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EXCELLENCE

SPECIAL EDITION NEWSLETTER

Pacific Centre for
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May 2022

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Front Cover

Lydia Young (CELL 2021 Spring & 2021 Fall cohorts) rock climbing in Skaha Bluffs Provincial Park, Penticton B.C. in 2020. *Photo credit: Wilson Macdonald.*

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This summer marks the completion of six years that CELL has provided experiential learning opportunities for law students across Canada in its mission to mentor and train the next generation of public interest environmental litigators. Celebrate with us in this special edition of the CELL newsletter as we look back at 6 years of education excellence.

MESSAGE FROM THE PRESIDENT



What started as an experiment six years ago has emerged as a success for legal education and for public interest environmental litigation.

As founding members, we knew that CELL had all the right ingredients: leading practitioners litigating cutting-edge environmental issues, dedicated professors thinking about the future of environmental law, and bright, energetic students eager to roll up their sleeves and expand on their classroom learning. Having mixed these ingredients together for the last six years, we see what a tremendous success this has been and continues to be.

CELL confronts challenges in environmental law, expands access to environmental justice, and broadens the horizons of legal education. Importantly, CELL serves to welcome law students and young lawyers into a community of public interest environmental lawyering, fostering the kind of solidarity that is necessary to confront daunting environmental crises.

The last six years have been a time of real change, both inside and outside of CELL. It

has been a period in which 'climate emergency' has supplanted 'climate change,' the sense of urgency it invokes underscored by 2021's succession of devastating extreme weather events in British Columbia. The last four years have seen a proliferation of environmental law reform by both provincial and federal governments, generating new legal issues and important opportunities to hold government to account on environment and climate promises. Inside legal education and the profession, experiential learning is now firmly established as an essential component of law school curricula. And of course, the COVID-19 pandemic has affected all aspects of life these past two years, including jolting law schools and the legal profession into the new reality of remote work.

CELL has been remarkably well-positioned to adapt to these changes and seize new opportunities. Indeed, harnessing online connection opened up new possibilities for cross-country collaboration, and CELL has grown the reach of its student cohort across the country and overseas. A personal highlight from the last year was presenting at Oxford University and meeting a CELL student who was in the Oxford audience!

CELL's reach has also expanded to capture a range of vital legal issues in environmental law, ranging from ground-breaking constitutional test litigation, to tort liability, to SLAPPs. And CELL has also expanded its types of student involvement: the student cohorts remain at the core, but CELL now includes student mentors, and partners with Pro Bono Students Canada as well as individual law professors teaching Environmental Law. It truly is a nimble and versatile

model for delivering legal education and improving access to environmental justice.

As a law professor and educator, I learn every day from the students I teach. They have forced me to think differently about what it means to learn and to do environmental law in an age of environmental crisis. Many students express their distress at the enormity of the environmental challenges in the world and dismay at the lack of clear and comprehensive solutions. Learning more about the problems without having the opportunity to participate in the solutions only breeds further disenchantment and disengagement. CELL offers a powerful response to the challenge of disenchantment. It activates and empowers students to see themselves as agents of much needed legal change.

It has been a privilege to serve as the President of CELL. I am proud of how far CELL has come in the last six years and I am excited about all the important work that CELL will continue to do in the years to come.

FROM THE DESK OF THE EXECUTIVE DIRECTOR



Six years ago, when the CELL website first went live, we declared that we were “a new kind of legal non-profit on the Canadian environmental law landscape.”

We also expressed the belief that:

... much more can and should be done to inspire, educate and equip junior lawyers and law students with the tools necessary to take on public interest environmental litigation work.

As public interest litigators and environmental law educators, we were confident that much was true. And six years later, it certainly remains so. Yet, through CELL, real headway towards building a critical mass of public interest environmental lawyers that can tackle the environmental challenges we face is being made. Having been put to the test, the model we envisaged is working.

As litigators and educators, CELL founders saw the need for an organization that puts the educational interests of students first—while never compromising on the quality of service provided to our clients and never losing sight of the transformative potential of litigation to uphold the rule of law and promote access to justice.

Having been a clinical legal educator for some twenty years before co-founding CELL, I was acutely aware of the bureaucratic and other obstacles to realizing this vision within the confines of the University. The other founders agreed: to provide the

kind of education aspiring public interest environmental litigators wanted and deserved, it was necessary to create a fully independent entity. To achieve this goal, the entity we were building also had to possess many of the attributes necessary to be an effective public interest advocate: creativity, courage, resilience, and a commitment to seeing things through no matter the obstacles that were thrown up.

While modelling and imparting these values to CELL students is crucial, I think we have also succeeded in delivering on our commitment to equip them with the skills that they will need to represent public interest clients in tough and important cases. In our view, the best way to learn litigation skills is in real cases under the tutelage of seasoned lawyers. That is the opportunity that CELL promises — and delivers. And that is why, we think, top law students from across Canada consistently seek out the chance to work with us even though they do not receive course credit and, typically, do so on an extracurricular basis.

It is unlikely you have seen or heard of CELL on social media. We are a pretty lean operation and we do not generally use our time or resources to promote or publicize what we do. That said, word of mouth has served us well. Every semester, spots in our program are over-subscribed with highly qualified applicants from law schools across the country. We have also managed to keep our “founders team” and CELL staff intact since we opened our doors. Finally, we have been very fortunate to attract donors who have generously supported our operations during this start up period. Special thanks to **Dr. Stephan Williams**, **Diana Belevsky** & **Al Meghji**, and to **Mary Rawson**.

Six years and still going strong. Long may you run, CELL, long may you run.



CELL summer 2017 cohort at Federal Court (L to R): Jeff Drozdiak, Chris Tollefson, Anthony Ho, Maddie Macdonald, Christina Clemente, Rory Shaw. Photographer: Erica Stahl.

A RECENT STUDENT'S EXPERIENCE

*Aimee Huntington provides her reflection on CELL through her experience as a recent student. Aimee was enrolled in CELL's fall 2021 and spring 2022 cohorts while she was in her third year of studies at the University of Calgary Faculty of Law. For spring 2022, Aimee was given the position of **CELL Student Mentor** alongside two other returning students. In that role, she guided fellow CELL students in group discussions and workshops. After graduation, Aimee will be completing a judicial clerkship program at the Federal Court of Canada.*



CELL gives students with a rare and unique opportunity to engage with cutting-edge environmental litigation. While undoubtedly environmental law courses are available to law students, CELL allows students to take theory one step further and gain practicable insight into environmental litigation.

CELL filled a void for me: coming into law school I wanted to be an environmental lawyer, but I had little idea of what that looked like. CELL goes outside the traditional bounds of the classroom experience and allowed me to participate in and consider environmental issues from a litigation perspective.

Public interest work, especially in environmental issues, is a vital driver of environmental developments in Canada. CELL offers a diversity of learning opportunities. From the instructors to the incredible guest

speakers and clients, CELL has been a fantastic learning experience that I intend to carry into my practice.

CELL was appealing in many respects. First, I had already had the pleasure of being a part of the *University of Calgary Faculty of Law Public Interest Clinic* and was continuing to grow my passion for public interest work. From that experience, I realized, entering my third and final year of law school, that I desperately wanted to be a litigator.

Second, CELL was conceptually very appealing because the program provides a rare opportunity to law students and promotes access to justice and the rule of law.

Third, I had noticed, entering my last year of law school, how rare opportunities were to get hands-on experience in environmental litigation specifically.

My experience in CELL was everything I hoped it to be and more. The matters that I interacted with were fascinating, and it was a fantastic learning experience. For me, the matters were also surprisingly diverse, and CELL is reflective of the diversity of environmental legal issues.

As a student, it was valuable to explore several different areas of environmental law and the respective litigation strategy. From tort law to constitutional matters like ***La Rose v. Canada***, CELL provided exposure to various areas. This diversity also offered a multitude of learning opportunities. Whether discussing litigation strategy, reading factums, examining research, or listening to guest speakers, the program touches on many elements of legal work.

“CELL has been a fantastic opportunity and I can truly say that it has been a highlight of my legal education.”

– Aimee Huntington testimonial

One aspect that I found particularly unique was the exposure and opportunity to interact with clients. Coming into the program, I had little expectation of being able to extensively interact with clients or even discuss a matter with a client. Yet, there were several sessions where a client came to discussions, and we were able to listen and also learn about their perspective, their concerns, and their goals.

As a law student, I often think the people at the heart of legal issues can get lost in the pages of a book or when reading a decision. Being able to interact and learn from clients directly about their experiences with the legal system was an important reminder of what we strive to achieve as lawyers.

One aspect of CELL that was a highlight for me was engaging with other students as a **CELL Student Mentor**. It was fantastic to be in an (online) room full of like-minded and passionate students. It also gives me hope for future environmental progress. The collaborative environment was particularly noticeable as a Student Mentor, where my role was to engage and encourage students in discussing the assigned matters.

I distinctly remember one student who week after week had amazing ideas, and honestly, I had often not thought about the issues in the way he approached them. But that is the brilliance of CELL; engaging with other students as a mentor not only allowed me to (hopefully) broaden other students' learning experiences but also my own experiences.

What CELL has given me most is clarity and affirmation in the direction of my career. It has solidified my interest in environmental law, but I also now know without a doubt that I want to pursue litigation. CELL's exposure has been fundamental to further developing my interest and passion in litigation.

From the program, I have learned much more about litigation itself and what it means to be an effective advocate. As a student, you often get snippets of a matter or work on a specific element of a file. Within CELL sessions, CELL instructors always made the larger picture clear, as they have an excellent ability to guide students and contextualize specific issues in the broader scheme of environmental public interest work—as public interest lawyers, litigation strategy and environmental matters more generally have an important role in Canada, particularly in light of the severity of climate change.

Recently, at the University of Calgary's graduation reception, the Honourable Justice Brown spoke of the importance of having law students and lawyers striving to break down barriers and to be change-makers. In my mind, CELL does just that and encourages students to continue that pursuit in their legal careers.

After graduation, my next step will be to complete a judicial clerkship at the Federal Court. Following which, I hope to pursue a career in environmental litigation. CELL's mission is to inspire, educate, and equip law students, all the while providing a vehicle for experiential opportunities. CELL has certainly achieved that and much more for myself, and I hope to carry these lessons forward into my career.

A LOOK BACK TO BEGINNING...

Caitlin Stockwell helps us to look back at the beginning of CELL's program. She was part of CELL's very first cohort in the fall of 2016, along with just four other students at that time. Nowadays, Caitlin has a flourishing practice at First Peoples Law LLP, where she assists Indigenous Peoples in issues of governance, Indigenous-led environmental assessments, g2g negotiations, and consultation and accommodation.



At the beginning of my second year at UVic Law, I had the opportunity to participate in CELL's very first cohort of students.

Under the patience and guidance of CELL instructors, our cohort helped the legal team representing SkeenaWild Conservation Trust to prepare a judicial review challenge against the approval of the Pacific NorthWest LNG Project. The Project consisted of a proposed natural gas liquefaction and export facility on Lelu Island, at the mouth of the Skeena River in northern British Columbia.

If construction had proceeded, this Project would have been the largest single-site emitter of GHG emissions in Canada and would have risked almost 35,000 m² of crucial salmon habitat.

Through this work, CELL provided a hands-on, real time crash course in civil procedure, administrative law, environmental law, evidence, and advocacy, while affording us the opportunity to work together as an enthusiastic team on a tangible and pressing

issue. It truly felt like being part of a grass-roots law firm.

The experience taught me that public interest advocacy and litigation was both challenging and complex as well as rewarding and navigable. Among the many benefits of working with CELL, I am very grateful for the opportunity to work with experienced public interest environmental lawyers/scholars, through all stages of a litigation file (from the conceptual work of brainstorming strategy sessions to the hands-on work of editing the content of a draft lawsuit) and to create lasting mentor-mentee relationships.

It is rare to have this opportunity not only as a summer or articling student, but also through the first few years as an associate.

"CELL's training left me feeling like I had produced worthwhile work that, along with my colleagues', would make practical contributions to a client's case. I couldn't recommend this program more..."

– Caitlin Stockwell testimonial

Today, I continue to apply the advocacy skill sets I built with CELL as a 2022 Vancouver Park Board candidate and as a lawyer at First Peoples Law working with and supporting Indigenous Nations across Canada in their efforts to advance their protected and inherent rights.

I am truly grateful for the time and care CELL put into creating this program and encouraging aspiring public interest lawyers to pursue environmental law and advocacy opportunities. I keenly follow and continue to be impressed by CELL's youth climate litigation work and the

meaningful experiential learning opportunities this affords to other law students and young lawyers.



Fall 2016 cohort (L to R): Caitlin Stockwell, Kathryn Gullason, Leila Hartford, Alex Ciccone, Anthony Ho, Roark Lewis, Chris Tollefson. Photo credit: Anthony Ho.

PRACTITIONER'S REFLECTION

Catherine Boies Parker, Q.C., a partner at Arvay Finlay LLP, was a founding member and inaugural President of CELL until stepping down in November 2021. She continues to educate CELL students as an adjunct instructor. In the following piece, she reflects on why she and a group of like-minded individuals started CELL back in 2016 and the rewards that the program provides not only to students but also to lawyers who delivers education to CELL students.



CELL was established by a small group of lawyers and legal academics that shared three key beliefs. First, that litigation is an important tool to ensure the protection of lands and resources, and the achievement of environmental and climate justice. Second, that students should have an opportunity to develop the skills required for successful environmental litigation while they are in law school. And third, that some of the most effective learning comes from doing—immersing a student in ongoing litigation is the best way to educate them about what such litigation is like, and what skills are needed to succeed.

For those who founded CELL, the courts play an important role in protecting the rights that are threatened by environmental harm, and in recognizing new ways in which established principles give rise to legally protected interests. For us, the task of framing and pursuing litigation in a manner that assists courts in reaching these

results is one of the most exciting and challenging responsibilities of our profession.

There are a handful of non-profit organizations that employ lawyers to conduct such litigation, and a few lucky and committed law students will work with those groups after they graduate. But we established CELL because we thought it was important that a broader group of students be given the opportunity to learn about how litigation can be used to defend environmental rights.

Perhaps even more importantly, we hoped that the students who go on to practice as litigators in private firms, big or small, will have learned skills that they can utilize from time to time in their paid work, their *pro bono* work, and their low *bono* work, whether alone or in partnership with the non-profits that work in this area. In this way, the common project of ensuring the law works to protect environmental values is more widely and deeply shared.

Finally, the people who started CELL had all participated in litigating environmental cases, and they knew that nothing educates like experience. Developing practical skills like drafting pleadings can only be done hands-on. The Rules of Court that seem so dull and tedious in the abstract come alive when they are applied to strategically advance litigation. And the experience of actually translating a client's experience of environmental harm into a form that can be presented to a court engages what I believe to be the most important role of a litigator—ensuring that the courts can hear and respond to the needs of individuals whose rights might not yet be fully recognized in a legal system

that has in the past emphasized the protection of property rights over all else.

The growth of CELL since its founding demonstrates that law students are in fact very eager to obtain this hands-on experience and that there is a wealth of opportunities for them to participate in cases.

The project of educating the next generation of environmental lawyers is one that I am grateful to have been a part of—as a Board member and instructor. It is rewarding to watch these students learn, and their contribution to the success of the cases they work on is significant.

I have received excellent legal research from CELL student on both domestic and international law, been supported in the courtroom by CELL students who were learning as they go, and benefited from numerous strategic discussions where CELL students' energy and expertise in environmental law identified and opened up new lines of research or argument.

I would encourage practicing litigators to engage with CELL in whatever way you can. Not only will you have the satisfaction of training students in a critically important way, but your own work will be greatly enriched by their ideas and their enthusiasm.

THEORY, PRACTICE, AND CAREERS: A PROFESSOR'S PERSPECTIVE

Dr. Jason MacLean is a member of CELL's Board and an Assistant Professor in the Faculty of Law at the University of New Brunswick and the School of Environment and Sustainability at the University of Saskatchewan. His teaching and research focus on climate change law and policy. His dream is to one day be a student intern at CELL.



CELL is Cutting-Edge

If CELL didn't exist, Canadian environmental law professors would have had to invent it. In fact, one of us did! Thanks to Chris's vision,

other Canadian law professors like me can supplement our courses by pointing our students to an opportunity to participate in the development of the law. CELL is an opportunity to be the change you want to see in the world.

This opportunity extends beyond actively and experientially learning the nitty-gritty of litigation, crucially important as that is. At CELL, students get to participate in thinking creatively and strategically about the evolution of Canadian law.

What is the best way to interpret the *Charter of Rights and Freedoms* in relation to environmental protection? How do the origins of the ancient public trust doctrine inform public policy – and our government's obligations – in the year 2022 and beyond? What are the implications of international law for Canadian climate change policy?

At CELL, students explode the false dichotomy between legal theory and practice. They navigate, step by step, the cutting-edge of law and policy innovation.

CELL is Good Judgment

CELL is no place, however, for wishful thinking. CELL's cutting-edge work is grounded in a fidelity to established legal principle, proper procedures, and the utmost professionalism. CELL is brave, taking on big and challenging cases and causes, but it isn't reckless. CELL is good judgment personified in its staff, its Board, and its students, all of whom are among the very best in Canada.

Six years of excellence is one thing, and no small thing at that. But CELL is also celebrating, in its own quiet way that lets its work speak for itself, six years of sure-footedness along the craggy terrain of Canadian environmental law. That's no accident. CELL is a truly collaborative shop. Chris and Anthony sincerely seek out constructive feedback and healthy disagreement. The Board, for its part, is no rubber stamp; it's committed, engaged, and willing to ask tough questions. And the students who become part of CELL are not only encouraged to speak up – they're expected to.

That's CELL's secret sauce: it's a truly egalitarian place where creative and constructive collaboration is the norm, and the best ideas carry the day.

CELL is Launching Careers

I'd like to conclude on a more personal note. Like CELL, Chris tends to let his work speak for itself. Chris won't tell you – so I will – that he's not only among the OG's of Canadian environmental law scholars, but

he's one of the most talented law teachers in the country.

As someone always looking to improve as a law teacher, I once asked Chris how he did it. How does he generate such a devoted following of students? His answer has stayed with me, and it's telling: "***I try to launch my students in their careers.***"

In a way, I already knew the answer to my question to Chris. After leaving the world of Big Law to become an environmental law professor, one day out of the blue I decided to cold-call Chris. I wanted to write an innovative article about his work.* Many professors of his stature would've just ignored a request like this from an unknown junior scholar, but not Chris. Chris not only dove into the project, but he later came to my law school to discuss the ideas with my students, and since then he has generously extended me opportunity after opportunity to collaborate with him. Chris helped launch my own career as an environmental law professor.

And that's what Chris and the colleagues he has brought together with him at CELL are doing: they're launching the careers of the next generation of Canadian environmental lawyers.

*Jason MacLean, Meinhard Doelle & Chris Tollefson, "The Past, Present, and Future of Canadian Environmental Law: A Critical Dialogue" (2015-2016) 1:1 *Lakehead Law Journal* 79, available at <https://llj.lakeheadu.ca/article/download/1410/725>

CASE HIGHLIGHTS

CELL students learn how to become public interest environmental litigators through exposure to real-life cases. Working with lawyers on those cases and under supervision of CELL instructors, students learn in an experiential setting.

The cases to which CELL students are exposed span from tribunal proceedings to judicial reviews and civil lawsuits.

Below are a few highlights.

Pursuing Climate Justice for Youth

CELL is an educational partner in the climate lawsuit before the Federal Court, ***La Rose v. Her Majesty The Queen***, which is brought by fifteen Canadian youths across the country. These plaintiffs, represented by ***Arvay Finlay LLP*** and ***Tollefson Law Corporation***, are suing the federal government for its contribution to catastrophic climate change impacts as unjustifiable infringements of their sections 7 and 15 *Charter* rights and as violations of the public trust doctrine.

In 2020, the Federal Court dismissed the lawsuit on a motion to strike filed by the federal government. The youth plaintiffs are appealing that decision before the Federal Court of Appeal.

In collaboration with the two law firms that are representing the plaintiffs, CELL provides its students with the opportunity to gain hands-on experience working with the legal team in this case. Students participated in the legal team's strategy meetings, where the students observed and learnt how litigators think through and approach a piece of complex litigation.

Under close supervision of CELL instructors, students also assisted the legal team with legal research and produced legal memos to help develop the case.



Julia Roe (CELL Fall 2019 cohort) presenting to the young plaintiffs in the La Rose case at a strategy session in Vancouver shortly after the filing of the lawsuit in October 2019. Photo credit: Robin Loznak.

Aside from the legal and evidentiary issues with which CELL students got to engage, CELL instructors can also draw from this case to present students with real-life issues surrounding client relationship and management, media and public relations in high-profile litigation cases, and professional conduct and ethics.

As this case proceeds further, future CELL students will get the chance to develop competencies in working with experts, conducting discoveries, preparing for trial, appellate advocacy, and more.

Julia Roe, a law student at Allard School of Law and a student in CELL's fall 2019 and spring 2020 cohorts, reflected on her experience with CELL:

"Participating in CELL's experiential learning program was an invaluable way of gaining hands-on experience in public

interest environmental law. Anthony Ho and Chris Tollefson facilitate interesting and engaging seminars that provide students with the practical skills and knowledge required for a career in public interest law. It was very exciting to be able to contribute to legal research and preparation for cases that could potentially have very significant impacts and advance environmental justice in Canada. I particularly enjoyed the opportunities to meet and work with plaintiffs in high-profile environmental lawsuits. I look forward to continuing my participation with CELL in future semesters."

Protecting Free Speech in Social Justice Movements

SLAPP stands for "**Strategic Lawsuit Against Public Participation**" and are lawsuits commenced against people or organizations with the intent to silence and deter their public criticisms and advocacy in debates on matters of public interest. In March 2018, CELL joined West Coast Environmental Law and over 40 other organizations in an open letter to the provincial government supporting Attorney General David Eby's commitment to enacting anti-SLAPP legislation. In March 2019, the B.C. legislature passed this legislation, the *Protection of Public Participation Act (PoPPA)*, allowing B.C. courts greater power to dismiss lawsuits that are brought with the intention of shutting down free expression in matters of public interest.

Our Executive Director, Chris Tollefson, has been closely involved in the SLAPP issue from the early 1990s, when he first joined the UVic Faculty of Law, and continues to the present.

A recent case that CELL has been using in its curriculum since the fall 2021 term is a

potentially precedent-setting case defending against a hallmark SLAPP suit. Ezra Morse, a 41-year-old resident of the Town of Qualicum Beach, is the co-founder and president of the Qualicum Nature Preservation Society, a 148-member organization.

Together, the QNPS and Mr. Morse argue that a local land development proposal, which has garnered intense public interest within that community, is a threat to a larger 200-acre Coastal Douglas-fir forest and an encroachment on the town's greenbelt.



Aerial view of Qualicum Beach. The proposed development is located at the edge of the 200-acre forest depicted at bottom right. Photo credit: Shawn /Flickr, 2007, CC BY-SA 2.0.

The developers filed a defamation suit alleging that a series of statements by Mr. Morse and the QNPS were defamatory, but the defendants argue that this lawsuit – filed in the run-up to a by-election in which the development was an issue – was an attempt to discourage activists from speaking out on a matter of public interest.

The defamation suit is precisely the kind of claim where the new *PoPPA* is intended to apply. Representing Mr. Morse, the

Tollefson Law Corporation filed an application to dismiss the lawsuit under the *PoPPA* on July 6, 2021.

"The plaintiffs' development proposal has implications for, and may set a precedent regarding, the protection of Coastal Douglas-fir forests and the future of urban development in the Town, and is a matter of broad public interest within the community," the application said. "This application will be the first time that the B.C. Supreme Court applies the *PoPPA* in the environmental context."

In February 2022, parties made oral argument before the B.C. Supreme Court on the *PoPPA* application and are now waiting for the court to render its decision.

Through this case, CELL students are learning about litigation practice and procedure in the context of a chambers application before the B.C. Supreme Court. They are learning how to prepare and conduct cross-examination of witnesses on their affidavits, including how to structure a cross-examination to gather evidence pertaining to the applicable legal framework. They also learn how to use evidence obtained through such cross-examinations in preparing written and oral submissions in chambers.

Affirming Common Law Riparian Right to Water Quality

Since the spring 2021 term, CELL's curriculum has included a potentially precedent-setting case regarding common law riparian rights in British Columbia.

In this case, Kenneth and Norine McDonald, a retired couple living in the small town of Comox on Vancouver Island, are seeking

legal redress against the municipality over the long-standing and systemic failure of the Town to properly maintain its stormwater management system.

The Town operates a stormwater management system that includes the discharge of stormwater into Golf Creek, which runs through the couple's residential property.

Among other issues, the McDonalds are alarmed by heightened levels of fecal coliform that are detected in the creek, and they are concerned that the Town's stormwater management system is depositing contaminants that can pose serious risks to human health, particularly to those with pre-existing health conditions.

A key aspect of this case revolves around the rights of riparian owners at common law to sue for upstream impacts on water quality. To date, B.C. courts have not definitely resolved the status of these rights.

On behalf of the McDonalds, **Tollefson Law Corporation** brought an application before the B.C. Supreme Court to have the court hear arguments on a point of law: whether there are any remaining riparian rights at common law to water quality in B.C. This summer, the court will hear arguments from the parties to decide whether to have a separate hearing on this question of law.

A finding in the McDonalds' favour would reaffirm a longstanding and powerful legal avenue to advocate for improved water management practices across B.C., which could benefit other communities and Indigenous nations facing similar concerns of upstream pollution impacting personal and environmental health.

This case provides CELL students with experience engaging in municipal-level environmental litigation while engaging legal issues that are of broader public interest to all of British Columbia. In doing so, students are learning important strategies to ensure that the clients' interests and overarching environmental questions continued to be addressed. Ultimately, CELL students have greatly benefited from this case by learning first-hand the importance of creativity in public interest litigation in order to set legal precedents in environmental law.

Intervening against the Trans Mountain Pipeline

CELL has collaborated with the lawyers for **BC Nature** to offer CELL students with experiential learning opportunities through litigation surrounding the **Trans Mountain Expansion Project**.

BC Nature participated as an intervener in the National Energy Board's regulatory review and environmental assessment process. If built, the expansion project would triple the amount of bitumen transported by the pipeline from Alberta to B.C.'s coast and increase marine tanker traffic from 60 to over 408 tankers annually. A marine oil spill along the tanker route would have catastrophic impacts on the marine and coastal environment.

In summer 2019, following the federal government's approval of the project for a second time since the decision in *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, which had quashed the original approval, BC Nature sought leave of the Federal Court of Appeal to apply for judicial review.

Using this case, CELL students developed litigation skills in the context of a leave motion before the Federal Court of Appeal. They not only learned about the law and practice around applications for leave, but also about preparing for and filing originating documents generally, including logistical considerations that lawyers must take into account.

Two CELL students, Adrian Levine and Ellen Campbell, gained first-hand experience filing the motion record at the Vancouver registry of the Federal Court of Appeal.



CELL students Adrian Levine and Ellen Campbell and CELL program coordinator Anthony Ho posing with the materials for filing at the Federal Court of Appeal in July 2019.

The Federal Court of Appeal denied BC Nature leave to seek judicial review in *Raincoast Conservation Foundation v. Canada (Attorney General)*, 2019 FCA 224. As a result, BC Nature filed an application for leave to appeal to the Supreme Court of Canada. CELL continued as an educational partner in the case, using this case to teach CELL students the law and practice surrounding leave applications before the Supreme Court of Canada.

In the fall 2019 term, CELL students had the opportunity to participate in strategy sessions with BC Nature's legal team to discuss and develop the leave application. Through these interactions, students were exposed to how litigators approached framing a case into one that would raise a matter of public importance and how litigators would structure a legal argument in the context of a leave application for the Supreme Court of Canada. Students also got the chance to collaborate with the legal team to help draft portions of the written argument for the leave application.

Fighting Industrial Air Pollution in Kitimat

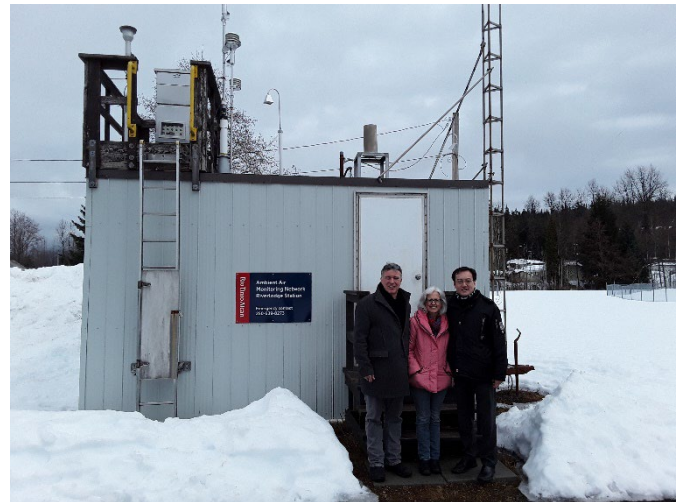
From fall 2018 to summer 2019, several CELL cohorts gained experiential learning opportunities working on an administrative tribunal proceeding before the Environmental Appeal Board regarding industrial air pollution in Kitimat, B.C.

In this case, the appellants were challenging a BC Ministry of Environment decision that could increase the risk of exposing the residents of Kitimat to adverse health effects (including premature mortality) from industrial sulphur dioxide (SO₂) emissions. The source of the SO₂ was the aluminum smelter in Kitimat, which is owned and operated by Rio Tinto.

A key issue was the Ministry's decision to manage potential effects of SO₂ on human health through an adaptive management program called an Environmental Effects Monitoring (EEM) plan.

The appellants were two residents of Kitimat, who are both schoolteachers, and Unifor Local 2301, which represents the workers at the aluminum smelter where the emissions are released. Unifor Local 2301

was represented before the EAB by Jason Gratl (Gratl and Company), who is also a member on the CELL board of directors.



The Riverlodge ambient air monitoring station in Kitimat, B.C. (L to R): Chris Tollefson, Elisabeth Stannus, Anthony Ho. Photographer: Stephen Stannus.

One of the appellants' key arguments was that the Ministry's decision unjustifiably infringed the appellants' right to life and right to security of the person guaranteed under section 7 of the *Canadian Charter of Rights and Freedoms*. The appellants also argued that the relevant provisions of the BC *Environmental Management Act* were unconstitutional because they unjustifiably infringed section 7 of the *Charter*.

This was a legal battle that had taken six years. A breakthrough in the litigation came in summer 2019 when the parties to the legal proceeding came to a mediated settlement. Under the public terms of the settlement, Rio Tinto's permit and the EEM plan were rewritten to provide important improvements to the protection of human health for the residents of this airshed. Changes included (1) more robust ambient air quality monitoring network, (2) more

stringent triggers for mitigation action, (3) more stringent implementation of mitigation action, and (4) the creation of a new, independent airshed group consisting of participants representing a broad spectrum of the community.

This case has been a great vehicle for training law students in public interest litigation. Over the years, CELL students were able to use this case to learn about how to develop and run a piece of complex litigation, including how to develop a legal theory, recruit expert witnesses, manage documentary evidence, and more. A few CELL students in the summer 2019 cohort even had the chance to participate in-person in the mediation sessions in this case, witnessing and learning first-hand how lawyers prepare for and conduct formal negotiations.

Grace Hermansen, a law student from Osgoode Hall, was part of CELL's summer 2019 program and was one of the students who attended the mediation. After completing CELL's program, she reflected on her experience with CELL:

"CELL has provided a fantastic opportunity to help bridge the gap between law school and practice. The mandate of the organization is evident to any student working with the organization: students are being trained in litigation skills, ones that are difficult to learn in a classroom setting. I would strongly recommend CELL to any student interested in pursuing not only environmental law, but keen to learn more about litigating public law cases."

Protecting Salmon from LNG Development

Through fall 2016 to summer 2017, CELL students had the opportunity to work within a legal team on an application for judicial review at the Federal Court.

SkeenaWild Conservation Trust is a non-profit conservation organization based in northern B.C. Along with other First Nations who have also launched legal action, SkeenaWild was challenging the federal government's approval of a \$11.4 billion liquefied natural gas (LNG) project at the mouth of the Skeena River.

The ***Pacific NorthWest LNG Project*** was a proposal to build a natural gas liquefaction facility and export terminal on Lelu Island, adjacent to Agnew and Flora Bank. Hundreds of millions of juvenile salmon come down the Skeena River every year to rest in the eelgrass habitat found in these areas as they become accustomed to life in the marine environment. This estuary is one of the most sensitive and productive salmon habitats in North America.



Lelu Island: Site of the proposed Pacific NorthWest LNG Project, at the mouth of the Skeena River. Photo credit: Brian Huntington.

The notice of application for judicial review, filed on October 27, 2016, was drafted in collaboration with a team of six law students in CELL's fall 2016 cohort. Through

working on this application, these law students obtained first-hand experience working with practising lawyers in reviewing the evidence, interviewing clients and experts, doing legal research, strategizing legal arguments, and drafting pleadings for the case.

Alex Ciccone, one of the law students who worked on the notice of application in fall 2016, offered the following reflection on working with CELL:

“As a law student working with CELL, I had the opportunity to experience public interest litigation firsthand. I was able to attend meetings with other lawyers and get experience in drafting various parts of a legal action. CELL offered me a similar experience to working in a private law firm, but with infinitely more support from the supervising lawyers who treat you as peers and offer you a seat at the table. CELL is by far the best way to get hands-on litigation experience in law school while contributing to ground-breaking legal actions.”

Students in spring 2017 continued the work of the previous cohort. In particular, CELL students had the opportunity to work with experts and to learn how experts are retained and how expert affidavits are created and filed at the Federal Court.

In summer 2017, Canada and Pacific NorthWest LNG applied to strike the affidavits filed by SkeenaWild on the basis of the general rule that no new evidence ought to be admitted upon judicial review. CELL’s summer 2017 cohort worked within the legal team to do the legal research and to draft SkeenaWild’s response to the motions to strike.

The students’ work culminated in a hearing on the motions to strike before Justice Roger Lafrenière in Vancouver on July 11, 2017. The students watched the proceeding from the public gallery and were able to see how their research and work translated into oral arguments before a court.

Although the motion was argued, the Court never rendered a decision because the proponent Pacific NorthWest LNG abandoned the project and the lawsuit was stayed before Justice Lafrenière issued his decision. Nevertheless, the case provided CELL students with valuable educational experience.

By the Numbers

Through its **6** years of providing legal education, CELL has...

- ran its program for **16** cohorts and **151** students
- admitted students from **12** Canadian law schools and **1** overseas
- delivered well over **3,000** student-hours of instruction

OUR TEAM



To oversee and run CELL's operations, a talented and committed team has been assembled from the worlds of litigation practice and academe. Our board and staff will work closely together to deliver our innovative litigation and education programs. For bios of our team, visit our website at <https://www.pacificcell.ca/our-team>.

Board of Directors

President – Jocelyn Stacey (Peter A. Allard School of Law, Assistant Professor and Associate Dean of Graduate Studies and Professional Programs)

Vice-president – Mark Underhill (Arvay Finlay LLP, Partner)

Treasurer – Maegen Giltrow, Q.C. (Ratliff & Company LLP, Partner)

Secretary – Jason Gratl (Gratl & Company, Partner)

Director at Large – Reidar Mogerman, Q.C. (Camp Fiorante Matthews Mogerman LLP, Partner)

Director at Large – Jason MacLean (University of New Brunswick Faculty of Law, Assistant Professor)

Staff

Executive director – Chris Tollefson (University of Victoria Faculty of Law, Professor; Tollefson Law Corporation, Principal)

Program coordinator – Anthony Ho (Tollefson Law Corporation, Associate)

STUDENTS

CELL's unique and innovative program attracts law students from across Canada and beyond.

Since first offering its educational program in fall 2016, 105 students in 16 cohorts have completed CELL's program. The current term is CELL's eleventh cohort.

CELL students who have completed the program are sought after by law firms large and small and by governments in both federal and provincial levels.

Spring 2022 Cohort

Aimee Huntington (UCalgary Law)
David Balzer (Allard Law, PBSC)
Elizabeth Benoy (Queens Law)
Emma Smyth (Allard Law, PBSC)
Eric Shapiro (UVic Law)
Harrison Myles (U of T Law)
James Mager (UVic Law)
Kaeleigh Phillips (Allard Law)
Michaela Aeberhardt (UVic Law)
Peyton Carmichael (UNB Law)
Sarah Lundy (UVic Law)
Will Andrews (graduated Oxford Law, UK)

Fall 2021 Cohort

Adele DesBrisay (UVic Law)
Aimee Huntington (UCalgary Law)
Austen Erhardt (Allard Law, PBSC)
Elise Burgert (U of T Law)
Iris Fairley-Beam (UVic Law)
Jade Dumoulin (Allard Law)
Jakob Sanderson (Allard Law, PBSC)
Kaitlin Cook (TRU Law)
Keira Lewis (Dalhousie Law)
Kristen Makokis (Allard Law)
Lydia Young (UVic Law)
Marina Saporito (Queens Law)
Michaela Aeberhardt (UVic Law)
Sean Price (UVic Law)
Will Andrews (Oxford Law, UK)

Spring 2021 Cohort

Corrine Tansowny (McGill Law)
Courtenay Jacklin (UVic Law)



Fall 2018 cohort (L to R): Chris Tollefson, Jason Fitzpatrick, Ruben Tillman, Allison Sproule, Owen Stewart, Lauren Mar, Jeff McEown, Alex Wheele, Anthony Ho. Photo credit: Anthony Ho.

David Gill (UVic Law)
Gabriel D'Astous (McGill Law)
Joe Braun (UVic Law)
Julia Fyfe (Allard Law)
Kat Ying (uOttawa Law)
Larissa Parker (McGill Law)
Laura Bullock (UVic Law)
Lydia Young (UVic Law)
Michaela Aeberhardt (UVic Law)
Nico Rullmann (UVic Law)
Sean Price (UVic Law)

Fall 2020 Cohort

Alisa Koebel (1-yr call)
Andrew Spear (UVic Law)
Erika Richards (UVic Law)
Evan Morrow (USask Law)
Gabriel D'Astous (McGill Law)
Joe Braun (UVic Law)
Julia Roe (Allard Law)
Larissa Parker (McGill Law)
Laura Bullock (UVic Law)
Michaela Aeberhardt (UVic Law)
Russell Chiong (UVic Law)
Victoria Kacer (UVic Law)
Will Andrews (Oxford Law, UK)
Zakary Anderson (USask Law)

Summer 2020 Cohort

Erika Richards (UVic Law)
Jacquie Miller (UVic Law)
Jamie Fikeris (UVic Law)
Joe Braun (UVic Law)
Julia Roe (Allard Law)

Larissa Parker (McGill Law)
 Laura Bullock (UVic Law)
 Lisa Harris (UVic Law)
 Macinly Fram (UVic Law)
 Russell Chiong (UVic Law)
 Travis Smith (USask Law)
 Victoria Kacer (UVic Law)
 Will Andrews (Oxford Law, UK)

Spring 2020 Cohort

Andrew Denhoff (UVic Law)
 Erika Richards (UVic Law)
 Frances Ankenman (UVic Law)
 Jacquie Miller (UVic Law)
 Jamie Fikeris (UVic Law)
 Joe Braun (UVic Law)
 Julia Roe (Allard Law)
 Laura Bullock (UVic Law)
 Lauren Mar (UVic Law)
 Xean Xu (Allard Law)
 Victoria Kacer (UVic Law)
 Will Andrews (Oxford Law, UK)

Fall 2019 Cohort

Amrit Rehlan (UVic Law)
 Cate White (UVic Law)
 Ellen Campbell (UVic Law)
 Erika Richards (UVic Law)
 Jacquie Miller (UVic Law)
 Jamil Kabani (Allard Law)
 Julia Roe (Allard Law)
 Lauren Mar (UVic Law)
 Sean Xu (Allard Law)
 Will Kendon (UVic Law)
 Yousap Hanna (Allard Law)

Summer 2019 Cohort

Adrian Levine (McGill Law)
 Andrew Denhoff (UVic Law)
 Christine Parsons (UVic Law)
 Danielle Toth (UVic Law)
 Ellen Campbell (UVic Law)
 Erika Richards (UVic Law)
 Grace Hermansen (Osgoode Hall)
 Gurkiran Dhillon (UVic Law)
 Margaret Monteith (UVic Law)
 Morgan Watchorn (TRU Law)
 Owen Pachal (UVic Law)
 Richard Wagner (UVic Law)
 Selina Wall (UVic Law)
 Will Andrews (Oxford Law, UK)
 Tyson Acoose (USask Law)

Spring 2019 Cohort

Allison Sproule (UVic Law)
 David Schechter (UVic Law)
 Graham May (UVic Law)
 Jason Fitzpatrick (UVic Law)
 Lauren Mar (UVic Law)
 Liam McGuigan (UVic Law)
 Owen Stewart (UVic Law)
 Sebastian Maturana (UVic Law)
 Will Kendon (UVic Law)

Fall 2018 Cohort

Alexander Wheele (UVic Law)
 Allison Sproule (UVic Law)
 David Schechter (UVic Law)
 Jason Fitzpatrick (UVic Law)
 Lauren Mar (UVic Law)
 Liam McGuigan (UVic Law)
 Marina Goodwin (UVic Law)
 Owen Stewart (UVic Law)
 Ruben Tillman (UVic Law)
 Ryan Beaton (UVic Law)
 Sebastian Maturana (UVic Law)



CELL instructors and students posing with Chief Kirk Tsakoza (Prophet River First Nation) and Chief Roland Willson (West Moberly First Nations) in front of the Vancouver Law Courts for a court case involving Site C in Summer 2018. Photo credit: Bruce Muir.

Summer 2018 Cohort

Amanda Spitzig (Osgoode Hall)
 Morgan McGinn (McGill Law)
 Rory Shaw (Queens Law)

Spring 2018 Cohort

Chya Mogerman (UVic Law)
 Emanuela Bocancea (UVic Law)
 Laura Edwards (UVic Law)
 Linette Lubke (UVic Law)
 Marina Goodwin (UVic Law)

Fall 2017 Cohort

Andrew Mendelson (UVic Law)
Catherine Higham (Allard Law)

Summer 2017 Cohort

Christina Clemente (uOttawa Law)
Madeline Macdonald (Queens Law)
Rory Shaw (Queens Law)

Spring 2017 Cohort

Ashley Thomas (UVic Law)
David Machat (UVic Law)
Jeff Drozdiak (UVic Law)
Mark Kimmich (UVic Law)
Matthew Palmer (UVic Law)
Michael Schryver (UVic Law)
Schuyler Roy (UVic Law)

Fall 2016 Cohort

Alexandre Vincent Ciccone (UVic Law)
Caitlin Stockwell (UVic Law)
Kathryn Gullason (UVic Law)
Leila Hartford (UVic Law)
Roark Lewis (UVic Law)
Taylor Dignan (UVic Law)

SELECT MEDIA

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SELECT TESTIMONIALS

From Current/Former Students

"It has been a fantastic opportunity and I can truly say that it has been a highlight of my legal education. Since I am nearing the end of my law school years, this is one of the experiences that I know I will try to carry forward the most. There is a uniqueness in public interest work that I think very few law students get to experience— this program provides such a rare insight into the importance of this work. The opportunity to meet and discuss some of these issues with the instructors, other lawyers they work alongside, as well as clients is so fantastic. Also, I believe that the students you select really show a passion and brightness for this area of the law; it is really awesome to be able to meet and interact with other students who share the same passions."

— **Aimee Huntington**, *University of Calgary: 2021 Fall & 2022 Spring cohorts*

"As a first year navigating online law school, CELL was an invaluable opportunity to meet like-minded faculty and students across Canada who are invested in tackling climate change through public interest litigation. CELL allowed us to step outside a student mindset and view ground-breaking environmental cases through the lens of practicing lawyers. Thank you, Professor Tollefson and Anthony Ho for investing into this important program and the next generation of public interest litigators!"

— **Lydia Young**, *UVic: 2021 Spring & 2011 Fall cohorts*

"Participating in CELL was the highlight of my semester. I really enjoyed learning alongside a small group of likeminded peers during the otherwise distant and challenging circumstances of remote learning. In addition, CELL provides a truly unique and unparalleled learning opportunity: to be brought on the real time journey of climate litigation. Through this learning format, I built substantive legal skills by conducting research and engaging with my fellow cohort members in critical legal analysis. I cannot wait to continue with CELL next semester!"

— **Michaela Aeberhardt**, *UVic: 2020 Fall, 2021 Spring, 2021 Fall, 2022 Spring cohorts*

"As a law student who has struggled to find ways to infuse environmental law into the limited curriculum that has been made available to me, Professor Tollefson and Anthony Ho have provided an experience that has filled a persisting educational and practical void. To welcome students from across the country into an environment where they feel that they can bring their skills and effort to bear in a tangible and meaningful way, and be treated as colleagues in doing so, is a true victory for environmental advocacy and education in Canada. Thank you, Professor Tollefson and Anthony, for this fantastic opportunity."

— **Travis Smith**, *University of Saskatchewan, 2020 Summer cohort*

"Being a part of the 2019-2020 CELL cohort was definitely a highlight of my 1L year! It was such an incredible experience to learn from legal professionals and students who are so dedicated to advocating for a stable climate system and advancing Canada's environmental laws. The experiential learning opportunities that CELL offered were also a great supplement to the 1L Constitutional Law course material and helped me learn more about career options in public interest litigation."

— **Laura Bullock**, UVic: 2020 Spring, 2020 Summer, 2020 Fall, 2021 Spring cohorts

"As a student who recently finished their first year of law school, the opportunity to be involved with CELL has been invaluable to me. Being able to work with a legal team on a piece of current litigation has allowed me to bridge the gap between what I have been learning in the classroom and what it is that a practicing litigator does. The seminars run by Anthony Ho and Chris Tollefson provided me with skills that I know will be useful in my future career and allowed me to take part in a case that may set the tone for the future of environmental justice in Canada. Overall, it was a great experience!"

— **Macinly Fram**, UVic: 2020 Summer cohort

"Participating in CELL's experiential learning program was an invaluable way of gaining hands-on experience in public interest environmental law. Anthony Ho and Chris Tollefson facilitate interesting and engaging seminars that provide students with the practical skills and knowledge required for a career in public interest law. It was very exciting to be able to contribute to legal research and preparation for cases that could potentially have very significant impacts and advance environmental justice in Canada. I particularly enjoyed the opportunities to meet and work with plaintiffs in high-profile environmental law suits. I look forward to continuing my participation with CELL in future semesters."

— **Julia Roe**, Allard Law: 2019 Fall cohort

Testimonials from Community Members

"The concept of building environmental law precedents and harnessing the energy and passion of law students has a powerful and effective tradition. CELL is building on a strong team and track record from Chris and Anthony and will fill a real need within British Columbia and Canada. This is a timely and important venture, and I welcome the new organization. It will be exciting to watch them serve the public interest and grow."

— **Gregory J. McDade, Q.C.**, Ratcliff & Company LLP

"The growing power of profit-driven corporations to cause irreversible harm to our environment needs to be held in check, and governments can no longer be allowed to bend over backwards to aid them. CELL is a team of battle-tested litigators committed to train the next generation of idealistic young lawyers to carry on the fight for a clean and healthy environment."

— **William Deverell**, Canadian novelist, activist, and criminal lawyer

Testimonials from clients of cases used in CELL's educational program

"Thank you all for the terrific work you and others have been doing over the past two or three months. And thank you, Anthony, for all the hard work you have done to produce a first-rate legal opinion. I deeply appreciate the hard work and the outstanding skill, knowledge, and commitment that you all have been contributing. Thank you. And please express my appreciation to the students for their good work.

I am very glad you are there and doing what you do. You are a BC treasure."

— **Kathleen Ruff**, *human rights & anti-asbestos activist*

"Over the last 2 years, when I was President of BC Nature, May 2014 to May 2016, as well during the year before that, as Vice-President, I worked closely with both Prof. Chris Tollefson and Anthony Ho. We cooperated and communicated on a wide number of issues, such as Roberts Bank, LNG, other important environmental cases, and on the Northern Gateway and the Trans Mountain pipeline projects. They have consistently provided BC Nature with timely and high-quality advice and assistance on press releases, at public meetings, and in developing and implementing litigation strategies. Last fall, Prof. Tollefson and Mr. Ho represented BC Nature in a complex and high-profile court challenge to Cabinet's decision to approve the Northern Gateway project. Their work in preparation for and oral submissions to the Federal Court of Appeal were highly professional and effective. BC Nature is grateful for their efforts, and we look forward to continue to working with Chris, Anthony and the CELL legal team."

— **Dr. Cornelis Visser**, *Former President of BC Nature*

"Chris Tollefson and Anthony Ho embrace the challenge of issues brought to them and provide clear advice. They are very approachable, and made the legal process less intimidating as their door was always open to support client needs. They explain the law in simple terms so that the ordinary citizen feels empowered to take action. I would recommend this team for those who are concerned about an environmental issue but don't know the legal process."

— **Elisabeth Stannus**, *Kitimat school teacher*



For more information about CELL, visit our website

<https://www.pacificcell.ca>