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## Environmental Harm: Civil Actions and Compensation

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## **Environmental Harm: Civil Actions and Compensation**

Mario D. Faieta, Howard B. Kohn, Robert Kligman, John Swaigen  
Markham: Butterworths Canada Ltd., 1996, 554 pp.

*Reviewed by* Duaine W. Simms<sup>†</sup>

If you are interested in the litigation of environmental law, you will want to have a copy of this book. It is a great reference guide to the various civil actions and forms of compensation available to anyone who has suffered environmental harm. Of course, it also provides information regarding defences to environmental actions.

*Environmental Harm: Civil Actions and Compensation* is divided into six parts, examining environmental litigation from common law and statutory perspectives and reviewing various governmental and non-governmental compensation packages. Part One examines civil actions in the environmental realm from the vantage of the common law. The authors have examined and applied several forms of tort action, including private and public nuisance, strict liability and negligence. There are also short chapters on trespass, riparian rights, waste, restitution, conspiracy and deceit.

The discussion of each topic includes not only the elements of each tort, but also comments on how these actions have been applied to the environmental setting. For example, there is a review in the first chapter of how the tort of private nuisance has been used in cases of aerial spraying, waste disposal, the emission of smoke, odours, dust, interference from noise and vibration and the contamination of water. Similarly, in Chapter Five, negligence is examined in cases of indoor air pollution (occupier's liability), asbestos, aerial sprays, the storage of hazardous materials and government negligence. In each chapter, the authors identify the key factors to be satisfied when bringing such actions and examine the leading case law covering these areas.

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The authors indicate in their introduction that the use of common law actions in environmental settings has proven unpredictable given that the courts have tended to arrive at result-based determinations. Still, the authors have directed their efforts to a discussion of the general trends in court decisions, indicating in which direction the common law appears to be headed. Reference is also made to anomalous judgments. Consequently, the reader is made aware of the standard which is usually followed and the potential offshoots and aberrations.

In Part Two, the authors begin to examine the solutions taken to address the volatility of the common law, namely the statutory regulation of environmental issues. While many of the statutes reviewed are directed at environmental matters (e.g., *Canadian Environmental Protection Act*, *Nuclear Liability Act*), there are also those to which environmental concerns are incidental (e.g., *Fisheries Act*, *Canada Shipping Act*). The authors also evaluate two pieces of legislation passed by the government of Ontario—the *Environmental Bill of Rights* and the *Environmental Protection Act*. Though the authors do recognize that provinces other than Ontario have existing environmental legislation, there is very little discussion, if any, of what is contained in those statutes. It would have been more informative to have examined the Ontario statutes in light of those of other provinces, particularly given the authors' recognition that Ontario is not in the forefront of developing environmental legislation.

Beyond these two Ontario statutes, the authors examined seven federal statutes. Although the review of each of the nine statutes varies in topic from chapter to chapter, there are some commonalities. The authors indicate to what environmental matters each statute applies, how liability for damage will be assessed, what claims can be made, and what compensation can be expected. In each chapter, the reader will find a general overview of the statute's pertinence to environmental issues and a discussion of how these statutes have been applied, complete with reference to recent court decisions. There are some helpful insights for anyone using the statutes mentioned in this book. While the depth required or desired for each act may not be present, the information given, and the analysis conducted by the authors, will definitely be of some benefit.

Part Three is dedicated to general issues of civil actions, including remedies, defences, class actions, limitation periods and the liability of various parties including trustees, lenders, directors and officers. In addition to providing information on remedies and available defences, the authors have also compared and contrasted the different types of remedies and defences. In particular, the chapter on remedies discusses injunctions, damages and abatement in their various forms and indicates when each is available and when it is better to pursue one rather than another.

The chapter on class actions examines the statutory basis which has developed for such responses to environmental concerns. Once again, however, the authors have chosen to restrict their review to legislation from Ontario. While there is a brief mention of class actions in other jurisdictions (i.e., British Columbia, Québec, and the United States), very little attention is given to the legislation in these jurisdictions relative to the information provided on the Ontario statutes. Although the authors note that the British Columbia legislation is generally similar to the Ontario statute, they do give mention, though briefly, that there exist significant differences. More space should have been accorded to a more extensive discussion of these differences. Furthermore, the authors suggest that the class action activity in Québec and the United States could be indicative of what is to come for Ontario and British Columbia; however, they still only give relatively little space to discussing what is happening in these jurisdictions. If the activities in these regions are so important, I question why greater discussion was not presented on these matters.

Part Four of the text discusses government compensation programs which cover relief for a variety of environmental mishaps and disasters, including spills, pesticide use, waste well disposal and nuclear damage. The authors have also included two non-environmentally specific sources of compensation, namely the Workers' Compensation Board and the *Fisheries Loans Act*. It is commendable that the authors have ventured beyond the obvious statutes and public bodies covering environmental issues and examined some important areas which would be of concern and assistance to those seeking relief from distress such as environmental hypersensitivity.

Part Five examines other sources of compensation including restitution and sentencing under the *Criminal Code*. An interesting

part in this section is the discussion on creative sentencing, which examines sanctioning and retribution in light of the failure of fine imposition to act as a deterrent. This is particularly informative given the questionable effectiveness of fines on large corporations.

Part Six, entitled "Case Studies," is a curious addition to this text. It includes only two chapters covering the sale of contaminated land and leaking underground storage tanks. I am at a loss to understand why the authors chose to analyze these two issues separately. While these matters may be of importance to the field of environmental law, it is strange that the authors have, without explanation, given them separate and distinct areas within the text. Despite this, these issues received excellent coverage; anyone who may be interested in these concerns can benefit from reading these closing chapters.

This book provides a great basis for research regarding environmental legal matters. It identifies the current status of the common law and various federal statutes. Unfortunately, it will be necessary to look elsewhere for information on and analyses of provincial statutes outside of Ontario. However, those interested in the environmental law field would do themselves a tremendous service by acquiring a copy of this text.