



Workers' Environmental Rights in Canada

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

October 2019

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The authors wish to acknowledge the ACW project, funded by SSHRC, for supporting this research project.

Supervision, direction, and guidance were provided by Larry Brown, NUPGE, Partner Organization Co-lead; and Dr. John Calvert, Simon Fraser University, Academic Co-lead.

The authors also wish to acknowledge the support of Theresa McClenaghan, CELA, and Fe de Leon, CELA.

This report is for informational purposes only and does not constitute legal advice. The contents of this report are current to the date of publication (October 2019).

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).¹ 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

¹ 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

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.

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**

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Introduction

Project Objectives

With the support of Adapting Canadian Work and Workplaces to Respond to Climate Change (ACW), the National Union of Public and General Employees (NUPGE), in collaboration with the Canadian Environmental Law Association (CELA), has undertaken a project to explore workers' environmental rights in Canada. The aim of this project is to identify workers' potential environmental rights in existing federal, provincial, and territorial occupational health and safety, and environmental laws. As detailed in Appendix 4, we scanned all federal, provincial, and territorial laws and extracted provisions that may recognize or provide a basis for environmental rights for workers.

Our research confirms that there are gaps in both the literature and existing legislation regarding workers' rights as they relate to environmental factors or situations. These gaps, however, also signal opportunities to strengthen rights that promote environmental sustainability and workers' role within the workplace. Therefore, we aim to contribute to the interdisciplinary study of labour and environmental law, in hopes that this report provides a foundation for further research, legal reform, and advocacy and is of benefit to labour, environmental, and health-based organizations.

Background

Climate change is one of the defining issues of our time. Environmental degradation and pressures on ecological resources have never been more acute.

Workers face unique threats to their health and well-being, safety, and economic security due to environmental factors. This is evidenced by the 2,780,000 workers who died globally, from unsafe or unhealthy work conditions,² and the identifiable occupational disease clusters in Canadian workplaces, where occupational cancer remains the leading cause of work-related death.³ The effects of climate change and environmental degradation pose new threats to workers' health and safety, and to the sustainability of their livelihoods.

This report explores the concept of *workers' environmental rights* in response to the expanding scholarship, global movements, and advocacy seeking to advance environmental rights, or the right to a healthy environment. As there have been comparably less analysis and scholarship on the environmental rights of *workers*, specifically, this report aims to respond to this lacuna.

² International Labour Organization, "Chapter 7 – Working Conditions," online: ilo.org/100/en/story/conditions

³ Workplace Safety & Prevention Services, "Prevention System Updates – Occupational cancer now Canada's leading cause of work-related deaths," (19 Sept 2013), online: <https://www.wsps.ca/News-and-Publications/Prevention-System-Updates/Occupational-cancer-now-Canadas-leading-cause-of.aspx>

Canada's history of hard-fought advances in occupational health and safety (OHS) illustrates the value of a rights-based approach to worker protection. Although the OHS paradigm has to some extent accounted for the effects of environmental hazards on workers within their workplaces, it has paid less attention to the potential rights and responsibilities of workers with regard to *environmental protection*, particularly in the context of climate change. In this report, we aim to contribute to this interdisciplinary study of labour law and environmental law.

Format of Report

This report is divided into 2 chapters. Chapter I explores the concept and history of environmental rights, often framed as “the right to a healthy environment.” Emerging alongside the modern environmental movement, environmental rights are increasingly recognized and advocated for around the world. Chapter I provides an overview of the approaches to, and mechanisms for, enshrining environmental rights, with a focus on the Canadian context. Chapter I surveys the literature on environmental rights of workers, specifically.

Chapter II investigates the link between workers' rights and environmental protection, and presents a review of federal and provincial laws that may extend such rights. This chapter provides a baseline from which trends can be identified and recommendations made to advance workers' environmental rights.

Key Terms

Environment and Working Environment

To explore the environmental rights of workers, nuanced definitions of *environment* and *working environment* are required.

A common narrowly framed definition of the environment is often synonymous with *nature* or the *outdoors*. This has often been the subject of much environmental protection efforts—protecting wilderness areas, parks, or endangered species. However, such a narrow definition would constrain the concepts and applicability of this report.

For the purposes of this report, *environment* includes the following components and the interactions between them:

- (a) land, water, and air, including all layers of the atmosphere and accompanying climate effects;
- (b) all organic and inorganic matter and living organisms; and

(c) socio-economic, cultural, and Indigenous values and rights.⁴

Scholars, activists, and Indigenous communities have long problematized the false dichotomy set up by this understanding of the environment, which views the environment as something distinct or external to human societies. This distinction between what is human and what is nature is often reinforced in labour and environmental law and policy.⁵

In practice, these spheres are deeply interconnected. The interrelationship between social and natural environments is particularly evident in the workplace, where work activities and workers both affect, and are affected by, the environment.

Relatedly, we must broaden and deepen our understanding of the working environment. The traditional understanding of working environment is often focused on the physical workplace or its immediate surroundings. In Ontario's occupational health and safety legislation, for instance, workplace is defined as "any land, premises, location or thing at, upon, in or near which a worker works."⁶

Therefore, this report employs an understanding of "working environment" that accounts for the health and well-being of both the worker and the environment, and the interconnections between them.

We also draw on the definition referenced by the International Labour Organization (ILO) in its Occupational Safety and Health Convention that provides the workplace is "all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer."⁷

While laws and policies often compartmentalize the work environment vs. natural environment, in practice, most work activities interact with the physical workplace, and social and natural environments. Recognizing these interconnections requires us to rethink our views of work and the workplace, such that environmental and climate effects *do* enter into our discussions of workers' safety, health, and environmental rights.

As discussed in this report, occupational health and safety rights have, in part, evolved to account for environmental factors, primarily in regard to the effect of environmental

⁴ Adapted from Ontario's *Environmental Assessment Act*, RSO 1990, c E 18 and the federal *Impact Assessment Act*

⁵ Ania Zbyszewska, 2018. "Labor Law for a Warming World? Exploring the Intersections of Work Regulation and Environmental Sustainability – Guest Editorial." *Comparative Labor Law and Policy Journal* 40(1).

⁶ *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1 <https://www.ontario.ca/laws/statute/90o01>

⁷ International Labour Organization (ILO). Occupational Safety and Health Convention, 1981 (No. 155). https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100_instrument_id:312300

hazards on workers' health and safety within their workplaces. For example, the ILO Working Environment (Air Pollution, Noise and Vibration) Convention (No. 148) outlines the need to prevent environmental hazards that pose threats to workplace health and safety.⁸

In this project, we are interested in exploring how OHS legislation in Canada accounts for environmental factors beyond the immediate or direct hazards in the workplace. While this element is a crucial one, we aim to further analyze the extent to which OHS legislation applies to (or could apply to) the effects of workplaces and work activities on the environment.

The ILO has been a leader in advocating a broader framework for occupational health and safety that is “devoted to the anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, *taking also into account the possible impact on the surrounding communities and the environment*” [emphasis added].⁹ To anticipate the hazards and impacts to surrounding communities arising in the workplace requires us to consider climate change.

The climate crisis also brings urgency to the potential for workers' environmental rights as tools for climate action and a just transition.

International human rights organizations and experts have also highlighted the ways in which climate change threatens human rights, and the need to incorporate human rights considerations into climate action policies.¹⁰ Thus, it is equally as important and timely to consider how workers' environmental rights may be tools for mitigating and adapting to climate change impacts, and to facilitating a just transition.

It is these understandings of the environment and working environment that inform—and, indeed, motivate—our exploration of workers' environmental rights in Canada.

Environmental Justice, Vulnerable Populations, and Workers

⁸ International Labour Organization (ILO). Working Environment (Air Pollution, Noise and Vibration Convention), 1977 (No. 148).

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C148

⁹ International Labour Organization (ILO). “Improving health in the workplace: ILO’s framework for action.” Factsheet, 16 December 2014. https://www.ilo.org/safework/info/publications/WCMS_329350/lang-en/index.htm

¹⁰ “Five UN human rights treaty bodies issue a joint statement on human rights and climate change.” News release, United Nations Human Rights Office of the High Commissioner, 16 September 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>.

“Our addition to fossil fuels causes climate emergency, says human rights experts.” United Nations Climate Action Summit, New York, 23 September 2019. News release, United Nations Human Rights Office of the High Commissioner, 17 September 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25003&LangID=E>

Environmental justice is the principle that environmental benefits and burdens should be equitably distributed among all persons, and that the majority of adverse impacts should not be unfairly imposed upon poor people, visible minorities, or marginalized communities.¹¹

Adopting an understanding of environment that complements the principle of environmental justice—which is often framed more broadly to encompass the health and well-being of people—ensures workers’ health and that of the environment can be advanced together.

In the tradition of environmental justice, it is important to recognize there are *vulnerable populations* more at risk of experiencing occupational and environmental harms.

As reported by the United Nation’s Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, “workers are especially vulnerable to the violation and abuse of their human rights, not the least of which is from being subjected to exposure to toxic substances in the course of their work.”¹² The Special Rapporteur also underscores that multiple factors, including income, education, age, gender, country of origin, ethnicity, and disability, can exacerbate the risk of being exposed to toxic substances, or to occupational disease and disability more broadly.¹³

Environmental justice scholarship has also exposed the ways in which environmental harms have uneven effects,¹⁴ disproportionately impacting poor, racialized, Indigenous, and other marginalized communities.¹⁵

Therefore, an understanding of *vulnerable populations* is important in order to address disparities that cause some workers to be disproportionately exposed to workplace and environmental hazards.

Vulnerable populations mean people who are:

¹¹ Based on: Canadian Environment Law Association, “Proposed Amendments to the *Canadian Environmental Protection Act*” (12 oct 2018) online: <https://www.cela.ca/proposed-ammdments-CEPA> [CELA, Proposed amendments to CEPA]

¹² Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. September 2018. UN General Assembly, Human Rights Council. A/HRC/39/48. <http://www.srtoxics.org/wp-content/uploads/2018/09/2018-HRC-report-on-Workers-Rights-EN.pdf>

¹³ Ibid.

¹⁴ Michael Buzzelli. “Environmental Justice in Canada: It Matters Where You Live.” CPRN Research Report, December 2008. Canadian Policy Researchers Networks. http://cprn3.library.carleton.ca/documents/50875_EN.pdf

¹⁵ Julian Agyeman, Peter Cole, Randolph Haluza-DeLay, and Pat O’Riley. 2009. *Speaking for Ourselves: Environmental Justice in Canada*. Vancouver and Toronto: UBC Press. See also: Ingrid R. G. Waldron. 2018. *There’s Something in the Water: Environmental Racism in Indigenous & Black Communities*. Halifax and Winnipeg: Fernwood Publishing.

- infants, children, or adolescents;
- women;
- pregnant people;
- seniors;
- Indigenous peoples;
- individuals with a preexisting medical condition or disability;
- workers that work with a toxic substance; or

who by reason of their

- income
- race
- gender
- national origin, or
- geographic location

are subject to a disproportionate potential for exposure, or potential for disproportionate adverse effects from exposure.¹⁶

Worker includes not only directly employed workers, but also informal workers, contract and subcontract workers, agency workers, and all other persons performing work-related activities.¹⁷

Including workers within the definition of vulnerable populations is a prerequisite to advancing workers' environmental rights, as these rights seek to prevent certain workers from being disproportionately at risk of experiencing adverse environmental or human health effects.¹⁸

¹⁶ CELA, Proposed amendments to CEPA.

¹⁷ United Nations Human Rights, Office of the High Commissioner for Human Rights, "Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes" (2018) online: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/39/48&Lang=E>, 5 [UN Rights to Workers]

¹⁸ *Ibid*

Chapter I

Literature Review: Environmental Rights in Canada

A rights-based approach has proven to be effective in a variety of contexts. For example, the development of a rights-based occupational health and safety framework in Canada has been largely successful in protecting workers. Given the value of a rights-based approach to *worker* protection, this report explores whether a rights-based approach to *environmental* protection could—or should—exist in Canada.

We begin by surveying the growing body of literature on what is called *environmental rights*, then examining if and how those frameworks account for work and workers, in particular. Subsequent sections of this report use occupational health and safety rights as a starting point to examine whether they can be extended to serve as a tool for environmental protection and climate action.

This chapter explores the concept and history of environmental rights, often framed as a right to a healthy environment, and provides an overview of the approaches to, and mechanisms for, enshrining these rights. Then, with a focus on the Canadian context, this chapter surveys the literature on environmental rights of workers, specifically.

1.1. What Are Environmental Rights?

Garnering increased attention in recent decades is the concept of environmental rights, or those “rights understood to be related to environmental protection.”¹⁹ Such a right is often defined by an accompanying adjective, such as healthy, safe, clean, adequate, secure, sustainable, or ecologically sound,²⁰ or some combination thereof. A common articulation is “the right to a healthy environment,” which, globally, human rights advocates, environmentalists, and lawmakers have recognized or advocated for.

The concept of environmental rights largely emerged with the modern environmental movement, which fostered a recognition of the connections between human rights and the environment (Section 2). Environmental rights advocates have argued that a rights-based approach to environmental protection is valuable because it adds the moral and legal weight of human rights.²¹

The movement, therefore, has aimed to present environmental rights as human rights. Scholars note 3 defining criteria of a human right: universal (held by all people), moral (existing regardless of recognition by a government or law), and essential (ensuring dignity and quality of life for all).²² A right to a healthy environment meets these criteria.²³

Enforceability is crucial to realizing rights. Recognition of environmental rights must articulate the responsibilities and obligations of governments to protect the rights.²⁴ In a workers’ context, this may also include employers’ duties. According to environmental rights and legal scholar David Boyd, who also currently serves as the United Nations Special Rapporteur on human rights and the environment, effective enforcement includes action to prevent violation and proactive steps to fulfill the right. Therefore,

the right to a healthy environment confounds traditional categories of human rights. It is both a negative (liberty) right, used to protect individuals from unwarranted government interference, and a positive (welfare) right, which requires the state to take action and

¹⁹ Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. December 2012. United Nations General Assembly, Human Rights Council. A/HRC/22/43.
https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf

²⁰ Sumudu A. Atapattu. 2006. *Emerging Principles of International Environmental Law*. Ardsley, NY: Transnational; Dinah L. Shelton. 2011. “Human Rights and the Environment: Substantive Rights.” GW Law School Public Law and Legal Theory Paper No. 2013-33.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226020

²¹ Shelton, 2011, “Human Rights and the Environment,” p. 265-66.

²² Maurice William Cranston. 1973. *What are Human Rights?* London: Bodley Head.

²³ David R. Boyd. 2012. *The Right to a Healthy Environment: Revitalizing Canada’s Constitution*. Vancouver and Toronto: UBC Press.

²⁴ Boyd, 2012, *The Right to a Healthy Environment*.

expend resources. It is both an individual and a collective right, a substantive and a procedural right.²⁵

²⁵ Boyd, 2012, *The Right to a Healthy Environment*, p. 3.

1.2. Historical Context

1.2.1. The concept and evolution of environmental rights

The concept of environmental rights has evolved primarily in the international sphere. As discussed throughout this report, international bodies and agreements have continued to play a role in advancing environmental rights by exerting pressure on states to recognize and honour environmental rights.

The UN Special Rapporteur on human rights and the environment (hereafter *the Special Rapporteur*) and its precursory position, the UN Independent Expert on the issue of human rights relating to the enjoyment of a safe, clean, healthy and sustainable environment, have been at the forefront of this work; the Special Rapporteur has produced extensive reporting and analysis. As Independent Expert, John Knox, documented a historical overview of the concept of environmental rights.²⁶ His report underlines the deep interdependence between human rights and the environment, a connection that is apparent (and further reinforced) in the evolution of environmental rights.

However, environmental rights are, relatively, latecomers to the human rights paradigm at both international and national levels. For example, the concept of environmental rights was not included in foundational human rights documents, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966).²⁷ It is only more recently that environmental rights have begun to appear in the rights paradigm and at a quick pace.

It is important to clarify that, despite environmental rights being relatively recent additions to the human rights field, the notions of environmental rights and responsibilities have long been part of Indigenous (legal) traditions.²⁸ It is within the Western rights framework that environmental rights are a relatively newer concept.

In international discourse, environmental rights emerged out of a growing awareness of the connections between human rights and the environment. The interconnections—and, arguably, interdependence—between human rights and the environment became apparent during the modern environmental movement beginning in the 1960s.²⁹

²⁶ Report of the Independent Expert, 2012.

²⁷ David Boyd. 2012. “The Constitutional Right to a Healthy Environment. *Environment: Science and Policy for Sustainable Development* 54(4): 3-15

²⁸ Ibid; John Burrows. 2010. *Canada’s Indigenous Constitution*. Toronto: University of Toronto Press; Winona LaDuke. 1994. “Traditional Ecological Knowledge and Environmental Futures.” *Colorado Journal of International Environmental Law and Policy* 5(1): 128.

²⁹ Report of the Independent Expert, 2012.

Rachel Carson's trailblazing book *Silent Spring*, published in 1962 is credited as the first documented support of the human right to a healthy environment. Carson wrote:

If the Bill of Rights contains no guarantees that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem.³⁰

We find origins of the more fully formulated right in the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972. The Stockholm Declaration emphasizes the links between human rights and the environment. It states: "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself."³¹ The Declaration principles begin as follows:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.³²

The Stockholm Declaration, which marked the first formal recognition of environmental rights, gave way to more widespread recognition. In 1976, Portugal became the first country to enshrine the "right to a healthy and ecologically balanced human environment" in its constitution.³³ Since that time, many countries have taken steps to recognize environmental rights in law, with constitutions becoming a primary mechanism (see section 3.2B). As of 2012, 177 of 193 UN member states have recognized the right to a healthy environment through their constitution, environmental legislation, court decisions, or ratification of an international agreement.³⁴ Canada is amongst the laggards, having not yet constitutionalized environmental rights; however, some subnational governments have to some extent recognized these rights.

In the early articulations of environmental rights, Fatma Zohra Ksentini played a significant role. In 1990, Ksentini was appointed as the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' Special Rapporteur on human rights and the environment. Although few of her reports or draft articles were adopted, the subject became a staple on the agenda of the UN Commission on Human Rights, which assumed the Sub-Commission in 2006 and created an Advisory Committee.

³⁰ Rachel L. Carson. 1962. *Silent Spring*. New York: Houghton Mifflin Company.

³¹ Declaration of the United Nations Conference on the Human Environment. Stockholm, 16 June 1972. <http://legal.un.org/avl/ha/dunche/dunche.html>

³² Ibid.

³³ Report of the Independent Expert, 2012.

³⁴ Boyd, 2012, "The Constitutional Right to a Healthy Environment.

Ksentini's Draft Principles on Human Rights and the Environment read, in part:³⁵

- a) Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible;
- b) All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible;
- c) All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment;
- d) All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Importantly, the draft articles identified both substantive and procedural rights to a healthy environment, an important distinction for realizing rights³⁶ (see section 3.1).

1.2.2. Political and social context

The recognition of environmental rights occurred against the backdrop of (and was informed by) the emerging environmental movement, when scientific knowledge and societal awareness of environmental issues were rapidly advancing. The movement's influence, beginning in the 1960s, contributed to the development of national laws addressing pollution, toxic substances, and natural resources. Internationally, states began coordinating on shared environmental challenges, through treaties aimed at protecting biological diversity and halting the depletion of the ozone layer.³⁷

Like environmental rights, the evolution of the *sustainable development* concept, becoming a focal point in the international community in the early 1990s, reinforced the links between human rights and the environment.³⁸ Growing environmental awareness and an emphasis on sustainable development led to "calls for formal recognition of the importance of environmental protection to human well-being."³⁹

As recognized by the former UN Special Rapporteur, articulating this relationship in human rights language was inevitable:

³⁵ Review of Further Developments in Fields with Which the Sub-commission has been Concerned: Human Rights and the Environment: Final report prepared by Mrs. Fatma Zohra, Ksentini, Special Rapporteur. Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities. E/CN.4/Sub.2/1994/9 <https://digitallibrary.un.org/record/226681?ln=en>, Annex I: Draft Principles on Human Rights and the Environment, p. 74-77.

³⁶ Ksentini outlines substantive rights including the right to a secure, healthy and ecologically sound environment; the right to be free from pollution; and the right to inter- and intra-generational equity. Procedural rights include the right to information; the right to hold and express opinions; the right to participate in decision-making; the right to effective remedies and freedom of association. Report cited in: Atapattu, 2006, *Emerging Principles of International Environmental Law*, p. 26.

³⁷ Report of the Independent Expert, 2012.

³⁸ Atapattu, 2006, *Emerging Principles of International Environmental Law*.

³⁹ Report of the Independent Expert, 2012.

Human rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and responsive policymaking. Human rights and environmental protection are inherently interdependent.⁴⁰

In other words, environmental protection plays an essential role in ensuring the enjoyment of human rights.”⁴¹

The impacts of the environment on human rights, and vice versa, are increasingly evident in the context of climate change. The UN High Commissioner for Human Rights on the relationship between climate change and human rights outlined this interdependent relationship in a 2009 report.⁴² The report illustrates that human rights are impacted by climate change, with disproportionate effects on vulnerable individuals and communities, including women, children, and Indigenous people,⁴³ and that states have obligations to protect those rights.

Human rights treaty bodies, too, have increasingly highlighted states’ human rights obligations in the context of climate change.⁴⁴ This sentiment was recently echoed by international human rights bodies and special rapporteurs, who, in September 2019, underscored the human rights implications of climate change, particularly for vulnerable populations, and the need for human rights considerations in climate action.⁴⁵ The joint statements also reference the right to a healthy environment, noting that

⁴⁰ Ibid., p. 4-5.

⁴¹ Shelton, 2011, “Human Rights and the Environment,” p. 265.

⁴² Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights. January 15, 2009. “Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights.” A/HRC/10/61. <https://www.ohchr.org/en/issues/hrandclimatechange/pages/study.aspx>

⁴³ Ibid., p. 15-18.

⁴⁴ Such bodies have highlighted the potential for climate change to impact human rights. For example, the Committee on Economic, Social and Cultural Rights (CESCR), issued a statement in October 2018, which coincided with the IPCC’s Special Report on limiting warming to 1.5°C, that acknowledged climate change severely threatens economic, social, and cultural rights. These bodies have stressed that states’ failure to prevent human rights harms due to climate change may be in violation of their obligations. For example, the Committee on the Elimination of Discrimination Against Women (CEDAW), said that nations must “take into account the greater vulnerability of women in the face of natural disasters and climate change” and “ensure access to justice for women.” Cited in: Centre for International Environmental Law (CIEL) and The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). February 2019. “States’ Human Rights Obligations in the Context of Climate Change: 2019 Updates.” <https://www.ciel.org/wp-content/uploads/2019/03/HRTB-Feb.-2019-update-2019-03-25.pdf>

⁴⁵ “Five UN human rights treaty bodies issue a joint statement on human rights and climate change.” News release, United Nations Human Rights Office of the High Commissioner, 16 September 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>. “Our addition to fossil fuels causes climate emergency, says human rights experts.” United Nations Climate Action Summit, New York, 23 September 2019. News release, United Nations Human Rights Office of the High Commissioner, 17 September 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25003&LangID=E>

a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being. In today's global climate emergency, meeting the obligations to respect, protect and fulfil human rights could help to spur the transformative changes that are so urgently required.⁴⁶

International actors have been pivotal to the development of environmental rights. In the following sections, we further address the challenges that remain and examine how their recommendations have been put into practice.

⁴⁶ "Our addition to fossil fuels causes climate emergency, says human rights experts," 17 September, 2019.

1.3. Environmental Rights in Practice

To explore environmental rights in practice, we must consider where these rights are (or might be) found and how they are articulated and enforced. Drawing on best practices worldwide⁴⁷ can provide a roadmap for implementing environmental rights. Experts and advocates for environmental rights have also outlined frameworks (see Appendix 1), principles, and proposals for actualizing environmental rights. This section provides an overview of the approaches to, and mechanisms for, recognizing environmental rights.

1.3.1. Creating a new right or greening existing rights

According to various experts, there are 2 possible approaches to enshrining environmental rights: (1) creating a new right or (2) greening existing human rights.⁴⁸ The first approach involves “adopting an explicit new right to an environment characterized in terms like healthy, safe, or sustainable.”⁴⁹ This approach has focused on creating such a right within national constitutions, though it may also be done through legislation (e.g., an environmental bill of rights) and regional human rights agreements.

The second approach, known as *greening* existing human rights, clearly illustrates the relationship between human rights and the environment, as it seeks to underscore the relationship of recognized rights (e.g., right to health) to the environment.⁵⁰ In doing so, this approach identifies 2 types of rights closely related to the environment: “(a) rights whose enjoyment is particularly vulnerable to environmental degradation, and (b) rights whose exercise supports better environmental policymaking.”⁵¹

Rights in the first category can be characterized as substantive rights (e.g., rights to life and health), while those in the second category can be characterized as procedural rights (e.g., rights to freedom of expression and association, information, participation in decision-making, and effective remedies).⁵² In practice, there are both substantive and procedural elements of environmental rights: a substantive right to environmental quality and procedural safeguards to ensure the substantive right is protected.⁵³ While distinct, substantive and procedural rights are deeply connected. They are complementary in

⁴⁷ Special Rapporteur on human rights and the environment. “Categories of Good Practices.” United Nations Human Rights Office of the High Commissioner, 2019. <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/GoodPracticesCategories.aspx> (last accessed April 2019).

⁴⁸ Report of the Independent Expert, 2012.

⁴⁹ Report of the Independent Expert, 2012.

⁵⁰ Report of the Independent Expert, 2012.

⁵¹ *Ibid.*, p. 7.

⁵² *Ibid.*

⁵³ Boyd, 2012, *The Right to a Healthy Environment*.

that “procedural law brings substantive law to life and enables rights and duties to be enforced and defended.”⁵⁴

To elaborate, substantive rights can be described as fundamental or inherent rights. However, in the context of environmental rights, they are most often at risk from environmental harms. For example, improper management and disposal of hazardous substances pose a threat to the rights to life and health; desertification, biodiversity loss, and climate change threaten the right to food.⁵⁵

This link is particularly present in the context of climate change. Global temperature increases contribute to increased incidence of mortality, illness, and displacement from climate disasters and extreme weather. According to the Intergovernmental Panel on Climate Change (IPCC), climate change will cause declining work productivity and rising morbidity and mortality due to heat wave exposure. As a result, agricultural and construction workers are particularly at risk, alongside children, women, the homeless, and the elderly.⁵⁶ The human health impacts of environmental degradation are also widely recognized. They are exacerbated by weak or piecemeal standards for air quality, food safety, pesticides, toxic substances, climate change, and biodiversity.⁵⁷

Procedural rights are those that deal with process or activities, particularly those that uphold or defend substantive rights. For environmental rights, procedural elements are those that support environmental protection and policymaking. Exercising rights to freedom of expression and association, to information, to participate in decision-making, and to legal remedies, when related to environmental issues, “results in policies that better reflect the concern of those most concerned and, as a result, that better safeguard their rights to life and health, among others, from infringement through environmental harm.”⁵⁸

Such procedural rights have been central to human rights declarations, such as the 1992 Rio Declaration on Environment and Development, which states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and

⁵⁴ “Procedural Law.” 2019. The Canadian Encyclopedia.

<https://www.thecanadianencyclopedia.ca/en/article/procedural-law> (accessed March 27, 2019).

⁵⁵ Report of the Independent Expert, 2012, p. 7.

⁵⁶ Special Rapporteur on human rights and the environment. No date. “Climate Change.” United Nations Human Rights Office of the High Commissioner, 2019.

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/ClimateChange.aspx> (last accessed April 2019).

⁵⁷ David R. Boyd. 2015. “The right to a healthy environment: A prescription for Canada. *Canadian Journal of Public Health* 106(6): 353-54.

⁵⁸ Report of the Independent Expert, 2012.

encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.⁵⁹

The Rio Declaration also emphasizes the value of involving vulnerable groups, including women, Indigenous people, and youth, in environmental policymaking.⁶⁰

Figure 1: Substantive and procedural rights

Substantive rights	Procedural rights
Rights whose enjoyment is particularly vulnerable to environmental degradation	Rights whose exercise supports better environmental policymaking
Examples: Right to life Right to health	Examples: Right to freedom of expression and association Right to information Right to participate in decision-making Right to effective remedies

The link between substantive and procedural rights is evident in the responsibilities recognized within an environmental rights framework. For instance, in order to protect the environment from harms that may violate a substantive set of rights, “states have obligations to respect and ensure the second [procedural] set of rights” whose implementation supports environmental protection and policymaking.⁶¹ This connection

can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.⁶²

The 2 approaches to environmental rights—creating existing rights or greening existing rights—need not be mutually exclusive. In fact, considering the Canadian context, Boyd argues: “Given the extent of Canada’s environmental problems, it would seem that both greening existing human rights and expanding the family of rights to include the right to a healthy environment are potentially useful approaches.”⁶³ Other legal scholars have also advocated for employing a dual approach, noting that

⁵⁹ Rio Declaration on Environment and Development. Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992. A/CONF.151/26 (Vol. I). <https://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> Principle 10.

⁶⁰ Ibid., Principles 20-23.

⁶¹ Report of the Independent Expert, 2012.

⁶² Ibid., p. 14.

⁶³ Boyd, 2012, *The Right to a Healthy Environment*, p. 27.

[Existing rights] by themselves, do not imply that a distinct right to environment exists in international law. While they do demonstrate the flexibility of human rights, problems have arisen with the issue of causation—establishing that the environmental issue in question resulted in a violation of the protected right. It may not be possible to make this link in every case. Thus, the recognition of a distinct right to environment becomes attractive in such situations.⁶⁴

In employing these approaches, there are various possible mechanisms or venues for implementing and enforcing the rights.

1.3.2. Implementation and enforcement mechanisms

In recognizing or enshrining environmental rights, it is important to ask, How and where are environmental rights protected? Who is responsible for protecting them?⁶⁵

With environmental rights, comes corresponding obligations or responsibilities. Broadly, they include

- procedural obligations regarding access to environmental information;
- public participation in decision-making, protecting rights of expression and association, and access to legal remedies;
- substantive obligations, including obligations related to non-state actors; obligations regarding transboundary environmental harm; and
- obligations relating to those in vulnerable situations.⁶⁶

Rights can be recognized or enshrined at various levels of government. The following sections provide an overview of some key precedents, opportunities, and limitations.

⁶⁴ Atapattu, 2006, *Emerging Principles of International Environmental Law*.

⁶⁵ Ibid.

⁶⁶ Special Rapporteur on human rights and the environment, “Categories of Good Practices.”

1.4. International Level

1.4.1. The role of international law

As previously noted, the environmental rights concept and movement largely developed in the international sphere. International actors and agreements have been at the forefront of recognizing the right to a healthy environment. Since the 1970s, environmental rights have begun to appear in international law through customary international law, including declarations and resolutions, and general principles of law.⁶⁷

The challenge with an international approach to environmental rights, however, is that most international bodies and agreements are non-binding on domestic law and decision-making, leaving most of the protection and fulfillment of rights to the national level.⁶⁸ However, international law is an important source of legal norms. Through treaties, conventions, and institutions, international law plays a normative role, reflecting or establishing values that may influence standards, behaviours, and decision-making.⁶⁹ It can influence domestic laws and judicial decisions, and may contribute to future binding obligations.

The following section highlights the key international treaties and conventions for environmental rights, including consideration of workers. All of the areas highlighted below, alongside the principles and rights they seek to advance, are reflected in later sections of this chapter.

1.4.2. International treaties and conventions

While many international agreements identify the link between the environment and human rights, few endorse a distinct right to the environment. The right to a healthy (or safe or sustainable) environment has not yet been included in a global agreement, although the Stockholm Declaration came close.⁷⁰ The World Charter for Nature recognizes procedural rights, including the rights to information, participation, and environmental impact assessment.

Sustainable development is increasingly the focus of global agreements. The 1992 Rio Declaration, for instance, identifies the link between sustainable development and human rights: “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with

⁶⁷ For an overview, see: Boyd, 2012, *The Right to a Healthy Environment*, p. 122-45.

⁶⁸ Boyd, 2012, “The Constitutional Right to a Healthy Environment,” p. 5.

⁶⁹ Boyd, 2012, *The Right to a Healthy Environment*, p. 122-25.

⁷⁰ Report of the Independent Expert, 2012.

nature.”⁷¹ Most recently, the UN Special Rapporteur has called on UN member states to adopt a declaration formally recognizing the human right to a healthy environment.⁷²

The International Labour Organization (ILO) is a specialized agency of the UN whose efforts have been pivotal to the advancement of workers’ rights. Although the ILO does not adopt the language of environmental rights, its frameworks and conventions on occupational health and safety and working environment provide useful guidelines, as discussed in Section 4.

1.4.3. Regional agreements

Environmental rights have been included in conventions or treaties between states at the regional level. Regional human rights agreements, such as the 1981 African Charter on Human and People’s Rights and the Association of Southeast Asian Nations’ Human Rights Declaration in 2012, have recognized the right to a healthy environment.⁷³ The right has also been included in regional environmental agreements, such as Europe’s 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; and the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. As of July 2018, regional human rights and environmental treaties recognizing the right to a healthy environment have been ratified by over 130 nations around the world.⁷⁴

⁷¹ Rio Declaration on Environment and Development, 1992, Principle 1.

⁷² “Environmental hazards kill 8 million a year: UN expert urges global recognition of the human right to a healthy environment.” Media Release, 25 October 2018. United Nations Human Rights Office of the High Commissioner.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23782&LangID=E>

⁷³ Other examples include the 1988 Additional Protocol to the American Convention on Human Rights, the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and the 2004 Arab Charter on Human Rights. See: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. United Nations General Assembly A/73/188. 19 July 2018.

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx>

⁷⁴ Ibid.

1.5. National Level

Much environmental rights scholarship and advocacy have focused on mechanisms at the national level because of the state's enforcement power. While international actors and agreements may lack teeth, domestic governments are able to enforce rights.⁷⁵ Therefore, experts argue that the state should be the protector of environmental rights.⁷⁶

1.5.1. Constitutional recognition

At the national level, much attention has focused on recognizing environmental rights as constitutional rights. As of 2015, 100 nations included the right to a healthy environment (or similar phrases) in their constitutions.⁷⁷ Canada is not yet among them.

There is a great deal of scholarship on constitutionalizing environmental rights, including that of David Boyd's, who has shown leadership on this issue globally and in Canada.⁷⁸ Boyd argues that a constitution is the best place to entrench the right to a healthy environment because it brings strong legal protection:

Within countries, a constitution is the highest and strongest law, as all laws, regulations, and policies must be consistent with it. A constitution protects human rights, sets forth the obligations of the state, and restricts government powers. On a deeper level, constitutions reflect the most deeply held and cherished values of a society.⁷⁹

Scholars have analyzed constitutional environmental provisions in depth, developed guidelines, and identified best practices for implementation.⁸⁰ In sum, proponents of the constitutional approach have identified the following potential benefits:⁸¹

- stronger environmental laws and policies,
- improved implementation and enforcement,
- greater citizen participation in environmental decision-making,

⁷⁵ Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights. January 15, 2009. "Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights." A/HRC/10/61. <https://www.ohchr.org/en/issues/hrandclimatechange/pages/study.aspx>. p. 7

⁷⁶ Atapattu, 2006, *Emerging Principles of International Environmental Law*.

⁷⁷ Boyd, 2015, "The right to a healthy environment: A prescription for Canada."

⁷⁸ Boyd has led quantitative studies, then followed by others, that interrogate why countries adopt constitutional environmental rights (CERs) and the relationship between CER provisions and environmental (rights) outcomes. See: Boyd, 2012, *The Right to a Healthy Environment*.

⁷⁹ Boyd, 2012, "The Constitutional Right to a Healthy Environment," p. 5.

⁸⁰ Chris Jeffords and Joshua C. Gellers. 2017. "Constitutionalizing Environmental Rights: A Practical Guide." *Journal of Human Rights Practice* 9(1): 136-45.

⁸¹ Boyd, 2012, "The Constitutional Right to a Healthy Environment," p. 5; For an in-depth discussion on the potential advantages of a constitutional approach in the Canadian context, see: Boyd, 2012, *The Right to a Healthy Environment*, p. 18-24.

- increased accountability,
- a safety net for weak or absent environmental laws,
- fewer environmental injustices,
- a level playing field with social and economic rights, and
- improved environmental performance.”

In Canada, proponents have argued that a constitutional/Charter right would fill gaps in environmental laws and regulations, address jurisdictional issues, and promote equality, because the current “patchwork of environmental laws” disproportionately impacts vulnerable communities.⁸²

Much scholarship has also focused on substantive constitutional environmental rights (CERs). Gellers and Jeffords have led efforts to investigate the role of procedural environmental rights (PERs) and their impact on human rights outcomes. Their work finds that constitutionally entrenched PERs, particularly those relating to access to information, are positively correlated with environmental justice outcomes.⁸³

Similarly, May and Daly call for the protection of the rights to information, participation, and adjudication or dispute resolution within constitutions.⁸⁴ They argue that constitutional protection of these procedural rights will improve environmental governance by supporting the

- rule of law,
- development of institutions,
- increased participation of the public in governance,
- government accountability, and
- integration of local, regional, and federal institutions.

Furthermore, they assert that constitutional guarantees of these rights will promote environmental sustainability.⁸⁵

In practice, constitutionalized environmental rights are shown to be positively correlated with environmental and human rights outcomes,⁸⁶ as evident in Norway, Portugal, and

⁸² Margot Venton, Pierre Sadik, and Kaitlyn Mitchell. “Right to a Healthy Environment.” Ecojustice, 2018. <https://www.ecojustice.ca/case/right-to-a-healthy-environment/>; Ecojustice. 2015. “The Right to a Healthy Environment: Canada’s Time to Act.” https://ecojustice.ca/wp-content/uploads/2015/04/Right_to_a_healthy_environment_FINAL.pdf

⁸³ Joshua C. Gellers and Chris Jeffords. 2018. “Toward Environmental Democracy? Procedural Rights and Environmental Justice.” *Global Environmental Politics* 18(1): 99-121.

⁸⁴ James R. May and Erin Daly. 2014. “The Future We Want and Constitutionally Enshrined Procedural Rights in Environmental Matters.” In *Global Environmental Law at a Crossroads*, edited by Robert V. Percival, Jolene Lin, and William Piermattei, 30–47. Cheltenham, UK: Edward Elgar.

⁸⁵ Ibid.

⁸⁶ Jeffords and Gellers, 2017, “Constitutionalizing Environmental Rights: A Practical Guide.”

the Philippines.⁸⁷ Boyd's analysis of 92 countries with constitutional environmental rights finds that this recognition has contributed to⁸⁸

- stronger environmental laws,
- better enforcement,
- increased public participation in environmental decision-making, and
- positive environmental outcomes, (e.g., reducing air pollution and GHG emissions).

There are, however, critiques of this approach. First, critics argue that the right to a healthy environment is anthropocentric, meaning centred on humans. As Atapattu argues, "an anthropocentric approach to environmental protection can (and should) never replace an ecocentric approach to environmental protection. It can only complement, not replace, an ecocentric approach."⁸⁹

Critics have identified potential shortcomings of the constitutional approach in particular. They argue that environmental rights are too vague and are redundant because of existing human rights and environmental laws; they are not enforceable, and are likely to be ineffective.⁹⁰ Although Boyd's observations find that few of these drawbacks have materialized in cases where countries constitutionalize environmental rights, he highlights those that are apparent.

First, in some countries, constitutional environmental rights and responsibilities have had minimal impact due to issues surrounding rule of law, poverty, civil wars or conflict, or authoritarian governments.⁹¹ These create barriers to actualizing human rights, including the right to a healthy environment. Second, Boyd finds that "excessive judicial activism can undermine democracy by shifting power from elected politicians to unelected judges," though these cases are rare.⁹²

Finally, he identifies a key obstacle particularly relevant in the Canadian context: it is difficult to amend a country's constitution. In Canada, amending the constitution is extremely difficult and unlikely, because it would require the approval of the Senate, the House of Commons, and the legislative assemblies of at least two-thirds of the provinces representing at least 50% of the population of all provinces.⁹³ This barrier raises significant doubts of the viability of the constitutional approach to environmental rights in Canada.

⁸⁷ Ecojustice, 2015, "The Right to a Healthy Environment: Canada's Time to Act."

⁸⁸ Boyd, 2012, *The Right to a Healthy Environment*.

⁸⁹ *Ibid.*, p. 20.

⁹⁰ See: David Wirth. 1994. "The Rio Declaration on Environment and Development: Two Steps Forward and One Back or Vice Versa?" *Georgia Law Review* 599(29). Atapattu, 2006, *Emerging Principles of International Environmental Law*. Boyd, 2012, "The Constitutional Right to a Healthy Environment," p. 5. Boyd, 2012, *The Right to a Healthy Environment*, p. 24-36.

⁹¹ Boyd, 2012, *The Right to a Healthy Environment*.

⁹² *Ibid.*

⁹³ *Ibid.*

1.5.2. Legislation and judicial decisions

There has also been some recognition of environmental rights at the national and provincial levels through legislation, such as bills of rights and environmental protection legislation, and through judicial decisions of the courts.⁹⁴ In Canada, there have been numerous efforts to constitutionalize and to legislate environmental rights.⁹⁵ Ultimately, these efforts have been unsuccessful, or had limited impact.

For instance, in 1995, the House of Commons Standing Committee on Environment and Sustainable Development recommended that the government “develop comprehensive federal legislation respecting the environmental rights of Canadians and Canadian workers.”⁹⁶ This recommendation remains outstanding.

Other efforts have included attempts to pass a Canadian Environmental Bill of Rights (EBR). In an EBR introduced in 2009, the text included worker-specific elements. Its stated purposes included “providing legal protection for environmental whistleblowers (employees who act to protect the environment and may be subject to reprisals by their employer).” It also outlined important procedural rights: “ensuring all Canadians have access to environmental information, effective mechanisms for participating in environmental decision-making, and access to justice.”⁹⁷

More recently, in April 2019, NDP Member of Parliament Linda Duncan introduced an Environmental Bill of Rights in the House of Commons.⁹⁸ It sought to provide that an individual’s right to life, liberty, and security of the person includes the right to a healthy and ecologically balanced environment.⁹⁹

⁹⁴ Boyd, 2012, *The Right to a Healthy Environment*; see also Ontario’s *Environmental Bill of Rights, 1993*, S) 1993, c 28 and Private Member’s Bill, C-438, *A Canadian Environmental Bill of Rights*.

⁹⁵ see Boyd 2012b for in-depth discussion.

⁹⁶ Boyd, 2012, *The Right to a Healthy Environment*.

⁹⁷ Cited in: Boyd, 2012, *The Right to a Healthy Environment*, p. 59.

⁹⁸ “Private Member’s Bill: C-438 An Act to enact the Canadian Environmental Bill of Rights and to make related amendments to other Acts.” Parliament of Canada. 42nd Parliament, 1st Session. <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=10388019&Language=E&View=3>

⁹⁹ Ibid.

1.6. Provinces, Territories, and Municipalities

Efforts to recognize and implement environmental rights have also occurred at provincial, territorial, and municipal levels of government through legislation and judicial decisions. In Canada, limited environmental rights have been enacted at the provincial/territorial level via environmental protection acts, human rights legislation, and case law.¹⁰⁰

There is advocacy for enshrining environmental rights at the provincial or territorial level. The Alberta-based organization, Environmental Law Centre, has developed a model Bill of Environmental Rights for Alberta that includes worker-specific components. In addition to the right to a healthy environment, the model bill aims “to provide legal protection against reprisals for employees who take actions to protect the environment.”¹⁰¹ It also details reprisal (whistleblower) protections.¹⁰²

Environmental rights have also been recognized at the municipal level around the world. Over 100 municipalities across Canada have passed declarations recognizing residents’ right to a healthy environment.¹⁰³

In Canada, most of the debate and efforts related to implementing environmental rights have occurred at these subnational levels. Chapter II provides an analysis of this legal landscape.

¹⁰⁰ David R. Boyd. 2015. “The right to a healthy environment: A prescription for Canada. *Canadian Journal of Public Health* 106(6): 353-54.

¹⁰¹ Brenda Heelan Powell and Environmental Law Centre (Alberta). March 1, 2018. “Environmental Rights in Alberta: An Annotated Environmental Bill of Rights for Alberta.” Environmental Law Centre’s Environmental Rights Program. <http://elc.ab.ca/wp-content/uploads/2018/03/ELC-Annotated-EBR-March-2018.pdf> Article 6(f).

¹⁰² Ibid., Articles 44-46.

¹⁰³ David Suzuki. “Why Canada needs an Environmental Bill of Rights.” *Canadian Geographic*, April 21, 2017. <https://www.canadiangeographic.ca/article/why-canada-needs-environmental-bill-rights>. See also: Devon Page and Peter Robinson. December 17, 2015. “Canadians deserve legal right to healthy environment.” *Ecojustice Blog*. <https://www.ecojustice.ca/canadians-deserve-legal-right-to-healthy-environment/>

1.7. Literature Related to Environmental Rights of Workers

1.7.1. Environmental protection perspective

Against a backdrop of the history, elements, and articulations of environmental rights, this section explores the literature related to the environmental rights of *workers*. Although there is an abundance of literature on environmental rights generally, we found there to be comparatively little written on environmental rights as they pertain to workers and workplaces, specifically. While it is beyond the scope of this paper to deduce why, this gap speaks to the motivation for the present research.

The limited study of workers' environmental rights is unfortunate given that the link between workers' rights and the environment, broadly, has long been understood. For instance, the connection between the environment and workers' rights is evident in the 1991 final report by Ksentini, then UN Sub-Commission's Special Rapporteur on Human Rights and the Environment. She provides an analysis of environmental impacts on the enjoyment of fundamental rights, including the "right to safe and healthy working conditions."¹⁰⁴ She finds that realizing the right to safe and healthy working conditions

requires a working environment free from pollution and other hazards, where workers' health is not threatened by circumstances such as exposure to asbestos, contact with pesticides and fungicides, or inhalation of toxic substances. Fulfillment of this right in turn requires the right to know and to have access to relevant information on environmental and health risks, the right of expression and association to facilitate collective action, and the recognition of the workers' right to refuse to pollute at the workplace.¹⁰⁵

Vulnerable groups, including Indigenous peoples, migrant workers, women, and children, are disproportionately impacted by violations of the right to safe and healthy work conditions. These uneven effects, she argues, emphasize the need to ratify international instruments like the ILO conventions on occupational health and safety and improve the processes for fully implementing them.

Finally, Ksentini's report underlines that understanding "the environmental dimension of the right to work" is linked to other rights, such as the right to health and the right to an adequate standard of living. The report also notes that the right to freedom of association, which is "a crucial element of effective popular participation in matters that relate to the environment and in general," is particularly relevant for workers: "The right to organize plays a critical role in workers' ability to protect and enforce their right to environmental health and safety on the job."¹⁰⁶

1.7.2. Occupational Health and Safety perspective

¹⁰⁴ Ksentini, 1994, *Review of Further Developments*.

¹⁰⁵ *Ibid.*, p. 49.

¹⁰⁶ *Ibid.*, p. 55.

It is also possible to explore the concept of workers' environmental rights from an Occupational Health and Safety (OHS) angle. Although there is little discussion of environmental rights in the context of work and workers within the literature, we identify openings as well as the opportunities associated with this approach.

The International Labour Organization (ILO) has been pivotal to the advancement of workers' rights. Although it does not use the language of environmental rights, the ILO has contributed to expanding the occupational health and safety framework to incorporate environmental considerations. Canada has ratified the ILO's Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and as such, is encouraged to take active steps towards achieving a progressively safer and healthier work environment. This includes advancing the Convention's recognition of workers' right "to a safe and healthy working environment"¹⁰⁷ and national policies, systems, and programs that prevent "occupational injuries, diseases and deaths . . . for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers."¹⁰⁸

Although the right to a healthy and safe work environment is widely recognized in international frameworks and conventions,¹⁰⁹ it is often rooted in an understanding of the working environment concerned with the physical (i.e., the workplace), and perhaps the social (i.e., the organization, workplace culture, interpersonal dynamics). It does not typically employ a broader understanding of the interrelationship between work and "the environment" as conceptualized here (see section 2.1).

Although the OHS paradigm has evolved to consider environmental factors, it has typically focused on exposure to environmental hazards in the workplace and their effects on worker health and safety. This is important, but only partially represents the relationship between work, workers, and the environment.

For example, the ILO's Chemical Convention provides that concerned workers and their representatives have the right to "information on the identity of chemicals used at work, the hazardous properties of such chemicals, precautionary measures, education and

¹⁰⁷ ILO, Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

¹⁰⁸ Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), Article 3

¹⁰⁹ For example, the 2008 World Congress on Safety and Health at Work in Seoul, South Korea led to the signing of the Seoul Declaration on Safety and Health at Work, which asserted the right to a safe and healthy work environment as a fundamental human right. See: WHO framework, p. 5.

The International Labour Organization outlines fundamental principles of occupational safety and health, including sector-specific healthy and safety protections against particular risks. Occupational Safety and Health Convention, 1981 (No. 155): Convention concerning Occupational Safety and Health and the Working Environment; and its Protocol of 2002; Occupational Health Services Convention, 1985 (No. 161); Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). complete list: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>

training”.¹¹⁰ By extension, this right implicitly recognizes the right of workers not to be exposed to toxics without prior knowledge, on the basis that workers “shall have the right to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health.”¹¹¹ While Canada is not a party to the Chemical Convention, it provides helpful guidance in framing and advancing the extension of workers’ rights to the environment, or environmental rights to workers.

More recently, however, we have seen signs of a shift towards a broader understanding of workers’ relationship to the environment. The ILO has signalled the need to consider not only environmental impacts on workers, but also work and workers’ impacts on the environment. The ILO’s framework for action on improving health in the workplace advocates for an expanded understanding of occupational health and safety. The ILO defines OHS

as a multidisciplinary field devoted to the anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, *taking also into account the possible impact on the surrounding communities and the environment* [emphasis added].¹¹²

Notably, the World Health Organization’s (WHO) Healthy Workplace Framework and Model goes beyond the conventional understanding and advocates a “broader, multi-stakeholder approach to addressing worker health, safety and well-being.”¹¹³ The Framework notes that worker health and well-being is impacted not only by the physical work environment, but also by the psychosocial work environment and the broader community, including impacts on and of the natural environment and climate change.¹¹⁴

The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste (herein, *toxics*) is an additional resource for advocacy on occupational and environmental rights. Their 2018 report on workers’ rights and toxic exposures found that the exposure of workers to toxic substances should be considered a form of exploitation, and that both business and state actors should act with urgency to eliminate or minimize such risk.

In response to the Special Rapporteur’s finding that “over two million workers die every year from occupational diseases, nearly one million from toxic exposures alone,”¹¹⁵ the

¹¹⁰ Chemicals Convention, art. 18 (3).

¹¹¹ ILO, Chemicals Convention, 1990 (No. 170), Article 18.

¹¹² ILO, Improving health in the workplace: ILO’s framework for action, 2014, https://www.ilo.org/safework/info/publications/WCMS_329350/lang--en/index.htm.

¹¹³ Joan Burton. 2010. “WHO Healthy Workplace Framework and Model: Background and Supporting Literature and Practice.” World Health Organization (WHO). https://apps.who.int/iris/bitstream/handle/10665/113144/9789241500241_eng.pdf?sequence=1

¹¹⁴ Ibid.

¹¹⁵ United Nations Human Rights, “Opening remarks by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak at the 73rd session of the U.N. General

report sets out 15 principles to strengthen the coherence between human rights and occupational health and safety standards in the context of exposure of workers to toxic substances (see appendix 2 for a full list of these principles and their definitions). Many of those principles, including the right to information, and a duty to prevent exposure, provide guidelines for Chapter II.

1.7.3. Expanding the OHS framework

In Canada, David Bennett has been a leader in analyzing worker-specific environmental rights. He situates his work within the history of OHS law. Although OHS was initially focused on addressing or preventing physical injury and death, over time it began to recognize issues of occupational disease. Then, once the OHS paradigm began to consider environmental factors and situations, environmental protection was added to the OHS agenda.¹¹⁶

This shift occurred within the broader context of growing linkages between labour and environmental activism. The labour movement engaged in issues of environmental health, pollution prevention, and toxics regulation. In this context, trade unionists led by the Canadian Labour Congress identified

the need to see the workplace and the environment as one and the same. Neither workers nor the general public should be sacrificed in the name of profit. The first step to alleviating environmental degradation would hence be to enforce regulations governing workplace pollutant exposure.¹¹⁷

In her research on worker-oriented environmentalism in Canada, Katrin MacPhee highlights the role of the labor movement in enhancing and advancing environmental protection, including cases in which worker mobilization was motivated by environmental health concerns.¹¹⁸

Much of this connection and collaboration has occurred under the umbrella of a just transition. Analysis by Laura Martin Murillo illustrates that workers' environmental rights present the next step for trade union action on environmental degradation—moving from awareness raising towards green restructuring and a just transition. She argues that workers' environmental rights present “workplace tools for action” to facilitate a just transition.¹¹⁹

Assembly” (25 October 2018), online:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23788&LangID=E>

¹¹⁶ Dave Bennett. 2007. “Labour and the Environment at the Canadian Labour Congress - The Story of the Convergence.” *Just Labour: A Canadian Journal of Work and Society*, 10: 1-7.

¹¹⁷ Katrin MacPhee. 2014. “Canadian Working-Class Environmentalism, 1965-1985.” *Labour/Le Travail* 74: 123-149. p. 142

¹¹⁸ MacPhee, 2014. “Canadian Working-Class Environmentalism.”

¹¹⁹ Laura Martin Murillo. 2013. “From sustainable development to a green and fair economy: making the environment a trade union issue.” In *Trade Unions in the Green Economy: Working for the environmental*, edited by Nora Rathzel and David Uzzell, 29-40. London and New York: Routledge. p. 37

Procedural environmental rights, in particular, will be important for facilitating a just transition. Murillo argues: “If the production method has to be changed, trade unions demand participation in the decision making, justice in the decisions made, protection from the changes made and adaptation to local needs.”¹²⁰ She highlights examples of sectors or countries around the world wherein workers have gained environmental rights. Citing the Canadian Union of Public Employees’ (CUPE) green bargaining guidelines, she emphasizes the importance of greening the workplace via collective agreements.¹²¹

In the Canadian context, Bennett’s work has made an important contribution to analysis on workers’ environmental rights. He applies the core OHS rights—right to know, right to participate, right to refuse—to environmental situations.¹²² He outlines the elements of workers’ environmental rights: (1) the right to join union-management environment committees, (2) whistleblower protection, (3) the legal right to refuse to pollute, and (4) the right to environmental information.

The right to refuse to pollute is particularly interesting, which Bennett likens to the right to refuse unsafe work. He argues that:

in the case of pollution, there is an even stronger case to be made that the employer should not be able to offer the job of polluting to another employee until the outcome of the case has been determined...[P]ollution is pollution, irrespective of who is required to carry out the act.¹²³

Notably, his analysis finds that existing legislation has not allowed work stoppage over any amount of pollution. He argues enforcement would be more likely when a worker has reason to believe the pollution is illegal, reckless, deliberate, or in excess of the norm for the enterprise.¹²⁴

Bennett also stresses the importance of the right to environmental information: “Workers’ environmental rights are ineffective without full prior knowledge about the nature and extent of pollution (as well as other matters, such as energy use, which bear upon environmental protection).”¹²⁵ He argues that workers’ environmental rights are a necessary component for a pollution prevention strategy and play a role in advancing equity.

¹²⁰ Ibid., p. 36.

¹²¹ Ibid. p. 37.

¹²² David Bennett. 2017. *Northern Exposures: A Canadian Perspective on Occupational Health and Environment*. Work, Health and Environment Series. London and New York: Routledge. First published 2011 by Baywood Publishing Company Inc.

¹²³ Bennett, 2017, *Northern Exposures*, p. 75.

¹²⁴ Bennett, 2017, *Northern Exposures*.

¹²⁵ Bennett, 2017, *Northern Exposures*.

Finally, Sean Stephenson focuses on broadening “the right to work” to address environmental and climate concerns. Observing the potential conflict between the international human rights and climate change regimes, he considers whether it is possible for states to fulfill both their human rights (right to work) obligations and their climate obligations.¹²⁶ From a legal perspective, he argues that these obligations are not in conflict; but, by incorporating a political economic analysis, there is potential for green structural change to cause employment insecurity and jeopardize the right to (decent) work.

To reconcile these issues, Stephenson advocates that the right to (decent) work must include “ensuring [the] right to work during green structural change—a change that will have a clear and definite effect on employment in the labour markets of developed states.”¹²⁷ This echoes the calls for a just transition.

In Chapter II, we pick up on this approach of expanding existing (OHS and other) rights to environmental protection. We begin with a comprehensive overview of existing environmental protection and OHS law to explore whether they currently extend workers’ environmental rights, whether they could, and recommendations for doing so.

¹²⁶ Sean Stephenson. 2010. “Jobs, Justice, Climate: Conflicting State Obligations in the International Human Rights and Climate Change Regimes.” *Ottawa Law Review* 42(1): 155-179.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ottlr42&div=9&id=&page=>

¹²⁷ *Ibid*, p. 168.

Chapter II

Statutory Analysis: Evaluating the Existence of Workers' Environmental Rights in Federal and Provincial Legislation

Building on the discussion of environmental rights in Chapter I, this chapter analyzes the extent to which workers' environmental rights have been recognized in existing laws in Canada.

As introduced in the Key Terms, this report relies upon a broader definition of environment that breaks down the dichotomy between human and natural environments. This report also employs an understanding of *working environment* that accounts for the health and well-being of both the worker and the environment, and the interconnections between them. It is with this lens that we approached our scan of workers' environmental rights as recognized in both occupational health and safety laws and laws aimed at environmental protection.

This chapter presents our findings from a review of federal and provincial laws relating to environmental protection and occupational health and safety that may advance workers' environmental rights. The specific laws reviewed and provisions relied upon are detailed in the accompanying legislative chart (appendix 4).

This chapter provides a baseline to understand legislated environmental workers' rights, from which trends among jurisdictions, and recommendations that identify critical needs, either in data collection, oversight, and monitoring, or in law reform, can be made. While this report's primary purpose was to report baseline conditions and the existence of workers' environmental rights, this chapter concludes with a high-level discussion of law reform opportunities best suited to advance a workers' environmental rights framework.

Our statutory analysis commenced with a review of guiding international human rights and environmental justice principles, and literature specific to Canadian environmental rights and occupational health and safety. Based on this iterative process, an environmental rights framework comprised of 6 distinct rights was developed (see figure 2).

We then reviewed federal, provincial, and territorial laws in view of these rights to identify if they were adequately recognized in existing environmental or occupational health and safety laws. Relevant provisions were pulled from these laws and summarized in a chart, appended to this report in appendix 4.

Figure 2: Workers' Environmental Rights Framework

Rights to strengthen	Rights to introduce
Right to safe and healthy working conditions, including environmentally sustainable workplaces and work activities.	Right to inform the public about potentially environmentally damaging workplace practices or production outputs, without fear of discipline or dismissal (whistleblower protection).
Right to information (right to know) about the environmental and climate change impacts of their work, workplace activities, and production outputs.	Right to refuse environmentally damaging work.
Right to participate in workplace environmental decision-making where it may have environmental or climate change impacts.	
Right to advocate for effective standards of environmental protection at the workplace and in the broader public arena.	

2.1. Jurisdiction for the Environment and Occupational Health and Safety

This section briefly outlines the division of powers and the jurisdiction of Canada,¹²⁸ and the provinces and territories, in legislating matters related to the environment and to occupational health and safety. It is necessary to understand the scope of federal and provincial government authority so that proposed legislative reforms are directed to the appropriate level of government and their respective jurisdiction.

2.1.1. The environment

The environment was not expressly identified as a head of power in Canada's Constitution in 1867.¹²⁹ What we would today call *environmental* concerns certainly existed at Confederation: smoke from factories, human waste and other noxious effluent escaping from inadequate sewage systems and polluting water supplies, industrial waste causing odours and disease, and horse manure in the streets. But the framers of the Constitution did not think that the environment required a separate *Class of Subject* of its own. They likely anticipated that legislation pertaining to these matters would come within s 92(16), which gives the provinces jurisdiction over "all Matters of a merely local or private Nature in the Province." They probably also anticipated that major "environmental" events that threatened the entire Dominion, like the oft-used examples of "pestilence" or "famine," would fall within Canada's peace, order, and good governance (POGG) power.

It is fair to say, as the Supreme Court has, that in the intervening 150 years since Confederation, the protection of the environment has become a matter of "superordinate importance, and one in which all levels of government and numerous organs of the international community have become increasingly engaged."¹³⁰ Quoting *Oldman River*, Justice La Forest observed: "The protection of the environment has become one of the major challenges of our time. To respond to this challenge, governments and international organizations have been engaged in the creation of a wide variety of legislative schemes and administrative structures."¹³¹

The environment as such is not a *matter* of exclusive jurisdiction, resting with one or other level of government. Legislatures and the courts have treated it as an area of shared jurisdiction.¹³² In so doing, they have said that courts must ensure an appropriate balance between federal and provincial jurisdiction in relation to the environment in order to be responsive to the "emerging realities and to the nature of the

¹²⁸ This section is excerpted from the Canadian Environmental Law Association's opinion to the Ontario Court of Appeal for the *Reference re Greenhouse Gas Pollution Pricing Act*.¹²⁸

¹²⁹ Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 91 - 92

¹³⁰ *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213, at paras 85, 123 [Hydro-Québec]

¹³¹ *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at para 85 [Oldman River]

¹³² See *Oldman River*, at pp 63-65; *R v Crown Zellerbach Canada Ltd*, [1988] 1 SCR 401, at pp 455-456; and *Hydro-Québec*, at para 59.

subject matter sought to be regulated.”¹³³ At the same time, as Chief Justice Lamer and Justice Iacobucci observed in their dissent in *Hydro-Québec*, “Environmental protection must be achieved in accordance with the Constitution, not in spite of it.”¹³⁴

2.1.2. Occupational Health and Safety

Like the environment, the scope of occupational health and safety legislation spans federal and provincial laws; however, the majority of workplaces are regulated by provincial or territorial laws.

Federal OHS responsibilities are set out in the *Canada Labour Code*. The *Canada Labour Code* applies to any work or business that is within the exclusive jurisdiction of Parliament, including navigation and shipping, rail, ferries, aviation and air transport, radio broadcasting, and banks.¹³⁵ While the CLC has a Pollution Prevention Strategy, it only applies to federal workplaces.¹³⁶

In addition to the *Canada Labour Code*, several federal statutes are also relevant to OHS, including the

- *Canadian Environmental Protection Act*, 1999, SC 1999, c 33
- *Hazardous Products Act*, RSC 1985, c H-3
- *Hazardous Materials Information Review Act*, RSC 1985, c 24 (3rd Supp), Part III
- *Pest Control Products Act*, SC 2002, c 28
- *Transportation of Dangerous Goods Act*, 1992, SC 1992, c 34

Provincial and territorial jurisdictions govern the majority of worker OHS, representing approximately 90% of all Canadian workers.¹³⁷ All of the provinces and territories regulate occupational health and safety. Sector, work, or hazard-specific regulations are made under the provincial statute, such as for mines or construction facilities, or for designated substances or chemical agents.¹³⁸

However, provincial laws pertaining to the health and safety of workers are inapplicable to federal undertakings.¹³⁹ As the Supreme Court of Canada held in the 1988 *Bell Canada* trilogy, Parliament has exclusive jurisdiction over labour relations and working

¹³³ *Hydro-Québec*, at para 86, per La Forest J

¹³⁴ *Ibid*, para 62:

¹³⁵ *Canada Labour Code*, RSC, 1985, c L-2, s 2

¹³⁶ Bennett, 7

¹³⁷ Shareholder Association for Research and Education, “History and Legislative Framework of Occupational Health and Safety in Canada – An Overview” (2017), p 2

¹³⁸ Ministry of Labour, “The Occupational Health and Safety Act: FAQs” (2013) online:

<https://www.labour.gov.on.ca/english/hs/faqs/ohsa.php>

¹³⁹ Edward W. Keyes and David J. Shore, “Canada: Provincial Health and Safety Legislation is Inapplicable to Federal Undertakings” (10 April 2017) online:

<http://www.mondaq.com/canada/x/584652/Health+Safety/Provincial+Health+And+Safety+Legislation+Is+Inapplicable+To+Federal+Undertakings>

conditions in federal undertakings, therefore, precluding the application of provincial statutes relating to OHS.¹⁴⁰

¹⁴⁰ Bell Canada v Quebec [1988] 1 SCR 749, para 20

2.2. Findings: A Review of Workers' Environmental Rights in Canada, the Provinces, and Territories

6 rights, which collectively form a workers' environmental rights framework, are presented below. The provincial, territorial, or federal laws that advance or hinder their advancement are discussed. This section also identifies how existing rights could be strengthened and extended in scope to advance workers' environmental rights in Canada.

2.2.1. Right to safe and healthy working conditions, including environmentally sustainable workplaces and work activities

The right to safe and healthy working conditions is reflected in the preambles and purpose statements of a number of federal and provincial statutes, including the federal *Pest Control Products Act*. This Act aims to “protect human health and safety and the environment”¹⁴¹ and provincial occupational health and safety laws, which as their name implies, serve to protect “workers from factors and conditions adverse to their health and safety.”¹⁴²

Statutes that confine the right to safe and healthy work *conditions* are narrower in application than those that extend the right to the *environment*. For instance, provincial statutes that frequently confine the right to “the physical condition of the workplace”¹⁴³ do not deal with as broad a right as the right to a healthy environment—which, as defined above, would encompass both natural and built (i.e., indoor) environments. Statutes that prohibit discriminatory action¹⁴⁴ against a worker who claims unsafe work *conditions* further strengthen this right.

Statutes that impose a positive duty, or obligation, on the employer to provide remedial action, should there be insufficient protections, also strengthen this right. This duty to provide remedial action is frequently framed as follows:

Where a supervisor finds that the worker has reasonable grounds for believing that an act is likely to endanger the worker's occupational health or safety or the occupational health or safety of another worker, the supervisor shall take appropriate remedial action or recommend appropriate remedial action to the employer.¹⁴⁵

¹⁴¹ *Pest Control Products Act* (SC 2002, c 28), Preamble

¹⁴² *Occupational Health and Safety Act*, SA 2017, cO-2.1, s 2; *Manitoba Workplace Safety and Health Act and Regulation*, 2016, C W210, 10/02, s 43.3; *Occupational Health and Safety Regulation*, BC Reg 296/97, G3.12

¹⁴³ *Occupational Health and Safety Act*, RSO 1990, c O.1, s 43(3)

¹⁴⁴ *Occupational Health and Safety Act*, SA 2017, c O-2.1, s 35

¹⁴⁵ *Occupational Health and Safety Act*, RSPEI 1988, c O-1.01, s 28(3)

While the onus to provide remedial action is evident in most provincial occupational health and safety laws,¹⁴⁶ it can be overturned should the employer find the claim to be “groundless” or should it lack “reasonable grounds.”¹⁴⁷ All of the statutes reviewed fail to set out upon what basis a worker’s refusal to work due to unsafe work conditions may be groundless. Thus, should a worker’s access to information or knowledge of hazards be limited, it is possible their claim could be deemed meritless. Therefore, the efficacy of this right is dependent upon sufficiently robust rights to know and right to information, so that workers are able to point to evidence of harm to either the environment or their health.

Recommendation 1

- The right to safe work conditions should include a right to a safe and healthy environment, whether built or natural.
- The efficacy of this right is dependent upon sufficiently robust rights to know and right to information, so that workers are able to substantiate the alleged harm to either the environment or their health.
- Workplace *conditions* or *factors* are too narrow a scope to sufficiently protect workers from workplace harms. Thus, 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 both the worker and the environment, and interconnections between them.

An additional element within a right to safe and healthy working conditions is a responsibility or duty by the employer to prevent exposure to hazards. A limitation within current regulatory policy is its tendency to manage issues and mitigate risk, rather than prevent harm posed by threats to humans and the environment. Prevention aims to avoid the creation of hazards in the first place, whether for the environment or health and safety, as opposed to controlling hazards, which aims at minimizing exposure or mitigating adverse effects once created.

¹⁴⁶ Occupational Health and Safety Act, RSPEI 1988, c O-1.01, s 28(4);

Occupational Health and Safety Act, SA 2017, c O-2.1, s 31(1).

Occupational Health and Safety Act, SA 2017, c O-2.1, s 31(1).

¹⁴⁶ *Occupational Health and Safety Act*, SNB 1983, c O-0.2, s 20; *Occupational Health and Safety Act*, RSNL 1990, C O-3, s 45; *Safety Act*, RSNWT 1998, c S-1; *Safety Act*, RSNWT 1998, c S-1; *Occupational Health and Safety Act*, RSPEI 1988, c O-1.01, s 28(4)

¹⁴⁷ *Occupational Health and Safety Act*, SNB 1983, c O-0.2, s 20; *Occupational Health and Safety Act*, RSNL 1990, C O-3, s 45; *Safety Act*, RSNWT 1998, c S-1; *Safety Act*, RSNWT 1998, c S-1; *Occupational Health and Safety Act*, RSPEI 1988, c O-1.01, s 28(4)

In the face of the many health and environmental problems posed by the presence of toxic substances in the workplace, the benefits of preventative strategies have long been understood to be significant. These benefits include

- Less pollution, leading to a cleaner environment and safer products;
- Lessened (or fewer) public health risks, contributing to safe workplaces;
- Savings in money to companies through implementation of prevention strategies (including pollution prevention plans, substitution approaches, application of green chemistry, and a life-cycle approach to chemicals management, etc.)
- Promotion of cleaner, more innovative technologies and development of greener products;
- Lower compliance costs for companies and lower enforcement costs for government agencies;
- Lower health care costs;¹⁴⁸ and
- Reduced need for further management of hazardous wastes.¹⁴⁹

A duty to prevent exposure would not only benefit individual workers and workplaces but would be in the public interest. Currently, a primary limitation of the occupational health and safety laws reviewed was that they do not include provisions to prevent toxic substances from being present. Tools being used are reactive to toxics in the workplace (i.e., WHMIS), rather than proactive in their ability to ban or restrict toxics.

To this end, eliminating toxic substances from the workplace is not only in the public interest but is the most effective means of preventing exposure. Accordingly,

this is reflected in the good practice known as the hierarchy of hazard controls, or “inherently safer design,” encouraged by ILO and national bodies concerned with occupational safety and health. In descending order of effectiveness in terms of preventing exposure, elimination is followed by risk mitigation options such as substitution with less hazardous substances and materials, engineering controls, administrative controls and the use of personal protective equipment.¹⁵⁰

The preventative measures listed in the CLC were the laws that most closely resembled this recommended hierarchy. However, it lacks the final step of substituting hazards “with less hazardous substances and materials.” While the CLC refers to a reduction of

¹⁴⁸ “EDCs: regulation still lagging behind evidence.” *The Lancet Diabetes & Endocrinology* 7, no. 5 (May 2019) Editorial [https://www.thelancet.com/journals/landia/article/PIIS2213-8587\(19\)30114-7/fulltext](https://www.thelancet.com/journals/landia/article/PIIS2213-8587(19)30114-7/fulltext)

¹⁴⁹ Canadian Environmental Law Association, “Submission on Bill 66 – Restoring Ontario’s Competitiveness Act, 2018, Schedule 5: “Repeal of the Toxics Reduction Act, 2009 and all associated regulations by December 31, 2021” (ERO # 013-4234) and “Planning and reporting changes under the toxics reduction program and Ontario Regulation 455/09” (ERO # 013-4235)” (18 January 2019), online: <https://www.cela.ca/sites/cela.ca/files/1235-CELASubmissionsOnBill%2066%2CSchedule5.pdf> [CELA Submission on Bill 66, Schedule 5]

¹⁵⁰ UN Rights for Workers citing National Institute for Occupational Safety and Health, “Hierarchy of controls”, Centers for Disease Control and Prevention, 11 May 2018

hazards, it does not specify that this be accomplished through substitution. As the CLC states:

122.2 Preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.

Another key federal statute that has attempted to advance this aim is the *Canadian Environmental Protection Act* (CEPA), which has among its purposes the prevention of pollution. Section 3 of CEPA defines “pollution prevention” as “the use of processes, practices, materials, products, substances or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health.” While CEPA contains reporting requirements,¹⁵¹ which require that companies report releases to the National Pollutant Release Inventory, it does not require they report the use of the toxic substance. Thus, it lacks the driving intention of prevention of hazardous substances.

Environmental rights exist to some extent under the CEPA. Section 37 of CEPA outlines environmental rights for employees of federally regulated industries (further analysis of existing legislation is outlined Chapter II of this report). In 2017, a report by the House of Commons Standing Committee on Environment and Sustainable Development called on the Canadian government to enshrine the right to a healthy environment within CEPA.¹⁵²

Furthermore, pursuant to s 56 of the Act, ministerial authority can require persons to prepare and implement a pollution prevention plan. However, it is an infrequently used provision and concerns far too few industrial sectors or companies to constitute a systematic response to the problem of increasing releases and use of toxic substances. As a result, it has failed to take aggressive action on preventing pollution from toxic substances on a company-by-company basis.

In response, some provinces have implemented toxic reductions legislation. For instance, Ontario’s recently repealed¹⁵³ *Toxic Reductions Act* (TRA) had been enacted to reduce the use, and creation, of toxic substances. It sought to achieve this goal by requiring companies to develop, and, ideally, implement reduction plans.¹⁵⁴

Unfortunately, on balance, there have been disappointing results under this statute for which much was expected. Despite being in force since 2010, key provisions under the Act that were central to achieving its purpose were not brought into force. This included

¹⁵¹ CEPA, s 46

¹⁵² “Healthy Environmental, Healthy Canadians, Healthy Economy: Strengthening the *Canadian Environmental Protection Act, 1999*.” Report of the Standing Committee on Environment and Sustainable Development. June 2017. 42nd Parliament, 1st Session.
<https://www.ourcommons.ca/Content/Committee/421/ENVI/Reports/RP9037962/envirp08/envirp08-e.pdf>

¹⁵³ CELA Submission on Bill 66, Schedule 5

¹⁵⁴ Ibid

a regulation that authorized the provincial cabinet to set, by regulation, targets relating to toxic substances,¹⁵⁵ proclaim substances of concern,¹⁵⁶ and set administrative penalties.¹⁵⁷

For example, for Ontario facilities indicating in their plans an intention to implement a reduction option, the data reported shows a steady reduction in the amounts of toxic substances used, created, or contained in product for the period 2012–2016. That is a good news story. However, for all facilities, including those not indicating an intention to reduce, the data on the amount of toxic substances used, created, or contained in product has remained largely unchanged over the five-year period. Moreover, the data also shows that for each year between 2013 and 2016 the total amounts of toxic substances, including those linked to cancer, released to air, land, and water for all facilities were greater than for 2012.¹⁵⁸

In addition to these shortcomings, Ontario has since repealed its toxics reduction law as a “red tape” reduction measure. As CELA stated in its submission to the Ministry, “the TRA needs to be improved, not abandoned and the need for these improvements dwarfs any concern with alleged ‘red tape’ under the program.”¹⁵⁹

Lastly, even though some Acts, such as the federal *Pest Control Act*, may have as their primary objective “to prevent unacceptable risks to individuals and the environment from the use of pest control products,”¹⁶⁰ the inclusion of the word “unacceptable” denotes that some level of risk or exposure is acceptable. The *Pest Control Act* provides the following definition of acceptable risk:

2(2) For the purposes of this Act, the health or environmental risks of a pest control product are acceptable if there is reasonable certainty that no harm to human health, future generations or the environment will result from exposure to or use of the product, taking into account its conditions or proposed conditions of registration.

In all legislation, terms such as *acceptable risk* should be defined to ensure that, in addition to the worker, no harm to human health, future generations, or the environment will result from exposure to or the manufacturing, processing, importing, using, or releasing of a substance.¹⁶¹ Yet there remain limits to this approach, as it prioritizes setting standards or emission levels, as opposed to requiring the substitution or prohibition of certain chemicals. This approach uses a scientific determination of

¹⁵⁵ O. Reg 445/09, s 50(1)(d)

¹⁵⁶ *Toxics Reduction Act, 2009*, SO 2009, c 19, s 11

¹⁵⁷ *Ibid*, s 30

¹⁵⁸ Joseph F. Castrilli, “Time to Beef Up Toxics Reduction Measures.” Blog, Canadian Environmental Law Association, June 27, 2018. <https://www.cela.ca/blog/2018-06-27/ontario-red-tape-reduction-trumps-toxics-reduction>

¹⁵⁹ CELA Submission on Bill 66, Schedule 5

¹⁶⁰ *Pest Control Act*, s 4(1)

¹⁶¹ CELA, Proposed amendments to CEPA, 9

acceptable level of risk developed since the 1970s largely as a substitute for bans or phase-outs of chemicals.

As McClenaghan et al. summarized in their paper “Environmental Standard Setting and Children’s Health: Injecting Precaution into Risk Assessment” (2003),¹⁶² there are a number of shortcomings to this approach including:

- *Small population generalizations*—i.e., when extrapolations are made from high concentrations of chemical exposures in small populations to predict health effects in large populations exposed to lower concentrations of the same chemical.
- *Generalizations from animal studies to human health*—i.e., when extrapolations are derived from animal studies (both high dose, short term exposure, and low dose, long term exposure) to predict human health effects.
- *Ignoring background sources*—i.e., the tendency to ignore, or be unaware of, background sources of exposure to chemicals affecting people or ecosystems leading to exceedances of threshold values established through risk assessment.
- *Ignoring multiple chemical exposure*—i.e., the inability of risk assessment to accommodate real-world situations of multiple chemical exposures of varying dose and duration, or to assess the possible cumulative or synergistic effects of such multiple exposures.
- *The healthy white male as the norm*—i.e., the tendency to exclude the most sensitive segments of the population from calculations of risk by not including a wide enough margin of safety (and even assuming safe levels are known or knowable).
- *Major limitations in animal testing*—i.e., the fact that animal bioassays do not always extend over entire lifetimes, dosing generally begins after weaning, thereby skipping *in utero* and neonatal periods comparable to the first 3–6 years of human life. Plus, there is the complication of the “wasted dose,” which is the difference between the lifetime dose and the dose that actually causes disease. And then there is the inappropriate assumption that negative results in animal bioassays indicate safety for humans.¹⁶³

Recommendation 2

- Protecting workers’ environmental rights requires a shift in focus from exposure abatement, to toxic exposure prevention. A duty to prevent exposure would not only benefit individual workers and workplaces, but would be in the public interest.
- Approaches that require the substitution or prohibition of chemicals should be favoured over standard setting based on an *acceptable risk* threshold.

¹⁶² J. Env. L. & Prac. (12), p 245

¹⁶³ Ibid.

2.2.2 Right to information (right to know) about the environmental and climate change impacts of their work, workplace activities and production outputs

The right to information, or *right to know*, is an employee's right to know the hazards of work based upon a basic human entitlement to information that directly impacts upon their health and bodily integrity.¹⁶⁴ The right to know includes public information frameworks, inventories, and databases that require the identity of chemicals used at work to be disclosed, alongside their hazardous properties and potential health and environmental hazards. Through these mechanisms, the right to know increases the transparency and accountability of the workplace, the accessibility of high-quality information, and raises the expectation of more rigorous health and safety requirements and policies.

The Workplace Hazardous Materials Information System (WHMIS), legislated in 1988, was Canada's earliest response to workers' right to know about exposure to chemical hazards in the workplace. This national right to know was a first, and it created a national standard with complementary provincial and territorial laws, facilitating its implementation.¹⁶⁵ Remarking on its now thirty-years' history, commentators have noted that

Workers began to use data sheets as the starting point for identifying candidates for elimination from the workplace and the identification of less hazardous substitute. Thus WHMIS has had a twofold benefit: it is a tool for improving safety and it is the first link in a chain leading to the detoxification of the workplace.¹⁶⁶

Despite the broad application of both federal and provincial laws that are included in WHMIS, there are limitations. First, there is the difficulty of predicting workers' exposure levels when health hazards are only known for a minority of substances.¹⁶⁷ Secondly, the lack of information or publicly available information about the hazards of tens of thousands of substances (discussed further below) impairs the efficacy of a worker's right to know.¹⁶⁸ Lastly, as adverse health effects are chemical or hazard specific, the cumulative impact of multiple, potentially simultaneous exposures in the workplace is often overlooked.¹⁶⁹

Persistent barriers to the right to know are claims of trade secrecy and proprietary information. For instance, the *Canadian Environmental Protection Act*, 1999, provides

¹⁶⁴ Richard M. Brown, 1982 "Canadian Occupational Health and Safety Legislation" (1982) 20:1 Osgoode Hall LJ)

¹⁶⁵ Bennett, 3

¹⁶⁶ Ibid, 26

¹⁶⁷ UN Rights to Workers, 13

¹⁶⁸ Ibid

¹⁶⁹ "Occupational Disease Cluster Summit - Learning from the Experience of Casale Monferrato, Italy" (13 April 2019), Toronto

for where releasing a chemical's name, or a biological name, would result in the release of confidential business information, it should be identified as a masked name.¹⁷⁰ This also arises if a workplace Material Safety Data Sheet has information that is officially designated a trade secret (i.e., information which could reveal the identity of the material); workers, employers, and the public will not have access to the information. Therefore, there is no way to gauge whether the resulting regulatory standards and health protections in place are sufficient.¹⁷¹

In the case of the federal *Hazardous Materials Information Review Act*, any supplier who is required to disclose the chemical name of a substance or material, the chemical name of any impurity, stabilizing agent or solvent that is present, or the name of the chemical ingredient and the range or concentration of ingredient mix, is exempt from doing so "if the supplier considers it to be confidential business information."¹⁷²

The right to know is also reflected in the *federal Transportation of Dangerous Goods Act*, 1992, which requires dangerous goods to display safety marks during sale, delivery, distribution, and import. While information related to the product's formula, its chemical composition or ingredients can be requested by the Minister, this disclosure is protected as privileged.¹⁷³ Only if the information is necessary for an emergency response is the privilege waived and the information made available to the public.¹⁷⁴

It is not common, however, for a worker's right to know to include a public right to know. For instance, in the provincial occupational health and safety context, hazardous materials are identified on safety data sheets for workers. While all provinces, other than Newfoundland and Labrador, include a provision in their respective health and safety statutes similar to this: "an employer shall ensure all hazardous materials present in the workplace are identified and posted in an area where it is likely to come to the attention of the workers"—the provision does not facilitate the public's right to know.

Furthermore, while the labeling of hazardous substances plays a crucial role in workers safety, it also aids in public awareness of the need for proper disposal and safe handling of the substance. Labeling of hazardous substances is also critical for addressing toxic chemical exposure throughout the life cycle of the substance to ensure consideration is given to the hazards associated with the substances.¹⁷⁵

Extending the right to know beyond the immediate workplace and ensuring hazardous substances are able to be tracked, and the information about them made public, not only serves to increase public awareness about most hazardous substances, but also advances preventative strategies from industrial and commercial sources.

¹⁷⁰ *Canadian Environmental Protection Act*, 1999, s 88

¹⁷¹ Bennett, 126

¹⁷² *Hazardous Materials Information Review Act*, RSC, 1985, c 24 (3rd Supp.) Part III), s 11

¹⁷³ *Transportation of Dangerous Goods Act*, 1992 (1992 c 34), s 24(1)

¹⁷⁴ *Ibid*, s 24(2)

¹⁷⁵ Canadian Environmental Law Association, "Beyond the Bylaw – ChemTRAC, poverty and pollution" (2013), online: https://www.cela.ca/sites/cela.ca/files/Beyond_the_Bylaw.pdf

Of the federal and provincial laws reviewed, there are limited examples of a worker's right to know being extended to the public. For instance, while the *Canadian Environmental Protection Act* contains reporting requirements obligating companies to report releases of toxic substances to the National Pollutant Release Inventory (NPRI),¹⁷⁶ it does not collect and disseminate data on the use of the toxic. Also, the reporting requirements are not comprehensive enough to capture all hazards. Thus, substances, which despite their severe environmental and human health effects, such as radionuclides, are not captured in the NPRI's reporting data.¹⁷⁷

Further, the NPRI does not have a specific focus on workplace exposure. Thus, while reporting under NPRI may include voluntary data collection regarding pollution prevention activities, this does not have the same degree of effectiveness or enforceability as the pollution prevention planning notices required under CEPA.

However, it is important to note that even for pollution prevention plans for listed CEPA toxic substances, they are generally sector specific and generally focus on establishing emissions limits. This approach also does not fulfill the concept of pollution prevention, which aims to consider substantial changes *upstream*. Thus, even in the context of CEPA, pollution prevention plans are more often used to establish emission or effluent limits rather than develop regulations that prohibit the use of a toxic substance (i.e., BPAs, Triclosan, Siloxanes).

A more encouraging example of the right to know extending to the public is the City of Toronto's ChemTRAC program, resulting from a municipal bylaw that generates information on 25 of the cancer-causing substances found in Toronto's air. As the program notes:

The City's new bylaw requires companies—large or small—that are using these substances and releasing them to the air, to report them to Toronto Public Health each year. The City will then make this information available to us. The new bylaw is called the Environmental Reporting and Disclosure Bylaw. It came into effect in 2008, and the data from reporting companies are now available [online]. . . .

The City chose these substances because they pose a significant risk to our health if we breathe them every day over a long period of time. We know the risks associated with these substances, first, because studies show workers who have been exposed to them over a number of years have developed specific health problems, and, second, because hospital admissions for breathing problems increase when air pollution levels are high.¹⁷⁸

¹⁷⁶ *Canadian Environmental Protection Act, 1999, SC 1999, c 33, s 46* [CEPA]

¹⁷⁷ Canadian Environmental Law Association, "Comments on the CNSC's Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2017 - Recommendations to Improve the Oversight of Environmental Protection and Waste Management" (2018), <https://www.cela.ca/sites/default/files/CELA's%20Report%20-%20ROR%20Nuclear%20Substance%20and%20Uranium%20Facilities%202017.pdf>

¹⁷⁸ Toronto Toxic Reduction Tool Kit, https://www.cela.ca/sites/cela.ca/files/TTRT_ToolkitItem1.pdf

This program was a first in Canada in requiring not only large polluters but small and medium-sized facilities to report their use of these substances. Since 2013, data reports received by companies are available for public view through a series of reports (dating back to 2005) and also through an interactive mapping tool. According to the City of Toronto,

tracking and reporting to ChemTRAC helps businesses identify the major sources of priority substances in their facility. With the major sources identified, businesses can develop plans to reduce the use and release of priority substances.

For many businesses, this is the first time they will be sharing information about the use and release of chemicals in their facility. This is also an opportunity for businesses to share the pollution prevention efforts that they are making and to explain how their business works through the voluntary Environmental Statement in the ChemTRAC Data Disclosure System.

Lastly, Ontario's recently repealed¹⁷⁹ *Toxic Reductions Act, 2009*, required regulated facilities with existing toxics substance-reduction plans to track and account for each prescribed substance at the facility (i.e., how it is used, created, released, recycled, disposed of, transferred and contained in product(s)). Unfortunately, despite its significant focus on workplace exposure, the government did not fully implement the legislation. Now repealed, this opportunity to advance the right to know in the workplace about environmental hazards is further reduced.

Recommendation 3

- The right to know about hazards in the workplace should also apply to hazards or harm to the environment.
- It should also include the public's right to know. Extending reporting obligations to a public forum has a number of benefits, including improving community relations, preventing pollution through the replacement of hazardous materials with less-toxic ones, and a means of encouraging innovation to reduce adverse environmental and health impacts.
- Protecting confidential business information should not be permitted when there is evidence of harm to the environment or human health. The public interest should be paramount and disclosure only in the limited instances of an emergency response is too narrow an exception.
- Strengthen and expand use and release inventories of pollutants to require mandatory reporting of pollution prevention activities and assess reduction of pollutants in workplace settings.

¹⁷⁹ CELA Submission on Bill 66, Schedule 5

2.2.3. Right to participate in workplace environmental decision-making where it may have environmental or climate change impacts

Workers should also have a role in developing standards of protection and ensuring their participation is mandatory in shaping policies. This should include active involvement in workplace efforts to mitigate or adapt to climate change, as well as a broader role in facilitating a just transition.

Enabling their meaningful participation also requires basic procedural rights, such as access to information and records, adequate notice and sufficient time to respond. Suffice it to say, early and meaningful opportunities for workers' involvement would result in fairer and more credible processes, and improve the overall quality, acceptability and soundness of the employers' decisions.

Relatedly, Bennett, in his analysis of workers' environmental rights in Canada has argued for the right to participate in joint union-management environment committees. He argues that "provincial law should institute the right to joint environment committees with rights, functions, and authority equivalent to those of the joint health and safety committee. Specific environmental powers should include the right to participate in workplace environmental audits."¹⁸⁰

This right is also critical in the context of a just transition, where workers, as well as their community that relied heavily on a specific industry, will be critical to decision-making and transitioning away from industries that engender environmental and human harm. The mining of asbestos and its burden not only on workers but on the community is a telling example. For example, for years, health and civil society organizations have advocated for a just transition, requesting substantial discussions occur to address the technical and economic support that would be needed to assist workers and their communities' transition away from asbestos. Critical to these discussions would be considerations of remediation activities targeting closed asbestos mines and potential socio-economic opportunities for affected communities and workers.¹⁸¹

Thus, failing to include more broadly scoped community and public considerations in decision-making, would be inadequate in advancing a just transition and an ineffective participation right.

¹⁸⁰ Bennett, 9 74

¹⁸¹ See for instance Joint Letter to Minister McKenna dated 12 June, 2017, "Response to Consultation on the proposed regulatory approach to prohibit asbestos and products containing asbestos (supporting organizations and individuals - updated June 12, 2017)"

Recommendation 4

- Workers should have a role in developing environmental standards and policies pertaining to their work activities. This should include participation in workplace efforts to mitigate or adapt to climate change.
- Enabling their meaningful participation requires they have basic procedural rights, such as access to information and records, adequate notice and sufficient time and resources for meaningful engagement in these processes
- Workers, including their community, should have a role in developing frameworks, policies, and supports aimed at a just transition.

2.2.4. Right to advocate for effective standards of environmental protection at the workplace and in the broader public arena

Occupational health and safety laws must be protective of health, even for the most vulnerable or at-risk workers. As the United Nation's Special Rapporteur on Human Rights and Toxics recently reported, multiple factors, including social status, education, age, gender, country of origin, ethnicity, and disability can exacerbate the risks in the exposure to toxics in the workplace.¹⁸²

Recognizing all workers' right to adequate standards of protection within an environmental rights framework is a means of remedying these disproportionate effects, so that irrespective of social status, education, age, gender, country of origin, ethnicity or disability, certain individuals are not disproportionately burdened with adverse effects.

Recommendation 5

- Any workers' environmental right must ensure that those of greatest vulnerability are protected, and thus develop standards accordingly.
- This includes those of biological susceptibility. This means that a level of protection is required such that even pregnant people (and by extension, the developing fetus) and people who are breastfeeding are safe in the workplace.

¹⁸² UN Rights for Workers, 8

Included within a right to adequate standards is a worker's right to advocate for effective standards of environmental protection, both in the immediate workplace and broader public arena. Preventing exposure to toxics should serve as a first line of defence. But should this fail and a worker be exposed, or threats previously unknown arise, workers must have access to an effective remedy (i.e., a full and fair judicial process) and also an ability to weigh in on decisions made about standards in their workplace.

A preliminary matter to consider in advancing a right to an effective remedy and right to advocate for effective standards, is whether workers have knowledge of their rights. Because of the insufficiency of right-to-know legislation, as discussed in the previous section, it would not be uncommon for a worker to be unaware of the substance to which they were exposed, especially if the employer failed to collect or maintain adequate records. This highlights the interconnections and interdependence among these rights, and thus the need to develop a comprehensive framework to realize workers' environmental rights.

While in principle this right (to an effective remedy and to advocate for effective standards) exists for all workers in Canada, its availability is deeply constrained because of lack of access to justice. It can be prohibitively expensive to seek a remedy through the courts due to

- the evidentiary burden and risks of adverse cost awards;
- the difficulty establishing causation due to the long latency periods for adverse health effects to arise;
- a possible lack of accessible, high-quality information; and
- possible evidentiary gaps regarding aggregate exposures, cumulative effects, and accompanying epidemiological impacts.

Recommendation 6

- A sufficient right to know about hazards and workers' rights must serve as a prerequisite to a right to an effective remedy and a right to participate in decision-making.

2.2.5. Right to inform the public about potentially environmentally damaging workplace practices or production outputs without fear of discipline or dismissal (whistleblower protection)

The right a worker has to inform the public about potentially environmentally damaging workplace practices or production outputs without fear of discipline or dismissal (whistleblower protection) is a 2-part right within a workers' environmental rights

framework. This right builds on the right to know, but also introduces protection for workers from reprisals. It is related to the right to know in that, without full prior knowledge about the nature and extent of harm, a worker may not appreciate the extent of the environmental or human health effects of their actions. Therefore, upholding this right concomitantly requires the right to know to be sufficiently fulfilled. Of the federal and provincial laws reviewed for this report, none contained this right.

While the provincial occupational health and safety laws reviewed do not preclude workers from informing the public about their work or workplace, because of proprietary or trade secret information being a bar to a public right to know, the extent to which a worker could likely advance public knowledge of harm is limited. A right to inform the public could be included, however, as an addition to existing provisions requiring the “disclosure of information,”¹⁸³ or “duty to provide information,”¹⁸⁴ commonly found in both federal and provincial OHS and dangerous goods laws.

The second aspect to this right is the protection from discipline or dismissal. Commonly referred to as whistleblower protection, Ontario’s *Environmental Bill of Rights* (EBR)¹⁸⁵ provides a helpful precedent for legislation that prohibits employers from taking “reprisals” against employees on certain prohibited grounds. These grounds include exercising their participatory rights to engage in environmental decision-making, requesting a review or investigation under the Act, or providing information or evidence to appropriate authorities, as prescribed in the Act.¹⁸⁶ Should a reprisal occur, the EBR provides the employee an opportunity to file a complaint with the Ontario Labour Relations Board, which, under the Act, has the jurisdiction to remedy the situation.¹⁸⁷

Employee reprisal protection is also included in the proposed Bill C-438, An Act to enact the Canadian Environmental Bill of Rights that, if enacted, would prohibit employers from retaliating against employees if they exercised or sought to exercise their rights under the Act (s 34). This includes rights to access information (s 7 of the proposed Bill), engage in public participation and decision-making regarding the environment (s 8), and to apply to the Minister for an investigation of an offence under an Act of Parliament the person alleges has occurred (s 12), or bring an environmental protection civil proceeding should the Minister fail to conduct an investigation and issue a report within a reasonable time (s 17), among other enumerated grounds.

Recommendation 7

- A sufficiently robust right to know must be a prerequisite to the right to inform the public about potentially environmentally damaging workplace practices or production

¹⁸³ *Transportation of Dangerous Goods Act, 1992*, SC 1992, c 34, 23(1)

¹⁸⁴ *Occupational Health and Safety Act, 1993*, SS 1993, c O-1.1, s 9

¹⁸⁵ *Environmental Bill of Rights, 1993*, SO 1993, c 28

¹⁸⁶ *Ibid*, s 105

¹⁸⁷ *Ibid*, s 106 - 108

outputs without fear of discipline or dismissal (whistleblower protection). This is because a worker may not appreciate the extent of the environmental or human-health effects of their actions, absent knowledge of the potential harm. Also, a worker cannot provide free, prior and informed consent without this information.

- A right to inform must also be accompanied by a concomitant right that protects employees from reprisal when they exercise or seek to exercise their environmental rights.

2.2.6. Right to refuse environmentally damaging work

Another right to include within a workers' environmental rights framework is a right to refuse to pollute or to refuse environmentally damaging work, which serves as an extension of the right to refuse unsafe work and advances the public interest. While this right has been discussed in commentary and academic literature, this right currently does not exist in federal or provincial laws.

The rationale for this right is that

environmental management issues within facilities are often closely related to occupational health and safety matters. Workers have the potential to play a significant role in ensuring the environmentally sound conduct of economic activities.

To be effectual, it is necessary to define or scope out what constitutes *environmentally damaging*. Thus, as a measure of what constitutes environmentally damaging work, some commentators have recommended that it is framed as work which is "reckless, deliberate or in excess of the norm for the enterprise."¹⁸⁸

Like the other rights reviewed herein, this right does not exist in isolation and its effectiveness is dependent upon the adequacy of other procedural rights, like a workers' right to information and right to participate in decision-making. For instance, without an adequate right to information, the environmental or human health effects of an action may not be fully understood. Furthermore, by incorporating considerations of environmental damage within workplace decision-making processes, there is a basis to implement and prioritize options that are *less* damaging or *more* sustainable.

A legal right to refuse to pollute or undertake environmentally damaging work is an extension of the legal right to refuse unsafe work. While unsafe work conditions can, however, be remedied to some extent through training and adequate oversight, the right to protect the environment and refuse to damage or cause pollution, cannot be mitigated in the same way. Consider for instance, the issue of climate change. As the Intergovernmental Panel on Climate Change has recently remarked, humanity has at

¹⁸⁸ Bennett, 74

most 12 years to drastically reduce GHG emissions.¹⁸⁹ Therefore, if implemented, a right that allows workers to refuse work in instances that may contribute to climate harm would be among the means for climate action and GHG reductions.

Recommendation 8

- Provincial occupational health and safety legislation should be amended to provide a right to refuse environmentally damaging work, and to require the establishment of joint employee/management workplace environment committees, similar to the existing requirements for joint health and safety committees.¹⁹⁰
- The right to refuse damaging the environment or polluting should also be advanced as a tool to combat climate change and avert GHG emissions.

¹⁸⁹ “Global Warming of 1.5 °C”, Intergovernmental Panel on Climate Change, 6 October 2018, online: http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

¹⁹⁰ Canadian Environmental Law Association, “Democracy and Environmental Accountability in Ontario for The Environmental Agenda for Ontario Project,” (1999), online <https://www.cela.ca/sites/default/files/uploads/361democracy.pdf>, p 27

2.3. Discussion: Opportunities to Recognize Environmental Rights in the Workplace

Based on the aforementioned workers' environmental rights framework, this section highlights present opportunities for law reform that could contribute to advancing a framework of workers' environmental rights. While this report's primary purpose was to report baseline conditions and the existence of workers' environmental rights in federal and provincial statutes, it also elucidates areas that may be best suited to advance such a framework.

This includes the federal post-2020 chemicals-management approach and review of CEPA. The post-2020 chemicals-management approach seeks to enhance the protection of workers from exposure to chemicals, while the review of CEPA presents an opportunity to enshrine a right to a healthy environment and acknowledge vulnerable communities, including workers. The timing of this report was particularly apt, as its goals aligned well with the 2 opportunities discussed below.

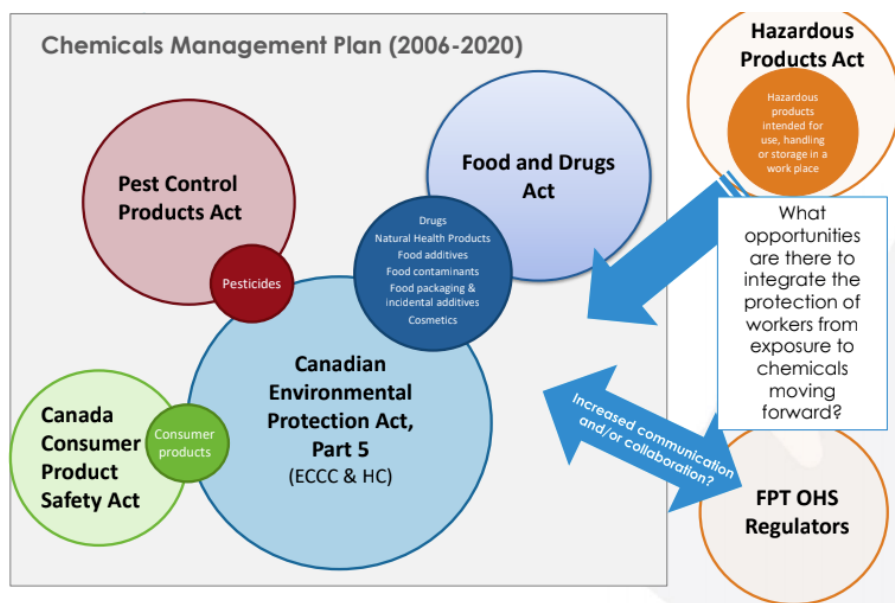
2.3.1. Post-2020 Chemicals-Management Approach

The *Canadian Environmental Protection Act, 1999* (CEPA), is the cornerstone of Canada's regulatory system for controlling exposure to harmful substances. CEPA requires that any new substance not listed under the Domestic Substances List must be assessed under the New Substances Regulations for environmental and human health impacts. Substances are addressed as either "existing" or "new" according to lists drawn up since the 1980s. The Domestic Substances List (DSL), created between 1984 and 1986, includes 23,000 substances known to be in use in Canada. CEPA established a deadline of September 2006, at which point the list was categorized according to criteria concerning toxicity and potential for human exposure. For "new" substances, not previously listed on the DSL, a different set of requirements prevail under CEPA. With categorization complete, the federal government launched the Chemicals Management Plan (CMP) in December of 2006.

While CEPA has an important role in assessing and managing substances, and is the reason why the CMP exists, it has not sufficiently addressed worker exposure to substances on the basis that this falls under provincial and territorial jurisdiction. In recent years, however, workplace exposure and vulnerabilities to workers has become a focus, and the federal government, in its review of CEPA and plans for a post-2020 approach to chemicals management, has included vulnerable populations, which includes workers.

It is on this basis that there may be an opportunity to apply this report's findings to this ongoing legislative review process.

Figure 5. Potential Future Opportunities in Chemicals Management¹⁹¹



According to Health Canada,

The Chemicals Management Plan (CMP) will reach a major milestone in 2020, which provides an opportunity to renew and modernize current program elements. Enhancing the protection of workers from exposure to chemicals is one area being explored. Health Canada has been working with federal/provincial/territorial (FPT) representatives from the Canadian Association of Administrators of Labour Legislation, Occupational Safety and Health Committee (CAALL-OSH) to identify potential opportunities to enhance the protection of workers using the information, tools, and/or technical expertise of the CMP. In the Fall of 2018, as part of this initiative, FPT jurisdictional members of the Committee of Workplace Hazardous Materials Information System (WHMIS) Coordinators (CWC) were surveyed to identify potential opportunities to leverage the expertise and data accumulated on hazardous substances used in Canadian commerce through the CMP to benefit worker health and safety.¹⁹²

Health Canada has identified potential opportunities to enhance worker protection, including in the areas of

- Data sharing and prioritization
- Occupational exposure limit development
- Research and monitoring
- Risk assessment and information gathering
- Risk management

¹⁹¹ Canada, CMP Multi-stakeholder Workshop, May 24 2019, Slide 2

¹⁹² Online: <https://www.canada.ca/en/health-canada/programs/consulting-integrated-strategy-protection-canadian-workers-exposure-chemicals/summary-survey-results-federal-provincial-territorial.html>

- Strengthen science-based hazard classifications
- Increase awareness
- Increase compliance and enforcement under the Hazardous Products Act (HPA)

Due to the overlap between Health Canada's stated objectives and the 6 rights reviewed in Section 3 that comprise the workers' environmental rights framework, there is an opportunity to advocate for their greater inclusion and recognition.

2.3.2. Proposed amendments to CEPA

The Canadian Environmental Protection Act (CEPA) is the backbone of Canadian environmental legislation. However, there is an outstanding need for sound federal environmental law reform that addresses control of toxic substances, including carcinogens and endocrine disrupting substances, which pose serious risks to the health and well-being of present and future generations of Canadians and the natural world.

The mandatory 5-year review of CEPA provides an additional opportunity to advance the rights articulated herein. In March of 2016, the Standing Committee on Environment and Sustainable Development began its review.¹⁹³ Some of the proposed amendments made by CELA serve as a foundation for advancing and strengthening these rights.

The Standing Committee on Environment and Sustainable Development, in its report on strengthening CEPA, quoted CELA, noting

The reality of the situation in Canada is that many hazardous substances that are available in Canadian industry or commerce and thought to have little or no exposure associated with them have proven to be very available in the Canadian environment. Using a hazard-based assessment approach that assumes there will be exposure, is more precautionary (and consistent with various sections of the Act respecting the application of the precautionary principle) than is a risk-based approach.¹⁹⁴

Despite an extensive list of amendments from CELA, which are specifically relevant to workers' environmental rights, there is more to be done to make these recommendations requirements and a government priority.¹⁹⁵ For instance, CELA proposed the following:

Amend the preamble to recognize the right of every Canadian to a healthy environment; commit the Government of Canada to applying environmental justice principles in decisions regarding exposure of vulnerable populations to toxic substances.

¹⁹³ See the Canadian Environmental Law Association's "CEPA Review Collection" online: <https://www.cela.ca/collections/pollution/reviewing-cepa>

¹⁹⁴ Online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/ENVI/related-document/8385935>

¹⁹⁵ CELA, Proposed amendments to CEPA

Amend Part 5 to expand the information gathering authority of the Minister with respect to substances, to apply the categorization and screening level assessment regimes to endocrine disrupting substances in their own right, to clarify that where a substance is found to be toxic or capable of becoming toxic the option of taking no further action is not available to the Minister, and to expand the considerations that must be addressed in respect of preventive or control actions for substances determined to be toxic, including effects on vulnerable populations, aggregate exposures and cumulative effects, and substitution of safer alternatives.

Amend Part 11 by adding a requirement for the Minister to table a state of the environment report every five years in each House of Parliament that also examines exposure levels to toxic substances and substances of very high concern in hot spots and assesses the health of vulnerable populations at these locations in light of environmental justice principles, with such report to be subject to review by a Parliamentary committee.¹⁹⁶

CELA has also proposed new provisions to the Act, which include the requirement that the Minister produce *Safer Alternatives Assessment Reports* in response to priority toxic substances, and recommended that the pollution prevention be advanced through a dedicated research body, known as the *Institute on Pollution Prevention and Safer Alternatives*. Details of each are excerpted in Appendix 3.

¹⁹⁶ Ibid.

Conclusion

Our research confirms that gaps remain in the study of environmental rights, as they pertain to workers and workplaces specifically, and in the legal landscape in Canada. We hope this report contributes to the interdisciplinary study of labour and environmental law, with the aim that it provides a foundation for further research, law reform, and advocacy, of benefit to labour, environmental, and health-based organizations.

In sum, our review of existing federal, provincial, and territorial occupational health and safety and environmental law, supports our recommendation for a 6-part framework for workers' environmental rights, which includes the following:

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.

We reiterate that these rights do not exist in isolation, but rather they are a collective set of legal principles, which, together, can advance workers' right to a healthy environment. Advancing workers' environmental rights requires nuanced understandings of *environment* and *working environment*. It also requires a shift in focus, from traditional health and safety issues, to a broader approach, as stewards of the environment.

The framework's approach of strengthening existing rights and articulating new ones is reminiscent of the 2 approaches identified in the environmental rights literature: (1) creating a new right and (2) greening existing rights. Our recommendations focus primarily on greening existing occupational health and safety rights, but also involve substantiating new rights. As noted by environmental rights scholars, a dual approach may be most effective.

This report provides a framework for workers' environmental rights that can serve as a tool for action on climate change and for a just transition to an environmentally 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.

Appendix 1

Framework Principles on Human Rights and the Environment¹⁹⁷

1. States should ensure a safe, clean, healthy, and sustainable environment in order to respect, protect, and fulfill human rights.
2. States should respect, protect, and fulfill human rights in order to ensure a safe, clean, healthy, and sustainable environment.
3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy, and sustainable environment.
4. States should provide a safe and enabling environment in which individuals, groups, and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation, and violence.
5. States should respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters.
6. States should provide for education and public awareness on environmental matters.
7. States should provide public access to environmental information by collecting and disseminating information, and by providing affordable, effective, and timely access to information to any person upon request.
8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, states should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
9. States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process.
10. States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.
11. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect, and fulfill human rights;
12. States should ensure the effective enforcement of their environmental standards against public and private actors.
13. States should cooperate with each other to establish, maintain, and enforce effective international legal frameworks in order to prevent, reduce, and remedy transboundary and global environmental harm that interfere with the full enjoyment of human rights.
14. States should take additional measures to protect the rights of those who are vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
15. States should ensure that they comply with their obligations to Indigenous peoples and members of traditional communities, including by
 - a. recognizing and protecting their rights to the lands, territories, and resources that they have traditionally owned, occupied, or used;

¹⁹⁷ Special Rapporteur on human rights and the environment. "Framework Principles on Human Rights and the Environment (2018)." United Nations Human Rights, Office of the High Commissioner. <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

- b. consulting with them and obtaining their free, prior, and informed consent before relocating them, or taking or approving any other measures that may affect their lands, territories, or resources;
 - c. respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories, and resources;
 - d. ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories, or resources.
16. States should respect, protect, and fulfill human rights in the actions they take to address environmental challenges and pursue sustainable development.

Appendix 2

Principles: Human Rights and OHS

Fifteen principles to strengthen the coherence between human rights and Occupational Health and Safety standards in the context of exposure of workers to toxic substances¹⁹⁸

Principle 1—States have a duty to protect the human rights of all workers through the prevention of exposure to toxic substances.

Principle 2—Business enterprises have a responsibility to prevent occupational exposures to toxic substances.

Principle 3—Hazard elimination is paramount in preventing occupational exposures.

Principle 4—Workers have the right not to be exposed to toxic substances without their prior and informed consent.

Principle 5—Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders.

Principle 6—States must prevent third parties from distorting scientific evidence or manipulating processes to perpetuate exposure.

Principle 7—Protecting workers from exposure to toxic substances protects their families, their communities, and the environment.

Principle 8—Every worker has the right to know, including the right to know their rights.

Principle 9—Health and safety information about toxic substances must never be confidential.

Principle 10—The right to safe and healthy work is inseparable from freedom of association, the right to organize, and the right to collective bargaining.

Principle 11—Workers, representatives of workers, whistleblowers, and rights defenders must all be protected from reprisal and the threat of reprisal.

¹⁹⁸ United Nations Human Rights, “Opening remarks by the United Nations Special Rapporteur on human rights and hazardous substances and wastes, Baskut Tuncak at the 73rd session of the U.N. General Assembly” (25 October 2018).
<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23788&LangID=E>

Principle 12—Governments should criminalize allowing workers to be exposed to substances that are known or should be known to be hazardous.

Principle 13—Workers, their families, and their communities must have immediate access to an appropriate and effective remedy, which should be available from the time of exposure.

Principle 14—Workers or their families should not bear the burden of proving the cause of their illness or disability to access an effective remedy.

Principle 15—States should assert jurisdiction for cross-border cases of workers harmed by occupational exposure.

Appendix 3

Proposed Amendments to CEPA

Excerpts of CELA's proposed amendments to the *Canadian Environmental Protection Act, 1999 (CEPA)*:¹⁹⁹

Safer Alternatives Assessment Reports

103.3(1) Within 180 days after the publication of a list referred to in subsection (5) of section 103.2, and annually thereafter, the Minister shall select priority toxic substances from the list in the order in which they appear on the list and conduct and publish, utilizing the assistance of any advisory committees the Minister considers appropriate, a safer alternatives assessment report that evaluates the availability of safer alternatives to these substances.

Content of report

(2) The content of a safer alternatives assessment report shall include:

- (a) uses and functions of the priority toxic substance;
- (b) uses that result in the greatest volume of dispersion of, or highest exposure to, the priority toxic substance in the indoor, workplace, and natural environment;
- (c) consideration of the potential impacts to human health and the environment, including a vulnerable population, of the continued use of a priority toxic substance;
- (d) whether any of the existing uses of the priority toxic substance are unnecessary;
- (e) public policy implications of a reduction in the use of the priority toxic substance where its current use is necessary;
- (f) whether alternatives, including non-chemical alternatives, are available for the uses and functions of the priority toxic substance;
- (g) whether the alternatives identified in subsection (f) are unacceptable, require further study, or are safer than the priority toxic substance;
- (h) a qualitative discussion of the economic feasibility, opportunities, or costs associated with adopting and implementing any safer alternatives to the priority toxic substance including a qualitative characterization of,
 - (i) the economic impacts of adopting and implementing a safer alternative on the economy of Canada;
 - (ii) any impacts on the workforce or quality of work life;
 - (iii) potential costs or benefits to existing business;
 - (iv) potential impacts on the cost of providing health care if a product containing the priority toxic substance is a medical product; and

¹⁹⁹ CELA, Proposed amendments to CEPA.

- (v) the extent of human exposure to the priority toxic substance that could be eliminated and health care costs saved by adopting and implementing a safer alternative;
- (i) recommendations on a course of action that should be employed with respect to the priority toxic substance including, but not limited to, whether all uses of the priority toxic substance should be prohibited; and
- (j) such further or other matters as set out by regulation.

Institute on Pollution Prevention and Safer Alternatives

103.11.(1) The Ministers shall establish a body known as the Canadian Pollution Prevention and Safer Alternatives Institute, which may be affiliated as part of one or more universities or colleges in Canada.

Purposes of Institute

(2) The purposes of the Institute shall include:

- (a) providing general information about, and publicizing advantages of and developments in, pollution prevention and safer alternatives;
- (b) establishing courses, seminars, conferences, and other events, reports, updates, guides, publications, and other means of providing technical information for industrial facilities, and may as appropriate work in cooperation with the Ministers, other departments, other levels of government, or aboriginal governments, regarding promotion of pollution prevention and safer alternatives;
- (c) developing and providing curriculum and training for higher education students and faculty on pollution prevention and safer alternatives;
- (d) engaging in research, development, and demonstration of pollution prevention and safer alternatives methods including, but not limited to, assessments of the impact of adopting such methods on the environment, public and workplace health, the economy and employment within affected industrial facilities;
- (e) establishing, in cooperation with the Ministers, centralized environmental contaminant and exposure data for systematic review in support of development of pollution prevention and safer alternatives methods;
- (f) developing by a date to be determined by regulation and in conjunction with the Ministers, and any other departments identified by regulation, a pollution prevention and safer alternatives planning program for individuals who wish to be certified as safer alternatives planners by the Institute, such program to include training safer alternatives planners to be qualified to:
 - (i) assist industrial facilities in the development and implementation of current pollution planning and safer alternatives techniques; and
 - (ii) prepare, review, and approve industrial facility substitution

implementation plans required under sections 103.5 of this Act;

- (g) sponsoring research or pilot projects to develop and demonstrate innovative technologies for pollution prevention and safer alternatives;
- (h) assisting in the training of inspectors and others, if so requested by the Ministers;
- (i) providing pollution prevention training and assistance to individuals, community groups, workers, and municipal government representatives so as to allow them to understand and review reporting requirements, pollution prevention and other plans, or other information under this Act;
- (j) conducting studies on potential restrictions on the use of toxic substances in Canada including, but not limited to:
 - (i) existing national and international experiences with restrictions;
 - (ii) social, environmental, and economic costs and benefits of adopting restrictions;
 - (iii) specific toxic substances that should be considered for restrictions in Canada and how such restrictions could be implemented.

Appendix 4
Legislative Chart

(Attached)