

ecojustice

THE
RIGHT
TO A

Healthy
ENVIRONMENT

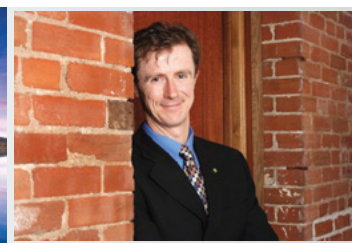
CANADA'S TIME TO ACT

TABLE OF CONTENTS

3	INTRODUCTION
4	PRINCIPLES OF STRONG ENVIRONMENTAL LAWS
5	REALITY CHECK
6	THE RIGHT TO A HEALTHY ENVIRONMENT
7	THE PATHWAY FOR CHANGE
8	ENVIRONMENTAL RIGHTS IN ACTION
9	CONCLUSION
10	REFERENCES & FURTHER READING

ACKNOWLEDGEMENT

We would like to acknowledge former Ecojustice executive director Dr. David R. Boyd for his leadership on the issue of environmental rights in Canada. Much of the content in this publication is informed by his extensive body of work, particularly the 2012 book: *The Right to a Healthy Environment: Revitalizing Canada's Constitution*.



Special thanks to the **Catherine Donnelly Foundation** for their generous support of Ecojustice's Right to a Healthy Environment campaign.

CONTRIBUTORS

Authored by Kimberly Shearon and Margot Venton, with contributions from Darcie Bennett, Megan Bradfield, Savannah Carr-Wilson, Pierre Hamilton, and Pierre Sadik.

Graphic design by Christa Ledding
www.christaledding.com

INTRODUCTION

Most Canadians agree that strong environmental laws are important because they protect the quality of the air, water and land that our health depends on.

And yet, Canada consistently underperforms against its peers when it comes to environmental protection. In 2013, a report released by the Washington-based Center for Global Development ranked Canada's environmental protection record dead last among 27 wealthy countries.¹

Despite being home to 20 per cent of the world's freshwater resources, Canada has no national law that regulates drinking water quality. Alberta's oil patch represents one of the biggest industrial projects on the planet, but federal laws fail to adequately regulate air, water or land pollution from oilsands extraction. Weak oversight by regulators also plagues the mining industry.

Countries around the world have begun to introduce laws to address or mitigate the effects of climate change, but Canada's laws have been slow to adapt. In fact, regulatory reviews of major energy projects in Canada consistently omit meaningful consideration of greenhouse gas emissions.

In almost every respect, Canada's environmental framework falls short. And we pay the price.

Weak environmental laws that fail to adequately protect against threats to the air, water and land that we all depend on put the health and wellbeing of Canadians at unnecessary risk.

But together, we can get Canada back on track.

More than 110 countries have already recognized their citizens' right to a healthy environment by enshrining it in their national constitution. Now it's time that we demand Canada do the same.

Together, we can make it happen.



“More than 110 countries have already recognized their citizens' right to a healthy environment... Now it's time that we demand Canada do the same.”

PRINCIPLES OF STRONG ENVIRONMENTAL LAWS

Change starts with strong laws.

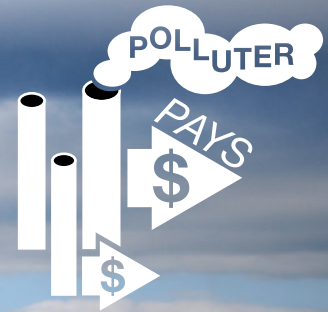
At Ecojustice, we believe every environmental law must include a few basic principles. Laws grounded in these principles can protect the places and people we love and ensure that every Canadian — no matter who they are, or where they live — can enjoy a healthy environment.



Strong environmental laws ensure that everything we put into the air, land and water is taken into account when regulators make environmental decisions. Considering how a proposed project will add to an area's cumulative pollution load provides a more accurate picture of its environmental impacts and helps prevent the creation of toxic hot-spots.



Strong environmental laws prevent toxic hot spots from developing and ensure that no one community suffers from a disproportionate pollution burden. They also ensure that regulators consider how our actions impact future generations so that our children don't suffer the consequences of degraded air, water and land.



Strong environmental laws ensure that when the actions of an individual or corporation degrade our water, air or land, the polluter — not taxpayers — pays to clean up the mess.



PUBLIC PARTICIPATION

Strong environmental laws ensure that governments give concerned citizens meaningful opportunities to weigh in on environmental decision-making that affects their community and step in when those governments fail to enforce their own laws.



Strong environmental laws ensure that decision-makers 'look before they leap' where our air, land and water is concerned. When decision-makers have an incomplete understanding of the environmental risks associated with a project or plan, they err on the side of caution and impose safeguards to stop harm before it happens.



Strong environmental laws recognize that you can't enjoy a strong economy without a healthy environment. Protecting and restoring the quality of our air, water and land for future generations makes good economic and environmental sense.

REALITY CHECK

Canada's environmental law framework is far from comprehensive.

In almost every instance, Canada's federal laws fail to incorporate the six basic principles of strong environmental laws.

Jurisdictional issues also pose a challenge to effective protection of Canada's air, water and land. Because the environment is never referenced in the Canadian Constitution, there is uncertainty about which level of government is ultimately responsible for protecting people and the natural world from environmental harm.

Like the federal government, provincial and territorial governments have a mandate to create and implement environmental laws. However, inconsistencies from jurisdiction to jurisdiction have resulted in an ineffective

patchwork of environmental laws with major gaps that put the health of Canadians at risk.

For instance, drinking water quality is managed by the provinces and territories, which each have its own policy. These policies are not all created equal, meaning the quality of drinking water in Toronto may be significantly better than in Whitehorse. And because Canada has no national water law, communities under federal jurisdiction — such as First Nations reservations — have no legal protection of their drinking water quality and are therefore exposed to disproportionate health risks.

A United Nations study published in 2009 found that First Nations' homes are 90 times more likely to be without running water than the homes of other Canadians.² As of May 2014, Health Canada reported that there were 130 drinking water advisories in effect in 91 First Nation communities.³

Canadians deserve — and must demand — better.

CASE STUDY: NEB ACT

The federal government gutted some of Canada's most important environmental laws when it forced through its omnibus budget bills in 2012.

The *National Energy Board Act* is one law that is significantly weaker today than it was pre-2012. As part of its efforts to fast-track major pipeline projects, the federal government rewrote key parts of the law, sacrificing independent science and a democratic, thorough review process at the altar of "efficiency."

As a result, valuable opportunities for public input have been restricted or stripped away in an (unsuccessful) attempt to ensure that the

Kinder Morgan Trans Mountain Expansion Project's review process takes no more than 15 months. There will be no cross-examination on the company's evidence, meaning intervenors — like the clients Ecojustice represents — will not have the opportunity to directly challenge Kinder Morgan's evidence about the safety of its proposal.

The narrow scope of the review process also explicitly excludes from consideration the environmental and human health impacts of climate change and oilsands development associated with the pipeline.

The result is a deeply flawed process that undermines the NEB's ability to fulfill one of its core duties: Regulate in the public interest.

THE RIGHT TO A HEALTHY ENVIRONMENT

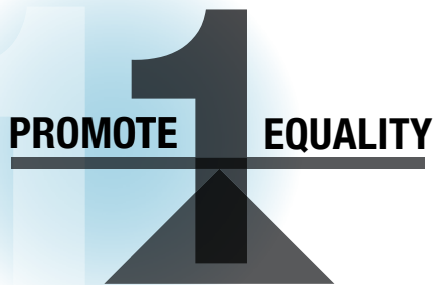
At a time when many countries around the world are introducing progressive legislation to protect their air, water and land, Canada is falling behind.

But there's a way to get Canada back on the right track.

It starts with you. And it ends with Canada enshrining the right to a healthy environment in the Charter of Rights and Freedoms.

The Charter gives each and every Canadian inalienable rights. It ensures freedom of expression and protects us from discrimination. It also guarantees each of us the right to life, liberty and security of person.

Here are three reasons why it's time for Canada's highest law to recognize each and every Canadian's right to a healthy environment:



Canada's patchwork of environmental laws means that thousands of First Nations people across the country do not have access to clean running water. It also means that communities near toxic hotspots like Sarnia's notorious Chemical Valley and Alberta's Fort McMurray, disproportionately bear Canada's pollution burden because governments continue to authorize industrial sprawl in these areas without considering cumulative environmental impacts. In some cases, pollution is not even being monitored.

▷▷ **The right to a healthy environment could fix these inequities by compelling governments to recognize that — regardless of who they are or where they live — every Canadian is entitled to a minimum standard of environmental quality.**



Canada has surprisingly weak rules about air pollution, drinking water safety and the use of toxic substances. For example, even though the Canadian Medical Association reports that air pollution contributes to more than 20,000 premature deaths each year,⁴ Canada — unlike the United States, Australia and the European Union — has no legally-binding national air quality standards.

▷▷ **The right to a healthy environment could mandate the creation of new environmental laws, or require existing ones to be strengthened. This will have an immediate, direct impact on the quality of the air, water and land that our health depends on.**



Federal, provincial, territorial and municipal environmental laws in Canada can be rolled back at any time. But in countries that recognize their citizens' environmental rights this is not the case. Courts in many of these countries have recognized the "standstill principle," which interprets the right to a healthy environment to mean that existing environmental laws are a baseline that can be improved, but never weakened.

▷▷ **The right to a healthy environment could stop harmful law rollbacks — like the sweeping changes buried in the 2012 federal omnibus budget bills — before they happen, and ensure that efforts to protect the air, water and land on which we all depend stand the test of time.**

THE PATHWAY FOR CHANGE

More than 110 countries around the world recognize that environmental rights are human rights. It's time that Canada's most powerful law did the same.

Here's how we can get there together.

3 OUR SHARED VISION

ALL CANADIANS HAVE THE CHARTER RIGHT TO A HEALTHY ENVIRONMENT.

Laws and policies at all levels of government adapt to recognize this new right.

2

TOOLS FOR CHANGE

STRATEGIC LITIGATION

Individuals or public interest groups make the case that a government action or decision that resulted in dangerous levels of air pollution, contamination of a water supply, or another form of environmental degradation is unconstitutional because it violates an existing Charter right (e.g. s.7: the right to life, liberty and security of the person). A legal victory would establish that existing Charter rights encompass the right to a healthy environment.

A NEW RIGHT

Adding a new right to the Charter is difficult, though not impossible. It would require Parliament's approval and the support of seven of the ten provinces, accounting for 50 per cent of the country's population. If that consent is secured within a three-year period, the federal government could add a section to the Charter recognizing the right of every Canadian to live in a healthy environment.

JUDICIAL REFERENCE

Any federal, provincial, and territorial government can ask the Supreme Court to answer important legal questions such as whether the right to a healthy environment is implicit in the right to life, liberty and security of the person. This process, known as a judicial reference, has been used over a hundred times and the results are binding on lawmakers.

1

IT STARTS WITH YOU

Large-scale legal change starts in our own backyards. When we come together to demand that our right to a healthy environment be recognized, we will create a groundswell too great for our decision-makers to ignore.

Canadians from coast to coast to coast are already leading grassroots campaigns urging their local communities to make declarations of support for environmental rights. Learn more at www.bluedot.ca.

Some provinces, including Ontario and Quebec, already have provincial bills of environmental rights. And as more communities join the call for action, there will be pressure on the other provinces to follow suit. While these bills do not have the same force as a Charter right, they send a strong signal that Canadians are ready for change.

CHARTER RIGHTS IN ACTION

Sexual orientation is never mentioned in the Charter, but in 1995 the Supreme Court of Canada ruled that discrimination based on sexuality is analogous (comparable) to discrimination based on race, national or ethnic origin, and, as such, prohibited

Four years later, the Supreme Court also found that the definition of "spouse" that prevented same-sex partners from applying for support upon relationship breakdown was unconstitutional. Across the country, legislators began to bring their laws in line with same-sex couples' newly recognized rights.

ENVIRONMENTAL RIGHTS IN ACTION

Environmental rights can improve human health, restore damaged ecosystems, and protect natural resources. Here are three powerful examples of how having the right to a healthy environment is making a difference around the world.



NORWAY

The inclusion of environmental rights in Norway's constitution coincided with a boom in the country's offshore oil and gas industry. In order to meet obligations to guarantee its citizens' right to a healthy environment, the Norwegian government developed innovative ways to reduce its greenhouse gas emissions to offset growing fossil fuel production.

Norway implemented an 80 per cent tax on oil and gas company profits. It also introduced a carbon tax and invests the money in environmental and social programs.⁵ While still a major oil and gas producer, Norway is now among the handful of countries committed to becoming carbon neutral.



THE PHILIPPINES

The Philippines recognizes its citizens' right to a healthy environment, and as a result, Manila Bay — a notorious pollution hotspot — is being cleaned up.

In 2008, the Supreme Court of the Philippines released a major judgment in a case brought by "Concerned Residents of Manila Bay" which stated that government agencies "cannot shirk from their mandates." The court ordered 12 government agencies to develop a comprehensive plan to rehabilitate the bay. The court even took the unusual step of appointing itself to supervise restoration efforts.

The Philippines is now in the process of cleaning up 14 river systems in an effort to reduce pollutants entering Manila Bay by 50 per cent by 2015.⁶



PORTUGAL

In 1976, Portugal became the first country in the world to enshrine the right to healthy environment in its constitution. A decade later, it introduced the *Environmental Framework Law* to ensure that government decision-making at all levels respects its citizens' environmental rights.

The law requires the government to evaluate industrial proposals using the precautionary principle to prevent pollution and mitigate its impacts before it happens. So when a proposal to build a gas station threatened the air quality around an elementary school, a Portuguese court ruled that the gas station would violate the schoolchildren's right to a healthy environment and could not be built.

CONCLUSION

Change is afoot. Around the world, countries are being forced to adapt to the realities of climate change, water scarcity and deteriorating air quality. In the last 50 years, the right to a healthy environment has gained recognition faster than any other human right.⁷

When countries commit to legally protecting the basic elements of our survival — clean air, drinkable water and unpolluted land — the benefits are clear. Lighter ecological footprints. Stronger environmental laws. Healthier communities.⁸

Canada is the second largest country on the planet.

IT IS HOME TO



25%
of the world's
wetlands

20%
of the world's
fresh water



20% of the world's remaining
wilderness

98%

of Canadians **view nature as essential to human survival.**⁹

And according to a 2012 poll conducted by the David Suzuki Foundation,

85% of Canadians agree that people should have the right to a healthy environment.

By enshrining the right to a healthy environment in the Canadian Charter, we can align our highest law with our most deeply-held values. The right to a healthy environment will be a powerful catalyst in improving the quality of our laws, our environment and our health.

We've seen it in Norway. In the Philippines. In Portugal. **Now it is Canada's turn.**

REFERENCES

- 1 “Commitment to Development Index 2013” accessed July 21, 2014, <http://www.cgdev.org/publication/commitment-development-index-2013>
- 2 UN Department of Economic and Social Affairs, Secretariat of the Permanent Forum on Indigenous Issues. 2009. The State of the World’s Indigenous Peoples. New York: United Nations, p. 25.
- 3 “Drinking Water and Waste Water” accessed July 21, 2014 <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php>
- 4 Canadian Medical Association No Breathing Room; National Illness Cost of Air Pollution (2008).
- 5 David R. Boyd “The Nature Debate, part 1: Make it Law” Financial Post, January 25, 2013.
- 6 David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada’s Constitution*, (Vancouver: UBC Press, 2012): 164.
- 7 David R. Boyd, “The Constitutional Right to a Healthy Environment” accessed July 30, 2014 <http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html>
- 8 David R. Boyd, *Constitutional Recognition of the Right to a Healthy Environment: White Paper* (Vancouver: David Suzuki Foundation: 2013)
- 9 David R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003): 4

FURTHER READING

Alvin Singh and Alaya Boisvert, *Broken Ground: On the Frontlines of a Fractured Landscape* (David Suzuki Foundation, 2014) available at: <http://brokenground.ca/>

David R. Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003)

David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada’s Constitution* (Vancouver: UBC Press, 2012).

Paul R. Muldoon, *An Introduction to Environmental Law and Policy in Canada*. (Toronto: Emond Montgomery Publications, 2008)

R.D. Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (San Francisco, Sierra Club Books, 2005)

William Amos and Margot Venton, *Restoring the Balance: Recognizing Environmental Rights in British Columbia* (Vancouver: Ecojustice, 2009)

Help us spread the word

A large, detailed dandelion seed head is positioned on the left side of the frame. Three stems, resembling dandelion seed stalks, extend from the right side of the seed head towards the top right corner. Each stem has a circular icon at its tip: a Twitter bird, a Facebook 'f', and a dollar sign. The background is a soft, out-of-focus green.

SHARE ON TWITTER

SHARE ON FACEBOOK

SUPPORT OUR WORK

ecojustice