

# The Polluter-Pays-Principle in Canadian Legislation

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## Introduction

The Our Living Waters (OLW) Network catalyzes collaboration across its membership towards the ambitious goal of *all waters in Canada in good health by 2030*. Seven winning conditions have been selected by OLW to assess progress toward this goal, within which twenty-four impact measures are tracked in a [Shared Measurement System](#). The *Restoration Economy* winning condition includes [six impact measures](#), one of which is *Legislating Restoration*.

*Legislating Restoration* tracks the share of federal/provincial/territorial governments that have explicitly incorporated the polluter-pays-principle (PPP) in keystone<sup>1</sup> environmental protection legislation. OLW believes that enshrining the PPP in legislation is essential to ensuring the financial costs of restoring the environment are borne by those responsible for projects that damage it.

Each jurisdiction in Canada has its own keystone environment act regulating standards for environmental quality, including discharge of contaminants, licensing systems and environmental assessment, among other things. *Legislating Restoration* focuses on these acts because they are the primary laws informing judicial and executive action in the area of environmental restoration. As a core environmental principle, the PPP is a more potent force for restoration when found in keystone legislation than in industry- or activity-specific acts that are targeted and narrow in scope (for example, acts governing forestry activities).<sup>2</sup>

The PPP is a globally recognized environmental principle that obliges responsible parties to pay for restoration of damage they cause to the environment<sup>3</sup>. The principle has been recognized in environmental legislation around the world since its establishment during the [1992 United Nations Earth Summit](#) in Rio de Janeiro.<sup>4</sup> Among the 175 signatories to the [Rio Declaration](#), the Government of Canada officially enshrined the PPP in Canadian law with the 1999 *Canadian Environmental Protection Act* (CEPA)<sup>5</sup>. Inclusion of the PPP in the preamble to CEPA provides a clear legal framework within which courts may oblige polluters to pay for remediation of the environment wherever the federal government has jurisdiction over their activities.

The PPP is also recognized in keystone environmental legislation at the provincial/territorial level, though not widely. Of the thirteen provinces and territories, the PPP as such is explicitly recognized in only two keystone acts. At the same time, the notion that those who damage the environment should somehow

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<sup>1</sup>By “keystone” legislation, we mean the overarching environmental protection act of a government at the federal, provincial or territorial level. For example, the [Canadian Environmental Protection Act 1999](#) is the keystone act at the federal level.

<sup>2</sup>Text Box 2 at the end of this report discusses the recognition of the PPP in targeted environmental protection legislation.

<sup>3</sup>Khan, M.R. (2015). Polluter-Pays-Principle: The Cardinal Instrument for Addressing Climate Change. *Laws 2015*, 4. 638-653. Retrieved from <https://doi.org/10.3390/laws4030638>

<sup>4</sup>United Nations. (1992). *Report of the United Nations Conference on Environment and Development*. Retrieved from [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf)

<sup>5</sup>Government of Canada. (1999). *Canadian Environmental Protection Act, 1999*. Retrieved from <https://laws-lois.justice.gc.ca/PDF/C-15.31.pdf>

be held accountable for their actions is recognized more or less clearly – though quite differently – in all provincial/territorial acts. This uneven approach leads to differences in the adjudication of cases involving environmental contamination. Text Box 1 outlines how court decisions in Alberta and Ontario have differed depending on whether the PPP is recognized in legislation, as is the case in Alberta, or not, as is the case in Ontario.

*Text Box 1 - Differing court decisions based on recognition of the PPP in environmental legislation*

<p style="text-align: center;"><b>Ontario:</b> <b><i>Kawartha Lakes Ontario v. Ontario (2013)</i></b></p>	<p style="text-align: center;"><b>Alberta:</b> <b><i>Orphan Well Association v. Grant Thomson Limited (2019)</i></b></p>
<p>In a 2013 case pitting the City of Kawartha Lakes against the Government of Ontario<sup>6</sup>, Kawartha Lakes was found financially responsible for remediation of damage caused by fuel oil spilled by a city resident. Kawartha Lakes, which was in no way responsible for the spill, argued in court that the PPP should apply. But the PPP is not explicitly recognized in Ontario’s <i>Environmental Protection Act</i> (EPA) and the City was forced to pay because Ontario courts found it was the entity with ‘deeper pockets’<sup>7</sup>. According to the ruling, the principle of environmental protection is the over-riding consideration in Ontario and not making the polluter pay. Since the City had greater financial means to ensure clean-up of the spill than the polluter, the City had to pay.</p> <p>The failed plea by the City’s defense team to apply the PPP offers an insight into how the principle can be seen differently from one jurisdiction to another. Had the PPP been explicitly recognized in Ontario’s EPA, the court may well have held the polluter liable for restoration. Inconsistent recognition of the PPP across Canadian jurisdictions leaves room for courts to interpret government’s intentions differently, resulting in instances of innocent parties being forced to pay for the actions of patently guilty polluters. Greater standardization of legislation across jurisdictions would send a clearer message that those who pollute will be held responsible for their actions wherever they live.</p>	<p>The 2019 Redwater case demonstrates the application of the PPP as found in Alberta’s environmental legislation. Bankrupt oil and gas corporation Redwater Energy Corporation claimed it was unable to pay for remediation of its orphaned oil wells while also facing demands to reimburse creditors<sup>8</sup>. A case was brought by the Alberta Orphan Well Association (OWA) against Grant Thornton Ltd. (GTL), Redwater’s bankruptcy trustee. The case reached the Supreme Court of Canada (SCC) due to disputes over the PPP and Canada’s <i>Bankruptcy and Insolvency Act</i> (BIA). After four years, the SCC ruled that the environment must be restored before creditors can receive payment in bankruptcy cases<sup>9</sup>. It required GTL, therefore, to pay for clean-up of Redwater’s orphaned wells before paying its creditors.</p> <p>The SCC’s decision spurred discussion of the need to revise the BIA to explicitly recognize the PPP, which would create a stronger legal framework for holding polluters to account in bankruptcy hearings. The fact that the PPP is explicitly recognized in both CEPA and Alberta’s <a href="#">Environmental Protection and Enhancement Act</a> contributed to the SCC’s ruling, demonstrating the value of doing so if polluters are to be held to account.</p>

<sup>6</sup>CanLII (2013). *Kawartha Lakes (City) v. Ontario (Environment)*, 2013 ONCA 310 (CanLII). Retrieved from <https://www.canlii.org/en/on/onca/doc/2013/2013onca310/2013onca310.html>

<sup>7</sup>Cocker, J. D., 2016. Polluter Pays? Ontario v. British Columbia. *Environmental Law Insights*. Retrieved from <https://www.environmentallawinsights.com/2016/08/17/polluter-pays-ontario-v-british-columbia/>

<sup>8</sup>CanLII. (2019). *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (CanLII), [2019] 1 SCR 150. Retrieved from <https://www.canlii.org/en/ca/scc/doc/2019/2019scc5/2019scc5.html>

<sup>9</sup>Farrell, E., Boily, J., Murray, H. (2019). Third Time’s a Charm for Alberta Regulator: How the SCC Decision in Redwater Could Change the Role of Environmental Orders in Ontario Insolvency Proceedings. *Mondaq*. Retrieved from <https://www.mondaq.com/canada/environmental-law/788284/>

## Methodology

To determine the share of jurisdictions across Canada in which the PPP is enshrined in legislation, the fourteen keystone environmental protection acts of Canada's federal, provincial and territorial governments were reviewed. These acts represent the overarching legislation governing environmental standards and management in the country, making them the most powerful acts these different governments can use to protect and restore the environment<sup>10</sup>. Incorporating the PPP directly into keystone environmental acts is the best way to ensure that polluters are held responsible for remediation wherever possible. The fourteen jurisdictions were grouped into the three tiers below depending on the extent to which the PPP is recognized in their keystone acts.

**Tier 1:** Jurisdictions in Tier 1 explicitly recognize the PPP in their keystone environmental legislation using words identical to or substantively the same as “the polluter-pays-principle”. This unambiguously confirms the legal obligation for parties responsible for environmental pollution in those jurisdictions to pay for the restoration. A specific goal of [Nova Scotia's Environment Act](#), for example, is to promote “the polluter-pay principle confirming the responsibility of anyone who creates an adverse effect on the environment ... to take remedial action and pay for the costs of that action”.

**Tier 2:** In Tier 2 jurisdictions, the PPP is not explicitly recognized in keystone environmental legislation, but the intention of holding those responsible for pollution financially accountable for restoration is nevertheless clear. In these cases, bearing restoration costs is clearly mentioned in relation to the responsibility for polluters to restore the environment though the words “polluter-pays-principle” (or similar) do not appear. These acts thus incorporate the spirit of the PPP without explicitly invoking it. In Newfoundland and Labrador's [Environmental Protection Act](#), for example, “A person responsible for the release of a substance shall, at that person's own cost ... take all reasonable measures to ... remedy the adverse effects of the substance ...”.

**Tier 3:** In Tier 3 jurisdictions, the PPP is not mentioned at all in the keystone environmental legislation and the responsibility for polluters to pay for environmental remediation is not clear. Considerable discretion is left to government officials (ministers and/or designated officials) to decide on the extent to which polluters will be held to account. In these jurisdictions, parties responsible for pollution are not necessarily obliged to conduct environmental remediation. Rather, those who contravene the act may be liable for clean-up if determined by the government. Provisions are generally made for the recuperation of expenses incurred by governments in environmental remediation from polluters, implying that it is governments rather than polluters that will often carry out the remediation. In New Brunswick's [Clean Environment Act](#), for example, the Minister of the Environment is authorized “where in his opinion a person has violated any provision of this Act or the regulations, to issue an order directing that person to carry out, in accordance with directions set out in the order, such clean-up, site rehabilitation or other remedial action as he considers necessary.”

## Findings

Review of the fourteen keystone environmental protection acts in Canada revealed that the acts in only three jurisdictions make explicit reference to the PPP (Tier 1): Canada, Alberta and Nova Scotia. Another four jurisdictions (Newfoundland and Labrador, Saskatchewan, British Columbia and Yukon) have keystone acts in which the principle that polluters should, as a matter of course, be held legally and

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<sup>10</sup>Becklumb, P. (2019). Federal and Provincial Jurisdiction to Regulate Environmental Issues. *Library of Parliament*. Retrieved from <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2013-86-e.pdf>

financially responsible for environmental restoration is clear even if the PPP is not explicitly recognized (Tier 2). In the remaining jurisdictions, there is neither recognition of the PPP nor any clear statement the polluters are necessarily to be held responsible for restoration of damage they cause (Tier 3). The table below summarizes the findings by jurisdiction. Brief discussions of the keystone legislation in each jurisdiction and its approach to holding polluters to account follow this. A textbox at the end considers how the PPP is treated in targeted industry- and activity-specific environmental protection legislation.

*Table 1 – Canadian jurisdictions grouped into tiers based on the use of the PPP in their keystone environmental legislation*

Tier	Jurisdiction	Keystone Environmental Act
1	Canada	<i>Canadian Environmental Protection Act</i>
	Nova Scotia	<i>Environment Act</i>
	Alberta	<i>Environmental Protection and Enhancement Act</i>
2	Newfoundland and Labrador	<i>Environmental Protection Act</i>
	Saskatchewan	<i>The Environmental Management and Protection Act</i>
	British Columbia	<i>Environmental Management Act</i>
	Yukon	<i>Environment Act</i>
3	New Brunswick	<i>Clean Environment Act</i>
	Prince Edward Island	<i>Environmental Protection Act</i>
	Quebec	<i>Environmental Quality Act</i>
	Ontario	<i>Environmental Protection Act</i>
	Manitoba	<i>The Environment Act</i>
	Nunavut	<i>Environmental Protection Act</i>
	North West Territories	<i>Environmental Protection Act</i>

## Tier 1 Jurisdictions

### Canada – *Canadian Environmental Protection Act*

The preamble of the [Canadian Environmental Protection Act](#) notes that the Government of Canada “recognizes the responsibility of users and producers in relation to toxic substances and pollutants and wastes, and has adopted the ‘polluter pays’ principle”.

**Summary:** *There is explicit recognition of the PPP in Canada’s keystone environmental protection act.*

### Nova Scotia – *Environment Act*

The purpose of Nova Scotia’s [Environment Act](#) is noted as supporting and promoting “the protection, enhancement and prudent use of the environment while recognizing ... [among others] ... the polluter-pay principle confirming the responsibility of anyone who creates an adverse effect on the environment ... to take remedial action and pay for the costs of that action”.

**Summary:** *There is explicit recognition of the PPP in Nova Scotia’s keystone environmental protection act.*

## Alberta – Environmental Protection and Enhancement Act

Similarly to Nova Scotia, the purpose of the Alberta [Environmental Protection and Enhancement Act](#) is to support and promote “the protection, enhancement and wise use of the environment while recognizing ... [among others] ... the responsibility of polluters to pay for the costs of their actions”.

**Summary:** *There is explicit recognition of the PPP in Alberta’s keystone environmental protection act.*

## Tier 2 Jurisdictions

### Newfoundland and Labrador – Environmental Protection Act

Section 9 of the Newfoundland and Labrador [Environmental Protection Act](#) sets out clear provisions regarding responsibility of polluters to pay the costs of remediation:

“A person responsible for the release of a substance shall, at that person’s own cost, and as soon as that person knows or ought to have known of the release of a substance into the environment that has caused, is causing or may cause an adverse effect,

- (a) take all reasonable measures to
  - (i) prevent, reduce and remedy the adverse effects of the substance, and
  - (ii) remove or otherwise dispose of the substance in a manner that minimizes adverse effects;
- (b) take other measures required by an inspector or the department; and
- (c) rehabilitate the environment to a standard that the department may adopt or require.”

Section 120 of the Act outlines the right of the government to recuperate funds it directs towards remediation from the polluter:

“The costs, expenses or charges incurred in carrying out environmental emergency measures cleanup, investigations, monitoring and the direction of an activity, in addition to another remedy which may be available under this Act, may be recovered by the government as a debt owed to the Crown from the person who is responsible for the need to take those emergency measures, investigations, monitoring or that direction.”

**Summary:** *Though Newfoundland and Labrador’s keystone environmental protection act does not directly invoke the PPP, it uses plain and unambiguous language to state that a person responsible for the release of a substance into the environment is also responsible for the costs of rehabilitating the environment.*

### Saskatchewan – The Environmental Management and Protection Act

Sections 9 and 10 of Saskatchewan's [Environmental Management and Protection Act](#) describes the duty to act if a person has released pollution into the environment:

"Every person who ... discharges or allows the discharge of a substance into the environment that may cause or is causing an adverse effect shall report the discharge in accordance with any prescribed requirements or any requirements set out in the code."

"[Persons polluting] shall as soon as possible, take all reasonable emergency measures consistent with public safety:

- (a) to repair or remedy any undue risk; or
- (b) to reduce or mitigate danger to life, health, property or the environment that results or that may reasonably be expected to result from the discharge of the substance."

**Summary:** *Though Saskatchewan's keystone environmental protection act does not directly invoke the PPP, it uses plain and unambiguous language to state that a person responsible for the release of a substance into the environment. Though the Act does not explicitly mention the polluter's responsibility to bear the cost of remediation, this would appear to be implicit.*

### British Columbia – Environmental Management Act

Section 47 of British Columbia's [Environmental Management Act](#) sets out the general principles of liability for the costs of remediation of contaminated sites within the Act:

"A person who is responsible for remediation of a contaminated site is absolutely, retroactively and jointly and separately liable to any person or government body for reasonably incurred costs of remediation of the contaminated site, whether incurred on or off the contaminated site."

Section 45 sets out who is responsible for remediation of contaminated sites, which includes both current and previous operators of the site where the contamination occurs.

**Summary:** *Though British Columbia's keystone environmental protection act does not directly invoke the PPP, it uses plain and unambiguous language to state that a person responsible for the release of a substance into the environment is also responsible for the costs of rehabilitating the environment.*

### Yukon – Environment Act

Section 135 of Yukon's [Environment Act](#) describes the duty to act if a person has released pollution into the environment:

"If a spill occurs, the person who owns or has possession, charge, or control of the spilled substance at the time of the spill shall, when they have knowledge of the spill,

- (a) take all reasonable measures:
  - (i) to confine, repair, and remedy the effects of the spill; and
  - (ii) to remove the substance spilled in such a manner as to reduce or mitigate any danger to human life, health, and the natural environment;

and

(b) restore or rehabilitate the natural environment to a condition reasonably equivalent to the condition that existed immediately before the spill occurred.

**Summary:** *Though Yukon's keystone environmental protection act does not directly invoke the PPP, it uses plain and unambiguous language to state that a person responsible for the release of a substance into the environment. Though the Act does not explicitly mention the polluter's responsibility to bear the cost of remediation, this would appear to be implicit.*

## Tier 3 Jurisdictions

### Prince Edward Island – Environmental Protection Act

Section 21 of the Prince Edward Island [Environmental Protection Act](#) states that any person who discharges, causes, or permits a contaminant into the environment or who owns or has control of a contaminant which is discharged into the environment shall:

“take such action as the Minister may direct

- (i) to investigate and define the extent, nature and impact of the contaminant, and
- (ii) to repair, restore and remedy the environment or to confine or contain the effects of the contaminant.”

Section 7 permits use of environmental protection orders to oblige polluters to, at their own cost, “clean, repair, and restore the area affected by the contaminant to the extent indicated in the environmental protection order or, otherwise, to the satisfaction of the Minister”.

Section 33 further allows the Minister to “issue an order for the costs of the remedial action against the person to whom the original order or direction was given.”

**Summary:** *The Prince Edward Island's keystone environmental protection act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are necessarily the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*

### New Brunswick – Clean Environment Act

Section 5 of New Brunswick's [Clean Environment Act](#) outlines the action the government may take if pollution is discharged into the environment:

“the Minister may ... issue an order requiring the [polluter] to ... to carry out clean-up, site rehabilitation, restoration of land, premises or personal property or other remedial action”.

Section 5 further allows the Minister to recover any costs incurred by the Minister in “ameliorating any adverse effect of the release of a contaminant, or restoring any land, premises or personal property” from the polluter.

**Summary:** *New Brunswick's keystone environmental protection act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are the responsibility of the polluter. The Act*

*leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*

## Quebec – *Environmental Quality Act*

Section 115.0.1 of Quebec’s [Environmental Quality Act](#) outlines the action the government may take if pollution is discharged into the environment:

“When contaminants are, could be or could be prevented from being released into the environment, the Minister may claim from a person or municipality the costs of any intervention by the Minister to avert or diminish any adverse effects on the quality of the environment, on the life, health, safety, well-being or comfort of human beings or on ecosystems, other living species or property.”

**Summary:** *Quebec’s keystone environmental protection act does not explicitly oblige polluters to restore the environment immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*

## Ontario – *Environmental Protection Act*

Section 93 of Ontario’s [Environmental Protection Act](#) sets out clear provisions regarding the responsibility of polluters to carry out remediation:

“The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.”

It goes on to note that:

“The duty [to restore the environment] comes into force ... immediately when the owner or person, as the case may be, knows or ought to know that the pollutant is spilled and is causing or is likely to cause an adverse effect.”

Section 99 outlines the right of the government relates to the ability of the director to pay the minister of finance for the costs of preventing, eliminating, or ameliorating adverse effects or to restore the natural environment. Sec. 99.1(1)

“If a pollutant is spilled, the [government] may issue an order requiring the owner of the pollutant or the person having control of the pollutant to pay ... any reasonable costs or expenses incurred by [the government]”.

**Summary:** *While Ontario’s keystone environmental protection act uses plain and unambiguous language to state that a person responsible for the release of a substance into the environment is also responsible for rehabilitating the environment, it does not explicitly state that the costs of remediation necessarily fall on the responsible person. As was seen in the case of Kawartha Lake versus Ontario (see Text Box 1 earlier), Ontario courts have ruled that remediation costs should be borne by third parties in some instances.*

## Manitoba – *Environment Act*



Section 24 of Manitoba's [Environment Act](#) outlines the action the government may take if pollution is discharged into the environment:

"[An authorized employee of the government] may, by order, require

- (a) a person who failed to comply with an environmental protection order to pay the [associated] costs of any action taken [to comply with it]; or
- (b) the person responsible for the pollutant in question to pay the costs of any emergency action taken under".

**Summary:** *Manitoba's keystone environmental protection act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*<sup>11</sup>

## Nunavut – Environmental Protection Act

Section 7 of Nunavut's [Environmental Protection Act](#) outlines the action the government may take if pollution is discharged into the environment:

"...where a person discharges or permits the discharge of a contaminant into the environment, an inspector may order that person to repair or remedy any injury or damage to the environment that results from the discharge."

Section 12 allows a judge to require environmental remediation by "...directing the person to take any action that the judge considers appropriate to remedy any harm to the environment that results or may result from the act or omission that constituted the offence".

Without specific reference to costs associated with environmental remediation, Section 16 allows for the government to claim and recover costs from polluters:

"The Government of Nunavut may claim and recover the reasonable costs and expenses incurred in taking any measures under this Act from every person who, through his or her actions or negligence or the actions or negligence of others for whom he or she is by law responsible, caused, permitted or contributed to the discharge of a contaminant or otherwise contravened the provisions of this Act or the regulations."

**Summary:** *Nunavut's keystone environmental protection act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are necessarily the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*

## Northwest Territories – Environmental Protection Act

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<sup>11</sup> It is worth noting that while Manitoba's keystone environmental act does not recognize the PPP, the PPP is explicitly recognized in another of the province's acts dealing with environmental restoration, the *Contaminated Sites Remediation Act*. See Text Box 2 below for further details.

Section 7 of the Northwest Territories' [Environmental Protection Act](#) outlines the action the government may take if pollution is discharged into the environment:

“where a person discharges or permits the discharge of a contaminant into the environment, an inspector may order that person to repair or remedy any injury or damage to the environment that results from the discharge.”

Without specific reference to costs associated with environmental remediation, Section 16 allows for the government to claim and recover costs from polluters:

“The Government of the Northwest Territories may claim and recover the reasonable costs and expenses incurred in taking any measures under this Act from every person who, through his or her actions or negligence or the actions or negligence of others for whom he or she is by law responsible, caused, permitted or contributed to the discharge of a contaminant...”

**Summary:** *The Northwest Territories' keystone environmental protection act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are necessarily the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic.*

### *Text Box 2 – The PPP in targeted environmental protection acts*

Though keystone environmental protection acts are the focus of *Legislating Restoration*, they are not the only legislative avenues open to jurisdictions to introduce the PPP. There are also many industry- and activity-specific acts that address environmental protection in Canada, several of which are reviewed below. Like the keystone environmental acts reviewed, these targeted acts vary in the extent to which they recognize the PPP. While these acts are important in legislating and adjudicating cases relating to their targeted industries or activities, their provisions must be interpreted in the broader context of their jurisdictions' keystone environmental acts. As the examples below show, keystone acts can be at odds with targeted legislation in their recognition of the PPP.

#### British Columbia – Forest Practices and Range Act

Section 98 of British Columbia's [Forest Practices and Range Act](#) states that any person who is convicted of an offense under the Act may be ordered by the court to “compensate the minister for all or part of the cost of any remedial or preventative action taken by or caused to be taken on behalf of the ministry as a result of the act or omission that constituted the offence”.

**Summary:** *British Columbia's Forest Practices and Range Act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are necessarily the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic. The Forest Practices and Range Act is aligned with the province's keystone environmental protection act in this regard.*

#### Manitoba – Contaminated Sites Remediation Act

The purpose of Manitoba's [Contaminated Sites Remediation Act](#) is noted as providing “for the remediation of contaminated sites and impacted sites ... and to provide [among others] ... a fair and efficient process for apportioning responsibility for the remediation of contaminated sites that ... applies the ‘polluter pays principle’ ...”

**Summary:** *There is explicit recognition of the PPP in Manitoba's Contaminated Sites Remediation Act. The Contaminated Sites Remediation Act is not aligned with the province's keystone environmental protection*

*act in this regard; the latter does not explicitly recognize the PPP and leaves considerable discretion to the government to decide on the extent to which polluters must take action.*

### Nova Scotia – Clean Water Act

Section 4 of Nova Scotia’s [Clean Water Act](#) outlines the action the government may take if pollution is discharged into the environment:

“...the Minister may ... issue and order requiring [a polluter] to ... carry out clean-up, site rehabilitation, restoration of land, premises or personal property or other remedial action.”

Section 6 further states that:

“...any costs incurred by the Minister while [remediating pollution] ... shall be the liability of and paid by all persons ... who failed or refused to comply with any order [related to this act] ... or ... whose [actions] caused, directly or indirectly, the release [of pollution]”.

**Summary:** *Nova Scotia’s Clean Water Act does not explicitly oblige polluters to restore the environmental immediately upon knowledge of a contamination incident. Nor does it explicitly recognize that restoration costs are necessarily the responsibility of the polluter. The Act leaves considerable discretion to the government to decide on the extent to which polluters must take action, meaning that the application of the PPP is ad hoc rather than automatic. The Clean Water Act is not aligned with the province’s keystone environmental protection act in this regard; the latter explicitly recognizes the PPP in its purpose statement.*

## Conclusions

Legislating the environment has been a responsibility shared between federal and provincial/territorial governments since the latter half of the 20th century.<sup>12</sup> In this context, ensuring Canada has a restoration economy in which polluters are legally held responsible for the damage they cause requires consistent legal frameworks across all governments. As the results of *Legislating Restoration* show, this consistency does not exist in Canada today; application of the PPP varies widely from jurisdiction to jurisdiction and even from act to act within jurisdictions. The Canadian government enshrined the PPP in its keystone legislation in 1999 in line with its signing of the 1992 Rio Declaration. More than twenty years later, most provincial and territorial environmental protection acts have not recognized this restorative environmental principle. Only two of Canada’s thirteen sub-national jurisdictions have directly incorporated the PPP into their keystone environmental acts. An additional four recognize the PPP in spirit if not in name, making it clear that polluters are obliged to bear the costs of their actions without specifically invoking the PPP. The remaining seven do not recognize the PPP in any clear way, leaving it to ministers or government officials to determine if and when polluters should pay. These disparities create tension among jurisdictions, but also present opportunities for improvement through explicit incorporation of PPP in keystone environmental protections acts as they are revised in the future.

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<sup>12</sup>Tidball, J., *et al.* (2019). Environmental law and practice in Canada: Overview. *Thomson Reuters Practical Law*. Retrieved from [https://ca.practicallaw.thomsonreuters.com/2-503-2764?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/2-503-2764?transitionType=Default&contextData=(sc.Default)&firstPage=true)