



## **Workers' Environmental Rights in Canada**

A project with Adapting Canadian Work and Workplaces to Respond to Climate Change (ACW)

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## Executive Summary

The history of occupational health and safety legislation in Canada illustrates the value of a rights-based approach to worker protection. Internationally, the United Nations has recognized this with its Universal Declaration of Human Rights enshrining all workers' right to just and favourable conditions of work (Article 23).<sup>1</sup> Through its numerous Conventions, the International Labour Organization has also successfully advocated policies to address a wide range of workplace health and safety issues. Governments around the world have adopted many of its recommended Conventions and have committed to take steps towards achieving a progressively safer and healthier work environment.

While a general right of workers to a safe and healthy work environment is widely accepted, the content of this right has been the subject of extensive debate. It has focused on the extent to which workers should have a voice in shaping workplace health and safety practices, including matters such as the right to refuse unsafe work and the right to a safe workplace and safe working conditions. To address this issue, Canada's federal and provincial laws have provided workers with a range of rights that restrict the employer's unilateral ability to manage production and control the work assigned to its workforce if their safety or health may be at risk. **Although there is considerable room for improvement, federal and provincial laws provide workers with a vehicle for achieving some of the key protections they need.**

While workplaces are the source of hazards facing workers, they are also the source of damaging greenhouse gas (GHG) emissions and other adverse environmental impacts. The science on climate change is clear: we are facing a crisis of unprecedented proportions necessitating dramatic measures to stop global warming. Environmental degradation and pressures on ecological resources have never been more acute.

However, in contrast to the extensive policy and legislative developments on occupational health and safety, workers' responsibilities and rights to protect the environment, or to limit the damage of climate change, have received far less attention. There is a significant gap in the literature, as well as in legislation and public policy.

There is also **much less law** on environmental impacts caused by workplace activities that affect the broader society, and on the corresponding duties of employers to disclose information to prevent harm to both workers and affected communities. In sum, the patchwork of environmental protection legislation across the country does not sufficiently consider the rights of workers and their role as stewards with responsibilities to promote environmental justice for the communities affected by their work activities.

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<sup>1</sup> See: "Decent work and the 2030 Agenda for Sustainable Development", 2 November 2017. United Nations human rights mechanisms define "decent work" as "work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration". Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work

The focus of this report is to identify workers' potential environmental rights in existing federal, provincial, and territorial occupational health and safety and environmental laws in Canada. Based on this jurisdictional scan, the report also explores the extent of these rights, and whether there is sufficient policy and legislation in the area of workplace health and safety that can be used as a basis to expand workers' rights to the environment and climate action.

This report builds on a rights-based approach to environmental protection, also known as **environmental rights**, which has been the focus of increased attention and advocacy in recent decades. The "right to a healthy environment" has been increasingly recognized and advocated for at international, national, and subnational levels.

In this report, we ask,

- How are workplace health and safety rights connected with environmental rights?
- How do occupational health and safety rights and laws account for environmental concerns?
- And, to what extent do existing environmental rights and protections specifically consider workers and their workplaces?

This report has identified the federal and provincial laws whose aim is the protection of workers' health and safety. However, our research and jurisdictional scan of laws—which may recognize, or be capable of advancing, workers' environmental rights—demonstrate there is insufficient legal basis recognizing environmental factors, or effects outside the workplace, the vulnerabilities of workers to environmental hazards and toxic substances, and the duties of employers to disclose information and prevent harm to both workers and the environment. Without the legislative basis recognizing these rights or harms to workers, there is an accompanying lack of access to justice, whereby claims of a breach of a worker's environmental right can be advanced and recognized by our domestic courts.

Based on our research and legal analysis, we propose a series of 6 rights that collectively create a **framework for workers' environmental rights**. To realize workers' environmental rights, ensuring workers have the right to effective solutions and standards of protection conversely requires a sufficiently robust right to information so that workers can appreciate the nature of harm to themselves or the environment. Further, it requires the right to participate in the decision-making and policy-making processes as advocates of environmental justice. Advancing workers' environmental rights will require a shift in focus, from traditional health and safety issues, to a broader approach as stewards of the environment.

The framework recognizes that to have safe and healthy working conditions, the scope and definition of *worker*, *work conditions*, and *environment* should be defined in a way that accounts for the health and well-being of the worker and the environment, and the interconnections among them. This report is rooted in (and motivated by) the

recognition that there is, in practice, a great deal of overlap between work(places) and the broader environment, while in law and policy these spheres are distinct. Therefore, this report aims to broaden our understanding of *working environment* to go beyond the physical workplace, as typically imagined, to account for not only the health and well-being of workers but also that of the public and the environment.

This report aims to provide a framework for workers' environmental rights that can serve as a tool for **action on climate change** and for a **just transition** to an ecologically sustainable economy that incorporates principles of social justice. It considers how enshrining workers' environmental rights may be a tool for mitigating and adapting to climate change impacts. The climate crisis also underscores the urgent need for environmental rights, including those for workers, to ensure this just transition.

Lastly, while the purpose of this report is to review the existence of workers' environmental rights, our findings also identify potential opportunities to advance and strengthen these rights. The leading labour, environmental, and occupational health and safety laws throughout Canada do not, at present, extend environmental rights to workers. However, there is an opportunity to strengthen existing rights (e.g., workers' right to know, right to participate, right to refuse), and substantiate new rights (e.g., the right to a healthy environment) through amendments to existing occupational health and safety and environmental laws. There is also an opportunity, through the ongoing review of the *Canadian Environmental Protection Act*, to advocate for amendments that recognize the vulnerability of workers and explicitly require consideration of vulnerable populations in the substantive provisions of the act.

Thus, we have identified a 6-part framework for workers' environmental rights, as detailed in the later sections of this report (see Chapter II). The following is a summary:

- 1. Right to safe and healthy working conditions, including environmentally sustainable workplaces and work activities, and a duty of employers to prevent unsafe exposure to hazardous substances**
- 2. Right to information (right to know) about the environmental and climate change impacts of their work, workplace activities, and production outputs**
- 3. Right to participate in workplace decision-making where it may have environmental or climate change impacts**
- 4. Right to advocate for effective standards of environmental protection at the workplace and in the broader public arena**
- 5. Right to inform the public about potentially environmentally damaging workplace practices, or production outputs, without fear of discipline or dismissal (whistleblower protection)**
- 6. Right to refuse environmentally damaging work**