

Review

An insight into environmental laws in Canada

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Concern for the environment has been increasing around the world since the early 1980s. In the year 1987, the Brundtland report heightened awareness of the need for significant legislative and other changes. People in Canada are gradually becoming more aware of the urgent need to protect the environment. Canadians are involved with many projects to protect fragile ecosystems and stop further environmental destruction. Some projects are individual efforts and some are carried out through Non-Governmental Organizations (NGOs) such as World Wildlife Federation and Greenpeace. Other projects are initiated by the Government of Canada. Enforcement of Canadian environmental law can involve three stages: voluntary abatement; mandatory rectification; and, as a last resort, prosecution and penalties. The federal agencies and most provincial ministries have designated abatement and enforcement personnel. Written enforcement policies set out criteria with respect to how and when each of the three enforcement stages is to be applied. Federal enforcement policies include the compliance and enforcement policy for the Canadian Environmental Protection Act, 1999 and the compliance and enforcement policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act. Many, but not all, provincial regulators have similar policies, which can be obtained by searching their websites or requesting a copy in writing. This paper has been prepared to present an overview of environmental laws in Canada. In this manuscript, an effort has been made to: (a) discuss Canadian environmental legislation at various levels such as federal, provincial and municipal levels; and (b) give an insight into the trends in Canadian environmental law, and emergency response and government investigations.

Key words: Federal, provincial, municipal environmental law, Canada.

INTRODUCTION

'Environment' is a term that includes physical place; resources of land, water and air. In order to prevent the harmful consequences and effects of the global warming and climate change, there is need to protect the environment. In recent years, international society has become more concerned about environmental pollution.

Growing awareness of environmental problems has resulted in more governmental regulations.

Environmental law addresses the relationship between humans and the physical environment, and is an area of law with both domestic and international implications. It is a complex and interlocking body of treaties, conventions,

statutes, regulations, and common law that operates to regulate the interaction of humanity and the natural environment, toward the purpose of reducing the impacts of human activity. Environmental law draws from and is influenced by environmental principles, such as ecology, conservation, stewardship, responsibility, and sustainability.

Pollution control laws generally are intended (often with varying degrees of emphasis) to protect and preserve both the natural environment and human health.

Resource conservation and management laws generally balance (again, often with varying degrees of emphasis) the benefits of preservation and economic exploitation of resources. From an economic perspective, environmental laws may be understood as concerned with the prevention and preservation of common resources from exhaustion. The limitations and expenses that such laws may impose on commerce, and the often unquantifiable (non-monetized) benefit of environmental protection, have generated and continue to generate significant controversy.

Concern for the environment has been increasing around the world since the early 1980's. In 1987, the Brundtland report heightened awareness of the need for significant legislation and other changes. People in Canada are gradually becoming more aware of the urgent need to protect the environment. Canadians are involved with many projects around the world to protect fragile ecosystems and stop further environmental destruction. Rephrase (suggestion): some projects are initiated by the Government of Canada while others are carried out through individual efforts and Non-Governmental Organizations (NGOs) such as World Wildlife Federation and Greenpeace.

This paper presents an overview of environmental laws in Canada. It discusses Canadian environmental legislation at various levels, such as federal, provincial and municipal levels. This paper also gives an insight into the trends in Canadian environmental law, and emergency response and government investigations.

ENVIRONMENTAL LEGISLATION IN CANADA

Environmental law in Canada applies to businesses across virtually all sectors of the economy and all regions of the country. The federal and ten provincial governments, as well as the three territorial governments, are active in the creation and evolution of environmental law to meet the changing environmental challenges of the day, such as: climate change, toxic substances management, waste reduction, urban renewal through brown fields redevelopment, and the facilitation of environmental assessments of infrastructure and renewable energy projects.

Canadian environmental law will continue to evolve to keep pace with the times. Water management challenges,

adaption to climate change, and the interconnection of environmental regulation and global trade, promise to be the issues of the immediate future. A large and diversified country, with a significant industrial base, a wealth of natural resources in mining, forestry and fisheries, large expanse of agricultural lands, coastal frontage on three oceans, arctic and subarctic territories, Canada is sensitive to virtually the full range of environmental issues facing the planet. Canadian environmental legislation includes: Canada National Parks Act, Canada Water Act, Canada Wildlife Act, Canadian Environmental Assessment Act, Canadian Environmental Protection Act, Department of the Environment Act, Environment Week Act, Fisheries Act, International Boundary Waters Treaty Act, International River Improvements Act, Lac Seul Conservation Act, Lake of the Woods Control Board Act, Manganese-Based Fuel Additives Act, Migratory Birds Convention Act, National Wildlife Week Act, Resources and Technical Surveys Act, Species at Risk Act, Weather Modification Information Act, and Wild Animal and Plant Protection and Regulation of International and Inter-provincial Trade Act.

The legislative powers of the federal parliament and provincial legislatures are expressly defined by the Constitution Act, 1867; Canada's founding legal document. However, the power to legislate with respect to the environment is not expressly included in the powers granted to the federal parliament or the provincial legislatures. The federal government's express authority over criminal law, fisheries, shipping and navigation, interconnected undertakings, peace, order and good government, has been used to justify a wide variety of federal environmental legislation. The provincial governments have generally relied on their authority over property and civil rights, matters purely of a local nature, and local works and undertakings in justifying the passage of environmental legislation.

MANAGEMENT OF ENVIRONMENTAL LEGISLATION AND IMPLEMENTING AGENCIES

Environment Canada (EC) is the department of the Government of Canada with responsibility for coordinating environmental policies and programs as well as preserving and enhancing the natural environment and renewable resources. Its ministerial headquarters is located in les Terrasses de la Chaudière, Gatineau, Quebec. Under the Canadian Environmental Protection Act (R.S., 1999, c. 33), EC became the lead federal department to ensure the cleanup of hazardous waste and oil spills for which the government is responsible, and to provide technical assistance to other jurisdictions and the private sector as required. The department is also responsible for international environmental issues (e.g. Canada-USA air issues).

Under the constitution of Canada, responsibility for envi-

ronmental management in Canada is a shared responsibility between the federal government and provincial/territorial governments. For example, provincial governments have primary authority for resource management including permitting industrial waste discharges (e.g. to the air). The federal government is responsible for the management of toxic substances in the country (e.g. benzene). EC provides stewardship of the environmental choice program, which provides consumers with an ecolabelling for products manufactured within Canada or services that meet international label standards of Global Ecolabelling Network. EC continues to undergo a structural transformation to centralize authority and decision-making, and standardize policy implementation.

ENVIRONMENTAL LEGISLATION AT VARIOUS LEVELS

Federal

Canadian Environmental Protection Act (CEPA)

The Canadian Environmental Protection Act, 1999 (CEPA), is the federal government's primary environmental regulatory statute. It provides for broad federal regulatory authority over the management and control of toxic substances and a range of other issues from environmental emergencies to the cross-border movement of wastes and recyclable materials. CEPA is a consolidation of a number of pre-existing federal environmental statutes.

CEPA provisions concerning toxic substances provided for a wide range of controls for any substance which is classified as '*toxic*' and listed in Schedule 1 of the Act. The minister of the environment has the authority under CEPA to obligate any person to provide samples, information, and data regarding a particular substance. Special procedures are in place regarding substances which are new to Canada. Additionally, CEPA imposes a duty to report and take remedial action on those who are in control of or own a spilled toxic substance. The same duty is imposed on persons who contribute to the initial release of a toxic substance. Authority to issue orders in the case of environmental emergencies is also included in the CEPA.

CEPA is supported by a variety of enforcement powers. A person in breach of CEPA may be given '*monetary penalties*' (or in certain cases '*imprisonment*'). Alternative dispositions through environmental protection and alternative measures agreements may be possible. Officers and directors may be prosecuted if they authorize, assent to or acquiesce in the commission of an offence by a corporation. They may also be prosecuted if they fail to take all reasonable measures to ensure corporate compliance.

National Pollutant Release Inventory (NPRI)

CEPA also establishes the NPRI. Facilities which release one or more of the substances found in the NPRI substances list in an amount greater than the reporting thresholds are required to submit a detailed inventory of their emissions to EC. The data collected through NPRI reporting is made accessible to the public.

Fisheries Act

Federal authority regulations with respect to water quality and pollution are primarily found in the Fisheries Act. While the act as a whole is generally concerned with the protection of commercial and recreational fisheries, provisions of the act prohibiting the deposition of deleterious substances into water frequented by fish, and the harmful alteration or destruction of fish habitat are enforcement which, in effect, establish virtual zero tolerance thresholds for unapproved water discharges, and disruptive water works.

Dangerous goods

Both federal and provincial law exists with respect to the transportation of dangerous goods. At the federal level, the Transportation of Dangerous Goods Act, 1992 (TDGA) establishes a comprehensive regulatory regime; all of the provinces have adopted an identical regime with respect to intra-provincial transportation. Eight classes of goods are regulated ranging from explosives to dangerous organisms.

The TDGA regulates on a wide range of issues outlined in the Transportation of Dangerous Goods Regulations. The Act contains a full range of enforcement powers including provisions for officer and director liability. Environmental assessment at the federal level is governed by the Canadian Environmental Assessment Act (CEAA). To trigger an assessment under CEAA, a federal authority must: either be the proponent of the project, provide financing to the proponent, give federal lands to be used for the project, or issue a license or approval required for the project to be carried-out.

The legislation discussed earlier includes several of the most prominent federal environmental statutes. However, it should be noted that there are several other federal statutes which contribute to the body of Canadian federal environmental law, such as: the Pest Control Products Act, the Navigable Waters Protection Act, the Marine Liability Act, and the Canada Shipping Act, 2001.

Provincial

The provincial legislatures are empowered by the Constitution Act, 1867 to legislate with respect to a very wide

range of environmental issues. In general, each province has developed a complex web of regulations and statutes which address matters such as: waste management, waste disposal, air pollution, water pollution, fuel handling, contaminated site remediation, and environmental assessment.

The provinces each typically have a central environmental conservation and protection statute which establishes both general and specific prohibitions with respect to discharges of contaminants and the disposal of waste and provides for a means of approval by the administrative branch of government. Examples of these statutes include: Ontario's Environmental Protection Act, British Columbia's Environmental Management Act, Alberta's Environmental Protection and Enhancement Act, and Quebec's Environmental Quality Act.

Spills and clean-up

Spills of pollutants are generally given special treatment as a particular class of contaminant discharge. Under the provincial environmental protection statutes, persons who own or are in control of a pollutant at the time of a spill may be subject to a range of obligations regarding notification and the remediation of adverse impacts, regardless of whether they are at fault. Failure to respond adequately may result in an order to remediate and prosecution.

The provincial environmental protection statutes may also contain special provisions regarding the clean-up, use and control of contaminated sites. For instance, Ontario's Record of Site Condition Regulation sets out detailed requirements pertaining to the investigation and documentation of contaminated site conditions. Most importantly, in certain circumstances, there is a requirement for the filing of a Record of Site Condition (RSC). The regulations also specify who is qualified to certify a RSC, and what information must be included.

Waste management

Waste management is also generally regulated under provincial environmental protection statutes. Approval may be required for the operation, alteration or construction of a waste management system or disposal site. Applications for approval will need to disclose plans and specifications of the proposed site or system. In some situations, a hearing by an administrative tribunal may be required prior to approval. Regulations regarding waste management often include specific standards which must be maintained, reporting requirements and fees payable to the province. Provincial environmental protection statutes usually contain provisions which authorize the imposition of fines or other punishment for breaches of the act.

Environmental assessment statutes

The provinces have generally also enacted environmental assessment (EA) statutes or regulations. Examples include: Ontario's Environmental Assessment Act, British Columbia's Environmental Assessment Act, and Alberta's Environmental Assessment Regulations.

Typically, EA legislation applies to projects proposed by the province or provincial agencies, municipalities and private sectors where they are designated by the regulations as being subject to an EA. Ontario has also recently provided for more streamlined EA approvals for green energy projects through a wide range of amendments to environmental legislation as provided for under the Green Energy Act, 2009.

Generally speaking, proponents of projects are required to submit both proposed terms of reference and an EA for approval) in accordance with the approved terms of reference. The ministry administering the process will review the EA and coordinate with the proponent in an effort to have any outstanding issues resolved. Once reviewed, the public will be notified and given an opportunity to comment on the proposed project and EA. Final decisions regarding a project are often reviewable by an administrative tribunal.

Canada's three territories (the Northwest Territories, Yukon and Nunavut) do not have inherent jurisdiction entrenched in the Constitution Act, 1867 as do the provinces. The jurisdictions of the territories are wholly defined by the power granted to them by the federal government through enabling statutes.

Environmental laws in the territories generally are reflective of federal environmental law. Territorial specific environmental legislation is a relatively recent occurrence. The enabling statutes for the territories, such as the Yukon Act, contain provisions which expressly provide for the paramount of federal law in cases of conflict with territorial law. To the extent that territorial environmental law is similar to that of the provinces, it can generally be said that territorial regulation is less complex and extensive.

Municipal

Municipalities across Canada have used the law-making authority granted to them by the provinces to enact a variety of environmentally related by-laws. An example is the "City of Toronto's former Pesticide By-law" which banned the use of pesticide products for purely cosmetic purposes. The By-law was recently displaced by Ontario's Pesticides Act to the same effect. Most recently, the city of Toronto has enacted the "Environmental Reporting and Disclosure By-Law" which requires businesses to report: (1) their annual usage, production; and (2) release of 25 listed toxic chemicals where the quantity of the chemical exceeds a reporting threshold.

ENFORCEMENT

Environment Canada Enforcement Branch is responsible for ensuring compliance with several federal statutes. The Governor-in-Council appoints enforcement officers and pursuant to section 217(3) of the Canadian Environmental Protection Act, enforcement officers have all the powers of peace officers. There are two designations of enforcement officers: Environmental Enforcement and Wildlife Enforcement.

The former (Environmental Enforcement) administers the Canadian Environmental Protection Act and pollution provisions of the Fisheries Act and corresponding regulations. The latter (Wildlife Enforcement), on the other hand, enforces: Migratory Birds Convention Act, Canada Wildlife Act, Species at Risk Act, and The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.

All officers wear dark green uniform with black ties and a badge (appear on the right). Environmental enforcement officers only carry baton whereas wildlife enforcement officers are also equipped with firearm. The minister may also:

- 1) appoint members of the Royal Canadian Mounted Police, fishery officers, parks officers, customs officers and conservation officers of provincial and territorial governments as enforcement officers; and
- 2) allow them to exercise the powers and privilege of Environment Canada officers.

On March 4, 2009, a bill to increase the enforcement capabilities of EC was introduced into the house of commons. The Environmental Enforcement Bill has the provision to: increase the fines for individuals and corporations for serious offenses, give enforcement officers new powers to investigate cases, and grant courts new sentencing authorities that ensure that penalties reflect the seriousness of the pollution and wildlife offences.

TRENDS IN CANADIAN ENVIRONMENTAL LAW

Environmental legislation in Canada is continuing to grow and evolve. Recently, there has been an effort to increase the use of administrative penalties, the imposition of fines for the commission of environmental offences on an absolute liability basis. This trend can be seen at both provincial and federal levels. Examples include Ontario's passage of the Environmental Enforcement Statute Law Amendment Act and federal Environmental Violations Administrative Monetary Penalties Act. Further government initiatives are expected to reduce the use and creation of toxic substances. For example, Ontario's Toxics Reduction Act, 2009 promotes: voluntary reductions by requiring reduction plans; voluntary reduction targets, and toxic substance use; and creation and reduc-

tion disclosure obligations to the public, the workforce and the government.

CANADIAN ENVIRONMENTAL ASSESSMENT ACT AND REGULATIONS

The Canadian Environmental Assessment Act (the Act) is the legal basis for the federal environmental assessment process. Regulations under the Act are used to determine when the Act applies and what type of environmental assessment is required, and to prescribe procedures for government departments and agencies to coordinate the environmental assessment process.

Regulations under the Canadian Environmental Assessment Act are mentioned as follows: Canada Port Authority Environmental Assessment Regulations (Comprehensive Study List Regulations; Crown Corporations Involved in the Provision of Commercial Loans Environmental Assessment Regulations; Establishing Timelines for Comprehensive Studies Regulations; Exclusion List Regulations, 2007; Federal Authorities Regulations; Inclusion List Regulations; Law List Regulations; Projects outside Canada Environmental Assessment Regulations; and Regulations Respecting the Coordination by Federal Authorities of Environmental) and Assessment Procedures and Requirements.

EMERGENCY RESPONSE AND GOVERNMENT INVESTIGATIONS

The Canadian environmental legislation provides that when an environmental mishap occurs, one must be prepared to respond in terms of controlling the escape of a contaminant or pollutant, obtaining the assistance of environmental specialists, and notifying government agencies.

One must also be prepared for the government investigation which will likely follow in an attempt to determine the degree of negligence involved in the occurrence. Depending on the outcome of such an investigation, regulatory charges of a criminal nature or civil claims for compensation may be brought against the corporation and/or individual employees. Brief description of the emergency responses as well as the government investigations involved under various settings is presented in the following.

Notification and clean-up

Any time there occurs a discharge of a contaminant into the natural environment "out of the normal course of events"; the Ontario Ministry of Environment must be notified 'forthwith'. If the discharge is "abnormal in quality or quantity in light of all the circumstances", thereby con-

constituting a 'spill' under the Ontario Environmental Protection Act, or involves a specific substance regulated by such federal legislation as the Transportation and Dangerous Goods Act and the Canadian Environmental Protection Act, notification of the local police, the local municipality, the federal Departments of Transport or Environment, Canadian Transport Emergency Centre (CANUTEC), and the Canadian Coastguard will also be required. The CANUTEC is operated by the Transportation of Dangerous Goods (TDG) Directorate of Transport Canada.

These statutes also require that the spill of a pollutant or release of a dangerous good or toxic substance, be cleaned up immediately. For example, the Ontario Environmental Protection Act states as follows:

"The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment".

While the very occurrence of an environmental mishap may involve a regulatory offence, further offences will be committed if a spilled substance is not controlled, cleaned up and reported to the appropriate government authorities. In addition, the risk of personal injuries which can lead to civil claims will be increased if the company is slow to respond to the mishap. It is thereby imperative that the company have in place an emergency response plan which anticipates possible mishaps and the avenues by which spilled materials may escape the property. Other provisions are as follows:

- 1) Company personnel must be trained and equipped for responding to spills;
- 2) The names, addresses and telephone numbers of environmental specialists capable of assisting in the cleanup of the spill must be kept on file; and
- 3) Procedures for reporting environmental mishaps, both internally and to government agencies, must be established and communicated to all employees.

Getting the facts

While little time can be wasted before notifying government authorities of a significant occurrence, management must obtain, to the extent possible, all relevant facts relating to the event and the company's response thereto. If the event is in any way likely to give rise to regulatory charges or civil litigation, management should involve legal counsel as early as possible. In this way the making of internal reports describing the event and any internal investigation related thereto, can benefit from what is known as "solicitor-client privilege" and thereby, not be subject to government seizure. At a minimum, someone

in the corporation should be designated to take charge of responding to an environmental mishap and handle all inquiries or requests for information from government agencies and other third parties. The sooner the company gets all the facts, the sooner it can make a well informed decision on how it wishes to respond to government agencies and the world at large.

Preparing for government investigations

It should come as no surprise that even run-of-the-mill environmental occurrences may become the subject of a criminal investigation. Environmental authorities at every level of government in Canada have been given a strong mandate to take tough action to enforce and be seen to enforce, environmental laws. In Ontario, the Ministry of Environment has two types of provincial officers who will generally have direct dealings with the private sector. They are known as: "Abatement officers" and "Investigation and Enforcement officers".

The former officers deal with relatively routine concerns such as responding to public complaints and carrying out periodic inspections of activities within their jurisdiction known to be environmentally sensitive. The Investigation and Enforcement officers are only engaged once the abatement officer decides that a responsible person or company is failing to take its environmental obligations seriously or that the circumstances of a particular event require criminal sanction. Once the investigation and enforcement officer is involved, it should be assumed that: (a) court proceedings will likely result, and (b) anything and everything stated to the officer can and will be used to secure a conviction against the company or individual employees. However, even statements made to an abatement officer at the initial stage of the government's involvement, may be used in a prosecution.

If at all possible, all dealings with government authorities should be channeled through a single person, in order to ensure that investigators do not go on a "fishing expedition" or speak to poorly informed employees. However, while every effort possible must be exercised to manage the situation and control the trans-mission of information within and beyond the company, one cannot hinder or obstruct a provincial officer in the lawful performance of his or her duties. This in itself constitutes an offence. Provincial officers acting under the Environmental Protection Act have very wide powers to: (a) inspect, (b) take copies of relevant documents, and (c) take samples and ask questions.

Once it becomes clear that a regulatory offence may have been committed, individual employees may choose not to provide information to the provincial officers, for fear that they may incriminate themselves. However, this is an individual decision and management cannot, in any way, be seen to coerce or intimidate an employee, because the employee may seek the enforcement of

provincial environmental law. Unfortunately, a corporation does not have a right against self-incrimination.

As already indicated, management should involve legal counsel as early as possible in its investigation of the relevant events and in its response to any government investigation. Information regarding the company's environmental control or preventive maintenance systems must be identified and preserved in anticipation of formulating a due diligence defense. Such information may be given to the investigators early on, in order to avoid the commencement of a prosecution. However, this decision will inevitably require the benefit of legal counsel. It will also be important to monitor oral information and documentation provided by employees to the government investigators. Accordingly, employees should be trained in advance to notify management if and when they are contacted by government investigators. Copies of any written statements prepared by investigators must be obtained.

Given the fact that any information provided to the government authorities may be used against the company and individual employees, all employees must be advised of the seriousness of an investigation. The company itself cannot prevent its employees from cooperating with investigators. However, by stressing the fact that an individual can and will be prosecuted, it can be expected that the employees will think twice before dealing carelessly with investigators. Employees should be told that if they choose to cooperate, they are only obligated to provide information relevant to an environmental matter under investigation and they should only answer the questions. They should be discouraged from volunteering information; particularly, with respect to matters they do not have direct knowledge. They should never provide hearsay information. They are not obligated to sign a written statement and they should explicitly reserve the right or opportunity to revise or clarify information given to an investigating officer. If at any time during a government investigation, management wishes to seek legal advice, it should not hesitate to request an opportunity to do so before allowing the investigators access to the plant and its employees. Management should also decide to what extent it wishes to make available independent legal counsel to its employees.

Solicitor-client privilege

An important protection against the disclosure of company documents during a government investigation is the privilege respecting confidential communications between a solicitor and his or her client. This privilege operates at all times, subject to waiver by the client. In order to effectively assert this privilege, one must understand which documents are affected by it, have in place a system for segregating and controlling such documents and

assert the privilege as early as possible.

Professional communications of a confidential nature between a solicitor and his or her client, which take place with the purpose of obtaining legal advice, are privileged. It is not necessary that the communications should be made either during or relating to an actual, or even an expected legal proceeding. It is sufficient if they pass as professional communications in a professional capacity, subject to one or two specific exceptions, such as communications between solicitor and client that had been made to facilitate the perpetration of a crime or fraud.

Information generated within the company should be directed to legal counsel and marked as being "Legal and confidential" and for the purposes of providing management with legal advice. Internal reports should be made only to legal counsel, with copies to a very select group within management. Such information must not be disclosed to third parties or in any way treated in a "non-confidential manner". Otherwise, the privilege may be lost.

A separate file should be created containing all such legal communications. In the event, the investigator should request a review of company files, any legal documentation should be sent immediately to legal counsel or withheld until the request has been discussed with legal counsel. If required, a legal procedure exists for dealing with any challenge to the company's position that the documentation is in fact privileged.

The protection of third party communications to a solicitor, made by an agent instructed by the client to communicate with the solicitor, is particularly important in environmental matters. Very often the specific source of a contaminant entering into the environment is unknown and environmental specialists may be retained to provide advice to the company and its legal counsel. Accordingly, where the company wishes to obtain such information or simply conduct a review or audit of its operations for the purpose of insuring compliance with environmental laws, it is recommended that (a) the consultants be retained by legal counsel and (b) final advice to the company be made through its solicitors.

Whether any written reports based on such a review or audit will in fact be protected by the privilege, will likely depend on the existence of circumstances which support the need to provide legal advice. One recent case indicates that as long as the dominant purpose of the specialists' or consultants' advice is to provide for the giving of legal advice, the privilege will be sustained (<http://www.blakes.com/pdf/EnvLawOntCan.pdf>, accessed on May 14, 2012). Naturally, the fact that a legal proceeding is imminent will strengthen the claim that the purpose of the communication is to provide for the giving of legal advice.

CONCLUSION

Under Canada's constitution, environmental regulation is

shared between the federal government and the 10 provinces/3 territories (referred to collectively as 'provinces'). 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 environmental laws are based on federal constitutional powers such as: international borders, international relations, trade and commerce, navigation and shipping, seacoasts and fisheries, and criminal law.

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.

The principal federal statutes are: 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, and Pest Control Products Act.

Provincial environmental laws are based on provincial constitutional powers 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, and Toxics Reduction Act.

Acceptable activities, standards and thresholds vary between jurisdictions. As well, many sectoral laws (that is, those relating to a resource or industry) include substantial environmental requirements. In addition, Canada has a vibrant system of common law and administrative law, which often have a marked effect on environmental law.

REFERENCES

- Canadian Environmental Law Research Foundation (1984). Preliminary Analysis of a Federal Environmental Bill of Rights. Toronto. http://en.wikipedia.org/wiki/Environment_Canada, Accessed on December 23, 2011.
- http://www.acc.com/legalresources/quickcounsel/elic_rjs.cfm, Accessed on December 22, 2011.
- <http://www.blakes.com/pdf/EnvLawOntCan.pdf>, Accessed on May 13, 2012.
- http://www.iclg.co.uk/index.php?area=4&country_results=1&kh_publications_id=187&chapters_id=4404, Accessed on December 24, 2011.
- <http://www.nrcan.gc.ca/minerals-metals/business-market/recycling/3313>, Accessed on December 25, 2011.
- <http://www.saskschools.ca/~kiddlaw/environmental/lesson1/1a.html>, Accessed on December 23, 2011.
- http://www.tc2.ca/pdf/H3_Environmental.pdf, Accessed on December 23, 2011.
- World Commission of Environment and Development (1987). Our Common Future (The Brundtland Report), Oxford University Press, London.