

# Environmental Law

Section F of Stikeman Elliott's *Doing Business in Canada*



# Environmental Law

## 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 discharges into the environment, licence and permit requirements, spill reporting and clean-up requirements, 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 criminal sanctions and give courts the power to strip profits, order licence suspensions and issue restoration, restraining and abatement orders.

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 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 and trustees have been addressed both in the federal *Bankruptcy and Insolvency Act* and in a variety of provincial legislative initiatives.

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Chambers Global identifies the firm as one of Canada's two top-tier Corporate/M&A practices and it is frequently ranked among Canada's leaders in domestic and cross-border M&A league tables from Thomson Financial, Mergermarket and Mergerstat Review. Stikeman Elliott is also the leading adviser in Canadian securities offerings, ranking first from 2005 to 2009 (inclusive) in Bloomberg league tables in terms of overall volume, as well as receiving top rankings from the *Financial Post*. The firm's National Litigation Group, whose specializations include class actions, securities litigation and restructurings, has been ranked among the top three business litigation practices in Canada by Lexpert. Among Stikeman Elliott's other highly regarded practices are competition/antitrust (named as a leader by the *Global Competition Review*), taxation (highly ranked by Lexpert) and structured finance (widely considered to be Canada's foremost practice in that field).

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