

LEGISLATIVE JURISDICTION IN ENVIRONMENTAL LAW

by

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Introduction

Recent Western history is screaming the need for environmental controls. We can no longer ignore the fact that some of our resources are non-renewable, some of the natural, unique and spectacular features of our landscape cannot be reproduced artificially, some of our soil/climate combinations are vital if we are to continue eating the food we eat, and that even the food we eat and the air we breathe will ruin us if the levels of contaminants in them are not kept in check.

The primary purpose of this paper is to point to some problems that arise with legislative jurisdictions involved in environmental law. The basis of legislative authority is briefly discussed and a number of examples of how that authority is exercised are explored. A listing of each Act, though, which impinges on the environment is beyond the scope of this paper.^{1,2}

The Origins of Legislative Authority: The British North America Act

The legislative authority for all jurisdictions in Canada ultimately is derived from the British North America Act, 1867, and its subsequent amendments. The powers residing in the federal and provincial governments are ambiguously defined and the manner in which the courts have

¹For a more detailed approach to environmental law, see Environment On Trial, by David Estrin and John Swaigen, 2nd. ed., 1978. Toronto: Canadian Environmental Law Research Foundation.

²A listing of a number of federal and provincial (Ontario) environmental laws is appended to this paper.

interpreted these powers has led to jurisdictional conflicts in many matters.

With regard to environmental concerns, it is understandable that many of the problems of today were not even imagined 110 years ago. The BNA Act stipulates that in certain matters the federal government has sole authority, in some the provinces, & in some the jurisdiction is a shared one, while municipalities derive their authority from their provinces. It happens that sometimes it is uncertain or at least unclear which level of government in fact has control over a particular matter. When this happens, the constitutional question may have to be resolved before it can be determined how to deal with the matter.

The following examples illustrate how legislative jurisdiction can be problematic where environmental questions are concerned.

An Example of Potential Federal-Provincial Conflict Over Jurisdiction

Jurisdiction over railroads is clearly a federal matter, as stipulated by the Railway Act, R.S., 1970. Noise control is a matter within provincial jurisdiction. The question arises as to which level of government has authority to control noise coming from railroads. The question may appear simple. However,

be assured, that as a matter of constitutional law, it is not simple. If the province or the municipality attempts to regulate railroad noise in a manner that virtually stifles expansion of the railroad into certain areas, or undermines the actual workings of the railroad, that legislation would probably be held invalid in any court in this country. The reason that such a regulation would be invalid is that the province or the local level of government would be entrenching upon the federal powers to regulate the railroad. The federal government, on the other hand, has not shown itself to be interested in regulating noise emanating from railroads, and, indeed, if the federal government were to so legislate in that area, certain aspects of that legislation might be found to be invalid. The question then remains: Who has jurisdiction to control railroad noise? It is a problem that does not have any easy solutions. This problem illustrates how it is that a number of environmental concerns, such as railroad noise, do not have any effective legislation nor likelihood for such legislation to be enacted by any level of government in the immediate future.

An Example of Joint Federal and Provincial Control

There are a number of Acts, both federal and provincial, that control atomic energy. Using Ontario as an example in following atomic energy

through from beginning to end, that is, from mining of uranium to disposal of waste products, we will briefly survey a number of Acts involved in the split jurisdiction over atomic energy.

Atomic energy is a complex issue. Various levels of government create nuclear technology. The technology, economics and politics, both domestic and foreign, about, for instance, the CANDU reactor (a uranium-powered nuclear reactor) have heavily influenced government policy with regard to the problem of nuclear energy. The principal applicable statute is the federally enacted Atomic Energy Control Act (AECA), 1946. (The present federal legislation may be substantially changed by a bill now before Parliament: Bill C-14, the Nuclear Control and Administration Act. Changes to the existing regulatory framework will occur if Bill C-14 is enacted.) The legislation is overseen by the Atomic Energy Control Board (AECB). As well, the federal government has three crown corporations involved with atomic energy and these corporations report to the Ministry of Energy, Mines and Resources.

Government regulates the use of radioactive substances. Thus, uranium extraction is federally licenced as a "prescribed substance" at the mining stage, then in its use in nuclear applications, in transportation, and ultimately in its disposal. The federal government establishes permissible radiation doses and safety standards and has passed the Nuclear Liability Act to compensate the victims of any nuclear disaster. However, the province of Ontario has also been active in the nuclear field. Ontario Hydro, a crown corporation of the province, was very active in promoting development of the CANDU reactor. A number of Ontario ministries, as a result of legislation,

are concerned with aspects of nuclear power. The Ministries of the Environment, Health, Natural Resources, Consumer and Commercial Relations, and Labour, are members of an AECB Advisory Committee. The Ministry of the Environment also monitors radioactive emissions, and has the power to regulate treatment and disposal of radioactive wastes, since they are included under the definition of contaminants and hazardous wastes under The Environmental Protection Act, S.O. 1971. The Environmental Assessment Act, S.O. 1975, could also apply to establishment of a nuclear power station. Other provincial ministries may similarly regulate aspects of atomic energy within their legislated jurisdictions.

Thus there may be jurisdiction at three levels of government with regard to the nuclear industry. (Included as an Appendix to this paper, is a chart showing federal and provincial (Ontario) legislation dealing with the environment.)

An Example of Jurisdiction Primarily Under Provincial Control

Land use is primarily a provincial matter with a number of notable exceptions. These exceptions are mainly in areas where federal authority has been extended, such as national parks, military bases, and land uses such as works considered to be for the good of Canada. Legislation within this area, at times, illustrates over-regulation. Ontario has a very comprehensive planning scheme under several pieces of major legislation which allows for the planning of the province. Major Acts

which apply are The Planning Act, The Ontario Municipal Board Act, and various other land use Acts, such as The Mining Act, and The Pits and Quarries Control Act. In some cases, the provincial legislation allows local levels of government to plan for land use within their boundaries. The planning that is prepared by those levels of government is then implemented by zoning by-laws. It is at this level that conflicting ideas about land use may occur.

A development may make economic sense for a developer and may well provide jobs, but it may also create environmental problems. Values, such as the preservation of agricultural land, recreational land, and peaceful and quiet countryside, may be lost to a development. In order to reconcile these values, Ontario legislation provides for a hearing, or a number of hearings, which may be long and costly. These hearings should provide a forum for airing environmental as well as economic reasons for and against any project. While the present approval process can create long delay and add substantial costs to the projects, serious environmental risks may be exposed. Before any irreversible work is done, these risks should receive very careful deliberation. Perhaps, as our civilization plods on, it will be necessary to make some unpleasant choices regarding our environment for the future, but let us at least do everything reasonable in ensuring that the choices are conscious, and arrived at with full awareness of the alternatives.

Conclusion

This paper traces the origins of legislative jurisdictions and some of the problems in applying jurisdiction to environmental issues. The tabular charts appended to the paper show some of the environmental legislation extant. Legislative jurisdiction is obviously a problem. But other problems arise. We should be concerned about the quality of legislation that is passed. We should be concerned about any needless duplication or overlapping of jurisdiction in the legislation passed. We must be concerned about the lack of legislation by any level of government in some environmental areas. Where legislation exists, we must be concerned about the enforcement of that legislation. These factors are very important if we are to achieve effective and therefore meaningful environmental controls.

APPENDIX

The following pages have a number of Ontario and federal statutes tabulated. This chart was accurate as of July 1973. A number of recent Acts, therefore, are not included. Major Acts such as The Environmental Assessment Act, S.O. 1975, obviously are not included on this chart. An up-to-date version of this chart will be available in the second edition of Environment on Trial.

ENVIRONMENTAL RESPONSIBILITIES

Provincial and Municipal Laws

STATUTE	ADMINISTERING MINISTRY OR AGENCY	ENFORCED OR CARRIED OUT BY	AREA AFFECTED
<i>Air Pollution Control Act</i>	Now incorporated in the <i>Environmental Protection Act</i>		
<i>Beach Protection Act</i>	Natural Resources*	Mines Division	sand, gravel, stone around and under water
<i>Beds of Navigable Waters Act</i>	Natural Resources	Municipalities	water
<i>Conservation Authorities Act</i>	Natural Resources	Conservation Authorities Branch, local Conservation Authorities	water, land, air, noise, planning
<i>Drainage Act</i>	Agriculture and Food		water
<i>Endangered Species Act</i>	Natural Resources	Wildlife Branch; enforced by Conservation Officers, Deputy Conservation Officers, RCMP, Ontario Provincial Police (OPP)	animals
<i>Energy Act</i>	The Energy Ministry is responsible for energy policy considerations. Consumer and Commercial Relations (CCR) is responsible for operational considerations.	Anti-pollution provisions enforced by inspectors of the Energy Branch of CCR	water (spills during oil and gas production); Energy and Environmental Impact
<i>Environmental Protection Act</i>	Environment*		any contaminant of the natural environment
<i>Expropriations Act</i>	Justice, and the Ministry administering the Act under which the expropriation has been authorized	Inquiry Officers	land use planning
<i>Fish Inspection Act</i>	Natural Resources	Theoretically enforced by Conservation Officers, but not enforced because no regulations exist under the Act See Federal Act	water, ingestion of fish and crustaceans by humans
<i>Game and Fish Act</i>	Natural Resources	Conservation Officers, Deputy Conservation Officers	animals
<i>Gasoline Handling Act</i>	Consumer and Commercial Relations	Gasoline Section	spills of oil and gasoline
<i>Highway Traffic Act</i>	Transportation	local police and OPP, Oversize and Overweight Permits Bureau re heavy trucks	air (emissions), vehicle noise, littering, nuisances created by vehicles servicing pits and quarries
<i>Industrial Safety Act</i>	Labour	Inspectors from the Industrial Safety Branch	noise (occupational hearing loss)
<i>Lakes and Rivers Improvement Act</i>	Natural Resources	Engineering Services Branch	water
<i>Legal Aid Act</i>	Justice and Attorney General Legal Assessments; Law Society of Upper Canada Financial Assessments; Community and Social Services	Local Area Directors Area Committees	

STATUTE	ADMINISTERING MINISTRY OR AGENCY	ENFORCED OR CARRIED OUT BY	AREA AFFECTED
<i>Criminal Code</i> 1. disturbing the peace, ss. 171, 172 2. mischief, s. 387 3. nuisance, s. 176 4. attempt, s. 21 5. threatening, s. 745	Attorney General of Ontario	police forces local Crown Attorneys	not usually used in environmental cases but has great potential in noise, odour and other pollution cases
<i>Expropriation Act</i>	Public Works	Hearing Officers	land use planning
<i>Fisheries Act</i> 1. Pulp and Paper Effluent Regulations 2. Chlor-Alkali Mercury Regulations	Environment Canada	federal inspectors; anti pollution provisions not enforced in Ontario but private prosecutions are encouraged by sharing fines with complainants.	all Canadian waters: 1. suspended solids, n.o.d. 2. mercury 3. generally, any substance deleterious to fish
<i>Food and Drugs Act</i>	National Health and Welfare	designated Inspectors	man directly (ingestion of food, drugs, hormones, vitamins, amino acids)
<i>Fish Inspection Act</i>	Environment Canada	Inspector appointed under the Act or by the Ontario government	water (fish, other marine animals and plants)
<i>Government Harbours and Piers Act</i>	Transport	Staffing of harbours is done directly through the Ministry.	land use planning around harbours, potential to prevent oil spills
<i>Hamilton Harbour Commissioners Act</i>	Hamilton Harbour Commission	same; potentially also municipal by-law enforcement officers and local police	water, land use planning
<i>Harbour Commissions Act</i>	Local harbour commissions	same; see above.	water, land use planning
<i>Hazardous Products Act</i>	Consumer and Corporate Affairs, National Health and Welfare	Hazardous Products Inspectors appointed under the Act	air, land, water, man directly (hazardous products including radioactive substances)
<i>Land's Duty Act</i>	To prosecute, consent of the Attorney General of Ontario is needed.	municipal councils, police forces	Sunday noise
<i>Migratory Birds Convention Act and Regulations</i>	Indian Affairs and Northern Development	Ontario Conservation Officers and Deputy Conservation Officers appointed by Ontario Ministry of Natural Resources; RCMP	water, land (ban on dumping oil or any other harmful substance in waters or areas frequented by designated migratory birds)
<i>Motor Vehicle Safety Act</i>	Transport	designated Inspectors	noise, air (emissions from cars, trucks, snowmobiles at manufacturing and import levels only)
<i>National Harbours Board Act</i>	Transport	National Harbours Board	water and land use planning around harbours
<i>National Housing Act</i>	See Central Mortgage and Housing Corporation Loans, above.		
<i>National Parks Act</i> 1. Garbage Regs. 2. Water and Sewage Regs. 3. Fishing Regs. 4. Traffic Regs. 5. Signs Regs. 6. General Regs.	Indian Affairs and Northern Development	Park wardens, police	garbage, effluent, trade wastes and miscellaneous land water wastes in national parks
<i>Navigable Waters Protection Act</i>	Transport	1. Pollution Prevention Officers in all major and most minor ports (Steamship Inspectors) 2. District Marine Agents (Porty Sound and Prescott only)	water: 1. prohibition of dumping of wastes 2. Ministerial authorization of structures and works

STATUTE	ADMINISTERING MINISTRY OR AGENCY	ENFORCED OR CARRIED OUT BY	AREA AFFECTED
<i>Lord's Day Act</i>	To prosecute, consent of the Attorney General of Ontario is needed	municipal councils, police	sun-day noise
<i>Mining Act</i>	Natural Resources	Division of Mines	water, land
<i>Municipal Act</i>	Treasury, Economics, and Inter-governmental Affairs (TEIGA)	Municipal councils pass by-laws authorized by the Act. Police, municipal By-Law Enforcement Officers and Building Inspectors enforce the by-laws.	urban problems in general: water, noise, land, air, land use planning
<i>North Georgian Bay Recreational Reserve Act</i>	Natural Resources	Parks Division	North Georgian Bay land use
<i>Niagara Escarpment Planning and Development Act</i>	Treasury, Economics, and Inter-governmental Affairs (TEIGA)	Regional Planning Branch	planning: park's green-space
<i>Ontario Municipal Board Act</i>	Attorney General	Ontario Municipal Board (OMB)	land use planning, pits and quarries
<i>Ontario Planning and Development Act</i>	TEIGA	Plans Administration Branch	land use planning
<i>Ontario Water Resources Act</i> See Water Chapter for regulations covering water wells, pleasure boats, marinas and a wide variety of other subject matters	Environment	Water Supply and Pollution Control Water Resources Water Management	water
<i>Ontario Water Resources Commission Act</i>	see <i>Ontario Water Resources Act</i>		
<i>Pesticides Act</i>	Environment	Pesticide Control Service, Pesticides Review Board	pesticides (air, land, water, animals, ingestion by humans)
<i>Petty Trespass Act</i>	Attorney General	OPP and local police	land (snowmobiles)
<i>Petroleum Resources Act</i>	Natural Resources	Petroleum Resources Section of Mineral Resources Branch	water (spills during oil and gas production)
<i>Pits and Quarries Control Act</i>	Natural Resources	Pits and Quarries Supervisor, in the Industrial Minerals Section of the Mineral Resources Branch	pits and quarries (noise, air pollution, aesthetics)
<i>Planning Act</i>	TEIGA	Municipal councils pass by-laws authorized by the Act. Police, municipal By-Law Enforcement Officers and Building Inspectors, local planning boards, committees of adjustment, municipal councils, the OMB, etc., enforce these by-laws	same as <i>Municipal Act</i>
<i>Power Commission Act</i>	Hydro-Electric Power Commission of Ontario (HPECO)		water, littering, energy
<i>Provincial Parks Act</i>	Natural Resources	Parks Division, enforced by district foresters or park superintendents, OPP	planning (parks)
<i>Public Health Act</i> See text for a variety of regulations covering many areas of concern, e.g., slaughter houses, summer camps, etc.	Health	Local Boards of Health headed by Medical Officers of Health	air, land, water, noise
<i>Public Lands Act</i>	Natural Resources	Division of Lands	water, littering and land use related to Crown Lands

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STATUTE	ADMINISTERING MINISTRY OR AGENCY	ENFORCED OR CARRIED OUT BY	AREA AFFECTED
<i>Public Parks Act</i>	TEPCA	Pollution provisions are enforced by local police.	water, littering, planning (parks)
<i>Public Utilities Act</i>	TEPCA	HEPCO and municipal councils	water, littering, energy
<i>Tourism Act</i>	Industry and Tourism		water, trailer camps
<i>Waste Management Act</i>	Now incorporated in the <i>Environmental Protection Act</i>		
<i>Weed Control Act</i>	Agriculture and Food	Soils and Crops Branch and by county, regional municipality, and municipal weed inspectors	pesticides
<i>Wilderness Areas Act</i>	Natural Resources	Parks Division	planning (parks)
<i>Wolf and Bear Bounties Act</i>	Repealed. But county councils may and still do unilaterally impose bounties on wolves without the aid of the subsidy formerly provided by the provincial government under the Act.		
Federal Laws			
<i>Aeronautics Act</i>	Transport (civilian aircraft) National defence (military aircraft)	civilian aircraft: address complaints to: Regional Administrator CATA, Box 7, Toronto-Dominion Centre, Toronto 1, or phone (416) 369-3718 Senior Planner, Official Plans Section, TEPCA military aircraft: Base Operations Officer, c/o the nearest Canadian Forces Base	aircraft noise, low-flying aircraft, unlicensed aircraft, etc. land use planning around airports aircraft noise, low-flying aircraft, etc.
<i>Atomic Energy Control Act</i>	Energy, Mines and Resources Atomic Energy Control Board -- an independent Board answering to Parliament through the Minister of Energy, Mines and Resources	Radiation Protection Bureau of the Environmental Health Directorate of the federal Department of Health -- sometimes also the Ontario Health Ministry	air, land, water (radioactive isotopes, uranium, thorium)
<i>Canada Labour Code</i>	Department of Labour	designated inspectors	noise, air, man directly, combustible dust, flammable substances, air-borne contaminants, radiation, explosives related to federal works and undertakings
<i>Canada Shipping Act</i>	Transport	Steamship Inspectors; Pollution Prevention Officers; for offices in Ontario see <i>Canada Shipping Act</i> heading in Water chapter.	air and all Canadian waters (oil, garbage, smoke, and pesticides)
<i>Canada Water Act</i>	Environment Canada		water (phosphates)
<i>Central Mortgage and Housing Corporation Loans</i>	CMHC	a portion of <i>National Building Code</i> standards into provincial statutes, municipal by-laws, or contracts	land use planning, noise, water: 1. incentive loans to municipalities for construction of sewage treatment facilities; 2. suggested standards for building construction (<i>National Building Code</i>)
<i>Clean Air Act</i>	Environment Canada	No regulations exist to make this Act enforceable.	air (fuels)

STATUTE	ADMINISTERING MINISTRY OR AGENCY	ENFORCED OR CARRIED OUT BY	AREA AFFECTED
<i>Nuclear Liability Act</i>	Atomic Energy Control Board	Courts Nuclear Damage Claims Commission	
<i>Pest Control Products Act</i>	Agriculture	Inspectors appointed by Plant Products Division of Production and Marketing Service of this Department	pesticides (in air, land, water and direct human consumption)
<i>Pesticide Residue Compensation Act</i>	Agriculture	designated inspectors	land (farm products)
<i>Radiation Emitting Devices Act and Regulations</i>	Health and Welfare	designated inspectors	man directly (x-ray equipment and other radiation emitting devices)
<i>Railways Act</i>	Transport, through Canadian Transport Commission	designated "inspecting engineers"	noise
<i>Toronto Harbour Commissioners Act</i>	Toronto Harbour Commission	same; potentially also city by law enforcement officers and local police	water, air and land use planning around harbour

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