

East Coast Environmental Law

Environmental Law for Land and Sea: New Brunswick

This volume of the East Coast Environmental Law Summary Series first provides an overview of environmental jurisdiction and then discusses some specific topics related to environmental law and coastal issues, including land based pollution, development of fragile shorelines, and protected areas. The final section reviews a variety of options for seeking enforcement of environmental laws. The goal of the publication is to connect the public with legal resources that will help them address environmental concerns and ensure better management of coastal resources – both land and water – over the long term.

This publication is best used in combination with past East Coast Environmental Law Summary Series publications and additional resources available at our website: www.ecelaw.ca.

Coastal Jurisdiction: An Overview

Which levels of government manage the coast?

Canadian coastal management is influenced by multiple levels of government: federal, provincial, municipal, international and aboriginal. The division of jurisdictional authority raises many concerns regarding who is best suited to protect and govern the coastline of the province. The *Constitution Act, 1867* provides the framework for the division of powers between federal and provincial governments. Responsibilities over environmental issues are not clearly divided between federal and provincial levels of government and are instead shared (see: Who is in Charge of Making Environmental Legislation - Summary Series Volume VI). As an attempt to resolve jurisdictional tension outside of the courts, both levels of government frequently come to political arrangements and agree to disagree.

Federal Jurisdiction

The Federal Government controls coastal waters from the ordinary low watermark seaward to 200 nautical miles (370.4 km). On land, the Federal Government has jurisdiction over all federal crown land, including national parks, land designations under the Indian Act and Canadian Forces bases. In addition, the federal government has authority over certain coastal activities, such as navigation and shipping, sea coast and inland fisheries (*Constitution Act, 1867*, s.91). Coastal management at the federal level is split amongst several departments, including the Department of Fisheries and Oceans, Environment Canada, Transport Canada and Parks Canada.

Provincial Jurisdiction

Pre-confederation historical documents, the *Constitution Act, 1867*, international treaties, federal and provincial legislation and Canadian judicial decisions are all sources of law that help define the jurisdiction of a province. The *Oceans Act* (a federal statute) provides that the provinces are responsible for coastal lands inland from the ordinary low water mark.¹ However, provincial jurisdiction is much more complicated than this. Sections 92, 92A and 93 of the *Constitution Act, 1867* outline the subject matters that the provinces have jurisdiction over (for more details about the *Constitution Act, 1867* please refer to Summary Series VI). The wording used in the *Constitution Act, 1867* implies that the authority of a province is limited to its territorial boundaries (s. 92). Each province joined Confederation with boundaries that are still debated today. For example, it is still undecided whether the Bay of Fundy seabed is within the territories of New Brunswick and Nova Scotia or under the control of the Federal Government.² British Columbia and Newfoundland have attempted to gain jurisdiction over certain submarine lands in a number of reference cases against the Federal government.³ This has important implications regarding seabed jurisdiction. Where the territory of a province goes beyond the low water mark, the province will have jurisdiction that extends below the low water mark.

The provincial departments that share the main responsibilities for coastal management in New Brunswick are the Department of Environment and Local Government, the Department of Natural Resources, and the Department of Agriculture and Aquaculture.

Municipal Jurisdiction

Unlike federal and provincial jurisdictions, a municipality's authority is not constitutionally based. Municipal jurisdiction is granted by a province through statute. Municipalities can play a very important role in coastal management especially where there are gaps in federal and provincial activity. Municipalities have primary jurisdiction over land use within their boundaries, although their power is not without limits. Some of the most effective municipal tools include municipal plans, zoning by-laws, subdivision control, site planning control and expropriation powers. There are instances when municipal by-laws and provincial statutes that are both aimed at environmental protection may overlap. How these by-laws and statutes can co-exist will be discussed under the topic of development of fragile shorelines below.

Aboriginal Rights, Treaty Rights and Aboriginal Title

Unlike the jurisdictional authority of provincial and federal governments set out in the *Constitution Act, 1867*, Aboriginal groups have unique rights and title regarding coastal resources and lands. Section 35 of the *Constitution Act, 1982* affirms the existence of aboriginal rights and treaty rights in Canada. Aboriginal rights are rights which stem from past practices and occupation of certain territory and/or use of its resources. If such use and occupation is proven to a sufficient level, Aboriginal peoples may also have title to the land, giving them complete ownership. Treaty rights are gained by signing treaties between aboriginal groups and the Crown, sometimes at the expense of previously enjoyed rights. Both aboriginal rights and treaty rights may provide title to coastal lands as well as specific rights to coastal resources, such as the right to hunt, fish and to some extent, trade.

There are few settled aboriginal and treaty rights that are currently recognized and there is ongoing debates concerning their existence and extent. The Supreme Court of Canada has confirmed that any conduct on behalf of the Crown which might adversely affect the exercise of aboriginal and treaty rights triggers a duty to consult and accommodate the Aboriginal peoples affected.⁴ For example, if the Crown had knowledge of the potential existence of Aboriginal rights, title, or treaty rights in an area along the coast and wished to issue a permit or approve a development, it would first have to consult with the Aboriginal peoples affected.

Land Based Pollution

What can I do if I observe a pollutant running from the land into the ocean?

Jurisdiction

If the source of the pollution is coming from provincial land (including private land), then responsibility over the pollution falls under provincial jurisdiction from the authority to govern 'Property and Civil Rights' (*Constitution Act, 1867*, s. 92(13)) and the general ability of the province to regulate such pollution.

Section 91(12) of the *Constitution Act, 1867* provides the federal government legislative authority over 'Sea Coast and Inland Fisheries'. The federal government has the jurisdiction to preserve fish and their habitats and can thus regulate water pollution that affects them. It cannot otherwise use this power to intrude into provincial jurisdiction.⁵ The federal government also has general authority over the environment and in particular the authority to designate toxic substances, which will be discussed below.

Management (Who/What?)

Canadian Environmental Protection Act (CEPA)

The preamble of CEPA states that the goal of the Act is to prevent pollution while protecting the environment and human health in order to contribute to sustainable development. The Minister of the Environment (Federal) has the ability under CEPA to establish a National Advisory Committee for the purpose of avoiding duplication among different levels of government and taking cooperative action with other levels of government to allow national action to be carried out (s.6).

Part 5 of the CEPA outlines the Minister's responsibility for creating the Toxic Substances List. One of the aims of the National Advisory Committee is to coordinate an intergovernmental approach to the management of toxic substances (CEPA, s.6(1)(b)). Under CEPA, regulations are made with regard to these substances. If a substance on the List is released into the environment, CEPA comes into play. Where there is a release or the likely release of a substance on the Toxic Substances List and it affects your property, you are required to report the matter to an enforcement officer. An enforcement officer, who is designated under section 217, may also deal with the matter if not reported. A list of Toxic Substances is available in Schedule 1 of CEPA.

Fisheries Act

Section 36(3) of the *Fisheries Act* prohibits anyone from depositing or permitting "the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance ... may enter such water". (see Definitions section below)

It does not matter that the water may not be deleterious after the substance is added or that the substance entering the water is in a quantity too minute to actually harm the fish.⁶ Even if an individual did not "contribute" enough of the substance to the water body, he/she could still be liable.

An individual could be liable even if he/she did not specifically "deposit" the pollution into the water body; pollution that is allowed to escape from land may be sufficient. It is sufficient if the substance is deposited in a location where it "may enter" the watercourse frequented by fish.⁷

New Brunswick Clean Environment Act (CEA)

New Brunswick Clean Water Act (CWA)

New Brunswick Water Quality Regulation (WQ Reg)

Section 5.3(1) of the CEA and s.12(1) of the CWA prohibit the **release** of a **contaminant**... into or upon any part of the environment if to do so would or could affect the natural, physical, chemical or biological quality or constitution of the environment. The exception is if the release is in compliance with an approval or licence. Section 3(1) of the WQ Reg, a regulation under the NBCEA, provides that "no person shall, without an approval, emit, discharge, deposit, leave or throw any contaminant into or upon the environment in any location such that it may, directly or indirectly, cause **water pollution** to any **waters of the Province**." Section 3(3) of the WQ Reg deals with sources of contaminants, e.g. industrial facilities, by prohibiting the construction, modification or operation of a **source** of contaminants without an approval. It is important to note that intention to release a substance is not required in order to be found guilty of an offence under these statutes.

Important CEA, CWA, WQ Reg Definitions

Contaminant is broadly defined to mean any solid, liquid, gas, micro-organism, odour, heat, etc., or combination of any of them that is foreign to or in excess of the natural constituents of the environment, or that affects the natural, physical, chemical or biological quality or constitution of the environment, or endangers the health, well-being, etc. of animals, plants, and property.

Source of contaminant means any activity or any real or personal property that releases or might release a contaminant into or upon the environment (i.e. the air, water or soil) or any part of it and includes a **danger of pollution**. The definition of **danger of pollution** clarifies what things or activities could be sources of contaminants, e.g. drums, pits, and different ways they might result in a release, e.g. seepage, Acts of God. (Note: "**Source**" as used in WQ Reg has the same meaning as "source of contaminant").

Release includes discharging, emitting, leaving, depositing or throwing a contaminant which results in the contaminant directly or indirectly entering the environment/water.

Water pollution is the alteration of the various properties of the waters of the Province or the addition or removal of substances to those waters. These actions must then render or likely render the waters of the Province harmful to the public health, safety or welfare or harmful or less useful for domestic, municipal, industrial, agricultural, recreational or other lawful uses or harmful or less useful to wildlife.

Waters of the Province are all waters in the Province, which includes New Brunswick jurisdictional coastal water, ground water and surface water.

Using NB's Water Protection Laws

If you are encouraging the NBDOE to prosecute a violation, or undertaking a private prosecution regarding a pollutant entering a waterbody, you likely want charges laid under both s.12(1) of the CWA and s.3(1) of the WQ Reg. The reason for this is s.12(1) appears to be more broad than the provisions of s.3(1). In *R. v. New Brunswick Power Corp.*,⁸ N.B. Power was charged with violating s.3(1) of the WQ Reg. by causing approximately 7,000 litres of light fuel oil to be spilled, which in turn permeated the soil under the impoundment area of its Belledune thermal generating station. At trial it was proven

that whatever water was contaminated appeared “to be trapped in the pore spaces of the bedrock and granular backfill [under the impoundment area] presumably until it biodegrades”. The trial judge held that because the oil was trapped it could not result in water pollution. He interpreted the definition of water pollution to require “proof of consequence”, i.e. that a likely use of water has been adversely affected. In contrast, s.12(1) of the CWA does not appear to require this “proof of consequence”, but simply that the release result in some change to some quality of the water. (See discussion of s.36(3) of the *Fisheries Act* above for a comparison).

Don't forget that charges could also be laid under CEPA or the *Fisheries Act*.

Duty to Report a Release in New Brunswick

The WQ Reg s.12(2) requires any person who causes the release of a contaminant that may result in water pollution, or who has control of a source of contaminant that causes a release, to immediately report that release to the Minister of Environment. Any events that “may result in a substantial increase in water pollution” are also to be immediately reported to the New Brunswick Provincial Mobile Communications Centre at 1-506-453-7171 (s.11(3)). The Minister may take emergency measures to control the release of a contaminant when necessary (CEA s.5.01, CWA s.7).

The Minister has broad powers to issue Ministerial Orders for the containment, control and clean-up of any release of a contaminant (CEA s.5(1), CWA s.4(1)). The Orders can be issued to a number of persons, including the owner of the contaminant, the person having control of the contaminant or the land where it is located, and the person who released the contaminant. Failing to comply with an Order can result in an individual being fined \$500 to \$50,000 and any other person (e.g. a corporation) being fined \$1,000 to \$1,000,000 (CEA s.33(1), CWA s.25(1)).

What Are My Options?

The Federal and Provincial governments have discretion on whether to enforce the acts discussed above. With time and money constraints, and the difficulty of collecting evidence, charges are often not laid.

1. Under CEPA, if you have knowledge of the commission of an offence, you may report the offence to an

enforcement officer (s. 16(1)). You may also apply to the Minister for an investigation of the commission of the offence (s. 17(1)), at which point the Minister will investigate (s. 18). If the Minister does not conduct the investigation within a reasonable amount of time or if the response was unreasonable, you may also bring a private action (s. 22). Additionally, an individual who suffers from an offence may seek an injunction or bring an action to recover damages from the person who engaged in the conduct (ss. 39 and 40).

2. A member of the public can initiate a private prosecution that may result in the government getting involved, or can file a petition that will force the government to examine the issue. Although these do not require the government to lay a charge, they likely result in the examination of the violation. For further information on private prosecutions please refer to our publication on that topic at www.ecelaw.ca.
3. If the land based pollution is entering water frequented by fish make a report to Environment Canada and the DFO by calling the Coast Guard Regional Operations Centre at 1-800-565-1633. If no action is taken, you may initiate an investigation under the *Fisheries Act*.
4. If you have knowledge of a release that occurs in waters under provincial jurisdiction contact the NB Department of Environment: Tel: 1-506-453-2696, Env. Emergency 1-800-565-1633, Email: env-info@gnb.ca.
5. If you have knowledge of a release that occurs in waters or areas frequented by migratory birds, contact Environment Canada's Enforcement Branch: Tel: 1-800-668-6767
Email: environmental.enforcement@ec.gc.ca or wildlife.enforcement@ec.gc.ca.

If your employer is requiring you to take an action that may have an effect on migratory birds or their nesting areas, section 5.3 of the *Migratory Birds Convention Act* protects employees who refuse to do something that they believe might be in contradiction of this Act.

Development on Fragile Shorelines and Beaches

How can I help restrict inappropriate development on a fragile shoreline?

Jurisdiction

Municipal by-laws, provincial and federal legislation create a three-tiered regulatory scheme which enables each level of government to take part in the protection of fragile shorelines.

Federal Jurisdiction

When dealing with provincial territory, certain events will trigger federal government involvement. These triggers include:

- If a development would impact aquatic and marine environments, then federal jurisdiction may be triggered under such acts as the *Fisheries Act*, *Navigable Waters Protection Act* and *Species At Risk Act* (SARA).
- If the development is proposed or funded by the federal government, or is authorized on federal land, a federal

environmental assessment may be required before a project is started (*Canadian Environmental Assessment Act* (CEAA), s. 5).

- If the development is a harbour, wharf, or any other related facility that is located on or next to water which provides accommodation or services principally for fishing or recreational vessels then federal jurisdiction is also invoked under the *Fishing and Recreational Harbours Act* (s. 2).

Provincial Jurisdiction

There is currently no overarching provincial legislation in New Brunswick that addresses development and protection of the coast as a whole, although this may be changing in the near future. What follows below is a discussion of some of the acts, regulations and policies that govern coastal developments.

Coastal Areas Protection Policy (CAP Policy)

The five objectives of this policy are to:

- protect personal safety from storm surges/flooding events
- protect public infrastructure from storms and erosion
- prevent the pollution of water and wetlands
- maintain the buffering capacity of coastlines
- protect coastal flora and fauna and their habitats

The policy creates three zones:

- Zone A – Coastal Lands Core Area encompasses the area between the higher high water large tide (HHWLT) mark and the lower low water large tide mark (LLWLT). Very few development activities are permitted in Zone A.
- Zone B – Coastal Lands Buffer Area extends 30 m landward from the HHWLT. Limited developments are permitted in this zone.
- Zone C – Coastal Transition Area boundaries and prohibited activities have not been established.

The CAP Policy is not formal law. It is used by the DOE, DNR, and municipalities and district planning commissions to guide their decision-making with regard to developments along the coast. However, at the time of writing, there were plans to make the CAP Policy a law. One of the principles of the policy, and hopefully of the soon-to-be law, is that it applies to all lands in the province whether Crown, private, incorporated or unincorporated.

Clean Environment Act – Environmental Impact Assessment Regulation (EIA Reg)

The EIA Reg requires that certain projects, called “undertakings”, be registered with the DOE before any work on the undertaking begins. Whether the undertaking requires a formal EIA or not (determined after registration), the registration process helps ensure the project is given some scrutiny before it can proceed. (see Schedule A of the EIA Reg for a full list: www.gnb.ca/0062/regs/87-83.htm).

Persons who are concerned about a coastal development should determine whether the project needs to be registered and if so, has it been.

- **Example:** Projects that may impact wetlands 2 ha or larger (including coastal) need to be registered. Any coastal wetland in New Brunswick is considered to be a “Provincially Significant Wetland (PSW)” (New Brunswick Wetlands Conservation Policy: www.gnb.ca/0078/publications/wetlands.pdf). Projects in a PSW, within 30 m of a PSW, or any activity that poses a significant risk to a PSW, will generally not be supported by the government.

Clean Environment Act – Water Quality Regulation (WQ Reg)

The WQ Reg prohibits the construction and operation of a source of contaminants unless it has received approval from the Minister. The DOE reviews applications for approvals to determine the source’s impact on the environment. If approved, the approval usually has conditions attached that limit the amount of effluent that can be released, establish quality standards for the effluent, set monitoring requirements, etc. Examples of sources that require approvals can be found in the *Fees for Industrial Approvals Regulation (Clean Water Act)*.

Clean Water Act – Watercourse and Wetland Alteration Regulation

The *Clean Water Act*, s.15, requires that a permit be obtained before any alteration is made to a watercourse or wetland, which includes coastal wetlands. Alterations include anything that can temporarily or permanently change the flow of water including: structures extending into the water; the use of machinery within 30 m of the watercourse; and the disturbance of the ground or removal of trees and other vegetation within 30 m of the watercourse. (see NDDOE Watercourse Alterations

Technical Guidelines at www.gnb.ca/0009/0371/0005/0001-e.pdf for more information).

Quarriable Substances Act

Section 4(2) of this Act states, “No person shall remove or take a quarriable substance from a **shore area**... unless the person has been issued a quarry permit.” **Shore area** means that portion of land lying within three hundred metres above and three hundred metres below the ordinary high water mark of any body of water and includes any bed, bank, beach, shore, dune, bar, flat or mud flat lying in that portion of land. This section applies to private lands. A quarry permit is also required before a quarriable substance can be removed from Crown land.

Crown Lands and Forests Act

Submerged lands, i.e. lands seaward of the average high tide mark, are Crown lands. Structures cannot typically be placed on these lands without approval or a lease from the Department of Natural Resources (DNR).

- Under DNR policy, small, floating docks and private moorings that do not obstruct pedestrian use of submerged lands do not require formal approval
- Commercial floating docks, permanent piers and boat launches, pipelines, etc., require either a lease or an easement from DNR
- Under the Coastal Areas Protection Policy, erosion control measures such as groynes, breakwaters and retaining walls will not be permitted below the high tide mark

Municipal or Land Use Planning Jurisdiction

The power of a municipality can be very useful in advancing the sustainability objectives adopted by federal and provincial governments. For example, municipal by-laws and district planning commission documents allow municipalities and the Environment Minister to regulate and designate land use in a manner consistent with regulations and policies set out by the province. If proactive, municipalities are sometimes best suited to create an action plan that implements a provincial vision. Municipal planning authority is limited to the power granted by the province. If municipal plans and by-laws cannot coexist with provincial and federal regulations, then the power of the municipality must yield.

The case of *Merzetti v. The City of Saint John*⁹ is a good example of how municipal by-laws can be used for environmental protection and supplement existing provincial law. The provincial *Watershed Protected Area Designation Order* (CWA) established a 75 m setback zone around the Loch Lomond Watershed, which supplies the City’s drinking water. The City of Saint John added to the Order with a by-law that extended the zone to 150 m. Mr. Merzetti rebuilt his home within the 150 m zone without approval from the City. As a result, the City wanted to tear down his home. Mr. Merzetti argued the City could not do so because it could not pass a by-law that was more stringent than the province’s. The Court of Appeal held there was no conflict between the by-law and the Designation Order, and that Saint John’s standard of setback “may be more demanding than the province, but not less so”. [at para. 29]

Community Planning Act (CPA)

The CPA governs land use planning, e.g. zoning, in the province’s municipalities and unincorporated areas. Under the CPA, larger municipalities can develop their own municipal plans and zoning by-laws. District Planning Commissions prepare rural plans for the province’s smaller municipalities and unincorporated areas.

There are no guidelines or standards for how municipal or rural plans are to be drafted. However, sections 23(5) and 27.2(1) of the CPA require such plans to address “conservation of the physical environment”. Section 34(3)(g) gives municipalities

and district planning commissions the authority to pass zoning by-laws/rural plans that allow them to “prohibit the erection of any building or structure on any site where it would otherwise be permitted under the by-law when, in the opinion of the advisory committee or commission, the site is marshy, subject to flooding, excessively steep or otherwise unsuitable for a proposed purpose by virtue of its soil or topography.”

The rural plan for the Village of St. Martins along the Fundy coast provides an example of a rural plan that provides for coastal protection. The rural plan establishes an “environmental protection zone” within which are coastal lands within the Village’s boundaries. Only conservation uses and some secondary uses, such as trails and picnic tables, are permitted in this zone. (see www.royaldpc.com/PDF_Documents/Plans/STMartins_RPlan.pdf).

What are my options?

If you are concerned about a proposed development on a shoreline, try the following options. For more options and information visit www.ecelaw.ca.

1. Determine what, if any, Rural Plan or zoning by-laws exist in your area. This information is often available on your municipality’s or planning district commission’s website. If you wish to make a complaint about a by-law violation, contact your local municipality.
2. If a municipality or district planning commission is implementing planning documents, they are required to adopt a public participation program. Contact your municipality or district planning commission to see if there are any upcoming or current public participation programs in your area.

3. If you would like to see your community develop new by-laws or amend its by-laws regarding development on the coast, bring this to the attention of your municipal council or your district planning commission.
4. To find out if a permit, approval, or lease has been issued by either the Department of Environment or the Department of Natural Resources, as the case may be, you could ask the appropriate department for the information. If they are unwilling to provide it, you can make a formal Right to Information application. See the *New Brunswick Right to Information and Protection of Privacy Act*: <http://www.gnb.ca/info/>.
5. Any developments below the ordinary high water mark also need approval from the Department of Fisheries and Oceans (DFO). Such developments will inevitably influence fish habitat and therefore must be considered by the DFO pursuant to the *Fisheries Act*. The DFO must determine if a Hazardous Alteration, Disruption or Destruction (HADD) is created, and if so, a federal Environmental Assessment may be triggered. The Regional Headquarters Office, Habitat Management can be contacted at (902) 426-8105. Other regional contact information may be found at www.dfo-mpo.gc.ca/habitat/regions/maritimes-eng.asp.
6. If you think that the development will inhibit the public’s mobility in the water, contact Transport Canada, Navigable Waters Protection Program at 1-877-842-5606 or oep-epe@tc.gc.ca.

Protected Areas

What measures are in place to protect specific areas of the land and marine environments?

The International Union for Conservation of Nature (IUCN) defines protected area as a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values.¹⁰

Jurisdiction

Protected areas can be established by both the federal and provincial governments on both water and land. The province has primary jurisdiction over land in the coastal zone. However, the federal government can legislate certain land-based conservation measures that are of a national concern, such as species at risk and migratory birds, or that relate to an area of federal jurisdiction, such as inland fisheries.

Provincial Crown lands, as defined in the *Crown Lands and Forests Act*, mean any lands under the administration or control of the Minister of Natural Resources and includes any water upon or under the surface of such lands. This includes the coastline and any submerged lands, or sea beds, which are not under federal jurisdiction or are privately owned water lots. (See discussion of Jurisdiction above for more details).

The federal government has jurisdiction over federal Crown lands, which include national parks, Indian reserves, and Canadian Armed Forces bases. Marine protected areas not adjoining the shore are also under federal jurisdiction.

If a proposed protected area contains a portion of land subject to Aboriginal rights or title, the government must fulfill its duty to consult and accommodate,¹¹ which may result in the creation of a national park reserve (*Canada National Parks Act*, s. 4(2)) and/or co-management arrangements with the Aboriginal peoples affected.¹²

Management (Who/What?)

To assess the management of protected areas, it is necessary to address federal and provincial protective powers both from the land and sea side. Land based protected areas with coastal boundaries stop where provincial jurisdiction ends, namely at the ordinary low watermark. Because much of New Brunswick’s coastline is privately owned, the following will also address ways in which private land may be protected.

Provincial Management

The following Acts provide various mechanisms for designating provincial protected areas.

Protected Natural Areas Act (PNA)

At present, there are 4 Class I and 57 Class II protected natural areas (PNA) in New Brunswick. Several of these areas encompass coastal lands, such as Whitehorse Island PNA (Class I), Bay du Vin Island PNA, Little Salmon River PNA, Miscou Grande Plaine PNA, and Tabusintac PNA (all Class II). A review of the plans of survey for these PNAs shows that their boundaries end at the ordinary high water mark.

PNA and its general regulation place restrictions on what activities can take place in a PNA. PNA affords Class I PNAs the highest protection, stating no person shall enter or carry on any activity in a Class I PNA (s.11). Persons are allowed to enter and use Class II PNAs only for purposes permitted by the regulation (s.12). Industrial activities such as logging and mining are not permitted. The Regulation allows activities such as hiking, hunting, fishing, trapping, and camping if a tent is used.

Parks Act and Parks Act Regulation

There are currently 16 Provincial Parks designated under this Act. Section 2 of the Act dedicates provincial parks to present and future generations. Section 15(1) of the Act prohibits all private mining and quarrying activities in provincial parks. The Regulation prohibits persons from causing damage to a park, e.g. cut/remove flora (s.3). The Regulation also prohibits the hunting and trapping of wildlife in provincial parks (s.14). The cutting and removal of timber is prohibited in all but three provincial parks (s.17). Beaches and other shoreline areas are protected in provincial parks by the prohibition on the removal of sand or gravel (s.18).

Wildlife Refuges and Wildlife Management Areas Regulation (Fish and Wildlife Act)

There are currently 6 Wildlife Refuges and 15 Wildlife Management Areas (WMA) in New Brunswick. The Act gives the Minister of Natural Resources authority to declare, by regulation, any Crown lands, or privately held lands with the consent of the land owner, as designations under this Act. The Regulation prohibits hunting and trapping in Wildlife Refuges and regulates if and when hunting and trapping is allowed in a WMA. The Regulation defines "land" to include all types of waters, such as tidal marshes, foreshore flats, bays and coves.

Conservation Easements Act

A conservation easement is an agreement between a land owner and an eligible body that grants rights, or imposes obligations on the easement holder, owner or both for the purpose of protecting, restoring or enhancing the land (s.2). This is a useful tool for private land owners who wish to protect land that they own. Examples of eligible bodies include non-profit organizations such as the New Brunswick Nature Trust and Nature Conservancy of Canada, a municipality, and a provincial or federal government or agency (s.5). A conservation easement must be registered in the appropriate registry and depending on the agreed duration, may last indefinitely, even if the land is sold or inherited (ss.6 and 2).

For more information on Conservation Easements and other private conservation options visit the New Brunswick Nature Trust website: www.naturetrust.nb.ca/en/protect-your-land.

Federal Management

Ocean side:

At the federal level DFO, Environment Canada and Parks Canada, all have the ability to designate protected areas at sea. Although the protected areas differ in name, the nature of protection is relatively similar. There is some debate over the continuity between departments regarding the protection of designated areas. In 2005 the DFO published Canada's Federal Marine Protected Areas Strategy, which strives to establish a network of marine protected areas by establishing a more systematic approach to protected area designations as well as increasing collaboration between departments. The strategy is available at: www.dfo-mpo.gc.ca/oceans-habitat/oceans/mpa-zpm/fedmpa-zpmfed/pdf/mpa_e.pdf.

This strategy responds to the federal *Oceans Act*, which requires the Minister of Fisheries and Oceans to develop an oceans management strategy (s.29). A system of **Marine Protected Areas** (MPA) is to be implemented to protect and conserve marine ecosystems, endangered marine species, unique features and areas of high biological productivity or biodiversity (s.35).

The Musquash Estuary is an example of an MPA in New Brunswick in the Bay of Fundy. It was Canada's sixth MPA and came into being on March 7, 2007. The Musquash Estuary MPA is divided into four zones—1, 2A, 2B, and 3. General prohibited practices in all zones of the MPA include: anything

that disturbs, damages, destroys or removes any living marine organism, habitat or seabed; dumping, discharge, deposition of any substance; or any activity in the vicinity of the MPA that triggers one of the prohibited practices above. Aboriginal and recreational fishing are permitted throughout the MPA. Vessels are not permitted in Zone 1.

Similarly, Environment Canada is able to protect and conserve habitat for wildlife by establishing **Marine Wildlife Areas**, which includes the preservation of habitat for migratory birds and endangered species. Parks Canada is able to establish **National Marine Conservation Areas** to protect and conserve representative examples of Canada's natural and cultural marine heritage, and to provide opportunities for public education and enjoyment. The focus of these Areas is on harmonizing conservation with human enjoyment of the area.

Migratory bird sanctuaries, national wildlife areas and national parks with a marine component are also important contributions to the marine protected areas network.

Land side:

The following Acts provide various mechanisms for designating federal land based protected areas. For more information about the protected areas that are managed under the following Acts visit our website at www.ecelaw.ca.

Canada National Parks Act

This Act establishes parks within which critical habitat of species at risk are protected. Boundaries for all national parks are determined on a case by case basis. The coastal boundaries for Fundy National Park end at the mean high tide mark, except for some estuarial areas. An example of a national park in New Brunswick with a coastal component is Kouchibouguac National Park. Its boundary ends at the mean low tide mark and encompasses beaches and lagoons.

Canada Wildlife Act

Allows the federal government to establish National Wildlife Areas (NWA), Marine Wildlife Areas (MWA) and Migratory Bird Sanctuaries, which are all examples of protected areas. The purpose of these designations is to conserve essential and unique habitats while managing the nature of human activity. Some examples of NWAs in New Brunswick include Cape Jourimain, Shepody, Portobello Creek and Tintamarre.

Species At Risk Act (SARA) and Migratory Birds Convention Act

These Acts prohibit the destruction of the critical habitat of endangered or threatened species on federal land, a national wildlife area or a migratory bird sanctuary. SARA also prohibits killing, harming, harassing, capturing or taking any species that is listed as an extirpated, endangered or threatened species, or damaging or destroying the residence of a member of a listed species on federal lands. Aquatic species and migratory birds are protected by the federal government even on non-federal lands. The Minister of Environment may also order that federal protection applies to any species on non-federal land if the Minister is of the opinion that the species is not adequately protected by provincial legislation and regulations.

What Are My Options?

1. If you wish to protect a portion of your land while maintaining ownership rights, you may wish to look into setting up a conservation easement. The terms of use and duration may be drafted uniquely to suit your use of the land. Many different environmental organizations will accept a conservation easement. Benefits include federal and provincial tax incentives, as well as long term protection of privately owned ecological areas.

2. If there is a significant offshore resource that you and your community are interested in protecting, you may wish to identify an Area of Interest for the possibility of establishing a DFO MPA. Areas of Interest may be identified by community groups, the general public, or by other stakeholders. Some benefits of designating an MPA include the protection and sustainability of fisheries and future income. For an example of an MPA established by local stakeholders visit www.musquashmpa.ca.
3. Violating the provisions of any of the above Acts is an offence. You may be able to trigger an investigation and prosecution by contacting the government responsible for the legislation that is being violated and asking the

government to investigate the activity.

4. If you have concerns about management of a protected area that comes under federal jurisdiction you can bring a petition the federal Commissioner of the Environment and Sustainable Development who will forward the petition to the relevant minister and require him or her to give you a response.

Enforcing Environmental Laws

How can I seek enforcement of environmental laws?

This section examines various options for seeking enforcement of any environmental law. Enforcement includes any government or private action taken to determine or respond to non-compliance with environmental laws. Enforcement activities include:

1. Government enforcement
2. Public enforcement through judicial review and private prosecutions
3. Public enforcement using tort law

The first step of any enforcement process is to determine which level of government (federal, provincial, or municipal) is responsible for regulating the aspect of the environment you are concerned about (e.g. wildlife, forest, water) and, therefore, which piece of environmental legislation applies.

Step 1 – Seek Government Enforcement

Generally, Canada's approach to environmental law is to regulate human conduct to keep contamination and damage within "safe and acceptable" limits by enacting "command and control" legislation with built-in enforcement mechanisms.

"Command and control" legislation identifies types of environmentally harmful activity, imposes specific conditions/standards on that activity and prohibits forms of the activity that fail to comply with the imposed conditions/standards.

Report Environmentally Harmful Activity to the Government

When you learn of environmentally harmful activity, the first step is to report it to the appropriate government authority responsible, e.g. if you find oil or some other contaminant in a local stream call the provincial government; if there are fish in the stream you may also need to call the federal government.

Often environmental legislation will allow the Minister or an employee to conduct inspections and/or investigations of activities that are regulated by the legislation to determine whether the particular activity violates the legislation.

Inspection - Gives government broad powers to verify the compliance of regulated activities before they know a violation has occurred, e.g. police road checks.

Investigation - Gives government the power to seek and gather evidence or information in response to an alleged violation, e.g. police investigation of a crime scene.

There are a variety of mechanisms that may trigger an inspection or investigation, including receipt of information from other departments or a formal public complaint. Some legislation authorizes the government to investigate without a public complaint and some requires a public complaint before an investigation will be done.

The following legislation allows the government to investigate or inspect alleged environmental damage, without a formal public complaint:

Provincial – *Clean Environment Act, Clean Air Act, Clean Water Act, Fish and Wildlife Act, Endangered Species Act, Aquaculture Act*

Federal - *Canadian Environmental Protection Act, Fisheries Act, Migratory Birds Act, Canada Shipping Act, Canada Wildlife Act, Canadian National Marine Conservation Areas Act, Canada National Parks Act, Species at Risk Act*

What is the Outcome?

These tools give the Minister or an employee of the responsible department wide discretion to decide what course of action to take. Further, a government inspection or investigation does not ensure that the legislation is enforced. They can decide that no violation has occurred and take no further action or find a violation and issue a ministerial order, direction to clean up or remedy the harm, or prosecute.

Pros & Cons

Pros

- No expense to inform the government or issue a complaint asking the government to inspect or investigate
- The government will complete the investigation at its expense

Cons

- Entirely dependent on the government's assessment of whether a violation has occurred
- The government's only obligation is to determine whether an investigation is necessary and respond to the person who made the request within a certain time frame
- There are no guidelines for how the government must make their decision

Step 2 – Compel Compliance through Appeal, Judicial Review or a Private Prosecution

As discussed under Step 1, certain legislation allows members of the public to ask the responsible government to inspect or investigate to find out if a violation has occurred. If a violation is found, enforcement measures may be implemented. If the government will not respond, there are other tools the public can use to try and stop the activity.

Appeal

Some environmental legislation prohibits environmentally harmful activities outright but allows them to happen if they are approved or permitted. For example, under the *Environmental Impact Assessment Regulation* (EIA Reg), certain listed “undertakings” are not allowed to proceed unless they are registered with the DOE and receive the approval of the Minister. Under the federal *Fisheries Act*, no one can take part in an activity that causes an “alteration, disruption or destruction” of fish habitat unless they have a permit.

If you believe an activity is taking place without the proper approval(s) or the way the approval was issued was wrong, you may be able to appeal the Minister’s or employee’s decision that approved the activity in the first place and have it overturned by the courts.

Even when the applicable legislation does not explicitly allow for the appeal or review of a decision, courts always maintain the authority to review the decision. New Brunswick environmental laws typically do not provide appeals to persons other than the applicant for the approval.¹³ One exception to this is the *Community Planning Act* (s.86(2), although the grounds for appeal are quite limited).

Judicial Review

Judicial review is a court’s examination of the conduct or decision of an inferior decision-maker, such as a court, tribunal, board, committee or Minister, to ensure that the conduct or decision was proper in law. Follow these steps to determine if judicial review of an approval is possible in your circumstance:

- Check whether the applicable legislation requires the activity to be approved, e.g. under the EIA Reg or under the *Water Quality Regulation*
- If so, find out if an approval has been granted by either checking the EIA Record of Registrations (www.gnb.ca/0009/0377/0002/EIA.pdf) or by making a request for information under the NB Right to Information and Protection of Privacy Act: <http://www.gnb.ca/info/>
- If there is an approval, find out when it was granted to see if you missed the deadline for filing for judicial review under Rule 69 of the *New Brunswick Rules of Court*

What is the Outcome?

The court can overturn the decision, order the decision-maker to do something (e.g. issue a permit) or make a declaration about the state of the law, which proves that the other party is in breach of the law. A declaration is a powerful remedy against the government as it will clarify or interpret the legislation, and the government does not want to be seen in breach of the law.

Pros and Cons

Pros

- You could have the decision of the Minister or government employee overturned, which would set a precedent for future conduct by the government

Cons

- You must have standing, which is the right to bring an action in court
- Private parties always have standing to bring court actions to protect their private interests
- Public interest litigants who are seeking the judicial review of a government decision do not automatically have standing—instead, courts have the discretion to grant them standing, typically after applying a test set out in a quartet of Supreme Court of Canada decisions¹⁴
- There are significant costs involved in bringing a court case and you may have to pay the other party’s legal costs if you are not successful
- Judicial review is usually only available when the decision-maker has made an “error in law”, i.e. the decision maker has not applied/followed the law properly
- It is very difficult to be successful on a judicial review application because government decision-makers are often given broad authority, which means the judge is likely to grant deference to the decision-maker, i.e. is not likely to overturn the decision out of respect for the Minister’s initial/original decision
- The results may not be satisfactory, as the entity causing harm to the environment may be able to repeat their actions as long as they pay closer attention to the procedural rules

Private Prosecution

When you become aware of an environmental offence, you can inform the Crown prosecutor of the appropriate level of government and let the prosecutor decide whether to prosecute the offender. If the Crown decides not to prosecute, you may be able to bring a private prosecution.

Under some environmental legislation, a citizen can bring a private prosecution and charge a person or entity with violating that environmental legislation – e.g. under either the *Fisheries Act* for the offence of causing harmful alteration, disruption or destruction (HADD) of fish habitat or of depositing a deleterious substance.

To bring a prosecution, you must have reasonable grounds to believe that an offence has been committed, which means you have to observe an offence, speak to witnesses and gather evidence.

What is the Outcome?

If successful, you may get half of the penalty that is imposed and the offender will be fined, required to clean up the damage or even be imprisoned. If unsuccessful, the court could require you to pay the other party’s costs.

Pros & Cons

Pros

- You don’t need to have standing
- You don’t need to wait for government intervention
- Prosecutions usually attract media

Cons

- Limitation periods may apply
- There are costs associated with going to court and gathering evidence
- Legal requirements for collection and preservation of evidence are very rigorous
- You may not be rewarded with any of the monetary penalty
- The Attorney General or responsible Minister may also decide to intervene and stay the charge

For more information on Private Prosecutions, please see our publication on that topic at www.ecelaw.ca.

Step 3 – Using Tort Law

Start a Civil Action

If an activity that damages the environment also causes damage to you or your property, consider starting a civil action in court against the responsible party. To do this, you will need a cause of action, i.e. the event or activity that forms the basis of the lawsuit.

The most common types of environmental lawsuits are tort actions based on the following causes of action: negligence, private nuisance, public nuisance, trespass and strict liability.

Negligence - Any person, entity or even the government can be sued for negligence. You don't need to have a property interest. To be successful in proving a party or entity was negligent, you must prove:

1. That the party owes you or the thing damaged, a duty of care (or obligation)
2. That the party breached the standard of care
3. That there is a causal connection between party's conduct and the alleged injury
4. That there is actual loss/damages to your interests
5. That the loss experienced was foreseeable

Private Nuisance - Available only to those who own private property - you don't need to prove a breach of standard of care, but you do need to prove that your damages were foreseeable.

Public Nuisance - The right to bring such an action lies with the government, unless an individual can show "special damages" unique to them and not common to other members of the public. Although an individual does not need private property interest (unlike private nuisance), it is difficult for an individual to establish "special damages."

Trespass - You don't need to prove damage to property, breach of standard of care, or fault, but you do need to prove intentional interference with the property. Trespass can be based on a single incident. However, only the person in possession of the property can bring the suit.

Strict Liability - This tort will be available when a person or entity brings a dangerous substance on to their property that escapes and causes damage to the land or goods of someone else. The law holds that people who bring dangerous substances on their property will be held "strictly liable" for any damage the substance causes without proof of intent, negligence or fault. You just have to prove that it was the person or entity's object that escaped and caused damage to the environment.

What is the Outcome?

There are really two remedies available for civil actions:

- *Damages* - Monetary award made by the court to compensate the injured party for its loss. Damages could be nominal, general, special or punitive.
- *Injunction* - A court order prohibiting someone from doing something, or forcing him or her to do something, while waiting for the court to make a decision. Therefore, it guards against future injuries rather than providing a remedy for past injuries.
 - Very difficult to obtain because you have to prove that you will suffer irreparable harm if the activity is not stopped
 - If you get an injunction during a trial, you may have to post security to cover the other party's costs/damages in case your suit fails

Pros & Cons

Pros

- The offender may have to pay damages and a portion of the cost of your legal fees if you are successful

Cons

- If the matter proceeds to trial, the cost of lawyer's fees, court fees and gathering evidence can be thousands of dollars
- If you lose, you may have to pay a portion of the winning party's legal fees
- The evidence may be difficult to gather and you will have to prove that you have experienced damage, which can be hard to quantify
- Be aware that other parties may be involved
- Limitation period may apply

Intervene in a Civil Action

If you or your group feels that you could provide meaningful contribution to a case that is coming before the courts that you are not directly involved in, you can get the court's permission to become an intervenor.

In order to receive permission to intervene, you need to: (1) have an interest in the outcome of the court proceeding, (2) make a useful contribution, or (3) offer a perspective that is different from the parties involved in the case.

What is the Outcome?

A positive outcome would be for the court to recognize the intervenor's interest or to pick up on the view the intervenor provides.

Pros & Cons

Pros

- You could change the law by showing a judge that the environment should be considered in his or her decision

Cons

- The judge may not take an intervenor's views into account
- To be effective, you should hire a lawyer, however, you will not be able to recover any of part of your legal fees because you are not a party

Step 4 – Initiate Legal Action Outside of the Courts

There are various legal tools available that do not involve going to court. While these types of tools will not result in enforcement, they can be powerful in swaying public opinion.

Petition

A petition is a written application from a person(s) to some governing body or public official asking that some authority be exercised to grant relief.

Provincial - The Office of the Ombudsman handles complaints against provincial or municipal government departments, agencies, boards and commissions.

Any person, group, society or company with a complaint against a provincial or municipal government department, agency, board or commission can make a petition to the Ombudsman.

Federal - The Auditor General has established a Commissioner of the Environment and Sustainable Development (CESD), which takes public petitions to ensure that Canadians can bring environmental concerns to the attention of federal Ministers and that these concerns are dealt with in a timely manner.

Anyone can submit a petition to the CESD about environmental issues that fall within federal jurisdiction.

What is the Outcome?

Provincial- The Ombudsman will assess the petition/grievance to decide how to proceed with his/her investigation. All investigations conducted by the Ombudsman are confidential and done in private. Most investigations conducted by the Ombudsman do not result in formal, public reports, but instead are "internal" reviews of governmental actions, decisions, etc. The Ombudsman is required to report to the petitioner the results of the investigation, such as whether the Ombudsman recommended the government authority undertake a particular action.

Federal- The CESD decides whether or not to accept or reject the petition. If accepted, it will be forwarded to the responsible federal department and notice of this will be sent to the petitioner. A Minister must send a letter to the petitioner within 15 days acknowledging receipt of the petition and must respond within 120 days.

Pros & Cons

Pros - Provincial

- The request is inexpensive
- Investigations can result in the Ombudsman making recommendations that can require the government body to review how it handled the complaint, change its policies or procedures, or improve how it communicates with the public and other government bodies

Pros - Federal

- Inexpensive and can force the government to respond to specific questions based on a particular fact situation
- The CESD prepares a report every year that includes a chapter on all of the petitions that were submitted that year, along with the responses
- In some cases, the CESD may audit an issue that was the subject of a petition and to investigate

Cons - Provincial & Federal

- While the information received may be useful, neither the provincial nor the federal petition process is an enforcement process as there is no obligation to respond in a particular way
- The government will not be able to respond to questions that relate to legal proceedings, ask for a legal opinion or relate to a matter that is beyond the department's jurisdiction

Commission for Environmental Cooperation (CEC)

The Commission for Environmental Cooperation (CEC) is comprised of representatives from Canada, Mexico and the USA. The CEC was established as a side agreement to NAFTA to prevent any unfair trade advantages gained through the non-enforcement of environmental laws. It has a Citizen Submission Process where the public can play an active "whistle-blowing" role when it appears that the government is failing in enforcing environmental laws. The CEC may review and investigate a submission and publish a factual record of its findings. Further details about the Submission Process can be found at: www.cec.org/citizen.

What is the Outcome?

If the submission meets the criteria, the CEC may request a response from the offending government. If the response does not satisfy the CEC, a factual record may be created and the Council may make the record public.

Pros & Cons

Pros

- If the CEC makes the factual record public, there may be public pressure on the government to rectify the problem

Cons

- May be quite time-consuming, complicated and even if the CEC's secretariat recommends an investigation, there is no obligation that one be undertaken
- If the NAFTA Ministers agree to undertake an investigation, there is no obligation on the governmental party to do anything in response to the recommendations
- Has no enforcement mechanism beyond public pressure

Key Word Definitions:

Coastal Area: Means the air, water and land between the lower low water large tide and the higher high water large tide, and one kilometre landward of the higher high water large tide or one kilometre landward of any coastal feature, whichever extends farther inland. **Higher high water large tide** means the average elevation of the highest high tide based upon the most recent nineteen years of tidal predictions for which there is data. **Lower low water large tide** means the average elevation of the lowest low tide based upon the most recent nineteen years of tidal predictions for which there is data.¹⁵

Deleterious substance: A substance is deleterious if it is harmful to fish, if it limits the use of fish by humans (for example contamination of fish by *E. coli*), or it harms the water quality. Regulations under the *Fisheries Act* also prescribe levels that constitute a substance as deleterious. Deleterious substances include pesticides, petroleum products, cleaning supplies, and heavy metals.¹⁶

Foreshore: The strip of land lying along tidal water, between ordinary high and low water marks.¹⁷

High Water Mark: The medium high tide line between spring and neap. When the law uses these words, the boundary is to be taken to mean the ordinary or mean high water mark.¹⁸

Low Water Mark: The medium low tide line between spring and neap.

Marine Protected Area: An area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated by the *Oceans Act*, for special protection for conservation or protection of a specific habitat or area.¹⁹

Navigable Waters: Any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, commerce, or recreation. This includes both inland and coastal waters.²⁰

Seabed: The ground under a water source or under the ocean.²¹

Water Lot: A designated parcel of land, underwater. Pre-confederation, a number of water lots were created and still remain in existence today. Saint John Harbour has a number of water lots. Water lots cannot be established after confederation (1867).

References:

- 1 The State of Nova Scotia's Coast Technical Report, (Nova Scotia: Department of Fisheries and Aquaculture, 2009) at 75.
- 2 Meinhard Doelle et al. "The Regulation of Tidal Energy Development Off Nova Scotia: Navigating Foggy Waters" (2006) 55 U.N.B.L.J.
- 3 *Reference Re: Ownership of Off Shore Mineral Rights (British Columbia)*, [1967] S.C.R. 792.; *Reference re: Ownership of the bed of the Strait of Georgia and related areas*, [1984] 1 S.C.R. 338.; *Reference re: Seabed and subsoil of the continental shelf offshore Newfoundland*, [1984] 1S.C.R. 86.
- 4 *Haida Nation v. Canada*, 2004SCC 73, 245 D.L.R. (4th) 33. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69, 259 D.L.R. (4th) 610.
- 5 *R. v. Crown Zellerbach Canada Ltd.* 1988, 1 S.C.R. 401.
- 6 *R. v. MacMillan Bloedel (Alberni) Ltd.* (1979), 47 C.C.C. (2d) 118 (B.C.C.A.).
- 7 *R. v. Western Stevedoring Co.*, 1984 13 C.E.L.R. 159.
- 8 *R. v. New Brunswick Power Corp.* [1999] N.B.J. No. 645 (N.B.P.C.).
- 9 *Merzetti v. City of Saint John*, 2005 NBCA 16 (CanLII).
- 10 www.iucn.org.
- 11 *Haida Nation v. British Columbia (Minister of Natural Resources)*, 2004 SCC 73, 245 D.L.R. (4th) 33.
- 12 Parks Canada. www.pc.gc.ca/eng/progs/np-pn/cnnp-cnnp/naatsihchoh/reserve.aspx.
- 13 *Fundy North Fishermen's Association v. N.B. (Minister of Agriculture, Fisheries and Aquaculture)*, 2000 CanLII 3066 (NB Q.B.), 1359629 *Ontario Inc. v. Province of New Brunswick (Minister of Environment and Local Government)*, 2004 NBCA 27 (CanLII).
- 14 For a good discussion of the issue of public interest standing in New Brunswick, see: *Province of New Brunswick v. Morgentaler*, (2009) 344 N.B.R. (2d) 39, 306 D.L.R. (4th) 679 (N.B.C.A.).
- 15 *Clean Environment Act*, R.S.N.B. , c. C-6, s.1.
- 16 *Fisheries Act*, R.S.C. 1985, c. F-14 s. 36(3). www-heb.pac.dfo-mpo.gc.ca/water_quality/fish_and_pollution/fish_act_e.htm.
- 17 *Flewelling v. Johnston.* (1921) 59 D.L.R. 419 at para. 41.
- 18 *Canada (A.G.) v. Kennings*, (1988) 23 F.T.R. 51, 40 L.C.R. 253.
- 19 *Oceans Act*, S.C. 1996, c. 31, s. 35(1).
- 20 Transport Canada available at www.tc.gc.ca/eng/marinesafety/oep-nwpp-guide-2053.htm.
- 21 Oxford Paperback Dictionary, Thesaurus, and Wordpower Guide, 2001, s. V. "seabed".

Disclaimer

Please note that this volume cannot cover all coastal environmental issues or all options available to you, nor should it be interpreted as legal advice.

East Coast Environmental Law Association

This guide was developed by East Coast Environmental Law Association (ECELAW), a non-profit organization.

ECELAW envisions a future where innovative and effective environmental laws and the just application of those laws provide Atlantic Canadians with a clean, healthy environment, which will make a positive contribution to the quality of life of its present and future inhabitants and visitors.

ECELAW promotes the development and just application of innovative and effective environmental laws in Atlantic Canada through:

- Awareness & Understanding - increasing public awareness of and access to environmental laws;
- Education - aiding in the education of future environmental law professionals; and
- Collaboration - working with the public, community groups and government to strengthen environmental laws in Atlantic Canada.

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For more information

Please visit www.ecelaw.ca for past volumes of our Summary Series, other legal resources and information library. The website of the New Brunswick Environmental Law Society www.sade-els.org contains environmental law news and information.

To find the full text of the federal and provincial Acts and Regulations, visit:

Canadian Legal Information Institute: www.canlii.ca

Federal Department of Justice: <http://laws.justice.gc.ca>

New Brunswick Queen's Printer: www.gnb.ca/0062/acts/index-e.asp

In New Brunswick, you can contact the Public Legal Education Service by phone: 506.453.5369 or on-line www.legal-info-legale.nb.ca/en/index.php.

On-line resources for frequently asked questions:

New Brunswick Department of Justice: www.gnb.ca/0062/index-e.asp

Self-Represented Litigants: www.gnb.ca/Cour/litigant-e.asp

The Courts of New Brunswick: www.gnb.ca/cour/



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