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Environmental Law

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

Contributed by Lawson Lundell LLP

Contents

Lawson Lundell LLP comprises over 150 lawyers and has four offices, in Vancouver, Kelowna, Calgary and Yellowknife. The Lawson Lundell regulatory and environmental group provides advice and assistance in all aspects of environmental law; federal, provincial and territorial laws; regulations, guidelines and policies; project assessments; regulatory and licensing requirements; contaminated sites; compliance requirements and risk allocation related to commercial transactions; and reclamation and environmental offences. This includes commercial transactions, environmental management systems, regulatory and licensing requirements, contaminated sites, reclamation, closure and remediation, and environmental offences.

Authors

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Michelle Casey is an associate with a practice focused on environmental, public utility and regulatory law. She has assisted with due diligence for various corporate transactions and a range of different project proponents. Michelle has also helped mining, energy and infrastructure proponents to obtain federal and provincial regulatory approvals, and has appeared before the British Columbia Supreme Court.

1. Regulatory Framework

1.1 Key Policies, Principles and Laws Governing Environmental Protection

In Canada, the federal (national) and provincial/territorial (regional) governments have responsibility for the protection of the environment. Federal laws will generally apply to all projects or operations throughout the country, while provincial/territorial laws apply only to those projects or operations located within the specific province or territory.

The key federal laws governing environmental protection include the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *Canadian Environmental Assessment Act*, 2012 (although the proposed *Impact Assessment Act* will repeal and replace this Act), the *Transportation of Dangerous Goods Act* and the *Navigation Protection Act*.

1.2 Notable Developments, Regulatory Changes, Government/Regulatory Investigations

The federal government has completed its review of several aspects of environmental regulation in Canada and has proposed new legislation. The federal government is expected to continue its consideration of the proposed legislation in the fall of 2018.

1.3 Developments in Environmental Policy and Law

The federal government appointed an expert panel to review the federal environmental assessment process in Canada. The expert panel released its report in April 2017, making several recommendations to modify significantly the environmental assessment process in Canada. It is unclear which recommendations will be adopted by the federal government. As described above, a new federal environmental assessment process is expected to be put in place. The proposed environmental assessment legislation changes the scope of project assessments to include health, social and economic aspects, in addition to the existing environmental aspects. The proposed legislation also expressly recognises indigenous rights and knowledge in project reviews.

1.4 Environmental NGOs or Other Environmental Organisations/Groups

Environmental NGOs and organisations play a variety of roles in environmental protection in Canada. Some key NGOs, such as Ducks Unlimited and the Nature Conservancy of Canada, play a key role in conserving natural spaces. Other environmental groups, such as the David Suzuki Foundation and the Sierra Club of Canada, regularly lobby government for environmental change or challenge environmental decision-making in court. Many indigenous communities play a role in environmental protection by arranging their own monitoring and enforcement services.

2. Enforcement

2.1 Key Regulatory Authorities and Bodies

The key federal regulatory authorities in Canada include Environment and Climate Change Canada, Fisheries and Oceans Canada, the Canadian Environmental Assessment Authority (which, under the proposed legislation discussed above, will be replaced by the Impact Assessment Agency of Canada), Transport Canada, Parks Canada and Natural Resources Canada.

Other key regulatory authorities exist in each province or territory, many of which will co-ordinate their approach to regulation and enforcement with their federal counterparts.

2.2 Investigative and Access Powers

Most regulatory authorities employ officers or other enforcement personnel, who are often granted the power to conduct routine inspections and investigations. For example, a federal fishery officer may enter and inspect a facility or vessel if he or she has reasonable grounds to believe that federal fishery regulations are being breached. They may also open containers, examine fish or take samples of them, conduct tests, or take copies of documents.

However, most regulatory officers investigating an offence or pursuing prosecution will be required to obtain search warrants and abide by other legal protections.

2.3 Approach to Enforcement

The approach to the enforcement of environmental law varies according to the severity of the environmental incident or the breach of the regulation. Whenever possible, Canadian authorities enforce environmental law through voluntary agreements and specific orders to comply. Canadian authorities will hold polluters responsible for the clean-up costs of pollution or contamination, and may seek further penalties where necessary.

3. Environmental Impact Assessment and Permits

3.1 Requirement for an Environmental Permit

Environmental permits are issued by the federal and provincial/territorial governments, depending on the nature and location of the activity at issue. Permits involving fisheries, for example, must be obtained from Fisheries and Oceans Canada, while permits involving oil exploration must be obtained from the relevant provincial or territorial regulatory authority.

Environmental permits may be necessary for a wide variety of activities. For example, activities that may harm a threatened or endangered species will require a permit under the *Species at Risk Act*, while activities related to forestry will

require a permit from the relevant provincial or territorial regulatory authority.

3.2 Requirement for an Environmental Impact Assessment

Environmental assessments can be required by the federal government, the provincial/territorial government, or both, depending on the nature of the project. Currently, federal environmental impact assessments may be required where a project is designated by the regulations, meets the scale threshold prescribed by the regulations and may cause significant adverse environmental effects. The combination of these three requirements dictates the type, scale and location of projects that will generally require a federal environmental assessment. Under the proposed environmental assessment legislation, an impact assessment will be required for a project designated by regulation or by an order of the Minister. The federal government has completed its first round of public consultation on the approach that should be used to determine which projects require impact assessments. A second round of consultations is expected to take place in the fall of 2018.

3.3 Obtaining Permits and Rights to Appeal

Environmental permits are generally obtained by applying to the appropriate government authority with responsibility over the permitting scheme. For example, permits around fish or fish habitats will commonly be obtained from Fisheries and Oceans Canada. Some permitting regimes, but not all, will allow for an appeal to a quasi-judicial authority or a member of the federal government, known as a Minister. In all cases, the decision to grant or refuse a permit can be reviewed by the courts through an application for judicial review.

3.4 Integrated Permitting Regimes

Depending on the circumstances, some projects may be able to obtain multiple environmental permits through a single process, but this is not always the case. Project proponents or operators in Canada will need to obtain permits from each of the responsible government authorities, at the federal and provincial/territorial levels, as required.

3.5 Transferring Environmental Permits

Most environmental permits can be transferred. Investors looking to purchase Canadian projects or operations will want to ensure they acquire the project's associated permits.

3.6 Time Limits and Onerous Conditions

Environmental permits are usually time limited, but the duration of the authorisation will depend on the nature of the activity being permitted. For example, while permits that authorise water use may be as long as 50 years, permits that authorise environment-damaging activities may be effective for only a month or two.

Permits typically contain conditions that accord with the requirements of the legislation under which they are granted. Permits may contain onerous or unusual conditions, but such permits are more likely to be used in larger permitting processes, such as the federal environmental assessment process.

3.7 Penalties/Sanctions for Breach

The penalties or sanctions for breach of permitting requirements will depend upon the nature of the permit and the severity of the breach. Penalties may entail relatively low monetary fines, restrictions on further activity, more significant monetary fines, or prosecution.

4. Environmental Liability

4.1 Key Types of Liability

The key types of liability faced by project proponents or operators in Canada for environmental damage or breaches of environmental law include monetary fines, the loss of environmental permits and criminal prosecution.

5. Environmental Incidents and Damage

5.1 Liability for Historic Environmental Incidents or Damage

Most environmental legislation in Canada operates on the "polluter pays" principle, which requires the party that caused the harm to the environment to bear the ultimate cost of any clean-up or remediation.

However, Canadian contaminated sites legislation can impose liability for historic environmental incidents or damage on a current operator or landowner of contaminated land; for example, if the new landowner is aware of contamination and takes no steps to mitigate its spread, then said new landowner is subject to the various defences set out in the legislation.

5.2 Types of Liability for Environmental Incidents or Damage

There are several types of liability for environmental incidents or damage in Canada. Project proponents, operators, or suppliers of products may face liability for pollution or harm to the environment, for failing to comply with specific environmental regulations or permits, for the ownership, operation, or control of contaminated sites, or for the supply of products to contaminated sites. They may also face claims of nuisance or negligence from private parties affected by contamination.

A defence of due diligence is normally available to parties accused of breaching environmental legislation, as well as

various common and equitable defences. However, there are some offences where due diligence is not available.

5.3 Landmark/Significant Cases

A recent case that demonstrates many of the key principles and issues in a contaminated sites context is *JI Properties Inc v PPG Architectural Coatings Canada Ltd*, 2015 BCCA 472. This appellate decision provides commentary on the legislative/regulatory regime, the status of pre-legislation comfort letters and due diligence by the defendants, the operation of limitation periods on environmental damage and the scope of reasonably incurred remediation costs.

6. Corporate Liability

6.1 Liability of a Corporate Entity

As previously noted, Canada has adopted the polluter pays principle to environmental liability, and this includes corporations. Corporate entities that damage the environment or breach environmental legislation will be liable for the harm caused. This can include damage caused by oil spills and sewage pollution, or breaches of regulations around wildlife, fisheries, the transportation of dangerous goods, the disposal of hazardous materials, contaminated sites, etc.

6.2 Shareholder or Parent Company Liability

It is uncommon in Canada for the shareholders or parent company of a polluting corporate entity to be held liable for the environmental damage. However, Canadian contaminated sites legislation contains broad liability provisions that may apply to shareholders or a parent company that owns, controls or manages a contaminated piece of property. Also, in very rare circumstances, a party or government may seek permission from the court to "pierce the corporate veil" and sue the parent company for actions taken by the subsidiary.

7. Personal Liability

7.1 Liability of Directors or Other Officers

Several pieces of federal environmental legislation impose responsibilities on directors and officers for their company's environmental performance. Penalties for environmental damage or breaches of environmental law can include:

- being fined or imprisoned for the corporation's pollution, even if the corporation has never been prosecuted or convicted;
- being fined for the corporation's failure to obtain the necessary permits or approvals, follow required environmental processes, or report spills;
- being prosecuted for failure to take all reasonable care to prevent the corporation from causing or permitting pollution;
- being heavily fined or imprisoned for the corporation's contempt of court where there are repetitions of events that led to a previous environmental conviction; or
- being personally liable for the costs of remediating historical and current property contamination associated with any real estate that the corporation owns, controls or occupies, or formerly owned or controlled.

7.2 Insuring Against Liability

Most directors and officers in Canada rely on director and officer insurance to insure them against any errors and omissions made in the course of their duties. Directors and officers may seek further indemnification from the company itself for any liability that arises from their role in the company.

8. Lender Liability

8.1 Financial Institution/Lender Liability

It is unlikely that financial institutions or lenders will be liable for the environmental damage caused by one of their clients. However, Canadian contaminated sites legislation contains broad liability provisions that may apply to a lender who owns, controls or manages a piece of property. For example, if a lender realises on security taken on real property assets that are contaminated, the lender may have sufficient 'control' over the situation to incur liability for clean-up.

8.2 Lender Protection

To protect themselves from liability risk, lenders should investigate the potential environmental liabilities inherent in an undertaking before investing, and should ensure that money is allocated towards meeting environmental contingencies.

9. Civil Liability

9.1 Civil Claims for Compensation

Civil claims for compensation or other remedies can be brought through common law causes of action, such as nuisance, negligence, trespass, or loss of property value, or through statutory causes of action set out in environmental legislation.

9.2 Exemplary or Punitive Damages

Canadian courts almost always have jurisdiction to award exemplary or punitive damages. However, generally speaking, they are unlikely to award such damages unless the conduct in question is high-handed, malicious, arbitrary or highly reprehensible.

9.3 Class or Group Actions

Class actions are available for environmental-related civil claims. However, class actions in Canada must first be "certi-

fied" by a court in order to proceed. This process ensures that the claim raises common issues and that a class proceeding is the preferred way to resolve those issues. Few environment-related cases have made it past this initial threshold.

9.4 Landmark Cases

Two recent appellate decisions, released in 2014, confirmed that class action regimes are not often appropriate to remedy environmental harms: *Canada (Attorney General) v MacQueen*, 2013 NSCA 143 and *Windsor v Canadian Pacific Railway Ltd*, 2014 ABCA 108. Although environmental causes of action may seem to involve common issues among class members, proof of those claims is often an individual issue.

10. Contractual

10.1 Transferring or Apportioning Liability

Indemnities and other contractual arrangements can be used to transfer or apportion liability for environmental pollution or breaches of law, although the appropriate terms for each set of parties will, of course, be fact-specific. However, third parties – including regulators – will not likely be bound by such agreements and are entitled to prosecute or seek compensation from the party who is liable at law. Polluters relying on such indemnities and contracts must seek compensation through those mechanisms on their own.

10.2 Environmental Insurance

Most commercial general liability policies in Canada exclude pollution liability. Businesses can purchase an optional pollution liability extension, although such extensions will be subject to strict exclusions.

Instead, Canadian businesses may wish to purchase an environmental liability policy from one of a variety of insurers in Canada. These policies can provide coverage for liability arising from a sudden or gradual pollution event, waste management services, storage tanks and contractors, among other things.

11. Contaminated Land

11.1 Key Laws Governing Contaminated Land

Jurisdiction over contaminated sites is divided between the federal and provincial/territorial governments in Canada. The federal government has some powers to issue remedial and preventative orders regarding water and soil contamination, and has jurisdiction over any federal lands. All other lands are governed by provincial contaminated sites legislation.

11.2 Definition of Contaminated Land

Contaminated sites are defined as areas of land where the soil, sediment, vapour or groundwater contains a prescribed substance in quantities or concentrations exceeding risk-based criteria, standards or conditions. Prescribed substances generally include hazardous substances such as sulphur, petroleum hydrocarbons, heavy metals and CFCs.

11.3 Legal Requirements for Remediation

When a "responsible person" has not remediated an identified contaminated site, a regulatory authority can issue a remediation order to ensure remediation is carried out. This could occur if the contamination is severe or if the responsible person will not voluntarily carry out the remediation requirements.

11.4 Liability for Remediating Contaminated Land

Persons who may be liable for the costs of remediating a contaminated site include the current owner or operator of a site, a previous owner or operator of a site, persons who produced the prescribed substance found on site and persons who transported the prescribed substance found on site. However, specific exclusions apply. For example, a prior owner or operator might not be found liable if they can demonstrate that the site was not contaminated at the time they owned or controlled it and that they did not contribute to the contamination. Similarly, a current owner who can demonstrate that none of their conduct exacerbated or contributed to the costs of remediation may not be found liable.

11.5 Apportioning Liability

More than one person can be liable for remediation of contaminated land, with liability typically apportioned according to the degree of fault or contribution by the parties to the pollution. *Gehring et al v. Chevron Canada Limited et al*, 2006 BCSC 1639 provides commentary on the allocation of remediation costs.

11.6 Ability to Seek Recourse from a Former Owner

A person liable for remediating contaminated land can seek recourse from the original polluter or former landowner. Such actions may be available in contract law, in negligence, or through a statutory cause of action in some provinces.

11.7 Ability to Transfer Liability to a Purchaser

A polluter or landowner can transfer liability for a contaminated site to a purchaser by way of contract. However, environmental legislation in most provinces permits regulators to order those who formerly owned or controlled contaminated property to carry out remediation measures. Parties seeking to rely on contractual terms to recover their costs or limit liability will need to seek a remedy through those mechanisms.

12. Climate Change and Emissions Trading

12.1 Key Policies, Principles and Laws Relating to Climate Change

Although a large part of the Canadian economy is resource-based, the country's economy varies greatly from coast to coast. The strategies to combat climate change have therefore been as varied as the economies in which they are implemented.

12.2 Targets to Reduce Greenhouse Gas Emissions

Canada is a signatory to the major international climate change conventions. As a party to the Paris Agreement, Canada has committed to an economy-wide target to reduce greenhouse gas emissions by 30% below 2005 levels by 2030.

Although the federal government signed the Paris Agreement, Canada is a federal system and the federal and provincial levels of government have the jurisdiction to regulate matters concerning the environment.

In recognition of the collaborative approach needed for progress on climate change, the federal and provincial Ministers of the Environment developed the Pan-Canadian Framework on Clean Growth and Climate Change, which requires all provinces and territories to have carbon pricing initiatives in effect by 2018. However, the framework gives the provinces and territories the flexibility to design their own policies to meet emission-reduction targets through the different initiatives or mechanisms that best suit their individual economies.

12.3 Energy Efficiency

Canada maintains a number of legal requirements with respect to energy efficiency. Regulations apply to a range of products, including appliances, light bulbs, heating and cooling systems, and vehicles. Many incentive programmes also exist to support the construction of energy-efficient homes and buildings and the development of energy-efficient industries and businesses.

12.4 Emissions Trading Schemes

In 2017, the federal government announced that the provinces and territories in Canada had to develop their own carbon pricing system that met federal standards or the federal government would impose their own programme on the provinces and territories. At the time of this announcement, four provinces (British Columbia and Alberta with carbon taxes and Ontario and Quebec with cap and trade programmes) had already implemented carbon pricing systems. In July 2018, however, the Ontario government announced that they were winding down their cap and trade programme.

13. Asbestos

13.1 Key Policies, Principles and Laws Relating to Asbestos

Asbestos management in Canada is governed by occupational health and safety legislation, and environmental legislation. It is governed federally by legislation such as the *Hazardous Products Act* and the *Canada Consumer Product Safety Act*, and provincially by legislation such as the *Workers Compensation Act*. The federal government has proposed regulations that would prohibit the import, sale and use of asbestos or products containing asbestos, subject to some limited exclusions.

13.2 Responsibilities of the Landowner or Occupier

The responsibility for removing or managing asbestos present in a building generally falls on the building owner. However, in some provinces the occupier of a building, such as a tenant or project developer, may also bear some responsibility.

Landowners or occupiers must conduct a pre-work assessment before commencing certain building work. Any asbestos found must be removed, enclosed, encapsulated, or carefully managed prior to renovations or alterations. The legislation mandates that specific procedures are implemented during asbestos removal, relating to ventilation, waste containers and decontamination.

13.3 Asbestos Litigation

Asbestos was used frequently in Canadian insulation, fireproofing and construction until the 1980s. Canada was also an active producer of asbestos until 2011. As a result, Canadian exposure to asbestos has been relatively widespread, and asbestos-related diseases continue to be one of the top causes of workplace death in Canada.

Despite this, asbestos litigation against employers is relatively uncommon. Canada has a socialised medical insurance system and most provinces operate a mandatory workers' compensation scheme, which means that the majority of workers injured by asbestos exposure will receive medical treatment and compensation without resorting to litigation.

Where asbestos litigation has been undertaken, it has been initiated by workers' compensation boards, the bodies responsible for administering the workers' compensation schemes, and brought against manufacturers of asbestos products to recover the costs of paying out compensation to workers and their families.

13.4 Establishing a Claim for Damages

To establish a claim for damages for asbestos exposure, a litigant must demonstrate actual physical harm or injury. However, the long latency period of asbestosis and meso-

thelioma means that the injury or harm may not be realised and litigation not commenced for decades.

This has created challenges for Canadian courts. Litigants have often been exposed to asbestos from a variety of sources over a long period of time, making causation and the proper apportionment of liability a difficult issue. More recent jurisprudence suggests courts will take a more relaxed approach to causation in such cases; see *Clements v Clements*, 2012 SCC 32.

13.5 Significant Cases on Asbestos Liability

One of the leading cases with respect to asbestos liability in Canada is *Privest Properties Ltd v The Foundation Co of Canada Ltd* (1995), 11 BCLR (3d) 1 (SC), aff'd (1997), 31 BCLR (3d) 114 (CA). Privest was the first suit to be tried in Canada involving asbestos in buildings and remains one of the longest in the history of British Columbia, taking up 182 days of court time. The court rejected the plaintiffs' position that the building in question had been contaminated by the presence of asbestos-containing spray fireproofing. The court concluded that the substance at issue was not an inherently dangerous product, because the fireproofing contained chrysotile, rather than crocidolite or amosite forms of asbestos. This decision set a meaningful precedent in Canada by constraining liability with respect to the use of asbestos in fireproofing and construction. It also departed significantly from earlier American authorities.

14. Waste

14.1 Key Laws and Regulatory Controls Governing Waste

In Canada, the responsibility for managing and reducing waste is shared among federal, provincial, territorial and municipal governments. The federal government regulates the export and import of waste and the interprovincial movement of waste, while the provinces regulate the use and disposal of waste. Both "extended producer responsibility" and "product stewardship" programmes are used to manage products at their end-of-life.

14.2 Retention of Liability After Disposal by a Third Party

Whether or not a producer or consigner of waste retains liability for waste after it has been disposed of by a third party depends on the province in question. In some provinces, the legislation includes an automatic ownership transfer provision triggered once waste is accepted by an authorised waste management facility that limits further liability of producers or consigners. In provinces where such a provision does not exist, any past or present owner or person that possessed, controlled or managed the waste remains exposed to liability for waste after it has been disposed of by a third party. However, generally speaking, some direct involvement in the release is necessary for the liability to crystallise. Under both schemes, producers or consigners remain liable for any damage caused while the waste was in their possession or in transport.

14.3 Requirements to Design, Take-Back, Recover, Recycle or Dispose of Goods

Producers in Canada are not generally required to take back, recycle or dispose of goods once they become waste. However, legislation across Canada is widely used to impose some or all of the costs of recovery, recycling and disposal of goods on the producers of waste. These laws are intended to incentivise producers to design products that can be disposed of responsibly.

15. Environmental Disclosure and Information

15.1 Requirement to Self-Report Environmental Incidents or Damage

There are requirements to self-report environmental incidents or damage to regulators in Canada. These requirements often apply to spills or releases of environmentally harmful substances such as oil, sewage and ozone-depleting substances. Larger spills or releases may also be required to be reported to the public at large.

15.2 Public Access to Environmental Information

Canadian government agencies often publish environmental information on their websites. The public may also request government documents and information through access to information requests, which apply to nearly all public authorities and bodies and nearly all government documents.

15.3 Disclose Environmental Information in Their Annual Reports

The disclosure of environmental information in annual reports is still largely voluntary in Canada. However, under Canadian securities rules, reporting issuers (which are largely public companies) must disclose all material information, including material information about environmental and social issues. Report issuers may also have disclosure obligations under the policies of a particular stock exchange.

16. Transactions

16.1 Environmental Due Diligence on M&A, Finance and Property Transactions

Environmental due diligence is typically conducted on M&A, finance and property transactions in Canada.

16.2 Environmental Liability for Historic Environmental Damage

In a share sale, all the assets and liabilities of the target company remain with the company, meaning that the buyer will absorb any outstanding environmental liabilities for historic environmental damage or breaches of environmental law.

In an asset sale, the buyer typically does not inherit the pre-acquisition environmental liabilities associated with the purchased assets. However, by law, the buyer may inherit liability for the pre-existing environmental condition of the assets, especially in the case of a contaminated site. A buyer may also be liable where it takes over an ongoing situation of regulatory non-compliance.

16.3 Retention of Environmental Liability by Seller

On a share sale, a seller typically does not retain any liability for historic environmental damage or breaches of environmental law. The liabilities are those of the corporate entity, meaning they transfer with the purchase of the shares. However, representations, warranties and indemnities are commonly used in Canadian business transactions to shift liability to the seller.

On an asset sale, a seller typically remains liable for pre-closing environmental liabilities, such as those associated with contaminated land.

16.4 Environmental Due Diligence by a Purchaser of Shares/Assets

Typically, a purchaser of Canadian shares or assets will request any of the relevant environmental studies, reports, permits, orders, key correspondence from regulatory authorities and other critical environmental documents from the vendor. A purchaser can also search public registries for information regarding the target company's environmental compliance, conduct interviews with senior environmental employees of the target company, or obtain an environmental audit or site assessment.

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16.5 Requirement for Seller to Disclose Environmental Information to the Purchaser

There is little legislation that mandates the disclosure of environmental information to a purchaser. In some jurisdictions, for example, provincial legislation will require a vendor of real property who knows or should know that the property has been used for an industrial or commercial purpose to provide a site profile to a prospective purchaser. More commonly, the requirement to disclose environmental information to a purchaser is built into Canadian contracts. Robust representations and warranties regarding the property or the company's environmental status will create liability where those statements prove untrue.

16.6 Environmental Warranties, Indemnities or Similar Provisions

There are no 'typical' environmental warranties, indemnities, or similar provisions in a share or asset sale. The allocation of risk depends on the parties themselves. However, it is common in Canadian business transactions to include representations, warranties and indemnities that will impact the allocation of environmental liability. Topics that may be covered by these provisions include the state of the property, the absence of contamination and the company's environmental compliance status. Often, such warranties and indemnities will be limited in time.

16.7 Insolvency Rules

There are insolvency rules specifically concerning environmental matters or liabilities in Canada. For example, regulatory bodies that have undertaken the remediation of a contaminated site receive a super priority secured claim ahead of all other creditors for the cost of remediation. As another example, environmental orders, such as pollution or remediation orders, may not be subject to the automatic stay of proceedings imposed on creditors when a company declares bankruptcy.

In addition, some environmental fines or penalties may not be released by an order of discharge in bankruptcy.

17. Taxes

17.1 Green Taxes

In Canada, environmental taxes are imposed on activities or products that have a negative impact on the environment. They are designed to limit environmentally harmful behaviour through a price incentive, and are levied on the tax bases of energy, transportation, pollution and natural resources, among other things. Examples include federal and provincial fuel consumption taxes, and provincial taxes on mineral use, waste management and carbon emissions. Other provisions may allow businesses to recoup costs or receive accelerated depreciation write-offs for pollution control or energy conservation equipment and machinery.