



**ENVIRONMENTAL  
LAW CENTRE**  
UNIVERSITY OF VICTORIA

# **Annual Report 2022-23**



## 2022-23 OVERVIEW

One of the first signs in early spring around Victoria’s urban forests are carpets of forest lilies. As the lilies fade, purple camas starts to bloom, followed by wild rose, ocean spray, and a host of other flora in succession, each unique and appreciated. As nature cultivates itself throughout the changing seasons, so do organizations. Good results often come with careful planning while being responsive to different approaches and circumstances.

We’ve kept this in mind over the past year as we’ve benefitted from sound funding and continued to build new client relationships, extend our training in anti-colonial practice, and welcome new lawyer-instructors in anticipation of Calvin Sandborn’s August 2023 retirement. We especially thank Calvin for [encouraging donations in his name to the ELC’s Janet Person Environmental Law Centre Endowment Fund](#) (the first fund ever to be included in UVic’s Fossil Fuel Free Investment Portfolio).

Over the past year we have had the support of lawyers Patrick Canning and Charis Kamphuis who each brought unique skills in public interest environmental lawyering to the ELC and expertly aligned student work with client needs.

We have also remained extremely productive. Over the year, we offered three sessions of the Clinic and a Spring Intensive Clinic. We mentored 35 Clinic students, who provided over 3,131 hours of legal services to 25 client groups. In total, ELC staff, Articling Students, Coop students and Clinic students provided 9,799 hours of services (a record that will not be matched in the near future!) to help resolve public interest environmental law issues.

We held four webinars for the 12 lawyers in Cohort 8 of the ELC Associates Program. In May 2022, we hosted our first in-person

## 2022-23 BOARD & STAFF

### Community Board Members

- Lisa Fong, KC, Partner, Ng Ariss Fong
- Clare Frater, Director of Trust Area Services, Islands Trust
- Brenda Gaertner, Lawyer, Mandell Pinder LLP
- Darcy Lindberg, UVic Law Professor
- Nikki Skuce, Director, Northern Confluence Initiative
- Karenna Williams, Lawyer, Huberman Law Group

### Student Board Members

- Logan Aitken
- Samantha Andison
- Allison Bilenkey
- Sophie Chase
- James Mager
- Nick Noble
- Eric Shapiro
- Megan Walwyn
- Margaret Williams

### Board Advisors:

- Sean Price
- Lydia Young

### Staff

- Patrick Canning, Lawyer & Clinical Education Program Associate
- Gracie Chiu, Administrative Assistant
- Deborah Curran, Executive Director
- Charis Kamphuis, Lawyer & Clinical Education Program Associate
- Holly Pattison, Director of Operations & Communications
- Calvin Sandborn, KC, Senior Counsel



(TOP) Spring ELC staff walk (back row: Russell Chiong, Eric Shapiro; middle row: Charis Kamphuis, Deborah Curran, Calvin Sandborn; bottom row: Gracie Chiu, Holly Pattison, Lisa Harris)

(MIDDLE) ELC staff and Club members on the annual trip to the University of Oregon for the Public Interest Environmental Law Conference.



(BOTTOM LEFT) Summer ELC staff walk (Charis Kamphuis, Jack Jones, Gracie Chiu, Deborah Curran)

(BOTTOM RIGHT) ELC staff on the temporary boardwalk entrance into the Law building during construction of the National Centre for Indigenous Laws building (Eric Shapiro, Lisa Harris, Gracie Chiu, Calvin Sandborn, Russell Chiong)



events since 2019 with a face-to-face workshop in Vancouver for current and former Associates, followed by a gathering for Alumni.

This 2022-23 Annual Report provides an overview of our activities and impacts from the past year. We continued to see issues about upholding and advancing Indigenous authority and protecting land and water from pollution. In response to the Canadian Competition Bureau's 2022 decision regarding our complaint against Keurig, we also continued to advocate for transparency and accountability in green advertising.

We deeply appreciate the commitments our community of clients, donors, advisors, and students continue to make as we collaboratively work towards protecting and defending the natural environment. On behalf of all ELC Board and staff, thank you for your support!

**9,799**  
**HOURS**  
OF LEGAL SERVICES

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**45**  
PEOPLE



*Overall, being a part of the ELC and working on this project has been one of the most insightful, inspiring, and memorable experiences of my time at law school. I have experienced a lot of emotions working on this file and have found a genuine interest in environmental advocacy.*

ELC Clinic student 2022-23



## UPHOLDING INDIGENOUS AUTHORITY

We continue to see demand for the creation of new tools and approaches for recognition of the rights of Indigenous communities to manage and safeguard their relationships with the environment in their territories and to respond to impacts from industrial pollution. There has been particular interest in supporting Indigenous organizations working with local governments to exercise local government jurisdiction in support of ecological health and Indigenous interests. A significant component of work in this area is the restoration of riparian areas and shellfish beaches, ecological connectivity and harnessing the potential of water sustainability plans that can address Indigenous authority, incorporate collaborative governance arrangements, and address water quality and quantity issues over the long term.

We are also increasingly providing legal services to new First Nation clients to develop land and water governance and management instruments based on their Indigenous laws and have developed several water laws/policies that establish client expectations for water use in their territories. We are also working extensively on municipal, provincial, and federal law reform for restoring shellfish beds.

Building on our 2020 report [\*The Case for an Indigenous Guardians Network\*](#), we advanced the Guardian concept for a particular Nation to enhance the powers of their Indigenous Guardians, which could include obtaining specific delegated authority to fully enforce a wide spectrum of provincial laws.

Finally, in this reporting period we finalized and released a comprehensive law reform report on protecting cultural heritage resources on private land. Nations in BC have demonstrated leadership and asserted jurisdiction to protect and preserve vital cultural heritage resources, such as artifacts, spiritual sites, initiation sites, transformation sites, burial grounds, cultural practice sites, ceremonial bathing sites, and culturally significant landscapes. However, gaps in provincial law and policy continues to lead to the destruction of cultural heritage, which are under threat from resource development, construction, urbanization, tourism, theft, and vandalism. [\*Protecting Indigenous Cultural Heritage Resources on Private Land\*](#) highlights opportunities to improve the current legal framework and to empower Indigenous management. In addition to legal recommendations for provincial and local governments, the report provides examples of measures Nations have used to protect their cultural heritage resources and to assert jurisdiction on private lands.

Other examples of standing up Indigenous authority in this reporting period include:

- Developed recommendations for a First Nation for using provincial and federal laws to protect Indigenous Protected and Conserved Areas.

- Developed a package of bylaw reforms for an Indigenous organization to demonstrate how local government jurisdiction can be used to support Indigenous authority.
- Assisted with drafting a policy that includes a framework to express Indigenous water laws that can be adopted by both industry and government.
- Worked with an Indigenous organization to develop strategies (municipal, provincial and federal) to restore the ability to harvest shellfish in their territory.
- Analyzed a recent court decision to assist an Indigenous organization to identify potential opportunities to use cumulative effects strategies for a broad range of ecosystems and activities.
- Investigated the potential for a moratorium on new placer mining leases and claims until the *Mineral Tenure Act* has been modernized to reflect BC's *Declaration on the Rights of Indigenous Peoples Act Action Plan 2022-2027*.
- Developed a series of recommendations to make BC's "First in time, first in right" water allocation regime consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*;
- Developed a series of recommendations to assist a First Nation exploring how to provide clean energy to remote communities.
- Worked with an Indigenous organization to analyze and provide best practices recommendations for the regulation of mining effluent releases, enforcement and compliance regimes, and implementing Indigenous co-management.
- Worked with an Indigenous community on a water use plan and policy to help guide decision making on issues such as groundwater licencing.
- Developed a law reform submission on how to reform the liability regime for fire in BC to enable professional (meaning Indigenous) cultural burning.

***The ELC provides students with the opportunity to build confidence in tangible client-oriented skills, which is seldom available to students in law school. I found it empowering to move through the client relationship, all the way from the intake interview, to working collaboratively with the client throughout the development of the project, to the closing letter.***

ELC Clinic student 2022-23



## PROTECTING WATER AND LAND

We continue to see a demand for work to better protect, manage and restore the health of land and water, and for the support of public participation and government accountability in decision making for land and water. In the past year we have been asked to engage in provincial consultations on the new Watershed Security Strategy, and we are still regularly asked to lead webinars and workshops on our *Green Bylaws Toolkit*.

Overarching all aspects of our work is the consistent request to assist communities in responding to and preparing for the effects and uncertainties of climate change. From floods to drought to wildfire, communities have deep concerns about ecosystem health and are asking for short-term solutions as well as long-term protection measures. Clients are also asking us to investigate harmful impacts from industrial activities, to seek legal remedies and law reform recommendations to battle greenwashing, and to daylight the need for corporate and government accountability in advertising, subsidies, disposal of harmful chemicals, and energy equity.

Organizations and citizen groups are frequently requesting law reform and other measures to protect biodiversity and ecosystems, and there is a high degree of interest in the public's right to access to public spaces. Our recently released [\*Wild Places and Green Spaces: A Citizen's Guide to Proving Public Access\*](#) received interest from citizens all over the province and was the topic of an ELC Associates webinar this year. The *Guide* informs citizens how to gather the evidence they need to prove public access – how to document the history and status of the access route – and some of the most common ways that public access rights can be established.

We also continue to receive requests to deal with the problem of plastic pollution. Over the past few years, our work to develop and coordinate strategic law reform for the production, use, recycling and disposal of plastics helped lead to action by both the federal and provincial governments, including the approval of local bans on single-use plastics, establishing a legal framework to provide for province-wide bans of single-use plastic items, and a federal commitment to ban harmful single-use plastics and to have zero plastic waste by 2030. In April 2022, we provided submissions to the federal government in response to their proposed regulations to ban single use plastics. In June, the federal government released their *Single-use Plastics Prohibition Regulations*, which bans six categories of single-use plastics: checkout bag, cutlery, foodservice ware, ring carriers, stir sticks and straws. This semester, we developed a law reform platform to prevent and clean up abandoned, lost or discarded fishing gear.

Other examples this reporting period of new and ongoing ELC work with clients to protect land and water include:

- Commenced working on comprehensive law reform to reduce wildfire damage in the wildlife urban interface.
- Investigated options to prevent marine birds from accidentally being caught in fish nets.

- Assisted an environmental organization to assess legal opportunities to reduce the use of the non-renewable resource peat.
- Assisted an NGO in identifying legal avenues to protect eelgrass in BC in support of their First Nation partner.
- Helped a community group assess a proposed mine project in their area and participate in the Environmental Assessment process.
- Analyzed the legal obligations of a utility to provide proper compensation for fish and wildlife losses.
- Examined options for better regulation of large pesticide spray applications, especially in ecologically sensitive areas.
- Analyzed water licensing and water use and developed recommendations to better protect a significant lake.
- Developed a law reform submission to set specific standards to control climate washing under the current false advertising legal regime.
- Prepared a law reform submission with recommendations to improve Canada's approach to hydrofluorocarbon reduction and safe disposal.
- Continued to work on producing a guide introducing private prosecutions and how citizens might use them as a legal tool to help enforce environmental laws.
- Developed a comprehensive review of programs and regulatory schemes with the potential to promote energy justice in BC.
- Prepared a report on legislative tools available to protect recharge aquifers and potential longer-term strategies to protect watersheds and drinking water.
- Supported an environmental organization with identifying opportunities to intervene and advocate for improvements to mineral tenure in BC.
- Supported an organization concerned about the impacts of a hydroelectric dam in a watershed on salmon and fish habitat.
- Prepared law reform recommendations for a community concerned about local flooding in urban creeks.
- Identified legal mechanisms to engage in whole-of-river protection for the Fraser River.

***The ELC makes a significant difference to the work we do. The expertise provided and the insights from students and staff are invaluable and the work generated provides substantial support to our advocacy and engagement.***

ELC Client 2022-23



UVIC ENVIRONMENTAL LAW CLUB  
RESEARCH-A-THON 2023

# RIVER PROTECTION

FEB 10, 2023 | 9:30 AM - 3:30 PM | FRA 150 (DRR)

Join us for our annual Research-A-Thon!

- research riparian protections and whole-of-river approaches to conservation
- enjoy coffee, snacks, and lunch
- hear from an amazing lunchtime speaker
- spend a fun day with club members and folks at the UVic Environmental Law Centre
- win prizes!

 SIGN UP today at:  
<https://forms.gle/vkvUfPdrvEP35eu69>



Photo by Holly Pettison

## RESEACH-A-THON 2023: RIVER PROTECTIONS

The 6<sup>th</sup> annual Research-a-thon was flowing with student energy as almost 50 participants throughout the day dove into the focus of whole-of-river legal protection. The ELC Research-a-thon is a one-day event where students gather to generate research that supports a public interest environmental law issue. The goal of the 2023 Research-a-thon was to create a research base for the ELC to draw from in our work towards improving protection of rivers and watersheds. Volunteers examined international examples of river systems that have been granted holistic, whole-of-river protections. From Finland to New Zealand and at least 21 places in between, students spent the day identifying frameworks, legal and policy tools, governance structures, agreements, and enforcement.

Lunchtime guest speaker Bev Sellars, former councillor and chief of the Xat’sull (Soda Creek) First Nation in Williams Lake, BC, drove home the point about the dire need to protect rivers, and not just pieces here and there – whole rivers and systems – in order to save our “natural economy.” Bev spoke about the changes and deterioration she’s seen over time: to the river, to salmon, and to animals in her territory. In fact, she quit eating fish from the Fraser River. It was especially poignant when she said, “My grandchildren will never know the magic and joy of fishing the River.” The results of the Research-a-thon are being used to develop a brief that explores existing legal possibilities for protecting the entire Fraser River, one of the most important watersheds in North America.

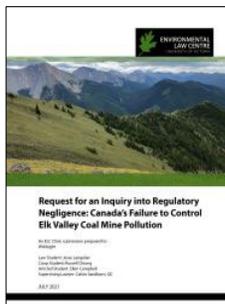
*I really enjoyed the chance to work on a subject entirely outside my comfort zone and the ELC has shed light upon a number of issues and career pathways that I would not have imagined otherwise.*

ELC Clinic student 2022-23



## RESULTS (FRUITS OF OUR PAST LABOUR)

It is said that if the only tool you have is a hammer, every problem looks like a nail. The ELC's toolkit is more like a Swiss Army knife: multi-purpose and adaptable for the situation at hand. You can see this variety below in the snapshot selection of recent outcomes achieved as a result of our work:



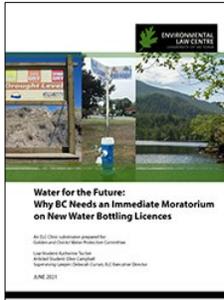
**COAL MINE POLLUTION IN THE ELK VALLEY:** Recognizing that coal mine pollution in the Elk Valley was causing serious damage to fish, in July 2021 we prepared a [submission to the Commissioner of the Environment and Sustainable Development](#) and the Auditor General of Canada seeking an inquiry into Canada's failure to control Elk Valley's coal mine pollutions. In late April 2022, we followed up with a letter to Canada's Minister of Foreign Affairs and US Secretary of State requesting both governments refer coal mine issues in the region to the International Joint Commission. In mid-May 2022, the [International Joint Commission wrote an unprecedented letter to the US and Canadian governments](#) indicating their concern and belief that this matter should come to them from both countries as a joint reference. This was followed up by a US State Department [statement of support](#) on an IJC Referral, after meeting with transboundary Indigenous groups. In March 2023, [Prime Minister Trudeau and US President Biden announced](#) that Canada and the US will reach an agreement by this summer to reduce and mitigate the impacts of water pollution in the Elk-Kootenay watershed.



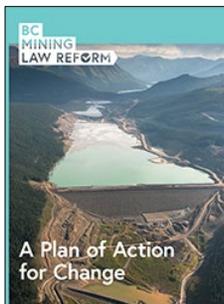
**PLASTICS:** We are continuing to see legislative change in response to our work on developing and coordinating strategic law reform for the production, use, recycling and disposal of plastics. In June 2022, the federal government released their [Single-use Plastics Prohibition Regulations](#), which bans six categories of single-use plastics: checkout bag, cutlery, foodservice ware, ring carriers, stir sticks and straws.



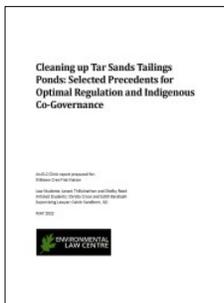
PROTECTING BEAR DENS: In response to our April 2022 [submission requesting the Province protect bear dens in BC](#) from inadvertently being destroyed by industrial activities and our client's efforts to amplify that work, a Private Members Bill in the BC Legislature to amend the *Wildlife Act* to protect bear dens passed first reading, was re-tabled in February and forwarded to second reading.



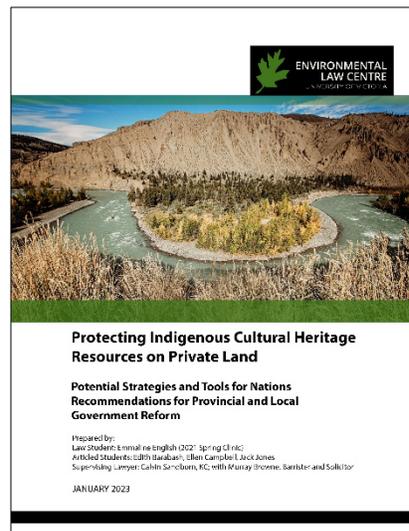
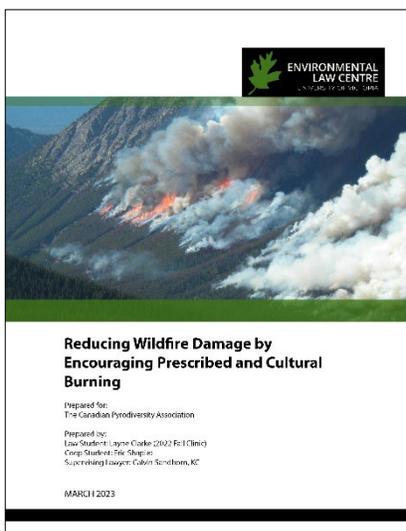
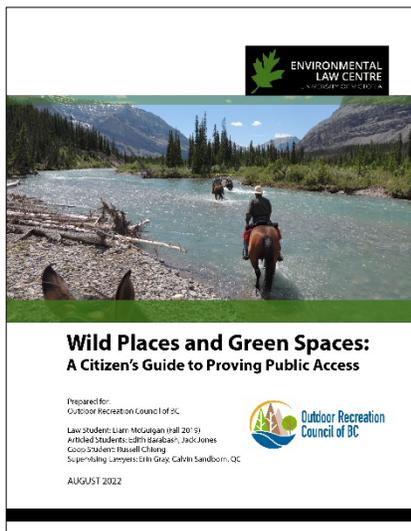
WATER BOTTLING LICENCING: Released shortly after the heat dome in 2021, our submission [Water for the Future: Why BC Needs an Immediate Moratorium on New Water Bottling Licences](#) prompted our clients to join with the Canadian Freshwater Alliance and others to support the ELC's recommendations and to launch a provincial campaign aimed at raising awareness of the water bottling issue and providing interested citizens with information and [tools](#) on how to organize as individuals or communities in order to call for change. The latest piece of the campaign our clients launched with the Canadian Freshwater Alliance and others is the podcast [Vol 5 of The Freshwater Stream](#), which features ELC staff and other water champions from around the province.



MINING LAW REFORM: In early April 2022, we learned that the provincial government was releasing an interim policy changing bonding rules for mining, which is a priority area of concern addressed in the [Mining Law Reform platform](#). The interim policy requires new mines and any existing mines having less than five years of remaining minerals reserves to post full reclamation security. Upon release of the policy, Chief Permitting Officer for the Ministry of Energy, Mines and Low Carbon Innovation thanked the BC Mining Law Reform Network and acknowledged that the [Polluter Pays](#) report helped inform the new policy.



At the end of August, the ELC appeared before a United Nations Reactive Monitoring Mission hearing on behalf of the Mikisew Cree First Nation to present findings from a recently released ELC report on how to regulate any proposed release of tar sands effluent that are currently stored in tailing ponds in and around their territory. Now publicly available, the report [Cleaning up Tar Sands Tailings Ponds: Selected Precedents for Optimal Regulation and Indigenous Co-Governance](#) documents what pollution standards should apply to the effluent treatment and disposal of oil sands affected waters. The report also highlights instances of co-governance and where Indigenous communities are setting rules and enforcing environmental jurisdiction.



## PUBLICATIONS

Work that we can share publicly is available on our website under [Publications](#). Below is a list of all the reports we publicly released in 2022-23.

1. [Reforming the Competition Act to Defend Climate: The Need to Regulate Deceptive Ads](#) (released Mar 2023)
2. [Reducing Wildfire by Encouraging Prescribed and Cultural Burning](#) (released Mar 2023)
3. [Protecting Indigenous Cultural Heritage Resources on Private Land](#) (released Jan 2023)
4. [Legal and Policy Options to Ban or Limit the Use of Horticultural Peat Moss in British Columbia](#) (released Nov 2022)
5. [Wild Places and Green Spaces: A Citizen's Guide to Proving Public Access](#) (released Aug 2022)
6. [2021-22 Annual Report](#) (released Jun 2022)
7. [Request That Coal Mine Pollution Issues in the Kootenay/Kootenai River Watershed Be Referred to the International Joint Commission](#) (released May 2022)
8. [Protecting Bear Dens in BC Forests](#) (released Apr 2022)
9. [Request for an Audit and Examination of BC Hydro Funding of the Fish and Wildlife Compensation Program](#) (released Apr 2022)
10. [Comments on Canada's Draft Single-Use Plastics Prohibition Regulations](#) (released Apr 2022)

***I have had the pleasure of working with the ELC several times. ... [The ELC] can really provide a boost, much needed support, and key resources for small community actors involved in environmental battles.***

ELC Client 2022-23

# MEDIA SNAPSHOT

Selected media mentions from the past year. For more ELC media, see: <http://www.elc.uvic.ca/about-us/elc-in-the-media/>

## Water and Watershed Management and Protection

- [Time for B.C. to fight fire with fire](#) (2023 Feb 22) *The Globe and Mail*
- [9 things that could have been done to prevent the Sunshine Coast's state of emergency](#) (2022 Oct 21) *The Narwhal*
- [Doubts downstream](#) (2022 Oct 19) *CBC News*
- [Water advocacy group launches campaign to protect Coquitlam-Burnaby creek](#) (2022 May 10) *Tri-City News*

## Mining and Energy Law Reform

- [Teck Resources, B.C. government pressed Ottawa to resist investigation into coal mine pollution](#) (2022 Nov 08) *The Narwhal*
- [How digital prospectors are staking First Nations land and private property in B.C.](#) (2022 Jul 08) *The Narwhal*
- [U.S. wants Canada to join probe of cross-border pollution from B.C. coal mines](#) (2022 Jun 14) *CTV News*
- [Canada Walks Back Position on IJC Reference for Kootenai Coal Mine Contamination](#) (2022 May 20) *Flathead Beacon*

## Public Access and Accountability

- [How the Competition Bureau found its muscle – and why that's good news for consumers](#) (2023 Jan 03) *The Globe and Mail*
- [Turning the tide on greenwashing](#) (2022 Oct 27) *CBA National Magazine*
- [GREENWASHING: WHAT IT IS AND WHY IT MATTERS](#) (2023 September 13) *Canadian Competition Law Review*
- [University of Victoria's Environmental Law Centre releases legal guide to help people access public lands](#) (2022 Aug 30) *CBC Radio All Points West*
- [University of Victoria publishes guide to help residents fight for public land access](#) (2022 Aug 26) *The Globe and Mail*

- [Douglas Todd: How to fight for the 'right to roam' on B.C.'s lands and waters](#) (2022 Aug 25) *Vancouver Sun*
- [Greenwashing and the problem with single-use plastics](#) (2022 Apr 15) *The London Free Press*

## Species and Habitat Protection

- [Fisheries Department doesn't adequately protect species at risk, Environment Commissioner's report says](#) (2022 Oct 05) *The Globe and Mail*
- [Conservationists urge B.C. to protect bear dens 'before it's too late'](#) (2022 May 11) *Yahoo News*
- [Environmental groups, First Nations call for protection of bear dens across B.C.](#) (2022 Apr 27) *Chek News*

## Sustainable Communities and Environmental Protection

- [Federal government announces new rules for recyclability and composting to reduce plastic waste](#) (2022 Jul 25) *Canadian Manufacturing*
- [B.C. watches as California subpoenas plastic industry over waste, alleged deception](#) (2022 May 18) *Victoria News*
- [Heroes and Zeros: Eastman Chemical vs. Keurig](#) (2022 May 05) *Corporate Knights*
- [Site C, B.C. Hydro slapped with environmental non-compliance order over potential acid rock drainage](#) (2022 Apr 29) *CBC News*
- [Conservation groups allege B.C. Hydro is not allocating enough funding to habitat restoration at its hydroelectric dams](#) (2022 Apr 19) *Vancouver Sun*
- [Ottawa's proposed single-use plastics ban is a step forward, but falls short](#) (2022 Apr 06) *The Globe and Mail*

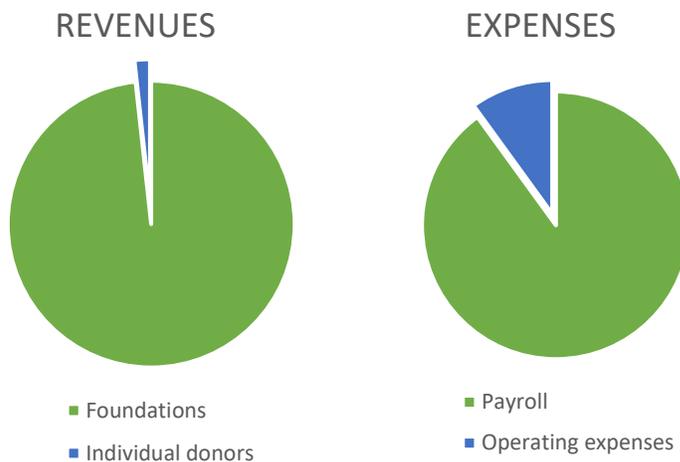


## MANY THANKS FOR YOUR SUPPORT!

Many hands sustain the ELC. In addition to our staff, we receive support from students, clients, the Law Faculty, Board members, lawyers, foundations, and our individual donors. Special thanks for all your hard work and happy engagement with the ELC.

We are privileged to have ongoing and core support from a variety of foundation and individual donors. Thanks to the Law Foundation of British Columbia, North Family Foundation, Sitka Foundation, MakeWay Foundation, Wilburforce Foundation, and the *Janet Person Environmental Law Centre Endowment Fund*. We are also grateful to the Real Estate Foundation of British Columbia for project funding.

In addition to the continuing steadfast support we receive, we also continue to diversify our revenues through private donations. We hope to see this trend continue as we move towards the next stages of organizational sustainability. We deeply appreciate all of our donors – thank you!



***Your collective support helps us develop and support strong laws that protect air, land and water***