SUMMARY REPORT

5th Journal of Environmental Law and Practice (JELP) Biennial Conference

‘Après…le Déluge’: Future Directions for Environmental Law and Policy in Canada

The Journal of Environmental Law and Practice’s 5th biennial conference (JELP 5), ‘Après…le Déluge’: Future Directions for Environmental Law and Policy in Canada, was held in Calgary, AB, on June 5-7, 2015. It set out to discuss the effect of the changes to Canada’s environmental law regime brought on by the passage of the federal omnibus budget bills C-38 and C-45, and of budget cuts to line departments such as Fisheries and Oceans Canada and Environment Canada, the ‘muzzling’ of Canadian scientists and delays in regulating greenhouse gases. Conference participants explored how other levels of government might respond to fill the resulting gaps, and what a reinvigorated federal environmental regime might look like.

There were eight panels, covering the following topics: assessing the amended Fisheries Act and CEAA 2012, theoretical perspectives, provincial and Aboriginal responses and developments, future environmental regimes, and perspectives on the future of environmental law. Many of the presentations are available on the JELP 5 website at http://jelp.ca/conferences/ (links embedded in the Conference Program). The conference volume is expected in December 2015, with some of the papers possibly appearing in the subsequent regular JELP issue instead. While it is impossible to do justice to the excellent presentations and rich discussion, this report provides a brief summary of some of the points discussed by the panels.

The participants did not identify overall conclusions from their discussions. However, the message of the conference is perhaps as follows: Much has been lost with the 2012 changes to Canada’s environmental law regime, compounding older systemic problems, but there are great opportunities for watershed and local initiatives, Indigenous law, environmental rights, and provincial and other initiatives to fill in the gaps and even transform environmental law in Canada. Reform efforts should aim high; sustainability as a core principle can be a subversive force; ecological scale interventions, flexibility and adaptability need to be built into the system; and the power of environmental rights should be harnessed. “Hope springs eternal.”

I – ASSESSING THE AMENDED FISHERIES ACT

Professor Arlene Kwasniak introduced this panel by noting 4 significant events in the evolution of fisheries protection in Canada: the enactment of the Fisheries Act in 1868; the introduction of the Fisheries Act in 1868; the introduction of the Fishery Act in 1868; the introduction of the HADD provisions in 1977; the work of Martha Kostuch leading, among other things, to the

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1 Prepared by Carla Sbert for the Center for Environmental Law and Global Sustainability, University of Ottawa. Any omissions or errors are hers.

2 ‘Après MOI, le Déluge’ is attributed to Louis XV. According to Wikipedia: “Most scholars believe Louis XV’s decisions damaged the power of France, weakened the treasury, discredited the absolute monarchy, and made it more vulnerable to distrust and destruction, as happened in the French Revolution, which broke out 15 years after his death. Norman Davies says that after Louis XV took full control in 1723, his reign “was one of debilitating stagnation,” characterized by lost wars, endless clashes between the Court and Parliament, and religious feuds. A few scholars defend Louis, arguing that his highly negative reputation was based on propaganda meant to justify the French Revolution. Jerome Blum says he was “a perpetual adolescent called to do a man's job.”” [footnotes omitted]
recognition of environmental assessment law as not just policy; and the dismantling of fisheries protection through bills C-38 and C-45. She pointed to JELP 5 as a new hopeful influence.

**Lamenting what we HADD? – Jason Unger (Staff Counsel, Environmental Law Centre)**

Jason Unger provided an overview of the evolution of the HADD and the many “laments” about it from different perspectives. For example, the “permanent alteration and destruction” of fish habitat prohibition had a broad impact on many activities, but while the prohibition itself was wide, its administration through letters of advice was problematic, fettering the discretion of DFO to do HADD prosecutions. Then, C-38 removed “disruption”, “permanent alteration” and “serious harm”, in addition to narrowing the definition of fisheries to commercial fisheries. His paper argues that “[t]he unfortunate conclusion drawn from the HADD story is that our laws and economic system are constrained in dealing with complex ecological components in a comprehensive and formal way.” The consequences of the trajectory and recent changes are not protection, but an increasing reliance on the adaptability of species. Low risks are not covered, cumulative effects are not considered, and the focus on “serious harm” ignores the thresholds of changes to habitat that may affect fisheries. He hopes for a role for the provinces, given the narrowed federal role, and notes that managing fisheries will require flexible and adaptable systems to integrate scientific information.

**An Abdication of Responsibility: An Assessment of Canada’s Habitat/Fisheries Protection Laws – Prof. Martin Olszynski (University of Calgary Faculty of Law)**

Professor Olszynski discussed the promises, the reality and the “nightmare” of s. 35 of the *Fisheries Act* from the perspective of fish habitat. He presented an analysis of 183 HADD authorizations from 2012-2014 that documents a 60% reduction of authorizations. He discussed the shift from the former “habitat protection regime” prohibiting the “harmful alteration or destruction of fish habitat” (HADD) that applied to all fish, to the current “fisheries protection regime” that prohibits the “death of fish and the permanent alteration or destruction of fish habitat” (DPAD), which applies to commercial recreational or Aboriginal fisheries only. He explained, however, that this shift is not what seems to have caused the drop in authorizations, but a focus by DFO on large-size impacts. He concluded that any new law should cover the huge amount of impact or activity in the watershed that is not being looked at by DFO.

**Compensating for “Serious Harm”: Section 35 of the amended Fisheries Act – Dave Poulton (Principal, Poulton Environmental Strategies)**

Dave Poulton reflected on changes to the law, policy and implementation of compensation for “serious harm” to fish habitat. He noted that the 1986 Fish Habitat Policy called for “net gain for habitat for Canada’s fisheries resources” with a conservation goal based on “no net loss” (NNL). He argued that offsets require a lot of baseline data, understanding of causal relations and clear metrics – in other words, rigour – and that NNL was not implemented with rigour or consistency. The new policy calls for compensating for “serious harm to fish” and there appears to be more rigour and better scientific tools. However, it is mostly for proponents to self-assess and DFO only looks at high-risk activities. The system is as discretionary as ever, but the discretion now lies with the proponent rather than DFO. Interestingly, the changes in policy did not rely on the recent changes to the *Fisheries Act*.
Discussion: What new rule or change is the most important? Environmental management frameworks, good science and a clear objective, returning to HADD, turning operational statements into mandatory requirements, and requiring notification of impacts.

II – ASSESSING THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT, 2012

An Empirical Study into Public Participation under CEAA 2012 – Prof. Shaun Fluker and Nitin Kumar Srivastava (LLM candidate) (University of Calgary Faculty of Law)

Professor Fluker and Nitin Kumar Srivastava looked at public participation in the EA process for 4 projects: the New Prosperity Mine, Shell Jackpine Mine Expansion, Site C Dam, and the Trans Mountain Pipeline. They found that it is hard to conclude that there has been a decline in public participation in panel review projects derived from the changes brought in through CEAA 2012. They note other worrisome things, however: the onus on the public to demonstrate their status, also increased by challenges from the proponent (especially given uneven resources); inconsistency regarding how panels interpret the same provisions; and that public participation is more discretionary than ever.

Pipelines and the Changing Face of Public Participation – Kirsten Mikadze (Sole Practitioner and Research Associate, Centre for International Sustainable Development Law)

Kirsten Mikadze explored how the EA process for pipelines under the NEB seems to be designed to exclude some interests. The NEB Act (s. 55.2) grants the NEB discretion to decide who participates in EA processes. This has resulted in practice in the systemic exclusion of downstream, upstream and climate change interests. She argued that the permanent accruals of benefits and burdens of pipelines make public participation especially important in the determination of what the public interest is.

The Fading Role of Alternatives in Federal Environmental Assessment – Rod Northey (Partner, Gowling)

Rod Northey argued that a rigorous approach to alternatives in the EA of projects has the following elements: there is a requirement to identify what the alternatives are, to evaluate them, and to examine what the trade offs are among them; the evaluation process is transparent, with steps and criteria; and the process concludes with the identification of a preferred alternative. In contrast to the standard under US NEPA/ CEQ Regulations, which is “alternatives including the proposed action,” the CEAA 1992 “significance of effects” standard does not explicitly refer to alternatives. The courts have said that the assessment does not need to identify the least negative option, simply one that doesn’t cause a significant negative effect. His proposal is to focus the EA instead on sustainability benefits and impacts, triggering a review of all alternatives that maximize sustainability.

Discussion: A new approach might focus on conducting environmental assessments at the landscape level, including cumulative effects, so that EA requirements could be reduced at the project level. Proponents should be required to follow best practices for all project assessments. From the study by Fluker and Srivastava it appears that panels are not fully implementing the legislated changes. The new rules also seem to have had no impact on the types of information or comments submitted, at least in pipeline assessments. It would be more useful for a better process and to improve public participation to constrain proponents so they can submit only 150-400 page applications (instead of up to 20,000 page ones), rather than focus on the timelines.
III – THEORETICAL PERSPECTIVES

“An Enormous Systemic Problem”: Delegation, Responsibility and Federal Environmental Law – Prof. Andrew Green

Professor Green described a combination of trends that are making judicial reviews on environmental matters harder. First, there is increasing discretion in environmental law. Second, there is a push for deference in decisions from an administrative law perspective. He discussed how it matters whether the standard of review used is correctness or reasonableness. His research concluded that the courts generally defer (in almost 2/3 of the cases reviewed), and examined the affirmation rates from different angles (types of decisions, area of law, decision maker, substantial or procedural review, pro- or anti-underdog). It shows that deference is more prevalent in environmental law cases, as compared to refugee cases for example (although there are many more of the latter). The government also seems to win more frequently in environmental cases. Finally, Green’s research suggests that the type of judge (conservative or liberal appointee) matters, although not in environmental law reviews (this varies considerably by area of law).

Regulatory Capture and the Systemic Divergence between Public and Private Interest: Remaking Canadian Environmental Law through Responsible Government – Prof. Jason MacLean (Lakehead University, Faculty of Law)

Professor MacLean argued that we fail to engage in a discussion of the political problem behind the perceived impossibility of implementing the changes we think we should have. At best, we lament this impossibility. He points to three root causes of the failure to achieve change from within the system: industrial appeasement; the notion that only “in a more reasonable world” such change would be possible; and the need for better science and more data. He recalled David Boyd’s six “systemic weaknesses” of Canadian environmental law, including excessive influence of special interest groups. He noted that in the Trans Mountain Pipeline case the proponent contested almost everything, except the assertion that the changes in CEAA 2012 were driven by industry. Given the inherent incumbency problem, it is unlikely a new government will be a panacea. Empirical research is needed showing environmental protection won’t kill the economy (along the lines of OECD research), and new ways to communicate and mobilize this research are needed. Change won’t come from within the system, so we need different ways to advocate for change and involve the grassroots, through the democratic process, to change the system.

Righting the Ship: Or, Whether the Proposed Canadian Environmental Bill of Rights and other Sustainability Interventions can Correct Canada’s Course? – Cameron Jefferies (University of Alberta Faculty of Law)

Professor Jefferies argued for the need to understand discourses (the software) to change the rules (the hardware). Using the competing world-views on environmental regulation proffered by John Dryzek, Jefferies argued that while the federal government’s commitment to sustainability and sustainable development is a front, it “cannot hide the government’s true intentions and fidelity to a Promethean world-view, the consequences of which are now starting to be felt.” He examined the legal definition of sustainability, and – acknowledging the possibility that a paradigm shift is needed – he called for the following “sustainability interventions”: democracy in action (voting); citizen science; litigation; and fostering future intervention strategies through a “substantive and positive right to a healthy and ecologically balanced environment” and NDP MP Linda Duncan’s Bill C-634, the proposed Canadian Environmental Bill of Rights.
Discussion: A democratically elected government should be able to decide what is in the public interest. Regulatory capture is a democratic deficit, reflecting the structural power of capital run amuck in the age of neoliberalism. Other cures for agency capture include toxic torts, changing statues and constitutional environmental rights. Citizens are not likely to win in an attempt to take on corporate interests. What is needed are incentives to protect the environment, co-opting the forces of the corporate world to force it to protect the environment. “Sustainability” is a very powerful development that happened by accident and shouldn’t be lost. It is very subversive. Governments have been mushing the concept but it is actually very easy to determine what it is, though it is not happening anywhere. The change of discourse from “sustainability” to “responsible resource development” reveals the power of the concept.

IV – PROVINCIAL RESPONSES AND DEVELOPMENTS

Adaptations in Water Law: Local (Provincial, Municipal, Indigenous) Approaches – Deborah Curran (University of Victoria Faculty of Law)

Professor Curran argued there is a trend of pushing decision making to the watershed level, notably in California, Australia and the EU’s water framework directive. In Canada, federal jurisdiction is absent for freshwater issues even though the Fisheries Act has had great impact. The colonial water law perspective is failing because there is not enough water for people with allocated rights to exercise these rights, and Aboriginal entitlements have not even been defined or factored into these allocations. Professor Curran reviewed the Okanagan Nation Alliance, and other local initiatives, to illustrate a shift from allocations to an integrated water management regime (which is challenging for lawyers). Elements include mandatory riparian setbacks from fish bearing streams, clawing back on licenses without compensation, and negotiating solutions. Resilience, adaptation and connectivity cannot happen with federal laws, but at the watershed level. The federal role could be perhaps to set performance standards to be implemented through watershed-level decision making.

Independent Provincial Environmental Oversight – David Wright (Acting Project Lead, Office of the Commissioner of the Environment and Sustainable Development) (in personal capacity)

David Wright offered a reflection on the opportunity for creating independent environmental oversight offices at the provincial level. He summarized existing examples (their roles, legal authorities and historical contexts) from Canadian provinces, Australia and New Zealand. He argued that there are five different overarching functions observable, from conducting retrospective auditing to providing prospective advice to parliamentarians. He concluded that there is room for provincial oversight roles, and that choices on institutional reform should be driven by the broader contexts of each province.

Fast-tracking Oil and Troubling the Waters: Marine Planning and Ocean Regulation on Canada’s Pacific – Linda Nowlan (Sole Practitioner, Vancouver, BC)

Linda Nowlan argued that there is a great need for action in Canada to protect oceans, and that the legal tools exist and can be improved. She explained how the federal government pulled out of an initiative that was on its way to accomplishing some marine spatial planning – the Pacific North Coast Integrated Management Area (PNCIMA) – because spatial marine protection poses great obstacles for tanker traffic and threatens the development of pipeline projects. In response, the Marine Planning Partnership (MaPP), co-led by the province and 18 First Nations, took over
from PNCIMA and is working to extend the Great Bear Rainforest Agreement model to the sea. Its main innovation is co-management. The federal government could come back and make it a tripartite system to finally achieve the integrated management vision of the *Oceans Act* and create Marine Protected Areas in close to 30% of the area.

**Discussion:** Provinces lack funding for conservation initiatives (ON, for example), but financing can be achieved by taxation and use charges day-lighted by service (flood control, etc.) Institutional tools for oversight play a stabilizer function. Procedural oversight does not ensure good environmental decisions. How does one measure the value of oversight bodies? Who heads the offices does matter. Intergenerational equity is more useful as a standard than sustainability, so an Ombudsman for Future Generations is a better idea, as very concrete questions can be asked. The federal government has detracted, but at the same time there are a lot more regulations. What are the levers that the federal government can pull? The World Water Forum has moved from thinking of water as a resource to thinking of it as an asset. IDRC is supporting groundbreaking work on watershed management internationally.

**V – ABORIGINAL RESPONSES AND DEVELOPMENTS**

**The Role of Indigenous Environmental Laws in Canada** – Jessica Clogg and Hannah Askew (Executive Director and Staff Counsel, West Coast Environmental Law)

Hannah Askew introduced the Acts of Recovery and Revitalization Project, which consists of working with Aboriginal communities to draw legal principles from stories, bring them to elders to understand them and codify them for use in specific legal projects or to ensure they are available to the community. In contrast to colonial law, which is a specialized legal system, Indigenous law is a legal order, embedded in the worldview and culture of Aboriginal peoples. In response to the (supposedly good) news that a bylaw against littering had been adopted, Hannah recalls a disappointed elder saying: “Laws are for the lawless.” They are needed when people have not internalized the principles by which they should live. Also, Indigenous legal traditions are relational and taught in a relational way. Jessica Clogg explained the work of WCEL with First Nations, through which legal principles are identified and applied to specific threats. Another methodology used is word analysis. The FN’s expression of the principles has been very pragmatic and specific. For example, *Gweix ye’enst* is the legal principle of sustainability, considered a foundational principle. While there are many challenges for the recovery and revitalization of Indigenous legal traditions, they have the potential to transform environmental governance and environmental law.

**Re-claiming the Space for Indigenous Environmental Stewardship** – Nicole Schabus (Thompson Rivers University Faculty of Law)

Professor Schabus noted that the two issues that were most prominent in the Cohen Commission – fish diversity and fish habitat – were the ones for which Bill C-38 eliminated protection. The *Fisheries Act*, the *Indian Act*, and fishing regulations since 1888 have been cutting off the rights of Indigenous peoples. She argued that the environmental stewardship of Indigenous peoples provides checks and balances on the government. However, Indigenous peoples face enforcement actions when they try to exercise their rights, especially fishing rights. A review of court decisions shows how fragile indigenous rights are despite some gains in their recognition.

**The Significance of Courteolle** – Prof. Janna Promislow (Thompson Rivers University Faculty of Law)
Professor Promislow discussed the 2014 Decision on the challenge brought by the Mikisew Cree FN (Treaty 8 – NE Alberta) against the government for a failure to fulfill their duty to consult on the 2012 omnibus legislation. The Decision is on appeal at the federal court of appeal this summer. It is interesting from both a governance and an administrative law perspective (which doesn’t happen often). The duty to consult does apply to strategic decision-making; government needs to consult early and frequently. The trigger is a change in governance regime, not the impact on the land. The Decision considered, however, that the change in law was not a concrete impact. In the claim against FIPA, the court ruled that the fact that the agreement might bring an action to protect foreign investment interest is hypothetical and does not qualify as an impact. Professor Promislow thinks the Mikisew Cree FN might lose the appeal because there are weaknesses in the way the arguments have been presented.

Discussion: When First Nations decide to write down their stories and legal principles, they are making a compromise between the need to maintain the traditional ways to pass on, access, and express them, and the need to use their law to protect their rights and interests. WCEL considers there is no conflict of interest in their dual role of support in recovering Indigenous laws and using them to advance the FN’s interests because in the first role they act only as support of the FN writing their own laws, not as counsel. The next challenge for the courts will be to deal with conflict of laws cases. The Haida claim for precautionary action in the face of uncertainty concerning herring is an example of the best application of the precautionary principle. China would hardly have signed FIPA if it saw it as “hypothetical”.

VI – FUTURE ENVIRONMENTAL REGIMES

Framework for Next Generation Environmental Assessment for Canada – Bob Gibson (University of Waterloo Dep’t of Environment and Resource Studies)

Professor Gibson presented some ideas on what an ambitious future EA process should look like. The sustainability discourse, the evidence of widespread unsustainability and a growing awareness of complexity show that the basic premises of economics and of EA are obsolete. EA should be delivering positive contributions to wellbeing (sustainability) rather than focusing on avoiding the worse projects. Sustainability assessment offers a way of approaching sensible decision-making in the public interest. It would bring strategic level assessment at the center of decision-making. It should be generic, not necessarily federal, provincial/territorial, or by a FN. What does sustainability assessment look like in non-renewable and transportation projects? Clarification of expectations is needed in every sector. Resistance to EA is due to motivation, so there is need for going beyond the EA process to ensure proper motivation (taxation, insurance, etc.) Upward harmonization and transition strategies are needed. Most importantly: aim high!

Decision-Making, Governance and Sustainability – Mark Winfield (York University Faculty of Environmental Studies)

Professor Winfield argued that the architects of “streamlining” have lost sight of the original purpose of EA, which was channelling conflict. EAs are failing community acceptance criteria: procedural justice, distributional justice, and trust. The state is now seen as taking sides. Ways forward include ensuring substantive rights to participate; Bill C-634 (Canadian Environmental Bill of Rights); Ontario’s anti-SLAPP legislation; and not restoring EA law to what it was, but finding something else.
Saving SARA: An Analysis of SARA’s Implementation and Options for Reform – Stewart Elgie (University of Ottawa Faculty of Law)

Professor Elgie provided a brief history of SARA and an overview of its provisions and implementation issues. Almost every environmental problem has species at risk (and also EA) associated with it. The overall separation between scientific assessments and consideration of socio-economic concerns has proven to be positive. SARA hasn’t been very effective, but it pushed the provinces to put in place their own Acts. Litigation has forced some improvements in implementation, but there are still huge gaps. SARA could be improved by eliminating the loopholes for muddling science and socio-economic considerations, perhaps by shifting the critical habitat identification requirement to the action planning stage, and fixing timeline issues.

Discussion: For SARA, perhaps an option is taking terrestrial species out of federal jurisdictions while tightening the requirement for provinces to write strong laws, or else the federal government will write them for them. More integration of SARA and EA is needed. The safety net in SARA enables negotiation and also is a way for the provinces to point the finger at the feds for requiring action. Shifting critical habitat identification to the action planning could result in more critical habitat being identified. Some existing EA regimes are reflective of Indigenous legal traditions (NWT, Yukon, etc.) The two most important changes for EA are, first, sustainability-based criteria and, second, strategic-level assessments. The question is how to get there practically, because it means giving up power in the decision-making process. If the government wants legitimacy it has to accept the outcome of EAs.

VII & VIII – PERSPECTIVES ON THE FUTURE OF ENVIRONMENTAL LAW I & II

Environmental Justice and Racism– Kaitlyn Mitchell (Staff Counsel, Ecojustice)

Kaitlyn Mitchell argued Aboriginal communities and low-income communities suffer from a disproportionate burden from industrial activities and a disproportionate lack of access to benefits in society. She presented a short history of the environmental justice movement in the US, discussed its definition and explained generally how it has been implemented in the US. The movement began in 1982, but a 2007 report found the problem had gotten worse; and in 2014, the recommendations from 2007 had not yet been fully implemented. She then discussed the situation in Canada, which is more nuanced. There is a clear problem linked to income and aboriginal status, though not so much to race (except for the case of Africville, Halifax, NS). She described the case of a FN community of 850 people in Sarnia that is surrounded by “chemical valley”, which includes 38 petrochemical facilities, in addition to others in the US side of the lake. She suggested three tools could be used to improve the situation: mandatory cumulative effects considerations in permitting and other decision-making; mandatory consideration of the situation of the community; and a constitutional right to a healthy environment.

Environmental Justice and the Charter: What is the potential for sections 7 and 15 to advance environmental justice in Canada? — Prof. Nathalie Chalifour (University of Ottawa Faculty of Law)

Professor Chalifour argued that there is a shared purpose between environmental justice and Sections 7 and 15 of the Charter. Section 7, if understood as capturing environmental rights, protects the basic rights of clean air, water and access to food. Section 15, like environmental justice, is about equality and preventing discrimination. She explored the applicability of each section to environmental justice claims. The advantage of using s. 15 is that it does not require
proving causation, but distinction in treatment. Also, there is more opportunity for progressive judicial interpretation of environmental justice claims under s. 15 because there have been practically no cases. The disadvantage of s. 15 is that it only protects low-income groups if they are also part of a protected group. Low-income cases are perhaps better aligned with s. 7 because it does not have this limitation.

Non-Regression and the Charter Right to a Healthy Environment – Lynda Collins (University of Ottawa Faculty of Law)

Professor Collins presented the principle of non-regression as incidental to an independent right to a healthy environment. She recalled David Boyd’s empirical analysis of the global experience with an independent right to a healthy environment. In essence, it brings about: better laws, better enforcement; increased public participation; greater access to justice; better environmental performance; and more tools for litigators. The principle of non-regression is also known as the standstill doctrine. It has a substantive requirement of non-degradation of environmental protection requirements, and it also protects the laws themselves. Environmental law is purposive, it has an agenda: environmental protection.

Discussion: Boyd’s analysis of the impact of the constitutional right to a healthy environment confuses correlation (with greater concern for environmental matters) and causation. Why not go for protecting ecological rights rather than just the lower hanging fruit of an anthropocentric right to a healthy environment? It’s a gateway. The endgame is protecting ecological rights, and this is especially important in unceded territories. What happens to a genuine effort of change in the context of non-regression? The purpose is to preserve the level of protection, not the specific mechanisms. Actually, Canada already has a non-regression provision for environmental protection under the North American Agreement on Environmental Cooperation.

Gender and Climate Change in Canada and Québec: Some Feminist and Ecofeminist Thoughts – Prof. Annie Rochette (Université du Québec à Montréal, Département des sciences juridiques)

Professor Rochette discussed how gender and climate change groups are still working in silos in Canada, with no integration of the work done by women and environmental/climate groups. She offered a definition of gender as relationships and roles that are socially constructed, and thus can be de-constructed. There is not enough research in Canada on integrating gender and climate change. The reasons for integrating are: more effective adaptation and mitigation; to foster social equality; and because women and men have different perspectives on climate change. She underscored the possibility of strategic alliances between the feminist movement and the environmental movement. The climate change discussion should focus more on social justice.

Neglected Sovereignty: Filling Canada’s Climate Change Gap with Extra-Territorial Measures – Prof. Sharon Mascher (University of Calgary Faculty of Law)

Professor Mascher noted that Canada has identified in their CC report that the Alberta floods had a cost of $5 billion. The UNFCCC and the Kyoto Protocol incorporate a commitment to act on the basis of sovereignty. Absent measures by Canada despite the IPCC call for urgent action, the EU may fill Canada’s gap by taking measures based on the carbon embedded in our products, including trade measures. Decisions in other jurisdictions may impact and force our decisions.
For example, despite the reluctance of the NEB to consider upstream impacts, the US analysis of Keystone XL considers upstream emissions.

A Betrayal of Its Own Ideology: The Canadian Government’s Refusal to Label Genetically Modified Foods – Bruce Pardy (Queens University Faculty of Law)

Professor Pardy argued that everyone has an ideology and every government has an ideology. What is wrong with the existing regulatory architecture is that the current government is not sticking to its own ideology. It does not matter whether GMOs are good or bad. Food labelling laws require that ingredients be labeled if they are not the same as other ingredients. GMOs are not being labeled because they are allegedly the same. At the same time, patents are granted for things that are different. GMOs are patented. So, if GMOs are different they can be patented and should be labeled. If they are not different, there should be no patents and need be no labeling. It is not a question of whether GMOs are good or bad.

Discussion: At the international level there is considerable integration between gender and climate change, especially with respect to poor and developing countries.

The Conference adjourned.

But it was not all about law… Participants also pondered the origins of this mountaintop meadow: Clearcut? Invasive insect? Landslide? Extraterrestrials? …