Environmental

Doing Business in Canada

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JURISDICTION

In Canada, the federal government has a much smaller role in environmental regulation than does the U.S. federal government. The authority to create laws dealing with the environment is shared between the provincial and federal government. Each province and territory in Canada has its own environmental protection legislation, whose statutes are the primary regulatory tools. In Ontario, the primary environmental statute is the *Environmental Protection Act* ("**OEPA**"), first enacted in 1971. Other environmental statutes in Ontario include the *Ontario Water Resources Act, Safe Drinking Water Act, 2002*, the *Clean Water Act, 2006*, and the *Environmental Assessment Act*. Similar types of legislation are found in most provinces.

The federal government is responsible for limited interprovincial environmental legislation as well as international rules. For instance, the transportation of dangerous goods that occurs across provincial borders or international borders is governed by federal legislation. The federal government also takes the lead in negotiating international environmental initiatives and treaties (e.g., Paris Agreement or the Great Lakes Treaty). In addition, the federal government presides over the *Canadian Environmental Protection Act* ("**CEPA**") which, despite its name, has limited applicability beyond federal lands and toxic substances. It is through CEPA that greenhouse gasses have been listed as toxic, subsequently allowing for their regulation by the federal government.

Municipalities, using localized public health and welfare as justification, have entered the environmental domain for more than two decades (e.g., lawn pesticides, green roof standards, sewer discharges and local emissions), enacting by-laws that can have a significant impact on facility design, operation and development. It is important to appreciate that particular requirements vary from municipality to municipality, which may be in addition to federal and provincial requirements in the same area.

Most governments have endorsed "polluter pays" and "get tough on polluters" policies, though legislation does not necessarily rely on this principle to find liability and assign responsibility for addressing pollution. These policies have resulted in several governments amending their environmental statutes to permit the issuance of administrative penalties, or environmental tickets, for relatively minor events of non-compliance and characterizing events of non-compliance as continuing offences with each day constituting a new offence. Most jurisdictions provide director and officer liability for certain issues of environmental non-compliance with some requiring an actual environmental harm to impose such liability.

Government ministries or agencies, such as the Ontario Ministry of the Environment, Conservation and Parks ("**MECP**"), can issue orders to persons who have management or control of property (e.g., officers and directors) to investigate, mitigate and/or remediate pollution. Director's Orders have been issued under the OEPA, which attribute no-fault liability to corporations and/or individuals, including to directors and officers personally. In one case, prior to a determination on the merits, the MECP entered into a settlement agreement with the former directors and officers of a bankrupt corporation who paid approximately $4.75 million for remediation costs. The extent of liability will be an issue for directors, especially where insolvency of the company is a risk.

In Ontario, using class proceedings to prosecute environmental torts has also become harder as the *Class Proceedings Act* was significantly amended a few years ago to make certification even more difficult than it was before.

WATER

Canada has no single over-arching water quality protection statute administered by the federal government akin to the *Clean Water Act* in the United States. That being said, the federal government is responsible for the *Fisheries Act* which, although ostensibly directed at the regulation of Canadian fisheries, has been used increasingly in recent years by the federal Department of Fisheries and Oceans to regulate water pollution in Canadian waterways. Aside from the federal *Fisheries Act* and the *Canadian Navigable Waters Act*, each province and territory has its own water quality statute(s) which it administers through its Ministry of the Environment or Natural Resources. These statutes generally establish water quality standards, water taking/transfer limits, permitting and approval regimes and enforcement measures. The quantum and quality of water takings (ground and surface) and discharges by industry are also regulated, with water transfers becoming increasingly controversial.

The *Ontario Water Resources Act, 1990* ("**OWRA**"), governs the quality and quantity of both surface water and groundwater within the province of Ontario. The purpose of the OWRA is to provide for the conservation, protection and management of Ontario's water and for its efficient and sustainable use, in order to promote the province's long-

term social and economic well-being. The OWRA is administered by the MECP and prohibits the discharge of polluting material in or near water (section 30), prohibits or regulates the discharge of sewage (section 31), enables the designation and protection of sources of public water supply (section 33) and regulates well drilling and construction (sections 36 to 50).

In 2006, Ontario introduced the *Clean Water Act, 2006* ("***Clean Water Act***"), to protect existing and future sources of drinking water. The *Clean Water Act* mandates the creation of source protection areas and regions to ensure the safety of drinking water supplies. It governs the preparation, amendment and review of source protection plans by source protection committees within each source protection area or region. The Act also expands on the effect of source protection plans by addressing conflicts, monitoring requirements and annual progress reporting. Additionally, the *Clean Water Act* regulates threats to drinking water.

Within this broader legislative regime, Environmental Compliance Approvals ("**ECA**") for municipal water and wastewater infrastructure are administered by the MECP. These include municipal Consolidated Linear Infrastructure Environmental Compliance Approvals ("**CLI-ECA**"), which are single, system-wide environmental permissions that apply to all sewage works components within a municipal sewage collection system or municipal stormwater management system.[1]

CLI-ECAs are issued under the EPA to satisfy the approval requirements set out in section 53 of the OWRA. This approach replaces the previous system of multiple project-specific approvals, streamlining regulatory oversight while maintaining environmental protection standards. Under CLI-ECA, the municipality is responsible for ensuring compliance with all conditions of approvals, including alterations and expansions.[2]

The types of sewage works included in a CLI-ECA for a municipal stormwater management system typically include:

- all sewage works for residential stormwater management that are owned by a municipality, or that may be transferred to a municipality pursuant to an agreement, including pipes, swales, ditches, stormwater management facilities and low-impact development; and
- sewage works that are designed for stormwater management but may receive combined sewage overflows or sanitary sewage overflows in an emergency.

Industrial or commercial sewage works for stormwater management are not typically included. Likewise, privately owned sewage works for stormwater management that will not be transferred to a municipality are not included. These systems continue to be regulated through separate approval mechanisms.[3]

Similar legislation was enacted in British Columbia. In 2016, the province brought into force the *Water Sustainability Act* ("**WSA**") to ensure a sustainable supply of fresh, clean water. The Act governs both groundwater and surface water in B.C. Under the WSA, the *Groundwater Protection Regulation* ("**GWPR**") specifically governs activities related to wells and groundwater across the province. The GWPR sets minimum standards for well construction, maintenance, deactivation and decommissioning, and recognizes the individuals certified to drill wells, install well pumps and perform related services.

AIR

The federal government has air emission regulatory tools contained in the CEPA. The federal government passed a number of regulations to limit or reduce air emissions, including regulations for heavy duty vehicles (including full-size pickups, semi-trucks, garbage trucks and buses) and electricity generation from coal. CEPA necessitates the reporting of emissions where the substance is listed in the National Pollutant Release Inventory substance list and the amount of the emission is in excess of the reporting threshold. The National Pollutant Release Inventory is a publicly accessible database that tracks the release, disposal and transfer of pollutants.

Provincial and territorial legislation is generally of more importance to commercial and industrial emitters in Canada. For large emitters the federal government has reporting obligations while the provinces tend to issue permits and approvals for emissions related to facilities. Ontario has incorporated several of the U.S. Environmental Protection Agency's air modeling practices into its legislation. Reporting obligations of emissions are increasingly becoming the norm as reporting thresholds are progressively lowered.

1 Municipal Consolidated Linear Infrastructure Environmental Compliance Approvals, Ontario, 2026

2 Ibid

3 Ibid

Climate change-related legislation is a patchwork across the country. Several provinces have worked with certain U.S. states through the Western Climate Initiative ("**WCI**") on emissions trading programs. In addition, carbon taxes are used in some jurisdictions, including British Columbia and Alberta. In late 2011, Quebec, a WCI Partner, adopted a regulation under its *Environmental Quality Act*, which creates a cap-and-trade system for greenhouse gas emissions. In 2016, Ontario enacted the *Climate Change Mitigation and Low-carbon Economy Act* ("***Climate Change Act***"), which created a cap-and-trade system. Ontario began trading in 2017 and joined the emissions trading bloc in place between Quebec and California with its first participation in a joint auction occurring in early 2018. In July 2018, the newly elected Ontario government repealed the Climate Change Act and ended Ontario's participation in cap and trade. However, the Province of Nova Scotia joined the WCI in May 2018 and began auctioning in 2020.

In early 2019, the federal government implemented a federal carbon pricing system for provinces that have not designed their own pollution pricing systems in accordance with the federal government's climate action plan. The *Greenhouse Gas Pollution Pricing Act* ("**GGPPA**") is comprised of an output-based pricing system and a fossil fuel tax. In September 2020, in *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, the Supreme Court of Canada heard appeals from three provincial Courts of Appeal (Ontario, Saskatchewan and Alberta) regarding the constitutionality of this legislation and additional provinces joined these proceedings as intervenors. The Supreme Court of Canada handed down its decision in March 2021, holding that the federal government has the jurisdiction to impose minimum carbon-pricing standards. As a result, any province that does not have its own equivalent program is obligated to follow the federal rules.

The purpose of the GGPPA is to reduce greenhouse gas emissions by ensuring that carbon pollution pricing applies broadly across Canada. The federal backstop system has two components: (1) a regulatory charge on fossil fuels and (2) an output-based pricing system. The federal backstop applies, in whole or in part, in provinces and territories that request it or that do not implement a system meeting the minimum national stringency criteria.[4] Effective April 1, 2025, in accordance with subsection 166(4) of the GGPPA, the *Regulations Amending Schedule 2 to the Greenhouse Gas Pollution Pricing Act* and the *Fuel Charge Regulations* (SOR/2025-107) reduced fuel charges to zero under Part 1.

NOTABLE CANADIAN CLIMATE LITIGATION

Worldwide, there is significant litigation aimed at addressing the obligations of governments and corporations to address climate change, with varying degrees of success. Novel torts are arising in the context of climate change litigation, including youth successfully arguing in an Australian court that a duty of care is owed by governments to children when making regulatory decisions under environmental protection legislation.

Most recently in Canada, in the case of *Mathur et al. v. Ontario*, seven youth garnered significant attention through their lawsuit aimed at the Ontario government, following the province's decision to cancel its involvement in the cap-and-trade program. The youth argued that this decision was a violation of their *Canadian Charter of Rights and Freedoms* rights under section 7 (the right to life, liberty and security of the person) and section 15 (the right to non-discrimination, guaranteeing equal protection under the law). It further sought a declaration that Ontario violated an unwritten constitutional principle that governments cannot engage in conduct that will, or can reasonably be expected to, result in future harm, suffering or death of a significant number of its own citizens.

Most lawsuits of this nature have failed at the preliminary stage of "justiciability," but this litigation passed that initial hurdle and was ultimately heard on the merits in September 2022. The Superior Court released reasons dismissing the application in April 2023, but while doing so made a number of notable comments and findings, including:

- Ontario's target fell severely short of what scientific consensus required, thus increasing the risk to Ontarians' life and health;
- the court rejected Ontario's arguments that its emissions were globally insignificant, recognizing that "every tonne of CO2 emissions adds to global warming and leads to a quantifiable increase in global temperatures that is essentially irreversible on human timescales"; and
- positive rights are not currently recognized under the Charter. But the court found that the applicants made a compelling case that climate change and the existential threat that it poses to human life could justify the imposition of positive obligations under section 7 of the Charter, though it did not find so on the facts of this case.

4 Regulations Amending the Output-Based Pricing System Regulations: SOR/2025-108, Canada Gazette, 2025

The Ontario Court of Appeal heard the appeal of *Mathur* on January 15, 2024. On appeal, the applicants argued that the application judge mischaracterized their claim as seeking to impose positive obligations on the provincial government to combat climate change. The Court agreed with the applicants but declined to decide the application, citing the seriousness of the matters, the additional issues raised and the potential need for further evidence. Instead, the application was remitted for a new hearing before the same or another justice of the Superior Court (*Mathur v. Ontario*, 2024 ONCA 762). On December 17, 2024, the applicants applied for leave to appeal. On May 1, 2025, the Supreme Court of Canada denied leave to appeal and leave to cross-appeal the decision of the Court of Appeal. As a result, the matter will return to the Superior Court to be resolved based on the Court of Appeal's ruling.

The case was scheduled to be heard by the Superior Court of Justice in December 2025. However, a few days before the hearing, the Ontario government enacted legislative amendments removing the requirement to set greenhouse gas emission reduction targets. The applicants therefore requested that the hearing be adjourned. Subsequently, the applicants brought a motion seeking to have the Court of Appeal reopen their previous appeal in light of the legislative repeal and determine whether Ontario had violated its *Charter* obligations. A decision on the motion is pending.

The Federal Court of Appeal ("**FCA**") recently heard two challenges to federal climate policy: the La Rose claim, brought by a group of 15 children and youth from across Canada, and the *Misdzi Yikh* claim, brought by two houses of the Wet'suwet'en First Nations. In both claims, the plaintiffs alleged that the federal government's approach to climate change infringes on their constitutional rights. The plaintiffs did not specify any particular regulations and statutes; instead, they claimed that Canada's overall approach to climate change is deficient. In 2020, the Federal Court rejected both claims without leave to amend on the grounds that they were not justiciable.

However, in an appeal of the *La Rose* decision, the FCA disagreed, at least in part, holding that the claimants' section 7 claims could proceed, while their section 15 claims could not. The Court held that the section 7 claims were linked to Canada's failure to meet its commitments under the Paris Agreement, which were later ratified by Parliament. The FCA seemingly opened the door to further environment-related Charter challenges, explaining that while the claims were "novel," they were not doomed to fail: "The law is not static and unchanging – actions that were deemed hopeless yesterday may succeed tomorrow." The Court noted that the effects of climate change are widespread and grave, and disproportionately threaten Indigenous communities and youth; climate change might thus constitute the "special circumstances" necessary to establish positive rights under section 7 of the Charter.

A motion to strike the post-appeal amended pleadings in the *La Rose* action was scheduled to be heard on February 6, 2025. However, on December 19, 2024, the parties reached an agreement under which the plaintiffs undertook to file a further amended statement of claim. Since then, the *La Rose* action has continued to progress and is now expected to become one of the first Canadian climate cases to proceed to trial. The trial is scheduled to begin on October 26, 2026.

Parallel developments have occurred in the related Wet'suwet'en-led litigation. In *Lho'Imggin v. Canada*, 2025 FC 1586, the Federal Court considered a motion to strike a further amended claim advancing both constitutional arguments and novel common law claims grounded in customary international law. The case builds on earlier proceedings in *Misdzi Yikh v. Canada*, which were initially struck but partially revived on appeal with leave to amend.

LAND

Crucially for cross-border transactions, contracting out of regulatory liability under Canadian law is much more difficult than it is in the United States. In the U.S., it is often expected that a U.S. corporation that wishes to engage in business with or by a Canadian corporation can, in its agreement with the Canadian entity, insert provisions whereby the U.S. entity limits liability that may result from the Canadian operations or assets. However, Canadian law does not allow a party to contract out of its regulatory liability for events or actions that occur in Canada. The best that can be done is to negotiate indemnities. As a result, a U.S. corporation that acquires contaminated land in Ontario one day could be subject to statutory orders and penalties to clean up the property the next day.

That being said, environmental legislation across Canada is primarily (but not exclusively) drafted and interpreted by the courts in accordance with the "polluter-pays" principle. Accordingly, the focus of regulators and the courts is typically on the entity responsible for the pollution, at least as a first option,

whether that entity was the immediate previous owner or a more remote former owner. Nonetheless, it is clear that under the OEPA, persons can be ordered to take measures to address contamination they did not cause.

Ontario is one of the provinces to have substantive and directed legislation for the remediation of contaminated lands or brownfields. The *Environmental Protection Act* ("**EPA**") provides certain basic immunity from the MECP orders under the OEPA (the MECP's primary enforcement tool). These include orders with respect to a once-contaminated property where prescribed remediation has been conducted and proper filings with the MECP have been made by a property owner or entity in control. The EPA does not include any funding mechanism, similar to the *Comprehensive Environmental Response, Compensation, and Liability Act* in the United States, meaning that the remediation of brownfields in Canada, including Ontario, remains primarily market driven. In some instances, municipalities may work with the developer to create incentives for the remediation of brownfields. These may take the form of community improvement plans, waivers of development charges and property tax incentives, including tax increment financing ("**TIFs**").

Recent amendments to Ontario Regulation 153/04 (the Record of Site Condition ("**RSC**") Regulation), introduced by the MECP in October 2025, are intended to streamline the RSC process and reduce regulatory burden, particularly in the context of redevelopment and housing projects. A key change is the prohibition on filing RSCs based solely on a Phase One Environmental Site Assessment where an RSC is not otherwise required under the EPA or the regulation itself. Exceptions apply where the RSC is submitted voluntarily or where the requirement arose before October 23, 2025. Where a proposed land use, such as mining and waste disposal, may result in long-term environmental management costs even after operations have ceased, the government may require financial assurance to be provided at the time of permitting the facility to avoid the potential for a legacy of unfunded environmental contamination. Financial assurance is intended to ensure that legacy environmental issues are properly funded and to avoid complications should a company fall into financial distress. The adequacy of such financial assurance and the priority ranking of environmental obligations in bankruptcies and restructurings continues to be a highly contentious area.

TOXIC SUBSTANCES

The CEPA regulates the production, manufacture, use and disposal of toxic substances, excluding pesticides, which have a separate combination of federal and provincial regulation. Through this legislation, the Minister of the Environment can require samples and information with respect to a substance in order to assess toxicity. Under the CEPA, a substance is defined as "toxic" if it has an immediate or long-term harmful effect on the environment or biological biodiversity, or if it constitutes, or may constitute, a danger to human life or health. The CEPA contains penalty provisions, including mandatory minimum fines and maximum fines up to $12 million. The federal government continues to review its classification of several substances to ensure that the proper safeguards are in place given the current state of scientific knowledge about the health and environmental impacts of the substance.

Provincial legislation or municipal by-laws may impose similar or more restrictive standards for the release, storage and disposal of hazardous materials, including the preparation of plans to reduce the use of certain toxic products. Provinces and territories generally adopt federal standards for the transportation of dangerous goods.

As of January 1, 2023, businesses and institutions subject to Ontario's amended Regulation 347: General – Waste Management are required to report their activities and pay fees through the Resource Productivity and Recovery Authority ("**RPRA**") online Hazardous Waste Program Registry. The Ministry of the Environment, Conservation and Parks remains responsible for oversight, compliance and enforcement of hazardous waste regulations.

Most recently, the federal government weighed in on plastics pollution by releasing regulations under CEPA that add "plastic manufactured items" to the List of Toxic Substances (in Schedule 1 of the CEPA). These regulations prohibit the manufacture, import and sale of single-use plastic checkout bags, cutlery, foodservice ware made from or containing certain plastics, ring carriers, stir sticks and straws, subject to accessibility laws for persons with disability-related needs.

These new rules were the subject of a judicial challenge in the Federal Court of Canada in March 2023. In its decisions from November 16, 2023, the Federal Court struck down the classification of plastics as unconstitutional and unreasonable. The federal government has since appealed the decision. On January 25, 2024, the FCA granted an interim

stay of the Federal Court's initial decision, meaning that the regulation of single-use plastics under the CEPA remains in effect. The FCA also ordered an expedited appeal on the matter. In 2026, the Federal Court allowed the appeal and upheld the Governor in Council's order listing plastic manufactured items ("**PMIs**") as toxic substances under Schedule 1 of CEPA. The Court held that PMIs fall within CEPA's broad definition of a "substance" and that the listing decision was a reasonable exercise of Cabinet's discretion, supported by evidence that plastics may cause environmental harm. Emphasizing CEPA's precautionary framework, the Court noted that CEPA requires only that a substance may enter the environment and may cause harm, not proof of actual or universal harm. It also clarified that listing a substance is an enabling, first-stage step in a two-stage regulatory scheme, separate from later decisions regarding regulation of specific plastic products.

SPECIES PROTECTION

Regulation exists at both the federal level (e.g., *Species at Risk Act*, "**SARA**") and the provincial level (e.g., in Ontario, the *Species Conservation Act, 2025*, "**SCA**") to protect both species and their habitats. These acts set out permitting, monitoring, reporting and remediation requirements for activities that affect listed species or their habitats, with considerable fines for non-compliance. Endangered species legislation can have a significant impact on the timing and costs of every kind of development, from infrastructure to housing.

Ontario's Bill 5, *Protect Ontario by Unleashing Our Economy Act, 2025*, made significant changes to the protection of endangered species in Ontario. On March 30, 2026, Ontario's *Species Conservation Act* ("**SCA**") came into force, along with its implementing regulations, repealing the *Endangered Species Act* ("**ESA**") and revoking its regulations.

The new SCA regime represents a shift in both policy orientation and regulatory approach to species conservation. Whereas the ESA was explicitly recovery focused and prioritized species protection with limited consideration of economic impacts, the SCA reframes species conservation as one factor to be balanced against broader objectives such as economic growth and infrastructure development. Although scientific input remains part of the process, the SCA expands Cabinet and ministerial discretion over species listing, exemptions and regulatory design, reducing the binding effect of scientific determinations.

Shortly after the SCA came into force, a Notice of Constitutional Question and Notice of Application were filed on April 8, 2026, challenging the validity of the legislation on the basis that it unlawfully delegates legislative authority to Cabinet. The outcome of this litigation may have important implications for the interpretation and enforcement of the SCA going forward.

The SCA expressly excludes certain categories of species that are already protected under federal legislation. For example, migratory birds remain governed by the *Migratory Birds Convention Act, 1994*, one of Canada's oldest environmental statutes. This federal statute contains regulations to protect migratory birds, their eggs and their nets from destruction by wood harvesting, hunting, trafficking and commercialization. Prosecutions continue under this statute. The United States has a corresponding law to implement the treaty.

At the federal level, SARA is designed to meet Canada's commitments under the international Convention on Biological Diversity. The Act seeks to prevent wildlife from disappearing and to manage wildlife of special concern through protection of both threatened species and their habitats. Under SARA, an independent committee identifies at-risk species and assesses their conservation status. If the species is designated as extirpated, endangered or threatened, SARA dictates that the federal government must prepare a Recovery Strategy (designed to stop or reverse species decline).

British Columbia does not have a dedicated *Endangered Species Act*. Instead, the province relies on various pieces of legislation that collectively govern threats to species at risk and the management of their habitats. Examples include the *Wildlife Act, Forest and Range Practices Act* ("**FRPA**"), *Oil and Gas Activities Act* ("**OGAA**"), *Ecological Reserves Act, Park Act, Land Act* and the *Mineral Tenures Act*. The *Wildlife Act* protects most vertebrate animals from direct harm, with exceptions for regulated activities such as hunting or trapping. It also authorizes direct management of wildlife or human activities. Both the FRPA and the OGAA include regulations identifying wildlife species at risk. Under the FRPA, efforts are focused on species within forest or range practices, while the OGAA ensures permit applications are in line with Wildlife Habitat Areas ("**WHAs**") for any oil or gas activities. The *Ecological Reserves Act* provides for the establishment and administration of ecological reserves, which help with the protection of at-risk species and their habitats.

ENVIRONMENTAL IMPACT ASSESSMENT

Canada has recognized infrastructure deficits in transportation, energy and water/sewer which necessitate large capital investments over a number of years. Infrastructure projects usually require the completion of provincial and/or federal environmental assessment processes to ensure any potential impacts are properly mitigated. Infrastructure will also benefit from funds received from the sale of carbon allowances.

In Canada, the first legislation in place federally for environmental assessment was the *Canadian Environmental Assessment Act*, first passed in 1992. Under this regime, if the federal government was the proponent or if the project involved federal funding, permits or licencing, the Act would apply.

In 2012, significant amendments were made to the regime, which resulted in the enactment of the *Canadian Environmental Assessment Act, 2012* ("**CEAA, 2012**"). The CEAA, 2012 restricted the type of projects subject to a federal environmental assessment, stipulated timeframes for completing assessments and permitted the federal government to delegate an environmental assessment to another jurisdiction or substitute the process of another jurisdiction to help avoid duplication of environmental assessments for both federal and provincial governments.

In 2019, the federal government repealed CEAA, 2012 and passed the *Impact Assessment Act* ("**IAA**"). The IAA broadens the scope of assessments to include positive and negative environment, economic, social and health impacts, as well as to require gender-based analysis and an assessment of the impacts of a project on Indigenous peoples and their rights. The federal assessment agency was rebranded the Impact Assessment Agency of Canada and will lead all federal impact assessments, including coordinating between regulatory bodies and provinces in the case of joint reviews. Each province also has requirements for environmental and impact assessment for certain projects within provincial jurisdiction.

The IAA has resulted in litigation. On October 13, 2023, the Supreme Court handed down its holding on a constitutional challenge to the IAA, originally raised as a reference question by the provincial government of Alberta. The Supreme Court held that while the assessment scheme in the IAA that governs federal lands or matters outside Canada was constitutional, the "designated projects" scheme for non-federal lands was unconstitutional. In response, the federal government issued interim guidance on the IAA, stipulating that it would revise the legislation.

The IAA was amended on June 20, 2024, in response to the SCC's decision. Key changes include modifying the definition of federal effects (section 2) from "effects within federal jurisdiction" to "adverse effects within federal jurisdiction," which now includes "non-negligible adverse changes." Both the screening (section 16) and decision-making phases were amended, along with expanded opportunities for cooperation among jurisdictions (sections 31-45, section 43.1).

In Ontario, the *Environmental Assessment Act* ("**EAA**") serves as the primary statute governing the environmental assessment process. The EAA's stated purpose is to "consider potential environmental effects before an infrastructure project begins." In past iterations of the Act, major infrastructure projects triggered a full environmental assessment unless narrow exemption criteria were met, with the requirement largely depended on the identity of the proponent. However, the provincial government has subsequently introduced a "streamlined" project-list environmental assessment process. Under this process, projects are classified and subjected to either comprehensive environmental assessments or an environmental screening process based on their listed categorization. If a project is not expressly listed or designated, no environmental assessment is required. In other words, the past focus on who is undertaking the project has shifted to *what* the project is.

In Ontario, class environmental assessments are required for a variety of projects, including minor transmission facilities, municipal infrastructure projects, provincial parks and conservation reserves, government property, remedial flood and erosion control projects, resource stewardship and facility development projects, waterpower projects, provincial transportation facilities and municipal expressways, and activities under the *Mining Act* conducted by the Ministry of Northern Development and Mines. Once a Notice of Completion has been issued for a project under section 16, a request may be made for the Minister to require a comprehensive environmental assessment, but only on the grounds that the order may prevent, mitigate or remedy adverse impacts on the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, as recognized and affirmed by section 35 of the *Constitution Act, 1982*.

B.C.'s *Environmental Assessment Act* allows for the Environmental Assessment Office ("**EAO**") to review all major projects within the province, even if the project does not meet the prescribed requirements for review (section 10). The Act allows

the EAO to assess projects based on their potential environmental, economic and social impacts in the context of sustainability (British Columbia, 2020). In particular, the *Environmental Assessment Act* outlines measures to support reconciliation with Indigenous peoples in B.C. in line with the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**") (SBC 2018, c 51).

DUTY TO CONSULT: NOTABLE CANADIAN INDIGENOUS RIGHTS LITIGATION RELATED TO ENVIRONMENT MATTERS

Public and agency consultation is a mandatory requirement of the environmental and impact assessment process. Consultation with Indigenous peoples usually plays a significant role, as treaty and Aboriginal rights are protected by the Canadian Constitution. Recent court cases have further clarified the Crown's consultation obligations, noting that the scope of this obligation varies based on the strength of the asserted Aboriginal or treaty rights and the potential severity of the impact on those rights. While impact benefit and community benefit agreements are still being negotiated, an increasing number of resource developments are proceeding through joint ventures or partnerships with Indigenous peoples as equity partners.

The duty to consult requires the Crown to understand how and when government decisions or actions could have an adverse impact on Aboriginal and treaty rights. The duty to consult reflects the "honour of the Crown," which is a constitutional principle that requires that the government acts honourably and in good faith in all dealings with Indigenous peoples. The duty to consult is not expressly set out in any legislation; rather, it is a corollary of section 35 of the *Constitution Act, 1982*, which states: "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed."

Because the duty to consult and accommodate is not defined in statute, the doctrine has been developed and clarified through jurisprudence. Duty to consult litigation in Canada has been robust. In *Delgamuukw v. British Columbia* (1997), the Supreme Court stated that the nature and scope of the duty vary depending on the circumstances. Where a proposed action may significantly impair a right, a deeper level of consultation is required. This means that consultation functions as a spectrum.

In its landmark 2004 decisions, *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia*, the Supreme Court of Canada established that the Crown has the duty to consult Indigenous peoples. There is a low bar to trigger a threshold to consult: "When the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it." This means that the duty to consult can and does arise in instances of asserted but unproven Aboriginal rights.

In *Tsilhqot'in Nation v. British Columbia* (2014), the Supreme Court explained that section 35 and the duty to consult doctrine is intended to protect Aboriginal and treaty rights while also furthering reconciliation.

Courts have also stipulated that government must approach their consultative duties in good faith, providing adequate funding and timely information to Indigenous rights-holders. In *Mikisew Cree First Nation v. Canada* (2018), the Supreme Court held that the creation (or amendment) of legislation, including environmental legislation, does not necessarily trigger the consultation process.

In other decisions, courts have explained who is responsible for the duty to consult and accommodate—and who it is owed to. Governmental bodies retain ultimate responsibility for consultation, as the honour of the Crown cannot be delegated. However, they may delegate *procedural aspects* of consultation to project proponents, such as developers or mineral exploration corporations. In *R v Van der Peet* (1996), the Supreme Court set out the test for determining whether an Aboriginal right exists in any given context, while *R v Powley* (2003) modified this test for Métis individuals and communities. *Behn v Moulton Contracting* (2013) further clarified that Aboriginal rights are inherently collective in nature. As such, an Aboriginal rights-holder seeking rights related to the duty to consult must do so on a representative basis (i.e. on behalf of their Indigenous community).

Case law also addresses breaches of treaty rights. A particularly significant decision was released in 2021, *Yahey v. British Columbia*. It considered whether the treaty rights of the Blueberry River First Nations and had been infringed by the cumulative impacts of industrial developments within their territory, including forestry, oil and gas, renewable energy and agriculture. The court concluded that British Columbia had breached Treaty 8 over a period of many years. This breach occurred by allowing extensive industrial development in the First Nation's territory without assessing cumulative impacts and ensuring that the First Nation would be

able to continue meaningfully exercising its treaty rights in its territory. This decision was not appealed. Although prior legal decisions have recognized the significance of cumulative effects when it comes to the duty to consult, the *Yahey* case is one of the first holdings to link cumulative effects with treaty rights. This is likely to have an impact on regulatory risks where similar claims may be made.

More recently, governments, including Ontario, have incorporated the obligation to consult into land-use planning decisions by ensuring that First Nations are consulted as part of land-use planning decisions, as well as through infrastructure projects under environmental assessment regimes. While the substantive duty rests with the Crown, an Ontario court has held that where an Aboriginal rights claim is toward the light end of the consultive spectrum, the Crown can rely on statutory planning processes to fulfil its duty to consult. Further, under Ontario's *Provincial Planning Statement* and the *Planning Act*, planning authorities are mandated to engage with Indigenous communities and encouraged to develop co-operative relationships.

In 2025, the Federal Court released its decision in *Kebaowek First Nation v. Canadian Nuclear Laboratories*, which is one of the first decisions to outline how UNDRIP may be utilized as an interpretive aid, particularly with respect to the standard of "free, prior and informed consent" ("**FPIC**") found in several articles of UNDRIP. The Federal Court held that UNDRIP functions as an interpretive lens to assess whether the Crown has fulfilled its obligations prescribed at law. For example, in the context of the duty to consult, the Court held that Canada's adoption of UNDRIP requires more than the mere application of the common law duty to consult obligations. With regard to FPIC, the Court held that it is not a veto or a right to dictate outcomes, but rather a right to a robust process. The Court found that FPIC requires robust processes tailored to consider the impacted Indigenous Nation's laws, knowledge and practices, and employs processes that are directed towards finding mutual agreement. The decision has since been appealed to the FCA by Canadian Nuclear Laboratories with a cross-appeal filed by Kebaowek First Nation. However, as of May 2026, no appellate decision has been released.

In *Gitxaala v. British Columbia (Chief Gold Commissioner)*, the Gitxaala and Ehattesaht First Nations challenged British Columbia's mineral tenure regime under the *Mineral Tenure Act* ("**MTA**"), alleging that the automatic online staking of mineral claims without consultation breached the Crown's duty to consult and was inconsistent with UNDRIP and section 3 of B.C.'s *Declaration on the Rights of Indigenous Peoples Act* ("***Declaration Act***"). The B.C. Supreme Court agreed that granting claims without consultation violated the duty to consult but held that the Declaration Act did not create enforceable rights. On appeal, the British Columbia Court of Appeal held that the question of consistency between a B.C. law, the Declaration Act and UNDRIP was justiciable. It found that the relevant UNDRIP provisions required consultation and cooperation with Indigenous peoples to obtain their free, prior and informed consent before approving projects affecting their lands, and concluded that the MTA was clearly inconsistent. The Province of British Columbia applied for leave to appeal the *Gitxaala* decision to the Supreme Court of Canada (SCC No. 42200). As of May 2026, the application has been fully submitted and remains under consideration, with no leave decision issued.

WASTE AND RECYCLING

The storage, transfer and disposal of hazardous and non-hazardous waste are primarily regulated at the provincial level, with some federal involvement in certain circumstances, such as controlling transboundary movements of hazardous waste and recyclables. Municipalities are responsible for the collection, recycling, composting and disposal of household waste. Development of new waste facilities, such as landfills, can be controversial and subject to significant review and public consultation. In Ontario, environmental regulation of new waste facilities is largely governed under updated sections of the EAA.

Most provinces and territorial governments are actively encouraging recycling and mandate industry-funded stewardship programs to divert certain waste streams (e.g., tires, paper, cardboard, electronic) from landfills. Several provinces, including Ontario, have adopted a "producer responsibility model" where producers are responsible for the full life-cycle of their products and packaging, including its collection through either a single agency or—uniquely in Ontario—multiple organizations through the private sector. In Ontario, waste diversion is overseen by the RPRA. Under the producer responsibility model in Ontario, producers are fully responsible for municipal hazardous waste (e.g., paint, antifreeze and batteries), electrical waste (e.g., computers, televisions and stereos), used tires and blue box materials, including paper, plastic, glass and metal. Blue Box services are transitioning; producers will be fully responsible for these services by the end of January 1, 2026. After a transition

period, as of January 2026, municipal collection of recycling has transitioned to collection by Producer Responsibility Organizations.

The *Resource Recovery and Circular Economy Act, 2016*, ("**RRCEA**") along with various regulations, provides the RPRA the statutory means of ensuring compliance with its regulatory schemes. Regulated parties that fall under these statutes must follow their regulations. In the event of non-compliance, the RPRA has the authority to impose Administrative Monetary Penalties as an alternative to court proceedings. While these penalties cannot exceed $1 million, they may still be substantial and are intended to ensure a regulated party cannot gain a competitive market advantage by opting for non-compliance. Examples of contraventions that might attract administrative penalties include failure to meet resource recovery performance targets, failure to respond to information requests, failure to submit reports on time, or submitting incomplete, inaccurate or misleading information.

On June 4, 2025, the MECP proposed several amendments to the Blue Box Regulation. Most notably, the proposed changes included delaying enforceable recovery targets for core materials by approximately five years reducing or deferring recovery requirements for flexible plastics.

Administrative monetary penalties are being issued under the RRCEA. The RPRA's website notes that, since 2024, seven administrative monetary penalties have been issued relating to the tires, batteries and Blue Box programs. Many more compliance orders have been issued across all RPRA programs, and the RPRA reported that in 2025, 3,933 non-compliance cases were opened across the batteries, Blue Box, hazardous and special products, electronics and lighting, and tires programs. Several jurisdictions have mandated goals to reduce waste to specified targets providing new opportunities for innovation. The federal government has introduced ambitious plans to reduce food waste and plastic waste, for instance. Within waste diversion processes and regulations, failure to register, file and remit payments can lead to fines. Regulation of recycling and waste diversion is expected to increase.

In British Columbia, the *Recycling Regulation* (B.C. Reg. 449/2004) under the *Environmental Management Act* provides a framework for producers to implement Extended Producer Responsibility ("**EPR**") programs. EPR refers to a system that regulates the life cycle management of certain products, including recycling (Government of British Columbia, 2024). The *Recycling Regulations* sets out specific responsibilities for producers (sections 3-8), outlines steps for product expansion and provides guidance for the management of regulated products (section 13).

ENVIRONMENT, SOCIAL AND GOVERNANCE CONCERNS

CORPORATE GOVERNANCE AND SECURITIES REGULATION

In addition to the common law, exposing individuals and businesses to civil liability in nuisance, negligence and trespass, other claims are possible under statutory regimes, such as capital market regulation.

The *Canadian Business Corporations Act*, since 2019, has explicitly recognized that environmental considerations are relevant when directors and officers are considering the best interests of the corporation.

GREENWASHING

In Canada, misleading marketing related to the "green credentials" of products are regulated through the *Competition Act* and other federal legislation.

The *Competition Act* has criminal and civil regimes. Under both sets of provisions, directly or indirectly promoting the supply or use of a product which is false or misleading in a material respect is reviewable and can lead to substantial fines for deceptive marketing. To determine whether a claim is misleading, courts will consider the "general impression" conveyed, as well as the claim's literal meaning. Further, under the civil regime, any "green" marketing claim must be supported by concrete evidence obtained through adequate and proper testing.

Companies should be aware of Canada's guidelines for environmental claims greenwashing, updated in December 2021, addressing the *Competition Act*, the *Consumer Packaging and Labeling Act*, and the *Textile Labelling Act*, and their associated regulations. The guidelines clarify that the Competition Bureau will take action to combat false, misleading or unsubstantiated environmental claims. . They also offer best practices for businesses to avoid greenwashing in their ads, slogans, logos and packaging that are backed up be adequate evidence and data.

On June 24, 2024, Bill C-59 received royal assent, amending certain sections of the *Competition*

Act. These changes include improvements to the deceptive marketing practices provisions and expressly classify greenwashing as reviewable conduct (section 74.01(1)). Effective June 20, 2025, private litigants will be able to bring applications under section 103.1(1) to seek leave from the Competition Tribunal to address reviewable conduct under section 74.1.

Recent enforcement activity illustrates the Bureau's growing focus on environmental claims. In 2022, Keurig Canada agreed to pay a $3 million administrative monetary penalty, along with an $800,000 environmental donation and corrective measures, to resolve allegations that it made false or misleading claims about the recyclability of its single-use coffee pods. Similarly, in earlier proceedings involving Volkswagen and Audi's "clean diesel" marketing, the Competition Bureau secured monetary penalties for deceptive environmental representations, including $2.5 million in penalties related to misleading emissions claims in certain diesel vehicles, along with substantial consumer compensation settlements.

LAND DEVELOPMENT AND CONSERVATION

Developers frequently address natural heritage and natural hazard limitations in development applications related to development proposals. Zoning and natural features are regulated at the provincial level in Canada, though federally regulated lands are not subject to provincial zoning rules.

In an attempt to address the need for housing, Ontario has sought to introduce changes to the planning framework in Ontario, impacting municipal approval processes, appeal rights from municipal decisions, and permitting functions by conservation authorities.

In broad strokes, Ontario has taken steps to remove protections from previously protected lands for increased housing development, used existing ministerial zoning powers more frequently and introduced new ministerial zoning powers. The province has also moved to limit the function of conservation authorities to a review of natural hazards. Natural heritage concerns are to be redirected to others to manage and review.

Conservation authority permits are now required in all cases where ministerial zoning order powers are used. Additionally, new regulations have exempted conservation authority permits from formal application requirements when regulatory requirements are met. This change mirrors similar changes in other environmental spheres, such as the management pollution releases and species at risk. Conservation authorities can only make regulations for land actually owned by the authority in question. Furthermore, the conditions attached to conservation authority permits have been further reduced.

The *Conservation Authorities Act* ("**CAA**") was amended in 2024. Notable amendments include restricting authorities from making regulations related to lands not owned by the authority, reducing the number of prohibited activities that require permits, and introducing new exceptions and limits on the conditions an authority may attach to a permit.

In April 2024, Ontario Regulation 41/24: *Prohibited Activities, Exemptions and Permits* came into effect, revoking 36 existing conservation authority regulations and consolidating them into a single ministerial regulation governing prohibited activities, exemptions and permits under the Act. The changes are designed to streamline approvals under the Act, with a focus on natural hazards, and to improve clarity and consistency in decision-making.[5]

The new regulation refines where development is prohibited. It updates the definition of "watercourse" and adjusts the scope of development restrictions around wetlands. Certain low-risk development activities will be exempt from requiring permits from the conservation authority.

The approved regulation also restricts the conditions conservation authorities are authorized to attached to permits. Conditions imposed by conservation authorities must be directly related to mitigating the impact of natural hazards or any public safety risks arising from natural hazards and must be necessary to support the permit's administration or implementation (e.g., reporting and compliance requirements).

Finally, new rules have been introduced to ensure that conservation authority permits are administered transparently and consistently. These rules require, among other things, that conservation authorities create publicly available maps, updated annually, showing areas where permits are required; refrain from requesting additional studies or technical information after an application is confirmed complete; and issue an annual report on permitting statistics.

5 Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits, Ontario, 2024

More recently, on March 10, 2026, the MECP announced future plans to consolidate Ontario's 36 conservation authorities into nine regional conservation authorities. Subsequently, Bill 97, *Plan to Protect Ontario Act (Budget Measures)*, 2026, was introduced on March 26, 2026. Among other amendments, the legislation establishes a statutory framework under the CAA to facilitate the amalgamation of 35 conservation authorities into eight new conservation authorities, while continuing the Lakehead Region Conservation Authority under a revised regional structure. The bill also provides for transition mechanisms overseen by the Ontario Provincial Conservation Agency.[6]

Contrary to the prevailing provincial trend, the Ontario government reversed its prior decision to open a significant parcel of protected lands within the province's Greenbelt for housing development. Developers will not be compensated for lands that will be returned to the Greenbelt through legislation.

June 2026

6 Ontario Taking Next Steps to Improve Conservation Authorities, Ontario, 2026

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