

Content

Compared to constitutional laws or even labour laws, environmental law is a relatively new and evolving area in the legal realm. In Canada, the environmental movement began in the late 1960s. In 1971, the federal government established the Department of the Environment to protect the natural environment. This included conserving renewable resources, protecting Canada's water, and enforcing boundary water regulations. It is also responsible for organizing environmental policies and programs at the federal level.

Major Environmental Legislation *The Canadian Environmental Protection Act*



With the greater consumption of resources and the growing awareness of the environment, governments began to take a more active role in developing and enforcing laws dealing with the environment. Areas such as chemical waste dumps, air pollution, water pollution, resource depletion, and the destruction of many species of wildlife have come under some form of regulation in Canada.

In 1999, the federal government enacted the *Canadian Environmental Protection Act* (CEPA). An improvement on previous environmental legislation, CEPA outlines the role of the federal government in environmental management, the environmental protection management process, and key programs aimed at protecting the environment and human health. The act concerns itself with sustainable development and pollution prevention. It focuses on a variety of issues including the reduction, management, and elimination of the amount of toxic waste that is released into the environment. The authorities strengthened the regulatory and enforcement sections of the Act with a greater emphasis put on citizen input into the decision making process.

Along with the federal act, each province and territory also has its own environmental protection regulations. In Ontario, the provincial equivalent of CEPA is the Environmental Protection Act (EPA). Amended several times, this act regulates the environment at a provincial level. Like its federal counterpart, the EPA provides a framework for preventing and controlling the release of pollutants into the environment. The act focuses on waste management, the emissions of motor vehicles, ozone depleting substances, and spills. Penalties under the Ontario EPA are set forth in the act and include both individual and corporate penalties. The Ontario Ministry of the Environment provides information for citizens on the state of the environment in their province, along with links to the major environmental legislation in the province.



Both the federal and provincial governments organized an Environmental Registry, which gives the public access to information on environmental policies and regulations. The Environmental Registry provides information on various projects under assessment, details on the type of assessment taking place, projects that gained approval, and any objections to approvals. An example of recent environmental assessments on

a federal level can be found on the [Environmental Registry](#) website.

The Environmental Assessment Act

Like the CEPA, the *Environmental Assessment Act* (EAA) has a federal and provincial equivalent. The purpose of the act, at both the federal and provincial levels, is to integrate environmental factors into the planning and decision making process of proposed projects. The purpose of the act is to create sustainable development, and prevent the decline in the quality of the environment. It is the job of the environmental assessment process to anticipate problems that would arise out of proposed government and corporate projects. It is at this stage of the planning process that the public, under the EAA, is encouraged to participate in the environmental assessment process. A description of the project, its purpose, alternatives to the project, and an evaluation of these alternatives must be made during the process. As well, how the environment will be, or might be affected also needs to be addressed. Since the process is so complex, some environmental assessments can take a long time to complete. It is the complexity of the project which can slow development and be costly, but at the same time it tries to ensure that environmental concerns are taken into consideration. The biggest obstacle is balancing economic and environmental concerns. The final decision is made by the Ministry of the Environment.

The Environmental Bill of Rights

In 1993, the Ontario legislature passed the *Environmental Bill of Rights*. This ground breaking piece of legislation states that the citizens of Ontario have the right to a healthy environment and that it is the government's primary role to protect, conserve and restore the environment. Consequently, the citizens of Ontario have the right to participate in the environmental decision making process by actively commenting upon the laws, policies, and regulations, as well as appealing any environmental decisions made by the government. Under the *Environmental Bill of Rights*, the government is accountable for its environmental decisions. Any two citizens who feel that there is a violation of environmental legislation have the right to request an investigation. A citizen can also challenge through the court system, by suing to protect a public resource or for nuisance.

Municipalities

While major environmental legislation is accomplished at the provincial and federal level, municipalities also play an important role in environmental issues. They have authority over sewer systems and waste management programs. Recycling is a major part of municipal environmental efforts. Other municipalities seek to regulate the use of pesticides. In 2001, the Supreme Court of Canada ruled that municipalities have the right to make bylaws which govern pesticide use.



Conclusion

While three major pieces of environmental legislation are discussed in this area, laws governing the environment are numerous and often address only specific aspects of a problem. As a result, who actually is responsible for these areas is often under debate. Legislation is spread among a variety of different departments within the federal, provincial, territorial, and municipal governments. While these pieces of legislation herald a new phase of environmental awareness, in reality, there are very few investigations, or lawsuits brought forward because of the immense amount of time and/or money needed to launch such challenges.

Role of the Courts

The role of the court system in Canada varies. Due to the numerous jurisdictions and different government levels involved, the courts are often asked to intervene to settle jurisdictional issues. Interpreting legislation is a key role played by the court system. Courts are also instrumental in applying the law to environmental disputes when individuals launch civil suits. [Tort Law](#) is often used in cases of environmental damage. Some torts that are often used in environmental cases are [nuisance](#) and [negligence](#). Often the principle of [strict liability](#) applies in environmental actions i.e., the very fact that the violation of an environmental law or regulation exists will mean that there can be no defence. In these civil cases, the plaintiff can seek damages for harm done and/or additional redress, such as an injunction which is a court order to stop someone from doing something.

tort

derived from the Latin word tortus which meant wrong. In French, "tort" means a wrong". Tort refers to that body of the law which will allow an injured person to obtain compensation from the person who caused the injury. Every person is expected to conduct themselves without injuring others. When they do so, either intentionally or by negligence, they can be required by a court to pay money to the injured party ("damages") so that, ultimately, they will suffer the pain cause by their action. Tort also serves as a deterrent by sending a message to the community as to what is unacceptable conduct.

nuisance

in tort law, an action alleging that there has been unreasonable interference with the use and enjoyment of real property

negligence

careless conduct that causes foreseeable harm to another person

strict liability

culpability based on the commission of an actus reus and inability to prove the defence of due diligence

Tort Laws and the Environment

The Tort Law of nuisance arises when someone unreasonably interferes with or disrupts the use or enjoyment of your property. For example, loud noise, smoke, water pollution, and odours that disturb the use and enjoyment of your property may be causes for a private nuisance civil action. A public nuisance occurs when a whole group is affected by an action. The common remedies for nuisance are monetary compensation and/or an injunction to stop the nuisance.

In negligence cases, reasonable care must be evident in order to avoid causing injury. To be entitled to compensation, the plaintiff must show that the defendant did not live up to the standard of care and that they should have anticipated the resulting damage. Evidence of physical harm or property damage must be demonstrated for compensation. Determining a reasonable standard and proving that the defendant should have foreseen the damages are difficult issues to prove in environmental cases.

In strict liability cases, the defendant is responsible for damages and loss caused by his/her acts or omissions, regardless of culpability. To avoid liability, the defendant must prove that all reasonable care was taken to avoid the damages.

Polluter-Pays Principle

In Canada, along with several other industrial countries, the concept of the polluter paying for the costs associated with the regulation of toxic substances and pollutants is common. This idea is embodied in the Canadian Environmental Protection Act, which upholds the idea that companies or people that pollute should pay the costs they impose on society.

Precautionary Principle

This concept is used to manage threats of serious or irreversible harm where there is scientific uncertainty. In the case of the environment, the precautionary principle holds there is no need to establish harm before environmental action can be taken. This idea is embodied in the *Canadian Environmental Protection Act*, which upholds the idea that the lack of scientific evidence is not an excuse for causing irreversible harm to the environment.

Conclusion

While the courts play an instrumental role in interpreting, applying, and enforcing environmental law in Canada, civil litigation is costly and lengthy and in most cases, individuals find it difficult to launch such civil suits.

After reading the content sections of this activity read and answer the following questions.

1. Examine sections 186-191 of the *Environmental Protection Act in Ontario*. What are the penalties for violating the *Environmental Protection Act*?
2. How does the *Environmental Bill of Rights* affect you? Who can be a part? What are your rights under the *Environmental Bill of Rights*?
3. Re-read through the content section regarding torts and provide an example of how each of these torts could be used in environmental law. You may want to review the *Environmental Bill of Rights*.
4. Take a current piece of environmental legislation and summarize the main features, the problems with the legislation, and how these problems could be remedied.
5. On April 26, 2007, the federal government announced its plan entitled "Turning the Corner: An Action Plan to Reduce Greenhouse Gases and Air Pollution". Review the plan and comment on how it will help improve the environment and what problems still need to be addressed.
6. In May 2000, E. coli bacteria contaminated the water supply in Walkerton, Ontario. As a result, more than 2300 people became ill and seven people died. Research the Walkerton case. What happened? How did the Ontario government handle the situation? What recommendations resulted from the Walkerton Inquiry? How has the tragedy changed views on drinking-water safety? Why is safe drinking water not a protected right?

1. Please review:

[Environment Canada – Environmental Registry — A Guide to Understanding the Canadian Environmental Protection Act](#)

<http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=E00B5BD8-1&offset=1&toc=show>

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