

## Publisher's Note

2018 — Release 2

Previous release was 2018-1

From Your Library:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

David Estrin

## Business Guide to Environmental Law

*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 trade-marks.

### Release Highlights

This release provides updates to the case law and commentary in Chapter 1, Toxic Real Estate: Environmental Law Issues in Property Transactions; Chapter 2, Environmental Liabilities of Corporate Directors and Officers; and Chapter 4, Proactive Environmental Management: More Than Staying Out of Jail.

### Case Law Highlights

- **Chapter 2 — “Environmental Crimes”: Directors’ and Officers’ Liabilities to Pay Fines or Serve Jail Terms — Sentencing:** Tamarack, a placer mining company, and Anton Beets, a director of Tamarack Inc., were convicted of offences under the Yukon *Waters Act* for depositing gasoline into water in a water management area and for failing to report the deposit. Both

---

THOMSON REUTERS CANADA

#### Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

Email CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Tamarack and Beets had been participating in a Discovery Channel television program, “Gold Rush,” and the incident occurred when an episode of this show was being filmed at the mine site at the end of the work day. A dredge pond was being filled and Mark Favron, a contract welder who reported to Beets, asked Beets if it was all right to pour approximately 1.5 gallons of gasoline into the pond. Beets did not object and another employee set it alight. The incident was filmed with Beets in the foreground commenting on the scene and was aired as part of the episode. Both Beets and Tamarack were convicted. Beets was fined a total of \$6,000 on two counts and Tamarack a total of \$25,000 on four counts. Both appealed sentences and convictions. On appeal, Justice Gower of the Yukon Territory Supreme Court considered the sentences in relation to factors such as culpability, environmental damage, remorse, deterrence, offenders’ record, benefit of the activity and extent of attempts to comply. The amount of waste (1 to 1.5 gallons of gasoline) and environmental damage were minimal. However, the incident was widely viewed on television. In dismissing the appeals against sentence and convictions, Gower J. noted that “the fact that the incident was widely broadcast does justify significant importance being placed upon general deterrence, specifically for the purpose of deterring others from committing similar acts for entertainment purposes”: *R. v. Beets* (2017), 11 C.E.L.R. (4th) 26, 2017 CarswellYukon 46, 2017 YKTC 17 (Y.T. Terr. Ct.), affirmed (2018), 16 C.E.L.R. (4th) 288, 2018 CarswellYukon 22, 2018 YKSC 21 (Y.T. S.C.).

## Commentary Highlights

- **Chapter 1 — Liability for Contaminated Property — Liability of Former (or Remote) Vendors — Liability of Remote Vendors in Nuisance:** — This heading has been updated to reflect recent Court of Appeal decisions that preclude a remote owner who was responsible for causing contamination on its own property from being liable to the present owner for a claim in nuisance: *1317424 Ontario Inc. v. Chrysler Canada Inc.*, (2014), 86 C.E.L.R. (3d) 139, 2014 CarswellOnt 10758 (Ont. S.C.J.), affirmed (2015), 89 C.E.L.R. (3d) 183, 2015 CarswellOnt 1913 (Ont. C.A.).
- **Chapter 4 — Proactive Environmental Management: More Than Staying Out of Jail — Challenges For Business and Institutions:** — Chapter 4 has been updated with respect to some of the environmental issues that increasingly require business and institutions to be environmentally proactive in the face of the proliferation of complex regulations, statutory provisions creating personal liability, heightened fines and other penalties, and increasing public scrutiny and insistence on environmental account-

ability and disclosure. The trend has been for increased environmental reporting and audit requirements, particularly with respect to climate change and heightened public interest in environmental information that requires balancing more open, publicly accessible environmental disclosure while at the same time maintaining as confidential, information that may jeopardize the establishment of a legal due diligence defence. Other topics include the role of the business community in achieving sustainable development and the provision of sustainability reporting.

