

## Journal of Environmental Law and Practice Volume 17 Abstracts

### **Creating Environmentalists: Environmental Law, Identity and Commitment**

- Andrew Green

**Abstract:** Progress on environmental issues will require a shift in how individuals view and value their relationship to the environment. This article examines two divergent theories on how individuals' values are formed. One theory stems from the recent work in economics on how identities (including values) are formed and affect choices. It is based in part on a connection between an individual's choice of identity and their desire to further their own well-being. The second theory is based on a view of an individual's values as commitments that she adopts which are unconnected to her own well-being. This article sets out these theories and examines the connection between them and the formation of environmental law and policy including instrument choice and administrative processes.

### **The Duty to Accommodate Aboriginal Peoples Rights: Substantive Consultation?**

- Verónica Potes

**Abstract:** The nascent doctrine on the duty to consult and accommodate Aboriginal rights remains hesitant with regard to the outcome. While it has potential to impose a substantive outcome to consultation processes involving Aboriginal peoples, it may also become an assimilationist tool. It all depends on how high the standard for accommodation is set. The generic obligation to "address concerns substantially" must inform the mandate to "balance interests" if reconciliation of cultures is the ultimate pursuit. The Court has yet to determine the standard for accommodation.

### **Tools for the Protection of Ecologically Significant Private Lands in Ontario: A Case Study of Marcy's Woods**

- Michelle Campbell

**Abstract:** There is increasing concern about the loss of natural spaces to development in numerous areas across Canada where urbanization pressures are great. Canada's Carolinian Forest Zone in Southern Ontario, which is considered one of Canada's most endangered ecosystems, is one such region. The unusual forested dune habitat called Marcy's Woods in the Niagara Region is an example of a rare intact Carolinian ecosystem. The Woods are currently under private ownership. The main purpose of this article is to outline the various legal tools that exist for the protection and conservation of ecologically significant private lands in Ontario. The available legal tools include: voluntary agreements for sale; conservation covenants; municipal planning; special provincial planning authority; legislative enactment; and government expropriation. The specific case of Marcy's Woods is used to illustrate how these legal

tools could be used by conservation organizations to promote the protection of important private lands in the province.

### **Governance and the Environment in Canada From Regulatory Renaissance to “Smart Regulation”**

- Mark S. Winfield

**Abstract:** The following is the keynote address presented by Mark Winfield at the 2nd Biennial J.E.L.P. Environmental Law Conference, Sharing Environmental Responsibility: Stewardship Obligations in the Corporate, Governmental and Non-Governmental Sectors, held at Anglin Lake, Saskatchewan, June 1-4, 2006.

### **Smarter Regulation: The Case for Enforcement and Transparency**

- Jerry V. DeMarco and Toby Vigod

**Abstract:** In recent years in Ontario, a diminished emphasis on enforcement (1994-1999) correlated with an increase in water pollution exceedances. A renewed emphasis on enforcement was then accompanied by a decrease in water pollution exceedances (1999-2003). While the relative importance of enforcement activities in the province of Ontario was not the only variable at play during the period of this study, the results presented provide evidence that enforcement remains a key aspect of achieving compliance with environmental standards and improving environmental quality. It is recognized that 'carrots' (e.g. voluntary initiatives, incentives) and 'sticks' (e.g. binding standards, enforcement actions) are both needed to improve compliance with environmental standards. Deterrence of inappropriate conduct can be accomplished by a variety of means but enforcement of legal standards is a key element of an effective compliance toolkit. The threat of significant fines and/or jail time is still an effective deterrent. Public disclosure of environmental performance has also been found to create additional and strong incentives for pollution control.

### **An Essay on Social Responsibility and the Limits of the Corporate Form: A Perspective on Environmental Protection**

- Michael Ilg

**Abstract:** As this modern tendency toward corporate social responsibility (CSR) coincides with a similarly increasing awareness of environmental harm, it appears an appropriate time to discuss the efficacy of addressing environmental protection through corporate governance. Although the joining of CSR and environmental protection is a promising start-position, this article advises caution in this regard. Given the systematic impediments to achieving environmental ends through government imposition of management goals, the issue should instead become one of achieving the same environmental objectives from without, external to the corporation.

Objectives of social responsibility need to be translated into verifiable information signals, so that they appear on the same level as other calculations of corporate profitability and shareholding success. Treating environmental protection as an incentive and reward in corporate competition may, therefore, further an important social objective while retaining the innovative drive of market forces.

### **The Supreme Court of Canada's Recognition of Fundamental Environmental Values: What Could be Next in Canadian Environmental Law?**

- Jerry V. DeMarco

**Abstract:** The Supreme Court of Canada has recognized the importance of environmental protection in the context of upholding environmental legislation at all levels-federal, provincial, and municipal. This article summarizes the manner in which the Court has embraced several key environmental principles, namely, environmental rights, the polluter pays principle, the precautionary principle, intergenerational equity, sustainability, and public trust. Thoughts are offered on how the Court's endorsement of these principles may affect the evolution of environmental case law and legislation in Canada.

### **Public Participation and the Disposition of Oil and Gas Rights in Alberta**

- Nickie Vlavianos

**Abstract:** Alberta's Environmental Appeals Board (EAB) is a quasi-judicial administrative tribunal, created under the Environmental Protection and Enhancement Act (EPEA). One of the EAB's stated purposes is to provide a vehicle for members of the public to have a voice with respect to activities that may have an adverse effect on the environment. The Environmental Law Centre completed a project in 2000 reviewing the EAB to assess how accessible its process is to the public. The report focused on three areas key to effective public participation in the appeal process: standing, practice and procedure, and costs. Overall, most interviewees thought that the EAB process was beyond the reach of the average citizen because of the financial and personal burdens, complexity of the process, and the need for legal counsels. More public information and education is required to improve accessibility and restore public confidence in the appeals process.

### **Carbon Offset Trading: A Leaky Sieve or Smart Step?**

- Stewart A.G. Elgie

**Abstract:** Canada is about to embark on its first large scale experiment with emissions trading, as part of its efforts to address climate change. The theory is that emissions trading can achieve significant cost savings compared to traditional regulatory approaches, and therefore allow for greater emission reductions. However, designing a

carbon trading program to achieve such dual benefits poses significant challenges, particularly if the aim is to include a wide array of sectors and companies. Canada's proposed climate plan includes two components: a cap and trade system for large industrial emitters, and offset trading for other sectors. This article advances two theses. First, a cap and trade system can generate significant environmental and economic benefits, whereas an offset system typically will generate little or no overall benefits. Second, despite its limited benefits, offset trading should not be categorically rejected: in some situations it can serve as an important transitional step towards an effective cap and trade system.

**Book Review: Meinhard Doelle – *From Hot Air to Action: Climate Change, Compliance and the Future of International Environmental Law***

- Gregory Wurzer

**Public Access to Environmental Appeals: A Review and Assessment of Alberta's Environmental Appeals Board**

- Cindy Chiasson

**Abstract:** Alberta's Environmental Appeals Board (EAB) is a quasi-judicial administrative tribunal, created under the Environmental Protection and Enhancement Act (EPEA). One of the EAB's stated purposes is to provide a vehicle for members of the public to have a voice with respect to activities that may have an adverse effect on the environment. The Environmental Law Centre completed a project in 2000 reviewing the EAB to assess how accessible its process is to the public. The report focused on three areas key to effective public participation in the appeal process: standing, practice and procedure, and costs. Overall, most interviewees thought that the EAB process was beyond the reach of the average citizen because of the financial and personal burdens, complexity of the process, and the need for legal counsels. More public information and education is required to improve accessibility and restore public confidence in the appeals process.

**Yesteryear's Leasehold Covenants in a Contamination Conscious Canada**

- Sarah Powell and Katie Goldberg Zwick

**Abstract:** Today, most parties to commercial real estate transactions are keenly aware of the importance of allocating environmental liabilities. As a result, modern leases routinely include provisions regarding responsibility for clean-up and liability related to contamination. In older leases however, environmental liabilities were not generally contemplated. The question then arises, particularly upon termination of these older leases, whether the tenant must clean up contamination that occurred on the leased premises during the term of the lease, and if so, to what extent. The jurisprudence involving the allocation of responsibility for contamination in the context of leases has

not yet clearly defined the level of clean-up that will be required of a tenant in the case of older leases where provisions addressing contamination were generally not contemplated.