

**DIGGING DEEPER**

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# Jurisdictions & Environmental Advocacy

A Primer on Canada's Division of Powers

**EVERY DAY**  
**ADVOCATES**



Environmental  
Leadership  
Canada

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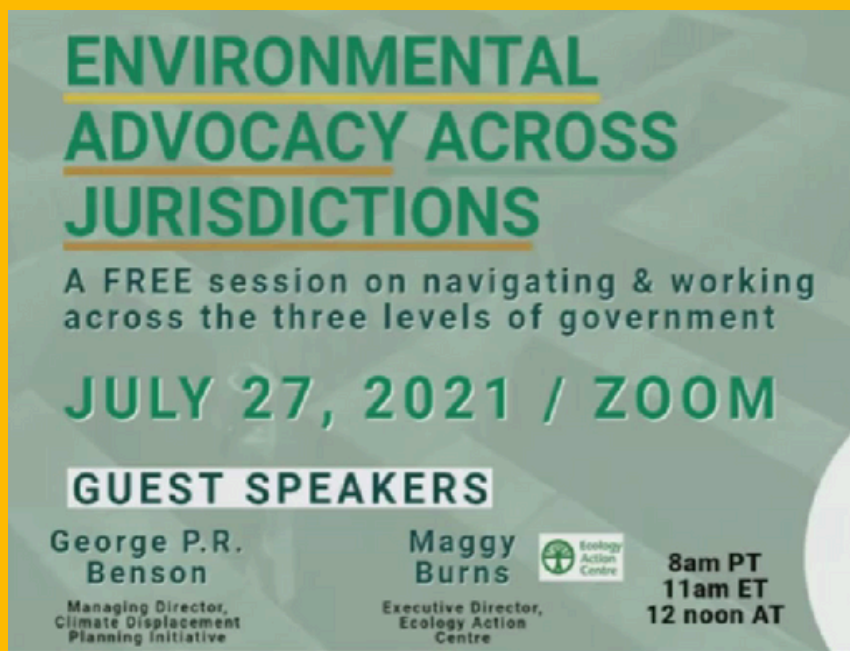
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## Objective

A challenge for environmental advocates is understanding jurisdictional responsibility in Canada and navigating these divides when working on issues that cross jurisdictional boundaries. This resource provides an overview of the different jurisdictions involved in environmental governance in Canada, their various responsibilities, and the points of tension (and opportunity) that advocates should know. Also included is practical advice for advocates working on cross-jurisdictional issues.

This resource summarizes key takeaways from a 2021 workshop for Every Day Advocates, the full recording for which can be found below.



**Environmental Advocacy  
Across Jurisdictions  
(recording)**

Featuring George P.R. Benson (Climate Displacement Planning Initiative) and Maggy Burns (Ecology Action Centre)



# 1 The Big Picture: Jurisdictional Divides in Context

**Specific, overarching responsibility for “the environment” does not fall to any single level of government in Canada. Instead, various areas fall under different jurisdictional purviews, creating a patchwork of authority that advocates must navigate. Environmental governance in Canada invariably involves all levels of government: federal, provincial, local, and Indigenous self-governments.**


The messy breakdown of responsibility in Canada owes much to the **Constitution**, which **divided power between the federal and provincial governments, while also recognizing the inherent right to self-governance of Indigenous peoples**. Not mentioned in the Constitution were local governments, whose authority is delegated to them by the provinces. (See Part II for an overview of which level of government is responsible for what with regard to the environment).

A key takeaway for advocates: **successful advocacy depends on knowing the jurisdictional powers of the decision-makers you are engaging, and on targeting asks towards the most relevant level(s) of government.**

The patchwork of environmental authority in Canada poses numerous challenges to effective environmental governance. Ecosystems, species migration routes, and the flow of pollutants, for example, do not respect provincial boundaries. Intersectional challenges like environmental racism do not map well onto the breakdown of powers envisioned by the Constitution, making it easy for governments to “pass the buck.”

Moreover, even though the Constitution recognizes the inherent right to self-governance of Indigenous peoples, traditional Indigenous territories do not align with artificial and imposed colonial boundaries. This tension is even more apparent when we consider the complicated (and ever-evolving) tapestry of treaties (modern and historical), land and resource claims, and disputed areas across the country.

While these legal jurisdictional divides are important for advocates to understand, it should also be understood that this breakdown of power is built from, and perpetuates, **an incomplete and inaccurate narrative of “Canada,” one rooted in colonialism and inequity**. As such, in advancing environmental priorities across jurisdictions, advocates may find abundant opportunities to champion social justice and Reconciliation at the same time.



**“If we centre ourselves in only this understanding of 10 provinces and 3 territories, we’re missing the much richer fact of what Canada is.”**  
- George Benson

## 2 Navigating Jurisdictions: Who Does What

When it comes to the environment, the division of power is anything but simple. In fact, as the breadth of environmental crises becomes increasingly clear, different levels of government have clashed over jurisdiction, with specific limits to authority being tested in, and decided by, the court system. Advocates should know not only which level of government has jurisdiction over what, but also how allies within different levels of government can influence environmental outcomes outside their own jurisdiction.

### *Federal Government*

The federal government is one of the most important bodies for environmental decision-making in Canada. It is at this level of governance where Members of Parliament (House of Commons) and Senators of Canada work, even though they represent specific ridings/regions.

Most environmental powers of the federal government concern matters that go *between* provinces, or affect the country as a whole. For instance, **nuclear safety, international treaties, inter-provincial trade and impact assessment for large-scale infrastructure projects like pipelines** all fall under federal jurisdiction.

The federal government also has enormous power through what is called the “**Peace, Order and Good Government**” (POGG) clause of the Constitution, which permits it to make laws that are considered in the “national interest,” *even* when these could be seen as infringing upon provincial powers. For instance, the federal *Greenhouse Gas Pollution Price Act*, which imposed a carbon pricing regime on the provinces, was made under the POGG clause.

The federal government also has an oft-forgotten but powerful authority to enact environmental change through its pocketbook: **its power to tax and spend**. Federal funding can help drive everything from specific projects to management of national parks to agency staff who enforce environmental regulations.

### *Provincial Governments*

Provincial governments are generally responsible for managing environmental concerns **within** provincial boundaries. Importantly, under the Constitution, provincial governments have control over the management of their **natural resources, including energy, minerals and forests**.

## 2 Navigating Jurisdictions Cont.

Other areas that fall under provincial jurisdiction include: **management and creation of provincial parks, intra-provincial trade, intra-provincial electricity generation and transmission, and building codes**. Notably, territories do not have the guaranteed powers of provinces as afforded by the Constitution; instead, power is delegated to them directly by the federal government. In practice, much of the decision-making authority in the territories has devolved to territorial legislatures.

### **Local Governments**

Local governments (municipal, county, etc.) are considered “creatures of the provinces,” and also lack inherent powers under the Constitution. Instead, their authority is delegated to them by provincial laws (and as such, can be taken away). In terms of the environment, local jurisdiction typically includes: **land use planning (within local boundaries), solid waste management, air quality management, municipal parks and transportation/transit planning (within boundaries)**. Some local governments have been granted unique spheres of additional authority, such as the City of Vancouver’s ability to create its own building code.

### **Indigenous Self-Governments**

Indigenous self-governments are **formal, recognized structures through which Indigenous peoples exercise sovereignty over their territory** in accordance with federal and provincial agreements. There are currently 25 self-government agreements in Canada, with negotiations underway for more. With regards to the environment, Indigenous self-governments may, among other things, control or co-manage land use planning and natural resource management.

### **Pushing the Limits of Jurisdictional Divides**

Governments can impact environmental decision-making outside of their immediate jurisdiction in a number of ways. For advocates, this means that finding allies in other levels of government can be valuable *even when they lack the direct authority to enact the solution you want*.

Where governments are able exercise direct control over their counterparts, they may choose to enact regulation or introduce taxes to create change. In other cases, they may seek to **collaborate** across jurisdictions, **offer fiscal incentives**, or exercise **soft power** or **influence** (e.g. leaning on private relationships, taking a public stance on an issue, etc.) On the flip side, governments can also take a more combative approach, such as **suing one another** (e.g. provinces challenging federal environmental laws in court, or **stripping previously delegated powers** that are not protected by the Constitution).



# 3 Tips for Cross-Jurisdictional Advocacy

In tackling issues that span jurisdictional divides, advocates may not only have to engage decision-makers in different levels of government but facilitate or incentivize between these actors as well.

Experienced environmental champion **Maggie Burns** (Ecology Action Centre, Halifax) shares three tactics for successfully undertaking inter-jurisdictional advocacy:

## 1. “Play dominos”

Find the interconnections between jurisdictions. Think about what would need to happen at one level of government to push the needle of another. Tap into existing relationships across jurisdictions – public officials often move between different levels of government or start their own careers as political aides. Offering comparators can help galvanize action for reluctant parties (no one wants to be the last to act) and provide examples to learn from.

## 2. Focus on Place

Connection to place is a powerful force. Organizers can draw upon the shared sense of connection to the land and sense of community to create diverse, highly motivated coalitions of allies.

## 3. Get loud, get creative

Political will is relevant in every jurisdiction. Raised, concerted voices can be highly motivating for decision-makers, especially when they align with policy windows of opportunity. Creativity can help keep your group relevant on the outside *and* help sustain momentum/prevent burnout internally.