



THE CANADIAN
BAR ASSOCIATION

CBA ENVIRONMENTAL, ENERGY & RESOURCES LAW SUMMIT

APRIL 27 – 28, 2017 | MONTREAL, QC

THURSDAY, APRIL 27

8:00-8:45 **Registration & Breakfast** | Six Resto Lounge & Inspiration Foyer

8:45-9:00 **Welcome & Introductions** | Inspiration Room

Co-Chairs: **Mira Gauvin**, Gowling WLG (Canada) LLP
 Carole Chan, McInnes Cooper

9:00-10:00 **Water Law: cross-country review of groundwater and surface water management legislation and policy framework** | Inspiration Room

Across Canada, the protection and use of water is an ever developing issue. From the development of the Water Sustainability Act and associated regulations in BC, to the increased regulation of and litigation over water takings in Ontario, to the adoption of an act and associated regulations to provide increased protections and confirm the legal status of water resources in Québec, water is a hot issue across the country. On this panel, three experienced practitioners in the water law area will update you on recent developments.

Moderator: **Jonathan Kahn**, Blake, Cassels & Graydon LLP
Speakers: **Jonathan Kahn**, Blake, Cassels & Graydon LLP
 Pierre-Olivier Charlebois, Fasken Martineau
 Jana McLean, Miller Titerle + Company LLP

10:00-11:00 **Species at Risk Acts & Project Development and Operation** | Inspiration Room

This panel will tackle the increasingly complex regulatory challenges regarding the protection of species at risk and their habitat including:

- *the first federal emergency order on private lands in Quebec for the protection of the Western Chorus Frog;*
- *the increasingly stringent permitting requirements to conduct field work and assess/mitigate potential impacts; and*
- *the emerging challenges and opportunities for habitat offset/banking.*

Moderator: **Sarah Powell**, Davies Ward Phillips & Vineberg LLP
Speakers: **Kyle Hunt**, Savanta Inc.
 Karine Peloffy, Directrice Générale, Centre québécois du droit de l'environnement

11:00-11:15 **Refreshment Break** | Six Resto Lounge

11:15-12:30 **International perspectives in environmental law: how will recent changes around the world affect us?**
Inspiration Room

The landscape of environmental law in the global context is poised to change. The impact of Brexit on the UK and EU, the election of a new President in the US and appointment of a new administrator to the USEPA will all have ramifications for environmental issues and environmental law. There are parallels to draw with global movements towards nationalism rather than international or supranational arrangements, bilateral deals rather than multilateral trading agreements, and how this impacts environmental protection which is

widely acknowledged to be an international issue. This panel will touch on key environmental legal issues and their potential impact on Canada.

Moderator: **Janet Bobechko**, Norton Rose Fulbright

Speakers: **Seth Davis**, Elias Group LLP & Chair of the Section of Environment, Energy, and Resources of the American Bar Association

Simon Tilling, Burges Salmon LLP & Council Member and Trustee of the UK Environmental Law Association

12:30-1:45

Lunch & Keynote Speaker | Ovation Room

Carta de Foresta: A Revolution for Forests, Commons and Individual Rights

Speaker: **Daniel Magraw**, Paul H. Nitze School of Advanced International Studies (SAIS), Johns Hopkins University

1:45-2:45

Climate Change Law and Practice: Canada Carbon Pricing, the US Presidential Order and BREXIT – What next? | Inspiration Room

There have been many significant changes to the Climate Change space in the past year. A new federal government ratified the Paris agreement and announced a progressive national carbon pricing policy, while many provinces have introduced or adjusted their GHG regulatory regimes. This session will provide an overview of the current (and rapidly changing) regulatory regimes across Canada, the implications of the recent US presidential order and BREXIT; and the practical realities of carbon pricing.

Moderator: **Tony Crossman**, Blake, Cassels & Graydon LLP

Speakers: **Jean Piette**, Norton Rose Fulbright

Sean Capstick, Golder Associates Ltd

Seth Davis, Elias Group LLP & Chair of the Section of Environment, Energy, and Resources of the American Bar Association

Simon Tilling, Burges Salmon LLP & Council Member and Trustee of the UK Environmental Law Association

2:45-3:45

Technical and Legal Aspects of Soil and Groundwater Contamination | Inspiration Room

Vapour intrusion regulations in Canada vary by province but can play a significant role in legal matters pertaining to real estate transactions and redevelopment of contaminated sites. This panel will discuss applicable vapour intrusion regulations and monitoring requirements in Canada, as well as the challenges and emerging solutions to accurately assess vapour intrusion risk and to distinguish between subsurface and background sources. Our expert panel will discuss the challenges associated with background sources, data variability, preferential pathways, acute toxicity and changing regulations. They will discuss new test methods to overcome the challenges and provide more certainty when addressing legal matters.

Moderators: **Tamara Farber**, Miller Thomson

Dr. Silvia Mancini, Geosyntec Consultants Inc.

Speakers: **Dr. Eric Bergeron**, Golder Associates Ltd.

Dr. Todd McAlary, Geosyntec Consultants Inc.

3:45-4:00

Refreshment Break | Six Resto Lounge

4:00-5:00

Environmental Insurance – Underwriting Coverage and Claim Disputes | Inspiration Room

Most property and casualty policies exclude pollution risks. This means that environmental insurance policies and riders are often the only coverage that permits recovery of losses from environmental issues or events. These issues and events may involve: (i) historic known and unknown pollution conditions, (ii) spills, leaks and discharges, (iii) environmental impacts from neighbours, and (iv) environmental failures, mishaps and mismanagement. Environmental insurance can serve as a risk transfer tool in any of these contexts including frequently in environmental transactions. Not all coverage is equal and not all insurance products are available from all insurers and for all potential exposures. Notably, environmental coverage is often negotiable with insurers during underwriting. From the claims perspective, there has been judicial consideration of environmental coverage disputes including when coverage triggers and how far coverage extends. Once a claim is issued, there may be further negotiation with one or more insurers about the scope of defence and indemnity coverage which is dependent on the policy language and scope of the plaintiff's claim. Our speakers will touch on key points associated with underwriting environmental coverage, and also environmental defence and indemnity obligations.

Moderator: **Marc McAree**, Willms & Shier Environmental Lawyers LLP

Speakers: **Carl Spensieri**, Berkley Canada

George Boire, Marsh Canada Ltd

Matt Gardner, Willms & Shier Environmental Lawyers LLP

5:00

Closing Remarks

5:00-7:00

Cocktail Reception | Centre for Sustainable Development | 50 Sainte-Catherine Street West

Brief presentation of the Maison du Développement Durable project by Joanne Parent, MENKÈS SHOONER DAGENAI LETOURNEUX Architectes.

FRIDAY, APRIL 28

8:00-8:30

Registration & Breakfast | Six Resto Lounge & Inspiration Foyer

8:30-10:15

Updates on the Federal Environmental Assessment Process Review | Inspiration Room

The Minister of Environment and Climate Change established an Expert Panel in August 2016 to review federal environmental assessment processes under the Canadian Environmental Assessment Act, 2012 (CEAA, 2012). The Expert Panel travelled across the country to hear the views and perspectives of Indigenous people and other key stakeholders on how best to reform CEAA, 2012. The Expert Panel submitted its report to the Minister on April 5, 2017. One of the experts on the Panel is Rod Northey. He will provide an overview of the Expert Panel's work and key recommendations.

The Mining Association of Canada (MAC) submitted a detailed brief to the Expert Panel setting out a number of recommendations for it to consider. Justyna Laurie-Lean, Vice President, Environment and Regulatory Affairs will provide MAC's perspective on the reform of CEAA, 2012 and the recommendations of the Expert Panel.

The Environment, Energy and Resources Law Section (NEERLS) and Aboriginal Law Section of the Canadian Bar Association (CBA Sections) also submitted a brief to the Expert Panel suggesting ways to strengthen and improve the federal environmental assessment processes. Tony Crossman, former Chair of NEERLS,

appeared before the Expert Panel to highlight key features of the brief. With the CBA's brief as a backdrop, Tony will also comment on the Expert Panel's report and the public reaction to it.

Moderator: **Charles Birchall**, Willms & Shier Environmental Lawyers LLP

Speakers: **Rodney Northey**, Gowling WLG (Canada) LLP

Tony Crossman, Blake, Cassels & Graydon LLP

Justyna Laurie-Lean, Mining Association of Canada

10:15-10:30

Refreshment Break | Six Resto Lounge

10:30-11:30

Environmental Aspects of Transactions | Inspiration Room

This panel will consider a hypothetical transaction to examine and discuss issues that arise for purchaser and seller lawyers and environmental consultants when attempting to define and allocate risks related to environmental issues on a commercial transaction. Issues that will be discussed, include:

- *Deal readiness for sellers*
- *Due diligence aspects including retaining environmental consultants, access to information, assessing materiality*
- *Dealing with the regulator*
- *Risk allocation and risk sharing: "as is" transaction, contractual representations & warranties, general and specific indemnities and insurance*
- *Considerations related to financing*
- *Post-closing issues: need for corrective action, remediation or regulatory permitting*
- *Ethical issues: Solicitor client privilege, reporting, and disclosure*

Moderator: **Tony Crossman**, Blake, Cassels & Graydon LLP

Speakers: **Dan P. Bunner**, Ramboll Environ Canada, Inc

Myriam Fortin, Stikeman Elliott LLP

Alexandria J. Pike, Davies Ward Phillips & Vineberg LLP

11:30-12:30

Recent Developments in the Law and Practice of Aboriginal Consultation | Inspiration Room

Aboriginal Law in general, and Aboriginal consultation in particular, continues to be one of the fastest evolving areas of the law in Canada. This panel will discuss recent developments in the law and practice of aboriginal consultation, with a particular focus on consultation in the context of the forestry, mining, and oil & gas sectors, from the perspective of practitioners who act for aboriginal groups, industry members and governments.

Moderator: **Mike Simms**, McInnes Cooper

Speakers: **Nadir André**, Borden Ladner Gervais LLP

Jean-Sébastien Clément, Gowling WLG (Canada LLP)

Sandra A. Gogal, Miller Thompson LLP

12:30-1:45

Lunch & Keynote Speaker | Ovation Room

Since its inception nearly 40 years ago, the Bureau d'audiences publiques sur l'environnement (BAPE) has pursued its mission to enlighten government decision-making in a sustainable development perspective. Some of the questions discussed today will include scientific oversight, social acceptability and social media.

Speaker: **Pierre Baril**, President, Bureau d'audiences publiques sur l'environnement (BAPE)

1:45-3:15

The Laws of Food, Agriculture and the Environment: Intersecting Disciplines? | Inspiration Room

Food, agriculture, and the environment are linked by their very nature, but how do the laws and policies that govern in these areas interact? From environmental criteria in agri-business financing to place of origin labelling and sustainable food systems, this panel of distinguished food, agriculture, and environmental jurists will provide an overview of food and agricultural law, highlighting - in both Canada and the US - key trends and issues of interest for environmental law practitioners.

Moderator: **Carole Chan**, McInnes Cooper

Speakers: **Donald Buckingham**, Canada Agricultural Review Tribunal
Jonathan Brown, Elizabeth Haub School of Law, Pace University
Madeleine Lemieux, Lemieux, Paradis, Francis

3:15-3:30

Refreshment Break | Six Resto Lounge

3:30-5:00

Cross-Canada “Hot Topics” / Recent Developments Panel | Inspiration Room

Moderator: **John Stefaniuk**, Thompson Dorfman Sweatman LLP

Speakers: **Martin Lessard**, Justice Québec, (Bill 102- modernization of the authorization framework under the Environment Quality Act)
Claude Corbin, Director General, Transport Canada (TBC), (Canada’s Oceans Protection Plan)
Harry Dahme, Gowling WLG (Canada) LLP, (Canadian Environmental Protection Act, 1999 and Canada’s Chemical Management Plan)
Robert Daigneault, Daigneault, avocats inc. (Bill n°132 : An Act respecting the conservation of wetlands and bodies of water)

5:00-5:15

Closing Remarks

5:15-19:00

Closing Cocktail | Imagination Room

Organizing Committee Members:

Co-Chairs:

Mira Gauvin, Gowling WLG (Canada) LLP

Carole Chan, McInnes Cooper

Members:

Charles (Chuck) Birchall, Willms & Shier Environmental Lawyers LLP

Janet Bobechko, Norton Rose Fulbright Canada LLP

Tony Crossman, Blake, Cassels & Graydon LLP

Jennifer Danahy, Gowling WLG (Canada) LLP

Tamara Farber, Miller Thomson LLP

Lisa Jamieson, LNG Canada Development Inc

Charles Kazaz, Blake, Cassels & Graydon LLP

Marc McAree, Willms & Shier Environmental Lawyers LLP

Alexandria Pike, Davies Ward Phillips & Vineberg LLP

Sarah Powell, Davies Ward Phillips & Vineberg LLP

Michael Simms, McInnes Cooper LLP

John Stefaniuk, Thompson Dorfman Sweatman LLP

Martin Thiboutot, McCarthy Tétrault S.E.N.C.R.L., s.r.l

Barry Weintraub, Rueters LLP

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