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Alberta – British Columbia Environmental Harmonization: Helping or Hindering the Environment?

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The Alberta and British Columbia governments are moving forward on a harmonization initiative which includes a plan to streamline environmental laws and processes between the two provinces. However, it is not clear if such provincial bilateral agreements will result in enhanced environmental protection or provide the starting point for the race to the bottom for environmental standards.

Background

In October 2003, Alberta and British Columbia held the first of what would be a series of joint Premiers and Ministers' Meetings. The first Joint Cabinet Meeting was held in October 2003. At that meeting, Alberta Premier Ralph Klein and British Columbia Premier Gordon Campbell signed a Protocol of Cooperation, committing their governments to work more closely together. The second Joint Cabinet Meeting was held on May 26, 2004. This meeting resulted in the signing of the *Alberta - British Columbia Memorandum of Understanding Environmental Cooperation and Harmonization* (the "Environmental MOU") between Alberta Environment and the British Columbia Ministry of Water, Land and Air Protection[1] along with four other agreements including one aimed at the regulatory harmonization of the oil and gas sector.[2] A third Joint Cabinet Meeting was recently held on March 18, 2005, which resulted in the signing of three more agreements including one on bilateral water management.[3]

The Environmental MOU

The Environmental MOU signals a more cooperative approach to environmental management, including a general move towards equivalent standards and regulations in both provinces. Proposed areas of harmonization include ozone depleting substances and halocarbons, deep well injection for oil and gas operations, special waste sites registry, waste paint stewardship and electronic product stewardship.[4]

The Environmental MOU has three broad objectives. One objective is aimed at protecting environmental quality through the sharing of best practices. There are also numerous economic objectives that focus on reducing costs and adding value for governments, as well as providing "an increasingly seamless situation for companies doing business in British Columbia and Alberta." A further objective is to engage the federal government to reduce duplication in environmental management and regulation.

The governments are now at the stage of establishing steering committees and developing a joint work plan to articulate the timelines and details involved in implementing the agreement. However, given the breadth of the objectives, it is still

unclear what direction environmental harmonization will take and what results it will achieve.

Opportunities and risks

In the best case scenario, the Environmental MOU provides an opportunity and a forum for sharing best practices on environmental regulation. Enhanced cooperation could lead to effective policymaking and innovation at a faster pace by taking the best and most effective environmental laws from one province and using them as a template for the other. Harmonization may also be an effective tool to address cross border environmental concerns such as transboundary pollution or transboundary ecosystem management, although this may be better accomplished through specific agreements. For example, the MOU on water management is specifically aimed at developing a transboundary water management agreement targeting areas such as the Peace River watershed.

On the other hand, the Environmental MOU also runs the risk of leading to the adoption of the lowest common denominator with respect to environmental laws and practices. One of the clear advantages and objectives of harmonization is to promote business efficiency. Many business activities transcend provincial boundaries and the argument is made that business is made less efficient if it has to conform to differing provincial laws and regulatory requirements. There is a temptation for provinces to use lower environmental standards as a way to attract, or retain, industry.

Further, it must be noted that the Environmental MOU is part of a broader initiative between Alberta and British Columbia to harmonize or streamline services. What underlies this is a larger economic strategy to break down trade and investment barriers and lower costs for taxpayers and businesses.[5] Against this background, it is more difficult to accept the claim that the harmonization effort is designed to best achieve a superior level of environmental protection. Harmonization or the streamlining of processes are useful measures in maximizing profits in industry but are unlikely to yield an increased efficiency in environmental management, since such measures often reduce the very resources (i.e. people power) that ensure efficient and good quality environmental management.

Other harmonization initiatives

Harmonization initiatives in the realm of environmental law are not new. In 1998, the federal, provincial and territorial governments (with the exception of Quebec) signed the *Canada-wide Accord on Environmental Harmonization* (the "Accord") and related sub-agreements. The Accord is a framework agreement containing mechanisms for better cooperation and coordination between the two levels of government. The stated objectives of the Accord are to enhance environmental protection, promote sustainable development, and achieve greater effectiveness and efficiency of environmental management for issues of Canada-wide interest.[6]

Unfortunately, the Canadian Constitution does not specifically refer to "environment" when it deals with the distribution of legislative powers between federal and provincial governments. Thus, both levels of government have the ability to intervene in areas relating to the environment regardless of whether there is overlap and duplication. Generally speaking, the Accord was aimed at reducing duplication and overlap between the federal and provincial governments. The rationale was that governments could potentially save money and cope with declining resources by a division of tasks between

the two levels of government. Arguably, there may be value in delineating the roles and responsibilities of the provincial and federal governments in environmental matters where there is shared jurisdiction.[7] However, there appears to be little or no value in addressing duplication and overlap between Alberta and British Columbia. It is not clear what cost savings or value adding could be derived from jointly dealing with environmental regulation issues that are largely within provincial jurisdiction.

A further question arises with respect to the Environmental MOU's objective for Alberta and British Columbia to jointly engage the federal government to reduce duplication. It is not clear how this would be accomplished and how a provincial bilateral agreement would further the aims of the Accord.

Conclusion

Harmonization, as a means of improving efficiency and ensuring consistency, has an innate appeal. However, there are doubts whether increased cooperation between the two provinces will protect environmental quality or result in any significant cost saving opportunities for the provinces. Overall, improved environmental protection is probably best achieved through adequate organization and the injection of money and staff within provincial boundaries rather than focusing on broad inter-provincial harmonization initiatives.

[1] The Environmental MOU is available online: Government of Alberta, International and Intergovernmental Relations <http://www.iir.gov.ab.ca/canadian_intergovernmental_relations/documents/Environmental_Cooperation_MOU.pdf>.
[2] *Memorandum of Understanding Alberta – British Columbia Protocol for Energy Cooperation and Regulatory Harmonization,* 26 May 2004, online: Government of Alberta, International and Intergovernmental Relations <http://www.iir.gov.ab.ca/canadian_intergovernmental_relations/documents/Energy_Cooperation_MOU.pdf>.
[3] *British Columbia – Alberta Memorandum of Understanding Bilateral Water Management Agreement Negotiations,* 18 March 2005, online: Government of Alberta, International and Intergovernmental Relations <http://www.iir.gov.ab.ca/canadian_intergovernmental_relations/documents/WaterManagementNegotiatingMOU_March22005_FINAL.pdf>.
[4] Government of Alberta, News Release, "Alberta and British Columbia work together to improve efficiency and reduce duplication" (26 May 2004) online: Government of Alberta, International and Intergovernmental Relations <http://www.gov.ab.ca/acn/200405/16507.html>.
[5] *Ibid.;* see the comments from British Columbia Premier Gordon Campbell and Alberta Premier Ralph Klein.
[6] The Accord and related CCME harmonization documents are available online: The Canadian Council of Ministers of the Environment (CCME) <http://www.ccme.ca/initiatives/environment.html?category_id=25>.
[7] Notwithstanding these objectives, the Accord has attracted criticism including concerns about the lack of public participation and accountability and the diminished federal leadership role in environmental matters. See Karen L. Clark and Mark S. Winfield, "The Environmental Management Framework Agreement - A Model for Dysfunctional Federalism? An Analysis and Commentary" (February 1996), online: Canadian Institute for Environmental Law and Policy <http://www.cielap.org/infocent/research/agree.html#contents>. See also Jason Unger, "'Harmony' in Toxic Substance Regulation Muddles *CEPA 1999* Five Year Review" Environmental Law Centre *News Brief*, Vol. 20:1, 2005, online: Environmental Law Centre <http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?id=861>.

Legal, Practical, and Political Impacts of The *Species At Risk Act* Are Beginning to Evolve: How Will Our Governments Respond?

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Alberta, and the rest of Canada are quickly approaching the one-year anniversary of the federal *Species at Risk Act*[1] ("*SARA*") fully coming into force.[2] On January 12, 2005 the Canadian government announced the addition of 73 species to the list of endangered, threatened, extirpated and species of special concern.[3] As additional species are listed there will likely be significantly more pressures on both federal and provincial jurisdictions to live up to their obligations to protect species and biodiversity.

Notwithstanding widespread criticism of *SARA* for the breadth of government discretion involved in having the Act apply to lands within provincial jurisdiction, it appears that industry and landowners can expect to feel the practical and political implications of *SARA* in short order.

In particular, as more clarity is provided regarding the habitat and residency requirements of species and as recovery strategies begin to be produced by the federal government, the need for awareness and diligence on the part of landowners and industry will increase. Similarly the political and, to a lesser degree, legal implications of the safety-net provisions are bound to become more relevant as pressure can be asserted by lobbying forces to point out inadequacy in provincial policies and laws.

Defining species requirements have real provincial impacts: an Alberta example

The Sprague's pipit or *Anthus spragueii,* listed as a threatened species under *SARA*, is a ground nesting bird that is protected under the *Migratory Birds Convention Act, 1994*[4] ("*MBCA*") and under the general prohibition sections of *SARA*.[5] The pipit's distribution, covering much of the southeast portion of Alberta and a good deal of other prairie provinces, makes the pipit's residences and its recovery strategy of significant relevance to both public and private lands.[6] This is particularly the case as the bulk of their residency requirements are in areas that are subject to significant oil and gas and agricultural pressures.

Being a species covered by the *MBCA*, the Sprague's pipit is protected federally under sections 32 and 33 of *SARA*, notwithstanding the geographic location of the bird. Provincially the pipit is not listed as threatened, but it is considered a "non-game" bird under the Provincial *Wildlife Act*.[7] Similarly the Piping plover is considered threatened and is protected by *SARA* provisions notwithstanding its geographic location as a migratory bird.

As the distribution and residency requirements for the species begin to be defined, the importance of being aware of the listed species' nesting or residency habitat requirements becomes more evident. While not determinative, it appears likely that as residence and habitat requirement become published, the burden of being duly diligent for those who may disturb a nest of a pipit will increase.

Indeed, the residency definitions, now being published by the federal government, while not having legal force per se, may have implications for both enforcement and for determining the effectiveness of the due diligence defence provided by s. 100 of the Act.

Recovery strategy process will bring renewed pressures

The implications for industry and landowners will truly be felt once a recovery strategy is formulated, particularly where critical habitat is identified (although *SARA*'s critical habitat protection provisions require Cabinet action to apply, even when dealing with migratory birds).

Once critical habitat has been identified under the *SARA* recovery strategy and action plan there will be increased political pressure placed on provinces to follow suit.

Political pressures may be the true utility of *SARA*

Provincial implications of *SARA* are also becoming increasingly apparent as the ability to contrast federal science and protection with provincial efforts becomes increasingly easy.

Groups and individuals who would see that provincial protection of threatened species and their habitat extends beyond migratory birds and aquatic species can rely on the *SARA* derived documents to effectively challenge provincial inactivity. This is beginning to occur as groups turn to petitioning the federal government to intervene provincially for lack-lustre protection of species such as the woodland caribou in Alberta and the spotted owl in British Columbia.[8]

While the federal discretion in *SARA* makes federal intervention in provincial protection unlikely, the political mileage obtained through broadly publicizing the inadequacies of provincial laws (when compared with *SARA*) is likely to be an effective tool for forcing provincial industry and government into action.

Furthermore, if the federal response appears to indicate that the federal Minister is in some way fettering the discretion given under *SARA*, one might expect a legal challenge to force some federal action to be taken.[9]

Anniversary challenges for species at risk are still ahead

Whether *SARA* becomes an effective tool for species protection is still an open question. In large part the effectiveness of the legislation still depends on how aggressively the federal government approaches its role for species protection on provincial land.

On the most practical of levels, effective enforcement of *SARA* and the protection of critical habitat, matters that are arguably required to save a species, are not yet addressed by federal law or policy.

With some species having habitat requirements that are somewhat ubiquitous, such as the long natural grasses needed for nesting by the threatened Sprague's pipit or the burrows needed by the endangered Burrowing Owl, the issue of enforcement and habitat protection have yet to be felt. Planning and resources are needed if industrial or agrarian impacts on these species' habitats are to be curtailed.

An effective enforcement policy for species protection also appears to be labour intensive. To be successful an enforcement policy would first identify suitable habitat, followed by identification of particular residences and woluld subsequently monitor

impacts on the residences and habitat, all requiring significant time, science and money. Effective enforcement may further include assessment of sectoral impacts on species and habitat and require changes to agricultural or industry practice.

Using the pipit once again as an example, one can readily foresee the difficulties in enforcement. Knowledge and control of grazing rates, vegetation cover and timelines would be required to ensure that the pipit's habitat suitability is maintained. In this regard the recovery plans and identification of critical habitat become significantly more relevant.

Currently, the capacity and resources devoted to enforcement and implementation of the Act is not well defined. Indeed, it may be that reliance on private enforcement tools, such as a private prosecution, will carry the protective provisions of *SARA* forward.

Conclusions

Industry, farmers, and private landowners must continue to be diligent in maintaining adequate knowledge about species at risk that may occur in or on their lands. This includes being cognizant of one's operational impacts on residences of these animals, particularly aspects of nesting periods and habitat requirements for certain species.

As recovery plans begin to be published one can expect further pressure to be exercised on the federal government to identify critical habitat within provinces and to force provincial action. This pressure may be merely political or it may come in a legal form, either through the swearing of private informations to prosecute applicable *SARA* provisions or through judicial review of the exercise of the federal Minister's discretion.

What seems clear is that *SARA* may have effectively made inaction, either as a party who may impact a species at risk or as the government attempting to protect the species, a thing of the past.

[1] S.C. 2002, c. 29.
[2] All sections of *SARA* were in force as of June 1, 2004. See online: Species at Risk Act Public Registry <http://www.sararegistry.gc.ca/the_act/HTML/Guide_e.cfm#30>.
[3] The amendments to Schedule 1 of *SARA* occurred by way of Order in Council, *Order Amending Schedule 1 to 3 to the Species at Risk Act*, P.C. 2005-14, C. Gaz. 2005.II.73.
[4] S.C. 1994, c. 22.
[5] *Supra* note 1 at ss. 32-33.
[6] For a review of the pipit's habitat, see online: Species at Risk <http://www.speciesatrisk.gc.ca/search/speciesDetails_e.cfm?SpeciesID=573> . Similarly, the residency definition is available at online: Species at Risk Act Public Registry <http://www.sararegistry.gc.ca/plans/showDocument_e.cfm?id=599>.
[7] R.S.A. 2000, c. W-10, as amended.
[8]The Sierra Legal Defence Fund, in conjunction with the Canadian Parks and Wilderness Society and the Alberta Wilderness Association announced that they would be petitioning the federal government regarding provincial protection of woodland caribou. The Sierra Legal Defence Fund had earlier petitioned the government in relation to protection of the spotted owl in British Columbia. (See online: FFWD Weekly <http://www.ffwdweekly.com/Issues/2005/0224/news2.htm> and Sierra Legal Defence Fund <http://www.sierralegal.org/m_archive/pr04_03_02.html> respectively).
[9] A challenge of the "safety-net" provisions of the Act (such as ss. 34 or 61) would likely require proof that the Minister, in forming or failing to form his opinion on provincial species protection, failed to adequately consider relevant considerations. It is difficult to determine if these circumstances would ever occur, however the political and practical implications of failing to act, both provincially and federally, may be significant.

In Progress

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Legislative Proposals

Federal The federal government released their action plan for meeting commitments under the Kyoto Protocol. *Moving Forward on Climate Change: A Plan for Honouring Our Kyoto Commitment*, released on April 13, 2005, is available via the website www.climatechange.gc.ca/english/newsroom/2005/plan05.asp?pid=179.

Alberta Bill 11, the *Stettler Regional Water Authorization Act* was introduced on March 16, 2005 and passed Committee stage on April 6, 2005. The Bill authorizes the withdrawal of water from the South Saskatchewan River Basin to serve the communities of Donalda, Big Valley, Rochon Sands, White Sands, Byemoor, Endiang, Erskine, Nevis, and Red Willow, and the subsequent release of that water into the North Saskatchewan River Basin. A licence authorizing this transfer would be issued with no appeal to the Environmental Appeals Board. This is the second interbasin transfer authorized by legislation. The first was Bill 33, the *North Red Deer Water Authorization Act*, passed in 2002.

Manitoba Bill 3, *The Recreational Trail Property Owners Protection Act*, which will amend the *Occupiers' Liability Act,* was introduced on March 22, 2005. The Bill is intended to encourage landowners to allow recreational trails on their property by reducing their liability.

Enforcement Actions

Enforcement action on the federal level includes:

- a Saskatchewan waterfowl outfitter and three guides pled guilty and were convicted on 51 counts of violating the *Migratory Birds Convention Act* as well as on five counts under the *Saskatchewan Wildlife Act* for offences that occurred in 2002 and 2003. Sentencing is set for May 12, 2005.

- a Québec resident was sentenced to pay $47,456 in fines and court costs after pleading guilty to trafficking in black bear gall bladders. Marc Langlois was charged with 25 counts under the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* and with 20 charges under the provincial *Act Respecting the Conservation and Development of Wildlife*.

- Akso Nobel Chemicals Ltd. of Saskatoon was sentenced to a penalty of $80,000 after pleading guilty to one count of violating the federal *Fisheries Act*. The release occurred in 2002 when a substance used in the application of asphalt was released into the plant's effluent system and later into the South Saskatchewan River. The penalty consists of a $10,000 fine and a

payment of $70,000 to the Environmental Damages Fund. As well, the company is required to improve their material safety data sheets and employee training with respect to the substance, and to bring their effluent system into compliance with an Inspector's Direction issued by Environment Canada.

Court of Appeal Clarifies Sentencing Principles for Environmental Offences

R. v. Terroco Industries Limited, 2005 ABCA 141

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A recent decision of the Alberta Court of Appeal has clarified the principles to be applied in sentencing for environmental offences. In *R. v. Terroco Industries Limited*,[1] the defendant corporation ("Terroco") was charged under the Alberta *Environmental Protection and Enhancement Act* ("EPEA") with causing or permitting the release of a substance that may cause a significant adverse effect.[2] Terroco was also charged under the Alberta *Dangerous Goods Transportation and Handling Act* ("DGTHA") with failing to comply with safety requirements in the handling or transportation of dangerous goods.[3]

The charges were laid after a newly hired branch manager failed to properly complete shipping documentation before transport. The driver who was to deliver the chemicals, also a new hire, did not realize the nature of the chemicals, in spite of the fact that the containers themselves were properly labeled. He improperly mixed the two chemicals in the same tank, and the result was a potentially lethal chlorine gas. Another driver who was at the site was exposed to the released gas, and suffered serious injury to his respiratory system. This was the basis for the EPEA charge.

In response to the incident, the first driver drove the truck to the destination, a well-site. In pumping the mixture into the well as contemplated for an acid wash, the mixture ate through the seals on the pump mechanism. Approximately one barrel was sprayed onto the ground near the well. This spill was the basis for the DGTHA charge.

The trial judge imposed fines of $50,000 for the EPEA offence and $5,000 for the DGTHA offence. On appeal to Queen's Bench, the convictions were upheld but the fines were raised to $150,000 and $15,000, respectively.

On further appeal of the sentence by Terroco, the Court of Appeal affirmed the $150,000 fine on the EPEA charge, but restored the sentence of the trial judge on the DGTHA charge.

The issue

In granting leave, the Court of Appeal agreed to address the principles that apply to sentencing under environmental protection legislation. The principles articulated will have broad application in environmental cases, and provide guidance to potential offenders on the scope of liability. This article examines highlights of the decision.

Culpability

The Court confirmed that culpability should be a dominant consideration in sentencing for environmental cases. Failure to take simple and inexpensive steps to avoid the offence is an aggravating factor, as is reasonable foreseeability of the danger.

The Court stressed that sentencing judges should attempt to place the offender on a continuum of culpability, between virtual due diligence and virtual intent. If the offender narrowly misses meeting the standard of due diligence, the sentence should reflect this. Likewise, a less diligent offender will normally attract a heavier penalty.

Sentencing judges have examined the level of due diligence in previous cases; this is not new. However, the effect of the *Terroco* decision is to require sentencing judges to consistently undertake a more rigorous review and analysis. They must now go beyond reviewing whether the defendant acted with due diligence, and thoroughly examine what steps could have been taken to minimize foreseeable risk. This stronger correlation between the degree of due diligence and sentencing reinforces the importance of effective training and environmental protocols.

Acceptance of responsibility and remorse

The Court confirmed that a past enforcement history can be an aggravating factor in sentencing, and then carefully reviewed factors such as early reporting, cooperation with the authorities, changes to practices and procedures, and a guilty plea, that show acceptance of responsibility and can mitigate sentence.

The Court stressed that failing to take immediate steps to remedy the harm is an aggravating factor, while the exercise of remedial action can mitigate the sentence. Interestingly, on this point the court finds the liability imposed by EPEA on offenders who fail to take remedial action instructive. From this EPEA provision, the court appears to derive an indication of legislative intent: that failing to take immediate remedial steps is a priority concern that should be reflected in all sentencing under the Act.

Damage and harm

In reviewing the role of damage in sentencing, the Court emphasized that the absence of ascertainable harm is not a mitigating but a neutral factor in environmental cases. This reflects the frequent difficulty of identifying environmental harm, difficulties of attribution, and the gradual effect of cumulative actions. Actual, identifiable harm or injury is an exacerbating factor.

The quality and location of the receiving environment are also relevant. Releases in sensitive areas or where harm is rapidly spread, such as a waterway, constitute aggravating factors, as do releases near populated areas.

The availability of civil remedies or compensation through agencies such as the Workers' Compensation Board are relevant to sentencing, but do not remove harm from the sentencing equation.

The Court's comments on potential harm as a factor in sentencing are also notable. Potential harm is informed by the probability of the risk, the nature of the product released, the likely magnitude of damage if the risk materializes, and the sensitivity of

the site, including proximity to populations and fragile environments. The Court confirmed that the greater the potential harm, the greater the warranted penalty. Furthermore, where potential harm is avoided by luck, the offender should not benefit from this in sentencing.

Deterrence

In confirming deterrence as a key factor in sentencing, the Court again referred to the relevant environmental legislation as a basis for sentencing priorities. The "polluter pays" principle set out in the purpose section of the EPEA,[4] the fact that the Act "constitutes a code of environmental conduct and enforcement",[5] and the high maximum penalties under both the EPEA and the DGTHA were cited as supporting a significant element of deterrence in sentencing.

The Court stressed that sentencing judges should carefully consider whether creative sentencing options are appropriate. Where an offender has benefited financially from a violation, an order requiring forfeiture of the profit should be the norm. In appropriate cases, for example involving a large corporation with nearly unlimited means, specific deterrence may be partially achieved by requiring the offender to publish, at its expense, the facts relating to the conviction.

The Court also confirmed that the starting point for sentencing of corporate offenders must be more than a licensing fee for illegal activity, or the cost of doing business.

No sentencing formula or guidelines

During the appeal the Crown argued that a range of sentence could be established by a formula involving the offender's gross annual revenues, or by dividing offences into categories with an assigned sentencing range for each. The Court rejected these arguments, pointing to the variety of substances, risks, environments, and harm that may be involved in an offence. An appropriate sentence will continue to depend on the facts of the case and reflect past sentences for similar offenders and offences.

Application of principles to the facts of the case

In finding a significant degree of culpability, the Court stressed that Terroco had promoted to branch manager an individual with little knowledge of the transport of dangerous chemicals. It was therefore foreseeable that a problem might occur. The Court set out a number of steps Terroco could have easily taken to minimize this risk. The company's annual gross revenues of $20 million were noted.

In Terroco's favour, the Court found that the company had no prior enforcement record, had cooperated with the authorities, and had voluntarily paid all clean-up costs. However, the Court held that the trial judge had erred in failing to fully consider the harm suffered by the injured driver from the gas release. This actual harm was an aggravating factor. In addition, the site of the release was near a village, and the potential for further harm was high. The employees' lack of experience added to the level of risk. These factors justified the intervention of the summary conviction appeal judge and the fine of $150,000 for the EPEA charge, which was affirmed. As the DGTHA offence caused no lasting harm and created a lesser risk, the sentence of the trial judge on this charge was found not to be demonstrably unfit, and was restored.

Conclusion

Because environmental offences are often "victimless" in that the harm is borne by society as a whole, some sentencing judges have been reluctant to impose fines that reflect the seriousness of the harm or risk posed to the environment or human health.

In *Terroco*, the Court of Appeal addresses this issue by emphasizing the relevance to sentencing of the express and implied priorities of Alberta's environmental legislation. The importance of protecting the environment and human health, the "polluter pays" principle, high maximum fine provisions, prohibitions against the creation of potential harm, and statutory liability for failing to take immediate remedial steps are all cited as supporting fines in the mid to high range in appropriate circumstances. The need for sentencing judges to consider creative sentencing orders is also stressed.

Terroco will likely result in stiffer penalties for large corporate offenders who are careless and put the environment or the public at serious risk, particularly where there is lasting harm. The availability of civil or other remedies now appears less likely to significantly affect the penalty imposed. This decision underlines the need for comprehensive and adaptive due diligence for companies operating in Alberta.

[1] 2005 ABCA 141.
[2] S.A. 1992, c. E-13.3, s. 98(2); now R.S.A. 2000, c. E-12, s. 109(2) [EPEA cited to S.A. 1992, c. E-13.3].
[3] S.A. 1998, c. D-3.5, s. 19(a); now R.S.A. 2000, c. D-4, s. 19(a).
[4] *Supra* note 2, s. 2(i).
[5] *Supra* note 1 at para. 54.