	<p>Background paper for the "Seminar on Strengthening the Enforcement and Administration of Environmental law in North America." PANEL 4.- Environmental enforcement at a local level, alternate mechanisms to solve environmental disputes and submissions on enforcement matters. (a) Local law enforcement attorneys, municipalities and commissions that perform auditing or public scrutiny related to environment. Author: Irene Artru, Commission for Environmental Cooperation.</p>
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This paper provides a broad overview of federal, state and local governmental institutions in Canada playing a role in environmental protection, be it enacting environmental laws, implementing them, enacting regulations, emitting licenses and permits, assessing environmental impacts, or monitoring environmental enforcement and compliance. It describes what their respective responsibilities are and how they coordinate.

A. Legislative Powers and Environmental Protection

In Canada, environmental protection is not defined in the Constitution as a subject matter of federal or provincial legislation, but is rather an aggregate of matters, which come within different classes of subjects, some within federal jurisdiction and others within provincial jurisdiction.

At the federal level, the sources of powers are the federal exclusive jurisdictions over some natural resources¹, over the activities of some industries², over criminal law, which includes the prohibition of activities that are harmful to the environment³, and finally the residuary power to “make Laws for the Peace, Order, and good Government of Canada” (s. 91, opening words), which has been interpreted by case law as implying two branches : the emergency branch and the national concern branch, the latest being useful to establish measures to control pollutions that are beyond the capacity of a province alone to control⁴.

At the provincial level, the sources of powers are the exclusive jurisdictions over non-renewable natural resources, forestry resources and electrical energy, over property and civil rights, which authorizes the regulation of land use and most manufacturing and business activity, and allows the adoption of laws such as the Ontario *Environmental Bill of Rights*; over provincial public lands, containing mining and lumbering; and over municipal institutions (see below, section on municipalities).


Federal and Provincial governments have concurrent powers over agriculture and taxing.

¹ Coastal waters outside the boundaries of the provinces, international and interprovincial rivers, federal public lands, Indian lands.

² Fisheries, navigation and shipping, interprovincial and international transportation and communication, and “Such Works [...] declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces”, such as nuclear power.

³ *R. v. Hydro-Quebec*, [1997] 3 S.C.R. 213.

⁴ In *R. v. Crown Zellerback*, [1988] 1 S.C.R. 399, for instance, the national concern branch was considered for marine protection, as a valid basis for a federal prohibition of dumping waste at sea.

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B. Judiciary Powers and Environmental Law Enforcement

Environmental laws and regulations, as well as environmental administrations acts, are enforced by provincial and federal courts, depending on the matter of the case, and they are usually subject to a control of their legality by administrative tribunals and by judicial review.

Regarding the control of their legality however, some provinces considered more efficient that one tribunal hear all administrative appeals involving environmental issues. They enacted provincial legislation establishing quasi-judicial bodies subject to the rule of natural justice, exclusively dedicated to environmental subjects. Their members include environmental lawyers, academics, planners and mediators, and their decisions remain subject to judicial review. In Ontario for instance, the Environmental Review Tribunal hold public hearings on appeals arising from administrative decisions under various environmental and planning statutes, and adjudicates leave to appeal applications under the Environmental Bill of Rights. In Alberta, the Environmental Appeals Board also adjudicates appeals of environmental decision and offers mediation service prior to the hearing.


C. Administrative Powers and Environmental Protection

1) Environmental Departments, Agencies and Attorneys

Each level of government is provided with an department of environment; Environmental departments have regulatory powers, authority to emit licenses and permits, orders, etc. Prosecutions of environmental offenses are conducted by each attorney general of the federal and provincial governments. Although there are no environmental attorney general as such, crown prosecutors of the justice administration that are specialized in environmental cases work closely with the environmental department legal service.

2) Commissions Performing Monitoring and Auditing

The federal government and some provinces have established independent institutions performing monitoring and auditing of their activities, providing them with investigation powers and entitling them to produce recommendations and to report to the Parliament or to the provincial legislatures. At the federal level, this power is granted to the Commissioner of the Environment and Sustainable Development, which is part of the

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Office of the Auditor General of Canada. It assesses the quality of the sustainable development strategies prepared and updated by designated departments and agencies every three years. It conducts performance audits on the implementation of environmental policies and follow-up audits of activities reported on previously and on departmental progress on recommendations from past audits. It provides the Parliament with reports, analysis and recommendations. It also oversees the environmental petitions process, ensuring that Ministers respond timely to petitions and conducts follow-up on alleged violations. At the provincial level, examples of similar institution are the Commissaire au développement durable in Quebec and the Environmental Commissioner in Ontario.

3) Commissions Performing Public Scrutiny

Canadian governments have increased public participation in their decision-making process, in particular by empowering independent commissions to conduct environmental impact assessments with public scrutiny. At the federal level, the Canadian Environmental Assessment Agency does not conduct environmental assessment itself, but administers the environmental assessment process, during which review panels allow the public to present evidence, concerns and recommendations at public hearings, and produce an environmental assessment report containing conclusions and recommendations and a summary of comments received from the public. At the provincial level, the the Bureau d'audiences publiques sur l'environnement of Quebec, the Clean Environment Commission (CEC) of Manitoba and the Ontario Environmental Review Tribunal conduct a similar process, except that the latest renders a binding decision on the grant approval, which is subject to administrative appeal and judicial review.

4) Municipalities and Local Institutions

Municipalities, which are under the exclusive jurisdiction of provincial legislatures, are entitled to adopt regulation on subjects delegated by the provincial legislature. Regarding activities that affect the environment, municipalities usually control zoning, construction, purification of water, sewage, garbage disposal, noise and pesticide. Choosing the example of the Province of Quebec, the *Municipal Powers Act* grants municipalities regulatory powers, including prohibition, permits system, and enforcement powers, such as inspections, on a variety of subjects, including environment itself and others matters indirectly related to the protection of the environment. Municipalities in Quebec can establish an organism for environmental protection, and some of them can create local

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protected areas. Section 19.3 of the *Environment Quality Act* of Quebec allows municipalities to make an application for an injunction to stop an activity affecting environment quality.

D. Coordination among federal and province governments

Coordinated environmental management is an objective of the Canadian Council of Ministers of the Environment (CCME), whose members are the 13 ministers of the environment for the federal, provincial and territorial governments in Canada. This forum contemplates the harmonization of environmental legislation, policies, procedures and programs and the development of nationally consistent environmental objectives, standards and scientific databases. The CCME has for instance developed the Canada-Wide Acid Rain Strategy, the Code of Practice for Petroleum Storage Tanks, and works currently on projects such as an harmonized regulatory framework and sustainable funding for the management of municipal wastewater effluents, adequate information on water quality and quantity, and common tools. Its members entered into the *Canada-Wide Accord on Environmental Harmonization*⁵, which led to the signature of sub-agreements on environmental assessment, standards, inspections and enforcement, and monitoring and reporting. These sub-agreements, by a one-window approach, seek to allocate responsibility over each aspect of environmental management to just one level of government, the best situated to take them on. Bilateral or multilateral implementation agreements set out the detail of these arrangements⁶.

⁵ January 29, 1998. With the exception of Quebec.

⁶ See, for instance, the *Canada-Manitoba Agreement on Environmental Assessment Cooperation*. Regarding projects where there is also federal jurisdiction, a process is set out respecting joint review. Manitoba Clean Environment Commission hearings may be used as a source of information for the federal review or there may be a joint review panel formed for specific projects. Manitoba Commission members would be part of these panels.