



# Environmental Law Centre

University of Victoria

[www.elc.uvic.ca](http://www.elc.uvic.ca)

## Clinic offers hands-on education

Whether it's learning about the neo-liberalist hegemony in your legal theory class or the Frankalmoin tenurial system in property, it is easy to get frustrated with the apparent lack of relevance a legal education provides—especially if your interests are divergent from black letter law. Thank goodness for clinical programs. Fresh out of first year and still wondering what lawyers actually do, my experience at the Environmental Law Centre Clinic afforded me a glimpse of what it might be like to practice environmental law, or law in general.

Each semester, students are assigned files and given the opportunity to work closely with clients and lawyers to address real and often pressing issues. My project in fall 2007 involved teaming up with a local lawyer and concerned citizens from a community up island to challenge a massive condo development and 27 hole golf course destined for a coastal area near Comox. The development's potential impact on the environment is frightening. In addition to the loss of habitat, added stress on local water systems, and interference with streams known for salmon spawning, the developers propose to build atop a toxic coal dump. The disruption of the coal waste caused by the digging and dredging has the potential to seriously contaminate the surrounding marine ecosystem.

For the project, my client gave me the broad mandate to research any legal issue that could challenge, prevent, or stall the development. I chose to focus on the obvious candidate—the TOXIC COAL PILE. My research involved attending public meetings, trips to the site itself, and a

great deal of time spent researching land titles and the *Local Government Act (LGA)*. After much digging, and reaching a first name basis with the folks at the Integrated Land Management Bureau, I discovered documents related to the ownership of the toxic coal property.

It turned out the coal pile was not actually owned by the developer but leased by a third party from the province. This was the hook I was looking for—the thread I could pull to unravel the developer's plans, the path to victory that would lead to the prestige associated with publication in the ELC's annual newsletter. The legal ramifications of the lease are complicated but effectively, in combination with planning documents, the lease led to us discovering that the Regional District's board had contravened the *LGA* by rezoning the property as residential. This contravention was an error that could potentially invalidate approval of the project.

Unfortunately, the significance of my work was greatly diminished by the Ministry of Environment (ironic?). It seems the mischievous elves that work the switches and levers within the bowels of the Ministry had recently released the Regional District from the *Act's* zoning requirements. This does not mean that the developers now have a carte blanche to go ahead with their plans—but it is a set-



Proposed development site near Comox. Photo: Patrick Sullivan

back for those opposed to salmon-stuccoed condos surrounded by the remains of an ancient rain forest.

Though I was left a little frustrated by the final result, my time at the ELC was enriching, and in many ways more educational than other classroom experiences. Making progress on projects that have an impact on pressing issues in the real world is, in some respects, more rewarding than an excellent grade on a paper or exam—I think. I wouldn't really know about that last part. **Patrick Sullivan**

## Co-Chairs' Corner

The Environmental Law Centre has undergone dramatic growth over the last year. We've reached out to the province's top public interest lawyers through our new ELC Associates program. We've expanded our client services through



the clinic's new two-semester intensive stream. We've tackled increasingly complex cases by creating two new articling positions. And people are taking notice. Just ask Maclean's magazine, whose annual law school review praised UVic for its "renowned" Environmental Law Centre.

But if these burgeoning branches are to flourish in the years to come, our institution's roots must remain strong. The Environmental Law Club played an essential role in this process over the summer of 2007, as dedicated club members aided ELC administrator, Holly Pattison, to organize the ELC's 10th anniversary party. This landmark event united a score of ELC staff, clients, and alumni from years past with an Oak Bay mansion full of UVic's environmental lawyers of tomorrow.



Tasty dishes at the tenth anniversary party.  
Photo: Holly Pattison

For the third straight year, ELC Legal Director Calvin Sandborn delivered to students an inspiring address on the nature of the purpose-driven lawyer. The ELC also brought in Ben Parfitt of the Canadian Centre for Policy Alternatives to discuss socioeconomic inequality and climate change for the law school's Equity Conference. Lawyer Lara "Tiger" Tessaro of Ecojustice Canada also visited to talk about recent precedent-setting decisions regarding Canadian environmental assessments (read: kick-ass enviro cases – eds.).

But we've not stopped at birthday hats and lunchtime chats. We've dug in the mud. In October Sarah Sharp organized a team of 10 students who attended an environmental negotiation competition in Vancouver; in November's rain, Michaelin Scott led a stalwart troop up Mount Finlayson; in the Spring, the ELC partnered with Saanich Parks to replant an overrun

## Oregon Trail

With the generous help of the Law Foundation of BC, over the weekend of March 9-12, twelve members of the UVic Law community attended the Public Interest Environmental Law Conference at the University of Oregon in Eugene. This is the largest conference of its kind with 3000 attendees and over 100 panels. This year's theme was 'Compelling a Climate of Change', and climate change was a hot topic among the panels (pun intended).

Diverse panelists discussed issues such as land zoning practices and greenhouse gas reductions, carbon taxes and carbon trading, food security and food sourcing, the possibility of conflicts over water, and strategies for adapting to a warmer world. Sophia Rabliauskas from the Poplar River First Nation in Manitoba highlighted the importance of Indigenous ecological knowledge to understanding climate change and its adverse effects on Indigenous communities.

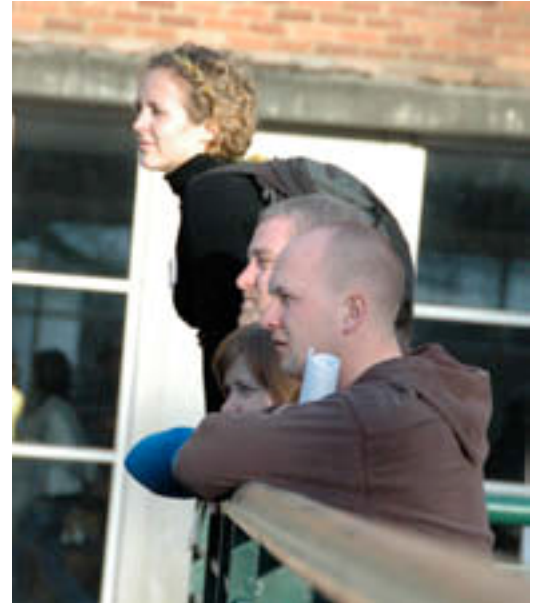
While much of the debate focused on American jurisprudence and American laws, it was nonetheless an invaluable experience for our delegation. We gained practical knowledge about the applicability of essentially every facet of law to environmental issues: property, municipal, tort, and criminal law, to name a few. But perhaps more importantly, it was inspiring to see such large group of committed lawyers making a living doing something they care about. I have often been told that in the legal profession you can do what you care about and starve, or you can sell yourself and make a fortune. These lawyers were not starving, nor were all of them exclusively engaged in environmental law, but they all had incorporated issues they felt passionately about into their professional lives. Looking forward to next year for a fresh dose of inspiration! **Eric Regehr**

greenspace; and throughout the year, tireless volunteers took composting in the law building to new levels (don't you dare trash that banana peel!).

In mid-March, the ELC sank its roots southward, sending a contingent a dozen strong to the public interest law conference in Eugene, Oregon. And, to cap off the year, the ELC joined PUENTE Theatre's Lina de Guevara to host a "theatre of the oppressed" workshop that explored intuitive and analytical solutions to the crisis of climate change.

Many thanks our visionary funders, committed board, competent staff, energetic executive, and proactive membership. The ELC is growing, and our roots remain strong.

Co-Presidents,  
Tim Thielmann & Rachel Forbes



Green people come in all sizes. Photo: Holly Pattison



They'd live here if it wasn't illegal. Photo: Maya Gordon

## Cleana Marinas

I always planned to take the Environmental Law Clinic at some point, but it was only after an unexpected course shuffle that I found myself in class this past fall, staring at a mostly empty folder and wishing I had paid more attention in Legal Research and Writing. My task was to help local NGO the Georgia Strait Alliance adapt Ontario's Clean Marine Program to British Columbia. This program distributes handbooks to marinas across Ontario, showing them how to achieve environmental best practices in areas from boat maintenance to yard work to retail operations. Marinas can then sign up for the auditing and certification portion of the program, which rates marinas based on their environmental practices. The program has been successful in improving environmental practices and curbing pollution.



Before the BC program could get going, the Ontario handbook needed to be adapted to current federal and provincial laws and practices. My job was to research and summarize all relevant laws applying to BC marinas. This sounds like a simple job, but it grew to mammoth proportions. The Ontario handbook was my guide to what I needed to find, and the topics were diverse. I researched and summarized pesticide laws, worker safety laws, *Canada Shipping Act* regulations, regulations governing emissions from refrigerators and air conditioners, environmental legislation such as the *Environmental Management Act*, health regulations governing sewage and waste, and many other laws. This required extensive research, and at first it was daunting. I had to call numerous government and NGO employees to get directions to relevant laws or explanations of what those laws mean. Several visits to the law librarian were also required, as well as many hours dedicated to the project in

October and November. In fact, I had to give up tickets to a Canucks game partly because of this project. I had no choice – I had a client who needed the job done on time.

Despite these challenges the experience was very valuable. It was one of my first tastes of legal work in the real world, and was a helpful preview of my current co-op job. It forced me to improve my legal research skills and helped familiarize me with the structure and language of legislation. I discovered that reading legislation is like reading Shakespeare: intimidating and hard to understand at first, but once you get used to it you can navigate it surprisingly well. Moreover, the project allowed me to make a meaningful contribution to a cause I believe in, when I would not have otherwise had the time. It sounds cheesy, but seeing the difference you can make to public interest projects and how grateful people are for your help is really rewarding. Despite periods of frustration and struggle, the experience was invaluable and I encourage other students to give it a shot. **Jill Vivian**

## University challenge

In a joint venture between the Environmental Law Centre and the Law Students Society, the Faculty of Law has signed on to the University Challenge. This means that the law school will commit to becoming climate neutral by a yet-to-be-determined future date. The University Challenge is an initiative created by Common Energy, a group of students, staff, and faculty committed to making university campuses carbon neutral. This can involve changes from installing more efficient light-bulbs to arranging car-pools for faculty and students. Before the faculty officially goes climate neutral, a 'Climate Action Team' will assess the current climate impact of the faculty and how it can best be improved. The team will create an attainable goal and timeline, and if the faculty does not meet the end target, it can purchase offsets to cover the greenhouse gas

emissions they were not able to neutralize. **Katie Hamilton**

## Cool strategies for a warming world

March 16th, 2008 marked the inaugural 'Joker's International Day of Action on Global Warming', with over forty groups worldwide using non-scripted theatre to spur creative and proactive approaches to climate change.

The ELC partnered with PUENTE Theatre founder Lina de Guevara, who facilitated a 'theatre of the oppressed' workshop in the law lounge. De Guevara guided an intimate and energetic group through the workshop, utilizing 'image' and 'forum theatre' techniques designed to illicit both intuitive and analytical interpretations of the complex issues regarding climate change. Various dialogues, written by the ELC's own Sarah Sharp, Marisa Cruickshank, and Tim Thielmann, led the workshop's actors and 'spectators' through a series of contemporary environmental conflicts, ranging from paper waste to energy consumption to BC's recently announced carbon tax.



Sarah Sharp directs protest practice. Photo: Beth Collins

This unique event was, without question, a hit. As one participant mused: "The event was challenging, yet rewarding. I felt a real solidarity with this community of actors, and a renewed enthusiasm to effect environmental change." **Tim Thielmann**

## Negotiate this

*UVic wins first negotiation comp!*

On November 2, 2007, the Environmental Law Club sent ten talented negotiators to UBC to participate in the University of British Columbia - University of Washington - University of Victoria Environmental Negotiation Competition (yes, a better name is needed!).

Student Sarah Sharp organized the first UVic team to take part in the competition, and the group received overwhelming feedback on their skills, professionalism and collegiality. UVic second year students Zahra Jimale and Jennifer Smith won the competition (the final round was a three-way tie, but the UVic pair had more points overall). The team also included Marisa Cruickshank, Brian Eberdt, Sarah Jackson, Anna Johnston, Emma Lehrer, Jen Lin and Michaelin Scott. **Rachel Forbes**

## ELC is intense

*But more so than camping?*

The ELC Intensive Stream (two-semester, seven-credit course) is unlike any other course offered in the law school. The biggest difference between this class and other law classes is the temporal and geographic immediacy of the material covered. This is a class that deals with current issues in our immediate environment and the legal ramifications of those real life events. It is not a class where we read ancient and obscure case law to glean legal principles.

Some factors that make this experience unique are the small class size (only four people this year), the group work (joint submission to the Capital Regional District), and the frequent feedback on our work from lawyers and professors.

OK, so what did we actually do?

Field trips: we went to O.U.R.

EcoVillage at Shawnigan Lake, to Dockside Green and to a public hearing at Otter Point Fire Hall;

Case studies: we studied the Dockside Green development and the Tsilhqot'in land title conflicts;

Public presentations: we made submissions to the Juan de Fuca Land Use Commission on the rezoning of the recently released TFL lands;

Negotiations: we engaged in a two-week negotiation relating to independent power projects in BC;

Speaking practice: we got to practice our public speaking skills (on video!) with feedback and coaching.

Wow! We did a lot! We also did the regular law class stuff: writing memos, class presentations, etc.

I remember warnings about how much work the regular ELC course and wondering if I was crazy to want to do the intensive stream. So, was it a lot of work? Yes. But, was it worth it? Absolutely. **Jennifer Smith**

## "You're law students?!"

Despite disbelief from community residents, the ELC sent a crew of planters to restore native species to a site at Mt. Douglas Park in Saanich. The volunteers ranged from grizzled vets to 'green' rookies.



*Entrenching lawyers' dirty reputations. Photo: MC*

The ELC partnered with Saanich Parks and local residents to remove invasive species (okay, they did all the removal) and plant a number of native species of trees, shrubs and bulbs.

Over the course of the afternoon soil was upturned, elbows were greased and cookies were eaten (graciously provided by Nathalie Dechaine of Saanich Parks). In the end, the project went off without a hitch and our volunteers went away tired but smiling.

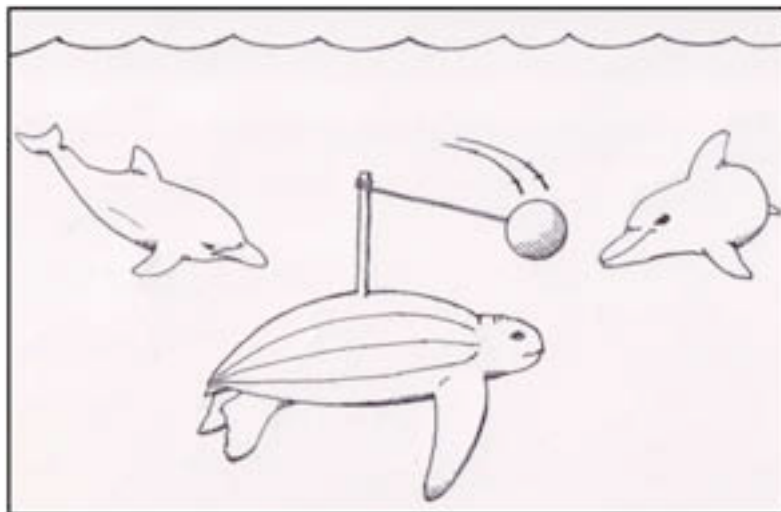
**Lukasz Awlasiewicz**

*The ELC envisions a British Columbia where local communities, environmental groups, and First Nations have the legal tools and resources to advocate effectively for the restoration, conservation, and protection of this province's unique and diverse environment.*

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Exploited by more intelligent marine creatures, the tetherbacks were driven to extinction, victims of their own unfortunate anatomy.