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BUSINESS GUIDE TO ENVIRONMENTAL LAW

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Business Guide to Environmental Law addresses business liability regarding Canadian environmental law. It is designed to aid legal counsel as well as senior executives in dealing with legal situations regarding the environment. The topically organized presentation of issues includes environmental issues in real estate transactions, directors' and officers' liabilities, transportation of dangerous goods, extended producer liability, labelling, advertising, patents and trademarks.

What's New in this Update:

This release features updates to the legislation in Appendix A. Additionally, there have been updates to Appendix WP. Words and Phrases.

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Highlights:

Appendix WP. Words and Phrases—LANDS—Although they disagreed on the result, Gonthier J. and McLachlin C.J.C. agreed on many of the key legal principles. They both agreed that, unless specified otherwise, “land” means the “right to receive a good title in fee simple” and “value” means the “exchange value” of the land, i.e. what a knowledgeable and willing buyer would pay for the land on the open market: [*Musqueam Indian Band v. Glass*, 2000 SCC 52, [2000] 2 S.C.R. 633 (S.C.C.)], at paras. 9 and 35-38. They both agreed that calculating “fair market value” requires determining the “highest and best use” for the land that is legally permissible. Legal restrictions on the land should be reflected in the FMV but restrictions imposed by the lease itself disregarded: *Musqueam Indian Band*, at paras. 13 and 47.

Appendix WP. Words and Phrases—NATIONAL CONCERN—To sum up, the purpose of the national concern analysis is to identify matters of inherent national concern — matters which, by their nature, transcend the provinces. “Historical newness” is irrelevant to this analysis, and there is no threshold question whether the matter can be characterized as being new. Instead, the analysis has three steps: the threshold question, which relates not to newness but to whether the matter is of sufficient concern to Canada as whole; the singleness, distinctiveness and indivisibility analysis; and the scale of impact analysis. The onus is on Canada to adduce evidence to satisfy the court that a matter of inherent national concern is made out. *References re Greenhouse Gas Pollution Pricing Act* (2021), 58 Alta. L.R. (7th) 1, 39 C.E.L.R. (4th) 1, 2021 CSC 11, 2021 SCC 11, [2021] A.C.S. No. 11, [2021] S.C.J. No. 11, [2021] 5 W.W.R. 1, 165 O.R. (3d) 798 (note), 2021 D.T.C. 5027, 2021 D.T.C. 5026, 455 D.L.R. (4th) 1, 2021 CarswellSask 171, 2021 CarswellSask 170, 483 C.R.R. (2d) 136 (S.C.C.) at para. 141 Wagner C.J.C. (Abella, Moldaver, Karakatsanis, Martin and Kasirer JJ. concurring).

Appendix WP. Words and Phrases—GREENWASH—The term “green-wash” has been defined as “disinformation disseminated by an organization so as to present an environmentally responsible public image”. (At para. 11.) *Northwest Organics, Ltd. Partnership v. Maguire*, 2015 BCSC 1918, 2015 CarswellBC 3063 (B.C. S.C.).