which pursued policies that came into conflict with its goals. Accordingly at the federal level steps were taken to give a central role to that department, and to expand the role of other government departments and agencies so as to ensure that they took account of environmental concerns in taking decisions that could have an environmental impact.*

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allocations should be made, how much is appropriate, and who should participate in such decisions.

Environmental law aims to protect and restore or improve the environment. It does not do so simply because some legislator or court had an idea. Rather, it reflects the values of many Canadians. Opinion polls have confirmed again and again that Canadians value their environment and support action to protect it. Environmental law supports these fundamental values.

The Scope of Environmental Law
Many laws affect efforts to protect or improve the environment. Some of them do so directly, for example, by requiring pollution abatement. Others address environmental matters indirectly or as part of a related agenda, such as protecting health or property. As a result, the boundaries of environmental law are inexact.

The core of environmental law clearly includes environmental regulatory law, which governs discharges of harmful substances into the air and water and onto land. Environmental assessment law, which requires the study of and attention to environmental considerations in the planning and approval of new undertakings, is also at the core of environmental law. So too is legislation that confers environmental rights on citizens—especially rights to receive environmental information, to participate in environmental regulatory decisions, and to demand that legally required standards be applied. Laws that protect endangered species and natural areas, and the environmental provisions in laws concerning agriculture, forestry, energy, and other major sectors of the economy are also important components of environmental law. Finally, we must include international laws, conventions, and treaties that are focused on environmental concerns such as persistent organic pollutants, substances that deplete the ozone layer, transboundary movement of hazardous wastes, and greenhouse gases. All of these subjects are discussed in later chapters.

Beyond this core, how far does environmental law properly extend? Does it include national and provincial park legislation, a major part of which provides for public recreation? What about wildlife legislation concerned with “managing” wildlife mainly for hunting? Does environmental law include community and regional planning law, a subject that affects virtually all urban and regional economic activity through regulation of the built environment and its infrastructure? Human health

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**environmental regulatory law** law governing the discharge of harmful substances into the air and water and onto land

**environmental assessment law** law requiring careful attention to environmental considerations in the planning and approval of new undertakings
is included in most statutory definitions of environment. But are the myriad of statutes, regulations, and bylaws that establish and regulate health and related social programs part of environmental law? Don’t some tax and economic benefit laws concern or include environmental protection activities? What about the common law elements of property and tort law that have sometimes been used to halt property or natural resource development? And then there is international law, some of which deals with environmental issues. Which of all these areas of law deserve to be called “environmental”? Is there a logical end or a reasonable set of boundaries? Should we just accept that all law is in some sense environmental law? No neat answer exists to any of these questions.

One reason for the difficulty in defining the scope of environmental law (beyond the fact that much of it is recent) is that it draws from a wide range of traditional legal concepts and subjects. For example, environmental regulatory law uses instruments (such as authorizations, prohibitions, and regulatory offences) and institutions (such as decision-making tribunals) that have counterparts in other regulatory areas such as health and safety and telecommunications. It is then relevant to consider at least some decisions in these other areas in analyzing environmental regulatory decisions.

Another reason for the impression of few boundaries is that the environment underlies and supports everything. That is why environmental law overlaps other legal fields and why areas such as health law, planning law, and even tax law are, in a sense, part of environmental law. Laws in all of these areas can be used or adapted for the protection and enhancement of the environment. Recognizing these overlaps, we have included in this text sections on environmental laws in a variety of important sectors, as well as sections on common law tort, property rights, environmental offences, constitutional law, and the arcane administrative law concerning judicial review of environmental regulatory decisions.

All environmental law sources are important. In the practice of environmental law, we may look first to the core environmental rights and regulations or to specific environmental provisions in other laws. But we should remember that sometimes the environment can be protected most effectively by a court ruling that a threatening proposal is unconstitutional, that granting approval for an undesirable project is outside the legal powers of a government board or official, or that the relevant decisions were made in a procedurally unfair way.

**Ideas Underlying Modern Environmental Law**

Formal environmental law can be traced back centuries, if not millennia, and customary rules about human–environment relations likely go back to our earliest ancestors. Most of what we now call environmental law, however, was introduced within the last few decades. It reflects rising environmental concerns and increased environmental understanding and has also been influenced by ideas about public
welfare, citizen participation, philosophy, and ethics that have occupied recent debate on important public issues.

**Public Welfare and Citizen Participation**
Modern environmental laws are as much about how we govern ourselves as about how we treat the environment. Many of the environmental laws in place today in Canada and other developed countries originated in a burst of environmental law-making in the late 1960s and early 1970s. These new laws focused on preventing as well as reducing pollution and signified a new understanding that environmental damage was a serious problem, that easy technical fixes were not always available, and that prevention is often wiser and cheaper than repair. The new laws responded to a wave of public concern about environmental abuses. Concerned citizens, often led by public interest advocates and assisted by media attention, drove the process.

This pattern has continued throughout the evolution of environmental law in Canada. Few innovations in environmental legislation and few major advances before the courts have been the product of government zeal. Virtually all progressive steps in environmental law have required public initiative, public ingenuity, and persistent public pressure.

Not surprisingly, then, Canadian environmental law rests as much on ideas about democracy as on understandings about how to deal with the environment. Two linked aspects of democracy have been particularly important. These are the public welfare role of governments and the importance of citizen participation in policy deliberations. The public welfare idea is that governments in democracies have a responsibility to defend and advance public well-being. Long-recognized priority areas for government action for public welfare include national security, public safety, education, and transportation. Environmental protection became an important item on the list more recently, largely because of public concern and pressure. Environmental law is a response to the emergence of a public consensus that governments need to act on this important but previously neglected area of public interest.

Getting governments to act on environmental concerns has been only part of the story, however. The development of environmental law in Canada also reflects an unwillingness merely to trust government officials to do what is necessary. From the late 1960s to the present, Canadian campaigns for stronger environmental laws have also consistently included demands for participative rights—that is, legal requirements for the interested and concerned public to be notified about important findings and initiatives, to have timely and convenient access to information, to have opportunities for effective involvement in deliberations before irrevocable decisions are made, and to be able to enforce environmental laws when governments fail to act. Environmental lawyers acting in the public interest have often used common law principles, as well as available statutory provisions, to assert the legal rights of citizens to participate in environmental regulatory decisions and to stop or delay proposed projects.
likely to harm the environment. They have also pushed, often successfully, for environmental bills of rights centred on opportunities for effective participation.

Efforts to strengthen environmental protection through regulatory laws—by raising standards, extending the reach of government requirements, and expanding the narrow array of public environmental rights—continue today. But these approaches are recognized as having limits and may never be sufficient by themselves. As a result, the public welfare and citizen rights foundations of environmental law are now increasingly being supplemented by efforts to mobilize other players and motivators, including direct communication with policy-makers and legislators, petitions, and the strategic use of social media.

Much of the recent focus of law reform and related environmental initiatives has been on economic tools. While many governments have simply tried to encourage corporations “voluntarily” to exceed regulatory requirements, some have begun to make greater use of law-based economic instruments that give polluters an economic incentive to reduce pollution and waste.1

**Philosophy and Ethics**

The second set of big ideas underlying modern environmental law centres on philosophy and ethics. As we noted above, environmental law is not neutral. It has a positive agenda to improve well-being. That is not to say that environmental lawmakers and practitioners always agree on what is required for well-being, or what the priority objectives should be, or even who and what should be included as the intended beneficiaries. But there are some common themes.

Most environmental laws emerged from concerns about threats to human health or other material interests. The initial assumption was that any problems that were serious enough to merit legal attention could be dealt with satisfactorily, one by one, usually through some technological repair. The role of the law was to force attention on the matter where problems were not solved through technological solutions. That assumption fit well with the prevailing belief that we could and should dominate nature through applied science, technology, and other servants of economic progress.

But the real world turned out to be inconveniently complicated. The technical fixes did not always work, or they had unsavoury side effects, or they were far too expensive, or the problems came too thick and fast to be manageable. Years of experience gradually taught that prevention was preferable to repair, that considering overall effects was better than dealing with problems one by one, and that we should adopt precautionary approaches because we will never know enough to be able to predict, much less fix, all of the problems we might cause.

Development through economic growth and technological innovation has brought major gains. But it has also begun to eat away at the world’s ecological foundations and is digging a dangerously expanding gulf between rich and poor. In
Part I  Introduction: The Evolution, Framework, and Challenges of Environmental Law

1987, the World Commission on Environment and Development, convened by the United Nations and chaired by then Norwegian Prime Minister Gro Harlem Brundtland, officially declared that the current path was not sustainable and that a substantial shift in agenda was necessary.2

Many of the most recent environmental laws have therefore begun to reflect a new understanding of the world and our place in it. That understanding is as follows:

- We are permanently dependent on a natural environment made of highly complex and interrelated systems at every level, from global climate chemistry to the soil bacteria affecting growth of individual plants.
- We will never control nature in any complete and fully competent way.
- We must find better ways to live in and with the rest of nature by establishing better integrated socio-ecological systems that are farsighted, careful, and adaptable enough to serve present needs without sacrificing the prospects of future generations.

In addition, we now face plenty of evidence that human activities are producing significant adverse effects well beyond the national and provincial reach of most environmental laws. To deal with greenhouse gas emissions that contribute to global climate change and a host of other transboundary pollution, resource depletion, and ecological damage, we will also need to develop better means of designing and applying international controls.

BOX 1.2 » The Tragedy of the Commons

One of the most profoundly difficult moral dilemmas relating to the environment is the tragedy of the commons. It refers to situations in which many rational individuals, acting in their own self-interest (for instance, to feed their families), consume a commonly available resource, until doing so eventually becomes detrimental to all, and potentially even ecologically catastrophic. Consider, for instance, fishing boats that continue to fish stocks whose numbers are declining faster than they can reproduce. It is a centuries-old concept, but was widely popularized by ecologist Garrett Hardin in 1968. Hardin uses the example of a pasture for grazing livestock that is “open to all”:

Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons.*

This new understanding is far from fully accepted or adopted. Its implications are much debated. As well, there is (and perhaps should be) a great diversity of views about how best to express, order, and apply the main principles in corrective action, including correction through environmental law. Some focus on economic tools, while others stress links between social justice and ecological protection or between women and nature. Yet others advocate a less or non-anthropocentric (human-centred) approach that recognizes the intrinsic value of nature and assigns legal rights of some sort to the environment. Emerging versions of sustainability ethics attempt to pull all of these together in an integrated package.

As we will see in the chapters that follow, little of this non-anthropocentric perspective is entirely unprecedented. Many old laws include components that anticipate the new understanding. For example, some environmental assessment laws define the environment as encompassing humans and their communities and cultures along with biophysical and ecological systems. The objectives of many other environmental statutes extend beyond benefits for humans and recognize interactions between human beings and natural systems. Humans are sometimes included as merely one category of “living organism.”

Many long-standing proposals for the law also anticipate recent ideas. For example, in 1948, Aldo Leopold proposed a “land ethic” that would extend ethical or moral considerations to reflect the interconnections of ecosystems so that soil, plants, and animals, along with humans, would merit moral consideration as important parts of the land on which all live. In a 1972 law journal article, Christopher Stone argued in favour of giving trees standing (capacity) to sue, with the help of human “next friends” (substitute litigants), to protect themselves and their habitat. And in 1973, Laurence Tribe published a paper entitled “Ways Not to Think About Plastic Trees,” in which he proposed moving beyond transcendence (human domination over natural objects) to immanence (respect for natural objects and systems).

Proposals for sustainability ethics also predate the Brundtland commission’s introduction of the phrase “sustainable development” into household use. Indeed, the idea that we should integrate moral commitment to environmental protection with advocacy for basic livelihood security, race and gender equality, participative political rights, and other aspects of human justice has a long and distinguished pedigree. Implementation is, however, just beginning. And because of the ambitiousness of the agenda and the extent to which it challenges well-entrenched practices, change in this direction has been and is likely to continue to be slow.

This is the general nature of the relationship between the law and society, or between environmental law and the world of concerns about human–nature relations. Both the big ideas and their application in law continue to evolve. Law is one field, among many, in which the big ideas of the day are introduced, tested, and adjusted or supplanted by new ideas, ideally better ones that have been built on the lessons learned from past failures as well as past successes.
The Role and Place of Environmental Law

Law carries the weight of societal consent and authority. It is composed of the rules and prohibitions that society prescribes through its recognized law-making institutions: the legislatures and the courts. It is not just a set of guidelines, suggestions, or practices that we can choose to follow or not. It lays down requirements that can be enforced through regulatory agencies or the courts.

It is important to keep this mandatory feature of environmental law in mind because so much human activity, including building structures and extracting natural resources, seems to happen under guidelines, codes of practice, and simple convention (or “the way we do this”). But guidelines, codes, and customary practices are only convenient recipes for complying with the basic expectations that underlie or are embedded in environmental (and other) legal requirements.

For example, practitioners of environmental assessment have developed extensive guides and handbooks for doing assessment work. But environmental assessment law and the regulations and formal decisions made under the law set the requirements concerning which proposed undertakings must be assessed, what the scope of an assessment must be, what factors must be considered, how public involvement must be facilitated, what standards must be met, and what follow-up and monitoring must be carried out.

Environmental law is not just about prohibitions and penalties. Many environmental laws are principally devoted to providing legal frameworks for processes that may involve information dissemination, review and research, consultation, planning, actual environmental protection, and remediation actions. Environmental assessment and land use planning laws, for example, centre on establishing structured approaches to decision-making that consider specified factors and provide opportunities for participation by interested and affected parties.8

We can put environmental laws into two main categories: environmental laws of general application and sectoral laws (laws dealing with a resource sector such as water or forests, or an industrial sector such as fisheries or waste management).

Laws of General Application and Sectoral Laws

Environmental laws of general application are typically devoted to conventional environmental issues such as pollution control and natural resource protection, and they apply to everyone and all activities. Laws focused on the activities of particular industrial sectors may be less obviously environmental but can be just as important. They include the many broadly environmental laws that deal with the allocation and
use of natural resources (such as land, water, forests, agriculture, and fisheries) and have significant effects on environmental systems.9

Sectoral laws (such as those governing mining, oil and gas extraction, and nuclear power) may cover a wide range of considerations but include important provisions addressing environmental concerns—for example, concerns about air or water contamination, wildlife habitat damage, human health threats, and maintenance of resources for future generations. For an overview of a variety of sectoral laws, see Chapter 9.

Laws governing activities in particular industrial sectors sometimes appear to overlap or conflict with environmental laws of general application. For example, energy projects are subject to both federal general environmental assessment requirements and evaluations under federal energy sector law. To deal with some of these situations, the laws may provide for harmonization through joint or substitute procedures. An example is the joint board procedure under Ontario’s environmental, water, and municipal planning legislation that allows for a single hearing on matters involving two or more different laws.10 If conflict exists, disputes are resolved by negotiation or, if necessary, by the courts, which apply general principles of statutory interpretation to decide which law prevails. In such cases, the courts carefully assess the language of each law and the objectives that can be understood by reading each law as a whole. Courts ask themselves whether the legislature intended that the

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**BOX 1.3 » Acts Administered by Environment Canada**

Environment Canada administers a number of acts of Parliament, either in whole or in part, and is responsible for meeting several obligations in these acts. The acts administered by Environment Canada appear below.

**Environmental Protection**
- Department of the Environment Act
- International Rivers Improvement Act (IRIA)
- Canada Water Act
- The Lake of the Woods Control Board Act, 1921
- Weather Modification Information Act

**Pollution Prevention**
- Canadian Environmental Protection Act, 1999 (CEPA 1999)
- Fisheries Act
- Antarctic Environmental Protection Act (AEPA)
- Arctic Waters Pollution Prevention Act

**Biodiversity and Conservation**
- Species at Risk Act (SARA)
- Migratory Birds Convention Act, 1994 (MBCA)
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRITA)
- Canada Wildlife Act

**Sustainable Development**
- Federal Sustainable Development Act (FSDA)
- Canada Foundation for Sustainable Development Technology Act

**Other Significant Acts**
- Canadian Environmental Assessment Act, 2012
- Environmental Enforcement Act (EEA)
- Canadian Environment Week Act
- National Wildlife Week Act

general environmental law—that is, the “law of general application”—should apply, or whether the special sectoral law should apply as an exception to the general requirements.

Both environmental laws of general application and special sectoral laws set out enforceable requirements. These requirements can take various forms, of which the most important are the statutory provisions and regulations discussed in Chapter 9. They can also be supplemented by influential guidance documents issued by regulators, covering such matters as desirable and best practices, standard administrative procedures, testing protocols, and enforcement priorities.

Finally, many other powerful laws and law-related influences that do not qualify as environmental law can have significant effects on environmental concerns, including the following:

- liability rules, tax laws, spending powers, and other financial tools that provide the basis for imposing and adjusting incentives for better environmental practices and disincentives for undesirable behaviour;
- general laws ensuring public access to information and other opportunities for effective scrutiny of and participation in important decisions, including environmentally significant ones; and
- the broad law-making power itself, which gives governments the ability to use the plausible threat of new legal obligations to encourage “voluntary” efforts to improve environmental performance.

While we tend to think of particular environmental laws and even categories of environmental laws as individually important, the key consideration is how well the whole suite of laws and related instruments works as an overall regime.

Four Evolutionary Phases in Canadian Environmental Law

The development of Canadian environmental law can be categorized into four evolutionary phases. These four phases show Canadian environmental laws addressing a rough succession of increasingly difficult subjects. Although the phases are reasonably easy to discern in the overall history of federal and provincial environmental law, they certainly did not evolve in a tidy sequential arrangement; nor did they evolve at the same time everywhere.

Phase 1: Common Law Rights and Early Statutes

The 1960s were characterized not just by the Beatles, bell-bottoms, and rebellions against authority. They are also remembered as the decade when legislators began to give serious attention to the environment. Still, a contemporary environmental lawyer transported back to the 1960s would quickly discover that almost her entire kit of environmental law tools was missing. She would find no regulatory statutes
with contaminant discharge limits, no approvals based on these limits, and no civil and criminal penalties for failure to comply.

A bit of legal research (the old-fashioned library kind) would show our environmental lawyer the tools available to her. The federal *Fisheries Act* would be there, as it has been since the 1860s, but it would be limited to blanket prohibitions against the discharge of “deleterious substances” in “waters frequented by fish.”\(^{12}\) She would also find public health statutes, a public nuisance offence in the *Criminal Code*, and a scattering of anti-pollution provisions in natural resource development statutes. Courts would not recognize the right of citizens to challenge government statutory decisions (or non-decisions) that resulted in environmental harm, unless the citizens could show direct harm to their persons or property.

The main tools available to an environmentally conscious lawyer in the 1960s were the *causes of action* under the tort and property law components of the common law (or the *civil law* in Quebec). The most promising of these would likely involve lawsuits in *nuisance* and *negligence*. While effective in some circumstances, nuisance and negligence lawsuits were designed to resolve disputes between private parties and compensate persons harmed. As legal tools, they fall well short of providing comprehensive and systematic environmental protection. Private civil actions against polluters that were also important employers and revenue producers, such as natural resource development operations or industrial plants, often ran squarely into unsympathetic judges. But as the 1960s progressed, citizen awareness of environmental problems increased and prompted demands for more effective ways of combatting them.

This is not to say that civil actions are less important today. In addition, in attempting to recover damages or to halt some action that is harmful or may harm the environment, many “test” cases exist where lawsuits are brought in hope of a decision that breaks new ground in terms of introducing or reinterpreting a principle or interpreting a statute. Sometimes, even if a particular legal action is unsuccessful, it may lay the foundation for a more protective legal regime in the future.

**Phase 2: Waste Control and Cleanup Laws**

In the late 1960s, citizens and governments awakened to the recognition that concerted and comprehensive environmental protection action was needed. Basic air,
water, and land pollution statutes were enacted by the provinces in the late 1960s and 1970s. The federal government broadened its *Fisheries Act*. The objective of these changes was the control of harmful substances that were being deposited on land or discharged into air and water.¹³

**BOX 1.4 » The Purpose of the Fisheries Act, 2007**

2. The purpose of this Act is to provide for the sustainable development of Canada’s seacoast and inland fisheries, through the conservation and protection of fish and fish habitat and the proper management and control of fisheries.


Governments established regulatory systems to identify waste sources and require permits to control the quantity and quality of substances discharged. The terms and conditions of permits were often the result of closed negotiations between the industrial applicants and the regulators. Failure to comply with these requirements was an offence punishable on summary conviction (a minor offence) and resulted in modest fines for those found guilty.

The discharge of waste that was likely to harm the environment or human life or health was often established as a general offence. In this context, the *environment* was generally defined as air, water, and land upon which human life depends. Governments only gradually issued regulations specifying requirements for control of particular contaminants.

The new statutes were *cleanup laws*, designed to regulate the discharge of human and industrial waste into the environment. Among them were comprehensive statutes dealing with air, water, and land pollution. Examples of these statutes include the Ontario *Environmental Protection Act*, the Quebec *Environment Quality Act*, and the BC *Pollution Control Act*.¹⁴ There were also single-element statutes, such as Alberta’s *Clean Water Act*, *Clean Air Act*, and *Land Surface Conservation and Reclamation Act* (these acts were consolidated in the 1990s into the *Environmental Protection and Enhancement Act*).

The underlying assumption was that the natural environment could be used to dispose of, dilute, and cleanse the waste produced by human activity, as long as sufficiently careful management prevented too much contamination at any one time and place.¹⁵ Legislation was a matter of fairly allocating nature’s assimilative capacity. Although these laws have changed significantly, this waste control function still remains at their core.

**cleanup laws** laws designed to minimize discharge of human and industrial waste into the environment
Waste control laws were administered by environmental departments that were largely technical agencies, staffed by scientific and engineering experts who administered the permit or approval schemes. These departments developed guidelines, rather than enforceable regulations, for “safe” waste discharge. Initially, much effort was required simply to bring all waste sources under permit.

**Phase 3: Toxics Control Laws**

When people think of environmentally harmful chemicals or substances, they may expect that the government can step in and quickly deal with the issue. However, the regulation of toxic chemicals is far more complicated.

Emerging evidence in the 1970s and 1980s indicated that waste control laws aimed at allocating assimilative capacity did not address the accumulation in the environment of persistent toxic substances. This realization led to new legislative action. Both levels of government, at least in part, have the authority to regulate toxic substances. In *R v. Hydro-Québec*,¹⁶ the Supreme Court of Canada recognized the federal government’s authority to regulate toxic substances under the criminal law constitutional power (see the case study at the beginning of this chapter).

The major toxics control laws in Canada are the 1975 federal *Environmental Contaminants Act* and its successor, the *Canadian Environmental Protection Act* (CEPA).¹⁷ CEPA is the primary vehicle for the regulation of both existing and new substances in Canada. It provides a number of processes for assessing substances with respect to their risks to environmental or human health, and imposes information requirements on manufacturers and importers introducing new chemicals to Canada. Prior to the enactment of CEPA, over 23,000 substances that were made, imported, or used in Canada on a commercial basis had not undergone a full risk assessment.

The re-enactment of CEPA in 1999 sought to expedite the assessment process by requiring Health and Environment Canada to categorize or identify certain substances that pose a significant risk,¹⁸ namely, those that

- are inherently toxic (cause toxic effects) and persistent (take a long time to break down);
- are bioaccumulative (collect in living organisms and move up the food chain); or
- have the greatest potential for exposure to individuals.

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**waste control laws** laws designed to control discharge of waste using permits and approvals

**assimilative capacity** the ability of air, water, or soil to receive contaminants and cleanse itself without deleterious effects

**toxics control laws** laws designed to control the manufacture, use, sale, transport, storage, and disposal of toxic substances
CEPA established substance inventories or lists to distinguish new from existing substances, to determine reporting requirements for new substances, and to identify which substances may be subject to risk management provisions:

1. **Domestic Substances List.** Under the general scheme of the Act, all existing substances are placed on the Domestic Substances List (DSL).

2. **Priority Substances List.** Substances can be placed on the Priority Substances List (PSL) and undergo a rigorous assessment of their risks to the environment and human health. Of the 69 or so substances assessed to date, over 40 have been found to be toxic as defined under CEPA.

3. **Toxic Substances List.** If a substance is found to be toxic as defined under CEPA, it may be placed on the Toxic Substances List (TSL). Once a substance is on the TSL, the federal government has very broad authority to regulate the substance. Dioxins, polychlorinated biphenyls (PCBs), and mercury, to name but a few, are regulated under these provisions.

More about the categorization process of existing and new substances can be found at www.ec.gc.ca/CEPARegistry/the_act/guide04/toc.cfm. If a substance meets certain criteria, a screening-level risk assessment is undertaken to determine whether the substance is toxic as defined under CEPA. The assessment of substances may also be based on a review of the assessments undertaken in other countries.

A number of other federal statutes deal with potentially harmful substances. These statutes include the *Pest Control Products Act* (PCPA), the *Transportation of Dangerous Goods Act* (and its provincial clones), and the *Hazardous Products Act*. The PCPA regulates products that are used to control pests, insects, and so on (see Chapter 9). The *Transportation of Dangerous Goods Act*, as its name suggests, imposes restrictions and safeguards on the transportation of materials and goods that could be dangerous to the public in the event of an accident. The *Hazardous Products Act* regulates products that may contain toxic or dangerous substances.

On April 8, 2008, the federal government introduced the *Canada Consumer Product Safety Act*, which was intended to replace and update substantial portions of the *Hazardous Products Act* and to respond to growing fears of toxic contamination of consumer products, such as children’s toys. This legislation endows the government with testing powers and the authority to issue mandatory recall orders for unsafe consumer products and to require manufacturers, sellers, and importers to take corrective measures.

Provincial statutes have been tightened with the addition of requirements for the reporting and cleanup of toxic substance spills. As well, liability for spills and contaminated sites rests with landowners and former landowners, and even manufacturers, sellers, and users of toxic substances.19

These laws recognize that environmental protection is a long-term process that must address potential intergenerational effects of environmental damage. Because
scientific knowledge about the toxicity of particular substances is continually developing, these laws include protocols and processes for identification and effective control of contaminants. The approach is preventive and anticipatory, not merely reactive.

Also reflected in these statutes is the fact that toxic substances respect neither ecosystem nor political boundaries. Consequently, the laws are outward-looking in their development, implementation, and administration. The federal statutes took into account toxics research and international standards. Both federal and provincial laws began to reflect interprovincial and federal–provincial undertakings and commitments more clearly than before. They were also made more consistent with international conditions and Canada’s international obligations. For example, in the 1980s, Ontario made it clear that it wanted its water quality program to reflect the zero-discharge objectives for control of persistent toxics under the 1978 Great Lakes Water Quality Agreement between Canada and the United States.20

**Phase 4: Comprehensive Approaches to Environmental Assessment and Planning and Management Regimes**

During the early period when new waste control and cleanup laws were being introduced, many governments in Canada and elsewhere began to consider more anticipatory and preventive approaches to pollution and other environmental problems. Chief among the anticipatory and preventive tools were *environmental assessment* requirements and *planning and management regimes*. Environmental assessment requirements forced proponents of environmentally significant new projects, such as hydro power stations, airports, mines, roads, and landfills, to predict and evaluate the potential effects of these proposed undertakings. Sometimes comparison with reasonable alternatives was required before approvals were granted.

Environmental assessment requirements were imposed hesitantly in most jurisdictions. The federal government relied on a more or less discretionary policy-based assessment process for two decades before it finally passed legislated requirements.21 Ontario, which applied a strong assessment law to public sector undertakings beginning in 1975, left the private sector largely free of obligations. But eventually, the federal government, every province and territory, many land claim agreement areas,

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**environmental assessment** the identification and evaluation of actual or potential effects (positive and adverse) of an undertaking on the environment; “undertakings” may include policies, plans, and programs as well as projects, and “environment” may include social, economic, and cultural as well as biophysical effects, and the interactions among these effects; environmental assessments may also involve a critical review of purposes, comparative evaluation of alternatives, and a follow-up examination of effects

**planning and management regimes** legislative schemes that govern a sector, such as forests, fisheries, farmlands, and watersheds, with the purpose of maximizing the long-term benefits obtainable from the resource while minimizing the detrimental effects of its exploitation
and a substantial number of municipalities had law-based environmental assessment processes.

Although some Canadian assessment processes remain limited in application and ambition, most now go beyond mere evaluation of direct project effects to consider at least some of the following matters:

- cumulative effects (of the project plus other existing and expected activities);
- combinations of ecological, socioeconomic, and cultural effects;
- implications of uncertainties; and
- effects of strategic undertakings (plans, programs, and policies).

Some legal authorities argue that environmental assessment constitutes the only area of environmental law that is unique, and not merely an application of established legal approaches and instruments to environmental issues.

Legislated planning and management regimes have a longer history than environmental assessment. Some law-based processes for decision-making, concerning the management of fisheries, forestry operations, protected areas, and other Crown land uses, for example, go back 100 years or more. But most have been strengthened considerably in recent years in response to a variety of concerns, including the following:

- rising pressures on limited resources, such as old-growth forests;
- conflicts among competing uses, such as those that arise between sprawling suburbs and wildlife habitat; and
- evidence of serious management failures, such as that revealed by the destruction of the north Atlantic cod fishery.

Today many and various legislated planning and management regimes exist. They deal with many types of resources—for example, forests, fisheries, endangered species, farmlands, and watersheds—and many types of sectors—for example, electric power, solid waste, urban growth, and transportation. Not surprisingly, even within the same resource or sector, different provinces have adopted different requirements and procedures. This is evident in the field of forest management, for example.

Despite jurisdictional variations, the general trend is toward more comprehensive approaches that recognize numerous influences and complex implications, consider more response options, give greater respect to uncertainty, and include a wider range of interests.

Many of these regimes no longer focus solely on particular resources or environments, but rather on the interrelations and potential conflicts among many objectives and activities. As a result, environmental law as well as broader land use and other planning laws are beginning to be combined in more comprehensive responses to pressing problems. This change is evident, for example, in the regional growth management initiatives in the rapidly urbanizing areas of southern British Columbia and southern Ontario.22
Five Associated Trends in Environmental Law

Several trends have affected the design and application of the environmental statutes, regulations, and administrative practices introduced since the 1960s. While these trends have had different effects in different jurisdictions, each has been or promises to be significant everywhere in Canada.

Regional, Continental, and Global Effects

In the early days, environmental protection efforts focused on the local effects of particular sources and contaminants. The popular view was that “dilution is the solution to pollution.” Accordingly, when industrial air emissions were causing undeniable damage in the neighbourhood in which a plant was situated, the accepted response was to require construction of a taller emission stack.

This technique was most famously used in Sudbury, Ontario, where acidifying emissions and other contaminants from the nickel smelters had killed much of the local vegetation and left a moonscape suitable for astronaut training. Construction of a 380-metre (1,250-foot) superstack at the Inco smelter in the early 1970s helped reduce local pollution loads and allowed vegetation recovery.23 But it also spread the acidifying contaminants much farther. By the early 1980s, the long-range atmospheric transport of acidifying pollutants from Sudbury and a host of other major and minor sources was clearly having serious effects on the overall acidity of precipitation across huge areas of North America and Europe.24

The dilution solution had led to environmental damage on a regional and continental scale. Eventually, environmental authorities in Ontario and other jurisdictions in North America and Europe were moved to rewrite their environmental laws and facility-specific requirements to deal with effects well beyond the local scale.

Today the best-publicized environmental concern is global climate change, which has also resulted from emissions from a multitude of local sources. While responses

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dilution solution  the idea that air or water pollutants do not pose a problem if they are spread out widely enough, such as by the wind or ocean currents
to this problem are still far from adequate, the planetary scale of the challenge and the need for similarly inclusive action is well recognized.25

Transparency and Citizen Participation

In Canada, as in many countries, the initial inclination of government authorities was to deny or minimize environmental problems, and to resist imposing the full costs of environmental protection on corporate or individual taxpayers. In the late 1960s and early 1970s, a wave of public interest environmental groups emerged to challenge government authorities. Through effective collaboration with the news media, environmental groups raised public awareness of environmental problems and pushed governments toward stronger and more comprehensive environmental protection laws.

Unfortunately, the failure of governments to take initiative in acknowledging and addressing environmental problems contributed to public distrust of government authorities on issues of environmental protection. This distrust was deepened by the frequent weakness of government efforts to enforce the new laws and by the common practice of developing pollution abatement requirements through secret negotiations between regulatory authorities and polluting industries.

As a reaction to these frustrations, environmental groups began to push for greater transparency in the decision-making process, including the following:

- timely and convenient access to information,
- opportunities for direct involvement in deliberations leading to new policies,
- regulatory requirements and case-specific decisions, and
- rights to demand action and to participate in or pursue public interest litigation.

While not all of these efforts have been successful, most Canadian jurisdictions now make decisions related to environmental law in a much more transparent and participatory way than they did 30 years ago. The Supreme Court of Canada improved access to justice by removing doctrinal barriers to bringing legal challenges. The court substituted relatively flexible criteria for discretionary public interest standing. (The concept of standing in courts is discussed further in Chapter 13.) Simply put, the issue is about whether members of the public can challenge the legality of a provision of legislation or a government decision when they may be directly affected by that decision in cases where their property or health may be harmed. The courts have stated that the public can at times bring such lawsuits if certain criteria are met and, most important, if the person bringing the action has a genuine interest in the matter and there is no other way to bring the issues before the court.26 Many of

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standing  the right to sue
the more recent environmental laws, such as CEPA 1999\(^27\) and Ontario’s Environmental Bill of Rights, 1993, encourage public consultation and participation. Citizens may even become decision-makers under provisions for mediated negotiation among stakeholders.\(^28\) It is no longer a two-party government–industry negotiation process.

**International Influence on Precaution**

Modern environmental law in Canada and other nations is increasingly influenced by international law principles and agreements. Below are examples of international agreements explicitly implemented by Canadian environmental laws:

- The Convention on Biological Diversity\(^29\) was implemented by the Species at Risk Act to protect endangered species.
- The London Dumping Convention\(^30\) was implemented by CEPA 1999\(^31\) to reduce marine pollution.
- The Montreal Protocol on Substances That Deplete the Ozone Layer\(^32\) was implemented by CEPA 1999\(^33\) to protect against ozone-depleting substances.

The rising influence of international law results in part from the need for responses to international-scale environmental problems. These problems include climate change, stratospheric ozone depletion, acidic precipitation, biodiversity loss, and trade in toxic substances. Perhaps because of the evident perils involved, international environmental law has also been a forum for significant innovation.

One such innovation that is particularly important is the legal adoption of the precautionary principle, which holds the following:

> When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof.\(^34\)

Essentially, the precautionary principle recognizes that the world of environmental interrelations is extremely complex and that our ability to describe it, much less predict the effects of new interventions, is extremely limited. Uncertainty is therefore always present and often important.

In international law, including multilateral environmental agreements, the precautionary principle is now widely accepted and increasingly applied as customary law. Application in Europe is also extensive. In Canada, precaution is frequently advocated in policy statements, sometimes incorporated in statutory objectives and purposes,\(^35\) and often seen in some areas of implementation. Attention to uncertainties, anticipation of worst-case possibilities, and planning for adaptation are now commonly expected in major environmental assessments.
So far, the influence of the precautionary principle on the character of Canadian environmental law and practice has been limited. Little evidence exists that the principle is applied rigorously in permit and approval decisions or in enforcement actions. However, in 114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town), the Supreme Court of Canada used the precautionary principle in its interpretation of a municipal government statute to decide whether it authorized a municipal bylaw regulating and restricting pesticide use. Justice L'Heureux-Dubé’s use of the precautionary principle was based on her assessment that it was, at least arguably, a principle of customary international law. The Supreme Court also noted this emerging principle in Castonguay Blasting Ltd. v. Ontario (Environment).37

**Effective and Efficient Application of the Law**

Especially since the 1990s, the introduction, design, and application of environmental law in Canada have been affected by increased scrutiny of government initiatives by the public and non-governmental organizations. The main factors driving this trend are the following:

- ideological predispositions and corporate interests,
- concerns about the costs of government programs, and
- doubts about effectiveness.

Environmental laws have not been alone in coming under public scrutiny. But they have received particular attention because industrial interests have associated environmental laws with increased costs. Industry has also suffered long-term frustration as a result of the great diversity of general approaches and specific environmental requirements imposed by different jurisdictions. In response to concerns about costs and regulatory burdens, some governments have repealed or weakened environmental laws. Consider, for example, the virtual elimination of environmental assessment law in British Columbia and the Canadian Environmental Assessment Act, 2012. Some governments have also put more emphasis on voluntary compliance initiatives. At the same time, public interest advocates have consistently underlined the continuing failure of current environmental laws and their application to resolve problems in most areas of environmental concern. More positive initiatives include a new generation of environmental statutes with sophisticated enforcement provisions. Environmental laws are now being drafted as broader packages that include legal, economic, educational, and other means to encourage and enforce environmental improvements.

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*voluntary compliance* an approach that relies on industry and individuals to do the right thing, motivated by conscience, public relations, or a desire to avoid regulation
These new approaches give regulators greater flexibility to choose from a broad range of enforcement tools, depending on what is most appropriate in the circumstances. Some such tools include the following:

- tickets for minor offences,
- criminal indictments for endangering life or health,
- mandatory administrative orders,
- administrative penalties, and
- lawsuits.

The broader packages use regulation and the threat of additional regulation along with more general liability provisions, incentives, multi-stakeholder negotiations, and sector-specific “voluntary” programs to push for compliance and performance beyond legal requirements.

To catch the attention of the corporate sector, some jurisdictions have accompanied these more flexible approaches with provisions for large fines and potential imprisonment for serious environmental offences as well as with provisions for corporate officer and director liability. These provisions have given corporations a strong incentive to review and audit their compliance with environmental requirements, take necessary action, and prepare and implement environmental management policies and plans.

Not all of these flexible approaches are well integrated or consistently applied. Moreover, great variation remains from one jurisdiction to the next. When something goes wrong, the various environmental agencies may point the finger of responsibility elsewhere. For example, provincial agencies may blame federal agencies, and vice versa. However, most agencies also guard their mandate, authority, and independence tenaciously.

The resulting differences in environmental requirements across jurisdictions have frustrated not only many corporate interests that are subject to environmental laws but also environmental advocates who would like to push all environmental laws along a little faster. In response, federal, provincial, and territorial governments, especially through the Canadian Council of Ministers of the Environment, began to take some steps toward harmonizing environmental law requirements. This too remains a work in progress.

Beginning in about 2010, there has been a marked retreat federally and in some provinces on procedural and substantive environmental protection requirements for major projects—particularly energy development and facilities. For example, the re-enactment of the Canadian Environmental Assessment Act in 2012 limited the application and scope of federal environmental assessment in several ways. Application has been restricted by introducing considerable agency discretion as to when assessment is required. Moreover, the scope of assessment has been restricted, and public participation has been restricted to “interested parties.”
For energy facilities, *Canadian Environmental Assessment Act, 2012* along with amendments to the *National Energy Board Act*[^42] and the *Nuclear Safety and Control Act*[^43] changed environmental assessment and project approval requirements in four major ways:

1. The National Energy Board and the Canadian Nuclear Safety Commission have become the sole decision-makers for projects in their areas. No more joint panels with involvement from the Canadian Environmental Assessment Agency will take place.
2. Time limits for decision (and public review) process have been established.
3. Public participation in some regulatory approval proceedings has been limited.
4. Final project approval powers have been removed from tribunals such as the National Energy Board and vested in the Cabinet.

The time limits and participatory restrictions raise procedural fairness questions. Taken together, the changes suggest a distinct economic development priority and an intention to remove independent public fora from decision-making processes. (Box 1.5 examines the larger context of these policy trends.)

**Sustainability Objectives**

The final general trend is the continuing spread of official commitments to sustainability or *sustainable development*. The concept of sustainability, popularized by the 1987 report of the World Commission on Environment and Development (the Brundtland commission),[^44] has been much debated and often misused. But sustainability’s essential role is threefold:

1. to underline the unsustainable character of present inequities and environmental degradation;
2. to recognize the interdependence of social, economic, and ecological well-being; and
3. to encourage attention to the interests of future generations.

In Canada, sustainability has been included as a core purpose of most recent federal, provincial, and territorial environmental statutes. Federal departments and agencies are required to have sustainable development strategies that are regularly reviewed and updated every three years. Manitoba has a *Sustainable Development*

[^42]: National Energy Board Act
[^43]: Nuclear Safety and Control Act
[^44]: World Commission on Environment and Development
Box 1.5 » Canada’s Waning Commitment to Environmental Protection

In decades past, Canada enjoyed a reputation as an international leader in environmental law reform and progressive environmental policies. But a 2013 report from Washington-based Center for Global Development paints a very different picture of Canada’s environmental commitment in the 21st century. The Commitment to Development Index compares the environmental policies of the world’s richest countries, measuring rising or falling greenhouse gas emissions, gasoline taxes, and other indicators. Canada’s ranking has plummeted, and the country now sits last on the list. In their examination of Canada’s lagging legal and environmental performance, Stepan Wood, Georgia Tanner, and Benjamin J. Richardson have noted:

Trail-blazing accomplishments such as the Berger Inquiry into the Mackenzie Valley Pipeline, the Ontario Environmental Assessment Board, “round tables” on environment and economy, and comprehensive land claims agreements with Aboriginal peoples impressed policy makers and scholars worldwide. Indeed, Canada was known as an environmental law “exporter,” setting precedents for other countries and taking a leadership role in international environmental diplomacy. Reinforcing this reputation was Canada’s image as a largely unspoiled wilderness. … But Canada’s reputation has waned in recent decades. It is now a laggard in both policy innovation and environmental performance, known for inaction and obstruction on such issues as climate change. Scholarship on Canadian environmental law in international journals has become much more critical. Environmental law courses in non-Canadian universities now typically study Canada, if at all, only as an historical example.*

Figure 1.1 Index Comparing Environmental Policies Among Rich Countries

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<tr>
<th>Country</th>
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<tr>
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<td>Canada</td>
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Part I  Introduction: The Evolution, Framework, and Challenges of Environmental Law

Act, which is, among other things, meant to encourage and guide government decision-makers to integrate the broad range of interrelated sustainability considerations into their decision-making under existing and future laws, even when these laws have a specific, narrow focus. Several other provinces (e.g., Nova Scotia, Quebec, and British Columbia) have sustainability-centred statutes, plans, ministries, and reporting requirements.

As with the closely associated precautionary principle, the adoption of sustainability objectives is still much stronger in expressed intention than in rigorous application. But important practical applications have been made under environmental law. The Alberta Land Stewardship Act, which authorizes province-wide basic-scope land and resource use planning, incorporates sustainable development objectives.45 Several review panels established under the Canadian Environmental Assessment Act46 have used the law’s sustainability purposes as justification for requiring project proponents to show that their proposed undertakings would make a positive contribution to sustainability rather than merely avoid causing significant negative effects.

All of these trends are continuing, and we will return to them at the end of the text, where we consider what may lie ahead for environmental law in Canada. But now, with this brief historical review in hand, we are ready to take a more comprehensive look at the environmental law system.

SUMMARY OF KEY POINTS

- Environmental law is highly normative—encompassing the statutory and common law that can be used to protect the environment.
- Environmental law is aimed at protection of the natural as well as the dependent human environment, including use of environmental resources, prevention of damage, compensation, and public governance and processes.
- First-stage waste control laws of the 1970s led to toxics control laws and eventually to environmental assessment, planning, and management as well as modern laws that incorporate ideas of sustainability and, to a degree, precaution against environmental threats even where the likelihood of harm is not fully known.
- Law is composed of the rules and prohibitions that society prescribes through legislatures and courts and lays down requirements that can be enforced through regulatory agencies or the courts. This mandatory feature of environmental law is important because so much human activity, including building structures and extracting natural resources, happens under guidelines, codes of practice, and simple convention.
- The four evolutionary phases in the development of Canadian environmental law are (1) common law rights and early statutes, (2) waste control and cleanup
KEY TERMS

assimilative capacity  
negligence

causes of action  
nuisance

civil law  
planning and management regimes

cleanup laws  
sectoral laws

common law  
standing

dilution solution  
sustainable development

environmental assessment  
tort

environmental assessment law  
toxics control laws

environmental law  
tragedy of the commons

environmental regulatory law  
voluntary compliance

laws of general application  
waste control laws

DISCUSSION QUESTIONS

1. The courts’ role in the development of Canadian environmental law appears to be relatively minor. Is this correct? Explain.

2. What accounts for the exceptionally broad scope of Canadian environmental law?

3. How can the apparent weakening in the late 2000s of environmental legislation by the federal government and some provinces be explained? Was this already happening as a result of market approaches to environmental regulation and voluntary initiatives?

4. From your reading of the chapter, would you conclude that Canadian environmental law has been successful in protecting and improving the environment?

SUGGESTED READINGS


NOTES


4. See, e.g., Canadian Environmental Protection Act, 1999, SC 1999, s. 3(1), “environment,” and s. 64.


9. Ibid.

10. See Ontario Environmental Review Tribunal Act, 2000, SO 2000, c. 26, sched. F.


14. BC’s Pollution Control Act was replaced by the Waste Management Act, RSBC 1996, c. 118, and then the Environmental Management Act, SBC 2003, c. 53.


17. The Environmental Contaminants Act, SC 1974-75-76, c. 72, later the Environmental Contaminants Act, RSC 1985, c. E-12, was repealed and replaced by the Canadian Environmental Protection Act, RSC 1985, c. 16 (4th Supp.), and is now the Canadian Environmental Protection Act, 1999, SC 1999, c. 33.

18. CEPA, s. 64 specifies toxicity criteria.


20. The agreement was signed on November 22, 1978 and amended by the protocol signed November 18, 1987.


27. See CEPA 1999, s. 6, “National Advisory Committee”; “Part 2—Public Participation,” including “Environmental Registry,” “Application for Investigation by Minister,” and “Environmental Protection Action.”


30. The convention was signed in 1972 and entered into force in August 1975.

32. The protocol was signed in 1987 and entered into force in January 1989.
35. See, e.g., CEPA, 1999, s. 76; Species at Risk Act; and Ontario Endangered Species Act.
39. See Canadian Environmental Assessment Act, s. 83, “Administration.”
44. UN World Commission on Environment and Development, supra note 2.
45. See Alberta Land Stewardship Act, s. 1(2), “Purposes of Act.”
46. See Canadian Environmental Assessment Act, s. 83, “Administration.”