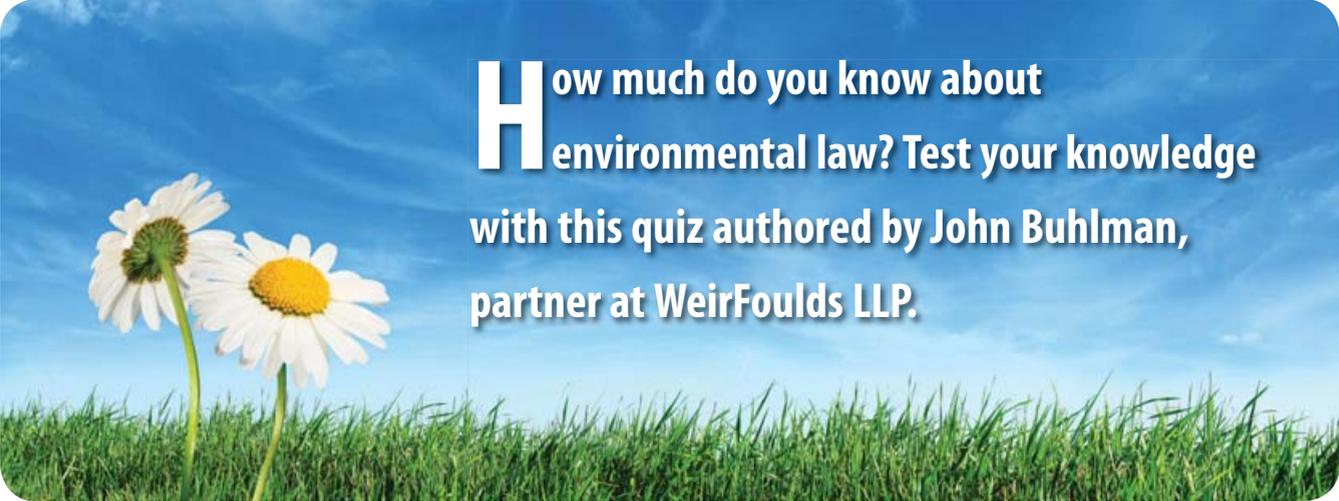


# ENVIRONMENTAL LAW QUIZ



**H**ow much do you know about environmental law? Test your knowledge with this quiz authored by John Buhlman, partner at WeirFoulds LLP.

**1** You have been asked to be a nominal director of your company, which is a wholly owned subsidiary of a foreign company, because the company needs a minimum number of Canadian resident directors. You think this is a great opportunity and are assured that even though the company has manufacturing facilities in Ontario, you need not be concerned with environmental liabilities since you will only be a nominal director. Are the assurances you received correct? **Yes or No?**

**2** The general counsel of the foreign parent company of your employer, a Canadian company operating in Ontario, gives general counsel in Canada the bad news that the Canadian company is being closed because it is not making any money and that there will be a large environmental liability. General counsel asks you if there is any liability on the parent company for the environmental liability. Your answer is:

- a) **Yes, absolutely.**
- b) **No, absolutely not.**
- c) **Yes, at least probably.**
- d) **No, probably not.**

**3** A director of the foreign parent company of your Canadian employer asks you whether she has any personal liability for the environmental liability of the Canadian company. Your answer is:

- a) **Yes, absolutely.**
- b) **No, absolutely not.**
- c) **Yes, at least probably.**
- d) **No, probably not.**

**4** You are asked to be a director of a Canadian company that has a manufacturing facility and therefore potential environmental liabilities. What should you do to protect yourself?

- a) **Don't worry, be happy.**
- b) **Obtain oral assurances that the company will protect you.**
- c) **Obtain a written indemnity from the company.**
- d) **Obtain a written indemnity from both the Canadian company and the foreign parent.**
- e) **Have the company obtain insurance that includes indemnity for you in the case of environmental liability.**
- f) **b & c.**
- g) **d & e.**

**5** You are a director of a Canadian company doing business in Ontario. The board meetings are fairly perfunctory and environmental issues are never on the agenda. You need not worry about this.

**True or False?**

**WeirFoulds** LLP

# ENVIRONMENTAL LAW QUIZ

## ANSWERS

**1 NO.** As a director of a company you have personal liability for both prosecution and orders. Directors, whether nominal or otherwise, have an obligation to take all reasonable care to prevent a breach of environmental laws. Directors who do not take reasonable care can be prosecuted. Anyone who has care, management, or control can be liable for an order issued by a director of the Ministry of the Environment. Directors of a company have the management and control of that company. There is currently a case before the Environmental Review Tribunal in which directors of a Canadian subsidiary of a foreign parent are challenging such an order made against them in a situation where the Canadian company is insolvent.

**2 (C)** Yes, at least probably. The Ministry of the Environment has named foreign parent companies as well as the Canadian company to orders requiring major cleanups. The same case mentioned under question 1 is also testing the ministry's authority to name the foreign parent. A previous case in which the ministry also named directors and foreign parents was settled prior to any decision on the liability of the directors and parent companies. The key is that the legislation allows the ministry to issue the order to anyone with care, management, or control. While the result in any case may revolve around how much control was exercised by the parent, the legislation is broadly worded, so, until the courts rule on the breadth of the legislation, be cautious.

**3 (C)** Yes, at least probably. Even though the director is a director of the foreign parent, if she exercises management or control over the operations of the Canadian company, personal liability is possible.

**4 (G)** In addition to taking measures to ensure compliance with environmental laws, (d) and (e) are the correct answers. You obviously need to be satisfied that the foreign parent has sufficient assets to protect you if you need to look to the indemnity. Insurance may be difficult to get or may be very expensive. Make sure you explore it with the company and see what is available for the particular business. You also need to assess how much insurance is available. A \$1-million policy may not be sufficient, depending on the potential liabilities. Cleanups ordered by the ministry can cost in the tens of millions of dollars. Sometimes, it is best to decline the invitation to be a director.

**5 FALSE.** As a director you have a legal obligation to ensure the company does not breach environmental laws. The only way you will know if that is happening is if there are regular reports to the board. Environmental compliance should be on the agenda of board meetings regularly.

### YOUR RANKING?

**One or fewer correct: Might be time to brush up.**

**Two or three correct: Not bad, but could do better.**

**Four or five correct: Impressive.**

CANADIAN LEGAL NEWSWIRE



it's fresh.  
it's free.  
it's weekly e-news!

Sign up today at

[www.canadianlawyermag.com](http://www.canadianlawyermag.com)

FROM THE EDITORS OF CANADIAN LAWYER AND LAW TIMES