

Canada Water Legislation FAQs

1. Who has responsibility for regulating water in Canada?

Canada's Constitution Act, 1867 allocates legislative powers to the federal and provincial levels of government. The Constitution Act gives each respective level of government exclusive jurisdiction to pass laws with respect to specific matters listed under the Act.

The Constitution Act does not say specifically which level of government has jurisdiction over "water", "environment", or "public health". The provinces have traditionally taken the lead in regulating water management, but the federal government also plays a role in certain water-related matters.

Although there is no power for "environment" per se, the Constitution Act list of provincial powers gives provincial legislatures authority over various aspects of the environment (including water) and public health. These heads of power include:

- Hospitals (section 92(7)),
- Municipal institutions (section 92(8)),
- Local works and undertakings (section 92(10)),
- Property and civil rights (section 92(13)),
- Matters of a "merely local or private nature" (section 92(16)), and
- Natural resources, forestry and electrical energy (sections 92A and 109).

There is also constitutional authority for significant federal participation in water management and protection. The federal list of powers under the Constitution Act gives the Government of Canada jurisdiction over various aspects of the environment (including water) and public health. These heads of power include:

- Peace, order and good government (section 91),
- Trade and commerce (section 91(2)),
- Navigation and shipping (section 91(10))
- Sea coast and inland fisheries (section 91(12)),
- Criminal law (section 91(27)),
- Federal works and undertakings (section 92(29) and 92(10)),
- Canals, harbours, rivers and lake improvements (section 108).

This constitutional division of powers means, in effect, that the federal and provincial governments share jurisdiction over water, environmental protection and public health. The provinces and the federal government also have shared jurisdiction over agriculture.

In addition, Ontario has enacted legislation that empowers municipalities in the areas of water management and public health. This means that, in Ontario, all three levels of

government have roles and responsibilities for environmental protection in general, and water in particular. In practice, they have assumed separate and complementary roles with respect to water management.

For information on the laws governing water in Ontario, see the [Ontario Water Regulation FAQ](#).

[Back to Top](#)

2. What is the role of the federal government in regulating water?

The federal government has focused primarily on its constitutional responsibility for fisheries and navigation, and for waters that lie on or across international borders. In recent years, however, the federal government has assumed a greater role in relation to water quality, particularly with respect to toxic substances.

The key water-related statutes administered by the federal government include:

- Canada Shipping Act – controls pollution from ships by imposing penalties for discharging pollutants without a permit or failing to report a spill; administered by Transport Canada;
- Canadian Environmental Protection Act, 1999 – establishes a regime for identifying, assessing and controlling toxic substances; imposes reporting requirements on anyone releasing a toxic substance; creates a national inventory of toxic releases; requires the development of Pollution Prevention Plans; controls nutrient discharges and marine pollution; administered by Environment Canada;
- Fisheries Act – protects fish by prohibiting habitat disturbances and the deposit of “deleterious substances” in water frequented by fish; ensures construction of fish-ways around any obstruction in a waterway; administered by Fisheries and Oceans;
- International Boundary Waters Treaty Act – implements the 1909 Boundary Waters Treaty between the United States and Great Britain (on behalf of Canada) establishing principles and guidelines for the management of boundary and transboundary waters in order to prevent or resolve disputes over water quality and water quantity; administered by Foreign Affairs and International Trade;
- International Rivers Improvement Act – prohibits damming, building a canal, a reservoir, or changing the natural flow of a river flowing out of Canada without a licence; administered by Environment Canada;
- Navigable Waters Protection Act – prohibits dumping of wastes that may interfere with navigation and prohibits construction of works in navigable waters without approval; administered by Transport Canada.

Where applicable, the Canadian Environmental Assessment Act also provides an opportunity to identify, assess and mitigate the effects of projects that could have significant impacts on groundwater or surface water.

Other federal statutes that play a less significant role in the regulation of water include:

- Arctic Waters Pollution Prevention Act – controls pollution from ships in Arctic waters by prohibiting any deposit of waste in Arctic waters or where it may enter Arctic waters without authorization; requires anyone who deposits waste or who is in danger of depositing waste to report it; administered by Indian Affairs and Northern Development;
- Canada Water Act – authorizes agreements with the provinces for the designation of water quality management areas, and for the delineation of flood plains and hazardous shorelines to control flooding and erosion; administered by Environment Canada;
- Dominion Water Power Act – requires authorization from the Minister to use public lands for hydroelectric projects; administered by Parks Canada; and
- Northwest Territories Waters Act and Yukon Waters Act – authorizes the federal government to take responsibility for inland waters and to delegate water management responsibilities to territorial governments; prohibits depositing waste in these waters without being authorized by a licence or regulations; administered by Indian Affairs and Northern Development.

In addition, another general grant of legislative authority is relevant to jurisdiction over water -- the power of the federal government to implement treaties concluded by the British Empire on Canada's behalf. This power supports the International Boundary Waters Treaty Act, and the International Boundary Waters Treaty signed by Canada and the United States to resolve disputes over lakes and rivers shared by the two countries.

The federal government has also used this authority to ratify internationally agreed-upon conventions. Canada was the first country to ratify the Stockholm Convention on Persistent Organic Pollutants in May 2001, with the objective of protecting human health and the environment from persistent organic pollutants. Canada also ratified the Kyoto Protocol in December 2002, making a commitment to meet specific targets by reducing carbon dioxide emissions.

See the [Climate Change and Water FAQ](#).

In addition, the federal government has proposed a new Canada Health Protection Act that would give the federal Ministry of Health a role in regulating drinking water. The proposed Act would confirm the authority of the Minister of Health to develop guidelines with regard to drinking water quality, in cooperation with other orders of government and other federal departments. Moreover, the Act would apply to the production of bottled water and water served on passenger conveyances. It would also apply to drinking water materials such as treatment devices and additives and system components. Public consultations are currently being held on what will be included in the new Act.

[Back to Top](#)

3. What is the role of the federal government in First Nations' drinking water?

Federal government documents describe the shared roles in First Nations' drinking water provisions as follows:

Programs and services for the provision of potable water on reserves are provided through First Nations Band Councils, Health Canada and Indian and Northern Affairs Canada (INAC)

Generally, First Nations Band Councils, together with departments of the federal government, have responsibility for designing, constructing, maintaining and operating water facilities in accordance with federal or provincial standards, whichever are more stringent. INAC provides funding to First Nations to assist them in the provision of these services to their communities. As well, INAC monitors design, construction and maintenance of these facilities. Health Canada, in collaboration with the provinces and territories, establishes the Guidelines for Canadian Drinking Water Quality and insures that water quality and surveillance programs are in place in First Nations communities. This support can extend to training programs for water treatment operators and community based water monitors on First Nations lands. Further information on these shared roles and responsibilities can be located at the following site: http://collection.nlc-bnc.ca/100/200/301/inac-ainc/safe_drinking_water-e/wqr_e.pdf

In the Part Two Report of the Walkerton Inquiry, Mr. Justice O'Connor stated that "The water provided to many Metis and non-status Indian communities and to First Nations reserves is some of the poorest quality water in the province. Submissions by the Ontario Metis Aboriginal Association and the Chiefs of Ontario, as well as the federal government's reports about the quality of water on reserves, make it clear that water is not provided for aboriginal people at the standards that generally prevail throughout Ontario." Justice O'Connor went on to make recommendations to improve the protection of drinking water on reserves. These recommendations on the report can be found at: <http://www.attorneygeneral.ius.gov.on.ca/english/about/pubs/walkerton/>

[Back to Top](#)

4. What are the most important federal laws governing water?

Of these statutes, the most important ones for federal involvement in water management are the Canada Water Act, the Canadian Environmental Protection Act and the Fisheries Act.

[Back to Top](#)

5. What does the Canada Water Act do?

Enacted in 1970, the Canada Water Act, administered by Environment Canada, contains a number of provisions that govern water quality in general. The Canada Water Act:

- Authorizes various federal-provincial arrangements such as joint subcommittees, programs or agreements with respect to water resource management (Part I);

- Regulates discharges of waste into “prescribed water quality management areas” and establishes federal water quality management programs for inter-jurisdictional waters (Part II);
- Establishes advisory committees to assist in the implementation of the Act (section 28); and
- Requires the Minister of the Environment to report annually to Parliament on operations under the Act (section 38).

Persons convicted of contravening the Canada Water Act face small fines (sections 30 and 31) and prohibition orders (section 32).

[Back to Top](#)

6. What does the Canadian Environmental Protection Act do?

The new Canadian Environmental Protection Act, 1999 is the centrepiece of the federal government’s pollution control regime. It is principally administered by Environment Canada, although Health Canada has certain responsibilities in relation to the assessment and regulation of toxic substances.

The underlying principles are to ensure pollution prevention, achieve sustainable development, protect biological diversity, exercise caution in cases of scientific uncertainty, adopt an ecosystem approach to environmental management, and virtually eliminate persistent and bioaccumulative toxic substances.

The Canadian Environmental Protection Act, 1999 contains numerous provisions which address water pollution and environmental enforcement, and, as a result, provides some degree of protection for surface waters. For example, the Act:

- Creates a public right to formally apply for an investigation of suspected contraventions of the Canadian Environmental Protection Act (sections 17 to 21);
- Creates a public right to bring a civil “environmental protection action” in respect of contraventions of the Act (sections 22 to 38);
- Creates a civil cause of action for loss or damage resulting from contraventions of the Act (sections 39 and 40);
- Requires pollution prevention plans from companies whose commercial, manufacturing, processing, or other activities, involve toxic substances from Schedule 1 of the Act (Part 4);
- Establishes a regime for identifying, assessing and regulating toxic substances (Part 5);
- Establishes a regime for identifying, assessing and regulating “animate products of biotechnology” (such as genetically modified organisms) (Part 6);
- Regulates nutrients such as phosphates that may adversely affect or degrade aquatic ecosystems (sections 116 to 119);
- Regulates ocean dumping and protects the marine environment from land-based sources of pollution through non-regulatory means (sections 120 to 137);
- Controls Canadian sources of international water pollution through regulations, interim orders or pollution prevention planning (sections 175 to 184);
- Controls transboundary movement of hazardous waste, hazardous recyclable material and prescribed non-hazardous waste for final disposal (sections 185 to 192);

- Requires companies or facilities to prepare emergency plans for toxic substances (Part 8); and
- Imposes a duty on corporate officers and directors to take all reasonable care to ensure that the corporation complies with the Act and its regulations, orders and directions (section 280).

A number of water-related regulations have been promulgated under the Canadian Environmental Protection Act with respect to ocean dumping, phosphorus concentrations, pulp and paper effluent, chlorinated dioxins and furans, and pulp and paper mill defoamer and wood chips.

The Canadian Environmental Protection Act makes it an offence to contravene the Act or regulations, orders or directions made under the Act (section 272). Persons convicted of contravening the Act face substantial penalties – up to \$1 million in fines, jail terms, profit-stripping restoration and restitution orders (sections 272 to 294). In certain circumstances, a person charged with an offence may avoid prosecution by agreeing to undertake prescribed “environmental protection alternative measures” (sections 295 to 297).

[Back to Top](#)

7. What does the Fisheries Act do?

The Fisheries Act was first enacted in 1868 and is administered by the Department of Fisheries and Oceans. It is primarily aimed at protecting fish and their habitat. However, the Act contains some strong provisions relating to water pollution, and, therefore, provides some protection for surface water. The Fisheries Act:

- Prohibits the harmful alteration, disruption or destruction of fish habitat (section 35(1));
- Prohibits the deposit of “deleterious substances” into or near waters frequented by fish (section 36(3));
- Enables the passage of regulations in relation to the deposit of waste, pollutants or deleterious substances (sections 36(4), 36(5) and 43), and
- Imposes civil liability for loss or expenses caused by the unlawful deposit of deleterious substances (section 42).

A number of regulations have been made under the Fisheries Act in relation to the liquid effluent from various industrial sectors, including chlor-alkali plants, meat and poultry plants, metal mining facilities, petroleum refiners, potato processing plants, and pulp and paper mills.

Persons convicted for contravening “fish habitat” and “deleterious substance” provisions face substantial penalties under the Act, such as \$1 million fines, jail terms, profit-stripping, licence suspensions and restoration orders (sections 40(2), 79.1 and 79.2).

[Back to Top](#)

8. What role does the federal government have with respect to international agreements related to water?

The federal government has the power to implement treaties concluded by the British Empire on Canada's behalf. The International Boundary Waters Treaty Act, passed by the federal government, implements the 1909 Boundary Waters Treaty between the United States and Canada. The Treaty recognizes that each country may be affected by the other's actions in the lake and river systems along their common border. Its purpose is to prevent and resolve disputes concerning these boundary waters.

The Treaty also creates the International Joint Commission to prevent and resolve these disputes. The Commission is an independent advisor to both governments. It rules on applications for approval of projects affecting boundary and transboundary waters and may regulate the operation of these projects.

In 1972, the governments of United States and Canada signed the Great Lakes Water Quality Agreement. This was superseded by a new agreement in 1978, which was amended in 1987. Its purpose is "to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem".

The International Joint Commission assists in the implementation of the Great Lakes Water Quality Agreement, in the improvement of transboundary air quality, and alerts the governments to emerging issues along the boundary that may give rise to disputes. It also assesses the effectiveness of programs and progress pursuant to the Great Lakes Water Quality Agreement.

See the [Great Lakes and St. Lawrence Ecosystem FAQ](#).

[Back to Top](#)

9. What are the views of the Canadian Environmental Law Association on the regulation of water in Canada?

The Canadian Environmental Law Association (CELA) was established in 1970 with a mandate to protect the environment using existing laws and to advocate environmental law reform. CELA has numerous publications that address the need to protect and conserve the quality and quantity of surface water and groundwater resources. These documents can be found at: <http://www.cela.ca/publist.htm>

[Back to Top](#)

10. How can I find out more about federal laws governing water management and protection?

The full text of these federal laws can be found on the website of [Justice Canada](#).

Information is also available on Environment Canada's website on Water Policy and Legislation at:

http://www.ec.gc.ca/water/en/policy/e_policy.htm

Another helpful site for researching Canadian laws is offered by the [Canadian Legal Information Institute](#).

The [Canadian Water and Wastewater Association](#) also provides summaries of water-related legislation in Canada and the provinces and territories.

For a starting point to researching water regulation in the other provinces and territories, see: http://www.ec.gc.ca/water/en/policy/prov/e_prov.htm

http://www.ecolawinfo.org/WaterFAQ-CanWatLeg.aspx#CanWat_01