

Table of Contents

<i>Preface</i>	iii
<i>Table of Cases</i>	xxi
Chapter 1 International Environmental Law	1
Introduction.....	1
Part I — Sources of International Law.....	2
Meinhard Doelle, adapted and updated from From Hot Air to Action? Climate Change, Compliance and the Future of International Environmental Law.....	2
Sara L. Seck, “Business & Human Rights Approaches to Environmental Law” adapted from Sara Seck, “Teaching Note: Human Rights & the Environment” in Teaching Business & Human Rights Handbook (2020) online: <i>Teaching Business and Human Rights Forum</i>	13
Notes and Questions	15
Part II — Relevance and Application of International Law in the Canadian Environmental Law Context	17
Elizabeth Brandon, “Does International Law Mean Anything in Canadian Courts?”	17
Notes and Questions	29
<i>114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)</i>	29
Notes and Questions	31
Part III — Domestic Application of the Precautionary Principle: A Case Study.....	33
Chris Tollefson, “A Precautionary Tale: Trials and Tribulations of the Precautionary Principle”	34
Notes and Questions	44
Part IV — Key International Environmental Regimes to Watch.....	45
Convention on Biological Diversity (CBD)	46
Elli Louka, <i>International Environmental Law, Fairness, Effectiveness and World Order</i>	46
Notes and Questions	48
The Basel Convention.....	49
Ifeoma Onyerikam, “Achieving Compliance with the Basel Convention on Transboundary Movement of Hazardous Wastes”	49
Notes and Questions	52
World Trade Institutions.....	53
Elli Louka, <i>International Environmental Law, Fairness, Effectiveness and World Order</i>	53
Notes and Questions	58
International Investment Agreements	59
Chris Tollefson & W.A.W. Neilson, “Investor Rights and Sustainable Development”	59
Notes and Questions	64

viii TABLE OF CONTENTS

Kyra Bell-Pasht, Counsel, Canadian Environmental Law Association, Submission to Government of Canada, regarding the Final Strategic Environmental Assessment of the Canada-China FIPA.....	66
Notes and Questions	69
The Global Climate Change Regime	70
Notes and Questions	72
References and Further Readings	73
Chapter 2 The Common Law.....	75
Introduction.....	75
Part I — Applying Traditional Tort Law in Environmental Cases	76
<i>Palmer v. Stora Kopparbergs Bergslags AB.....</i>	79
Notes and Questions	87
<i>Cambridge Water Co. v. Eastern Counties Leather Plc.....</i>	88
Notes and Questions	97
<i>Smith v. Inco Ltd.</i>	99
Notes and Questions	116
<i>Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.</i>	119
Notes and Questions	126
Part II — Understanding the Limits of Traditional Torts.....	127
Lynda M. Collins, “Material Contribution to Risk in the Canadian Law of Toxic Torts”.....	127
Notes and Questions	138
Part III — Class Action Suits and Environmental Tort Claims	139
Christie Kneteman, “Revitalizing Environmental Class Actions: Quebecois Lessons for English Canada”	140
Notes and Questions	146
Part IV — Tort Litigation Aimed at Deterring Public Participation	148
<i>1704604 Ontario Ltd. v. Pointes Protection Association.....</i>	149
Michaelin Scott & Chris Tollefson, “Strategic Lawsuits Against Public Participation: The British Columbia Experience”	157
Ontario Anti-SLAPP Legislation	159
Notes and Questions	161
Part V — Towards a Recognition of Common Law Public Rights in the Environmental Context	162
Justice B.J. Preston, <i>The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific</i>	163
<i>British Columbia v. Canadian Forest Products Ltd.....</i>	164
Notes and Questions	170
Jerry V. DeMarco, Marcia Valiante & Marie-Ann Bowden, “Opening the Door for Common Law Environmental Protection in Canada: The Decision in <i>British Columbia v. Canadian Forest Products Ltd.</i> ”	171
Notes and Questions	174
<i>Burns Bog Conservation Society v. Canada (Attorney General)</i>	174
Notes and Questions	180
Andrew Gage, “Asserting the Public’s Environmental Rights”	181
Notes and Questions	186
References and Further Readings	187

Chapter 3 Jurisdiction over the Environment	189
Introduction.....	189
Part I — Division of Powers and Interpretive Doctrine Relevant to Environment	
Cases	190
Division of Powers Overview	190
Meinhard Doelle, adapted and updated from the constitutional chapter in <i>The Federal Environmental Assessment Process: A Guide and Critique</i>	190
Interpretive Doctrine	196
<i>Morton v. British Columbia (Minister of Agriculture & Lands)</i>	196
Notes and Questions	204
Part II — Leading Cases on Federalism and the Environment.....	205
<i>R. v. Crown Zellerbach Canada Ltd.</i>	207
Notes and Questions	215
<i>Friends of the Oldman River Society v. Canada (Minister of Transport)</i>	216
Notes and Questions	224
<i>Canada (Procureure générale) c. Hydro-Québec</i>	225
Notes and Questions	243
References re <i>Greenhouse Gas Pollution Pricing Act</i>	244
Notes and Questions	257
Part III — The Politics and Practicalities of Jurisdiction over the Environment	258
William R. MacKay, “Canadian Federalism and the Environment: The Literature”	259
Notes and Questions	268
Part IV — Emerging Issues in Jurisdiction over the Environment	269
Aboriginal Rights and Jurisdiction over the Environment	270
<i>Tsilhqot'in Nation v. British Columbia</i>	274
Notes and Questions	285
Municipal Jurisdiction	286
<i>114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)</i>	287
Notes and Questions	295
Howard M. Epstein, “Subsidiarity at Work — The Legal Context for Sustainability Initiatives at the Local Government Level: How an Environmental Agenda Could Be Advanced by Canadian Municipalities”	296
Notes and Questions	300
Part V — Case Study: Trans Mountain Pipeline Expansion Project	301
Overview	301
Scope of Municipal Jurisdiction	303
Notes and Questions	305
Judicial Review of Provincial Government Action.....	305
Notes and Questions	307
Challenges to Federal Pipeline Approval: Pipelines and the Division of Powers Going Forward.....	308
Notes and Questions	309
References and Further Readings	310
Chapter 4 Environmental Regulation	313
Introduction.....	313

x TABLE OF CONTENTS

Part I — Environmental Regulation in Canada: Some Context and Perspective	314
D. Paul Emond, “The Greening of Environmental Law”	314
Notes and Questions	319
R. Michael M’Gonigle, <i>et al.</i> , “Taking Uncertainty Seriously: From Permissive Regulation to Preventative Design in Environmental Decision Making”	319
Notes and Questions	328
Stepan Wood, Georgia Tanner & Benjamin J. Richardson, “Whatever Happened to Canadian Environmental Law?”	329
Notes and Questions	332
Part II — Environmental Standard Setting	332
Chris Tollefson, Fred Gale & David Haley, <i>Setting the Standard</i>	333
Notes and Questions	339
Part III — The Emerging Governance-based Approach to Environmental Regulation.....	339
Michael Howlett, “Policy Instruments, Policy Styles, and Policy Implementation: National Approaches to Theories of Instrument Choice”	340
Kathryn Harrison, “Talking with the Donkey: Cooperative Approaches to Environmental Protection”	341
Jody Freeman & Daniel Farber, “Modular Environmental Regulation”	347
Chris Tollefson, Fred Gale & David Haley, <i>Setting the Standard</i>	350
Neil Gunningham, “Beyond Compliance: Next Generation Environmental Regulation”	353
Notes and Questions	356
Part IV — Environmental Regulation, Innovation and Economic Performance	357
Stefan Ambec <i>et al.</i> , “The Porter Hypothesis at 20: Can Environmental Regulation Enhance Innovation and Competitiveness?”	357
William Lahey & Meinhard Doelle, “Negotiating the Interface of Environmental and Economic Governance: Nova Scotia’s <i>Environmental Goals and Sustainable Prosperity Act</i> ”	361
Notes and Questions	369
Part V — An Overview of Canadian Regulatory Models	369
Fisheries Act	370
Habitat Protection: Subsection 35(1).....	370
Pollution Prevention: Section 36.....	371
<i>R. v. MacMillan Bloedel (Alberni) Ltd.</i>	372
<i>Fletcher v. Kingston (City)</i>	373
Notes and Questions	374
Ian Richler, “ <i>R. v. Kingston</i> and the Criminalization of Harmless Pollution”, Case Comment	374
Notes and Questions	377
Canadian Environmental Protection Act (CEPA).....	377
Meinhard Doelle, adapted from <i>Canadian Environmental Protection Act and Commentary</i>	377
Notes and Questions	380
<i>Great Lakes United v. Canada (Minister of Environment)</i>	380
Notes and Questions	390
CEPA Modernization: Bill S-5	391
Carl Meyer, “Canadians could soon have the legal right to a healthy environment. But can it be enforced?”	393

Notes and Questions	396
References and Further Readings	397
Chapter 5 Compliance and Enforcement.....	399
Introduction.....	399
Part I — Regulatory Compliance and Enforcement Strategies	400
Introduction.....	400
Joseph Castrilli, “Canadian Policy and Practice with Indicators of Effective Environmental Enforcement”.....	400
Notes and Questions	403
Regulatory Enforcement: The Canadian Record	403
Jerry V. DeMarco & Toby Vigod, “Smarter Regulation: The Case for Enforcement and Transparency”	403
Ecojustice Canada, <i>Environmental Enforcement by Canada’s Federal Government (The Essentials)</i>	405
Office of the Auditor General of Canada, <i>2011 December Report of the Commissioner of the Environment and Sustainable Development</i>	407
Office of the Auditor General of Canada, <i>2018 Fall Reports of the Commissioner of the Environment and Sustainable Development</i>	408
Notes and Questions	409
Part II — Cooperative versus Adversarial Enforcement Approaches.....	410
Matthew D. Zinn, “Policing Environmental Regulatory Enforcement: Cooperation, Capture and Citizen Suits”	411
Notes and Questions	415
Part III — Selected Issues in Environmental Law Enforcement.....	416
The Role of the Criminal Law as an Enforcement Tool.....	416
Stanley David Berger, “The Future of Environmental Prosecutions in Ontario”	417
The Role and Nature of the Regulatory Offence.....	418
John Swaigen, “Absolute Liability Revisited: <i>Lévis v. Tétrault</i> ”.....	418
Notes and Questions	420
<i>Lévis (Ville) c. Tétreal</i>	420
The Prosecution and Defence of Environmental Charges	421
Corporate Regulatory Liability	421
<i>R. v. Syncrude Canada Ltd.</i>	422
Shaun Fluker, “ <i>R. v. Syncrude Canada: A Clash of Bitumen and Birds</i> ”	431
Notes and Questions	437
Directors’ and Officers’ Liability	437
<i>R. v. Bata Industries Ltd.</i>	438
Notes and Questions	443
Sentencing in Environmental Cases.....	443
<i>R. v. United Keno Hill Mines Ltd.</i>	443
Elaine L. Hughes & Larry A. Reynolds, “Creative Sentencing and Environmental Protection”	448
Notes and Questions	455
The Emerging Role of Administrative Monetary Penalties (AMPs).....	456
Stepan Wood & Lynn Johannson, “Six Principles for Smart Regulation”	456
Notes and Questions	457
The Role of Adaptive Management in Compliance and Enforcement.....	458

Martin Z.P. Olszynski, “Failed Experiments: An Empirical Assessment of Adaptive Management in Alberta’s Energy Resources Sector”	460
<i>Taseko Mines Limited v. Canada (Environment)</i>	466
Notes and Questions	471
The Interplay between Statutory Remediation Orders and Bankruptcy/ Insolvency Law.....	471
<i>AbitibiBowater Inc., Re</i>	472
Notes and Questions	485
Part IV — Citizen Enforcement	485
Citizen Suits and Environmental Bills of Rights.....	486
Chris Tollefson, Jerry DeMarco & Darlene Gilliland, “Towards a Costs Jurisprudence in Public Interest Litigation”.....	487
Notes and Questions	489
Private Prosecutions	491
Keith Ferguson, “Challenging the Intervention and Stay of an Environmental Private Prosecution”.....	491
<i>Kostuch v. Alberta (Attorney General)</i>	493
Notes and Questions	497
References and Further Readings	498
Chapter 6 Judicial Review of Environmental Decision-making	501
Introduction.....	501
Part I — Administrative Decision-making and Judicial Review in the Environmental Law Context	502
Administrative Decision-making, Appeals and Architecture	502
Mark Haddock, <i>Environmental Tribunals in British Columbia</i>	503
Notes and Questions	509
Judicial Review: Background and Overview	509
<i>Dunsmuir v. New Brunswick</i>	511
<i>Georgia Strait Alliance v. Canada (Minister of Fisheries & Oceans)</i>	512
Part II — Standard of Review	513
Introduction.....	513
<i>Dunsmuir v. New Brunswick</i>	513
<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i>	515
Shaun Fluker, “Vavilov and the Judicial Review of Natural Resources, Energy and Environmental Decisions in Canada”	523
Notes and Questions	524
Part III — Reasonableness Review	525
<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i>	525
Shaun Fluker, “Vavilov and the Judicial Review of Natural Resources, Energy and Environmental Decisions in Canada”	532
Notes and Questions	535
Deference and Reasonableness Analysis.....	536
<i>Greenpeace Canada v. Canada (Attorney General)</i>	536
Notes and Questions	539
Jason MacLean & Chris Tollefson, “Climate-Proofing Judicial Review after Paris: Judicial Competence and Courage”	540
Notes and Questions	543

Part IV — Grounds for Judicial Review	543
Reliance on Irrelevant Considerations/Fettering Discretion.....	544
<i>Wimpey Western Ltd. v. Alberta (Department of the Environment)</i>	544
<i>Imperial Oil Ltd. v. British Columbia (Ministry of Water, Land & Air Protection)</i>	546
Notes and Questions	547
<i>Ultra Vires</i> : Beyond Statutory Authority	548
<i>Canadian Plastic Bag Association v. City of Victoria</i>	548
Notes and Questions	554
Discrimination in the Exercise of Regulation-making Power	555
<i>Moresby Explorers Ltd. v. Canada (Attorney General)</i>	555
Notes and Questions	559
Procedural Fairness	559
<i>Chameau Exploration Ltd. v. Nova Scotia (Attorney General)</i>	560
<i>Taseko Mines Limited v. Canada (Environment)</i>	562
<i>Mowi Canada West Inc. v. Canada (Fisheries, Oceans and Coast Guard)</i>	564
Notes and Questions	570
Adequacy of Reasons	571
<i>Pembina Institute for Appropriate Development v. Canada (Attorney General)</i>	571
<i>Newfoundland & Labrador Nurses' Union v. Newfoundland & Labrador (Treasury Board)</i>	573
Justice David Stratas, “The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency”.....	574
Notes and Questions	575
Failure to Discharge the Duty to Consult	576
<i>Tsleil-Waututh Nation v. Canada (Attorney General)</i>	577
Notes and Questions	585
Part V — Public Interest Standing and Judicial Review	585
Introduction.....	585
Raj Anand & Ian Scott, “Financing Public Participation in Environmental Decision-making”.....	586
Kirsten Mikadze, “Pipelines and the Changing Face of Public Participation”.....	588
Notes and Questions	590
Public Interest Standing	590
<i>Shiell v. Canada (Atomic Energy Control Board)</i>	592
<i>Algonquin Wildlands League v. Ontario (Minister of Natural Resources)</i>	593
<i>MiningWatch Canada v. Canada (Minister of Fisheries & Oceans)</i>	594
Notes and Questions	598
Part VI — Interim Injunctive Relief in Judicial Review Litigation	598
Introduction.....	598
Chris Tollefson, “Advancing an Agenda: Reflections on Recent Developments in Public Interest Environmental Litigation”.....	599
Injunction Case Law in the Environmental Context	601
<i>Algonquin Wildlands League v. Ontario (Minister of Natural Resources)</i>	601
Notes and Questions	603
<i>Imperial Oil Resources Ventures Ltd. v. Canada (Minister of Fisheries & Oceans)</i>	604
Notes and Questions	607

Part VII — Costs in Judicial Review Proceedings	608
Chris Tollefson, “Costs in Public Interest Litigation: Recent Developments and Future Directions”	608
Chris Tollefson, “Costs in Public Interest Litigation Revisited”	610
Notes and Questions	615
References and Further Readings	616
Chapter 7 The Federal Environmental Assessment Process.....	619
Introduction.....	619
Part I — Introducing Federal EA	620
Part II — The Original Canadian Environmental Assessment Act (CEAA 1992)....	623
Introduction.....	623
When Did the Act Apply?.....	624
Scoping Basics	625
Process Options	625
Notes and Questions	629
Part III — The Revised Canadian Environmental Assessment Act (CEAA 2012)....	629
Introduction.....	629
Who Is Responsible for Federal EAs?	630
Triggering Process.....	631
Process Options and Features	632
The “Standard” EA Process	632
Panel Reviews	633
Decision-making	634
Scope of EA.....	635
Harmonization with Provincial EAs.....	637
Public Engagement in the Process.....	638
Notes and Questions	639
Part IV — The Impact Assessment Act (2019) (IAA).....	640
Introduction.....	640
Triggers, Application of the Assessment Process	640
The Assessment Planning Process	641
The Standard (Agency) Assessment Process	642
The Panel Review Process	643
Harmonization	643
Strategic and Regional Assessments	645
Project Assessment Decision-making	645
Notes and Questions	647
Part V — Next Generation EA.....	649
R. Gibson et al, “A Next-Generation Assessment Framework for Examining the <i>Impact Assessment Act</i> ”, in M. Doelle, A. J. Sinclair, <i>The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act</i> (Irwin Law, 2021).	649
Notes and Questions	659
Part VI — Selected Court Cases.....	660
<i>Alberta Wilderness Assn. v. Cardinal River Coals Ltd.</i>	660
Notes and Questions	672
<i>Grand Riverkeeper, Labrador Inc. v. Canada (Attorney General)</i>	673
Notes and Questions	681

<i>Greenpeace Canada v. Canada (Attorney General)</i>	682
Notes and Questions	685
<i>Clyde River (Hamlet) v. Petroleum Geo-Services Inc.</i>	685
Notes and Questions	697
References and Further Readings	698
Chapter 8 Parks and Protected Areas	699
Introduction.....	699
Part I — History and Overview of Parks and Protected Areas in Canada	700
Canadian Parks Council, Canadian Protected Areas Status Report 2000–2005.....	700
Philip Dearden, “Progress and Problems in Canada’s Protected Areas: Overview of Progress, Chronic Issues and Emerging Challenges in the Early 21st Century”	701
Part II — The Role of Parks and Protected Areas	703
Philip Dearden & Rick Rollins, “Parks and Protected Areas in Canada”.....	703
Notes and Questions	705
Robert W. Turner, “Market Failures and the Rationale for National Parks”.....	706
Notes and Questions	708
Chris Malcolm, “Protected Areas: The Provincial Story”	708
Part III — Current Issues and Challenges	710
Marine Conservation and Protected Areas	710
Philip Dearden & Rosaline Canessa, “Marine Protected Areas”.....	710
“Networking” Our Parks and Protected Areas System.....	715
Philip Dearden & Jessica Dempsey, “Protected Areas in Canada: Decade of Change”	715
Conflicting Mandates? Use, Preservation and Ecological Integrity in Our National Parks	716
<i>Canadian Parks & Wilderness Society v. Canada (Minister of Canadian Heritage)</i>	717
Notes and Questions	723
Shaun Fluker, “‘Maintaining Ecological Integrity Is Our First Priority’ — Policy Rhetoric or Practical Reality in Canada’s National Parks? A case comment on <i>Canadian Parks & Wilderness Society v. Canada (Minister of Canadian Heritage)</i> ”	724
Reconciling Parks and Protected Areas Policy with Aboriginal Rights and Title.....	726
Philip Dearden & Steve Langdon, “Aboriginal Peoples and National Parks”	727
Carol Linnitt, “How Indigenous Peoples Are Changing the Way Canada Thinks About Conservation”	732
Environment and Climate Change Canada, “First New Indigenous Protected Area in Canada: Edéhzhie Protected Area”	736
Notes and Questions	737
<i>Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)</i>	738
Notes and Questions	744
Katherine Turner & Christopher Bitonti, “Conservancies in British Columbia, Canada: Bringing Together Protected Areas and First Nations’ Interests”	746

xvi TABLE OF CONTENTS

Notes and Questions	750
Part IV — Emerging Issues in Parks and Protected Areas Law	751
The Public Trust Rights and Duties.....	751
<i>Sierra Club v. Department of Interior</i>	752
Notes and Questions	754
<i>Green v. Ontario</i>	754
Notes and Questions	756
Reforming Ontario Parks Legislation: The Ontario Experience	757
Christopher J.A. Wilkinson, “Protected Areas Law in Ontario, Canada: Maintenance of Ecological Integrity as the Management Priority”	757
Notes and Questions	765
References and Further Readings	766
Chapter 9 Species at Risk	769
Introduction.....	769
Part I — Overview of the Magnitude and Nature of the Problem	770
Paul M. Wood & Laurie Flahr, “Taking Endangered Species Seriously? British Columbia’s Species-at-Risk Policies”	770
Kate Smallwood, <i>A Guide to Canada’s Species at Risk Act</i>	771
John Charles Kunich, “Preserving the Womb of the Unknown Species with Hotspots Legislation”	772
Notes and Questions	775
Part II — Species Listing under SARA	776
Kate Smallwood, <i>A Guide to Canada’s Species at Risk Act</i>	776
Arne O. Mooers <i>et al.</i> , “Science, Policy, and Species at Risk in Canada”	778
Notes and Questions	782
Part III — Critical Habitat Designation, Recovery Strategies and Action Plans....	783
Introduction.....	783
Arne O. Mooers <i>et al.</i> , “Science, Policy, and Species at Risk in Canada”	785
Habitat Designation and Recovery Strategy Litigation	787
<i>Alberta Wilderness Assn. v. Canada (Minister of Environment)</i>	788
Notes and Questions	794
<i>Environmental Defence Canada v. Canada (Minister of Fisheries & Oceans)</i> ...	794
Notes and Questions	802
<i>Georgia Strait Alliance v. Canada (Minister of Fisheries & Oceans)</i>	803
Notes and Questions	815
Part IV — Harm Prohibitions, Safety Net & Emergency Orders, and Permitting & Assessment Requirements.....	815
Introduction.....	815
Harm Prohibitions and Safety Net Order Provisions: Sections 32, 33 and 61.....	819
Kate Smallwood, <i>A Guide to Canada’s Species at Risk Act</i>	820
<i>Babbitt v. Sweet Home Chapter of Communities for a Great Oregon</i>	822
Notes and Questions	823
Emergency Orders: Section 80.....	823
<i>Adam v. Canada (Minister of the Environment)</i>	824
Notes and Questions	837
<i>Centre québécois du droit de l’environnement c. Canada (Ministre de l’Environnement)</i>	838
Notes and Questions	846

Permitting and Assessment Requirements: Sections 73-79.....	846
Dyna Tuytel & Margot Venton, <i>Challenges in Receiving SARA Protections: A Killer (Whale) Case Study</i>	848
<i>Tsleil-Waututh Nation v. Canada (Attorney General)</i>	850
Notes and Questions	854
Part V — Species Protection as a Governance Issue	854
Introduction.....	855
Federalism and Biodiversity.....	855
A. Dan Tarlock, “Biodiversity Federalism”.....	855
Notes and Questions	857
Species Protection Initiatives at the Provincial Level.....	857
Ecojustice Canada, <i>Failure to Protect: Grading Canada’s Species at Risk Laws</i>	858
Notes and Questions	859
SARA and Provincial Land and Resource Use Decision-making.....	859
<i>0707814 BC Ltd. v. British Columbia (Assistant Regional Water Manager)</i> ...	860
<i>Guelph (City) v. Soltys</i>	862
Part VI — Emerging Perspectives on Species and Biodiversity Protection	868
Joshua E. McNeely & Roger J. Hunka, <i>Policy Critique of the Draft Species at Risk Act Overarching Policy Framework: Perspectives for the Improvement of the Government of Canada’s Implementation of the Species at Risk Act</i>	869
Notes and Questions	874
Holly Doremus, “Biodiversity and the Challenge of Saving the Ordinary”....	874
Notes and Questions	878
Isabelle Deguise & Jeremy Kerr, “Protected Areas and Prospects for Endangered Species Conservation in Canada”	878
Notes and Questions	880
References and Further Readings	880
Chapter 10 Climate Change	883
Introduction.....	883
Part I — The International Context: United Nations Efforts on Climate Change ...	883
Kyoto Protocol.....	885
Paris Agreement	885
“Rapid and Far-reaching Transitions”	888
Recent United Nations Developments in Human Right and Biodiversity.....	889
Part II — Jurisdictional, Political and Policy Issues in Climate Law	890
Climate Change and Division of Powers.....	890
Nathalie J. Chalifour, “Canadian Climate Federalism: Parliament’s Ample Constitutional Authority to Legislate GHG Emissions through Regulations, a National Cap and Trade Program, or a National Carbon Tax”	891
Notes and Questions	895
Shi-Ling Hsu & Robin Elliot, “Regulating Greenhouse Gases in Canada: Constitutional and Policy Dimensions”	895
Notes and Questions	898
Federal Policy Responses to Climate Change	898
Meinhard Doelle, adapted from “Decades of Climate Policy Failure in Canada: Can We Break the Vicious Cycle?”	899

xviii TABLE OF CONTENTS

Notes and Questions	903
David V. Wright, Canada's 2030 Federal Emissions Reduction Plan: A Smorgasboard of Ambition, Action, Shortcoming, and Plans to Plan.....	904
Notes and Questions	908
Carbon Tax versus Cap and Trade	909
Reuven S. Avi-Yonah & David M. Uhlmann, "Combating Global Climate Change: Why a Carbon Tax Is a Better Response to Global Warming Than Cap and Trade"	910
Notes and Questions	917
Part III — Climate Change Litigation	918
Justiciability in Climate Litigation	919
<i>Friends of the Earth—Les Ami(e)s de la Terre v. Canada (Governor in Council)</i>	919
Notes and Questions	924
<i>La Rose v. Canada</i>	925
Notes and Questions	931
<i>Mathur v. Ontario</i>	932
<i>Mathur v. His Majesty the King in Right of Ontario</i>	936
Notes and Questions	937
<i>Friends of the Irish Environment CLG v. The Government of Ireland, Ireland and the Attorney General</i>	938
Notes and Questions	941
Science and Causation in Climate Litigation.....	941
Jason MacLean & Chris Tollefson, "Climate-Proofing Judicial Review After Paris: Judicial Competence and Courage".....	942
Notes and Questions	943
<i>Mathur v. His Majesty the King in Right of Ontario</i>	945
Notes and Questions	947
<i>Gloucester Resources Limited v. Minister of Planning</i>	948
Notes and Questions	954
<i>Neubauer et al. v. The Federal Republic of Germany</i>	956
Notes and Questions	960
Geetanjali Ganguly, Joana Setzer & Veerle Heyvaert, "If at First You Don't Succeed: Suing Corporation for Climate Change"	961
Notes and Questions	964
Part IV — Climate Change, Environmental Assessments and Species at Risk	965
Climate Change and Assessment Law	966
Meinhard Doelle, "Integrating Climate Change into Environmental Impact Assessments: Key Design Elements"	966
Robert B. Gibson et al., "From Paris to Projects: Clarifying the Implications of Canada's Climate Change Mitigation Commitments for the Planning and Assessment of Projects and Strategic Undertakings — Summary Report"	971
Notes and Questions	974
Climate Change and Biodiversity.....	974
John Kostyack & Dan Rohlfs, "Conserving Endangered Species in an Era of Global Warming"	975
J.B. Ruhl, "Climate Change and the <i>Endangered Species Act</i> : Building Bridges to the No-Analog Future".....	980
Notes and Questions	983

TABLE OF CONTENTS xix

Part V — Human Rights Approaches to Climate Law and Policy	984
<i>Daniel Billy et al. v. Australia.....</i>	985
Notes and Questions	991
Lisa Benjamin & Sara L. Seck, “Mapping Human Rights-based Climate Litigation in Canada”	993
Notes and Questions	1001
David Wu, “Big Oil Tort Liability in Canada — Lessons from the US and the Netherlands”.....	1001
Notes and Questions	1007
References and Further Readings	1008