DETAILED TABLE OF CONTENTS

FOREWORD TO THE FIRST EDITION xv

ACKNOWLEDGMENTS xvii

INTRODUCTION 1

- A. Law and the Environment 1
- B. Policy Objectives and Legal Techniques for Environmental Protection 2
- C. The Scope of Environmental Law 6
- D. The Institutional Framework for Environmental Responsibility 7
- E. Overview of the Book 9

CHAPTER 1: BASIC CONCEPTS IN ENVIRONMENTAL LAW 11

- A. Environment 11
- B. Pollution 14
- C. Conservation 16
- D. Sustainable Development 18
- E. Biodiversity and Ecological Integrity 21
- F. The Polluter-Pays Principle 23
- G. The Precautionary Principle and Pollution Prevention 24

viii ENVIRONMENTAL LAW

H. Adaptive Management 27

I. Conclusion 28

Further Readings 29

CHAPTER 2: THE CONSTITUTIONAL ALLOCATION OF ENVIRONMENTAL RESPONSIBILITIES AND INTERJURISDICTIONAL COORDINATION 31

A. Introduction 31

B. Sources of Federal Environmental Authority 34

C. Sources of Provincial Environmental Jurisdiction 38

D. Municipal Government and the Environment 40

E. Aboriginal Rights, Resources, and the Environment 42

F. Intergovernmental Coordination and Environmental Protection 46

1) Intergovernmental Consultation 46

2) Intergovernmental Bilateral Agreements 47

3) The Harmonization Accord and the Agreement on Internal Trade 48

Further Readings 51

CHAPTER 3:

ENVIRONMENTAL RIGHTS 52

A. Human and Constitutional Rights to Environmental Quality 52

B. The Charter and Environmental Law 57

C. The Legislative Basis of Environmental Rights 63

Further Readings 68

CHAPTER 4:

THE INTERNATIONAL CONTEXT OF CANADIAN ENVIRONMENTAL LAW 70

A. International Environmental Law and Organizations 70

B. International Institutions and Environmental Protection in Canada 74

- 1) Great Lakes Water Quality, Diversion, and Exports 74
- 2) The Arctic Circumpolar Environment 79
- 3) Controlling Acid Rain 80
- 4) Protecting the Ozone Layer 83

5) Climate Change, Global Warming, and the Kyoto Protocol 85

C. International Trade and the Environment 88

- 1) The General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) 89
- 2) The Canada–United States and North American Free Trade Agreements 93

Further Readings 99

CHAPTER 5: CIVIL LIABILITY FOR ENVIRONMENTAL HARM 101

A. Common Law Causes of Action 102

- 1) Nuisance 102
- 2) Negligence 107
- 3) Strict Liability 111
- 4) Breach of Statutory Duty 113
- 5) Trespass 113
- 6) Riparian Rights 114
- B. Assessing the Common Law 114
- C. Statutory Civil Liabilities 116
- D. Class Action Legislation 117

Further Readings 120

CHAPTER 6:

ENVIRONMENTAL REGULATIONS AND APPROVALS 122

A. Standard-Setting 123

- 1) Introduction 123
- 2) Air 125
- 3) Water 126
- 4) Drinking Water 128
- B. Permits, Licensing, and Approvals 129

C. Appeal Mechanisms and Public Participation 133

Further Readings 139

CHAPTER 7: ADMINISTRATIVE COMPLIANCE MECHANISMS 141

A. Compliance and Administrative Enforcement 141

x ENVIRONMENTAL LAW

B. Reporting Obligations 142

C. Inspections 144

D. Administrative Orders 147

- 1) Control Orders 149
- 2) Stop Orders 150
- 3) Preventive Orders 151
- 4) Remedial Orders 152
- 5) Environmental Protection Orders under CEPA 1999 152
- 6) Fairness and the Allocation of Liability for Administrative Orders 153
- E. Administrative Monetary Penalties 155

Further Readings 159

CHAPTER 8:

OFFENCES, PROSECUTION, AND PENALTIES 161

- A. An Introduction to Environmental Offences 161
- B. Interpreting Environmental Offences in the Courts 165
- C. The Criminal Code and the Environment 168
- D. Enforcement Policy and Prosecutorial Discretion 170
- E. Investigations 175
- F. Private Prosecutions and Other Citizen Initiatives 178
- G. Penalties, Remedial Orders, and Sentencing Principles 182 Further Readings 189

CHAPTER 9:

CORPORATE ENVIRONMENTAL OBLIGATIONS AND DIRECTORS' AND OFFICERS' LIABILITY 191

- A. The Liability of Corporations 191
- B. Directors' and Officers' Liability 194
 - 1) Strict Liability and Environmental Due Diligence 199
 - 2) The Environmental Audit 202
- C. Financial-Disclosure Obligations, Shareholder Accountability, and Sustainability Reporting 206

Further Readings 213

CHAPTER 10: ENVIRONMENTAL VALUATION AND COMPENSATION 215

A. The Nature of Environmental Damage 215

- B. Evaluating Environmental Losses 217
- C. Valuing Environmental Losses in Court 221
- D. Statutory Approaches to Compensation for Environmental Damage 224
- E. Liability and Compensation for Spills 228

Further Readings 230

CHAPTER 11:

REMEDIATION AND RESTORATION OF CONTAMINATED LANDS 231

- A. Introduction 231
- B. Site Remediation Requirements 235
- C. Liability Allocation Issues 240
- D. The Environmental Liability of Lenders, Receivers, and Trustees 243
- E. Contaminated-Sites Inventory and Public-Remediation Programs 250

Further Readings 253

CHAPTER 12:

ENVIRONMENTAL ASSESSMENT 254

A. Overview of Environmental Assessment 254

B. Evolution of Federal Environmental Assessment 257

- 1) The Scope of the Project 260
- 2) The Scope of the Environmental Assessment 261
- 3) The Scope of Factors to Be Considered in the Environmental Assessment 261
- 4) CEAA 2012 262
- C. Provincial Environmental Assessment Regimes 265
- D. Public Participation and Funding 270
- E. Interjurisdictional Coordination 272

Further Readings 274

xii ENVIRONMENTAL LAW

CHAPTER 13: TOXIC SUBSTANCES 275

- A. The Toxics Challenge in Canada 275
- B. The Canadian Environmental Protection Act, 1999 (CEPA 1999) and Toxics 279
- C. Transportation of Dangerous Goods 286
- D. PCBs 288
- E. Pesticides 290
 - 1) The Federal Level 291
 - 2) The Provincial Level 293
 - 3) The Municipal Level 295
- F. Information on Hazardous Materials in the Workplace and Worker Health and Safety Legislation 297

Further Readings 299

CHAPTER 14: ENDANGERED SPACES AND SPECIES 301

- A. Rationales 301
- B. Protecting Endangered Spaces 304
- C. Conservation Mechanisms for Private Lands 313
- D. The Protection of Endangered Species 315
- E. Federal Species at Risk Legislation 320
- F. Animal Welfare 326

Further Readings 329

CHAPTER 15:

ENVIRONMENTAL LAW AND THE CITIZEN 331

- A. The Automobile 332
- B. The Home Environment 335
- C. Green Marketing and Environmental Choice 342
- Further Readings 346

CHAPTER 16:

CONSULTATION, ALTERNATIVE DISPUTE RESOLUTION, AND VOLUNTARY MEASURES 347

A. Consultative Procedures and the Round Table Movement 348

- B. Alternative Dispute Resolution Procedures 350
- C. Co-Management Institutions 354

D. Voluntary Measures 355

- 1) Environmental Performance Agreements 357
- 2) ARET 358
- 3) Responsible Care 358
- 4) Environmental Management Systems, ISO 14000 and Certification 360
- E. Conclusion 364

Further Readings 365

CHAPTER 17: ECONOMIC INSTRUMENTS 367

A. Some Basic Pros and Cons 368

B. Canadian Experience with Economic Instruments 370

- 1) Non-tax Instruments 370
- 2) Tax Incentives and Allowances 374
- 3) Public Spending and Environmentally Dedicated Funds 377
- C. Other Economic Incentives 378
 - 1) Insurance 378
 - 2) Financial Institutions and Environmental Monitoring 383

D. Conclusion 385

Further Readings 386

CHAPTER 18: ENVIRONMENTAL REPORTING AND INFORMATION SOURCES 388

- A. Introduction 388
- B. State of the Environment Reports 391
- C. Corporate Information 393
- D. The National Pollutants Release Inventory 395

xiv ENVIRONMENTAL LAW

Further Readings 396

CHAPTER 19 CLIMATE CHANGE: CANADIAN LEGAL AND POLICY RESPONSES 397

- A. Causes and Consequences 397
- B. Federal Climate Change Initiatives 401
- C. Provincial Responses to Climate Change 407
- D. Municipal Action 412

E. Climate Change Adaptation 414

Further Reading 416

CONCLUSION 418

APPENDIX: WEBSITES 423

TABLE OF CASES 425

INDEX 443

ABOUT THE AUTHOR 475