

TABLE OF CONTENTS

<i>Acknowledgements</i>	A-1
<i>Contributors</i>	C-1
<i>Table of Cases</i>	TC-1
<i>Glossary</i>	G-1

PART I – OVERVIEW AND CONTEXT

Chapter 1 Overview

1:10	Introduction	1-1
1:20	Science Behind the Law	1-2
1:30	Organization and Topical Coverage	1-5
1:30.10	Overview and Context	1-5
1:30.20	Policy and Regulatory Framework	1-7
1:30.30	Emerging Subdisciplines	1-8
1:30.30.10	Carbon Finance	1-9
1:30.30.20	Project Structuring	1-9
1:30.30.30	Corporate Disclosure	1-9
1:30.30.40	Taxation	1-10
1:30.30.50	Litigation	1-10
1:30.30.60	Property Law	1-11
1:40	Cross Border Context	1-11
1:50	Conclusion	1-12

Chapter 2 International Framework

2:10	Climate Change and International Law	2-1
2:20	The Kyoto Protocol and Related Treaties: The International Climate Change Regime	2-1
2:20.10	History	2-1
2:20.20	Kyoto Protocol Emission Reduction Targets	2-3
2:20.30	The Kyoto Protocol Flexibility Mechanisms	2-4
2:20.30.10	Clean Development Mechanism	2-4
2:20.30.10(a)	Baselines for Determining Additionality	2-5
2:20.30.10(b)	CDM Projects and Sustainability	2-6
2:20.30.10(c)	The CDM Executive Board and the Certification Process	2-6
2:20.30.20	Emissions Trading	2-7

LAW OF CLIMATE CHANGE

2:20.30.20(a) Terminology 2-7
2:20.30.20(b) Fungibility 2-8
2:20.30.20(c) Commitment Period Reserve 2-9
2:20.30.30 Mechanisms' Eligibility 2-10
2:20.30.40 Joint Implementation 2-10
2:20.40 Reporting and Review (Articles 5, 7 and 8 of the
Kyoto Protocol) 2-11
2:20.50 Compliance 2-12
2:20.50.10 Enforcement and Facilitation Branches 2-12
2:20.50.20 Enforcement and Facilitation Processes 2-15
2:20.50.30 Matters Referred by the Compliance
Committee to the Enforcement Branch 2-15
2:20.50.40 Canada's Withdrawal from the Kyoto Protocol 2-19
2:20.60 Obtaining Credits Through the Enhancement of
Carbon Sinks 2-19
2:20.70 The Role of Developing Countries 2-22
2:20.80 Adaptation Funding 2-22
2:20.90 The Intergovernmental Panel on Climate Change's
Fifth Assessment Report 2-25
2:20.100 Negotiating the Post-2012 Regime 2-26
2:20.100.10 The Formal Launch of Negotiations in Bali 2-27
2:20.100.20 Key Elements of the Bali Roadmap: Parallel
Tracks to Copenhagen and Beyond 2-28
2:20.100.30 Kyoto Ad Hoc Working Group Negotiations 2-28
2:20.100.40 Ad Hoc Working Group on Long Term
Cooperative Action 2-29
2:20.110 Copenhagen Accord 2-30
2:20.111 Cancun Agreements 2-31
2:20.112 Durban Platform 2-32
2:20.113 Doha Amendment 2-33
2:20.114 Warsaw Agreements 2-33
2:20.115 Lima Call for Climate Action 2-34
2:20.120 Outside Influences on the UNFCCC Process 2-34
2:20.120.10 Possible Elements of a Future Regime 2-35
2:30 Climate Change Outside the UNFCCC and Kyoto Protocol:
Trade, Human Rights and Other Treaties 2-36
2:30.10 Trade Treaties and Climate Change Issues 2-37
2:30.10.10 Introduction: The WTO, the NAFTA and
Bilateral Treaties 2-37
2:30.10.20 Trade Treaties and Environmental Issues 2-38
2:30.10.20(a) Treatment of Environmental Issues under the
WTO Agreements 2-39
2:30.10.20(b) Treatment of Environmental Issues under
the NAFTA 2-44

TABLE OF CONTENTS

2:30.10.20(c) Bilateral Trade and/or Investment Treaties 2-45
 2:30.10.30 Treatment of Climate Change Issues Under
 Trade Treaties 2-46
 2:30.10.30(a) Alleged Discrimination Against Imports 2-46
 2:30.10.30(b) Alleged Violation of Investment Treaties 2-51
 2:30.10.30(c) Subsidy-Related Claims. 2-52
 2:30.20 Other International Treaty Provisions 2-54
 2:30.20.10 Climate Change as a Threat to the Marine
 Environment Protected by UN Convention
 on the Law of the Sea 2-54
 2:30.20.20 Climate Change as an International Human
 Rights Issue 2-55
 2:30.20.30 State Responsibility for the Effects of Climate
 Change under Customary International Law 2-58
 2:30.20.40 Climate Change and other Multilateral
 Environmental Agreements 2-59

Chapter 3 Climate Change and the Canadian Constitution

3:10 Introduction 3-1
 3:20 The Division of Powers 3-2
 3:20.10 Authority over Environmental Regulation 3-2
 3:20.10.10 Provincial Heads of Power 3-3
 3:20.10.10(a) Proprietary Provincial Powers 3-4.1
 3:20.10.20 Federal Heads of Power 3-5
 3:20.10.20(a) Sea Coast and Inland Fisheries 3-5
 3:20.10.20(b) Trade and Commerce 3-6
 3:20.10.20(c) Other Specific Federal Heads of Power 3-8
 3:20.10.20(d) Criminal Law Power, Hydro-Quebec
 and Syncrude 3-8
 3:20.10.20(e) Works for the “General Advantage of Canada” . 3-11
 3:20.10.30 The P.O.G.G. Power 3-12
 3:20.10.30(a) The National Concern Branch and Crown
 Zellerbach 3-12
 3:20.10.30(b) The Emergency Branch 3-15
 3:20.10.40 Concurrent Federal and Provincial Powers
 over Taxation 3-16
 3:20.10.50 Federal Spending Power 3-16
 3:20.20 The Division of Powers and the Regulation of
 Climate Change. 3-17
 3:20.20.10 The Particularity of Climate Change
 Regulation 3-17
 3:20.20.20 Enumerated Heads of Power 3-18
 3:20.20.30 Works for the “General Advantage of Canada” . . 3-18.1
 3:20.20.40 The P.O.G.G. Power 3-18.1

LAW OF CLIMATE CHANGE

3:20.20.50 Climate Change and the Spending Power 3-19

3:20.30 Authority and Obligation to Implement Treaties
on Climate Change 3-19

3:20.40 Climate Change and the Charter 3-20

3:20.40.10 Climate Change Legislation and Equality
Rights 3-20

3:20.40.20 Climate Change and the Right to Security
of the Person 3-21

3:20.50 Climate Change and Constitutionally Guaranteed
Aboriginal Treaty Rights 3-22

3:30 Climate Change Initiatives and the Constitution 3-23

3:30.10 Sources of Constitutional Uncertainty 3-23

3:30.10.10 The Power to Make and Implement Climate
Change Treaties 3-24

3:30.10.20 Cap-and-Trade Emissions Markets 3-25

3:30.10.20(a) A Provincial Cap-and-Trade Regime 3-26

3:30.10.20(b) A Federal Cap-and-Trade Regime 3-27

3:30.10.20(c) The Criminal Law Power 3-27

3:30.10.20(d) The Trade and Commerce Power 3-30

3:30.10.20(e) The National Concern Branch of P.O.G.G. 3-31

3:30.10.20(f) Parallel Federal and Provincial Cap-and-
Trade Regimes 3-32

3:30.10.20(g) A North American Cap-and-Trade Regime 3-32

3:30.10.30 The Taxation of Emissions 3-33

3:30.20 Other Federal Climate Change Initiatives 3-33

3:30.20.10 Omnibus Legislation on Climate Change 3-34

3:30.20.20 Using Regulatory Discretion Under CEPA to
Combat Climate Change 3-34

3:30.20.30 Federal Climate Change Legislation Grounded
in the Spending Power 3-35

3:30.20.40 The Liberal Party's Proposed Carbon Tax and
Cap-and-Trade Regime 3-36

3:30.20.50 The Kyoto Protocol Implementation Act 3-37

3:30.30 Provincial Climate Change Initiatives 3-39

3:30.30.10 Alberta 3-39

3:30.30.20 British Columbia 3-42

3:30.30.20(a) The Greenhouse Gas Reduction Targets Act 3-42

3:30.30.20(b) The Greenhouse Gas Reduction (Cap
and Trade) Act 3-42

3:30.30.20(c) The Carbon Tax Act 3-43

3:30.30.20(d) Greenhouse Gas Industrial Reporting
and Control Act 3-43

3:30.30.30 Manitoba 3-43

3:30.30.40 Nova Scotia 3-44

TABLE OF CONTENTS

3:30.30.50 Ontario 3-44
3:30.30.60 Quebec 3-45
3:30.30.70 Other Provinces 3-46
3:30.40 Inter-Provincial Initiatives 3-46
3:40 Climate Change and Constitutional Challenges in the
Courts. 3-47
3:40.10 Syncrude, Climate Change and the Criminal
Law Power 3-48

(The next page is CON-5)

TABLE OF CONTENTS

PART II – POLICY AND REGULATORY FRAMEWORK

Chapter 4 Federal Climate Change Law and Policy

4:10	Introduction	4-1
4:20	Canada’s Climate Change Profile	4-1
4:20.10	Greenhouse Gas Emissions	4-2
4:20.10.10	Historical Emissions.	4-2
4:20.10.20	Projected Emissions	4-4
4:20.20	Climate Change Impacts	4-6
4:20.20.10	Historical Impacts	4-6
4:20.20.20	Projected Impacts	4-6
4:30	Legal Framework	4-8
4:30.10	Constitutional Framework	4-8
4:30.20	Legislative and Regulatory Framework	4-9
4:30.20.10	Environment	4-9
4:30.20.10(a)	Canadian Environmental Protection Act, 1999	4-10
4:30.20.10(b)	Environmental Assessment	4-13
4:30.20.10(c)	Wildlife Protection	4-17
4:30.20.20	Product and Building Standards	4-18
4:30.20.20(a)	Energy Efficiency Act	4-18
4:30.20.20(b)	National Building Code of Canada	4-19
4:30.20.30	International Trade	4-21
4:30.20.40	Taxation	4-22
4:30.20.50	Federal Funding	4-23
4:30.20.60	Energy.	4-24
4:30.20.70	Transportation	4-26
4:30.20.80	Emergencies.	4-27
4:30.20.90	Other Areas of Federal Jurisdiction	4-28
4:40	Climate Change Policy Development	4-30
4:40.10	Policy Development Prior to the Kyoto Protocol	4-30
4:40.20	Policy Development at the Turn of the Century	4-33
4:40.30	Policy Development in the 2000s	4-35
4:50	Legal and Policy Response.	4-40
4:50.10	Mitigation.	4-40
4:50.10.10	Carbon Pricing Initiatives.	4-41
4:50.10.10(a)	Cap-and-Trade System	4-41
4:50.10.10(a)(i)	System Application	4-42
4:50.10.10(a)(ii)	Regulated Emissions.	4-43
4:50.10.10(a)(iii)	Targets	4-43
4:50.10.10(a)(iv)	Allowance Allocation.	4-45
4:50.10.10(a)(v)	Compliance Mechanisms.	4-46
4:50.10.10(b)	Reporting and Enforcement	4-54
4:50.10.10(c)	Future Directions	4-54

LAW OF CLIMATE CHANGE

4:50.10.10(c)(i) Carbon Capture and Storage 4-54
4:50.10.10(c)(ii) Leakages 4-55
4:50.10.10(d) Carbon Taxes 4-56
4:50.10.20 Complementary Initiatives 4-57
4:50.10.20(a) Renewable Fuels. 4-58
4:50.10.20(b) Electricity. 4-60
4:50.10.20(c) Energy Efficiency and Conservation 4-62
4:50.10.20(d) Transportation 4-63
4:50.10.30 Carbon Sequestration 4-66
4:50.10.30(a) Biotic Carbon Sequestration 4-66
4:50.10.30(b) Carbon Capture and Storage. 4-68
4:50.10.40 A Note on Voluntary Measures 4-70
4:50.20 Adaptation 4-71
4:50.20.10 Adaptation in Project Planning. 4-72
4:50.20.20 Adaptation in Operational Decision Making. 4-74
4:50.20.30 Adaptation of Existing Infrastructure 4-75
4:60 Future Trends in Federal Law and Policy 4-77
4:60.10 A Shifting Opposition? 4-77
4:60.20 Regional and International Linkages? 4-78
4:70 Conclusion 4-81

Chapter 5 British Columbia Climate Change Law and Policy

5:10 Overview 5-1
5:20 British Columbia's Climate Change Profile 5-1
5:20.10 Greenhouse Gas Emissions 5-1
5:20.10.10 Historical Emissions. 5-1
5:20.10.20 Projected Emissions 5-4
5:20.20 Climate Change Impacts 5-4
5:20.20.10 Historical Impacts 5-4
5:20.20.20 Projected Impacts 5-5
5:30 Legal Framework 5-6
5:30.10 Constitutional Framework 5-6
5:30.20 Legislative Framework 5-8
5:30.20.10 Environmental Legislation 5-8
5:30.20.10(a) General Legislation. 5-8
5:30.20.10(b) Environmental Assessment Legislation 5-8
5:30.20.10(c) Wildlife Protection Legislation 5-9
5:30.20.10(d) Forestry Legislation 5-9
5:30.20.20 Energy Legislation 5-11
5:30.20.30 Product and Building Standards 5-12
5:30.20.30(a) Energy Conservation and Efficiency
Legislation 5-12
5:30.20.30(b) Building Codes 5-12
5:30.20.40 Taxation Legislation 5-13

TABLE OF CONTENTS

5:30.20.40(a) Favourable Tax Treatment for Oil and Gas Industries 5-13

5:30.20.40(b) Favourable Tax Treatment for Mining 5-14

5:30.20.50 Transportation Legislation 5-15

5:30.20.60 Provincial Emergency Legislation 5-15

5:30.20.70 Planning Legislation 5-16

5:40 Climate Change Policy Development 5-17

5:40.10 Pre-Kyoto Policy Development 5-17

5:40.20 Policy Development in the Early Kyoto Era 5-17

5:40.30 Post Kyoto Policy Development 5-18

5:50 Specific Legal and Policy Response 5-21

5:50.10 The Climate Action Plan and Climate Leadership Plan . . 5-21

5:50.10.10 GHG Reduction Targets 5-23

5:50.10.20 Public Sector Carbon Neutrality 5-23

5:50.10.30 Local Governments 5-25

5:50.10.40 Principal Tools 5-28

5:50.10.40(a) Cap-and-Trade Regimes 5-28

5:50.10.40(b) Greenhouse Gas Reduction (Cap and Trade) Act 5-30

5:50.10.40(c) Greenhouse Gas Industrial Reporting and Control Act 5-33

5:50.10.40(d) Carbon Taxes 5-34

5:50.10.50 Supplementary Tools 5-43

5:50.10.50(a) British Columbia’s Energy Plan 5-43

5:50.10.50(b) Renewable Fuels 5-45

5:50.10.50(c) Renewable Energy 5-46

5:50.10.50(d) Energy Efficiency 5-54

5:50.10.50(e) Transportation 5-57

5:50.10.50(f) Other Regulated Emissions Reductions 5-60

5:50.10.50(f)(i) Oil and Gas 5-60

5:50.10.50(f)(ii) Liquefied Natural Gas 5-61

5:50.10.50(f)(iii) Landfill Gas 5-61

5:50.10.50(g) Carbon Sequestration 5-63

5:50.10.50(g)(i) Biotic Carbon Sequestration 5-63

5:50.10.50(g)(ii) Carbon Capture and Storage 5-64

5:50.10.50(h) A Note on Voluntary Measures 5-64

5:50.20 Adaptation 5-65

5:50.20.10 Environmental Assessment 5-66

5:50.20.20 Operational Adaptation 5-68

5:50.20.20(a) Forests 5-69

5:50.20.20(b) Mountain Pine Beetle 5-70

5:50.20.20(c) Water 5-71

5:50.20.20(d) Emergencies 5-74

5:50.20.30 Infrastructure Adaptation 5-75

LAW OF CLIMATE CHANGE

5:60 Future Trends in Provincial Law and Policy 5-76
5:60.10 Regulatory Trends. 5-76
5:70 Conclusion 5-77

Chapter 6 Alberta Climate Change Law and Policy

6:10 Introduction 6-1
6:20 Alberta’s Climate Change Profile 6-4
6:20.10 Greenhouse Gas Emissions 6-4
6:20.10.10 Historical Emissions. 6-4
6:20.10.20 Projected Emissions 6-6
6:20.20 Climate Change Impacts 6-8
6:20.20.10 Historical Impacts 6-8
6:20.20.20 Projected Impacts 6-8
6:30 Legal Framework 6-10
6:30.10 Constitutional Framework 6-11
6:30.20 Legislative and Regulatory Framework 6-14
6:30.20.10 Environmental. 6-14
6:30.20.10(a) General Legislation. 6-14
6:30.20.10(b) Environmental Assessment 6-16
6:30.20.10(c) Wildlife Protection 6-17
6:30.20.10(d) Other Environmental Legislation and Policy . . . 6-18
6:30.20.20 Electricity 6-22
6:30.20.30 Product and Building Standards 6-24
6:30.20.30(a) Energy Conservation and Efficiency
Legislation 6-25
6:30.20.30(b) Building Codes 6-27
6:30.20.40 Taxation 6-27
6:30.20.50 Transportation 6-29
6:30.20.60 Provincial Emergency Planning and Response. 6-29
6:30.20.70 Planning 6-30
6:40 Climate Change Policy Development 6-32
6:40.10 Policy Development Prior to the Kyoto Protocol 6-32
6:40.20 Policy Development in Response to Kyoto. 6-33
6:40.30 Policy Development from 2002-2015 6-36
6:40.40 New Policy Direction Commencing in 2015 6-39
6:50 Specific Legal and Policy Response 6-41
6:50.10 Mitigation. 6-41
6:50.10.10 Carbon Pricing Initiatives. 6-41
6:50.10.10(a) Emission Limits and Offsets for
Large Scale Emitters. 6-41
6:50.10.10(a)(i) Large Emitter Reporting Requirements 6-44
6:50.10.10(a)(ii) Large Emitter Reduction Targets 6-45
6:50.10.10(a)(iii) Compliance Options Including Offsets
and Credits 6-48

TABLE OF CONTENTS

6:50.10.10(a)(iv) Compliance Reporting 6-54
6:50.10.10(a)(v) Enforcement Provisions 6-54
6:50.10.10(b) Carbon Taxes 6-57
6:50.10.20 Complementary Initiatives 6-60

(The next page is CON-9)

TABLE OF CONTENTS

6:50.10.20(a) Renewable Fuels 6-60
 6:50.10.20(b) Electricity Supply 6-61
 6:50.10.20(c) Energy Efficiency and Conservation 6-63
 6:50.10.20(d) Transportation 6-64
 6:50.10.20(e) Limits on Oil Sands Emissions 6-65
 6:50.10.20(f) Reducing Methane Emissions 6-66
 6:50.10.20(g) Carbon Sequestration 6-66
 6:50.10.20(g)(i) Biotic Carbon Sequestration 6-66
 6:50.10.20(g)(ii) Carbon Capture and Storage 6-69
 6:50.10.20(h) A Note on Voluntary Measures 6-74
 6:50.20 Adaptation 6-75
 6:60 Future Trends in Alberta Law and Policy 6-76
 6:60.10 Linkages 6-77
 6:70 Conclusion 6-78

Chapter 7 Saskatchewan Climate Change Law and Policy

7:10 Overview 7-1
 7:20 Saskatchewan’s Climate Change Profile 7-2
 7:20.10 Greenhouse Gas Emissions 7-2
 7:20.10.10 Historical Emissions 7-2
 7:20.10.20 Projected Emissions 7-3
 7:20.20 Climate Change Impacts 7-4
 7:20.20.10 Historical Impacts 7-4
 7:20.20.20 Projected Impacts 7-4
 7:30 Legal Framework 7-5
 7:30.10 Constitutional Framework 7-5
 7:30.20 Legislative and Regulatory Framework 7-5
 7:30.20.10 Environment 7-6
 7:30.20.10(a) General Legislation 7-6
 7:30.20.10(a)(i) The Environmental Management and
 Protection Act, 2010 7-6
 7:30.20.10(a)(ii) The Clean Air Act 7-8
 7:30.20.10(b) Environmental Assessment Legislation 7-9
 7:30.20.10(b)(i) Environmental Assessment Act 7-9
 7:30.20.10(c) Wildlife Protection Legislation 7-10
 7:30.20.10(c)(i) The Wildlife Habitat Protection Act 7-10
 7:30.20.10(c)(ii) Wildlife Act, 1998 7-11
 7:30.20.10(d) Product and Building Standards 7-11
 7:30.20.10(d)(i) Building Codes 7-11
 7:40 Climate Change Policy Development 7-11
 7:40.10 Pre-Kyoto Policy Development 7-11
 7:40.20 Policy Development in Early Kyoto Era 7-12
 7:40.30 Post-Kyoto Policy Development 7-13

LAW OF CLIMATE CHANGE

7:40.30.10 A First Report on Making Saskatchewan a
Canadian Leader in Energy Conservation and
Renewable Energy Development (2006) 7-13

7:40.30.20 The Saskatchewan Energy and Climate Change
Plan, 2007 7-15

7:40.30.20(a) Conservation and Efficiency 7-15

7:40.30.20(b) Carbon Capture and Storage in the Oil and
Gas and Electricity Sectors 7-17

7:40.30.20(c) Increase the Use of Renewable Energy 7-17

7:40.30.20(d) Promoting the Creation of Natural
Carbon Sinks 7-17

7:40.30.20(e) Reduction of Methane and Other Emissions
from Oil, Gas and Agricultural Sectors 7-18

7:40.30.20(f) Sustainable Non-Renewable Resource Sector 7-18

7:40.30.20(g) Adaptation 7-18

7:50 Current Legal and Policy Response 7-19

7:50.10 Mitigation 7-19

7:50.10.10 Major Initiatives 7-19

7:50.10.10(a) The Management and Reduction of
Greenhouse Gases Act 7-19

7:50.10.10(b) Special Non-Profit Corporations 7-22

7:50.10.10(b)(i) The Saskatchewan Technology Fund
Corporation 7-22

7:50.10.10(b)(ii) Saskatchewan Climate Research and
Development Corp. 7-22

7:50.10.10(b)(iii) Saskatchewan Climate Change
Foundation 7-23

7:50.10.10(b)(iv) Saskatchewan Environmental
Corporation 7-23

7:50.10.10(c) Administrative, Inspections and
Enforcement 7-23

7:50.10.10(c)(i) Offences and Administrative Penalties 7-23

7:50.10.20 Supplementary Initiatives 7-24

7:50.10.20(a) Renewable Fuels 7-24

7:50.10.20(b) Renewable Energy 7-25

7:50.10.20(b)(i) Nuclear Energy 7-25

7:50.10.20(b)(ii) Wind Power 7-25

7:50.10.20(b)(iii) Net Metering Program 7-26

7:50.10.20(c) Energy Efficiency 7-26

7:50.10.20(c)(i) Energy Efficiency – Programs for
Individuals and Home Owners 7-27

7:50.10.20(d) Transportation 7-27

7:50.10.20(d)(i) Anti-Idling 7-27

7:50.10.30 Carbon Sequestration 7-27

TABLE OF CONTENTS

7:50.10.30(a) Biotic Carbon Sequestration 7-27
 7:50.10.30(b) Carbon Capture and Storage. 7-28
 7:60 Future Trends in Provincial Law and Policy 7-30
 7:70 Regional and International Linkages 7-30
 7:80 Conclusion 7-31

Chapter 8 Manitoba Climate Change Law and Policy

8:10 Overview 8-1
 8:20 Manitoba’s Climate Change Profile 8-3
 8:20.10 GHG Emissions 8-3
 8:20.10.10 Historical Emissions. 8-3
 8:20.10.20 Projected Emissions 8-6
 8:20.20 Climate Change Impacts 8-7
 8:20.20.10 Historical Impacts 8-7
 8:20.20.20 Projected Impacts 8-7
 8:30 Legal Framework 8-9
 8:30.10 Constitutional Framework 8-9
 8:30.20 Legislative and Regulatory Framework 8-9
 8:30.20.10 Environment 8-9
 8:30.20.10(a) General Legislation. 8-9
 8:30.20.10(a)(i) Environment Act 8-9
 8:30.20.10(a)(ii) Sustainable Development Act 8-10
 8:30.20.10(a)(iii) Water Resources Conservation Act 8-11
 8:30.20.10(b) Environmental Assessment Legislation 8-12
 8:30.20.10(c) Wildlife Protection Legislation 8-13
 8:30.20.10(d) Other Environmental Legislation 8-13
 8:30.20.20 Energy Legislation 8-13
 8:30.20.30 Product and Building Standards 8-14
 8:30.20.40 Taxation 8-16
 8:30.20.50 Transportation 8-17
 8:30.20.60 Provincial Emergency Measures Legislation 8-18
 8:30.20.70 Planning Legislation 8-19
 8:40 Climate Change Policy Development 8-20
 8:50 Specific Legal and Policy Response 8-24
 8:50.10 Mitigation. 8-24
 8:50.10.10 Major Initiatives 8-24
 8:50.10.20 Manitoba Climate Change Act 8-25
 8:50.10.20(a) Purpose of the Climate Change Act 8-25
 8:50.10.20(b) Provisions Related to Buildings and Building
 Products 8-27
 8:50.10.20(c) Provisions Related to Transportation 8-27
 8:50.10.20(d) Provisions Regarding Landfill Emissions
 Reporting and Controls 8-28

LAW OF CLIMATE CHANGE

8:50.10.20(e) Provisions Regarding Emissions from Power
 Generation 8-29
8:50.10.20(f) Other Consequential Amendments 8-30
8:50.10.30 The Biofuels Act 8-30
8:50.10.35 Bills 8-32
 8:50.10.35(a) Bill 20, The Environmental Rights Act 8-32
 8:50.10.35(b) The Efficiency Manitoba Act 8-32
8:50.10.40 Carbon Capture and Sequestration 8-33
8:50.10.50 Biomass Thermal Generation 8-34
8:50.20 Adaptation 8-35
8:60 Future Trends in Provincial Law and Policy 8-38
 8:60.10 Regional and International Linkages 8-39
8:70 Conclusion 8-44

Chapter 9 Ontario Climate Change Law and Policy

9:10 Introduction 9-1
9:20 Ontario's Climate Change Profile 9-2
 9:20.10 Greenhouse Gas Emissions 9-2
 9:20.10.10 Historical Emissions 9-2
 9:20.10.20 Projected Emissions 9-4
 9:20.20 Climate Change Impacts 9-5
 9:20.20.10 Historical Impacts 9-5
 9:20.20.20 Projected Impacts 9-7
9:30 Legal Framework 9-7
 9:30.10 Constitutional Framework 9-8
 9:30.20 Legislative and Regulatory Framework 9-8
 9:30.20.10 Environment 9-8
 9:30.20.10(a) General Regulation 9-8
 9:30.20.10(a)(i) Command and Control Provisions 9-9
 9:30.20.10(a)(ii) Market-Based Mechanisms 9-11
 9:30.20.10(b) Environmental Assessment 9-12
 9:30.20.10(c) Wildlife Protection 9-14
 9:30.20.20 Electricity 9-15
 9:30.20.20(a) Demand Side Regulation 9-16
 9:30.20.20(b) Supply Side Regulation 9-17
 9:30.20.20(c) Climate Change Considerations 9-18
 9:30.20.30 Product and Building Standards 9-19
 9:30.20.30(a) Energy Efficiency Standards 9-19
 9:30.20.30(b) Building Codes 9-20
 9:30.20.40 Tax 9-21
 9:30.20.50 Transportation 9-22
 9:30.20.60 Provincial Emergencies 9-22.1
 9:30.20.70 Planning 9-23
9:40 Climate Change Policy Development 9-25

TABLE OF CONTENTS

9:40.10 Policy Development Prior to the Kyoto Protocol 9-25

9:40.20 Policy Development in the Late 1990s 9-27

9:40.30 Policy Development in the 2000s 9-29

9:50 Specific Legal and Policy Response 9-31

9:50.10 Mitigation. 9-31

9:50.10.10 Carbon Pricing Initiatives. 9-32

9:50.10.10(a) The Development of Cap-and-Trade in Ontario 9-32

9:50.10.10(a)(i) Covered Emissions and Activities. 9-35

9:50.10.10(a)(ii) Absolute Caps 9-35

9:50.10.10(a)(iii) Capped Entities: Scope and Threshold 9-36

9:50.10.10(a)(iv) Auction and Sale of Allowance. 9-37

9:50.10.10(a)(v) Free Allocation of Allowances. 9-38

9:50.10.10(a)(vi) Transactions of Allowances and Credits 9-38

9:50.10.10(a)(vii) Offset Credits 9-39

9:50.10.10(a)(viii) Early Action Credits 9-40

9:50.10.10(a)(ix) Reporting 9-41

9:50.10.10(a)(x) Enforcement. 9-42

9:50.10.10(a)(xi) Next Steps. 9-43

9:50.10.10(b) Carbon Taxes. 9-44

9:50.10.20 Complementary Initiatives 9-45

9:50.10.20(a) Lower Carbon Fuel. 9-45

9:50.10.20(b) Electricity Generation. 9-46

9:50.10.20(b)(i) Supply Side Goals 9-46

9:50.10.20(b)(ii) The End of Coal. 9-49

9:50.10.20(b)(iii) Renewable Source Generation 9-50

9:50.10.20(b)(iv) Climate Change Considerations 9-52

9:50.10.20(c) Energy Efficiency and Conservation 9-53

9:50.10.20(d) Transportation 9-55

9:50.10.20(e) Carbon Sequestration 9-57

9:50.10.20(e)(i) Biotic Carbon Sequestration 9-57

9:50.10.20(e)(ii) Carbon Capture and Storage. 9-59

9:50.10.20(f) Other Relevant Legislation 9-59

9:50.10.20(g) A Note on Voluntary Measures. 9-60

9:50.20 Adaptation 9-62

9:50.20.10 Adaptation in Project Planning. 9-62

9:50.20.20 Adaptation in Operational Decision Making. 9-63

9:50.20.30 Adaptation of Existing Infrastructure 9-65

9:60 Future Trends in Ontario Law and Policy. 9-66

9:60.10 Linkages 9-66

9:70 Conclusion 9-67

LAW OF CLIMATE CHANGE

Chapter 10 Québec Climate Change Law and Policy

10:10	Overview	10-1
10:20	Québec's Climate Change Profile	10-2
10:20.10	Greenhouse Gas Emissions	10-2
10:20.10.10	Historical Emissions	10-2
10:20.10.20	Projected Emissions	10-4
10:20.20	Climate Change Impacts	10-4
10:20.20.10	Historical Impacts	10-4
10:20.20.20	Projected Impacts	10-5
10:30	Legal Framework	10-6
10:30.10	Constitutional Framework	10-6
10:30.20	Legislative and Regulatory Framework	10-8
10:30.20.10	Environmental Legislation	10-9
10:30.20.10(a)	General Legislation	10-9
10:30.20.10(a)(i)	Environment Quality Act	10-9
10:30.20.10(a)(i.1)	Regulation respecting a cap-and-trade system for greenhouse gas emission allowances . . .	10-13
10:30.20.10(a)(ii)	An Act respecting the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques . .	10-23
10:30.20.10(a)(iii)	Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere	10-24
10:30.20.10(a)(iv)	Regulation respecting halocarbons	10-26
10:30.20.10(a)(v)	Capture of biogas from landfill sites	10-26
10:30.20.10(a)(vi)	Bill 102 and Climate Test	10-27
10:30.20.10(b)	Environmental Assessment Legislation	10-27
10:30.20.20	Product and Building Standards	10-30
10:30.20.20(a)	Energy Efficiency Legislation	10-30
10:30.20.20(b)	Building Codes	10-30
10:30.20.30	Taxation	10-31
10:30.20.40	Transportation	10-33
10:30.20.40(a)	Transportation Electrification Action Plan . . .	10-33
10:30.20.40(b)	Regulation respecting Environmental Standards for Heavy Vehicles	10-34
10:30.20.40(c)	Highway Safety Code Requirements with respect to Speed Limiters	10-35
10:30.20.40(d)	Regulation respecting Greenhouse Gas Emissions from Motor Vehicles	10-35
10:40	Climate Change Policy Development	10-37
10:40.10	Pre-Kyoto Policy Development	10-37
10:40.20	Policy Development in the Early Kyoto Era	10-37
10:40.30	Post-Kyoto Policy Development	10-38
10:50	Current Legal and Policy Response	10-39

TABLE OF CONTENTS

10:50.10 Mitigation 10-41

10:50.10.10 Major Initiatives 10-41

10:50.10.10(a) Cap-and-Trade Regime 10-41

10:50.10.10(b) Western Climate Initiative 10-42

10:50.10.10(c) Provincial and Territorial Greenhouse Gas
Cap and Trade Initiative 10-44

10:50.10.10(c)(i) Regulation respecting mandatory
reporting of emissions of certain contaminants
into the atmosphere 10-44

10:50.10.10(d) Carbon Taxes 10-44

10:50.10.20 Supplementary Initiatives 10-45

10:50.10.20(a) [deleted] 10-46

10:50.10.20(b) Renewable Energy 10-46

10:50.10.20(c) Hydroelectricity 10-47

10:50.10.20(d) Wind Energy 10-47

10:50.10.20(e) Energy Efficiency 10-49

10:50.10.20(e)(i) Local and Community Initiatives 10-50

10:50.10.20(f) Transportation 10-51

10:50.10.20(f)(i) Quebec Public Transit Policy 10-52

10:50.10.20(f)(ii) Multi-modal Transportation 10-53

10:50.10.20(f)(ii.1) Reducing Environmental Footprint
of Road Transportation 10-53

10:50.10.20(f)(iii) Reduction of Emissions from
Individual Cars 10-54

10:50.10.20(f)(iv) Reduced Vehicle Idling and Vehicle
Inspections and Maintenance Program 10-54

10:50.10.20(f)(v) Environmental Standards for
Heavy Vehicles 10-55

10:50.10.20(g) Other Regulated Emissions Reductions 10-55

10:50.10.20(g)(i) Regulation respecting halocarbons 10-55

10:50.10.30 Carbon Sequestration 10-56

10:50.10.30(a) Capture of Biogas from Landfill Sites 10-56

10:50.10.30(b) Research and Development 10-57

10:50.10.40 A Note on Voluntary Measures 10-58

10:50.10.40(a) ClimatSol Program 10-58

10:50.10.40(b) Action-climat 10-58

10:50.10.40(c) Technoclimat 10-59

10:50.10.40(d) CRIQ 10-59

10:50.10.40(e) Premier Plan Strategique de Développement
durable de la Collectivité Montréalaise 10-59

10:50.10.40(f) Aluminum Production Sector Agreement
to Reduce GHGs 10-60

10:50.10.40(g) A Development Strategy for Quebec’s
Environmental and Green Technology Industry . . . 10-60

LAW OF CLIMATE CHANGE

10:50.10.40(h) Major Natural Risks Prevention Framework	10-61
10:50.10.40(i) Financing Clean Technology and Renewable Energy Projects	10-62
10:50.20 Adaptation	10-62
10:50.20.10 Prevention	10-62
10:50.20.20 Monitoring	10-64
10:50.20.30 Forest Management	10-64
10:55 Emissions Trading in Quebec	10-65
10:60 Regional and International Linkages	10-65
10:60.10 Western Climate Initiative	10-66
10:60.20 Provincial and Territorial Greenhouse Gas Cap and Trade Initiative	10-66
10:60.30 Regional Greenhouse Gas Initiative	10-67
10:70 Conclusion	10-67

Chapter 11 Atlantic Provinces Climate Change Law and Policy

11:10 Overview	11-1
11:20 Atlantic Canada's Climate Change Profile	11-2
11:20.10 Greenhouse Gas Emissions	11-2
11:20.10.10 Historical Emissions	11-2
11:20.10.10(a) New Brunswick	11-2
11:20.10.10(b) Nova Scotia	11-3
11:20.10.10(c) Newfoundland and Labrador	11-4
11:20.10.10(d) Prince Edward Island	11-5
11:20.10.20 Projected Emissions	11-6
11:20.10.20(a) New Brunswick	11-6
11:20.10.20(b) Nova Scotia	11-6
11:20.10.20(c) Newfoundland and Labrador	11-7
11:20.10.20(d) Prince Edward Island	11-7
11:20.20 Climate Change Impacts	11-7
11:30 Legal Framework	11-9
11:30.10 Constitutional Framework	11-9
11:30.20 Legislative and Regulatory Framework	11-10
11:30.20.10 Environmental Legislation	11-10
11:30.20.10(a) General Legislation	11-10
11:30.20.10(a)(i) New Brunswick	11-10
11:30.20.10(a)(ii) Nova Scotia	11-11
11:30.20.10(a)(iii) Newfoundland and Labrador	11-14
11:30.20.10(a)(iv) Prince Edward Island	11-15
11:30.20.10(b) Environmental Assessment Legislation	11-15
11:30.20.10(b)(i) New Brunswick	11-15
11:30.20.10(b)(ii) Nova Scotia	11-16

TABLE OF CONTENTS

11:30.20.10(b)(iii) Newfoundland and Labrador	11-17
11:30.20.10(b)(iv) Prince Edward Island	11-17
11:30.20.10(c) Wildlife Protection Legislation	11-18
11:30.20.10(c)(i) New Brunswick	11-18
11:30.20.10(c)(ii) Nova Scotia	11-19
11:30.20.10(c)(iii) Newfoundland and Labrador	11-19
11:30.20.10(c)(iv) Prince Edward Island	11-19
11:30.20.20 Energy Legislation	11-20
11:30.20.30 Product and Building Standards	11-22
11:30.20.30(a) Energy Efficiency Legislation	11-22
11:30.20.30(b) Building Codes	11-23
11:30.20.40 Taxation Legislation	11-24
11:30.20.50 Transportation Legislation	11-24
11:30.20.60 Provincial Emergency Legislation	11-25
11:40 Climate Change Policy and Development	11-26
11:40.10 Pre-Kyoto Policy Development	11-26
11:40.20 Policy Development in the Early Kyoto Era	11-26
11:40.30 Post-Kyoto Policy Development	11-29
11:50 Current Legal and Policy Response	11-30
11:50.10 Mitigation	11-30
11:50.10.10 Principal Tools	11-31
11:50.10.20 Supplementary Tools	11-31
11:50.10.20(a) Renewable Fuels	11-31
11:50.10.20(b) Renewable Energy	11-33
11:50.10.20(c) Transportation	11-34
11:50.10.20(d) Carbon Sequestration	11-35
11:50.20 Adaptation	11-36
11:50.20.10 Environmental Assessment	11-36
11:50.20.20 Operational Adaptation	11-37
11:50.20.30 Infrastructure Adaptation	11-37
11:60 Future Trends in Provincial Law and Policy	11-38
11:60.10 Regional and International Linkages	11-40
11:60.10.10 Bi-Lateral Agreements	11-40
11:60.10.20 Conference of North East Governors and Atlantic Premiers (NEG/ECP)	11-40
11:60.10.30 Regional Greenhouse Gas Initiative	11-41
11:70 Conclusion	11-41

PART III – EMERGING SUBDISCIPLINES

Chapter 12 Carbon Finance

12:10 Overview	12-1
12:20 Background: Impact of Climate Change on Businesses	12-2

LAW OF CLIMATE CHANGE

12:30	Institutional Investors, Lenders, Insurers and Climate Change	12-6
12:40	Carbon: A Separate Asset Class	12-8
12:50	How Emissions Credits are Created: An Overview	12-14
	12:50.10 Cap-and-Trade Systems Credits	12-14
	12:50.20 Offset or Project-Based Credits	12-15
12:60	Today's "Compliance" Carbon Market	12-23
	12:60.10 Kyoto and the Project-Based Mechanisms	12-23
	12:60.10.10 Project Design	12-28
	12:60.10.20 Project Concept	12-29
	12:60.10.30 Methodology	12-29
	12:60.10.40 Project Design Document	12-29
	12:60.10.50 Stakeholder Consultation(s)	12-30
	12:60.10.60 Project Validation	12-30
	12:60.10.65 Host Country Approval	12-30
	12:60.10.70 Project Registration	12-30
	12:60.10.80 Project Monitoring	12-31
	12:60.10.90 Project Verification	12-31
	12:60.10.100 Project Certification	12-31
	12:60.10.110 Commercialization	12-32
	12:60.20 CERS	12-32
	12:60.20.10 ERUs	12-34
	12:60.30 Cap-and-Trade under Kyoto	12-35
	12:60.40 The EU ETS and EUAs	12-36
	12:60.50 Australia – Almost a Cap-and-Trade System	12-42
	12:60.60 The Regional Greenhouse Gas Initiative	12-44
	12:60.70 Alberta's Compliance Regime	12-48
	12:60.80 New Zealand's Emission Trading Scheme	12-52
	12:60.90 The Western Climate Initiative and ETS in California and Quebec	12-53
	12:60.90.10 Background	12-53
	12:60.90.20 California	12-58
	12:60.90.30 Québec	12-72
	12:60.90.40 Ontario	12-75
	12:60.100 Switzerland's Emissions Trading Scheme	12-77
	12:60.110 Kazakhstan Emissions Trading Scheme	12-78
	12:60.120 Sub-National Schemes in Japan	12-78
	12:60.130 China's Emission Trading Schemes	12-79
	12:60.140 British Columbia's Compliance Regime	12-82
	12:60.150 Republic of Korea	12-83
12:70	Canada - A New and Developing "Compliance" Market	12-83
	12:70.10 The Federal Government	12-83
	12:70.20 Development of Potential Carbon Markets in Other Provinces	12-88

TABLE OF CONTENTS

12:80 The “Voluntary” Market 12-89
 12:90 Market Actors in Carbon Finance 12-96
 12:100 The Future of Carbon Finance. 12-101

Chapter 13 Project Structuring and Development

13:10 Introduction 13-1
 13:10.10 The Evolution of the Model 13-2
 13:10.20 The Challenge of “Green” or “Climate Change”
 Projects. 13-3
 13:20 From Idea to Commitment 13-5
 13:20.10 Why is Project Finance Chosen so Often? 13-5
 13:30 Choosing the Right Structure. 13-8
 13:30.10 Matching Funders to Risks 13-8
 13:30.20 The Role of Specialist Funding 13-10
 13:30.30 Reflecting the Risk Matrix in Contract 13-11
 13:40 Risk Evaluation 13-11
 13:40.10 Construction Risk 13-11
 13:40.10.10 Type of Contract 13-12
 13:40.10.20 Project Cost 13-12
 13:40.10.30 Completion 13-13
 13:40.10.40 Technology 13-14
 13:40.10.50 Force Majeure/Insurance 13-15
 13:40.10.60 Bonding Requirements 13-16
 13:40.20 Operating Risk 13-17
 13:40.20.10 Operator Risk 13-17
 13:40.20.20 Regulatory Risk. 13-18
 13:40.20.30 Cost Increases 13-18
 13:40.20.40 Force Majeure/Insurance 13-18
 13:40.30 Market Risk 13-18
 13:40.30.10 Market Price of Project Inputs and Output 13-19
 13:40.30.20 Transportation Risk. 13-20
 13:40.40 Political Risk 13-20
 13:50 Risk Allocation 13-21
 13:50.10 Contractual Structure 13-22
 13:50.20 Sponsor Arrangements 13-23
 13:50.20.10 Back-to-Back Risk Allocation 13-23
 13:50.30 Pre-development Agreements 13-24
 13:50.40 Joint Venture Agreements. 13-24
 13:50.40.10 Contributions 13-25
 13:50.40.10(a) Equity 13-25
 13:50.40.10(b) In Kind 13-25
 13:50.40.10(c) Management Resources. 13-26
 13:50.40.20 Non-competition Clauses/Conflicts of Interest . . . 13-26
 13:50.40.30 Pre-emption Rights/Rights of First Refusal. 13-27

LAW OF CLIMATE CHANGE

13:50.50 Subscription and Funding Agreements	13-28
13:50.50.10 Carried Interest	13-28
13:50.50.20 Valuation Element of Contribution in Kind	13-29
13:50.50.30 Government Funding and Tax Breaks	13-30
13:50.60 Loan Documents	13-30
13:50.60.10 Project Loan Agreement	13-31
13:50.60.10(a) The Term of the Loan	13-32
13:50.60.10(b) Transaction Costs	13-32
13:50.60.10(c) Issues of Particular Concern to Lenders	13-33
13:50.60.10(d) Lender Mitigation of Risk	13-34
13:50.60.20 Trends	13-35
13:50.70 Eco-energy Contribution Agreement	13-36
13:50.80 Project Documents	13-36
13:50.80.10 Granting Instrument	13-36
13:50.80.20 Construction Agreement	13-37
13:50.80.30 Operation and Maintenance Agreements	13-38
13:50.80.40 Supply Agreement	13-38
13:50.80.50 Project Production Off-take Agreements and Emission Reductions Purchase Agreements	13-39
13:60 Conclusion	13-40

Chapter 14 Corporate Disclosure

14:10 Introduction	14-1
14:20 Continuous Disclosure under Canadian Securities Laws	14-2
14:20.10 The Framework for Disclosure in Canada	14-2
14:20.10.10 Materiality	14-4
14:20.10.20 Forward-looking Information	14-10
14:20.20 Periodic Disclosure Requirements	14-11
14:20.20.10 Financial Statements	14-16
14:20.20.10(a) General Requirement	14-16
14:20.20.10(b) Contingencies	14-16
14:20.20.10(c) Other Accounting Issues	14-17
14:20.20.20 Management Discussion and Analysis	14-20
14:20.20.20(a) General Requirements	14-20
14:20.20.20(b) Known Trends, Demands, Commitments, Events or Uncertainties	14-22
14:20.20.20(c) Contingencies and Critical Accounting Estimates	14-23
14:20.20.20(d) Issuers with Projects	14-25
14:20.20.20(e) Interim MD&A	14-26
14:20.20.30 Annual Information Form	14-27
14:20.20.30(a) General	14-27
14:20.20.30(b) Environmental Protections	14-27
14:20.20.30(c) Environmental Policies	14-29

TABLE OF CONTENTS

14:20.20.30(d) Risk Factors 14-30
 14:20.20.30(e) Mineral Projects 14-31
 14:20.20.30(f) Litigation and Regulatory Proceedings 14-32
 14:20.20.30(g) Certification Requirements of National
 Instrument 52-109 14-34
 14:20.30 Timely Disclosure 14-36
 14:30 Disclosure Initiatives 14-38
 14:30.10 Investor Coalitions 14-39
 14:30.20 Investor Pressure for Increased Regulatory Guidance 14-40
 14:30.30 Voluntary Disclosure 14-40.4
 14:30.30.10 The Carbon Disclosure Project 14-40.5
 14:30.30.10(a) Risks, Opportunities and Strategy 14-41
 14:30.30.10(b) Emissions Accounting 14-41
 14:30.30.10(c) Emissions Management and Performance 14-42
 14:30.30.10(d) Climate Change Governance 14-42
 14:30.30.20 Sustainability Reporting 14-43
 14:30.40 Disclosure Frameworks 14-43
 14:30.40.10 Global Framework for Climate Change
 Risk Disclosure 14-43
 14:30.40.10(a) Emissions Reporting 14-44
 14:30.40.10(b) Strategic Analysis of Climate Change and
 Emissions Management 14-44
 14:30.40.10(c) Assessment of Physical Risks 14-45
 14:30.40.10(d) Analysis of Regulatory Risks 14-45
 14:30.40.20 Climate Disclosure Standards Board 14-45
 14:30.40.30 Industry Specific Disclosure Frameworks 14-47
 14:30.50 Increasing Investor Activism 14-48
 14:30.50.10 Shareholder Proposals 14-48
 14:30.50.20 Development of Investment Protocols and
 Standards 14-51
 14:30.60 Securities Law Considerations relating to Voluntary
 Disclosure 14-53
 14:30.60.10 Secondary Market Liability 14-54
 14:30.60.20 Forward-Looking Information 14-54
 14:40.60.30 Selective Disclosure 14-55
 14:30.60.40 Process and Disclosure Committees 14-55

Chapter 15 Taxation

15:10 Introduction 15-1
 15:20 Part I: Towards a More Effective Use of Taxes to Promote
 Environmental Proficiency 15-2
 15:20.10 Constitutional Considerations to Formulating an
 Appropriate Tax 15-2
 15:20.20 Tax Fairness Considerations 15-5

LAW OF CLIMATE CHANGE

15:20.30 Should Taxes be Used to Promote Climate Policy? 15-9
15:20.40 Traditional Approaches 15-12
15:20.50 Efficiency of Enhanced Deductions 15-12
15:20.60 Potential Benefit: The Economic Efficiency Rationale
for Taxes. 15-13
15:20.60.10 Pricing the Externality 15-13
15:20.60.20 Behaviour Signaling 15-15
15:20.60.30 Regulatory Effect. 15-16
15:20.70 Tax Used to Supplement Regulation 15-16.1
15:20.80 Potential Models for Environmentally Proficient Taxes 15-19
15:20.80.10 User Fees. 15-19
15:20.80.20 Earmarking 15-21
15:20.80.30 Taxes on Consumption. 15-21
15:20.80.40 Setting the Appropriate Goal 15-23
15:20.90 Carbon Taxes in Canada. 15-25
15:30 Part II: The General Tax Provisions Applicable to
Environmental Proficiency. 15-30.1
15:30.10 General Taxation Principles 15-33
15:30.10.10 The Scope of the General Test for Deductibility
of Expenses. 15-34
15:30.10.20 Spending to Promote Environmental
Proficiency: Repair or Enhancement 15-38
15:30.10.30 The Deductibility (or Not) of Taxes 15-39
15:30.10.40 Is a Fine Incurred in Business Activity
Deductible? 15-41
15:30.10.50 Deductions on Account of Capital 15-41
15:30.10.50(a) Recapture and Terminal Loss 15-43
15:30.10.50(b) Class Basis 15-44
15:30.10.50(c) Half Year Rule (Reg. 1100(2)) 15-44
15:30.10.50(d) Accelerated CCA: Renewables/High Efficiency
(Class 43.1 and 43.2). 15-44
15:30.10.60 Restrictions that Impact on Deductions 15-45
15:30.10.60(a) Specified Energy Property Rules 15-46
15:30.10.60(b) Tax Shelter Rules 15-47
15:30.10.70 Canadian Renewable and Conservation
Expenses Deductions for Renewable Energy
Expenses 15-47
15:30.10.80 Flow-Through Shares. 15-48
15:30.10.90 Reserves and Closure Expenses. 15-49
15:30.10.100 Specific Mine Reclamation Provisions. 15-51
15:30.10.110 Taxation of Subsidies 15-52
15:30.20 General Taxation of Carbon Credits 15-52
15:30.20.10 Expenditures to Reduce the Emissions of a
Business 15-53

TABLE OF CONTENTS

15:30.20.20 Acquiring or Disposing of a Quota 15-53
15:30.20.30 Emission Allowances After 2016 15-55
15:30.20.40 Purchasers — Treatment of Acquisition and
 Related Costs 15-57
15:30.20.50 Carbon Credits and HST/GST Treatment 15-57
15:30.20.60 Other Costs 15-58
15:30.30 The Taxation of Investment Vehicles 15-59

(The next page is CON-23)

TABLE OF CONTENTS

Chapter 16 Litigation

16:10 Introduction 16-1

16:20 The Interplay Between Litigation and Regulation 16-1

16:30 Tort Litigation 16-3

 16:30.10 Negligence 16-4

 16:30.10.10 The Standard of Care 16-5

 16:30.10.20 The Duty of Care 16-6

 16:30.10.30 Residual Policy Considerations 16-10

 16:30.20 Nuisance 16-10

 16:30.20.10 The Two Torts of Nuisance 16-11

 16:30.20.20 Public Nuisance and the Crown’s Parens
 Patriae Standing 16-12

 16:30.20.30 Private Nuisance and Class Actions 16-16

 16:30.30 Strict Liability (the Rule in Rylands v. Fletcher) 16-18

 16:30.40 Common Issues in Tort Actions 16-18

 16:30.40.05 Jurisdiction 16-19

 16:30.40.10 Causation 16-19

 16:30.40.10(a) The “But For” Test for Causation 16-20

 16:30.40.10(b) The “Material Contribution” Test for
 Causation 16-21

 16:30.40.20 Joint and Several Liability v. Market
 Share Liability 16-22

 16:30.40.30 Limitations Issues 16-23

 16:30.50 Conspiracy to Injure by Unlawful Means 16-23

16:40 Securities Litigation 16-25

16:50 Climate Change Regulation Litigation 16-27

 16:50.05 Public Interest Standing 16-28

 16:50.10 Litigation to Compel Government Ministers by
 Petition for Mandamus 16-29

 16:50.20 Litigation to Compel Government Agencies to
 Regulate 16-30.1

 16:50.30 Petitioning Government to Regulate Differently 16-31

 16:50.40 Regulatory Enforcement Litigation 16-31

 16:50.50 Seeking Judicial Review of Particular Regulatory
 Decisions 16-32

 16:50.60 Administrative Review 16-34

 16:50.70 Administrative Law Challenges to the Validity of
 Climate Change Regulations 16-36

Chapter 17 Climate Change and Property Law

17:10 Introduction 17-1

17:20 Property Rights Under Emissions Trading Regimes 17-2

 17:20.10 The Concept of Property 17-2

 17:20.20 Relevance of Property Concepts 17-3

LAW OF CLIMATE CHANGE

17:20.30 Federalism and Jurisdiction over Property and the Environment 17-4

17:20.40 Nature of Property Rights in Emissions Allowances, Credits and Offsets 17-9

17:20.40.10 An Overview of Emissions Trading Systems 17-9

17:20.40.10(a) Regulated “Compliance” Systems 17-9

17:20.40.10(b) Voluntary Systems 17-10

17:20.40.20 Allowances, Credits and Offsets as Economic Assets 17-13

17:20.40.30 The Status of Allowances and Credits in Regulated Trading Systems 17-14

17:20.40.30(a) Ontario 17-15

17:20.40.30(b) Alberta 17-18

17:20.40.30(c) British Columbia 17-20

17:20.40.30(d) Saskatchewan 17-22

17:20.40.30(e) Quebec 17-23

17:20.40.40 Voluntary Offsets and Credits in Unregulated Trading Systems 17-25

17:20.40.50 Are Emissions Allowances, Credits and Offsets Intangible Personal Property? 17-27

17:20.40.50(a) The Traditional Property Approach 17-29

17:20.40.50(b) The Regulatory Approach 17-31

17:20.40.50(c) The Commercial Realities Approach 17-33

17:20.40.50(d) Saulnier: The “Bundle of Rights” Approach . 17-34

17:20.40.50(e) Legislative Responses 17-38

17:20.40.50(f) Applying the Tests to Emissions Allowances, Credits and Offsets 17-39

17:20.50 Transfers of Credits and Offsets 17-40

17:20.60 Taking Security Interests in Credits and Offsets 17-42.4

17:30 Property Law Issues Relating to Solar and Wind Energy. 17-42.6

17:30.10 Common Law Rights to Light and Air 17-42.6

17:30.10.10 A Brief Overview of Easements 17-42.8

17:30.10.10(a) The Nature and Types of Easement 17-42.8

17:30.10.10(b) Creation of Easements 17-42.9

17:30.10.10(c) Express Easements 17-43

17:30.10.10(d) Implied Easements 17-43

17:30.10.10(e) Proprietary Estoppel 17-45

17:30.10.10(f) Prescription 17-45

17:30.20 The Doctrine of Ancient Lights 17-46

17:30.30 Practical Limitations to the Doctrine of Ancient Lights 17-48

17:30.40 American Jurisprudence Relating to Rights to Sunlight 17-50

TABLE OF CONTENTS

17:30.50 Application of Nuisance Principles to Protect Rights
to Light and Air 17-52
17:30.60 Express Easements for Light and Air 17-56
17:30.70 Restrictive Covenants 17-59

(The next page is CON-25)

TABLE OF CONTENTS

17:30.70.10 Enforcing the Burden of a Covenant 17-59

17:30.70.20 Enforcing the Benefit of a Covenant 17-60

17:30.70.30 Enforcing a Covenant After Sale of Both
 Dominant and Servient Lands 17-62

17:30.70.40 Building Schemes 17-62

17:30.70.50 Registration Requirements 17-64

17:30.80 Statutory Rights to Modify or Discharge Restrictive
 Covenants 17-65

17:30.90 Legislative Solutions to Protect Access to Sun and
 Wind 17-67

17:40 Property Law Issues Relating to Carbon Capture and
 Storage 17-68

17:40.10 Who Owns the Pore Space? 17-71

17:40.10.10 Common Ownership of the Surface and
 Subsurface 17-72

17:40.10.20 Divided Ownership of the Surface and
 Subsurface 17-78

17:40.10.20(a) The English Approach to Pore Space
 Ownership 17-82

17:40.10.20(b) The American Approach to Pore Space
 Ownership 17-83

17:40.10.20(c) The Canadian Approach 17-85

17:40.10.30 Statutory Provisions Governing Subsurface
 Ownership 17-89

17:40.10.30(a) Ontario 17-90

17:40.10.30(b) Nova Scotia 17-91

17:40.10.30(c) Saskatchewan 17-91

17:40.10.30(d) Alberta 17-92

17:40.10.30(e) British Columbia 17-96

17:40.10.30(f) Other Jurisdictions and Proposals 17-97

17:40.10.30(f)(i) United States 17-97

17:40.10.30(f)(ii) Australia 17-99

17:40.10.30(f)(iii) European Union 17-100

17:40.10.30(f)(iv) Other Proposals 17-100

17:40.10.40 Ownership Rights in Aquifers 17-101

17:40.20 Liability Issues 17-103

17:40.20.10 Classification of CO₂ 17-104

17:40.20.20 Title to Injected CO₂ 17-106

17:40.20.30 Liability for Leakage and Lateral Migration of
 Injected CO₂ 17-108

17:40.20.30(a) Subsurface Trespass 17-111

17:40.20.30(b) Nuisance 17-115

17:40.20.30(c) Strict Liability: The Rule in Rylands v.
 Fletcher 17-123

LAW OF CLIMATE CHANGE

17:40.20.30(d) Statutes of Limitation 17-129
17:40.20.30(e) Long-Term Liability Transfer 17-130
17:50 Green Building Standards 17-138
17:50.10 Voluntary Certification Programs - LEED and
BOMA BEST. 17-142
17:50.10.10 LEED 17-142
17:50.10.20 BOMA BEST 17-147
17:50.20 Liability Issues 17-149
17:50.30 Legal Authority to Impose Mandatory Green
Building Standards 17-160
17:50.30.10 The Constitutional Division of Powers 17-162
17:50.30.10(a) Division of Powers 17-162
17:50.30.10(b) Judicial Treatment of Local Municipalities . . 17-163
17:50.30.20 The City of Toronto Act, 2006 17-164
17:50.30.20(a) Purposes of the Act 17-164
17:50.30.20(b) General Powers. 17-165
17:50.30.20(c) Legislative Authority for Toronto’s Green
Roof By-Law 17-165
17:50.30.30 The Municipal Act, 2001 17-167
17:50.30.30(a) Purposes of the Act 17-167
17:50.30.30(b) Judicial Treatment 17-168
17:50.30.40 The Planning Act, 1990 17-168
17:50.30.40(a) Official Plans 17-168
17:50.30.40(b) Zoning By-Laws 17-165
17:50.30.40(c) Judicial Treatment of Zoning By-laws 17-170
17:50.30.40(d) Site Plan Control Areas. 17-172
17:50.30.50 The Building Code Act, 1992 17-173
17:50.30.50(a) Property Standards Provisions. 17-173
17:50.30.50(b) Regulatory Powers 17-173
17:50.30.60 The Greenbelt Act, 2005 17-175
17:60 “Green” Leasing 17-176
17:60.10 Environmental Management Plan 17-180
17:60.20 Carbon Offsets 17-183
17:60.30 Insurance 17-186
17:60.40 Green Building Accreditation 17-186
17:60.50 Rules and Regulations 17-186

PART IV – CROSS BORDER CONTEXT

Chapter 18 United States

18:10 Overview 18-1
18:20 United States Climate Change Profile 18-1
18:20.10 Greenhouse Gas Emissions 18-1

TABLE OF CONTENTS

18:20.20 Historical Emissions 18-2
 18:20.20.10 Projected Emissions 18-2
 18:20.30 Climate Change Impacts 18-3
 18:20.30.10 Historical Impacts 18-3
 18:20.30.20 Projected Impacts. 18-3
 18:30 Legal Framework 18-4
 18:30.10 Constitutional Framework 18-4
 18:30.20 Legislative and Regulatory Framework 18-5
 18:30.20.10 Environmental Legislation 18-5
 18:30.20.20 Other Federal Legislation 18-8
 18:30.30 Climate Change Litigation 18-9
 18:30.30.10 Statutory Claims to Force Governmental
 Action. 18-10
 18:30.30.20 Statutory Claims to Stop Governmental Action . . 18-12
 18:30.30.30 Public Nuisance Claims 18-13
 18:30.30.40 Fraudulent Concealment of Climate Change
 Risk 18-15
 18:30.30.50 Disclosure to Shareholders 18-16
 18:30.30.60 Industry Lawsuits 18-16
 18:40 Climate Change Policy Development 18-18
 18:40.10 Pre-Kyoto Policy Development 18-18
 18:40.20 Policy Development in the Early Kyoto Era 18-18
 18:40.30 Post-Kyoto Policy Development 18-19
 18:40.30.10 Asia-Pacific Partnership 18-20
 18:40.30.20 Bali 18-20
 18:40.30.30 G8/Major Economies Meeting 18-21
 18:40.30.35 Recent UNFCCC Summits. 18-21
 18:40.30.40 National Security 18-22
 18:40.30.50 Bilateral Agreements 18-23
 18:50 Current Legal and Policy Response 18-24
 18:50.10 Mitigation 18-24
 18:50.10.10 Principal Tools. 18-24
 18:50.10.10(a) Regional Cap-and-Trade Regimes 18-24
 18:50.10.10(a)(i) Regional Greenhouse Gas Initiative 18-25
 18:50.10.10(b) Tax Incentives 18-29
 18:50.10.20 Carbon Sequestration. 18-30
 18:50.10.30 Other Relevant State Legislation. 18-31
 18:50.10.30(a) Economy-Wide State Greenhouse Gas
 Reduction Legislation. 18-31
 18:50.10.30(b) State Vehicle Miles Traveled Reduction Laws 18-33
 18:50.10.30(c) Climate Change Commissions and Plans . . . 18-33
 18:50.10.30(d) Greenhouse Gas Performance Standards . . . 18-34
 18:50.10.30(e) Local Efforts. 18-35
 18:50.10.40 Voluntary Corporate Actions 18-36

LAW OF CLIMATE CHANGE

18:50.10.40(a) Voluntary Policies and Programs Supported
by the United States 18-36
18:50.10.40(b) [deleted heading]. 18-37
18:50.10.40(c) Centre for Climate and Energy Solutions 18-37
18:50.10.40(d) Carbon Disclosure 18-38
18:60 Potential Legislative Action on Climate Change 18-39
18:60.10 Previously Proposed Federal Legislation 18-39
18:70 Conclusion 18-42

**Chapter 19 North American and Global Integration of
Carbon Control Markets**

19:10 Overview 19-1
19:20 United States Federal Efforts to Address Greenhouse
Gas Emissions 19-2
19:20.10 The Environmental Protection Agency’s Regulatory
Program 19-2
19:20.10.10 EPA Regulation of the Transportation Sector 19-2
19:20.10.20 EPA Regulation of Manufacturing and Utilities 19-4
19:20.20 Possible Future Climate Change Legislation 19-8
19:20.30 Prospects for Market Oriented Regulation Under
Current Law 19-9
19:30 Prospects for Integration of State Efforts to Combat
Climate Change 19-11
19:30.10 How Regional Programs and Proposals Address
Integration with a Broader Program. 19-14
19:30.20 How Federal Proposals Address Integration with
Regional Programs 19-14
19:40 Conflicting Elements of Existing Programs and Proposals. 19-16
19:40.10 Program or Proposal Goals. 19-16
19:40.20 Greenhouse Gases Covered by Programs or
Proposals 19-18
19:40.30 Covered Entities in Programs or Proposals 19-19
19:40.30.10 RGGI Covered Entities 19-19
19:40.30.20 WCI Covered Entities 19-19
19:40.30.30 MGGRA Covered Entities 19-19
19:40.30.40 U.S. Federal Covered Entities. 19-20
19:40.30.50 Canadian Federal Covered Entities. 19-20
19:40.30.60 Covered Entities Conclusion. 19-22
19:40.40 CO₂ Equivalency 19-22
19:40.50 Emission Allowance Allocation. 19-23
19:40.50.10 RGGI Allowance Allocation 19-23
19:40.50.20 WCI Allowance Allocation. 19-24
19:40.50.30 MGGRA Allowance Allocations 19-24
19:40.50.40 U.S. Federal Allowance Allocations 19-25

TABLE OF CONTENTS

19:40.50.50 Canadian Federal Allowance Allocations 19-25

19:40.50.60 Allowance Allocation Conclusion 19-26

19:40.60 Offsets 19-27

19:40.60.10 RGGI Offsets 19-27

19:40.60.20 WCI Offsets 19-27

19:40.60.30 MGGRA Offsets 19-28

19:40.60.40 U.S. Federal Offsets 19-28

19:40.60.50 Canadian Federal Offsets 19-29

19:40.60.60 Offsets Conclusion 19-30

19:40.60.70 Conclusion. 19-31

19:50 International Initiatives 19-32

19:50.10 Overview 19-32

19:50.20 The United Nations Framework Convention on
Climate Change and the Kyoto Protocol 19-33

19:50.30 Australian and New Zealand Greenhouse Gas
Reduction Measures 19-34

19:50.40 The European Union Greenhouse Gas Emission
Trading System 19-36

19:50.40.10 EU ETS Overview and Goals 19-36

19:50.40.20 Greenhouse Gases and Entities Covered by
EU ETS 19-37

19:50.40.30 Description of the EU ETS System and Implications
for Integration Efforts Elsewhere 19-37

19:50.40.40 CO₂ Equivalency 19-41

19:50.40.50 Emission Allowance Allocation under EU ETS . . . 19-41

19:50.40.60 Offsets 19-41

19:50.50 Emerging Greenhouse Gas Reduction Strategies:
The Case of China 19-42

19:60 Developing Emissions and Offset Markets 19-43

19:60.10 Currencies 19-43

19:60.20 Exchanges 19-44

19:70 State of Play of International Negotiations. 19-46

19:70.10 Overview 19-46

19:80 General Considerations for Integrated, Multi-Jurisdictional
Trading Regimes 19-47

19:80.10 Overview 19-47

19:80.20 Benefits of a Multi-Jurisdictional Trading System 19-48

19:80.20.10 Minimizing Carbon Leakage 19-48

19:80.20.20 Maximizing Economic Efficiency 19-49

19:80.20.30 The Role of the Developing World 19-50

19:80.30 Components Necessary to Implement a Multi-
Jurisdictional Trading System 19-51

19:80.30.10 Goals of an International Trading System. 19-51

19:80.30.20 Coverage and CO₂ Equivalency 19-52

LAW OF CLIMATE CHANGE

19:80.30.30 Allowance Allocation	19-53
19:80.30.40 Offsets in an International Trading System	19-54
19:80.40 Enforcement in International Trading Systems	19-55
19:80.50 World Trade Implications of International Trading Systems	19-55
19:80.60 Conclusion of General Considerations for an International Trading Regime	19-57
19:90 Tools for Harmonizing a North American Trading Regime	19-57
19:90.10 Environmental Treaties.	19-57
19:90.20 Trade Treaties	19-58
19:90.30 Partnerships	19-59
<i>Words and Phrases</i>	WP-i
<i>Selected Legal Literature</i>	SLL-i
<i>Index</i>	IN-1