

ece law

east coast environmental law

East Coast Environmental Law Annual Report 2020

January 1 - December 31, 2020





About East Coast Environmental Law

East Coast Environmental Law is a regional environmental law charity based in Halifax, Nova Scotia, that provides public-interest environmental law services throughout Atlantic Canada.

OUR VISION

We envision a future in which innovative and effective environmental laws and the fair application of those laws provide Atlantic Canadians with a clean, healthy, and ecologically balanced environment that present and future generations can enjoy.

OUR MISSION

Our mission is to support the development and fair application of progressive environmental laws and legal orders throughout Atlantic Canada. To do that, we engage in:

- public legal education,
- community collaboration, and
- legal action.

We support grassroots environmental advocacy and the work of environmental non-governmental organizations throughout Atlantic Canada by making environmental laws more accessible and easier to understand. We provide legal research and analysis to enhance environmental and climate policy work, and we work collaboratively with organizations, community groups, and governments throughout the region to foster progressive law reform. When necessary, we also take part in legal proceedings before the courts.

OUR STORY

East Coast Environmental Law was incorporated as a Nova Scotian society in April 2007. For several years, the organization existed primarily as a volunteer Board of Directors made up of law professors, law students, legal practitioners, and members of the environmental community who were passionate about the issues, saw a pressing need, and gave their time generously in order to meet that need.

In 2011, East Coast Environmental Law became a registered charity, and the years that followed have been marked by a responsive evolution in the organization's structure and size. Although the organization continues to be supported by a volunteer Board of Directors who are motivated by passion and care, East Coast Environmental Law now employs three lawyers who work diligently to ensure that environmental law services are accessible when Atlantic Canadians need them the most.

WHAT WE DO

Healthy communities need clean water, unpolluted air, uncontaminated land, and a liveable climate. Responsible and equitable environmental laws and policies are necessary to create and maintain such conditions.

At East Coast Environmental Law, we believe that in order for our societies to engage in good ecological governance and stewardship, communities and individuals must be able to understand, access, and contribute to the progressive development of environmental law and policy. To foster

that understanding, enhance access to justice, and ensure that individuals and communities can participate in environmental decision-making, we respond to community inquiries, conduct legal research and analysis, develop educational resources which we distribute at no cost to the public, and create opportunities to increase public awareness of environmental laws throughout Atlantic Canada. We work hard to build capacity amongst community groups, environmental organizations, governments, law students, and private legal practitioners so that we can work together to ensure that environmental laws in our region are strengthened and used effectively.

Through our free Environmental Law Inquiry Service, online Information Library, community workshops, collaborations, legal action, and law reform initiatives, our work covers a broad spectrum of environmental and climate issues.

Some of these include:

- Aboriginal law in environmental contexts,
- biodiversity loss prevention, protection, and recovery,
- climate change mitigation and adaptation,
- environmental impact assessment,
- environmental racism,
- Indigenous rights in domestic and international law,
- Indigenous law revitalization,
- fisheries and aquaculture,
- forestry practices,
- marine and coastal areas,
- mining,
- protected places,
- public participation,
- renewable energies,
- resource extraction,
- species at risk, and
- offshore oil and gas.

HOW WE DO IT

We provide free legal information through our Environmental Law Inquiry Service, educational resources, and online Information Library.

We build the capacity of public-interest organizations and community groups by helping them to navigate environmental laws and legal issues.

We collaborate with environmental and social justice organizations throughout Atlantic Canada to conduct important legal research and analysis, host environmental law workshops, and organize collectively to take action for environmental and climate justice.

We mentor law students through summer employment opportunities and partnerships with the Schulich School of Law at Dalhousie University, the Environmental Justice and Sustainability Clinic at Osgoode Hall, York University, the Pro Bono Dalhousie program, and law faculties at other universities. By working or volunteering with us, law students get rare opportunities to contribute to the practice of public-interest environmental law, and they learn the value of using legal skills to assist individuals and communities in need.

We partner with private lawyers and lawyers at other not-for-profit organizations to bring forward challenging and important legal cases and improve access to justice.

We challenge and work with government departments and policymakers and actively participate in the creation and reform of environmental and climate laws at the federal and provincial levels.

OUR FUTURE

East Coast Environmental Law conducts a Strategic Planning Session every three years. In September 2018, Board members and staff came together to plot our trajectory for the 2019-2021 period. In September 2021, we will come together again to discuss what 2022-2024 may have in store.

In May 2020, we met one of our strategic goals by expanding our capacity through the hiring of a second staff lawyer, our 2019-2020 articled clerk, Tina Northrup.

As we look forward to the years to come, we know that the further expansion of our networks and services in New Brunswick, Newfoundland and Labrador, and Prince Edward Island will continue to be a priority. As our organization continues to grow, we are working to build a team comprised of staff lawyers in all four Atlantic Canadian provinces so that we can work in closer proximity to the communities we serve and cultivate deeper relationships on the ground.

Messages From

The Chair of the Board, Brian J. Hebert



I love springtime. I always have. The land comes to life. Hope, possibility and greenery abound. It still stirs something within me even after 58 years. At East Coast Environmental Law, spring can be bittersweet. At our Annual General Meeting, we welcome new Board members who represent the future hopes and possibilities of our organization. But we also say goodbye to those that have brought us to where we are today, as Board members whose two 3-year terms expire must resign. This year is no exception.

It is impossible in the short space I have to write this message to convey the magnitude and importance of the contribution that our three outgoing Board members have made to East Coast Environmental Law. Call them stalwarts, pillars, our foundation, our bedrock – their impact cannot be overstated. Active participants in committees and the executive, their love of, and dedication to, our tiny environmental organization is obvious. Their wisdom, guidance and leadership brought us to where we are today. They also did things – reviewed legal agreements, organized strategic planning sessions, wrote grant applications, crunched numbers and created understandable charts and tables that were nothing short of works of art. Heather Hill, Phillip Saunders and Mathieu Poirier, you showed up and made a difference. You were there for us. We cannot thank you enough. We will miss you.

No annual message this year would be complete without some mention of the COVID-19 pandemic. However, the fact is that East Coast Environmental Law has not only survived, but has thrived. Our Board members have been engaged as never before, and our Executive Director and staff lawyers have continued to provide the community based environmental law programs and services that people have come to expect, reaching perhaps a wider audience thanks to the Zoom boom.

What lies ahead this year? Erin Burbidge and the Program and Planning Committee are organizing our strategic planning process. Not only is it extremely critical to our work, it is also a fun way to get to know each other better, renew our vision and lay out our path forward together. Fundraising will be a continued focus for the Board as we build our financial foundation, and we will be looking for a new Chair for our Finance and Fundraising Committee as Matt steps down. I would like to extend a special thank-you to those Board members who have generously set up an automatic monthly donation to our organization. A steady flow of funding is critical to our ability to provide the services we do over the long term. Every donation matters.

Beyond East Coast Environmental Law, 2021 promises to be exciting in our region. I'm optimistic by nature and I see positive signs that governments and businesses are stepping up to the realities of climate change and the other environmental crises facing our planet. The new Premier of Nova Scotia has put the environment and equality squarely at the centre of his political agenda. This builds upon the bold move by former Premier Steven McNeil to put the environment and racial justice ahead of private corporate interests in closing the Boat Harbour effluent treatment facility in Pictou County in 2020 despite the resulting mill closure and economic fallout, bringing us closer to ending the environmental racism that has existed there for nearly 6 decades. Recently, I was struck by the fact that out of a dozen local business stories that appeared in the online business news site AllNovaScotia.com, three had an environmental focus. I learned that container ships propelled by sails are now quietly plying our ocean waters, snowmobiles with electric motors will soon be zipping across our northern regions and a solar powered electric grid in northern Nunavut will make a substantial dent in the use of diesel fuel up north. News like this is becoming commonplace thanks to a better understanding of environmental science and more effective environmental laws.

I am proud of our organization and our contribution to the fight for environmental sanity. Thank you for being part of East Coast Environmental Law. I am excited to work with you again this coming year.

Brian J. Hebert
Chair of the Board

Executive Director & Senior Lawyer, Lisa Mitchell



I am writing this message in March of 2021, more than a year after the complete and abrupt global change caused by the COVID-19 pandemic. So much has changed. Yet, when I look out my window today, I see the same beautiful and resilient pair of bald eagles that I saw this time last year. I took great comfort in watching them in March of 2020, when fear and uncertainty reigned supreme. They too faced a dire and uncertain future not that long ago. The prolific use of the pesticide DDT to control mosquitoes from the 1950s to 1980s had a disastrous effect on the bald eagle population, as it made the shell of the egg so thin that eaglets did not hatch. As a result, the species teetered on the brink of extinction.

Today, bald eagle populations across North America are quite robust, but their future is still precarious. Typically, less than half of bald eagles born each year make it to adulthood. They build the largest nests of any bird and they look for large, mature trees for nesting. To be successful in breeding they need suitable habitat and to be free from human disturbance.

Suitable habitat and minimal human disturbance are important for all species, and they are critical for the recovery of the many species whose continued existence is endangered or threatened. The story of the bald eagle is hopeful, and it shows that science, education, advocacy and the law can come together to make a real difference. This is the essence of our work at East Coast Environmental Law.



Photo: Lisa Mitchell

In May of 2020, after years of advocating for better protection for species at risk, we found hope in the decision of the Nova Scotia Supreme Court requiring Nova Scotia's Minister of Lands Forestry to take action to fulfil his obligations under the Nova Scotia *Endangered Species Act*. In 2021, we will look forward to the Minister finally meeting those obligations to protect species at risk in Nova Scotia and to the Government of Nova Scotia meeting its commitment to pass a *Biodiversity Act*.

In 2020, we also turned our attention to the Government of New Brunswick's performance under the New Brunswick *Species at Risk Act* and released a report which revealed that the Government of New Brunswick, like the Government of Nova Scotia, was exhibiting a pattern of failure to fulfil legal obligations that exist to protect species at risk. We expect to find that same pattern exhibited elsewhere in Atlantic Canada when we turn our attention to Newfoundland and Labrador and Prince Edward Island, as we hope to do in the year to come.

Species at risk deserve protection for their own sakes, but global events are also making it more and more obvious that human health and wellbeing are impacted in many ways by the harms we cause to the ecologies that support species diversity around the world. In July of 2020, a report by the United Nations Environment Programme made it clear that global pandemics such as the ongoing COVID-19 pandemic are connected to biodiversity loss, the loss of wildlife species' natural habitats, and the environmental consequences of anthropogenic climate change.

Watching the majestic eagles will continue to give me comfort during these uncertain times, but it also gives me hope that their rebound story can be repeated for other at-risk species like the Mainland Moose, the Chimney Swift, the Eastern Whip-poor-will, and so many others that enhance the biodiversity we need to ensure a more certain future for all species, including our own.

Lisa Mitchell
Executive Director & Senior Lawyer

Staff Lawyer, Mike Kofahl



2020 will undoubtedly be forever known as the year that the COVID-19 pandemic changed the world. However, the year also highlighted the resiliency of East Coast Environmental Law and the continued and growing need for our legal services and expertise.

At the beginning of 2020, before the World Health Organization declared COVID-19 a global pandemic, the Committee for the Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling submitted its final Regional Assessment Report to the federal Minister of Environment and Climate Change. As Canadians saw closures and lockdowns, the Minister used that Report and the results of the Regional Assessment to create regulations that now exempt all exploratory oil and gas drilling in an area offshore eastern Newfoundland totaling 735,000 square kilometers from any future project-level impact assessments under the *Impact Assessment Act*.

The practical result of Canada's first regional assessment is that the most vulnerable areas in the offshore are now open for offshore exploratory drilling with no further opportunities for public engagement or oversight. Ironically and sadly, the first bid accepted by the Canada-Newfoundland Offshore Petroleum Board since the Minister's exempting regulations were enacted was for exploratory drilling in part of the Northeast Newfoundland Slope Closure marine refuge. That refuge is closed to fishing because it houses a fragile marine ecosystem that provides essential habitat for fish. Its vulnerabilities should close it to exploratory drilling as well, but unfortunately the regional assessment was a missed opportunity.

Throughout all of the challenges with the regional assessment and its potentially devastating legacy and aftermath, our East Coast Environmental Law team continued to work with and support local, regional, and national environmental groups and communities in their efforts to improve how regional assessments are used to chart a course for our future.

Our work on regional assessments during the height of the COVID-19 pandemic highlighted the very real need for our legal services and expertise and the powerful impact that we can have on communities and the environment. As the world was swept up by the COVID crisis and the pandemic reduced or removed communities' and organizations' abilities to participate in or engage on important environmental decision-making processes, we stepped up to help fill the growing gap and continued engaging for the public interest. Our ability to continue engaging with communities and stakeholders in the midst of shifting public health requirements necessitated by the pandemic showcased our resiliency.

What I saw this past year was the ability and need for East Coast Environmental Law to step up and to provide a real and meaningful voice for the public interest on environmental legal matters. We were able to effectively weather the storm by working together as a team and coordinating efforts with other organizations with whom we have built strong relationships. I look forward to continuing that work with my colleagues, partners and communities.

Mike Kofahl
Staff Lawyer

Staff Lawyer, Tina Northrup



2020 was a difficult year marked by grievous loss of human life, exhausting periods of social isolation, and dangerous political rhetoric from the elected leader of one of the world's most powerful nations. 2020 was also an electrifying year marked by a powerful new chapter in the Black Lives Matter movement, new momentum for intersectional visions of environmental and climate justice, and unexpected opportunities to learn from the emergency response measures we accepted in order to keep one another safe and ask ourselves, collectively, what we wouldn't do to protect our fellow persons around the world from avoidable ravages of environmental destruction and climate change.

In the midst of this extraordinary year, I was offered the privilege of remaining with East Coast Environmental Law as a staff lawyer after my articles were complete and I was called to the Bar. I

accepted the offer without hesitation and with thankfulness for the existence of this organization which enables me to do exactly the kind of work I envisioned when I chose to go to law school.

Emerging patterns of extreme weather events and mutating climate conditions in regions around the world make it clear that some of the consequences of our steadily warming planet can no longer be avoided. Perilous effects of climate change are here and with us now. At the same time, it is still within our power to prevent the further worsening of our situation by acting together to change the ways we live in this world and fuel our lives.

As a public-interest environmental law charity that works hard to build and support communities' capacities to participate in environmental decision-making, protect themselves from environmental harms, and seek justice when harms have occurred, East Coast Environmental Law is a valuable resource for individuals, community groups, and organizations throughout Atlantic Canada who are working to preserve a biodiverse and liveable world and to ensure that Indigenous, racialized, and otherwise vulnerable communities no longer bear disproportionate burdens of the environmental and climate harms that the world's wealthy consumer societies have caused. I am honoured to be part of the organization's steady growth, because I know that as our capacity increases, so too do our abilities to support progressive change in our region.

Tina Northrup
Staff Lawyer



Photo: Mike Kofahl

Our Team

Board of Directors

Tricia Barry, LLB, is a medical research manager, Halifax.

Michael Boyd, BA (Justice Studies) is a third-year law student at the Schulich School of Law, Dalhousie University, Halifax.

Mark Butler, MES, is Senior Advisor with Nature Canada, runs his own consultancy, and is former Policy Director with the Ecology Action Centre, Halifax.

Erin Burbidge, LLB, MREM, is a Director at Clean Nova Scotia, Halifax.

Nicole Cameron, BA, is a Development Specialist with United Way Halifax.

Tegan Heywood, BA (Hons) is a second-year law student at the Schulich School of Law, Dalhousie University, Halifax.

Brian Hebert, LLB (Chair), is a partner at McKiggan Hebert Lawyers, Halifax.

Heather Hill, BA (Hons), LLB, is a faculty member at the Kingstec School of Business at the Nova Scotia Community College, Kentville.

Lil MacPherson is the President and Founder of Wooden Monkey Restaurants, Halifax.

Dawn Madic, CPA, CMA (Treasurer), is the Director of Finance and Administration, Ancillary Services, Dalhousie University, Halifax.

Bakes Mitchell, LLB, is responsible for Development and Partnerships at Lion's Roar, a non-profit media organization in Halifax.

Julia Pelton, MBA, BSc, is Account Manager at the Atlantic Canada Opportunities Agency, Halifax.

Mathieu Poirier, BAsC (Engineering), JD, MBA (Secretary), is a consultant at Dunsky Energy Consulting, Toronto.

Phillip Saunders, QC (Vice Chair), is a Professor at the Schulich School of Law and Director of the Marine and Environmental Law Institute, Dalhousie University, Halifax.

Sara Seck, BMus, MMus, LLB, PhD, is an Associate Professor, member of the Marine and Environmental Law Institute, and Associate Dean, Research, at the Schulich School of Law, Dalhousie University, Halifax.

Ian Stewart, BSc, MA, PhD, is an Associate Professor of Humanities at the University of King's College, an Adjunct Professor at the Department of Classics, Dalhousie University, and a Research Member at the School of Information Management, Dalhousie University, Halifax.

Payton Tench, BA, JD, is Counsel at Justice Canada, Halifax.

Caitlin Urquhart is a Staff Lawyer with Ecojustice and community activist, St. John's.

Staff

Lisa Mitchell, BA, LLB, MES, Executive Director & Senior Lawyer
Mike Kofahl, BA (Hons History), MA, JD, Staff Lawyer,
Kostantina (Tina) Northrup, BA (Hons English), MA, PhD, JD, Staff Lawyer

Contractual Support

Catherine Cook, Graphic Design
Jesse Williams, Website Management

Summer Students

Kanisha Acharya-Patel, Schulich Academic Excellence Fund for Internships
Laura Graham, Schulich Academic Excellence Fund for Internships
Keira Lewis, Schulich Alumni Internship Program
Ian MacKinnon, Canada Summer Jobs Program
Nicole Tomic, Canada Summer Jobs Program

Placement Students

Neil MacIsaac, Osgoode Hall
Kate Meagher, Schulich School of Law
Stephanie Robinson, Schulich School of Law

ECELAW staff brought to the table the expertise we needed to co-develop recommendations for a meaningful *Biodiversity Act* for Nova Scotia. Their thoroughness and attention to detail assures me that I can count on everything they write as reliable content upon which to base my advocacy communications. ECELAW staff are both professional and delightful to work with. Their written work is serious and well-referenced, yet their passion for protecting the environment shines through.

Karen McKendry, Wilderness Outreach Coordinator, Ecology Action Centre

Student Volunteers

Chelsea Barkhouse, Schulich School of Law
Kristan Belanger, Schulich School of Law
Olivier Bishop-Mercier, University of Toronto
Michael Boyd, Schulich School of Law
Ben Foster, Schulich School of Law
Jake Harris, Schulich School of Law
Tegan Heywood, Schulich School of Law
Courtney Jukes, Schulich School of Law
Aaron Koch, Schulich School of Law
Kate Meagher, Schulich School of Law
Hannah Mirsky, Schulich School of Law
Andrew Paul, Schulich School of Law
Riley Sun, Schulich School of Law
Dan White, Schulich School of Law

Thank you to our wonderful community of students who dedicated their time and energy to us in 2020: we couldn't do it without you!

This past year I have had the pleasure of getting involved with ECELAW both in my capacity as a student Board member and a volunteer. Sitting on the Board has been an exciting peek behind the curtain into how organizational and planning decisions are made. In my role as volunteer, I've helped Tina create a public information packet for a proposed bill, and this term I am participating in an exciting joint research project with ECELAW and the Marine and Environmental Law Program (MELP) to explore youth engagement with climate activism in the Atlantic provinces.

Tegan Heywood, JD Candidate, Schulich School of Law, Dalhousie University, and East Coast Environmental Law Board Member





Photo: Mike Kofahl

Causes That Kept Us Going in an Unprecedented Year

Assessing Government Failures to Protect Species at Risk

In October 2020, East Coast Environmental Law published a report entitled *Protected on Paper Only: An Evaluation of New Brunswick's Legal Obligations under the Species at Risk Act*.

New Brunswick's *Species At Risk Act* establishes a clear path to facilitate the identification, assessment, recovery, and protection of species at risk in New Brunswick, and, if the steps were followed as designed, the process could make a significant impact. Unfortunately, our report reveals that in the eight years since the Act was passed, New Brunswick's Minister of Natural Resources and Energy Development has taken very few of the steps that the Act requires, and the Government of New Brunswick has failed to clearly meet all of the Act's requirements.

Following the publication of the report, East Coast Environmental Law lawyers Lisa Mitchell and Tina Northrup met virtually with New Brunswick's Deputy Minister of Natural Resources and Energy Development and key members of his staff to discuss our findings and share our perspective on the government's lack of progress. We will continue to monitor the situation and advocate on behalf of New Brunswick's extirpated, endangered, and threatened species and species of concern.

Creating Accessible Public Resources on Environmental Law

Since its inception in 2007, East Coast Environmental Law has worked to make environmental law more accessible to the public by creating educational resources that make the law easier to understand. Growing our Environmental Law Summary Series is an important part of that work.

The Summary Series was one of the first public legal education activities undertaken by East Coast Environmental Law. Each volume of the series serves as a quick reference resource. The volumes are topical and generally address an area of interest or concern raised by communities or organizations.

In October 2020, we published four new additions to the Summary Series:

- *Environmental Impact Assessment: A Legal Toolkit for New Brunswick*
- *Environmental Impact Assessment: A Legal Toolkit for Newfoundland and Labrador*
- *Environmental Impact Assessment: A Legal Toolkit for Nova Scotia*
- *Environmental Impact Assessment: A Legal Toolkit for Prince Edward Island*

Each of these volumes aims to help individuals, communities, and environmental organizations understand environmental impact assessment processes so that they can participate effectively within them.

Funding by the Law Foundation of Newfoundland and Labrador and the Law Foundation of Nova Scotia supported the creation of *Environmental Impact Assessment: A Legal Toolkit for Newfoundland and Labrador* and *Environmental Impact Assessment: A Legal Toolkit for Nova Scotia*, respectively.

Critiquing the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador

In February 2020, the Committee responsible for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador released its final report. It was the culmination of a nearly year-long regional assessment conducted under the federal *Impact Assessment Act*. Our lawyers actively participated in the process, advocating for the Committee to conduct real and meaningful public engagement, cumulative effects and climate change impact assessment, and effective analysis of the adverse risks of exploratory oil and gas on vulnerable marine habitats and species.

Despite multiple attempts to raise these issues during technical advisory group sessions, meetings with the Committee, and an extensive submission on the draft report, and despite a clear mandate set out in its terms of reference, the Committee neglected to adequately assess the risks of exploratory oil and gas drilling in a study area that encompassed approximately 735,000 square kilometers (almost twice as large as the province of Newfoundland and Labrador) and failed to assess cumulative effects—the crucial and primary role of regional assessments. Shortly thereafter, the regional assessment and the Committee’s report were used as the basis for Ministerial regulations which now exempt all exploratory oil and gas projects in the former regional assessment study area from impact assessments.

In the face of this inadequate process, we have continued our advocacy for meaningful public participation, accountable decision-making, effective oceans protection, and effective regional assessment. Since providing further submissions on the serious legal shortcomings of the Ministerial regulations, our lawyers have continued to support the Ecology Action Centre, which, along with the Sierra Club of Canada and the World Wildlife Fund Canada, has launched two judicial reviews of the regional assessment and corresponding Committee report and Ministerial regulations. We have also continued to engage with the Impact Assessment Agency of Canada through its follow-up program for the regional assessment.

Learning Transformatively in Netukulimk Dialogue Sessions

Within the Mi’kmaw legal tradition, the principle of netukulimk speaks to the relationships, rights, and responsibilities that guide resource use and resource distribution by Mi’kmaq.

In the autumn of 2020, East Coast Environmental Law hosted three virtual dialogue sessions on netukulimk—in September, October, and November, respectively. The sessions aimed to bring Mi’kmaw Elders, lawyers, law students, conservationists, activists, and other community members together with a group of settler law students and environmental lawyers to engage in co-teaching and co-learning about netukulimk, to identify barriers that stand in the way of implementing netukulimk in Mi’kma’ki today, and to discuss work that could be done to support the revitalization of netukulimk in Nova Scotia and beyond. This work was supported by a grant from the Catherine Donnelly Foundation.

Our work on this project was led by East Coast Environmental Law lawyer Tina Northrup, and we are currently exploring ways to facilitate further work to revitalize Indigenous ecological laws and legal orders in our region.

Supporting Progressive Law Creation and Law Reform

In 2020, East Coast Environmental Law engaged in meetings with government and made written submissions on a number of law creation and law reform initiatives in Nova Scotia, including the proposed *Biodiversity Act* and anticipated regulations under the *Coastal Protection Act* and *Sustainable Development Goals Act*.

On the federal front, we collaborated with regional and national non-government partners to review and engage on the proposed federal *Aquaculture Act* and the development of regulations under the *Impact Assessment Act*.

Supporting Regional Advocacy for Affordable, Reliable, and Sustainable Electricity

In the summer and autumn of 2020, East Coast Environmental Law supported advocacy by the Conservation Council of New Brunswick and the Ecology Action Centre in Nova Scotia for affordable, reliable, and sustainable electricity in our region. East Coast Environmental Law lawyer Tina Northrup undertook extensive legal research and analysis to explain how the legislated electricity regimes in New Brunswick and Nova Scotia help and hinder the necessary transition from fossil fuels to renewable sources of electricity. To better understand how the legislated electricity regimes in New Brunswick and Nova Scotia compare to those in other jurisdictions, Tina also undertook a multi-jurisdictional comparative analysis that explored the legislated electricity regimes in Newfoundland and Labrador, Massachusetts, Québec, and Vermont.

East Coast Environmental Law worked with the Conservation Council of New Brunswick this year to assess legislative and regulatory barriers and opportunities to pursue a less polluting and more socially just electricity system. The resulting reports have been enormously helpful, clearly showing that barriers to electricity reform are political rather than technical.

Louise Comeau, Director Climate Change and Energy, Conservation Council of New Brunswick

Understanding the Effects of Shipping in Marine Protected Areas

Marine protected areas (“MPAs”) are one of the mechanisms that are used to protect important marine biodiversity, life, and habitats. Managing the risks and impacts of human activity in MPAs, including from fishing, shipping, and oil and gas activities, is crucial to ensuring their success and the sustainability of ocean biodiversity.

Federally, MPAs often do not adequately consider or mitigate the impacts of shipping. As a result, there is a need for governments, industry, and environmental organizations and practitioners to better understand the complex legal and regulatory environment that already exists for shipping and navigation and for MPAs.

In an effort to begin addressing this critical gap in the management of MPAs in Canada, East Coast Environmental Law collaborated with the World Wildlife Fund Canada and West Coast Environmental Law to develop the *Shipping in MPAs Toolkit*. East Coast Environmental Law lawyers conducted research and analysis, helped to facilitate multiple workshops (prior to COVID-19) in Ottawa with industry, government, and non-profit environmental organizations, and met with the advisory committee for the St. Anns Bank MPA. All three project partners will continue to promote the toolkit at virtual conferences and work with partners, collaborators and stakeholders, to advocate for stronger MPA protections.

ECELAW has been extremely helpful to us on PEI, particularly in relation to work on environmental rights and the development of the PEI Water Act. We are very appreciative of the valuable work of ECELAW: you have initiated important learning experiences for us on PEI and have always been extremely responsive to our requests for help when we need a legal perspective on environmental issues. We have always felt comfortable in reaching out to you, and you have always responded in a timely and helpful way. ECELAW is a very valuable resource for the Atlantic environmental community.

Don Mazer is a member of several groups that have worked with East Coast Environmental Law, including the Citizen's Alliance of PEI, the Environmental Coalition of PEI, and the Coalition for the Protection of PEI Water.



Eyes on the Courts

Bancroft v Nova Scotia (Minister of Lands and Forestry) – Endangered Species

In 2019, East Coast Environmental Law became an intervenor in a judicial review proceeding that asked the Nova Scotia Supreme Court (“NSSC”) to assess the Government of Nova Scotia’s failures to fulfil its legal obligations under Nova Scotia’s *Endangered Species Act* (“ESA”).

Represented by our colleagues at Ecojustice, we made additional written submissions in February 2020. In May 2020, Justice Christa Brothers of the NSSC delivered her decision on the matter and declared that Nova Scotia’s Minister of Lands and Forestry had not fulfilled their responsibilities under the *ESA*. The decision was a victory for species at risk in Nova Scotia, and we were glad to support the concerned individuals and naturalist groups, represented by local lawyer Jamie Simpson, who brought the case forward.

Bancroft v Nova Scotia (Minister of Lands and Forestry) – Owls Head

Owls Head Provincial Park Reserve (“Owls Head”), located on Nova Scotia’s Eastern Shore, was identified and managed as a supporting park under the Department of Lands and Forestry’s parks program and was proposed for designation as a provincial park under the *Provincial Parks Act* and the Parks and Protected Areas Plan (the “PAPA”). In the spring of 2020, a Freedom of Information request revealed that the Department of Lands and Forestry had de-listed Owls Head from PAPA and conditionally sold the land to Lighthouse Links Development Corporation for development into multiple golf courses.

In the summer of 2020, Robert Bancroft and the Eastern Shore Forest Watch Association, represented by local lawyer Jamie Simpson, launched a judicial review of the decision by the Minister of Lands and Forestry to de-list Owls Head Provincial Park Reserve from PAPA and to enter into a Letter of Offer to sell Owls Head. The applicants have argued as public litigants that the Minister breached procedural fairness in his decisions to de-list Owls Head and sell it and that the public was entitled to notice and an opportunity to comment on the proposed de-listing and sale. The applicants have also argued that the Minister’s decisions were unreasonable because he failed to provide justification and considered irrelevant factors in making his decisions.

East Coast Environmental Law lawyer Mike Kofahl joined Jamie Simpson as co-counsel on the judicial review in the autumn of 2020 and is providing legal support on the file. The judicial review is scheduled to be heard by the Nova Scotia Supreme Court on April 1, 2021.

R v 307625 Nova Scotia Limited

For decades, the community of Harrietsfield, Nova Scotia, has been living with serious water contamination concerns. Since the early 2000s in particular, water contamination caused by the operations at a construction and demolition (“C&D”) debris processing facility at 1275 Old Sambro Road has posed significant problems.

In April 2017, after years of delays and indecisive enforcement action by Nova Scotia Environment, Harrietsfield community member Marlene Brown initiated a private prosecution of the persons responsible for the contamination caused by the former C&D debris site. Not long after that, Nova Scotia’s Public Prosecution Service (“PPS”) assumed control of the prosecution, and it has stagnated ever since. By our count, the PPS has adjourned or agreed to adjourn the proceeding almost 20 times since it took over the case. In our view, these continued delays are sending a deplorable message which says that polluters in Nova Scotia will not be held to account.

East Coast Environmental Law supported the private prosecution by collaborating with local lawyer Jamie Simpson to provide legal counsel to Marlene Brown. We continue to monitor the progress of the public prosecution now that it is in the hands of the PPS and to advocate for its long overdue resolution.

Sierra Club Canada Foundation et al v Attorney General of Canada et al

There are two judicial reviews before the Federal Court related to the Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling.

On May 11, 2020, an application for judicial review of the Regional Assessment Committee’s final report was filed jointly by three parties: the Sierra Club Canada Foundation, the World Wildlife Fund Canada, and the Ecology Action Centre. On June 29, 2020, the same applicants filed another application for judicial review of the Ministerial regulations that were created as a result of the regional assessment. The respondents in both judicial reviews are the Minister of Environment and Climate Change and the Attorney General of Canada. Ecojustice is representing the applicants and East Coast Environmental Law is providing legal support to the Ecology Action Centre.

The first application challenges the completeness of the Regional Assessment Committee’s final report and argues that the report does not constitute a regional assessment within the meaning of the *Impact Assessment Act* (the “Act”). In particular, the application claims that the Committee failed to fulfil its mandate to assess the impacts of exploratory drilling in the study area, including cumulative effects and climate change impacts. It also argues there were procedural failures during the process, including failure to provide meaningful public engagement and refusal or failure to consider relevant information, scientific reports, and public submissions.

The second application challenges the legality of the Ministerial regulations that were created as a result of the regional assessment and the Committee’s report. Under the *Impact Assessment Act*, regulations exempting prescribed activities from impact assessments cannot be created until a regional assessment has been conducted for the classes of activities being exempted. This application flows from the previous judicial review which questions whether the regional assessment was valid under the Act. The regulations remain in effect while the judicial reviews are being considered by the Federal Court.

Public-Interest Legal Support and Student Mentorship

Our Environmental Law Inquiry Service, online Information Library, and student mentorship activities are longstanding and core elements of our program. Through our free Environmental Law Inquiry Service, we provide legal information about environmental law issues upon request and may provide more extensive legal support when our capacity allows.

2020 was a challenging year that required unprecedented changes to our social habits and ways of life, but that didn't stop individuals and community groups throughout Atlantic Canada from paying attention to environmental and climate issues in their areas, asking questions, and seeking support to address their concerns. In 2020, our Environmental Law Inquiry Service brought us inquiries on a broad range of topics, including:

- access to information,
- contaminated sites,
- damage to park lands,
- damage to sand dunes,
- environmental impact assessment processes,
- greenhouse gas emissions accounting,
- noise pollution,
- potential harms to beaches and shorelines,
- potential harms to estuaries,
- potential harms to wetlands,
- proposed mining activities,
- proposed use of pesticides,
- public access to beaches,
- species at risk,
- threats to ecologically sensitive areas, and,
- unlawful disposal of waste.

Providing legal information to inquirers often requires substantive legal research, which also leads to opportunities for student mentorship and professional training. While working or volunteering with us, law students get opportunities to carry out research that addresses pressing questions raised by concerned individuals and community groups throughout Atlantic Canada. Sometimes students are able to connect directly with clients and communities through this work.

Additionally, many students hone valuable legal research and writing skills by contributing to our online Information Library and helping us to prepare public legal education materials that we make available on our website at no cost to the public.





Our Supporters

East Coast Environmental Law receives ongoing in-kind and financial support from public and private foundations and institutions, as well as from individual patrons. These generous contributions are critical to our efforts to provide public-interest environmental law services throughout Atlantic Canada.

Our sustaining partners include the ECHO Foundation, Graham and Susan Smith, Richard Rachals, the Law Foundation of Nova Scotia, and the Marine and Environmental Law Institute at the Schulich School of Law, Dalhousie University. Ongoing and in-kind support from these partners enables us to meet our primary public-interest objectives and leverage funds that support specific project work.

In 2020, we also received support from the Canada Summer Jobs Program, the Impact Assessment Agency of Canada, the Catherine Donnelly Foundation, the Law Foundation of Newfoundland and Labrador, the Law Foundation of Prince Edward Island, the Schulich School of Law, the Schulich Academic Excellence Fund for Internships, and the Schulich Alumni Internship Program, along with collaborative support on specific projects from the Conservation Council of New Brunswick, the Ecology Action Centre, and World Wildlife Fund Canada.

Donations that individuals make through our website and the Canada Helps platform also help to sustain us.

We thank all of our supporters for making our work possible.

The partnership between Schulich and ECELAW this year to explore the meaning of Netukulimk is the start of something very exciting. It shows the possibility of partnership between Indigenous peoples and non-Indigenous allies to take Indigenous law, in particular Mi'kmaw law, seriously and as having relevance in addressing important challenges facing our communities and the planet. I'm very excited by what this work has uncovered to date and where it might take us in the future.

Naiomi Metallic, Assistant Professor and Chancellor's Chair in Aboriginal Law and Policy, Schulich School of Law, Dalhousie University

2020 Financial Statements

**East Coast Environmental Law Association
Unaudited Statement of Financial Position
As at December 31, 2020**

	December 31, 2020	Dec. 31, 2019
	\$	\$
ASSETS		
Current Assets		
Unrestricted Cash	135,821	79,944
Investments	50,206	50,206
Prepaid Wages	-	15,000
Accounts Receivable	12,362	12,463
	<u>198,389</u>	<u>157,613</u>
TOTAL ASSETS	<u>198,389</u>	<u>157,613</u>
LIABILITIES		
Current Liabilities		
Accounts Payable & Accrued Liabilities	21,560	17,173
Deferrals	22,831	22,831
TOTAL LIABILITIES	<u>44,391</u>	<u>40,004</u>
NET ASSETS		
Unrestricted Net Assets	94,581	58,192
Internally Restricted Net Assets	59,419	59,419
TOTAL NET ASSETS	<u>154,000</u>	<u>117,611</u>
TOTAL LIABILITIES AND NET ASSETS	<u>198,389</u>	<u>157,615</u>

East Coast Environmental Law Association
Unaudited Statement of Operations & Changes in Net Assets
For the Year Ending December 31, 2020

	2020
	\$
REVENUE	
Direct Grants	92,500
Direct Projects	93,156
Direct Contributions	26,249
Other Revenue	30
TOTAL REVENUE	243,399
EXPENSES	
Program	146,669
Administrative	43,423
Fundraising	16,919
TOTAL EXPENSES	207,010
EXCESS/(DEFICIENCY) OF REVENUE OVER EXPENDITURE	36,389
UNRESTRICTED NET ASSETS - beginning of the year	58,192
UNRESTRICTED NET ASSETS - end of the year	94,581

ecelaw

east coast environmental law

www.ecelaw.ca

6061 University Avenue, PO Box 15000
Halifax, Nova Scotia B3H 4R2

admin@ecelaw.ca
902 494 7121

