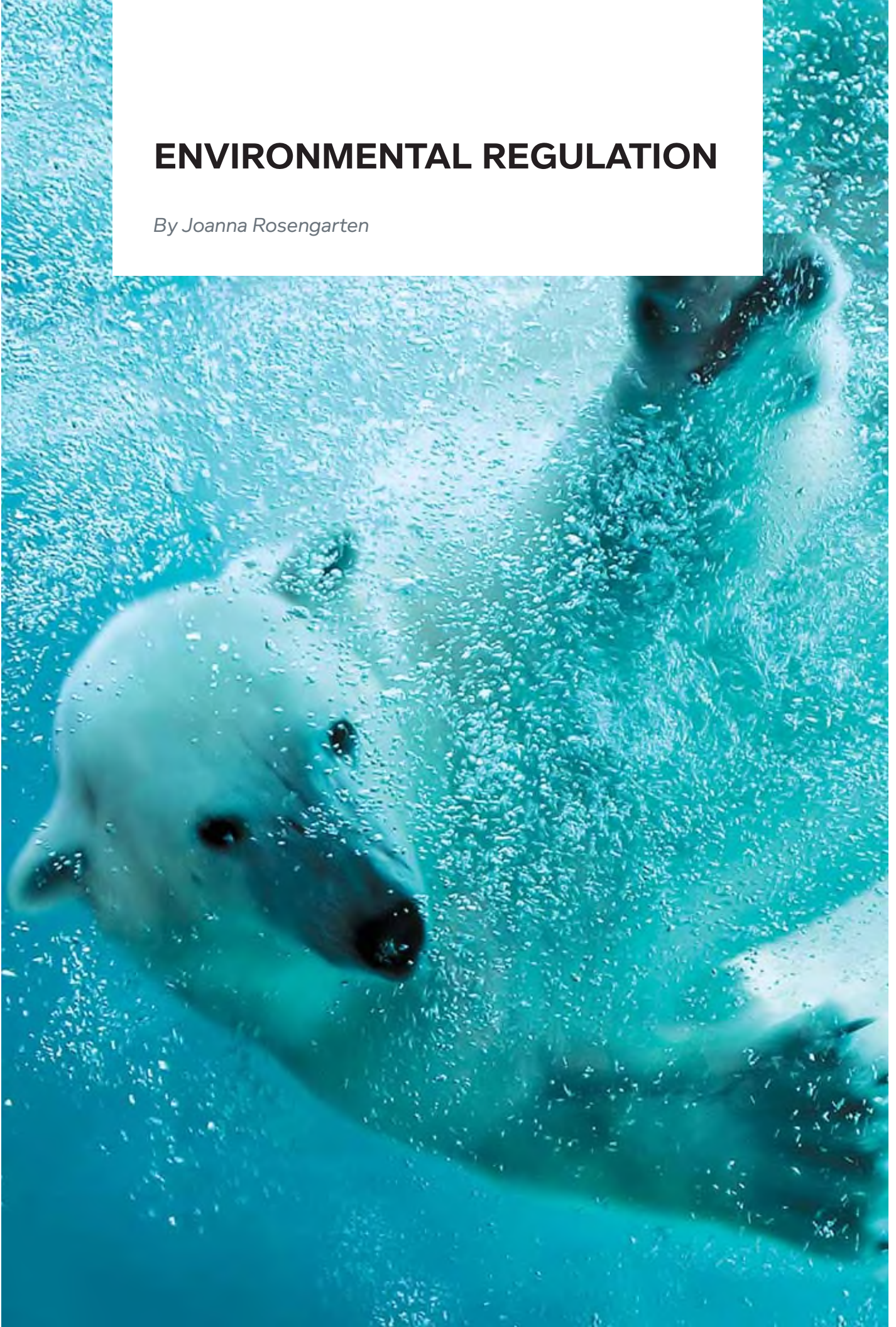


ENVIRONMENTAL REGULATION

By Joanna Rosengarten



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Environmental regulation in Canada is an area of shared responsibility between the federal government and the provincial governments, which, in turn, have delegated certain matters to municipal governments.

Both the federal and provincial governments have enacted legislation, regulations, policies and guidelines that affect industry on environmental matters such as pollution or contamination of the air, land and water, toxic substances, hazardous wastes, and transportation of dangerous goods and spills. In addition, there are requirements for approvals and environmental impact assessments in many areas affecting both the public and private sectors.

Environmental regulators have broad monitoring and inspection powers and use a wide range of enforcement mechanisms. These powers and mechanisms extend not only to the businesses involved, but also to corporate directors, officers, employees and agents. For example, the federal *Canadian Environmental Protection Act* includes provisions for warnings, significant fines, imprisonment, injunctions and compliance orders. Canadian courts are also now holding companies, as well as their officers, directors and employees liable for environmental offences.

Liability for contaminated sites is an important issue in Canada. The law in this area places liability on those persons who cause the pollution and, depending on the particular situation, on those persons who own, occupy, manage or control contaminated sites, or who owned or occupied such sites in the past. Such liability now extends to past owners and occupiers. Consequently, a “buyer-beware” philosophy prevails, making it critical in business and real estate transactions that either the buyer or the lender knows about all past and potential environmental problems associated with a particular business or property and, in some cases, formerly-owned businesses and properties.

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As a result of stringent environmental legislation and the regulatory bodies' vigorous approach to investigating and prosecuting environmental concerns, it is prudent for businesses to seek proper advice concerning environmental due diligence.

Federal and provincial governments are starting to develop and, in some cases, implement legislation aimed at reducing greenhouse gas emissions. For example, British Columbia has a carbon tax in effect, while Québec and Ontario have implemented cap-and-trade systems with a declining absolute cap on greenhouse gas emissions in these provinces. The federal government has announced its intention to implement a carbon pricing system in provinces and territories that do not have one by 2018. In December 2016, the federal government published the *Pan Canadian Framework on Clean Growth and Climate Change*, which outlines how Canada will reach its greenhouse gas emissions reduction targets and which has been signed by most Canadian provinces and territories. Climate change law is a developing area across Canada and businesses should ensure they are up-to-date on current and developing requirements in the provinces where they operate.

FOR MORE INFORMATION, PLEASE CONTACT:

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