



**WEST COAST**  
Environmental Law

**WEST COAST ENVIRONMENTAL LAW**  
**IMPACT REPORT**  
**2016-2017**



# A MESSAGE FROM THE PRESIDENT

West Coast Environmental Law has always harnessed the power of law to solve complex environmental problems. This means reflecting on successes and challenges, and honing our approaches over time. This year's success on the Enbridge Northern Gateway tar sands pipeline and tankers campaign holds many lessons in our ongoing work to transform the Canadian legal landscape.

First, as environmental lawyers, we understand firsthand the importance of engaging with Indigenous law as law, and the power of legal strategies grounded in Indigenous nations' own laws and jurisdiction. In the Enbridge campaign, the Save the Fraser Declaration banned Enbridge pipelines and tankers (and similar tar sands projects) from the Fraser River watershed and the ocean migratory routes of Fraser salmon as a matter of Indigenous law. The Declaration was a centerpiece of legal, financial and communications campaign strategies. Eventually supported by over 130 Indigenous nations, it was a significant contributor to the legal and financial risk that killed the Northern Gateway project.

Second, federal environmental law rollbacks in 2012 – designed to push through risky oil and gas projects like Enbridge's – were a reminder that even legislation can be vulnerable if there is not a broad understanding of the importance of strong environmental laws, and what is at stake if laws are weakened at the behest of big corporations. Today, as a result of our widespread public education work on the environmental law rollbacks and pressure created by the pipeline campaigns, we are deeply engaged in processes designed to rebuild and strengthen Canada's environmental safety net.

These successes demonstrate how West Coast is building the collective power to achieve a more just and sustainable future for all, by putting the law in the hands of communities and creating legal risk for those who would harm our land, air and water.

Third, successful legal campaigns take time and capacity. Our work on the Enbridge campaign began well over a decade ago and grew to involve dozens upon dozens of groups, small and large, and Indigenous nations working together to achieve a common goal. Yet many important threats to our land, water, air and communities never attract this level of campaign focus. This is one reason why West Coast has drawn on the lessons of our legal work



A handwritten signature in black ink, appearing to read "Jessica Clogg".

Jessica Clogg  
Executive Director and Senior Counsel



A handwritten signature in black ink, appearing to read "Lisa Matthaus".

Lisa Matthaus  
President

# MENT & EXECUTIVE DIRECTOR

for Indigenous nations over the past twenty years – including the Enbridge campaign – to develop and launch a unique capacity-building initiative called RELAW (Revitalizing Indigenous Law for Land, Air and Water).

Through RELAW, participating nations have access to a year of pro bono legal support, as well as in-person and online learning sessions. RELAW focuses on innovative approaches in three areas: identifying principles of Indigenous law embedded in Indigenous stories; designing deliberative community processes to apply these principles to contemporary environmental challenges; and strategies to enforce decisions a nation makes according to its own laws. The RELAW initiative is strengthening Indigenous legal capacity as we move beyond Enbridge to tackle the myriad other environmental threats facing us today – not least the Kinder Morgan Trans Mountain pipeline and tankers expansion project.

With several federal environmental law reform processes underway, and new commitments from our provincial government to revamp approaches to environmental assessment and land use planning in BC, in 2017-18 West Coast will be continuing our work to transform environmental decision-making and strengthen legal protection for the environment through collaborative legal strategies that bridge Indigenous and Canadian law.

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This annual report is a joint publication of the West Coast Environmental Law Association, the West Coast Environmental Dispute Resolution Fund Society and the West Coast Environmental Law Research Foundation.

For highlights of Association/EDRF programs see pages 4-14, and for Research Foundation programs see pages 15-24.

*\*The name “West Coast” refers to one or all of the West Coast Environmental Law societies, depending on where the reference appears in the report (ie. references to “West Coast” on pages dedicated to West Coast Environmental Law Research Foundation refer to the Research Foundation).*

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Photo: James Wheeler



# ACCESS TO JUSTICE

For decades, West Coast has been committed to providing legal information and assistance for British Columbians seeking to defend land, air, water and communities. Through our access to justice programs, we offer free legal advice and funding support to groups and individuals, directly and through a province-wide network of environmental lawyers. We also continue to provide valuable learning opportunities for law students, as well as helpful resources to keep people informed about new developments in environmental law.

## **LEGAL SUPPORT FOR NATURE AND COMMUNITIES**

West Coast's Environmental Legal Aid program empowers communities to use the law to protect the environment. Our staff lawyers provide free legal advice to help community groups and individuals understand their environmental rights. We also offer environmental legal aid funding to connect British Columbians with a network of private environmental lawyers around the province willing to work at a legal aid rate through our Environmental Dispute Resolution Fund.

## **YOUR ENVIRONMENTAL LAW WATCHDOG**

For many people, environmental law may seem complicated and difficult to understand – but it can have major implications for our lives, and the people and places we care about. Our Environmental Law Alert program provides readers with up-to-date information and analysis about some of the most pressing environmental law issues facing British Columbians, with easy-to-read analysis from dedicated legal experts that helps decode the issues and why they matter.

## **INVESTING IN THE FUTURE OF ENVIRONMENTAL LAW**

Through our Building the Environmental Law Bar program, West Coast is helping to cultivate the next generation of public interest environmental lawyers. We offer hands-on experience for law students and legal volunteers from across Canada and beyond, and our legal experts now teach an innovative environmental law course at the University of British Columbia.



# ENVIRONMENTAL LEGAL AID

## FIGHTING FOR JUSTICE AFTER THE MOUNT POLLEY DISASTER

In August 2014, the dam holding back the Mount Polley Mine tailings pond collapsed, resulting in the worst mining disaster in Canada's history. Twenty-four million cubic metres of contaminated water and tailings tore down Hazeltine Creek into Quesnel Lake – an important habitat for salmon, a source of drinking water for several BC communities, and a vital cultural site for members of the Secwepemc Nation.

All of this was in apparent violation of federal and provincial laws, as well as the conditions on Mount Polley Mining Corporation's (MPMC) operating permit. Yet the BC government allowed MPMC to partially restart work in 2015 and return to full operations in 2016.

Government investigations proceeded at a glacial pace and the Province failed to conclude its investigation before the deadline to lay provincial charges. Thankfully, three environmental defenders stepped into the breach to hold the polluters accountable, with help from West Coast's Environmental Dispute Resolution Fund (EDRF).

In October 2016, MiningWatch Canada brought a private prosecution against MPMC and the Province of BC for violating the federal *Fisheries Act*. The federal prosecutor stayed the charges in early 2017, but the federal government has until 2019 to lay charges.

Then, in April 2017, Christine McLean and the Concerned Citizens of Quesnel Lake challenged the temporary provincial permit MPMC was granted to pump mining effluent directly into Quesnel Lake.

And in August 2017, when the Province's three-year limitation period expired without a conclusion to lay charges, Bev Sellars of First Nations Women Advocating Responsible Mining (FNWARM) brought a private prosecution against MPMC for breaches of the *Environmental Management Act* and the *Mines Act*. Bev's action is an important step towards accountability and may give the Province more time to determine whether it can lay charges against MPMC.

In the world we're working towards, bringing justice for environmental disasters will not be left to citizens and community groups. But until we get there, the EDRF is here to help – by connecting advocates like MiningWatch, Christine and Bev with talented legal teams and providing funding to support their legal costs.



Photo: Bev Sellars and Jacinda Mack of FNWARM outside the Provincial Court of BC filing the private prosecution against MPMC.



# MILESTONES

## **January 2017: Shawnigan Lake Residents Association wins a victory for clean drinking water**

In 2013, the BC government granted a waste discharge permit for South Island Aggregates to import contaminated soil into a landfill in Shawnigan Lake's watershed. The Shawnigan Lake Residents Association viewed this as a major threat to their drinking water supply. They appealed the permit through the Environmental Appeal Board (EAB) and lost, so they filed for a judicial review. In January 2017, the court overturned the EAB decision, and the company was forced to halt operations. Then, in February, the Province cancelled the waste discharge permit altogether, citing the company's failure to meet deadlines and submit documents.

## **July 2017: Mike Sawyer challenges the approval process for the Prince Rupert Gas Transmission Line**

Smithers resident Mike Sawyer was troubled by the flawed approval process for the Prince Rupert Gas Transmission Line project, which was proposed to feed the controversial Pacific NorthWest liquefied natural gas (LNG) terminal. So he made two applications to the National Energy Board (NEB), arguing that the pipeline should be declared a federal project and be subject to a federal environmental assessment. When these applications were declined, Mike appealed with help from EDRF lawyer Bill Andrews. The Federal Court of Appeal set aside the NEB decision and sent the matter back to the NEB for re-determination. Shortly afterward, it was announced that the Pacific NorthWest LNG project would not be moving ahead.

## **July 2017: Tsilhqot'in defends Teztan Biny from Taseko's Prosperity mine project (again)**

With previous support from the EDRF, the Tsilhqot'in National Government (TNG) twice convinced the federal government to reject Taseko Mines' New Prosperity Mine proposal, which directly threatens Fish Lake (a sacred site known to the Tsilhqot'in as Teztan Biny). When BC nevertheless approved an extensive drilling program by Taseko to advance its rejected proposal in July 2017, we provided funding for TNG to file for a judicial review of BC's approval and for an injunction to stay work in the meantime. In August, in the face of injunction applications from both the TNG and the federal government, the company suspended its plans for exploration work until legal disputes were resolved.

**"I greatly appreciate the support of the EDRF, which enabled me to make an informed decision as to whether filing a legal case would be viable and useful. The EDRF and WCEL are a wonderful resource to support and empower BC organisations to more effectively defend the environment. The EDRF and WCEL are a public treasure."**

**- Kathleen Ruff, human rights activist and anti-asbestos campaigner**



# ENVIRONMENTAL LAW ALERT

## ON ALERT DURING BC'S ELECTION

Our watchdog program, Environmental Law Alert, strives at all times to make sure that British Columbians have reliable information on emerging environmental laws.

An election can be a pivot point in a democratic society, a moment when we get to debate what is important to us and look to a new future. Understanding what government policy means for us – and the air, water and land that we depend upon – becomes critical at election time, and as a new government takes up the reigns.

West Coast's Environmental Law Alert program took up the challenge, keeping readers informed both before and after the 2017 BC election. We published posts comparing BC NDP, Liberal and Green climate platforms, which were cited by several journalists. We investigated the tension between corporate donations and enforcement of BC's environmental laws. And our staff and volunteers collaborated with other non-partisan groups across the province to encourage our supporters to get out and vote.

Once the BC Greens agreed to support an NDP government, there were many unanswered questions about what this would mean for the environment. Our analysis highlighted the NDP and Green commitments that will be significant under the new government, and invited our readers to engage with the government on steps to build a more sustainable economy.

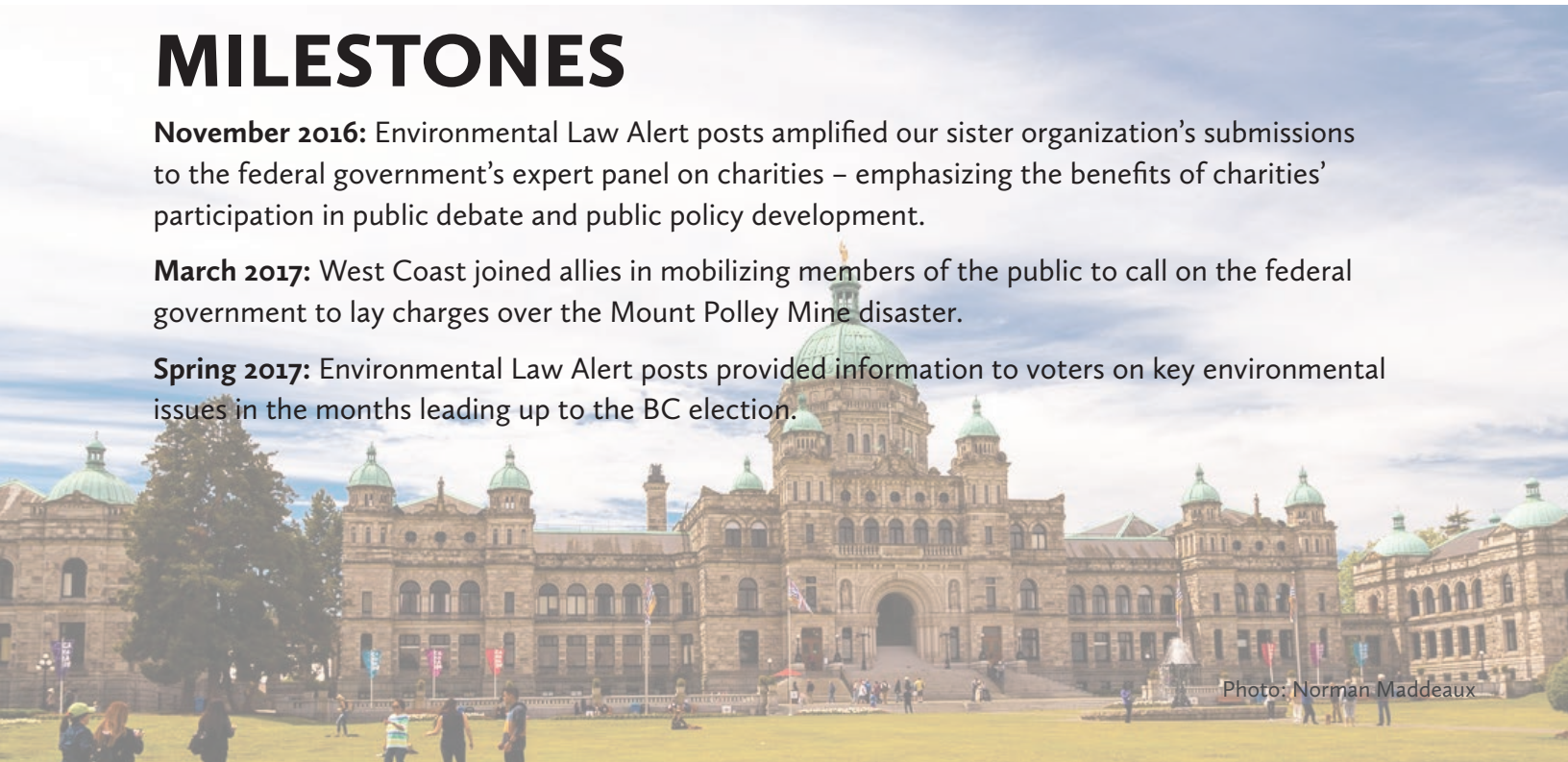
Environmental Law Alert will allow us to continue to provide analysis to the public on a range of new environmental initiatives that the BC government is expected to take – while being vigilant when the government does not deliver.

## MILESTONES

**November 2016:** Environmental Law Alert posts amplified our sister organization's submissions to the federal government's expert panel on charities – emphasizing the benefits of charities' participation in public debate and public policy development.

**March 2017:** West Coast joined allies in mobilizing members of the public to call on the federal government to lay charges over the Mount Polley Mine disaster.

**Spring 2017:** Environmental Law Alert posts provided information to voters on key environmental issues in the months leading up to the BC election.





# BUILDING THE ENVIRONMENTAL LAW BAR

This past year brought another great cohort of law students to our office. Through the Pro Bono Students program at UBC, internships through Osgoode Hall and Macquarie University, our summer law student program and our new university course, more than two dozen law students were able to work closely with West Coast lawyers. Their passion, curiosity and fresh ideas – not to mention their developing legal skills – were all welcome.

In the 2016 fall semester at UBC, staff lawyers Linda Nowlan and Deborah Carlson had the opportunity to run their dream environmental law course: weekly workshop sessions with students and a rotating cast of their West Coast lawyer colleagues, digging into the legal issues that shape our campaigns and programs. All 15 law students enrolled in the course also worked on a research project related to our current activities, supervised by staff lawyers. The second edition of West Coast’s UBC law course began in September 2017.



2017 Summer Law Students (left to right): Don Couturier, Nicolas McKay, Mari Galloway, Karyn Leslie, Matt Hammer

“One of the things that I loved the most about working at West Coast was the opportunity to engage with Canadian and Indigenous law on a multitude of levels: from researching and briefing Canadian court cases and statutory documents, to drawing out the Indigenous law embedded within traditional stories under the supervision of the extraordinary RELAW lawyers, I was immersed in the multi-juridical reality of the Canadian legal landscape.”

– *Nicolas McKay, 2017 Summer Law Student*







# LAW REFORM & ADVOCACY

West Coast Environmental Law Association is working to transform the legal landscape – and sometimes that means changing the rules of the game. This past year, our lawyers have been particularly engaged in ongoing law reform efforts at the federal level, advocating for strong laws and processes to safeguard the environment and uphold Indigenous rights.

## **STANDING UP FOR STRONG ENVIRONMENTAL LAWS**

During 2016-2017, Canada's federal government conducted sweeping reviews to fulfill its commitments to strengthen key environmental laws that were weakened in 2012 – and West Coast has been there, every step of the way. Our lawyers have presented to standing committees, made submissions to expert panels, met with government officials and gathered diverse experts to discuss solutions. We also continue to provide legal education, resources and opportunities for Canadians to take action in support of strong, fair and democratic environmental laws.

## **TAR SANDS PIPELINES AND TANKERS**

In addition to years of work to protect the environment and communities from risky tar sands pipelines, West Coast has spent decades working toward a comprehensive law banning oil tankers on the north Pacific coast. Through our legal analysis, education, advocacy and public engagement, we are playing a key role in efforts to stop the Kinder Morgan Trans Mountain pipeline and tankers project, and secure a legislated oil tanker ban that will protect lands, waters, wildlife and communities from the risk of oil spills.



# STRONG ENVIRONMENTAL LAWS

This year, we have made considerable progress towards strengthening Canada's environmental laws. In August 2016, the Canadian government announced major reviews of the *Fisheries Act*, *Navigation Protection Act*, the National Energy Board and federal environmental assessment processes. Since then, we have become deeply engaged in ensuring those laws and processes work for nature and communities, and have become Canada's go-to organization in environmental assessment reform.

In partnership with experts from coast to coast to coast, we developed leading-edge law reform proposals to help protect nature and communities from the individual and cumulative impacts of development proposals. Through in-person workshops across the country, as well as our online, print and media outreach, we helped tens of thousands of people participate in the environmental law reviews, and we ourselves made multiple in-person and written submissions on the four reviews.

Our efforts have paid off. The reports of the expert panels that reviewed Canada's environmental assessment processes and the National Energy Board, and the Standing Committee report on the *Fisheries Act*, aligned closely with many of our recommendations, and we continue to hold the government's feet to the fire to restore lost protections under the *Navigation Protection Act*. As we move ahead in 2017-2018, we remain confident that we will secure strong, lasting environmental legal protection in Canada.







## MILESTONES

**May 2016 and June 2017:** We hosted two federal environmental assessment reform summits, bringing over 40 experts from across the country together to discuss the key pillars and implementation of next generation environmental assessment. The results have been shared widely with the government, public, allies and Indigenous groups.

**September to December 2016:** We hosted or assisted with various talks, workshops and webinars on the environmental assessment review in communities across Canada – from Nanaimo, BC to Happy Valley-Goose Bay, Labrador.

**October 2016:** Staff Counsel Linda Nowlan appeared as witness before the Parliamentary Standing Committee on Fisheries and Oceans, regarding the review of the federal *Fisheries Act*. Recommendations from our testimony and two written briefs were prominent in the Committee's recommendations for reform, as well as in the government's response.

**March 2017:** Staff Counsel Anna Johnston relocated to Ottawa in order to meet regularly with the federal government on environmental law reform. Over the course of dozens of meetings throughout the spring and summer, we helped counter industry's lobbying efforts and educate the government on next-generation environmental law.

**June 2017:** We made detailed submissions on the government's Environmental and Regulatory Reviews Discussion Paper, including providing legal drafting for how to ensure federal decisions are sustainable and fair.



# TAR SANDS, PIPELINES & TANKERS

Bill C-48, the *Oil Tanker Moratorium Act*, was tabled in 2017 to fulfill the federal government's commitment to formalize an oil tanker ban on the Pacific north coast, including Hecate Strait, Dixon Entrance and Queen Charlotte Sound.

Catalyzed by the threat of oil supertankers from Enbridge's Northern Gateway proposal, West Coast Environmental Law Association and numerous allies have dedicated over a decade to advocating for legislation entrenching a Pacific north coast oil tanker ban. While Bill C-48 can still be improved, it is on track to create a "new normal" for BC's north coast where most realistic threats of new oil tanker megaprojects would be legally off the table. West Coast is engaging in the Parliamentary process to seek to strengthen Bill C-48 and ensure that it is passed.

Meanwhile, as the historic 2017 BC election unfolded, we developed legal options through which the new provincial government could meet its commitment to "employ every tool available" to protect BC's interests from the Kinder Morgan Trans Mountain pipeline and tankers project, and continued to provide legal support to First Nations opposing the project.



Photo: Staff Counsel Gavin Smith (centre) with partners during the delegation to Ottawa in support of the north BC coast oil tanker ban.



Photo: Island Conservation



# MILESTONES

**October 2016:** West Coast organized a delegation of First Nations, labour organizations, community groups and environmental organizations to travel to Ottawa in support of a Pacific north coast oil tanker ban. Together with the delegation, West Coast Staff Counsel Gavin Smith met with several Ministers and numerous federal officials to advocate for a strong federal statute entrenching an oil tanker ban on BC's north coast. The delegation held a press conference on Parliament Hill.

**November 2016:** In a press conference, Prime Minister Justin Trudeau and several members of Cabinet announced the rejection of the Enbridge Northern Gateway pipelines and tankers project, and committed to introduce a legislated oil tanker ban on BC's north coast in spring 2017. At the same time, the federal government announced its approval of the Kinder Morgan Trans Mountain project.

**January 2017:** We published *Will the Pacific North Coast Oil Tanker Ban Hold Water? A Review of Canada's Proposed New Legislation*.

**May 2017:** Bill C-48, the *Oil Tanker Moratorium Act*, was tabled for first reading in Parliament.

**May 2017:** We produced a review of Bill C-48 entitled "Why the Oil Tanker Moratorium Act is worth celebrating."

**June 2017:** Together with our clients and others, we held a series of meetings with investors and analysts to communicate the legal risks of investing in Kinder Morgan. A reduction in Kinder Morgan Canada Limited's share price forced the company to sell more shares to meet its financial needs.

**June 2017:** West Coast published *A Legal Toolbox to Defend BC from the Kinder Morgan Pipeline & Tankers Project*, which outlines our analysis of the most legally and politically resilient and effective tools available to the new BC government.



Photo: Stop Kinder Morgan rally in Vancouver, November 2016 (Kent Lins)





Photo: Brad Hill



# TRANSFORMING ENVIRONMENTAL DECISION-MAKING

At West Coast Environmental Law Research Foundation, we believe that decisions about the environment must be fair and democratic, grounded in science, and must uphold Indigenous rights and decision-making authority. We're working to transform environmental decision-making in Canada, and ensure that communities have a voice in matters that affect them.

## **KEEPING BC OIL SPILL-FREE**

For many years, West Coast has played a pivotal role in protecting the environment and climate from the risks posed by tar sands pipelines and tankers – providing legal and strategic support to First Nations and communities that are using the law to defend the lands and waters they care about from the threat of oil spills.

## **PROTECTING THE MARINE ENVIRONMENT**

Our lawyers are researching, analyzing, designing and implementing innovative legal strategies – grounded in provincial, federal and Indigenous law – to secure lasting legal protection for oceans and marine ecosystems.

## **REVITALIZING INDIGENOUS LAW**

Through the RELAW (Revitalizing Indigenous Law for Land, Air and Water) project, West Coast works with Indigenous partners who are revitalizing their Indigenous laws and applying them to the environmental challenges they are facing today.

## **TAKING CLIMATE LAW INTO OUR HANDS**

West Coast is engaged in a provincial, national and international conversation about how to ensure accountability from fossil fuel polluters for the harm caused by climate change.

## **PREPARING COMMUNITIES FOR THE REALITY OF CLIMATE CHANGE**

We're working to help communities make informed choices as they adapt to a changing climate – bringing together policymakers, scientists, urban designers, landscape architects and local residents to create adaptation solutions that work with nature, instead of against it.



# VICTORY: THE END OF ENBRIDGE

No ill-advised and risky industrial development is “too big to stop.” This will be the lasting lesson of the defeat of the Enbridge Northern Gateway tankers and pipelines project.

Have you ever heard a friend or neighbour say: “There is nothing we can do”? It is a sentence that many have said, heard or thought when facing risks to lands and waters that they care about. It is a difficult, draining sentence, and it can feel true. That is why it is important to keep stories like the defeat of the Northern Gateway project front of mind.

The Enbridge Northern Gateway project, first put before federal regulators in 2004, was to be a truly massive industrial undertaking. Enbridge proposed to build two 1,178-kilometre pipelines to transport an average of 525,000 barrels of oil per day from Bruderheim, Alberta to Kitimat, BC, and 193,000 barrels of toxic condensate per day in the opposite direction. The project would have introduced an average of 220 oil tankers per year to sensitive waters on BC’s north coast.

West Coast Environmental Law was one of the first organizations to raise awareness about the risks of the Northern Gateway proposal, before the project was regularly in the public eye. In the early days of the campaign, we connected Indigenous elders who experienced the Exxon Valdez oil spill with communities on the north coast. Over the subsequent years, West Coast became a go-to source of legal information and assistance to residents, non-governmental organizations and First Nations concerned about the risks of oil spills and other impacts from the project, including highlighting the impacts of related rollbacks to Canada’s environmental laws.

In addition to providing thousands of hours of pro bono legal support to our main clients, the Yinka Dene Alliance\*, West Coast also played a key role in catalyzing broad support for First Nations in their fight against Northern Gateway: from travelling with our clients on a cross-country Freedom Train journey, to standing by their side at multiple Enbridge annual general meetings, to working with them to launch a Solidarity Accord in support of the Save the Fraser Declaration, which is a legal instrument through which First Nations prohibited the project in their territories as a matter of their Indigenous laws.



Photo: United Against Enbridge Rally, October 2015. (Jeremy Board)

\*The Yinka Dene Alliance was formed as an alliance to fight the Northern Gateway project, consisting of: Saik'uz First Nation (Chief Jackie Thomas and Coordinator Geraldine Thomas-Flurer); Nadleh Whut'en First Nation (Chief Larry Nooski); Nak'azdli Whut'en (Chief Alec McKinnon and past Chief Fred Sam); Takla Lake First Nation (Chief John Allan French); Tl'azt'en Nation (Chief Justa Monk); and Wet'suwet'en First Nation (Chief Vivian Tom).



# EDGE NORTHERN GATEWAY

In 2014, when the federal government approved the Northern Gateway project in the face of widespread public and Indigenous opposition, West Coast was instructed by two Yinka Dene First Nations, Nak'azdli and Nadleh Whut'en, to launch a legal challenge on their behalf against the approval. The proceeding was consolidated with legal challenges from many other First Nations and organizations, leading to one of the largest cases in the history of the Federal Court of Appeal.

After almost two years of countless submissions, meetings, phone calls, emails, gatherings, press conferences, drafting, and days in court, we won our case in June 2016. The Federal Court of Appeal overturned the federal approval of Northern Gateway on the basis that Canada's constitutionally-required consultation with our clients and other First Nations "fell well short of the mark."

In November 2016, the federal government ultimately rejected the project. Northern Gateway did not legally challenge Canada's decision, finally bringing an end to the risks posed by Enbridge's project, after more than a decade of opposition. The *Oil Tanker Moratorium Act*, introduced as Bill C-48 by the federal government in May 2017, would prohibit similar projects on BC's north coast in future.

In the face of the other project proposals like Kinder Morgan's Trans Mountain expansion – and in the face of climate change, habitat loss and biodiversity decline – the win against the Northern Gateway project is a reminder that when communities speak together, when they strategize and support each other in service of a future they believe in, there is no such thing as insurmountable odds.



Photos (top to bottom): Staff Counsel Gavin Smith with Geraldine Thomas-Flurer of the Yinka Dene Alliance during Northern Gateway court hearings in October 2015; An embroidered patch proclaiming victory over Enbridge; Victory celebration in Haida Gwaii, March 2017.



# KEEPING BC OIL SPILL-FREE

Inspired and informed from our work on the Enbridge Northern Gateway campaign, West Coast has continued our work to protect the environment and communities from tar sands pipelines and tankers – with a current focus on the Kinder Morgan Trans Mountain project. Our approach involves a multi-pronged strategy to analyze and communicate legal, financial and reputational risk.

We continue to provide legal and strategic support to First Nations and communities that are using the law to defend the lands and waters they call home from the risk of oil spills.

## MILESTONES

**November 2016:** Enbridge Northern Gateway was officially rejected by the federal government, which simultaneously approved Kinder Morgan's Trans Mountain pipeline and tanker project. West Coast lawyers were in Winnipeg and Ottawa to respond with our clients in national media.

**December 2016:** Nine legal challenges were filed against the federal approval of Trans Mountain. West Coast is part of the legal team providing strategic support for the Tsleil-Waututh Nation, one of the parties challenging the approval in court.

**Ongoing:** West Coast continues to support the Tsleil-Waututh Nation in communicating the results of its independent assessment of Trans Mountain to decision-makers, including investors.



Photo: Tsleil-Waututh water ceremony in front of the Kinder Morgan marine terminal in Burrard Inlet, BC (Eugene Kung)



# MARINE PROTECTION

To many people, protecting the ocean means protecting seafood. But it's not only about the food – it's about culture, livelihoods and the key to a sustainable future.

Coastal residents say the main job of marine planning, as done through the Marine Planning Partnership (MaPP) led by the BC government and First Nations, is to protect the food that comes from the sea. MaPP plans focus on fisheries, shellfish aquaculture and community-based fisheries economy, as well as harvestable marine plants. The plans recommend protection for 15 to 30% of the total planning area, which encompasses a large region off the north coast of BC.

At West Coast, we're working to entrench these MaPP protection zones and develop ocean management solutions grounded in both Canadian and Indigenous law, through various research, education and outreach initiatives.

For example, this year we spoke to legal experts and government officials about potential solutions for the complex issue of legal authority over fisheries – a source of conflict between Indigenous peoples and the Canadian government since colonization. West Coast and our partners presented a paper on the topic at a national symposium in October 2016. The paper discusses how integrating Indigenous and Canadian law can address fisheries conservation and enforcement, through analysis of three cases of conservation limits imposed on fish and shellfish harvesting across the Pacific north and central coast and Haida Gwaii.

Our marine protection program continues to explore the interaction between Canadian law and Indigenous legal orders, and how it can transform fisheries conservation and marine planning in BC.

## MILESTONES

**October 2016:** At the national Environment in the Courtroom Symposium in October 2016, we presented our paper entitled “Enforcing the *Fisheries Act* – Perspectives from the Pacific Coast,” written with collaborators from the Kitasoo/Xai'xais First Nation and the Central Coast Indigenous Resource Alliance.

**May 2017:** West Coast co-hosted a symposium on “Linking Law and Science” at the AGM of the Canadian Society of Ecology and Evolution, with Prof. Jon Moore (Simon Fraser University) and a stellar group of lawyers and scientists. We later co-authored a journal article on the topic, submitted for publication in September.

**August 2017:** At the internationally-renowned Resilience conference in Stockholm, Sweden, West Coast presented a poster on the legalization of the innovative MaPP plans as a potential ‘tipping point’ in marine management in British Columbia.



# RELAW: REVITALIZING INDIGENOUS LAW FOR LAND, AIR & WATER

For thousands of years, Indigenous peoples have governed their territories according to their own laws – safeguarding land, air, water and communities to sustain their cultures and economies. The role of Indigenous peoples and Indigenous law-based strategies in defeating the Enbridge Northern Gateway proposal (see pages 17-18) is just one testament to the importance of living Indigenous law in confronting the environmental challenges of our time.

Drawing on the lessons learned from the Enbridge campaign and our work with Indigenous peoples on land use planning, assessment and other aspects of environmental governance, in 2016 West Coast launched RELAW (Revitalizing Indigenous Law for Land, Air and Water), a unique legal support and capacity building program.

We began working with our first cohort for the RELAW project in the spring of 2016. The first cohort included six Indigenous partners: Secwepemc (Shuswap Nation Tribal Council), St’át’imc, Fort Nelson First Nation, Tsilhq’atin, Tsawout and Gitga’at.

Through the RELAW project, we’ve worked with these partners to research Indigenous laws contained in stories and traditions, draft written summaries of their legal principles related to environmental governance, and guide community deliberation about how these principles should be applied on the ground.

**“[RELAW] gave us the tools to help preserve our laws, traditions and ways of being, now and into the future.”**

- Fort Nelson First Nation, 2016-2017 RELAW Partner



St’át’imc RELAW team members Dean Billy and Helen Copeland.



Geraldine Thomas-Flurer (Yinka Dene Alliance) with staff lawyers Gavin Smith and Hannah Askew at the spring 2017 RELAW retreat.



Primarily we worked with stories particular to each nation, but we also supplemented this with Indigenous language resources as much as possible. Our goal was to focus on the legal principles of each individual First Nation to assist with environmental decision-making (responsibilities, rights, standards and relationships), and then to align those principles with different projects or legal tools being produced by each First Nation – such as a water policy or marine planning.

Working with community-based researchers and guides, West Coast lawyers serve as “translators,” bridging from principles of Indigenous law to develop written codes, policies or plans. These written products are designed to assist with implementation and enforcement of decisions taken by Indigenous peoples as a matter of their own laws.

We’re currently wrapping up the work with our first cohort and have begun working with a second, which means adjusting the program to reflect what we’ve experienced and learned along the way. 2017 RELAW partners include the Ktunaxa, Taku River Tlingit, Heiltsuk, Kitsoo-Xai’xais, and Toquaht peoples. We look forward to another powerful year of learning and collaborating with our partners, as they reconnect with their Indigenous laws and apply them to new environmental challenges.



## MILESTONES

**May 2016:** At our first retreat with RELAW partners, we shared the methodology developed by the Indigenous Law Research Unit (ILRU) at the University of Victoria to enable community researchers to begin the process of researching and articulating Indigenous law for their nation alongside legally trained staff from West Coast.

**September 2016:** At our second retreat, participants learned and practiced facilitation skills and we began developing plans with each nation to engage in community dialogue and deliberation with respect to the legal principles in their stories. We also began discussions about developing contemporary Indigenous legal instruments like written policies, plans or declarations.

**May 2017:** Our third retreat was an opportunity to begin plans for implementation and enforcement. We also shared strategies for getting the Crown and third parties to take Indigenous laws seriously and to learn from the examples of others.



# CLIMATE LAW IN OUR HANDS

Climate change can seem like a far off, global problem – until your community is flooded, or burned, or needs to build expensive sea walls (as has been the case for more and more BC communities).

Our Climate Law in our Hands initiative challenges BC's local governments to take action to ensure that the costs associated with these local climate impacts are not paid only by taxpayers, but at least partly by Chevron, Shell, Exxon and other fossil fuel companies that sell products they know will worsen these climate impacts.

Recently, the Districts of Saanich and Highlands on Vancouver Island took the first step, by agreeing to send public climate accountability letters to 20 of the world's largest fossil fuel companies (whose products and operations have caused almost 30% of the planet's greenhouse gas pollution). These climate accountability letters describe local climate costs and demand that the fossil fuel companies pay a fair share.

That public demand opens up a conversation that could lead to future legal action to hold fossil fuel companies accountable for climate costs. Since our BC campaign launched in January 2017, Chevron has for the first time disclosed to its shareholders that there is a risk it could be sued for climate damages. And more recently, three communities in California have actually initiated lawsuits against fossil fuel companies for sea level rise costs.

As long as the fossil fuel industry continues to make billions from selling products they know cause climate change – and yet does not expect to pay any of the climate costs – the world will not be able to transition to a renewable economy as quickly as we need to. Demanding accountability from fossil fuel companies is fiscally responsible for our communities, and good economics for those who want to see global climate action.

## MILESTONES

**January 2017:** West Coast released an open letter signed by more than 55 BC-based organizations, asking BC's local governments to take action to hold fossil fuel companies accountable for local climate impacts.

**June 2017:** The District of Highlands voted unanimously to send a climate accountability letter – the first in the world of this kind – to Chevron and 19 other fossil fuel companies.

**July 2017:** The District of Saanich voted unanimously to send a similar climate accountability letter to fossil fuel companies.



# GREEN COMMUNITIES

“Man versus nature” is a common theme in Canadian settler literature, and unfortunately it seems to be built into Canadian law as well. Nowhere is this more evident than in our climate adaptation work.

For example, a provincial study suggested that protecting communities from sea level rise meant spending \$9 billion on higher dikes around the Lower Mainland. Under current laws and regulations, the impacts of this action on coastal ecosystems (likely devastating over the longer term) aren't considered. However, failing to work with nature leaves us vulnerable. If the dikes fail, or if sea level rises faster than anticipated, the consequences are catastrophic.

In West Coast's approach to climate adaptation, green communities, designed with nature, are more resilient to climate change. They are also more healthy and liveable for community members. On the coast, living wetlands can buffer the energy of waves and take the sting out of storm surge – providing a greener alternative to dikes and other built infrastructure.

This past year, West Coast has been organizing workshops and meeting with policy and decision-makers to explore how we can implement measures at the coastline that protect our communities and our ecosystems. We've been heartened by the positive response from government representatives and community members.

Existing federal and BC laws don't support the necessary measures or the multijurisdictional collaboration that is required, but West Coast is filling in the gaps by facilitating necessary connections and developing law and policy reform options for climate adaptation.

## MILESTONES

**May 2016:** West Coast collaborated with Green Shores (Stewardship Centre BC) to update and revise *Green Shores Policy and Regulatory Tools for Local Governments*.

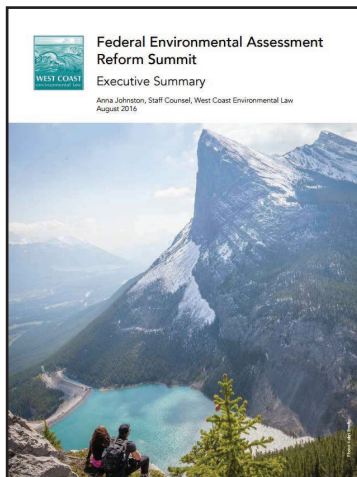
**November 2016:** More than a year of effort by environmental groups, including West Coast, resulted in the creation of an Environmental Advisory Committee for the Lower Fraser Integrated Flood Management Strategy. West Coast joined as a member.

**February 2017:** West Coast hosted the “Living Shorelines” workshop in Delta, BC. More than 20 representatives from federal, provincial and local governments attended to hear Shannon Cunniff of the US Environmental Defense Fund share insights about coastal protection planning in Louisiana, and West Coast launched the “Living Dike” initiative with an expert report from coastal engineer John Readshaw.



# SELECT PUBLICATIONS

## WEST COAST ENVIRONMENTAL LAW RESEARCH FOUNDATION



### Proceedings of the Federal Environmental Assessment Reform Summit

August 2016

In anticipation of the federal government’s review of environmental assessment processes, West Coast hosted a Federal Environmental Assessment Reform Summit in Ottawa May 2016. Attended by approximately 30 of Canada’s leading environmental assessment experts, academics, lawyers and practitioners, the Summit was an opportunity to discuss, crystallize thinking, weigh options and seek to find common ground on key components of a “next-generation” environmental assessment law for Canada. This publication summarizes the main outcomes of the discussions that took place during the Summit.



### Green Waterfront Design Charrette Report

December 2016

The Green Waterfront Design Charrette brought together design experts and staff from five British Columbia municipalities to explore how shifts in land use and building design could support community resilience to sea level rise. This report – co-produced with partners including the SFU Adaptation to Climate Change Team (ACT) – provides a thorough overview of the Charrette, including the objectives, expert presentations, as well as ideas and insights to address sea level rise in BC’s Lower Mainland.

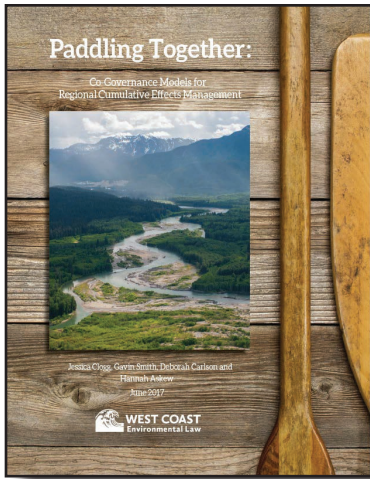


### Linking Science and Law: Minimum Protection Standards for Canada’s Marine Protected Areas

May 2017

The federal government has made public commitments to protect 10% of marine and coastal areas by 2020. Yet despite these commitments, Canada lacks basic marine protection standards – which means harmful industrial activities are sometimes permitted to continue in marine protected areas (MPAs). In this brief, West Coast presents recommendations for updating the *Oceans Act* to translate scientifically-determined protection standards into law and ensure meaningful protection for MPAs.



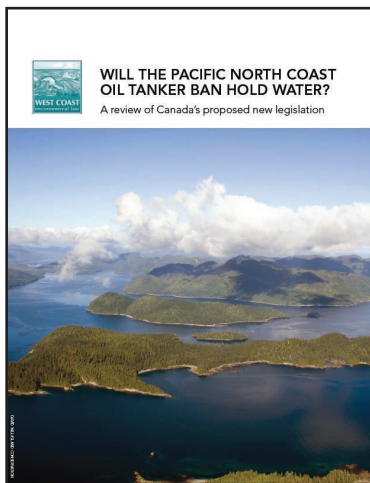


## **Paddling Together: Co-Governance Models for Regional Cumulative Effects Management**

**June 2017**

The combined effect of hundreds of thousands of different approvals, licences and unpermitted activities have combined over time to degrade our natural life support systems. This report looks at real-life options and points of inspiration for shifting our focus from reactive project-by-project decision-making to proactive regional management that begins with the needs of ecosystems and human communities, and is based on collaborative governance among Indigenous and Crown jurisdictions. The report forms part of a broader multi-year project at West Coast, examining best practices and models from around the world for cumulative effects management and regional governance.

## **WEST COAST ENVIRONMENTAL LAW ASSOCIATION**



### **Will the Pacific North Coast Oil Tanker Ban Hold Water? A Review of Canada's Proposed New Legislation**

**January 2017**

In November 2016, the federal government announced that it would introduce legislation in spring 2017 to entrench an oil tanker ban on the north coast of British Columbia, and it provided preliminary details on the content of the legislation. In this publication, West Coast evaluates the early details on the federal government's proposal for oil tanker ban legislation.



### **A Legal Toolbox to Defend BC from the Kinder Morgan Trans Mountain Pipeline & Tankers Project**

**June 2017**

The historic NDP/Green alliance in British Columbia has committed to "Immediately employ every tool available to the new government to stop the expansion of the Kinder Morgan pipeline, the seven-fold increase in tanker traffic on our coast, and the transportation of raw bitumen through our province." In light of this commitment, many people have been asking: "What can BC do about Kinder Morgan?" This brief outlines concrete legal options that the new BC government could use with respect to Kinder Morgan's Trans Mountain pipeline and tankers project.



# PEOPLE OF WEST COAST



## West Coast Staff

Back row, left to right: Linda Nowlan, Gavin Smith, Eugene Kung, Andrew Gage, Barbara Everdene, Deborah Carlson, Georgia Lloyd-Smith, Molly Kleiker, Stephanie Hewson, Maryann Watson

Front row, left to right: Alexis Stoymenoff, Jessica Clogg, Erica Stahl, Anjali Appadurai, Ceciline Goh, Mindy Cleave

(Absent: Hannah Askew, Lindsay Borrows, Lucy Hough, Anna Johnston, Jennifer King, Maxine Hayman Matilpi)

## 2016-2017 LAW STUDENTS AND LEGAL VOLUNTEERS

Alan Andrews	Matt Hammer	Alexandra Larkin	Nico McKay
Sarah Borkman	Hannah Hargrave	Karyn Leslie	Yasmeen Peer
Don Couturier	Alisa Koebel	Annie MacDonald	Thomas Riddell
Mari Galloway			

## 2016-2017 COMMUNITY OUTREACH INTERNS

David Michael Haerber      Robert Wisla

## 2015-2016 EDRF LAWYERS

Each year, West Coast works with a network of dedicated lawyers who represent clients all over British Columbia through the Environmental Dispute Resolution Fund (EDRF). These talented professionals work for partial pro-bono fees, on behalf of individuals and communities who step up to challenge environmental injustices and protect the places they care about. We would like to acknowledge the following lawyers who worked on EDRF cases in 2016-2017:

Alan Hanna	Cheryl Sharvit	Ethan Krindle	John Gailus	Michael Ng
Alison Latimer	Cheryl Tobias	Glen Bell	Judah Harrison	Neil Chantler
Alison Russell	Claire Truesdale	Grace Jackson	Krista Robertson	Patrick Canning
Angela McCue	Clo Ostrove	Holly Vear	Larry Reynolds	Richard Overstall
Bertha Joseph	Crystal Reeves	James Patterson	Laurel Dietz	Robin Gage
Beverly Hobby	Darwin Hannah	James Tate	Lilina Lysenko	Sean Hern
Bill Andrews	David Reid	Jasmine MacAdam	Lisa Fong	Tammy Shoranick
Bruce McIvor	Dominique Nouvet	Jason Gratl	Mark Walton	Tim Howard
Catherine Boies	Emily Hume	Jeff Jones*	Mary Macaulay	Tim Theilmann
Parker	Erin Gray	John Cliffe	Matthew Nefstead	

*\*West Coast also wishes to pay a special tribute to EDRF lawyer Jeff Jones, who passed away this year.*



# OUR SUPPORTERS

## **SUSTAINING PARTNER: THE LAW FOUNDATION OF BRITISH COLUMBIA**

The Law Foundation of BC has been West Coast Environmental Law Association's Sustaining Partner since 1974. The Law Foundation's funding enables us to work on our priority environmental law objectives, helps us to achieve success in all program areas, and most importantly, allows us to leverage additional funds from other granting agencies, companies and individuals.

## **FOUNDATIONS**

Program support from private, community and family foundations remains a crucial component of our overall funding. West Coast is honoured by the long-standing and diverse partnerships of our foundation funders.

This past year, we were supported by the following foundations from across Canada and beyond:

### **RESEARCH FOUNDATION:**

- 444S Foundation
- Bullitt Foundation
- Catherine Donnelly Foundation
- Eburne Mill Fund at Aqueduct Foundation
- Gencon Foundation
- Gordon and Betty Moore Foundation
- Minor Foundation for Major Challenges
- Patagonia
- Swift Foundation
- Tides Canada
- Vancouver Foundation
- Wallace Global Fund
- Wilburforce Foundation

### **ASSOCIATION:**

- New Venture Fund
- Oak Foundation
- Real Estate Foundation of BC
- Tides Foundation
- WestWind Foundation



# FINANCIAL STATEMENTS

## REVENUES

	For year ended April 30, 2017				For year ended
	Association	Foundation	EDRF	Total	April 30, 2016
Law Foundation Grants	425,000	-	-	425,000	425,000
Allocation to EDRF	(100,000)	-	100,000	-	-
Donations	2,919	330,865	-	333,784	260,131
Grants & Contracts Earned	372,233	1,377,309	-	1,749,542	1,324,155
Other Income	243,513	48,939	31	292,483	171,015
<b>Total Revenue</b>	<b>943,665</b>	<b>1,757,113</b>	<b>100,031</b>	<b>2,800,809</b>	<b>2,180,301</b>

## GRANTS AND EXPENSES

Personnel Related	645,381	800,021	-	1,445,402	1,175,456
Professional Services	9,903	20,217	-	30,120	19,485
Rent & Office Expenses	145,698	100,248	-	245,946	222,420
Amortization	20,389	-	-	20,389	13,740
EDRF Grants	-	-	100,000	100,000	99,993
Program Expenses	119,216	517,563	31	636,810	484,593
Fundraising	-	23,801	-	23,801	65,668
Thompson Award Costs	-	-	-	-	-
Administration Fee	-	199,689	-	199,689	101,766
<b>Total Grants and Expenses</b>	<b>940,587</b>	<b>1,661,539</b>	<b>100,031</b>	<b>2,702,157</b>	<b>2,183,121</b>
<b>Excess of revenue (expenses) for the year</b>	<b>3,078</b>	<b>95,574</b>	<b>-</b>	<b>98,652</b>	<b>-2,820</b>

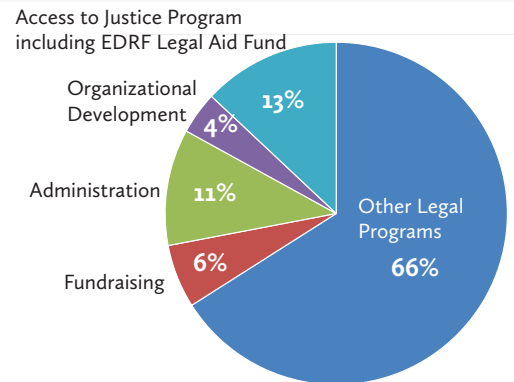
*Excerpt from the audited financial statements of West Coast Environmental Law Association, West Coast Environmental Law Research Foundation, and West Coast Environmental Dispute Resolution Fund Society. Full audited financial statements available upon request.*



# YOUR SUPPORT MAKES A DIFFERENCE

## WHERE YOUR DONATION GOES:

- 83% to programs
- 11% to administration
- 6% to fundraising



## SUPPORT NATURE AND DEMOCRACY

Every single individual donation to West Coast Environmental Law makes a world of difference. We achieve victories for British Columbians and Canadians because of our strong community of support – because one donor at a time has made a commitment to be part of the solution.

We are not funded by government, which means your individual donation really does make a fundamental difference in allowing West Coast to provide people with environmental legal aid, environmental law research, representation and education services to promote protection of the environment and public participation in environmental decision-making.

At West Coast Environmental Law, your gift today, or in the future, is a significant source of support for our critical work, and is fundamental to preserving the environment now and in years to come. There are a number of ways you can support West Coast, and in so doing, make a lasting commitment to the environment and your community:

- **Become a West Coast Protector:** Monthly donors are the backbone of our organizations. This way of giving provides consistent, reliable support to West Coast’s programs with minimal effort. Even \$10 a month makes a big impact.
- **An Environmental Legacy – Yours to Give:** Protect the environment through the law ... for generations. By leaving a gift to West Coast Environmental Law Research Foundation in your will, you are making a significant contribution to the future sustainability of an organization working to protect what you value most.

Legal Name: West Coast Environmental Law Research Foundation.  
Address: 200 – 2006 West 10th Avenue, Vancouver, BC V6J 2B3.  
Registered Charity #11929 2415 RR0001.

- **Tribute or Memorial Gifts:** Make a gift on behalf of someone special, or in celebration of a special occasion, or in memory of a family member, friend or colleague.
- **Gifts of Stocks or Securities:** Gifts of securities (stocks, bonds, mutual funds) enable you to make a big difference to ensuring that environmental protection is enshrined in law; at the same time, you will realize great tax savings.

Donations can be made online at <https://wcel.org/donate>.  
Call 604-601-2509 for more information and other giving options.





## WEST COAST Environmental Law

West Coast Environmental Law harnesses the power of law to solve complex environmental challenges. We are transforming environmental decision-making and strengthening legal protection for the environment through collaborative legal strategies that bridge Indigenous and Canadian law. By putting the law in the hands of communities and creating legal risk for those who would harm our land, air and water, we are building the collective power to achieve a more just and sustainable future for all.

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