



# Environmental Law Forum

January 16-18, 2013  
Rimrock Resort Hotel  
Banff, AB

## Wednesday, January 16, 2013

## Draft Agenda

4:00 p.m.+ Check-in  
7:00 p.m. Welcome Reception & Dinner

## Thursday, January 17, 2013

Discussion Leaders

7:30 a.m. Breakfast

**Double Session**  
**Full Morning**  
9:00 a.m.

### **Part 1: Review of Federal Government Environmental Law Reforms – *Canadian Environmental Assessment Act***

The new *Canadian Environmental Assessment Act, 2012* (“CEAA 2012”) was enacted on July 6, 2012. The *Canadian Environmental Assessment Act* (1992), has been repealed. Several regulations related to CEAA 2012 have also come into force:

- *Prescribed Information for the Description of a Designated Project Regulations*;
- *Cost Recovery Regulations*; and
- *Regulations Designating Physical Activities*

The legislation and regulations:

- Establish a “project list” describing the categories of projects to which federal EA would apply (rather than triggering an EA for every federal permit or authorization);
- Simplify the current structure of EAs to only two types of reviews: a “standard environmental assessment” and a “review panel assessment” (eliminating the concepts of “screening” and “comprehensive study”);
- Consolidate responsibility for EAs from over 40 different departments and agencies to the Canadian Environmental Assessment Agency. (The NEB will still do EAs for projects within its mandate);
- Set timelines: (i) 12 months for standard EAs; (ii) 24 months for review panels; and (iii) 18 months for EAs conducted by the NEB;
- Allow provincial EAs that meet the substantive requirements of the *Canadian Environmental Assessment Act* to replace federal assessments (one project-one assessment);
- Designate a lead department or agency as a single Crown consultation coordinator for specific project reviews and integrate the requirement for aboriginal consultation into the EA process; and
- Provide for the negotiation of memoranda of understanding with provincial governments to better align federal and provincial consultation processes.

This session will provide an overview of the new *Canadian Environmental Assessment Act, 2012* including the new approach to triggering environmental assessment tracks, timelines, coordination with provincial environmental assessments, and transitional provisions.

**Charles J. Birchall**  
Fogler, Rubinoff LLP  
Ottawa

**Shawn Denstedt**  
Osler, Hoskin &  
Harcourt LLP  
Calgary

**Robin Junger**  
McMillan LLP  
Vancouver

12:00 p.m. Luncheon



# Environmental Law Forum

Discussion Leaders

Session 2  
1:30 p.m.

## Part II: Review of Federal Government Environmental Law Reforms Fisheries Act

The *Fisheries Act* amendments are designed to focus that Act on the protection of fish that support commercial, recreational or Aboriginal fisheries and to more effectively manage those activities that pose the greatest threats to these fisheries. Proposed changes include the following:

- Section 35 of the *Fisheries Act* will be amended; rather than prohibiting harmful alteration, disruption or destruction of fish habitat (HADD), there will be a prohibition against carrying out works or activities that result in “serious harm” to fish (defined as the “death of fish or any permanent alteration to, or destruction of, fish habitat”).
- There will also be broad powers under s. 35 to create regulations exempting classes of works or activities from the s. 35 “serious harm” prohibition.
- The amendments would also allow the Minister to enter into agreements with provinces and with other bodies, provide for the control and management of aquatic invasive species, clarify and expand the powers of inspectors and permit the Governor in Council to designate another minister as the Minister responsible for the administration and enforcement of subsections 36(3) to (6) of the *Fisheries Act* for the purposes of, and in relation to, subject matters set out by order.

As well, on March 29, 2010, the Government of Canada announced its long-anticipated plans to expand the applicability of the federal *Metal Mining Effluent Regulations* (under the *Fisheries Act*) to coal and diamond mining projects. These regulations set effluent standards and monitoring requirements for effluent discharged from mining projects and previously only applied to metal mining. However, these changes were not included in the text of Bill C-38.

**Tony Crossman**  
*Miller Thomson LLP*  
Vancouver

**Michael Simms**  
*McInnes Cooper LLP*  
Halifax

2:50 p.m.

Refreshments

Session 3  
3:10 p.m.

## Regional Trends in Impact and Benefit Agreements for Natural Resource Projects

The intersection between aboriginal peoples and the development of natural resources is now at the heart of aboriginal and environmental law and policy across Canada. Issues arising around natural resource extraction and allocation, together with constitutional obligations rooted in treaty and aboriginal rights, the honour of the Crown and duties of consultation and accommodation generally lead to increasingly complex and costly economic and social arrangements between aboriginal communities and natural resource companies.

This session will provide:

- a primer on the evolution of the key social, environmental and financial terms in impact and benefits agreements over the past two decades across Canada; and
- an overview of the current regional trends and “best practices” in the mining industry for negotiating impact and benefits agreements across Canada.

**Sarah V. Powell**  
*Davies Ward Phillips & Vineberg LLP*  
Toronto

**With input from  
colleagues from  
across the country**

4:30 p.m.

End of Sessions Day 2



# Environmental Law Forum

6:30 p.m. Reception

7:00 p.m. Speaker: **Jim Prentice, P.C., Q.C.**; Senior Executive Vice-President and Vice Chairman of CIBC  
*From January 2006 until November 2010 Mr. Prentice was one of the most senior Ministers in the Canadian Government, serving variously as the Minister of Industry, the Minister of the Environment and the Minister of Indian Affairs and Northern Development.*

8:00 p.m. Dinner

## Friday, January 18, 2013

Discussion Leaders

7:30 a.m. Breakfast

### Session 4

### Class Action & Brownfields

8:30 a.m.

This session will examine recent developments from across Canada in the area of environmental class actions, including the following cases:

- *Smith v. Inco* – on April 26, 2012, the SCC denied the plaintiffs leave to appeal to the SCC, thereby confirming the decision of the Ontario Court of Appeal rendered on October 7, 2011;
- *Deraspe v. Canadian Electrolytic Zinc* – in March 2012, the Québec Superior Court certified a class action by residents of Salaberry-de-Valleyfield alleging health impacts from a 30 minute release of 10 tonnes of sulphur trioxide to the air on August 9, 2004;
- *Spieser v. Canada* – in October 2011, the trial of this class action against the federal government for TCE contamination of the Valcartier Canadian Forces base and the neighbouring town of Shannon;
- *Renaud v. Holcim Canada Inc.* – class action for nuisance by 1300 residents of Beauport due to pollution, odour and noise from a cement company (formerly St. Lawrence Cement);
- *Gaudet v. P & B Enterprises Itée* – class action for nuisance against by residents due to noise, odour and dust from an asphalt plant;
- *Carrier v. Procureure générale du Québec* – class action for nuisance by 1000 residents against Québec due to noise from adjacent Laurentian Highway;
- *Dobbie v. Canada, Ward v. Canada, Ring v. Canada, Brooks v. Canada* – actions brought by Merchant Group in the Federal Court, and the Superior Courts of Manitoba, Newfoundland, Saskatchewan and New Brunswick relating to agent orange contamination impacting persons resident at CFB Gagetown from 1956 to present.

This session will examine lessons to be learned from the above actions.

It will also look at some recently used techniques to avoid class actions or other civil litigation in historic contamination cases, including:

- Mediated settlement – *Marathon Pulp Inc.* – PCB and mercury contamination of an orphaned pulp mill site and the adjacent Peninsula Harbour of Lake Superior, and the successful one year mediated settlement process involving all former owners of the site (Ball Corporation, Georgia-Pacific, Tembec) as well as Ontario and Canada;
- Joint remediation and risk assessment – discussion of Wider Area of Abatement Risk Assessment and Community Based Risk Assessment options available in Ontario, and the tolling and joint remediation agreements required to implement them.

Finally, the session will canvas emerging issues in brownfields development across Canada.

10:20 a.m. Refreshments

**Jack Coop**

*Osler, Hoskin & Harcourt LLP  
Toronto*

**Christine Duchaine**

*Sodavex  
Montréal*

**Robert Daigneault**

*Daigneault Lawyers  
Inc.  
Montréal*



# Environmental Law Forum

Discussion Leaders

**Session 5**  
10:40 a.m.

## Regional Hot Topics

Take part in this ever-popular moderated, but wide-open discussion of topical legal and practice issues in a potpourri of “short snapper” segments.

This year’s coast to coast lineup will be drawn from the following:

- Castonguay Blasting
- Wetland issue in Québec: “avoid-minimize-compensate” challenge and Bill 71
- Fine particulate matter
- Best available control technology
- Air dispersion modeling
- Cumulative Effects – prosecution update
- Species at risk

We will also request the participants’ input on “hot topics” as the dates of the *Forum* approach.

**John D. Stefaniuk**  
*Thompson Dorfman  
Sweatman LLP  
Winnipeg*

12:00 p.m. Closing Luncheon

1:30 p.m. Departure