

Transboundary Environmental Pollution in PIL from a Comparative Perspective

Guillaume Laganière has published his doctoral thesis (McGill University, May 2020) “Liability for transboundary pollution in private international law: a duty to ensure prompt and adequate compensation” [online here](#). Because of the author’s comparative approach to the topic, the work is not only interesting to Canadian readers. The abstract reads as follows:

Our legal response to transboundary pollution depends not only on the adoption of preventive measures and regulatory oversight but also on the existence of civil liability mechanisms. Victims fundamentally seek to hold polluters liable for breaching their duties or deviating from basic standards of diligence, to obtain redress for the damage that ensued and to prevent it from continuing. The process becomes difficult, however, when pollution crosses borders and several domestic regimes are involved. This is where private international law comes into play.

This thesis investigates the regulatory function of private international law with respect to transboundary pollution. It uses the International Law Commission’s *Principles on the Allocation of Loss in the Case of Transboundary Harm* as a benchmark and assesses Canadian private international law accordingly. It suggests that states have a duty to ensure the availability of prompt and adequate compensation for all victims of transboundary pollution (local or foreign). States must implement domestic measures to facilitate claims against transboundary polluters. This includes equal access to justice and equal remedies for all victims. Private international law plays a crucial role in this context: courts must have jurisdiction to hear cross-border claims and apply a law that is favourable to compensation under choice of law rules.

This thesis builds from international environmental law to identify preferable rules of jurisdiction and choice of law for transboundary pollution in the Canadian context. It also addresses the enforcement of foreign judgments against local

polluters. The conclusions of this thesis have implications for all cross-border environmental litigation, including climate change litigation against greenhouse gas emitters currently unfolding in domestic courts around the world.