Board Notes

We experienced remarkable progress on many fronts this past year. Adopting new bylaws that permit more accountable and streamlined governance, providing the Minister of Environment with advice (at his request) on law reform, and training articling and law students to work on public interest environmental law cases was all part of our work in 2017-2018. Over 34 students, articled students and staff provided over 5,000 hours of pro bono legal services on 30 new files. We re-established our shared articling program and hired Megan Webber as our administrative assistant. We greeted our sixth cohort of ELC Associate lawyers, and “retired” 12 Cohort 5 Associates who now become ELC Fellows along with 50 other lawyers in BC. We spearheaded a national law reform initiative to address plastic waste in our oceans. We were honoured to establish, at the request of Jim’s family and close friends, the James H.C. Walker Memorial Prize to be awarded annually to an ELC student. Jim was the former Director of Fish and Wildlife and Assistant Deputy Minister of Environment for the Province of BC and acted as special advisor to ELC. Finally, with support from a Community-Engaged Learning Grant from the University of Victoria, we conducted a review of the Clinic course. Over 25 percent of students who completed the Clinic between 2007 and 2015 responded resoundingly to say that the Clinic helped them build their legal skills, and we will be using the evaluation results to refine Clinic activities and student training. Special thanks to the ELC community – students, funders, clients, our supporters and the Faculty of Law – for having such a big impact on the environment in BC.

Andhra Azevedo
Student Co-Chair
Board of Directors
2017-18

Tim Leadem, QC
Community Chair
Board of Directors

Deborah Curran
Acting Executive Director

COVER PHOTO: Central Coast, BC, Holly Pattison
Training The Next Generation Of Public Interest Environmental Lawyers

Students with a vision of providing legal assistance to British Columbians on environmental issues founded the ELC more than 20 years ago. Under the guidance of our team of legal professionals, ELC Clinic students continue to produce high-quality legal products that highlight and resolve problems or provide proactive tools and solutions to prevent them from happening.

Partnerships remain the basis of all ELC work. This year we collaborated with Indigenous, non-governmental and community organizations, and with lawyers with an interest in public interest environmental law. Through the passionate work of our students and staff, this year we provided over 5,000 hours of legal assistance to 33 client organizations.

While providing law students with a rich learning environment through their clinical experience, we are also increasing the capacity of community groups, environmental organizations, First Nations, and the public interest environmental law Bar in their efforts to protect and enhance conservation and sustainability in BC.

Many thanks to the people and foundations who support us, the friends who encourage us, and the clients who seek out our help and share their experiences with others. We couldn’t do what we do without all of you.

In 2017-18, ELC Clinic staff, students and articled students provided over 5,000 hours of legal aid services:

34 People
5,000 Hours of service
Law Reform for Sustainable Communities

Thanks to your support, this past year we developed comprehensive legal strategies for addressing marine plastic pollution. Our efforts even caught the attention of Canadian literary icon Margaret Atwood, who co-authored an op-ed about our national plastics strategy, which we hope to see reflected in the government’s position at the G7 meeting in June 2018.

Working with other environmental organizations, we co-drafted and signed onto a Blueprint for Revitalizing Environmental Assessment in BC that provides a new vision for approaching environmental assessment in BC and the key changes needed to make it happen.

We started a number of new law reform projects this year, including developing best practices and recommendations for crown grazing leases and licenses, preparing recommendations for better regulation of BC’s oil and gas industry, and working in partnership with NGOs and First Nations on a comprehensive mining law reform project. We are also investigating how local governments can achieve goals for cities to operate on 100% renewable energy by 2050.

FEEDBACK:

- **Student:** This clinic was a great way to get hands-on experience dealing with a live client on an issue that was very meaningful to me.
- **Client:** Our group wants you to know we are very grateful you accepted our application. We believe this work will be a very significant submission to argue for a positive change... This is excellent work.
Drinking Water and Watershed Health

Water, as the foundation of all life, continues to be a priority for the ELC. This year we were able to help three communities protect drinking water, and we developed proactive tools for watershed planning for several organizations.

Based on concerns over a threat to a community’s drinking water, we provided recommendations to challenge an operational certificate to accept materials at a landfill site. We requested a Drinking Water Health Hazard Prevention Order on behalf of another community group that was concerned about water contamination from a proposed mine, which was later rejected in part due to uncertainty about impacts on water, an issue directly addressed in the ELC submission. For another community, we are exploring how governments are using community-based water monitoring programs as a valid way to collect and provide data.

We analyzed and developed legal tools to incorporate watershed planning into municipal development, drafted a legal brief on establishing a watershed authority, and reviewed water and land-use legal tools for an Indigenous community. Through our input into a review process of an aquifer drinking water issue, we developed recommendations to better protect drinking water for the entire province.

FEEDBACK:

- **Student feedback**: It was amazing to see how a program with only a few people can have such a major impact on the world. I feel like the ELC has opened my eyes to problems I had no idea were happening in my own backyard.
- **Client feedback**: ...a pleasurable read and easy to follow for someone like me not in law. This should take us to the next level step of moving forward to better legislation and process.
Protecting Species, Habitat and Public Access

Working to protect biodiversity and ecological values, this year we developed recommendations to modernize the 100-year-old *Migratory Birds Convention Act*, compiled best practices and recommendations for managing conflicts that arise when balancing the needs of wildlife while taking into account the protection of public safety, and provided a legal opinion regarding the incidental killing of an endangered species of fish.

We called on the Commissioner for the Environmental and Sustainable Development to list the Thompson and Chilcotin Sheelhead under the *Species at Risk Act*, prepared legal information on the enforcement of the Act, and released recommendations on the need to manage floodgates and have fish-friendly pumps that allow salmon passage through floodplain areas and dike infrastructures.

We asked BC's Auditor General to investigate the regulation of placer mining in BC, and, on behalf of a First Nation, developed a legal opinion on cumulative effects assessment and the legal personality of natural features.

We developed recommendations to save migratory bird nests from destruction from brush cutting, prepared a comprehensive briefing note on a "Right to Roam" law in BC, provided support for a private prosecution against a mining company for violations of the *Environmental Management Act*, and we are exploring law and policy reforms for governments to better protect wetlands.

**FEEDBACK:**

- **Student feedback:** It was amazing to develop skills while working towards a product that will actually have an impact in my community. It was extremely motivating and rewarding knowing that my hard work will actually be used and appreciated by our clients.

- **Client feedback:** This report will certainly assist to raise capacity ... to effectively engage and inform decision makers with credible, sound advice and recommendations.
Other Highlights:

- In response to our 2013 request, the Information Commissioner found that the federal government violated policies that effectively muzzled scientists in ways that prevented them from responding to the public’s request for information.
- The Canadian government took the first step toward issuing that emergency order to protect caribou immediately north of the US border. This action is partly in response to the ELC’s December 2017 request.
- BC’s Information Commissioner launched an investigation in response to the ELC’s request to investigate whether public bodies are meeting their duty to proactively make important records available without the need for an access to information request.
- The government agreed with the 10 recommendations in the BC Auditor General’s audit of grizzly bear management. The ELC helped trigger the audit by filing a request in 2014 on behalf of the David Suzuki Foundation.
- When announcing they would review the policy of Professional Reliance and the practice of applicant-hired professionals to make decisions that were formally made by civil servants, the BC government acknowledged that the review will rely heavily upon the ELC report, Professional Reliance and Environmental Regulation in BC.
2017-18 CASE LIST

2017-18 Selected Case List (edited for client confidentiality)

1. Supporting litigation regarding a group's climate change concern
2. Assisting a community address concerns over drinking water safety and mining activity
3. Assisting a First Nation with concerns over mine development in their territory
4. Addressing issues related to feedlots adjacent to food crops
5. Defending the right for public debate over development proposals
6. Supporting the Mount Polley Mine spill private prosecution
7. Reforming the regulation of placer mining
8. Investigating government failures to enforce the Species at Risk Act
9. Protecting old mines and aquifers from contaminated materials
10. Stopping the indiscriminate government killing of wildlife
11. Reforming Crown grazing policies
12. Developing a water strategy for an Indigenous community
13. Pathway for cities to achieve 100% renewable energy
14. Helping a First Nation protect endangered sturgeon
15. Developing a white paper on community-based water monitoring
16. Preparing a toolkit for governments to consider wildlife and watersheds
17. Reforming public engagement in oil and gas governance
18. Challenging a large coastal energy proposal
19. Rewriting the laws that protect drinking water from agricultural waste
20. Creating an Agricultural Land Commission (ALC) policy brief
21. Helping environmental and Indigenous groups revise BC’s Environmental Assessment Act
22. Reforming mineral tenure system and applying land use planning to mining
23. Ensuring polluter pays principle applies to mining
24. Improving the monitoring and enforcement of BC’s mining rules
25. Protecting bird nests from roadside clearing and brushing
26. Helping a First Nation improve federal wetlands compensation
27. Requesting an emergency Order to protect steelhead
28. Developing a Right to Roam Law
29. Protecting Campbell River drinking water

CLIENTS SERVED

Community group (13%)
eNGO (10%)
NGO (40%)
First Nations (20%)
Partnership w/NGO & First Nations (14%)
Other (3%)

REGIONS SERVED

Coastal (7%)
Interior (17%)
Kootenays (3%)
Lower Mainland (3%)
North (7%)
Vancouver Island and Gulf Islands (10%)
Province-wide (45%)
National (7%)
MEDIA SNAPSHOT

A snapshot looking at some of the ELC-generated media from the past year:

Freedom of Information
- British Columbia introduces ‘long needed’ public sector whistleblower protection (2018 May 4) Lawyer’s Daily
- It’s official — the Harper government muzzled scientists. Some say it’s still happening (2018 Mar 22) CBC News
- Trudeau government has more to do to combat Harper-era muzzling of scientists: report (2018 Mar 18) Global News
- BC seeks public’s input on updating its freedom of information legislation (2018 Mar 6) Lawyer’s Daily

Mining and Energy
- ‘It’s an environmental law-free zone’: BC Auditor General asked to investigate unregulated placer mining (2018 Apr 16) DeSmog Canada
- BC government withheld information on dangers of unregulated fracking dams (2018 Apr 2) Tyee
- Erica Stahl: Mount Polley disaster escapes BC law because of government policy on private prosecutions (2018 Feb 19) Georgia Straight
- No provincial charges for Mount Polley mining disaster, but possibility of federal charges remain (2017 Aug 3) Vancouver Sun
- Amnesty releases report on human rights impact of Mt Polley tailings breach (2017 May 27) My Prince George Now
- A dam big problem: fracking companies build dozens of unauthorized dams in BC’s northeast (2017 May 3) DeSmog Canada
- What’s changed on the ground since the Mount Polley mine disaster? (2017 Apr 12) Tyee
- Millions in political donations prompt call for review of BC mining regulations (2017 Apr 7) CBC News
- Comparing mine management in BC and Alaska is embarrassing (and explains why Alaskans are so mad) (2017 Apr 5) DeSmog Canada
- 60 years later, Alaska still calling BC to task on a mine leak through its river (2017 Apr 5) CBC News

Professional Reliance
- Opinion: Professional reliance - environment compromised for corporate profit (2018 Feb 8) Vancouver Sun
- Opinion: BC environment has suffered from a history of ‘reliance’ (2018 Feb 2) Tyee
- How BC outsourced environmental protection (and what you can do about it) (2018 Jan 18) DeSmog Canada
- NDP reviews use of hired guns to study environmental risks (2017 Aug 13) Province
- BC questions having industry-hired experts assess project risks (2017 Aug 12) Times Colonist
- Biologically diverse BC to benefit from pledge for endangered-species law (2017 July 25) Vancouver Sun

Public Access
- Encroaching on public land near Gorge ‘not acceptable’, Esquimalt warns property owners (2018 May 3) Times Colonist
- Unblock access to public waterway, groups tell local council (2018 Mar 6) CBC News
- Report finds neighbours encroaching on public land (2018 Feb 20) CTV News Vancouver Island

Species and Habitat
- BC's Selkirk Mountains' Gray Ghost caribou herd 'functionally extinct' (2018 Apr 17) Vancouver Sun
- Opinion: Respect science and protect our steelhead and salmon (2018 Mar 9) Vancouver Sun
- Opinion: We must act now to protect birds in Canada (2018 Feb 22) Ottawa Citizen
- Unmonitored mining pollutes Fraser River, threatens salmon runs: report (2017 Apr 26) DeSmog Canada

Water and Watershed Management
- Island NDP MP Gord Johns declares war on plastic pollution (2018 May 5) Times Colonist
- Can Canada reinvent the plastic economy? (2018 May 3) Globe and Mail
- Review of tainted Okanagan aquifer includes proposals to protect water (2017 Nov 30) National Post
- Fraser River salmon impacted by floodgates, according to new SFU study (2017 Oct 4) CBC News
- Opinion: If you love the ocean, change the throwaway economy (2017 Aug 18) Vancouver Sun
- BC environmental group urges stop to Ajax Mine project over water-safety concerns (2017 Aug 14) Globe and Mail
- Review announced for tainted Okanagan water source (2017 Aug 2) CBC News
Many hands support the ELC. In addition to our two full-time paid staff, we receive support from the Law Faculty, Board members, students, clients, foundations and our individual donors.

The ELC Associates Program also enhances our work. As a network of aspiring and practicing public interest environmental law practitioners, ELC Associates share their knowledge of environmental and natural resources law and collaborate on issues of mutual concern with ELC staff and students.

Staff

Deborah Curran, **Acting Executive Director**
Deborah focuses primarily on land and water law. She has significant experience in analyzing and making recommendations on how local governments approach regulation and planning for environmental protection, particularly in the context of smart growth and ecosystem integrity.

Calvin Sandborn, Q.C., **Legal Director**
Calvin is one of BC’s most experienced public interest environmental lawyers. Former counsel to West Coast Environmental Law and the Forest Practices Board, Calvin was Associate to the historic Commission on Resources and Environment. In 2011, Calvin was named Honourary Citizen of the City of Victoria and received the Andrew Thompson Award, BC’s top prize for Environmental Advocacy. In 2017, he received the Svitlana Kravchenko Environmental Rights Award for his public interest and environmental law work and was appointed with the honourary title Queen’s Counsel.

Holly Pattison, **Paralegal Administrator**
Holly directs ELC operations and communications. She teaches file management in the Clinic and is responsible for financial oversight and communications. She’s a writer, photographer and filmmaker and uses her photography to illustrate the ELC’s work and environmental issues whenever possible.
2017-18 Board of Directors

Community Board Members

- Oliver Brandes, POLIS
- Gillian Calder, UVic Law Professor
- Kathy Chan, UVic Law Professor
- Clare Frater, Director of Trust Area Services, Islands Trust
- Tim Leadem, QC, retired Lawyer
- Alyne Mochan, Legal Officer, Office of the Conflict of Interest Commissioner of BC
- Stuart Rush, QC, retired Lawyer
- David Thomas, Businessman

Student Executive Board Members 2017-18

- Andhra Azevedo, President
- Caitlin Stockwell, Vice President
- Gigi Pao, Internal Communications
- Courtenay Jacklin, External Communications
- Jessica Wilson, External Communications
- Conner Wear, Treasurer
- Graham May, Special Events Coordinator
- Darcie Alexis, Indigenous Law Students Association Liaison
- Andie Britton-Foster, Summer Rep
- Rachel Gutman, Summer Rep
- Lola Churchman, Upper Year Rep
- Frances Ankenman, First Year Rep
- Will Kendon, First Year Rep

We aim to improve environmental quality and increase access to environmental justice in BC
Thank you to our donors

Thanks to foundational support from the Law Foundation of British Columbia, the North Growth Foundation, the Oasis Foundation, the Sitka Foundation, and to the support of our individual donors, the ELC continues to improve environmental protection and access to environmental justice in BC.