

## Publisher's Note

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David Estrin

# Business Guide to Environmental Law

*Business Guide to Environmental Law* addresses business liability regarding Canadian environmental law. It is designed to aid legal counsel as well as senior executives in dealing with legal situations regarding the environment. The topically organized presentation of issues includes environmental issues in real estate transactions, directors' and officers' liabilities, transportation of dangerous goods, extended producer liability, labelling, advertising, patents and trade-marks.

## Release Highlights

This release updates the case law and commentary in Chapter 3, Environmental Inspections and Investigations: When the Government Calls, with respect to powers of an inspector or provincial officer during inspections, including the Ontario provincial officer's power to require response to inquiries for the purposes of determining compliance; and breach of Charter rights during investigations. The Appendix to Chapter 8, Transportation of Dangerous Goods, has been updated to include the revised Transport Canada Guide for Reporting Dangerous Goods Incidents.

## Case Law Highlights

- **Chapter 3 — Environmental Investigations — Need for Investigators to Use a Search Warrant for Entry and Seizure of Documents: Where**

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Transport Canada inspectors boarded a vessel to conduct a port state control inspection and a compliance inspection but were also instructed to conduct a pollution investigation, the B.C. Provincial Court found that the inspector used his inspection powers under section 211 of the *Canada Shipping Act, 2001* as a guise to conduct a warrantless search for evidence of a contravention. The court then considered whether the defendant had an expectation of privacy. The court noted that although the defendant had a diminished expectation of privacy given that it was operating within a highly regulated industry and was subject to inspections by the regulatory authority, the defendant would not expect an inspector to invade its privacy “in ways not permitted by law under the inspection powers such as demanding that crew members provide evidence of a contravention.” Based on this finding and the fact that the inspector conducted a warrantless search, which was presumptively unreasonable, the court held that the defendant’s section 8 Charter rights were breached: *R. v. MV Marathassa*, 2018 CarswellBC 1353, 2018 BCPC 125 (B.C. Prov. Ct.).

- **Chapter 3 — Environmental Investigations — Rights and Limits of an Investigator to Question Individuals — The Right to Remain Silent:** Where Department of Fisheries and Oceans (DFO) officers attended a government wharf to inspect a vessel to check for fisheries compliance and to ensure that the fishing was legal, the B.C. Provincial Court considered whether statements given by the fishermen in response to the fisheries officer exercising his powers of inspection under section 49 of the Fisheries Act amounted to a breach of the right against self-incrimination. The court concluded that the defendant was required to produce the requested information and applying the four factors from *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154, held that the DFO officers’ questioning of the defendant did not breach his Charter rights: *R. v. Dyer*, 2017 CarswellBC 2678, 2017 BCPC 281 (B.C. Prov. Ct.).