

Green Federalism in Canada

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Overview

- The constitution is 'environmentally blind', While the Act sets out many specific areas of jurisdiction, it does not explicitly dictate who has the power to create environmental laws. As a result, Canadian courts have decided that this power is shared between the two levels of government.
- Where there is a direct conflict between federal and provincial environmental statutes in relation to the same matter, federal law prevails, but such conflicts are rare, and overlapping requirements are common.
- Municipalities also play a growing role.

Federal Role

Federal environmental laws are based on federal constitutional powers such as international borders; international relations; trade and commerce, navigation and shipping, seacoasts and fisheries, criminal law, and a somewhat contentious power to legislate in the national interest for “Peace, Order and Good Government”. The federal government also has primary jurisdiction over federal works and undertakings, such as the land and activities of the federal government, its agencies and corporations, the armed forces, and a variety of federally regulated entities such as the railways, aviation, inter-provincial transport, grain elevators, etc.

- *Canadian Environmental Protection Act, 1999 (CEPA)*
- *· Fisheries Act*
- *· Canadian Environmental Assessment Act (CEAA)*
- *· Species at Risk Act (SARA)*
- *· Transportation of Dangerous Goods Act, 1992*
- *· Canada Shipping Act*
- *· Hazardous Products Act*
- *· Pest Control Products Act*

Provincial Role

Provincial environmental laws are based on provincial constitutional powers, such as over municipalities, local works and undertakings, property and civil rights, provincially owned (public) lands and natural resources. In inland areas, most environmental laws that affect private activity are provincial.

Each province has its own environmental statutes. For example, Ontario statutes include:

- *Environmental Bill of Rights*
- *Environmental Protection Act (EPA)*
- *Ontario Water Resources Act (OWRA)*
- *Clean Water Act*
- *Environmental Assessment Act (EAA)*
- *Pesticides Act*
- *Safe Drinking Water Act*
- *Nutrient Management Act*
- *Green Energy Act*
- *Toxics Reduction Act*

Municipal Role

- Municipalities may regulate activities through legislation, including sewer-use bylaws, noise bylaws and property-standards bylaws. In addition, municipalities in Ontario and Québec integrate environmental approvals with planning approvals.
- Some municipalities require comprehensive environmental site investigations and public notification prior to issuing certain permits. For example, before issuing a planning approval or building permit, a municipality may require verification of contamination for the subject property, and may impose a remedial plan plus financial assurance as conditions of approval. In Québec, a municipality cannot issue a construction permit or approve a subdivision of land where the land in question is listed in the municipal registry of contaminated lands — unless the project or subdivision is consistent with an approved rehabilitation plan.
- Details of bylaws and municipal requirements vary between the different municipalities.

Enforcement and Policy

Every jurisdiction has an environmental ministry of some form, but environmental responsibilities can be widely shared within each government. For example, under federal environmental laws, the following Ministers are responsible for administration of the principal statutes:

- · Minister of the Environment: CEPA, SARA, CEAA, the Migratory Birds Convention Act, 1994, Canada Wildlife Act;
- · Minister of Fisheries and Oceans: Fisheries Act and the Oceans Act;
- · Minister responsible for Parks Canada: Canada National Parks Act and the Canada National Marine Conservation Areas Act;
- · Minister of Health: Hazardous Products Act
- · Minister of Transport: Transportation of Dangerous Goods Act, 1992
- The provinces often have similar duplication, and municipal governments also regulate many environmental activities.

Recent trends

- Over the past several years, a number of provinces have enacted legislation to promote the use of clean energy and reduce greenhouse gases (GHG), which directly targets global warming. For example, through its Climate Change and Emissions Management Act (CCEMA) and Specified Gas Emitters Regulation, Alberta regulates GHG emissions from large industrial emitters. Under British Columbia's Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act, the province can set standards for the renewable fuel content in B.C.'s transportation fuel blends.
- Ontario's Green Energy Act, 2009 exempts renewable energy projects from a wide range of municipal and provincial approvals, and has contributed to a rapid growth in renewable electricity generation. This Act introduced North America's first comprehensive feed-in tariff (fixed-price contract) program that guarantees specific rates for energy generated from renewable sources. It is designed to encourage the development of renewable energy projects by a range of generators, including First Nations and Métis communities, homeowners, farmers, schools, stores, factories, co-ops, offices and larger-scale commercial generators.
- Canada's federal government has not responded to climate change imperatives. In 2011, Canada officially revoked its Kyoto commitments, and is no longer a party to the Protocol. Although newly elected government has made this a priority.
- A major concern in Canada is the potential liability of municipalities for failing to protect against foreseeable damage relating to matters that fall under their jurisdiction, including erosion, sewer and storm water, fire and floods. For example, sewage and storm water infrastructure in many municipalities is being built to standards based on historical weather patterns, not the severe weather events that lie ahead.