



FROM THE GROUND UP

*Celebrating 30 Years of the
Environmental Dispute Resolution Fund*

November 2019



Message from the Executive Director

Since 1989, the Environmental Dispute Resolution Fund (EDRF) has supported community efforts to defend the health of the environment and build a more sustainable British Columbia. In honour of our 30th anniversary this year, we present this report to highlight some of our most exciting work.

In the past three decades, we have partnered with thousands of community members, grassroots groups, environmental organizations, and Indigenous nations to support environmental protection in every corner of British Columbia. EDRF support has helped community groups understand their legal options, negotiate solutions, and advance environmental protection through law before many levels of court and government tribunals. We have distributed more than \$5 million in grants to more than a thousand clients, ensuring that they have a voice in environmental decision-making.

The EDRF is part of West Coast Environmental Law's Access to Justice program, which provides free legal advice and support to British Columbians seeking to safeguard the environment through law. We are the only environmental legal aid program in BC that connects people with private environmental lawyers willing to take on public interest environmental law cases at legal aid rates.

This tremendous impact would not have been possible without the ongoing financial support of the Law Foundation of British Columbia, to whom we express our deepest thanks.

The EDRF would not exist without our roster of talented lawyers across the province. We honour and celebrate the tremendous contribution of each lawyer who has been part of our 30-year story. In order to continue this work into the future, we are always seeking more great legal minds to join our roster of EDRF lawyers. If you are a BC-based lawyer looking for ways to use your legal training and experience to support your environmental values, we encourage you to contact us to learn how you can contribute to the EDRF.

Whether to preserve habitat for species at risk, protect drinking water, or address climate change, the EDRF has won major environmental victories and given voice to people and communities who otherwise would not have been heard. From the beginning, the EDRF has supported Indigenous nations in advancing their vision of environmental stewardship for their territories and has encouraged collaboration between Indigenous communities and environmental groups.

As we look ahead at the next chapter, we are proud to share some highlights that illustrate the impact the EDRF has had in supporting community-led environmental protection in BC.

Jessica Clogg

Executive Director & Senior Counsel



Message from the Law Foundation

The Law Foundation of British Columbia is pleased to have been able to fund the Environmental Dispute Resolution Fund over the past 30 years. We join West Coast Environmental Law in celebrating this remarkable community service for the environment.

Josh Paterson, Executive Director
Law Foundation of British Columbia

Introduction

HELPING BRITISH COLUMBIANS PROTECT THE PLACES AND PEOPLE THEY LOVE FROM ENVIRONMENTAL HARM

The EDRF was created in 1989 to help meet the growing need for environmental legal aid in BC. West Coast's then Executive Director Bill Andrews approached the Law Foundation of BC for funding, and set us on a course to empower BC residents with legal and financial resources to tackle their environmental problems.

With the Law Foundation's continued support, the EDRF now distributes \$120,000 each year in grants to individuals, community groups, non-profit organizations and Indigenous nations across British Columbia. These funds allow clients to hire lawyers at a legal aid rate, and/or to hire environmental experts needed to advance environmental legal cases.

The EDRF's grassroots approach helps ordinary British Columbians access the legal and expert support they need to achieve lasting results that benefit both environment and communities. Our professional staff are available to help clients assess their legal options, find the right legal counsel to take on their case, and navigate the EDRF application process to fund their project. Upon receiving funding, clients receive ongoing support from EDRF staff on managing their grants, securing expert assistance, identifying and working with like-minded groups, community organizing, fundraising, media, and developing legal strategies to achieve their goals.

Funding decisions are made by the EDRF Management Committee, which consists of dedicated past and present members from West Coast's Board of Directors. The Management Committee has the difficult task of selecting which of the many worthwhile applications will receive funding – and the requests for funding continue to grow each year.

The EDRF has played a role in many environmental victories. These include protecting British Columbians from a variety of health risks, including toxic substances; defending the right of British Columbians to speak out on behalf of the environment; and ensuring environmental laws are enforced. Many of our cases make headlines – all of them make a difference!

The following pages offer a glimpse into the incredible impact of the EDRF – past, present, and future. It has been difficult to select only a few of the many stories we would have liked to share, but these stories bear evidence to the value the fund has provided for British Columbians over the past three decades.



Representatives of the Tsilhqot'in National Government (right) with EDRF lawyer Matthew Boulton and former WCEL staff lawyer Erica Stahl (left).



Members of the Ecoforestry Institute Society, which received EDRF support to protect the Wildwood ecoforest on Vancouver Island. (Photo: EIS)

From communities to courtrooms

During its 30-year history, the EDRF has supported a vast range of cases brought by individuals and groups seeking to defend land, air, water and public health in BC. From preventing toxic pollutants from being dumped in waterways, to protecting wildlife habitat, to making sure major industrial projects are properly assessed, the EDRF has helped secure important environmental victories – both in and out of court.

Here are just a few examples of the environmental successes supported by the EDRF:

Rivers Defence Coalition – Protecting the Nechako River from the Kemano Completion Project (1990-1995)

In the 1950s, the BC government gave the Aluminum Company of Canada (Alcan) water rights to the Nechako River. With those rights, Alcan built the Kenney Dam and associated infrastructure, including a tunnel and an 80-km transmission line as part of the Kemano Project. Decades later, Alcan developed plans for the “Kemano Completion Project” (Kemano II), which would double power capacity and reduce the mean annual flow of the Nechako River by over 85%, endangering wild salmon habitat. Despite promises of a public hearing, the project was approved with no public review.

The Rivers Defence Coalition, comprised of fishermen, and community and labour groups, received EDRF funding in 1990 for a court case to

force a federal environmental assessment of the Kemano Completion Project. The Coalition was represented by a legal team led by Dr. Andrew Thompson – one of BC’s foremost environmental lawyers and one of the first to take on cases through the EDRF.

The Rivers Defence Coalition won in court in 1991, but the decision was soon overturned by the Federal Court of Appeal. Following this defeat, the Coalition persuaded the BC government to conduct a provincial inquiry through the BC Utilities Commission (BCUC). In late 1994, the BCUC reported that the project would seriously impact salmon fisheries, which led the BC government to reject the project in 1995.



Members of the Rivers Defence Coalition on the Nechako River.
(Photo: Rivers Defence Coalition)

“Funding from the EDRF allowed the Rivers Defence [Coalition] to have lawyers representing us in court and at every stage of the Kemano Completion Project inquiry. We were able to hire experts to take apart Alcan’s reports, and show how they would impact fish. Without the EDRF, Kemano II – with all its environmental impacts – might well have been built.”

- Pat Moss, Chairperson, Rivers Defence Coalition

West Kootenay EcoSociety – Safeguarding turtle habitat in Grohman Narrows Provincial Park (2005-2007)

Grohman Narrows Provincial Park near Nelson, BC protects the habitat of many species, including the at-risk western painted turtle. The ten-hectare park came to public attention in 2005 when the Minister of Water, Land and Air Protection approved a road through it at the request of a trucking company.

The EDRF provided support for the West Kootenay EcoSociety to prove that the road-building project would damage turtle habitat and put the issue before the courts. In 2007, the BC Supreme Court agreed that the Minister had acted illegally in relocating the park access road through turtle habitat. The court victory preserved the turtles' wetland habitat, and held the government accountable for failing to abide by its own laws.



Western painted turtle. (Photo: Andrew A. Reding)

“[The case] sends a strong message that the Minister has to obey the *Park Act*, just like everyone else. This is a victory for all small parks in the province.”

- Suzy Hamilton, Board Member, West Kootenay EcoSociety

CoalWatch Comox Valley – Protecting a local watershed from coal mine pollution (2009-2016)

The Raven Coal Mine, proposed near Fanny Bay on Vancouver Island, had residents concerned about the effects of coal mining on their watershed, salmon, and the prized local shellfish industry. Community members came together to oppose the mine, raising awareness about the environmental impacts – including air and noise pollution, and potential acid mine drainage.

CoalWatch Comox Valley, with funding from the EDRF, obtained legal representation to participate in the environmental assessment process for the mine.

The initial proposal was rejected by the BC Environmental Assessment Office (EAO), but the proponent Compliance Energy pushed forward and re-submitted its application despite growing local opposition. The EDRF supported CoalWatch throughout years of campaigning and engaging in the regulatory process, and finally celebrated victory in 2016 when the EAO terminated the environmental assessment of the proposal because the proponent failed to submit required information.



Community rally with members of CoalWatch Comox Valley opposing the Raven Coal Mine. (Photo: Andrew Fyson)

“CoalWatch is a prime example of a small grassroots organization who met their goals with the unwavering support of WCEL and the EDRF grant program. Quite simply, the EDRF grant program was invaluable.”

- John Snyder, President,
CoalWatch Comox Valley

T. Buck Suzuki Environmental Foundation – Challenging marine dredging on the north coast (2015-2016)

Luanne Roth is the North Coast Estuary Campaigner at the T. Buck Suzuki Environmental Foundation, whose mission is to restore and protect fish habitat. With EDRF support, Luanne collaborated with lawyer Angela McCue to challenge three marine dredge projects associated with the Canpotex Potash Export Terminal proposed in Prince Rupert. The Foundation was concerned that the dredging would re-suspend toxins buried in contaminated sediments, causing harm to marine life and the quality and safety of the local food supply.

An EDRF grant allowed the Foundation obtain a legal review of the project’s expert report and a legal opinion on the prospects for a judicial review of the dredging permit. In summer 2016, the company abandoned plans for the project.



Ridley Island, site of the proposed Canpotex Potash Export Terminal in Prince Rupert. (Photo: Stephen Rees)

“Years of effort by concerned citizens and even the expert opinion of scientists did not stop Environment Canada from issuing a dredging permit. It was only after the EDRF helped us and everything became clear in the affidavits, especially Health Canada’s concern, that the proponent dropped the project. I cannot emphasize enough how our experience with the EDRF made us more effective by shaping our strategy with a focus on clear points of law.”

- Luanne Roth, North Coast Estuary Campaigner, T. Buck Suzuki Environmental Foundation

Nicola Valley Fish and Game Club – Preventing privatization of lakes and wild fish (2014-2018)

When Rick McGowan – an avid angler from Merritt, BC – was refused access to the road leading to Minnie Lake and Stoney Lake, he knew he needed to take a stand to win back public access to the lakes and ensure that wild fish cannot be privatized.

The Douglas Lake Cattle Company had blocked the public road to prevent people from accessing the lakes, which were situated on its large ranch. In December 2018, with support from the EDRF, the Nicola Valley Fish and Game Club defeated the Company in court.



Nicola Valley Fish & Game Club Director Rick McGowan’s granddaughter at the locked gate blocking the lake access road. (Photo: Rick McGowan)

The ruling confirmed that the Company had no right to prevent the public from accessing the lakes and the fish. Though the case is currently being appealed, the strongly-worded judgment was a big win for a small group of citizens against one of the largest cattle companies in the world. It has set an important precedent in a province where a surprising number of lakes and public roads are still locked away behind private gates.

“I am so grateful for support from the EDRF and from donations that were raised from clubs all over BC. We couldn’t have done this without support. We did this for the future generations of British Columbians because roads like this are being locked all over the province and something had to be done about it.”

- Rick McGowan, Nicola Valley Fish & Game Club

Bev Sellars, Concerned Citizens of Quesnel Lake & MiningWatch Canada – Demanding accountability for the Mount Polley Mine disaster (2016-2018)

When the Mount Polley Mine dam breached in August 2014, it sent 24 million cubic metres of contaminated water and tailings cascading down Hazelton Creek and into Quesnel Lake – an important habitat for salmon and source of drinking water for several communities. Despite the apparent violation of federal and provincial laws, no charges were laid and the mine was permitted to return to operations in 2016.

When governments failed to act, the EDRF was there to support multiple environmental defenders who stepped in to hold the polluters accountable. In October 2016, MiningWatch Canada brought a private prosecution against Mount Polley Mining Corporation (MPMC) and the Province of BC for violating the federal *Fisheries Act*. Then, in April 2017, Christine McLean and the Concerned Citizens of Quesnel Lake challenged a temporary provincial permit MPMC was granted to pump mining effluent directly into Quesnel Lake. And in August 2017, when the Province’s three-year deadline passed with no conclusion to lay charges, Bev Sellars of First Nations Women Advocating Responsible Mining brought a private prosecution against MPMC for breaches of the *Environmental Management Act* and the *Mines Act*.

Unfortunately, both private prosecutions were stayed, and when the five-year federal deadline for charges passed in August 2019, there were still no charges laid. In January 2019, Mount Polley suspended operations at the mine due to declining copper prices, but the demand for justice continues. Government inaction in these cases highlights the need for mining reform and stronger environmental enforcement in BC – sending a strong message that British Columbians will not stand for a system that lets polluters off the hook.

“There wasn’t anybody doing anything about the Mount Polley disaster. At the end of the day, the important thing for me is that somebody does something. If we do the best we can to stop the discharge going into the lake, or force the mine to clean the water going into the lake, I can say to my grandkids that we did everything we could.”

- Christine McLean,
Concerned Citizens of Quesnel Lake



EDRF clients Concerned Citizens of Quesnel Lake and MiningWatch Canada alongside allies filing a private prosecution over the Mount Polley Mine disaster. (Photo: Robert Moberg)

Heiltsuk First Nation – Seeking justice over the Nathan E. Stewart fuel spill (2018-present)

The EDRF is honoured to support the Heiltsuk Nation in holding government and industry accountable for a fuel spill that profoundly impacted their territory and people.

In October 2016 the Nathan E. Stewart tug ran aground and sank, spilling 110,000 litres of diesel fuel and other pollutants into Heiltsuk marine waters. The spill had devastating impacts on fish habitat and ecosystems, rendering them unusable for harvesting and cultural uses.

Two years later – with support from the EDRF – the Heiltsuk filed a Notice of Civil Claim in the BC Supreme Court suing the owner, Kirby Corporation, as well as BC and Canada.

The lawsuit seeks damages for losses incurred by the Heiltsuk, and raises novel legal questions about Aboriginal title to the seabed and foreshore, and about quantifying cultural losses. The case also raises questions about the national and provincial oil spill response framework, and Canada and BC’s duties to Indigenous communities affected by spills.



Káwáziit Marilyn Slett of the Heiltsuk First Nation. (Photo: Julia Kidder)

Indigenous peoples in Canada are leading the fight on environmental protection right now, using our inherent rights and title to protect and steward our lands, a duty and responsibility we owe to our present generation but also to future generations. Heiltsuk is growing its capacity to negotiate with government and is grateful for EDRF funding for legal assistance. WCEL and the EDRF have been there for us in the past and into the future as we continue to move towards self-government, and for that we are grateful.”

- Káwáziit Marilyn Slett, Chief Councillor, Heiltsuk Tribal Council

Generation Squeeze – Defending federal climate law in the courts (2018-present)

In fall 2018, the federal *Greenhouse Gas Pollution Pricing Act* came into force, putting financial incentives in place to reduce carbon emissions. The governments of Saskatchewan and Ontario challenged the new legislation as unconstitutional. With support from the EDRF, Generation Squeeze stepped up to help defend it.

The BC-based advocacy organization formed a new Intergenerational Climate Coalition and intervened in the reference cases, arguing the importance of protecting children and future generations. In both Ontario and Saskatchewan, the courts held that the carbon pricing legislation was indeed constitutional – and as of fall 2019, this important case is destined for the Supreme Court.



Generation Squeeze founder Dr. Paul Kershaw (left) with lawyer Nathan Hume at the Saskatchewan Court of Appeal. (Photo: Generation Squeeze)

“We’re now poised to bring these arguments to the Supreme Court of Canada, and couldn’t have done any of our legal work without the Environmental Dispute Resolution Fund. We are indebted to WCEL, and all who contribute to the EDRF, for making possible this cutting-edge legal intervention to help address the climate crisis.”

- Dr. Paul Kershaw, Founder, Generation Squeeze

Putting legal skills to work for nature and communities

When people in BC need legal support to tackle their environmental problems, the EDRF is there to help. Of course, none of this work would be possible without our incredible network of lawyers and professionals across the province who are willing to take on EDRF cases at legal aid rates.

Each year, EDRF lawyers make vital contributions to improve access to justice in BC, applying their legal skills and experience to some of the most pressing environmental challenges of our time. The EDRF provides opportunities for lawyers to work on unique and sometimes high-profile cases, developing innovative legal strategies that can result in positive change for the environment and communities.

We extend our gratitude to the dedicated lawyers from all corners of BC who have worked on EDRF files over the past thirty years. As we look toward the years ahead, we hope to expand our network of private lawyers to continue providing these much-needed legal services for BC communities.

If you are a BC lawyer interested in putting your skills to work for the environment, please contact legalaid@wcel.org to learn how you can get involved.

“I wouldn’t be able to do the work I do without the EDRF. Species at risk are going from threatened to endangered. There’s always more work that needs to be done – and I think there’s a role for lawyers in doing it. EDRF clients are motivated, intelligent, supportive and smart, and not in it for their own interest. The work can be challenging and sometimes it feels like the cases never end, but it’s truly satisfying work.”

William J. Andrews

EDRF Lawyer

Founder of the EDRF,

Former Executive Director of West Coast Environmental Law



“The EDRF allows me to conduct environmental legal work for Indigenous clients that they might not otherwise be able to do, and to support their vision of environmental protection. The EDRF uplifts my clients in that they feel the support of the organization standing by them. First Nations partnering with and relying on environmental non-profit groups is still a relatively recent development. The EDRF program not only supports specific collaborations between First Nations and environmental groups but fosters continuing relationships and a community of people with shared values and goals concerning the environment.”

Lisa Fong
EDRF Lawyer



“The EDRF is great for the environment in BC, and for the practice of law. I am proud to be part of it, and it has helped me to realise some of my biggest dreams. Corporate lawyer friends, despite the big paycheques, often seem to envy what I do. The EDRF has allowed me to live with a sense of meaning and purpose. That’s what I want others to see, and that’s why I have participated in the program. ... I could not fight for the Earth without the EDRF.”

Patrick Canning
EDRF Lawyer



“Through my work with the EDRF, I have had the opportunity to co-operate with other environmental lawyers around the province, to learn from amazing experienced lawyers, and to be able to collaborate with enthusiastic aspiring lawyers. I have been very fortunate to be connected with environmental activists, and to be able to work on files that will shape environmental law as a whole. My work with the EDRF has allowed me to travel throughout the province, and speak with community members about environmental issues that have changed their lives.”

Lilina Lysenko
EDRF Lawyer



What's next for the EDRF

UPHOLDING ENVIRONMENTAL JUSTICE

Looking to the future, we want to grow the capacity of the EDRF so that it continues to support a sustainable BC over the next thirty years and beyond.

Going forward, we will be proactively working to broaden our outreach and to improve access to environmental justice in British Columbia.

This means ensuring that our policies, outreach, and operations are aligned with environmental justice principles as a strategic priority. It means enhancing the role of the EDRF in ensuring that the voices of poorer, racialized and Indigenous communities

are heard in environmental and natural resource decision-making, which too often results in these communities bearing a disproportionate share of environmental harms.

We are developing a plan to better ensure that the individuals and groups accessing our legal aid services are representative of the diversity of BC communities who need them most, as well as to develop our EDRF lawyer roster to ensure that we have lawyers with the backgrounds, skills and experience to meet these needs.



(Photo: James Wheeler)

EDRF Staff & Management Committee

The work of the EDRF is made possible by a small team of dedicated West Coast staff who are committed to promoting access to justice for the environment in BC.

Dr. Larry Reynolds, Access to Justice Lawyer

“After practising environmental and natural resources law for more than 30 years across BC, Alberta, the Northwest Territories and Nunavut – representing federal, provincial, territorial and municipal governments, administrative tribunals, environmental protection organizations and Indigenous people – in assuming the role of Access to Justice Lawyer for WCEL, I feel that I have come full circle back to my roots in public interest environmental law. I am again inspired by the energy and dedication of those who work tirelessly for their environmental passion.”



Barbara Everdene, EDRF Project Manager

“I am always amazed at the dedication of ordinary citizens to build their knowledge and power and fight for the places they love, which may take years. I’m proud to work for the EDRF because we help make it affordable for citizens to have the legal expertise they need to keep government and industry accountable. And EDRF clients have told me over and over again that the vision and values of West Coast Environmental Law inspire them to keep doing what they do at the community level.”



EDRF MANAGEMENT COMMITTEE

The EDRF is administered by a Management Committee comprised of current and past members from the Boards of West Coast Environmental Law – each bringing their own professional expertise in law, science and more. This hardworking committee meets five times a year and as needed on an emergency basis to review numerous applications to the EDRF, and to decide which cases will receive funding.

Many thanks to all of the Board members who have played this role over the years, and to our 2019-2020 EDRF Management Committee:

Tracy Wachmann
Steven Deroy

Rachel Holt
Richard Overstall

Christine Scotnicki
Cheryl Sharvit

Kris Statnyk

EDRF Lawyers

Our network of knowledgeable lawyers is the backbone of the EDRF.

West Coast acknowledges the significant contributions of the following talented lawyers who we have on record as working on EDRF cases over the past three decades:

David Aaron
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Michael Akey
James Aldridge
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Robert Bauman
Arden Beddoes
Alan Beesley
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Glen Bell
Iain Benson
Thomas Berger, QC
Scott Bernstein
Jenny Biem
Tom Bishop
Morgan Blakley
Catherine Boies Parker
Rob Botterell
Matt Boulton
Alyssa Bradley
Hugh Braker
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Judith Wilson
Raymond Young

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Thank you for creating access to justice through environmental legal aid in BC!



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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.