



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

2012 Environmental, Energy and Resources Law Summit: Environmental Issues in Business Transactions April 26 – 27, 2012, Fairmont Waterfront Hotel, Vancouver, BC

Program Co-Chairs:

Tony Crossman, *Miller Thomson*

Sarah Powell, *Davies Ward Phillips & Vineberg LLP*

ABA SEER Liaison:

Alexandra Dunn, *Executive Director and General Counsel*

National Association of Clean Water Agencies

THURSDAY, APRIL 26

7:30 - 8:30 REGISTRATION AND CONTINENTAL BREAKFAST

8:30 - 8:45 OPENING REMARKS FROM THE CO-CHAIRS

8:45 - 9:15 WELCOME ADDRESS

Paul Kluckner, *Regional Director General for Environment Canada, Pacific and Yukon Region, Vancouver, BC*

9:15 - 10:45 LIABILITY FOR CONTAMINATED PROPERTY: LATEST DEVELOPMENTS

Moderator: **Dianne Saxe**, *Saxe Law Office, Toronto, ON*

Panelists: **Max Collett**, *Bull, Housser & Tupper LLP, Vancouver, BC*

Amy Edwards, *Holland & Knight, Washington, DC*

This panel offers in-depth analysis on liability of landowners for contamination under federal and provincial environmental laws, environmental liability of parent and successor corporations and lenders, latest common law approaches on environmental damage claims and recovery of remediation costs under historical insurance policies.

10:45 - 11:00 REFRESHMENT BREAK

11:00 - 12:00 MECHANICS OF ENVIRONMENTAL DUE DILIGENCE: STRATEGIES TO QUANTIFY ENVIRONMENTAL RISK IN A COMPLEX DEAL

Moderator: **Tim Clare**, *WSP Group, London, UK, Vice Chair, UK Environmental Law Association*

Panelists: **Walter D. James III**, *James PLLC, Colleyville, TX*

Guy Patrick, *Golder Associates Ltd., Victoria, BC*

Jim Titerle, *Miller Titerle LLP, Vancouver, BC*



This panel discusses environmental due diligence strategies for effective and efficient approaches to quantify environmental risk (e.g., estimation of liabilities, compliance with regulatory programs, remediation time frames and costs, carbon-related risk, etc.). The panel explores various protocols for due diligence that take into account the client's risk thresholds. The panel comments on the impacts of the recent economic uncertainty on due diligence trends.

12:00 - 1:30 LUNCH FOR ALL ATTENDEES WITH ROUNDTABLE DISCUSSION

Moderators: **Irma Russell**, *Dean and Professor, University of Montana Law, Missoula, MT, SEER Chair*

Jonathan Kahn, *Blake, Cassels & Graydon LLP, Toronto, ON, NEERLS Chair*

Members: **R. Kinnan Golemon**, *KG Strategies, LLC, Austin, TX, Past SEER Chair*

Jim Thistle, *McInnes Cooper, St. John's, NL, Past NEERLS Chair*

Uncertainty exists in terms of how Canada and the U.S. will balance their energy portfolios, reduce carbon emissions and promote domestic and cross-border energy security. This lively luncheon discussion will reflect on the unique opportunity that current policy and philosophy gaps present to NEERLS and SEER to affect and shape climate and energy policy at the federal and state/provincial specific levels.

1:30 - 2:30 KEY REGULATORY OBSTACLES TO DEVELOPMENT: CULTURAL RESOURCES, WETLANDS, WATER AND WILDLIFE

Moderator: **Janice Walton**, *Blake, Cassels & Graydon LLP, Vancouver, BC*

Panelists: **Lee A. DeHihns III**, *Senior Counsel, Alston & Bird LLP, Atlanta, GA*

Journey Paulus, *Cenovus Energy, Calgary, AB*

This panel explores how to identify and manage the risk associated with cultural (Aboriginal) resources, wetlands, water, species at risk and migratory birds as they may be key regulatory challenges to development. The panel also discusses emerging issues such as jurisdictional determination and ethical issues related to cultural resources, water and wildlife.

2:30 - 4:00 GET THE DEAL DONE: CONTRACTUAL ALLOCATION OF ENVIRONMENTAL RISK

Moderator: **Dennis Mahony**, *Torys LLP, Toronto, ON*

Panelists: **Channing J. Martin**, *Williams Mullen, Richmond, VA*

Deborah Overholt, *Borden Ladner Gervais LLP, Vancouver, BC*

For transactional lawyers, minimizing future environmental risks is a significant challenge. This panel provides practical approaches to minimize or manage environmental liabilities and explores the unique challenges faced by transactional lawyers to protect their clients from future (and unintended) environmental claims. The panel's focus is on effective contractual approaches to allocate environmental risk in transactions:

- Environmental risk allocation strategies, ranging from "as is" to complex environmental indemnities;



INFLUENCE. LEADERSHIP. PROTECTION.

- Drafting environmental provisions in harmony with other parts of the contract to ensure environmental liabilities are allocated in accordance with parties' intentions;
- Indemnities management;
- The use of environmental insurance products to protect stakeholders against broad-ranging environmental liabilities including strategies to negotiate the terms of environmental liability insurance policies; and
- Ethics for the transaction lawyer (puffing, lies and negotiations).

4:00 - 4:15 REFRESHMENT BREAK

4:15 - 5:00 EFFECTIVE ENVIRONMENTAL DISPUTE RESOLUTION: THE CANADIAN EXPERIENCE

Moderator: **Jim Thistle**, *McInnes Cooper*, St. Johns, NL

Panelists: **Gary Letcher**, *Edwards Kenny Bray*, Vancouver, BC

Professor LeRoy C. Paddock, *Associate Dean for Environmental Law, George Washington University Law School*, Washington, DC

Murray Rankin Q.C., *Barrister and Solicitor*, Vancouver, BC

Gilbert Van Nes, *General Counsel and Settlement Officer, Alberta's Environmental Appeals Board*, Edmonton, AB

This panel explores not only the promise of environmental mediation but also the potential obstacles and challenges. The panel discusses practical tips to the mediation process including preparing to participate effectively and goal setting with the client. Panelists will review forms of intervention (from neutral evaluation to arbitration) and discuss ethical issues.

6:30 - 8:30 JOINT ABA/CBA RECEPTION FOR ALL ATTENDEES AT THE VANCOUVER AQUARIUM

This cocktail and hors-d'oeuvres reception in the Arctic Canada Gallery at the Vancouver Aquarium will serve as an excellent opportunity to meet speakers and the other conference participants and to visit Canada's largest aquarium located in the heart of Stanley Park, in downtown Vancouver.

FRIDAY, APRIL 27

7:30 - 8:00 REGISTRATION AND BREAKFAST

8:00 - 9:00 INTERSECTION OF ENVIRONMENTAL AND BANKRUPTCY LAWS

Moderator: **Alexandria Pike**, *Davies Ward Phillips & Vineberg LLP*, Toronto, ON

Panelists: **John C. Cruden**, *President, Environmental Law Institute*, Washington, DC

Elizabeth Rowbotham, *BC Ministry of Attorney General*, Vancouver, BC

An inherent conflict exists between the policies underlying environmental and bankruptcy laws. This panel provides in-depth analysis of the latest case law and discusses ethical issues surrounding the prioritization of a bankrupt's environmental liabilities.



9:00 - 11:00 HOT TOPICS IN ENVIRONMENTAL, ENERGY AND RESOURCES LAW

Moderator: **Charles Birchall**, *Fogler, Rubinoff LLP*, Ottawa, ON

Panelists: **Jeffery Dennis**, *Legal Advisor to Commissioner, U.S. Federal Energy Regulatory Commission*, Washington, D.C.

Robin Junger, *McMillan LLP*, Vancouver, BC

Paul Rice, *Pinsent Masons*, London, UK

Kathleen Roussel, *Senior General Counsel & Executive Director, Environment Canada Legal Services*, Ottawa, ON

Michael Simms, *McInnes Cooper*, Halifax, NS

This popular annual panel focuses on a selection of the very latest developments including energy and climate policies in North America and the EU, cross-border energy projects, practical implications of regulators' guidance on climate change disclosure, the duty to consult Aboriginal communities and Canadian environmental assessment reform.

11:00 - 11:15 REFRESHMENT BREAK

11:15 - 12:00 KEYNOTE SPEAKER

Ross McMillan, *President & CEO Tides Canada*, Vancouver, BC

12:00 - 1:00 LUNCH

1:00 - 2:30 ENVIRONMENTAL AND SOCIAL RISK MANAGEMENT: NEW CHALLENGES IN INTERNATIONAL ENVIRONMENTAL AND CORPORATE SOCIAL RESPONSIBILITY

Moderator: **John Pratt**, *Natural Resources Canada*, Ottawa, ON

Panelists: **Marketa Evans**, *Extractive Sector Corporate Social Responsibility Counsellor, Government of Canada*, Toronto, ON

Arlena Barnes, *Past Senior Attorney, Bonneville Power Authority*, Portland, OR

Gary MacDonald, *Monkey Forest Consulting*, Vancouver, BC

Ian Sampson, *Shepstone & Wylie*, Durban, South Africa

Globalization means that corporate responsibility has no borders. This panel discusses the updated 2012 edition of the IFC's Sustainability Framework the upcoming Rio+20 Summit and the potential impact of renewed international commitment to institutional frameworks for sustainable development including free, prior and informed consent of affected communities. The panel will provide in-depth analysis on the complex web of international CSR performance guidelines and transparency initiatives and discuss Canada's CSR strategy for mining companies operating abroad.



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

2:30 - 2:45

REFRESHMENT BREAK





2:45 - 3:45 COMPARATIVE CONSTITUTIONAL LAW: KEY PRINCIPLES OF ENVIRONMENTAL, ENERGY AND RESOURCES LAW

Moderator: **Jonathan Kahn**, *Blake, Cassels & Graydon LLP*, Toronto, ON

Panelists: **Professor Robin Craig**, *Florida State University College of Law*, Tallahassee, FL
Peter Hogg, *Blake, Cassels & Graydon LLP*, Toronto, ON

This panel offers a comprehensive account and analysis of the growing - and increasingly important - intersection of constitutional and environmental, energy and resources law. The panel provides an accessible account of emerging constitutional issues valuable to all stakeholders.

3:45 - 4:00 CLOSING REMARKS BY THE CO-CHAIRS

4:00 - 5:30 JOINT NEERLS AND SEER BUSINESS MEETING

Conference attendees are welcome to attend.

5:30 - 7:30 JOINT ABA/CBA NETWORKING RECEPTION FOR ALL ATTENDEES

As the conference winds up, this cocktail and hors-d'oeuvres reception provides one more opportunity to mingle with speakers and other attendees.

