



Environmental Law Centre

UNIVERSITY OF VICTORIA

www.elc.uvic.ca

Issue 8: November 2005

Sierra Club Calls On Citizens to Protect Species at Risk

By: Allison Anderson

The Sierra Club of Canada, BC Chapter, has asked UVic's ELC to help them raise awareness among citizens about the ineffectiveness of BC's species protection legislation. The production of a citizen's action toolkit for species at risk is currently underway. The Sierra Club hopes the guide will empower citizens to advocate effectively for strong, clear provincial legislation for endangered wildlife and their habitats.

The Federal *Species at Risk Act* is inadequate and misdirected, arising from outdated laws and policies prioritizing resource extraction over species and habitat protection. BC, moreover, has no endangered species legislation for those species for which the province is responsible. And yet, only forty-three of the 1,303 animal and bird species considered at risk in BC receive some level of governmental protection.

According to the independent Forest Practices Board, the capacity of government agencies responsible for endangered wildlife planning has been so diminished in BC that they cannot fulfill their protection mandate. Meanwhile, profit-motivated forest companies have been handed the lead on endangered wildlife planning. It is up to British Columbians to demand that their government lives up to its obligations to present and future generations. The Sierra Club and ELC hopes to provide them with the right tools to do so.

ELC Mission Statement:

The Environmental Law Centre is a student-run organization committed to the protection of the environment through education, discussion and research on environmental issues and their legal solutions, and to the development of legal advocacy skills for students and environmentalists.

The Centre is open to law and non-law students and strives to create an inclusive environment, where all students may participate fully.

ELC Executive 2005:

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Alison Luke, Co-President
Barb Harvey, Vice-President
Rachel S. Forbes, Finance Manager
Lauren Kravetsky, VP Comm.
Carly Chunick, Projects Co-ordinator
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ELC Newsletter Editor:

Lauren Kravetsky

ELC Hosts Climate Change Lecture by Sierra Club Leader, Elizabeth May

By: Timothy H. Thielmann

We are fast approaching what will likely be "the most important world conference to date concerning global climate change," according to Dr. Elizabeth May, Director of the Sierra Club of Canada and Officer of the Order of Canada. May is one of Canada's most accomplished and well-known environmental activists. She is also a dynamic speaker and well-versed in the issues pertaining to climate change, as those at May's well-attended lecture in the Fraser building, on October 18th, will likely attest.

May began by tracing the history of the science on climate change. She noted wryly that as early as 1988, during the world's first high profile conference on climate change, the fact of climate change was no longer doubted. Instead, the matter for debate was the degree to which climate change would disrupt the world's ecosystems. Consequently, the conferring nations created the *Intergovernmental Panel on Climate Change* (IPCC) in order to refine the science on global warming and to suggest appropriate courses of proactive political action.



ELC Exec members Layli Antinuk and Jen Bond, prepping for Elizabeth May's talk.

The IPCC has since discovered carbon dioxide in our atmosphere has soared from pre-industrial revolution levels of 275 parts per million (ppm) to about 379 ppm today (CO₂ is the primary cause of global climate change); a large measure of the increase occurring only in the last fifty years.

Scientists admit that it is difficult to pinpoint a global "breaking point", but most agree that it would be *dangerous* to allow pre-industrial levels of CO₂ to double to 550 ppm. May submits that much of the damage has already been done, and that despite the rosier of visions for the future, "we'll probably lose most of our glaciers, and most of the ice in North Pole."

The United States, May chided, is the foremost obstacle to reducing escalating levels of CO₂ emissions. Despite enjoying the notorious distinction of being the world's most proficient global warmer, the United States has persistently blocked intergovernmental efforts to set targets and deadlines for reducing emissions. "It's quite odd," May chuckled, "that the Bush administration was so quick to preempt the "global threat" posed by Iraq, and yet so slow to perceive the need for urgent action on climate change."

Over 160 countries have, however, perceived this need. In 1997, the Kyoto Protocol was ratified, challenging industrial nations to reduce emissions below their 1990 levels by 2012. Last February, Kyoto achieved legal status, finally receiving support from countries collectively responsible for 55% of global emissions (a momentous feat, since the U.S. is responsible for 25% of these emissions).

Critics warn that Kyoto will have little effect so long as there are no enforcement mechanisms to ensure compliance with agreed upon targets. May, however, remains hopeful. Montréal will host the 11th Annual United Nations Climate Change Conference from November 28 to December 9, 2005. This conference is an opportunity to track progress, discuss the pros and cons of proposals such as international emissions trading. It represents, in May's view, an

unprecedented opportunity for Canada to show leadership on climate change issues. In light of the coming conference, May observed that there has never been a more pertinent time to show support for Canada's efforts to reduce CO2 emissions, urging her audience to contact local members of parliament and government leaders to ensure that talk of climate change becomes much more than just a bunch of hot air.

The Juan de Fuca Is Not Our Toilet:

By: Tina Parbhakar

Victoria Continues to Dump Raw Sewage

An SFU student told me yesterday that Victoria dumps its raw sewage into the ocean a few miles out. I was appalled and as a UVIC student, new to the city, I felt I should know all things appalling in my vicinity and investigated this claim. I found, surely enough, an article from 2004 on the *Seattle Post-Intelligencer* website; a paper that has been reporting on this subject since 1991. Columnist John Donnelly remarks on Victoria's many methods of dodging the sewage issue, including "a municipal referendum, site evaluations on possible treatment plants and scientific studies designed to justify the status quo."

The 2004 Sierra Legal Defense Fund's Sewage Report Card suspended Victoria after a grade of F- in 1999. The City's 25 year Core Area Liquid Waste Management Plan issued in 2003 does not include upgrades to treatment levels at the city's two largest sewage outfalls, Clover Point and Macaulay Point, despite requests from provincial and federal governments to upgrade these facilities.

With disproving vibes coming from south of the border, large Canadian environmentalist

groups and federal and provincial governments, I was glad to find that all is not calm in Victorian waters. Victoria has an active lobby group called POOP: People Opposed to Outfall Pollution. Their most recent press release, from October 17th, informs us that Mr. Floatie, their mascot and "a harmless piece of poo," was sued by the City of Victoria for entering the upcoming mayoral elections. As a result, Mr. Floatie's nomination has been retracted, but POOP will continue demanding that sewage treatment comes to Victoria by 2010.

So what can we do?

First of all, we should vote, on November 19th, for a candidate who is concerned about the



sewage issue. Secondly, we need to keep up on POOP's latest movements by signing up for email notices at www.poopvictoria.ca. Thirdly, we need to be vocal about getting national sewage standards, like those enacted in the United States and the European Union.

ELC requests Public Inquiry into FOI Policies

By: Rob Shirkey

The Environmental Law Clinic submitted a letter to B.C.'s Office of the Information and Privacy Commissioner (OIPC) alleging systemic discrimination by various Ministries against environmental groups that make Freedom of Information (FOI) requests. The letter requests the Commissioner conduct a Public Inquiry into the matter. The request was made by ELC student Scott Giesbrecht on June 20, 2005 on behalf of Sierra Legal Defence Fund and Western Canada Wilderness Committee.

The ELC submitted that government has made it more and more difficult for environmental groups to obtain public information. Indeed, environmentalists have faced numerous problems in pursuing FOI requests, including delays, exemption and excessive fees. The ELC also submitted that in a number of cases, government has appeared to act contrary to the spirit and letter of Freedom of Information legislation.

Giesbrecht worked with environmental groups such as Sierra Legal Defence Fund, Western Canada Wilderness Committee, Raincoast Conservation Society, West Coast Environmental Law, the Dogwood Initiative, T. Buck Suzuki Environmental Foundation, and others to compile examples for OIPC review. There are dozens of examples of unfair treatment towards environmental groups in the FOI process that may be indicative of systemic bias. When asked about his research, Giesbrecht remarked, "I was shocked to learn of all these incidents of environmental groups being stymied in making FOI requests - there are some pretty serious allegations in this letter."

A Poem by Rob Shirkey

*Tap water melting
Paper towel? Hand dryer?
Hands on pants!*

A portfolio officer has been assigned to the complaint. The matter is currently being considered by the OIPC and the various Ministries identified in the letter. The ELC student currently overseeing the file is Rob Shirkey. The ELC is confident that this matter will be thoroughly investigated and that any bias that may be revealed will be remedied by an order from the Commissioner.

And Now, A Word From Our Co-Presidents...

By: Jen Bond and Alison Luke

With December just around the corner, it's hard to believe that almost four months have passed since the ELC Executive launched into the 2005/06 school year! It has been an energetic, inspiring, and busy semester!

The ELC began the fall armed with an array of ideas which came out of a fantastic planning retreat at French Beach Provincial Park in early June. Orientation week was busy as usual, with Executive members welcoming new students with organic apples and hosting our traditional day hike to East Sooke Provincial Park. Over forty students and family members joined us for a great day exploring the beauty of the West Coast. For those seeking more mountainous adventures, the ELC also hosted a successful overnight backpacking trip to Strathcona Provincial Park.

Interest in the ELC continued to grow this term, and we now have over 175 active members. New this year, we are providing each member with a weekly update of Green Events hosted not only by the ELC but by other organizations as well. This initiative has received a tremendous response from both students and community organizations and we look forward to continuing this service in years to come.

This term's Clinic program has enjoyed similar popularity with both students and community clients, and a host of interesting projects are now well underway. Volunteer opportunities have also been filled quickly by eager ELC members, including a highly successful weekend affidavit campaign in Tsawwassen.

Elections for Executive positions were held in October, bringing three new faces on board just in time for a major speaker event featuring Elizabeth May, Executive Director of the Sierra Club of Canada. This was another great success, with excellent attendance from both students and the broader Victoria community.

October was rounded out with a great potluck and movie night and a costumed ELC contingent canvassing the streets of Gordon Head on Halloween. A big "thank you" to all of those who helped collect over 70 bags of food for those in need.

November was ushered in by our annual strategic planning meeting, which produced a range of exciting thoughts, ideas and visions for the future of the ELC. And as we wind down into the final weeks of term, it's still full steam ahead- with the publication of this newsletter and the beginning of our annual Good Karma food drive.

It has truly been a jam-packed term and a HUGE thank you must be extended to all involved! It is the energy and enthusiasm of both members and executive that make the ELC such a fantastic organization, and we are delighted to be working with each of you.

It's been a fantastic fall and we look forward to an equally great New Year!

Jennifer Bond and Alison Luke
2005/06 ELC Co-Presidents

***Comments? Interested in
Contributing an Article for the next
issue?***

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ELC Assists First Nations in Assessment Process

The Environmental Law Centre is assisting a coalition of First Nations in their efforts to respond to the environmental assessment of

By: Barry Robinson

a proposed expansion of a Vancouver Port Authority shipping terminal. The Sencot'en Alliance, a coalition representing the Tsawout, Tsartlip and Pauquachin First Nations on the Saanich Peninsula, and the Semiahmoo First Nation near White Rock,

says that they have not been adequately consulted during the environmental assessment process for the expansion of the terminal.



The Vancouver Port Authority first proposed the expansion of their Deltaport container terminal at Tsawwassen in February 2003. The expansion would see the addition of a third container shipping berth to the existing two berths. The expansion will require landfilling about 20 hectares of the Strait of Georgia on the east side of the existing terminal.

The Port Authority also has plans to double the entire terminal by 2020. The First Nations in the Sencot'en Alliance have traditionally fished in the Strait of Georgia and in the area of the planned expansion. The proposed expansion must undergo an environmental review by both the federal and provincial governments. The Port

Authority has been conducting environmental studies over the past two years and released its environmental assessment report in February 2005. That report is currently being reviewed by the federal and provincial governments.

While the Port Authority has provided information on the planned expansion to the Alliance and has provided some funding to assist the Alliance in reviewing the environmental assessment, the Alliance feels

that the consultation to date has not been adequate. The Alliance would like to do more studies to document its traditional use of the area. The Alliance also feels that its concerns have not been taken seriously. In particular, the Alliance raised concerns about increased ship traffic in the Strait of Georgia and about impacts on the fishery.

Barry Robinson, a student researcher at the Environmental Law Centre, is assisting the Sencot'en Alliance by preparing a legal argument in support of additional consultation and funding for the Alliance. The research includes preparing an overview of the federal and provincial environmental assessment processes and reviewing the case law pertaining to consultation with First Nations in environmental assessment processes. The research is also looking at whether the federal government, the provincial government or the project proponent should be responsible for funding First Nations to participate in these environmental assessment processes.

While the research will be used to support the Sencot'en Alliance's request for additional consultation and funding in the Deltaport environmental assessment process, it is also hoped that the research will assist the Alliance in participating in future environmental assessment processes as well. "The Sencot'en Alliance receives several requests each year to consult on environmental assessments and other resource issues", says Robinson. "The real question is who is responsible for funding First Nations to develop the capacity to respond to all of these requests."

First Nation may take Crown to Court

By: Isaac Ferbey

The Tseycum First Nation may pursue legal action against the Crown for failing to protect shellfish in Patricia Bay from run-off water laden with fecal coliform bacteria. If they are successful, the federal Crown may

foot the bill for cleanup and compensation following decades of water pollution from industrial dairy farms in North Saanich.

For centuries the Tseycum people have harvested shellfish from the bay. In an 1852 treaty for the purchase of land on Saanich Peninsula, Governor James Douglas guaranteed that the Saanich First Nations could fish “as formerly.” With colonization came intensive farming, however, and by the 1950s the Department of Fisheries and Oceans had to close the shellfish fishery at the Tseycum village site. The flow of animal waste into the bay contaminated the shellfish.

DFO has not yet used its powers under the *Fisheries Act* against farmers to control the pollution. The Tseycum claim that the government has failed in its duty to uphold the treaty which is recognized in the Constitution of Canada. As a result the Tseycum have lost an important food source and vital parts of their culture. They may seek compensation from the government for these losses.

In 1989 the Tsawout First Nation halted marina development in Saanichton Bay based on its shellfish harvesting rights under the same 1852 treaty. The Tsawout proved the treaty right in court and enforced it against a permit for future development, laying important legal ground work. The question remains, however, whether a court would enforce that same right against a prolonged, passive failure by the Crown to protect it. If so, would the same reasoning apply in the future to a First Nation’s treaty right to hunt similarly threatened wildlife? How could this reasoning be reconciled with Canada’s history of resource development, the cumulative environmental effects of which we are only beginning to see? The answer to this question may have wide-reaching implications, particularly for First Nations with treaty rights in other parts of the country.

Who Am I?

By: Anonymous

Guess which one of your fellow students is in the picture to the right and win a trip for two to a muffin from Maria's!

Please e-mail lkravets@uvic.ca with your submissions.



ELC Assists Tsawwassen Residents

By: Steve Chapman

In September, 2005, the ELC assisted Tsawwassen Residents Against Higher Voltage Overhead Lines (TRAHVOL), a local citizens group, in its continuing resistance to the construction of industrial-grade power lines through the heart of Tsawwassen, BC. This plan, known as the Vancouver Island Transmission Reinforcement (VITR), is currently in front of the British Columbia Utilities Commission for approval.

Increased output through the existing power lines would greatly increase the level of electromagnetic fields (EMF) to which local residents are exposed. High levels of EMF have been linked to increased rates of cancer and depression. In particular, children are especially vulnerable to these adverse health effects.

To help TRAHVOL prepare evidence for the Utilities Commission hearing, a group of 15 ELC students interviewed more than 60 Tsawwassen residents regarding the effects that an upgrade to the power lines would have on their health and economic well-being. The students worked with TRAHVOL's legal counsel to draft more than 50 affidavits for the Utilities Commission hearing, which is currently scheduled to begin in January, 2005.

ELC to Intervene at Forest Appeals Commission

By: Rob Shirkey

On July 4, 2005 ELC student Elisabeth Gronnestad obtained intervenor status for the Sierra Club of Canada (BC Chapter) for an important Forest Appeals Commission hearing. The hearing was originally scheduled for September but was adjourned pending the issuance of two decisions that may be of relevance to the appeal.



The Sierra Club was permitted to address the issue of due diligence central to this appeal. The appellant, a forest company who received an administrative penalty for unauthorized harvesting, is invoking the defence of due diligence now available under the *Forest and Range Practices Act*. The Sierra Club will make submissions on the interpretation of the defence and its application to forestry matters.

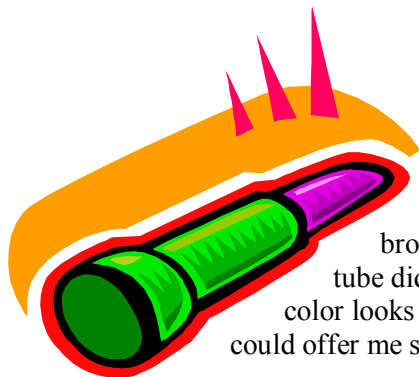
Sierra Club's concern stems from the fact that since the legislation was amended to allow for this defence, forest companies have been filing appeals arguing for an expansive interpretation of this defence. Sierra Club plans to argue that very high standards of conduct should be required before companies can avail themselves of the defence. More specifically, the Sierra Club's position is that licensees should not be able to delegate their duty to act diligently to the contractors they have hired to carry out their logging operations. Instead, ultimate liability for irresponsible forest practices should rest with the licensees who have the resources and control necessary to ensure legal and environmentally sound operations.

In his decision to allow the organization to participate, the Chair of the Commission, Alan Andison, was of the opinion that the Commission would benefit from the Sierra Club's expertise in the practical application of forest legislation and from the group's "unique environmental policy perspective".

Dear Dubé: A Pseudo-Legal Advice Column

By: Lauren Kravetsky

"Dear Dubé" is an environmentally focused advice column. In case it is not patently obvious that this column is nonsense, the following disclaimer applies: *I am not a judge, lawyer, or law professor, but simply a law student so this column should not be construed as legal advice...or even information, really. Enjoy!*



Dear Dubé,

I went to the drug store to buy my usual lip gloss - Vimmel, pink # 3159 - however, when I put it on it was a different shade than expected. I brought it back to the store to show the cosmetics lady that the shade in the tube did not match the shade on the paper colour indicator. The lady said "this color looks better on you anyways" and sent me on my way. I was wondering if you could offer me some advice.

Miss Maia Ol'shade, Victoria B.C.

Dear Miss Ol'shade,

I, too, use Vimmel pink #3159. On my last trip to Victoria (in 2001, before I retired), I ran out of lip gloss and had to visit Shopper's Drug Mart. After applying the lip gloss I also noticed it was not the right color, so I had one of my clerks send me a tube from Ottawa. The Ottawa tube was precisely the right shade. Several years later, after some extra-curricular research (I have a lot of spare time in my retirement), I discovered that the Vimmel lip product in Victoria was made with water from the Juan de Fuca Strait. I am no water quality expert, but I have a hunch that the mystery ingredient throwing off #3159 is the 34 billion litres of raw sewage dumped into the water year after year. I could recommend visiting your local Consumer Protection Bureau to get your money back, however, that would fix the symptom but not the cause. Therefore, I recommend teaming up with local activist Mr. Floatie, the Poop, to lobby for a treatment plant that will restore the Juan de Fuca to a composition fit for #3159. If that doesn't work, just phone me and I'll send you a tube.

Yours truly (actually, not truly - remember the disclaimer),
Dubé.

Standing with the Tahltan Elders

By: Beverly Slater

Over the last three months, in the twilight of her days at UVic Law, Beverly Slater has found herself caught up in an epic battle over resource development in Tahltan traditional territory, some 1000 km northwest of Vancouver: a battle that has taken her from the classroom, to the frontline of the Tahltan Elders' blockade and, finally, to BC Supreme Court in Vancouver.

A Tahltan member, Beverly approached this fall's clinic instructor Chris Tollefson about the prospect of the ELC Clinic taking on the case of the Tahltan Elders even before term began. Prof Tollefson was enthusiastic: they worked together to develop a viable term

project that focused on environmental assessment issues from a First Nations perspective in the ecologically sensitive and culturally significant Klappan Headwaters. Supervising and mentoring her on this work has been Will Horter, Executive Director of the Dogwood Initiative, who Beverly says "contributed immensely to her understanding of the 'practical' side of lawyering".

In addition to learning about environmental law precedents and the importance of legal strategizing, Beverly has put to good use a variety of skills honed in the clinic:

including client interviewing, affidavit drafting, and media work.

Beverly calls her work with ELC an “exceptional opportunity for experiencing the practice of law, and for learning about the importance of legal strategies beyond the classroom”.

In late October, she flew north to Terrace BC, and participated in a gathering of six Indigenous Nations that brought together to support the Tahltan Elders’ efforts to halt exploration and development in the Klappan. Later she went home to Tahltan territory and was there when the Tahltan Elders were charged with contempt of Court for blockading; charges that were later dropped. While in the North, she researched her clinic project on environmental assessment in the Klappan, and also did various interviews and prepared affidavit material.

As the controversy has heated up, Beverly has also gotten called upon to do media work about the case including an in-depth

radio interview. And she has also had the chance to get into court. This arose out of “volunteer” work she did for the Tahltan Elders assisting Vancouver lawyer Cameron Ward. Ward was hired by the Tahltan to oppose an application by Fortune Minerals to extend their injunction against native protesters blockading a key road in Tahltan territory that the company relied on to carry on operations. Beverly was kept busy interviewing elders, drafted affidavits and later junioring Ward at the hearing in BC Supreme Court. A decision was released on November 23rd, in favour of the Tahltan elders' argument that the injunction should not be extended.

According to Beverly, her clinic training was extremely useful at the hearing: “I recognized the cases and the legal tests that were being cited; the weaknesses in the company’s submission; and to my surprise I really felt at home in court! My experiences this term made me realize that, using the tools I am developing, I can use law to make a real difference in my community”.