

Standing or locus standi concerns the question of whether a person shall be permitted access to a court or other body. It is essentially a procedural question relating to the rights of individuals to pursue private remedies for pollution damage rather than requirements for positive action to prevent pollution. While recourse to the courts is part of the Canadian system, it is not used as extensively as in the United States. Generally speaking, the emphasis of Canadian law is on requirements established by governments for preventive and remedial action. Obviously, in the field of transboundary air pollution, a right of access to the courts cannot be regarded as a substitute for a requirement for positive action by governments.

i. Court Proceedings

Common Law Actions. The traditional common law actions of nuisance, riparian rights and strict liability under the rule in Rylands v. Fletcher for dangerous activities on land resulting in damage, are designed to protect private property interests. It follows that a person needs some interest, whether as owner, lessee or licensee, in the affected land to bring an action. Also, even if the affected land belongs to the plaintiff, if it is situated outside the jurisdiction of the court in which the action is brought (e.g. plaintiff with an interest in U.S. property suing in a Canadian court), then, because of the "local action" rule, i.e. the well-known Moçambique rule, in Canadian jurisprudence, that court is not competent to grant relief. On the other hand, if the action is not based on real property interests, but on some personal right of the plaintiff, courts do not hesitate to grant relief except where the plaintiff's interest is no greater than that of the general public. In such a case, only the Attorney General representing the State has the right to bring what is called a "relator" action.

The question of whether the abolition of the local action rule should be recommended to governments is now under consideration by a joint Canada-United States group of Uniform Law Commissioners.

Different considerations arise if the activity of a polluter causes injury to the health, safety or welfare of an individual; here, standing is not a hurdle, but the issue of causation might very well be.

Statutory Actions. The Clean Air Act and Environmental Contaminants Act provide that no civil remedy is suspended or affected by reason that the act or omission of an operator is an offence under those Acts. However, no