

1-1-1999

Environmental Law and Policy, 2nd ed.

Gloria Chao

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/djls>

Recommended Citation

Gloria Chao, "Environmental Law and Policy, 2nd ed." (1999) 8 Dal J Leg Stud 220.

This Book Review is brought to you for free and open access by the Journals at Schulich Scholars. It has been accepted for inclusion in Dalhousie Journal of Legal Studies by an authorized editor of Schulich Scholars. For more information, please contact hannah.steeves@dal.ca.

BOOK REVIEWS

Environmental Law and Policy, 2nd ed.

E.L. Hughes, A.R. Lucas & W.A. Tilleman, eds.
Toronto: Emond Montgomery, 1998, 630 pp.

Reviewed by Gloria Chao†

Should trees have standing? What are common law remedies for environmental damage? Does the prosecution of corporations and their officers and directors have an impact on regulatory compliance by corporations? What role do First Nations play in environmental assessment? Are national parks playgrounds or sanctuaries? Should environmental rights be entrenched in the Charter? These questions form a small component of the nascent yet increasingly complex area of environmental law. This multidisciplinary field draws not only upon different areas of law, but also on subjects such as sociology, science, politics, economics, ethics, and philosophy.

In the second edition of *Environmental Law and Policy*, editors E.L. Hughes, A.R. Lucas, and W.A. Tilleman do not purport to produce an exhaustive treatise of this vast subject area. Instead, they identify the principal directions that environmental law has taken, survey them in the materials, and explain their relevance to other areas of law and to external disciplines. This edition updates the original primer and introduces three new chapters on the following topical issues: “Public Participation and Judicial Review,” “Municipal and Land-Use Planning,” and “Toxic Real Estate, Contaminated Lands, and Insurance.”

Written in the style of a case book, this work is a compilation of excerpts of materials on a variety of topics ranging from black letter environmental law, such as statutes and jurisprudence, to writings on the philosophical underpinnings of environmental law, such as deep

† B.Comm. (U.B.C.), LL.B, LL.L (Ottawa), LL.M anticipated 1999 (Dalhousie)

ecology or ecofeminism. Each chapter is authored by different people. Following the same general layout, the chapters start with an introductory description of a broad issue and conclude with materials on specific sub-issues and trends. Although this format is clear and easy to follow, it has drawbacks as it is rare that the reader gets more than a brief excerpt of a case, statute or article. The editors do present the salient points of each document, but for the reader who is interested in a more in-depth analysis of the documents, these snippets may not suffice. One example is the excerpt from *Friends of the Old Man River Society v. Canada (Minister of Transport)*,¹ a landmark decision where the Supreme Court of Canada broadly established that environmental impact assessment was an essential component of federal decision-making. Portions of this decision are found in two chapters of the book. Unfortunately, only one chapter includes excerpts from LaForest J.'s majority judgment, or the dissent by Stevenson J. The second time the case is referenced there is no mention of the dissent, nor is there a cross reference to the first excerpt. It is clear that the intent of this volume is to give a snapshot of the issues and that it is no substitute for the case law in its unabridged form.

On a substantive level, this book strives to be comprehensive as it includes both domestic and international materials. The domestic materials present Canadian environmental law from both the federal government point of view and from the perspectives of different Canadian regions. For example, in describing the jurisdictional issues arising from the constitutional division of powers, the author of Chapter two sets out the federal and provincial powers in the *Constitution Act, 1867*, the Harmonization Initiative of the Canadian Council of Ministers of the Environment as well as the Nisga'a Treaty Negotiations with respect to aboriginal self-government in British Columbia. Chapter four is a detailed examination of the duality of the Quebec legal system where public environmental law incorporates principles of common law and private environmental law includes principles and remedies found in the *Civil Code of Quebec*.

To flesh out the different forces affecting Canadian environmental law, the editors include a discussion of the nature and sources of international environmental law. Excerpts of writings and multilateral

¹ (1992), 7 C.E.L.R. 1 (S.C.C.).

documents from international and American sources are also included. These materials include international soft law documents such as the Rio Declaration on Environment and Development,² and the Convention on Biological Diversity³ and treaties such as the Agreement between the Government of Canada and the Government of the United States of America on Air Quality.⁴ These documents are highly relevant to the subject-matter. After all, Canadian environmental law does not exist in a vacuum, but is informed and influenced by these external elements. Although it would be helpful to include a discussion of the way these international documents affect domestic policy, it is nevertheless useful to have such documents at one's fingertips as they nuance and foreshadow the future of Canadian environmental law and policy.

Environmental Law and Policy is a highly readable and easily digestible manual, without oversimplifying the issues. It is a solid pedagogical tool containing a wide range of subjects and a list of questions at the end of each chapter to focus the reader's attention on key points or issues. Although it may take some patience to go through these questions, the exercise is worth the effort as the questions frequently contain excerpts from academic writings and case law summaries that augment the passages found in the main body of the text.

This textbook is not intended to be comprehensive compendium of environmental law, nor is it meant to be read in one sitting. Instead, typically choosing one seminal case or scholarly writing to illustrate each issue, this volume provides a broad review of the most relevant issues of environmental law and policy. Although targeted primarily at students and teachers of law and related disciplines, this textbook may also prove highly useful to the practitioner, as it provides an organized framework of reference materials essential to navigating around the issues of Canadian environmental law and policy.

² (1992), 31 I.L.M. 876.

³ (1992), 32 I.L.M. 818.

⁴ (1991), 30 I.L.M. 678.