



Canada and the SDGs: The State of the Law

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Introduction

This paper assesses the legal implications of the Sustainable Development Goals (SDGs) in Canada. It finds that the SDGs have little binding legal effect on Canada, either as a component of international law or as domestic Canadian law. The SDGs have not been formally incorporated into Canadian law. However, Canada has accepted the SDGs and the present government has committed to their implementation. As such, there is moral and political force to the SDGs which, when aligned with the powers of the federal government, can be used to as an opportunity for advocacy and action.

1. An overview of the SDGs

The SDGs provide a shared blueprint for partnership, peace and prosperity for all people and the planet, now and into the future. They include 17 goals that serve as a global framework for action by all countries. The SDGs are based on the understanding that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.

The SDGs were created in a 2015 United Nations General Assembly (UNGA) Resolution, called the [2030 Agenda](#). The SDGs are intended to be completed by 2030 and are steered by the Division for Sustainable Development Goals in the UN Department of Economic and Social Affairs (UNDESA). UNDESA also supports the production of the [Global Sustainable Development Report](#) which provides an evidence-based instrument to support policymakers in promoting poverty eradication and sustainable development. To improve monitoring and support the implementation of the SDGS, in 2017, the UNGA adopted a [resolution](#) providing specific targets for each SDG, and indicators to measure progress toward each target. The online publication SDG Tracker, launched in June 2018, presents available data across all indicators.

The Canadian government adopted the 2030 Agenda in September 2015. In 2021, the federal government released the policy document [Moving Forward Together: Canada's 2030 Agenda National Strategy](#) outlining its vision and commitment to the SDGs. Progress on achieving the SDGs in Canada is tracked through the Statistics Canada's [SDG Data Hub](#). As well as through

various reports on the SDGs in Canada, such as that produced by the [British Columbia Council for International Cooperation](#).

While all the SDGs effect environmental issues, there are a few key goals of particular significance for the environment. These include:

[Goal 3](#): Good health and well-being

[Goal 6](#): Clean water and sanitation

[Goal 7](#): Affordable and clean energy

[Goal 11](#): Sustainable cities and communities

[Goal 12](#): Responsible consumption and production

[Goal 13](#): Climate action

[Goal 14](#): Life below water

[Goal 15](#): Life on land

2. The SDGs in international law

As a UNGA resolution, the SDGs have an important political and symbolic role. UNGA resolutions are formal expressions of the opinion or will of, at least, the majority of the states within the UN system. In the case of the SDGs, which were adopted by all 193 UN Member States, these goals represent the considered opinion and will of the globe.

While UNGA resolutions reflect the views of the Member States UNGA resolutions are not binding for Member States, apart from budgetary decisions. The implementation of the policy recommendations contained in resolutions are the prerogative of each Member State. This voluntary, rather than enforceable, approach is evident in the text of the 2030 Agenda that created the SDGs, which sets out that “every State has, and shall freely exercise, full permanent sovereignty over all its wealth, natural resources and economic activity.”¹ Moreover, the resolution states as a goal that it’s aim is to “encourage all member states to develop as soon as practicable ambitious national responses to the overall implementation of this Agenda” rather than providing for any mandatory implementation. As “conventional” international laws, which consist of written

¹ *2030 Agenda*, 21 October 2015, A/RES/70/1 at para 18.

documents, the SDGs have only as much binding force as the text and the states give them. The wording of the 2030 Agenda detracts from the enforceability of the SDGs.

The SDGs are also not binding as a matter of customary international law. [“Customary”](#) international law is binding over every state, even without any written legal commitment. Customary international law refers to international obligations that arise from established international practices. These obligations emerge from a complex mixture of the practice of states, the belief that the state action was legally necessary, and express or tacit consent to the particular rule. Customary international law does play an important role within international environmental law, however, the SDGs are not yet considered to be binding as a matter of international law. Though the SDG resolution represents the opinion of the globe, this alone is insufficient to create binding customary law.

However, as with many similar aspirational international documents, the SDGs have an important normative, rather than authoritative, force. States are not bound to fulfill the SDGs by law, but they may feel obligated or encouraged to follow them. Indeed, in combination with other international conventions such as the Paris Accords, the SDGs fit into an international framework which supports actions in favour of sustainability and the environment. This in turn, creates normative obligations that may be made into legal commitments by the states themselves. It is on that point that we turn to how Canada relates to the SDGS.

3. The SDGs in Canadian Law

In Canada, the federal executive has the authority to conduct most aspects of international affairs without legislative approval. However, this authority does not mean that when the executive branch signs a treaty or document it becomes Canadian law. Instead, international treaties must usually go through a process where they are ‘domesticated’ and reflected in Canadian law. This can occur through legislation, regulation, or, more rarely, the decisions of the judiciary.

International laws can become Canadian domestic laws when the legislative branch incorporates elements of international law into domestic legislation. At the federal level this means that Parliament either passes legislation which reflects international law or Parliament passes

legislation that affirms the text of international law. When the latter occurs, the binding force of the international law can still be unclear. For example, in 2021 Parliament passed the [*United Nations Declaration of the Rights of Indigenous Peoples Act*](#), which brings the 2007 [*UN Declaration on Rights of Indigenous Peoples*](#) into Canadian law. However, while the Act “affirms” the declaration as an instrument with “application in Canadian law,” it does not specify how the Declaration should be applied in Canadian law, beyond calling for a framework to be created. While implementation legislation brings international law into Canadian domestic law, it is not an automatic guarantee of “binding” legal force. Whether an international law brought into Canadian domestic law is “binding” will depend on the wording of the implementation legislation, such as whether it mandates or prohibits particular action, and the enforcement of the legislation by agencies or courts.

Customary international law can also be applied domestically through the judiciary. Courts may be asked to determine whether Canadian laws abide by binding customary international laws, rather than domestic legislation implementing those customary laws. Such occurrences are rare, but the Supreme Court of Canada has recognized that international law is part of the context in which Canada’s domestic laws are enacted. The [*Supreme Court*](#) has supported a presumption that domestic law should be interpreted to conform to the state’s binding international obligations, even if those obligations have not been domesticated into Canadian law. Even if the international law is not binding on Canada, the content of international law, such as a Declaration, can be a factor considered in the application and interpretation of domestic laws.

Finally, a government may simply choose to abide by an international law regardless of whether implementation legislation exists. The government may choose to establish policy commitments that it abides by for political reasons, rather than creating legislation or regulations that impose legal requirements.

While Canada adopted the 2030 Agenda in 2015, it has not passed implementing legislation, nor any other legislation that would give the text of the SDGs legal weight. Instead, the federal government’s commitments to the SDGs emerge from the policy considerations of the government of the time. They are not legally binding on the federal government and do not control its

interactions with the provinces. However, the political commitments to the SDGs and the powers of the federal government do provide numerous opportunities to advocate and act to meet the SDGs.

4. Federal opportunities to support the SDGs

The federal government has significant powers to support environmental SDGs. The Constitution provides it with jurisdiction over areas of environmental importance, such as trade and commerce, certain key industries, fisheries and oceans, shipping and navigation, and federal lands. Moreover, the federal government has more general powers that can be applied in support of environmental goals. These include its significant financial resources, its power over taxation, the criminal law, environmental assessment, and ensuring peace, order, and good government. However, as the Supreme Court has noted, the array of environmental issues often do not fit clearly within either federal or provincial jurisdiction, and so there can be ambiguity as to which level of government holds responsibility over particular environmental issues. This section describes how the federal government powers provide an opportunity for action on the environmental SDGs and ways that the federal government can affect environmental SDGs that it does not have jurisdiction over.

Goal 12: Responsible consumption and production

Under the Constitution, the federal government has some ability to regulate in support of responsible consumption and production, based on its power over trade and commerce. Through this power the federal government is able to create important environmental protections aimed at limiting greenhouse gas emissions. The federal government also has the power to regulate the international import of goods as well as the movement of goods across provincial borders. This power allows the federal government to refuse the importation and trade of particular goods that are environmentally harmful. For example, the federal government relied on this power to establish emissions standards for vehicles and engines imported into Canada and a potential ban on certain single use plastics.

Goal 13: Climate action

The Constitution provides the provinces with jurisdiction over most industries, such as mining and manufacturing, giving them primary jurisdiction over the regulation of air pollution from these

activities. Nonetheless, the federal government has important powers for regulating greenhouse gas emissions and other airborne pollutants based on its constitutional power and recent rulings of the Supreme Court. First, the federal government has the power to regulate cross border air pollution. However, under the [Canadian Environmental Protection Act](#) which regulates this issue, before acting to address cross-border pollution the federal government must first request that the province from which the pollution emanated address the issue.

Second, the federal government's taxation power allows it to establish a carbon tax. Third, while the provinces have jurisdiction over most types of industries, the federal government has the power to regulate certain industries. Based on the federal government's residual power to regulate matters not addressed in the Constitution, these federally-regulated industries include, for example, the regulation of emissions or other environmental concerns relating to aviation, interprovincial and international transportation, and nuclear activities.

Third, based on a recent Supreme Court [ruling](#), the federal government has also been given power to regulate the specific issue of minimum national standards of greenhouse gas pricing to reduce greenhouse gas emissions. The basis for this regulation is the federal government's power over issues of peace, order, and good government, discussed below.

[Goal 14: Life below water](#)

The federal government has perhaps its greatest powers for environmental protection relating to water and aquatic life. The federal government's Constitutional power over fisheries and oceans, which includes inland waterways such as lakes and rivers, is a significant tool for environmental protection. As confirmed by the [Supreme Court](#) on numerous occasions, the federal government has almost complete jurisdiction to not only conserve and protect fish, marine mammals, their habitats, and the quality of their water but also to conduct the general regulation of the fisheries and their habitats. For example, the federal government has used the *Fisheries Act*, and its constitutional power over fisheries and oceans to enact the [Wastewater Systems Effluent Regulations](#) to regulate wastewater management across Canada.

Similarly, the federal government has Constitutional jurisdiction over shipping and navigation, allowing it to regulate emissions from ships and boats, including fossil fuel usage and the discharge of sewage, oil, or other materials into waterways. The federal government may also regulate shipping routes and establish safety standards to prevent spills, wrecks, harm to marine

life, or other disruptions. This power, the [Supreme Court](#) has found, also extends to regulating any impediments to navigation in Canadian waterways, such as bridges and dams which may also have significant environmental implications.

[Goal 15: Life on land](#)

In the Constitutional division of powers, the provinces have jurisdiction over most lands and wildlife in their borders. However, the federal government has exclusive jurisdiction over the management of federally-owned Crown Land and national parks. About 41 percent of Canada's land mass is federally-owned crown land. The federal government has complete jurisdiction over this land, including the ability to establish protected areas on them. The federal government has primary jurisdiction over wildlife on these lands, as well as aquatic species, and migratory birds. For example, the federal [Species at Risk Act](#) regulates the protection of endangered and at-risk species on federal lands, aquatic species, and migratory birds.

The Constitution also provides the federal government with control over the land, water, and resources within Canada's territories. However, much of this control has been ceded under various agreements and legislation, such that control of Federal lands, waters, and other areas in the territories is now shared between the federal and territorial governments as well as Indigenous communities. For example, the Yukon and Northwest Territories now have sole jurisdiction over their water resources.

The federal government also has Constitutional jurisdiction relating to the rights and lands of Indigenous peoples, as well as duties and obligations towards Indigenous peoples and communities. These powers, duties, and responsibilities have important implications for environmental action. For example, the Supreme Court has confirmed that the federal government has a [duty to consult](#), and where appropriate, accommodate Indigenous groups when conduct might adversely impact potential or established Indigenous or treaty rights. These rights and consultations are often closely tied to [environmental concerns](#).

General Powers of the Federal Government

The federal government can support these, and other environmentally important SDGs that are less clearly under federal jurisdiction by using its more general Constitutional powers. For example, the federal government has limited direct power to support [Goal 3](#): Good health and well-being, [Goal 7](#): Affordable and clean energy, and [Goal 11](#): Sustainable cities and communities. This is because the Constitution provides the provinces, rather than the federal government, with jurisdiction over healthcare, most industries, and the working of municipalities. [Goal 6](#): Clean water and sanitation, is managed on a day-to-day level by the provinces and municipalities, however the federal government also has broader regulatory input [in this area](#). However, these goals, and the other SDGs, can be affected by the federal government using its more general powers, described below.

Money and Taxation

The federal government wields considerable power through its financial resources. The federal government can provide significant funds to the provinces, corporations, or organizations to undertake particular work. It can do this even if the federal government does not have jurisdiction in the area that it is funding. It may, for example, provide funds to a province on the condition that the provincial government spend part, or all, of the money in a particular way. Similarly, the federal government can require that the provinces follow certain policies in order to receive the funding. In this way, the federal government can have a significant influence over areas that are outside of its jurisdiction. Such actions are already underway, for example through the Government of Canada's [SDGs Funding Program](#).

The federal government also has significant powers to create and impose taxes. This power can be used for environmental purposes by taxing environmentally damaging activities – for example in the form of a carbon tax.

Criminal Law

The federal government also has nearly exclusive jurisdiction over criminal law matters, which it can use to regulate certain environmental issues. This power is broad and flexible, and a promising tool for environmental protections. The federal government can pass criminal legislation on a

matter so long as the legislation addresses a [valid criminal law purpose](#), is backed by a prohibition, and includes a penalty. A valid criminal law purpose is a law that is enacted to achieve a public purpose and designed to promote public peace, safety, order, health, or other legitimate public purpose. This power has been used, for example, to make the discharge toxic chemicals or other pollutants into the environment a criminal offence through the [Canadian Environmental Protection Act](#).

Environmental Assessment

The federal government can also require that a project undergo an environmental assessment controlled by the federal government, even if the project is primarily under provincial jurisdiction. The federal government can require an environmental assessment whenever the project in question may affect something within federal jurisdiction. These include, as stated in the [Impact Assessment Act](#), any projects that may affect navigation, fish, fish habitat, aquatic species or migratory birds, federal lands, other provinces or countries (such as through transborder pollution), or Indigenous peoples. A federal environmental assessment prohibits any aspect of the project from continuing that would influence an environmental issue under federal jurisdiction, until the project is found to have an insignificant impact on the environment, if Cabinet decides that the effects are justifiable, or if the proponent makes any changes requested by the assessment.

Peace Order and Good Government

The federal government also has power to address issues that relate to the peace, order, and good government of Canada. This power has three branches: residual powers, emergency powers, and the doctrine of national concern. If an issue falls within one of these categories, the federal government gains the authority to legislate to deal with the issue. The emergency power has not been used to address environmental issues, beyond natural disasters. However, the residual powers and the doctrine of national concern have been used for environmental protection.

The federal government has power over any subject matter that is not explicitly listed in the Constitution. This has been used to support federal intervention on certain environmental issues that have emerged since 1867. These include, for example, providing the federal government with [marine pollution and interprovincial water pollution](#).

The doctrine of national concern has also been relied on to enact environmental protections. However, using the doctrine of national concern is complex and only possible if the issue is sufficiently concerning, if it is single, distinctive, and indivisible, and if the provinces are unable to deal with the matter themselves. Once a matter is found to be of national concern it is permanently under the exclusive jurisdiction of Parliament. For example, the doctrine of national concern protected the [Greenhouse Gas Pollution Pricing Act](#), giving the federal government jurisdiction over the establishing minimum national standards of greenhouse gas pricing to reduce greenhouse gas emissions.

Conclusion

Canada has made its commitment to fulfilling the SDGs clear. However, this commitment has been policy-oriented and political, rather than legal and binding. Nonetheless, the SDGs, and the broader international environmental framework, have an important moral and political force. This force, when paired with the powers of the federal government, provides an important avenue for environmental advocacy and action. As such, environmental advocacy directed at the federal government might, rather than stressing a legal commitment, be well served by pairing specific policy proposals with clear federal government powers that can be used to fulfill the SDGs.