



BACKGROUND PAPER

FEDERAL AND PROVINCIAL JURISDICTION TO REGULATE ENVIRONMENTAL ISSUES

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Federal and Provincial Jurisdiction to Regulate Environmental Issues
(Background Paper)

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EXECUTIVE SUMMARY

This paper introduces the constitutional division of powers between the federal and provincial governments over various environmental issues.

Canada's Constitution does not list "the environment" as a subject matter specifically assigned to one level of government or the other. Rather, one or more subject matters that the Constitution allocates to the federal Parliament or to the provincial legislatures can apply to an environmental issue. Which level of government has jurisdiction to regulate in relation to a specific environmental issue therefore depends on which subject matter listed in the Constitution best describes the substance of the regulation and which level of government has authority for that subject matter.

Whereas certain environmental issues can be regulated solely by the federal or provincial governments, many can be regulated by both. Over time, the federal and provincial governments have worked together to harmonize the regulations regarding many aspects of the environment.

FEDERAL AND PROVINCIAL JURISDICTION TO REGULATE ENVIRONMENTAL ISSUES

1 INTRODUCTION

Lawmakers interested in regulating in relation to environmental issues must bear in mind which aspects of the physical environment fall under federal jurisdiction, which are under provincial jurisdiction, and which may be regulated by both levels of government.

In this paper, the word “regulate” is used in its generic sense, meaning control by coercion. It encompasses the enactment of legislation by Parliament or a provincial legislature and the making of regulations by a government, as well as government decision-making and management of an issue when backed by the force of law.

Sections 91 and 92 of the *Constitution Act, 1867* list subject matters in relation to which each level of government may regulate.¹ Neither list includes “environment” as a subject matter. Rather, the “environment” is a collective term referring to numerous issues, including some of the various subject matters the Constitution assigns to either Parliament or the provincial legislatures.

This paper provides an introductory explanation regarding the constitutional basis for jurisdiction to regulate a subject matter, and then explains which level of government is responsible for regulating various environmental issues.

2 CONSTITUTIONAL BASIS OF JURISDICTION TO REGULATE A SUBJECT MATTER

Which level of government has jurisdiction to regulate in relation to a specific environmental issue depends on which subject matter listed in the Constitution best describes the core substance of the regulation and whether the Constitution has assigned authority for that subject matter to Parliament or to the provincial legislatures.

2.1 FEDERAL SUBJECT MATTERS

The following federal subject matters are the basis of most federal jurisdiction over environmental issues:

- public property (section 91(1A)),² which means federally owned property;
- fisheries, both marine and freshwater (section 91(12));
- navigation and shipping (section 91(10));
- the criminal law (section 91(27)); and
- “Indians, and lands reserved for the Indians” (section 91(24)).

In addition, the opening words of section 91 of the *Constitution Act, 1867* set out a federal residual power. Numerous legal decisions have interpreted this power to mean that various subject matters not explicitly listed in the Constitution – such as marine pollution and interprovincial water pollution – are nevertheless within federal jurisdiction.

Finally, section 132 of the Act provides federal jurisdiction over at least two environmental issues: boundary waters and migratory birds.³ That section gives Parliament and the federal government the powers necessary for meeting Canadian obligations towards foreign countries arising under treaties between the British Empire and foreign countries. Each of these issues – boundary waters and migratory birds – had been the subject of an international agreement between Britain and the United States before Canada gained the autonomy necessary to enter into international treaties on its own behalf.

2.2 PROVINCIAL SUBJECT MATTERS

Provinces have jurisdiction over numerous environmental issues largely thanks to the following four subject matters, expressly assigned under the Constitution to the provinces:⁴

- property and civil rights in the province (section 92(13)), which empowers the provinces to regulate most types of business and industrial activities, including emissions from such activities;
- management of provincial Crown lands (section 92(5)), which empowers the provinces to regulate activities such as mining and lumbering on their substantial landholdings;⁵
- municipal institutions in the province (section 92(8)), under which authority the provinces may delegate to municipalities the power to regulate matters such as zoning, development, waste management and recycling, and drinking water and wastewater; and
- generally all matters of a merely local or private nature in the province (section 92(16)).

3 FEDERAL AND PROVINCIAL JURISDICTION OVER ENVIRONMENTAL ISSUES

This section explains which level of government is responsible for regulating various environmental issues relating to water, air and land. In some cases, the two levels of government share responsibility for the same issue. An example of such shared jurisdiction is discussed in the context of shared provincial and federal authority to require that an environmental assessment be carried out for many types of projects.

3.1 ENVIRONMENTAL ISSUES RELATING TO WATER

3.1.1 Fisheries, Shipping and Navigation

The federal government has authority to regulate in relation to fisheries, shipping and navigation. Federal jurisdiction over these subject matters applies for all parts of the oceans under Canadian jurisdiction, as well as lakes, rivers and streams within the provinces and territories. Federal jurisdiction over these matters does not vary depending on whether the bed of a lake, river or stream is owned by the federal Crown or the provincial Crown or is privately owned.

Under the fisheries power, the federal government has jurisdiction to regulate not only fish and fisheries, but also fish habitat, the quality of fish-bearing waters, and marine mammals, such as whales, walruses and seals. Under the *Fisheries Act*, the federal government also regulates marine plants in coastal waters that are not within the geographical limits of any province. This jurisdiction over marine plants appears to be based in the power to regulate the public property (the seabed) with which the plants are associated rather than in the fisheries power.⁶

The federal government's jurisdiction to regulate shipping includes the jurisdiction to regulate emissions from ships and boats, including sewage, oil and ballast water discharges. The federal government may also regulate shipping routes and safety to prevent spills, wrecks and disruption of the marine environment.

With regard to navigation, courts have recognized a public right to navigate Canada's waterways, regardless of who owns the waterways.⁷ This applies to vessels of all sizes, from tankers to canoes, as well as to all types of navigable waters, from oceans to rivers, lakes and streams. Because people have an underlying right to navigate waterways, the federal power to regulate navigation means that the federal government is responsible for determining which works that interfere with navigation – such as dams and bridges – will be allowed. Since keeping the waterways intact for navigation also results in environmental benefits, some people characterize federal navigation legislation as environmental legislation.⁸

3.1.2 Rivers and Lakes in the Provinces

Apart from the aspects of water management discussed above, provinces are primarily responsible for managing the water resources within their borders. They have enacted environmental legislation related to water use and watershed management, as well as effluent discharge limits for various industrial sectors.

An exception to this generalization exists in relation to the issue of international or interprovincial pollution, where the impacts of activities carried out in one province are experienced in another province or country, such as the United States. The federal government has jurisdiction to regulate such international or interprovincial effects.⁹

The federal government is responsible for regulating issues relating to boundary waters.¹⁰ Boundary waters are waters, such as the Great Lakes, along which the international border between Canada and the United States passes.

Finally, the federal government is also responsible for regulating all aspects of rivers and lakes that occur on federal land within the provinces. Examples include rivers and lakes in national parks.

3.1.3 Rivers and Lakes in the Territories

In accordance with the Canadian Constitution, territories are entirely under federal jurisdiction.¹¹ However, under various agreements and legislation, the federal government, the territorial government and Indigenous groups all have roles in water management in each of the three territories.¹²

The federal government has formally devolved province-like responsibilities and legislative powers – including powers to legislate water resources – to Yukon and the Northwest Territories. Parliament enacted implementing legislation in respect of each of these territories in 2001 and 2014 respectively.¹³ Although many province-like powers have also been delegated to Nunavut, this territory is not yet responsible for managing its water resources. An agreement-in-principle, signed on 15 August 2019, will guide negotiations towards a final devolution agreement for Nunavut respecting responsibilities in relation to land and resource management, including water management.¹⁴

3.1.4 Oceans

All portions of the territorial sea¹⁵ outside provincial boundaries fall under federal jurisdiction. In portions of the territorial sea that fall within provincial boundaries, the federal government nevertheless has jurisdiction to regulate marine pollution.¹⁶ Beyond the territorial sea of Canada, the federal government has jurisdiction over Canada's exclusive economic zone,¹⁷ including the right to exploit mineral resources in the continental shelf. The federal government has chosen to share the management and revenue of offshore resources being exploited in the areas off the coasts of Newfoundland and Labrador and Nova Scotia with those provincial governments.¹⁸

Marine protected areas, such as marine wildlife areas and national marine conservation areas, also come under federal jurisdiction.¹⁹

3.1.5 Drinking Water and Wastewater

In Canada, provincial and territorial governments are generally responsible for ensuring that public drinking water is safe. In most cases, responsibility for the day-to-day operations of treatment facilities has been delegated to municipalities.²⁰ Exceptions to this general rule include First Nations reserves,²¹ federal institutions such

as penitentiaries and federal office buildings, and federal land such as national parks, where the federal government is responsible for providing safe drinking water.²² In addition, Health Canada coordinates the activities of the Federal-Provincial-Territorial Committee on Drinking Water, a committee that establishes the *Guidelines for Canadian Drinking Water Quality*.²³ These guidelines “are used by every jurisdiction in Canada and are the basis for establishing drinking water quality requirements for all Canadians.”²⁴

As for wastewater, provincial, territorial and municipal governments have primary jurisdiction. The federal government has jurisdiction over wastewater on federal lands and on First Nations reserves. In 2012, the federal government asserted a much larger jurisdiction to regulate wastewater management in Canada when it made the *Wastewater Systems Effluent Regulations*,²⁵ which apply throughout the provinces and in Yukon.²⁶ These regulations were made under the *Fisheries Act* on the basis that the federal government has jurisdiction to regulate the quality of fish-bearing waters.

3.2 ENVIRONMENTAL ISSUES RELATING TO AIR

3.2.1 Industrial Emissions

The provinces have jurisdiction over most types of industries, including mining and manufacturing; therefore, they also have jurisdiction to regulate emissions from these industries. The federal government, in turn, regulates emissions from industries that come under its jurisdiction, including several that may have a significant environmental impact, such as aviation and interprovincial and international transportation. As discussed in the next section, the federal government also has jurisdiction to regulate the emission of toxic substances, regardless of which industry is responsible for causing such emissions.

3.2.2 Toxic Substances

Parliament has asserted federal jurisdiction to identify and regulate the release of toxic substances, such as mercury and asbestos, into the air, land and water. This jurisdiction was confirmed in 1997 when the Supreme Court of Canada ruled that controlling toxic substances is a valid exercise of federal jurisdiction to make criminal laws.²⁷ Federal provisions for controlling toxic substances are now contained within the *Canadian Environmental Protection Act, 1999* (CEPA), which includes a process for determining which substances are toxic, as well as a regulatory regime for controlling or eliminating toxic substances.²⁸

3.2.3 International Air Pollution

The federal government has jurisdiction to regulate air pollution that is released from a source in Canada and experienced in a country outside Canada. Under CEPA, before taking action, the federal Minister of the Environment must first offer an opportunity for the government responsible for the area containing the source of pollution – which must not be the federal government or its institutions – to prevent, control or correct the air pollution.²⁹

3.2.4 Greenhouse Gases and Climate Change

The provinces and territories have broad jurisdiction to regulate greenhouse gas emissions. They may directly regulate emissions from industries and activities under their jurisdiction. Under the provincial taxation power, they may impose a provincial carbon tax.³⁰ Under the power to regulate property and civil rights, the provinces may impose levies and establish emissions trading schemes, such as cap-and-trade schemes.³¹

The federal government's ability to regulate greenhouse gas emissions is based in its authority, under the Constitution, to regulate several different subject matters. First, the federal power to impose taxes could be used to impose a carbon tax.³² Second, the federal government may regulate emissions emanating from industries under federal jurisdiction, such as shipping and aviation. Next, under the criminal law power, the federal government has added six greenhouse gases to the List of Toxic Substances set out in Schedule 1 of CEPA, which allows the federal government to regulate emissions of these gases regardless of the source.³³ The federal government has also used its power to regulate trade and commerce to set emissions standards for vehicles and engines imported or transported across a provincial border, as well as for those bearing the national emissions mark.³⁴

A final federal power to regulate greenhouse gas emissions was recently challenged after Parliament adopted a federal “backstop” carbon pricing system that applies in provinces and territories that the federal government deems not to have sufficiently stringent carbon pricing systems in place. The *Greenhouse Gas Pollution Pricing Act*,³⁵ which was enacted in 2018, has two components: a regulatory charge on fossil fuels and an output-based pricing system for industrial facilities that emit above a specified threshold. Both the Ontario and Saskatchewan courts of appeal have found that the Canadian Parliament had jurisdiction to enact this scheme under the federal residuary power.³⁶ The Supreme Court of Canada is expected to make the final determination as to the constitutionality of the regime in the coming months.

3.3 ENVIRONMENTAL ISSUES RELATING TO LAND

3.3.1 Terrestrial Protected Areas

Both the federal and provincial governments have authority to establish protected areas. Jurisdiction is based on which level of government owns the lands that are to be protected, including the beds of rivers and lakes.

The federal government has established several different types of protected areas on its lands, including national parks and national wildlife areas. In contrast, federal migratory bird sanctuaries may be established on federal, provincial or private land, because the federal government has jurisdiction over migratory birds, if not the lands that comprise a sanctuary for those birds.

3.3.2 Wildlife and Species at Risk

The provinces have jurisdiction over most wildlife within their borders. There are three principal exceptions to this. The federal government has primary jurisdiction over

- wildlife on federal lands, such as in national parks and national wildlife areas;
- aquatic species, including fish and marine mammals, such as whales, walrus and seals; and
- migratory birds.

Federal jurisdiction over migratory birds was confirmed by the New Brunswick Provincial Court, which stated that the federal *Migratory Birds Convention Act, 1994* and its regulations are within federal jurisdiction based in the federal power to implement international treaties under section 132 of the *Constitution Act, 1867*.³⁷ The relevant international treaty in this case is the 1916 convention between the United Kingdom and the United States for the protection of migratory birds in Canada and the United States. The court also found that federal jurisdiction over migratory birds more generally is based in the federal residuary power on the grounds that migratory birds are a matter of national concern.³⁸

The federal government also has jurisdiction to regulate the international and interprovincial trade of wildlife under the federal *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*.³⁹

3.3.3 Waste Management

Waste management and recycling are primarily matters of municipal, provincial and territorial concern. As expressed by the Government of Canada:

In general terms, municipal governments manage the collection, recycling, composting, and disposal of household waste, while provincial and territorial authorities establish waste reduction policies and programs, approve and monitor waste management facilities and operations.⁴⁰

However, there are at least four aspects of waste management that fall within federal jurisdiction.

First, as discussed earlier in this paper, the federal government has jurisdiction to regulate the release of toxic substances under its constitutional power to make criminal laws. Numerous regulations made under CEPA regulate the release of toxic substances, listed in Schedule 1 of that Act, to the land, air and water.

Second, the federal government has jurisdiction to regulate the international and interprovincial movement of hazardous waste and hazardous recyclable materials. Waste and recyclable materials that qualify as “hazardous” are identified in various federal regulations.⁴¹

Third, the federal government is responsible for waste management and recycling on federal land – such as in national parks – as well as on First Nations reserves.

Fourth, the federal government is responsible for the management and clean-up of federal contaminated sites. These sites are located either on federal land – in the territories, for example – or on First Nations reserves, or their contamination has been caused by federal government operations.⁴²

3.3.4 Nuclear Activities

Parliament has declared that it has jurisdiction over

[a]ny work or undertaking constructed for the development, production or use of nuclear energy or for the mining, production, refinement, conversion, enrichment, processing, reprocessing, possession or use of a nuclear substance or for the production, possession or use of prescribed equipment or prescribed information.⁴³

Declaring federal jurisdiction over a work or undertaking in this manner is authorized under the *Constitution Act, 1867*.⁴⁴

3.4 JURISDICTION TO REQUIRE AN ENVIRONMENTAL ASSESSMENT

Under both federal and provincial law, many types of projects – such as the construction of a mine, pipeline or factory – must undergo an environmental assessment to ensure that environmental factors are taken into account throughout the planning stages of the project.

Provincial jurisdiction to require that a proposed project undergo an environmental assessment is broad, since the provinces have jurisdiction over “property and civil rights in the province,”⁴⁵ which gives them jurisdiction over most types of projects. Provincial jurisdiction over environmental assessment may also be based in provincial jurisdiction over provincial Crown lands and generally all matters of a merely local or private nature in the province.⁴⁶

However, in some cases the federal government also has jurisdiction to require that a project undergo an environmental assessment, even if the project is predominantly under provincial jurisdiction. Federal jurisdiction is based in the possibility of a project having an effect within federal jurisdiction. Under Canada’s new *Impact Assessment Act*, effects within federal jurisdiction include

- a change to fish and fish habitat, aquatic species or migratory birds;
- a change to the environment that would occur on federal lands, in a province other than the province in which the project is carried out, or outside Canada;
- an impact on Indigenous peoples – including on heritage, on current use of lands and resources for traditional purposes, or on a structure, site or thing of significance – resulting from a change to the environment; and
- a change to the health, social or economic conditions of the Indigenous peoples.⁴⁷

4 CONCLUSION

When the *British North America Act* (as the *Constitution Act, 1867* was originally entitled) was enacted, the environment was not identified as a subject matter requiring government protection. As environmental issues have emerged over the last half century, the original constitutional framework distributing legislative powers to Parliament and the provincial legislatures has been interpreted to assign authority over these new issues to one or both levels of government. Oftentimes this distribution of powers is complex and overlapping. Therefore, the federal government and the provinces have worked together to harmonize the application of regulations in respect of all aspects of the environment – water, air, land and environmental assessment.

NOTES

1. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.), ss. 91–92. Sections 92A–95 also assign subject matters to one or both levels of government. The subject matters most likely to be related to the environment are concentrated in sections 91, 92 and 92A.
2. Unless otherwise noted, all section numbers in this paper refer to sections of the *Constitution Act, 1867*.
3. These two topics are discussed in more detail in section 3 of this paper.
4. The *Constitution Act, 1867* does not give the territories jurisdiction over any subject matters. Rather, the territories come under the authority of Parliament, which has delegated substantial authority to the territorial legislatures to make laws. See [Yukon Act](#), S.C. 2002, c. 7; [Northwest Territories Act](#), R.S.C. 1985, c. N-27; and [Nunavut Act](#), S.C. 1993, c. 28.
5. The provinces, collectively, are the biggest landholder in Canada. However, the extent of provincial land ownership varies significantly from province to province. See V. P. Neimanis, “[Crown Land](#),” *The Canadian Encyclopedia*, 18 May 2011.
6. See [Fisheries Act](#), R.S.C. 1985, c. F-14, ss. 44–48.
7. [Wood v. Esson](#), [1884] 9 S.C.R. 239 (CanLII); [Stephens and Mathias v. MacMillan and MacMillan](#), [1954] O.R. 133 (CanLII); and [Friends of the Oldman River Society v. Canada \(Minister of Transport\)](#), [1992] 1 S.C.R. 3 (CanLII).
8. For a discussion about navigation legislation serving as environmental legislation, see Ecojustice, “[Bill C-45 and the Navigable Waters Protection Act \(RSC 1985, C N-22\)](#),” Legal backgrounder, October 2012. Federal navigation legislation was recently amended and renamed the [Canadian Navigable Waters Act](#). See [Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts](#), 1st Session, 42nd Parliament, S.C. 2019, c. 28, s. 46. Some stakeholders have criticized the amendments for not reinstating the requirement to consider the environmental impacts of projects that may interfere with navigation. For example, see Freshwater Alliance, [Navigable Waters gain protections as C-69 passes at the Senate](#), 22 June 2019.
9. See [Interprovincial Co-operatives Ltd. et al. v. R.](#), [1976] 1 S.C.R. 477; and [R. v. Crown Zellerbach Canada Ltd.](#), [1988] 1 S.C.R. 401, para. 16 (CanLII).
10. Under the 1909 [Treaty relating to Boundary Waters and Questions arising along the Boundary between Canada and the United States](#) between the King of the United Kingdom (on behalf of Canada) and the United States, the International Joint Commission (IJC) was created to prevent and resolve disputes relating to boundary waters. For more information about the IJC and its mandate, which has expanded beyond boundary waters to other international matters such as air quality, see IJC, [Role of the IJC](#).
11. [Constitution Act, 1871](#) (formerly known as the *British North America Act, 1871*), 34–35 Victoria, c. 28 (U.K.), s. 4.
12. For Yukon, see Public Works and Government Services Canada, [Yukon Northern Affairs Program Devolution Transfer Agreement](#), Ottawa, 2001; the federal [Yukon Act](#), S.C. 2002, c. 7; and the territorial [Waters Act](#), S.Y. 2003, c. 19. For the Northwest Territories, see [Northwest Territories Land and Resources Devolution Agreement](#) (2013); the federal [Northwest Territories Act](#), S.C. 2014, c. 2, s. 2; the federal [Mackenzie Valley Resource Management Act](#), S.C. 1998, c. 25; and the territorial [Waters Act](#), S.N.W.T. 2014, c. 18. For Nunavut, see the federal [Nunavut Waters and Nunavut Surface Rights Tribunal Act](#), S.C. 2002, c. 10.
13. Ibid.
14. Government of Canada, [Nunavut devolution](#).
15. The territorial sea is, roughly, a 12-nautical-mile band of sea around the coast of Canada that is considered to be part of Canada. The exact definition is found in section 4 of the [Oceans Act](#) (S.C. 1996, c. 31).
16. This principle was established by the Supreme Court of Canada on the grounds that marine pollution is a matter of national concern under the “Peace, Order and Good Government” provision of the *Constitution Act, 1867*. See *R. v. Crown Zellerbach Canada Ltd.*
17. The exclusive economic zone is defined in section 13 of the *Oceans Act*. Roughly, it is a band of sea adjacent to, and which extends beyond, the territorial sea to a distance of 200 nautical miles off the coast of Canada.

18. See the [Atlantic Accord](#) (1985) between Canada and Newfoundland and Labrador and the [Canada–Nova Scotia Offshore Petroleum Resources Accord](#) (1986). A similar [Canada–Quebec petroleum resources accord](#) was reached in 2011, but this accord has not yet been implemented through federal legislation.
19. See Fisheries and Oceans Canada, [Federal Marine Protected Areas Strategy](#).
20. Government of Canada, [Drinking water quality in Canada](#).
21. The responsibility to provide safe drinking water on reserves south of the 60th parallel is shared between First Nations communities and the federal government. In British Columbia, the First Nations Health Authority is responsible for providing “independent public health advice and guidance to BC First Nations communities” and “funding and technical support to enable effective monitoring programs for drinking water quality.” See Government of Canada, [Roles and responsibilities](#).
22. See Government of Canada, “[Water management in the federal house](#),” *Water governance: federal policy and legislation*.
23. Government of Canada, [Federal-Provincial-Territorial Committee on Drinking Water \(CDW\) – Health Canada](#).
24. Government of Canada, *Drinking water quality in Canada*.
25. [Wastewater Systems Effluent Regulations](#), SOR/2012-139.
26. The *Wastewater Systems Effluent Regulations* do not apply in the Northwest Territories, in Nunavut, or north of the 54th parallel in Quebec and Newfoundland and Labrador. *Ibid.*, s. 2(3).
27. See [R. v. Hydro-Québec](#), [1997] 3 S.C.R. 213.
28. See [Canadian Environmental Protection Act, 1999](#), S.C. 1999, c. 33, Part 5 [CEPA 1999]; and [regulations](#) made under the Act.
29. CEPA 1999, s. 166.
30. *Constitution Act, 1867*, s. 92(2). British Columbia was the first province to impose a provincial carbon tax. See [Carbon Tax Act](#), S.B.C. 2008, c. 40.
31. Quebec’s cap-and-trade system is an example of such an approach. See [An Act to amend the Environment Quality Act and other legislative provisions in relation to climate change](#), S.Q. 2009, c. 33.
32. *Constitution Act, 1867*, s. 91(3).
33. By virtue of the [Order Adding Toxic Substances to Schedule 1 to the Canadian Environmental Protection Act, 1999](#) (SOR/2005-345), the federal government added the following six greenhouse gases to the list: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride. Regulations subsequently made respecting emissions of these greenhouse gases include the [Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations](#) (SOR/2012-167) and the [Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity](#) (SOR/2018-261). However, for an example of an argument that the coal-fired electricity generation regulations could be characterized as “targeted energy facility regulation” and, on that basis, be within exclusive provincial jurisdiction, see Alastair R. Lucas and Jenette Yearsley, [The Constitutionality of Federal Climate Change Legislation](#), University of Calgary School of Public Policy [SPP], SPP Research Papers, Vol. 4, No. 15, December 2011. Since no court has ruled on the constitutionality of the federal regulations, they remain in effect.
34. Regulations made under CEPA based on the federal trade and commerce power include the [Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations](#) (SOR/2013-24); the [Marine Spark-Ignition Engine, Vessel and Off-road Recreational Vehicle Emission Regulations](#) (SOR/2011-10); the [Off-Road Compression-Ignition Engine Emission Regulations](#) (SOR/2005-32); the [Off-Road Small Spark-Ignition Engine Emission Regulations](#) (SOR/2003-355); the [On-Road Vehicle and Engine Emission Regulations](#) (SOR/2003-2); and the [Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations](#) (SOR/2010-201).
35. [Greenhouse Gas Pollution Pricing Act](#), S.C. 2018, c. 12, s. 186.
36. See [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 ONCA 544 (CanLII); and [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 SKCA 40 (CanLII). Both courts found that the *Greenhouse Gas Pollution Pricing Act* relates to a matter of national concern.
37. *R. v. J.D. Irving Ltd.* (2008), 37 C.E.L.R. (3d) 200 (N.B. Prov. Ct.).

38. Ibid. Also see [Hamilton Wentworth \(Regional Municipality Of\) v. Canada \(Minister of the Environment\)](#), 2001 FCT 381 (CanLII).
39. [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#), S.C. 1992, c. 52.
40. Government of Canada, [Municipal solid waste: a shared responsibility](#).
41. See [Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations](#), SOR/2005-149, ss. 1–2; and [Interprovincial Movement of Hazardous Waste Regulations](#), SOR/2002-301, s. 1.
42. For more information, see Office of the Auditor General of Canada, [Federal Contaminated Sites and Their Impacts](#), Chapter 3 in *Report of the Commissioner of the Environment and Sustainable Development – Spring 2012*, 2012; and Government of Canada, [About federal contaminated sites](#).
43. [Nuclear Safety and Control Act](#), S.C. 1997, c. 9, s. 71. Also see [Nuclear Energy Act](#), R.S.C. 1985, c. A-16, s. 18.
44. *Constitution Act, 1867*, ss. 91(29) and 92(10)(c).
45. Ibid., s. 92(13).
46. Ibid., ss. 92(5) and 92(16).
47. See the definition of “effects within federal jurisdiction” in section 2 of the [Impact Assessment Act](#) (S.C. 2019, c. 28, s. 1).