

30 year legacy behind Dalhousie's Marine and Environmental Law Institute

"Students have a unique opportunity to learn about public and private law practice in marine (including shipping) and environmental law taught from domestic and international perspectives."

By **Moira McConnell**

The late 1960's and '70s ushered in major social, political and technological changes. With them came the rapid expansion of law and the development of new areas of legal study and practice.

Among the more significant changes was the emergence of a public awareness of the need to protect the environment and the importance of the ocean and its resources.

For example, the 1970s saw the creation of the United Nations Environment Program and the decade long negotiation of the 1982 United Nations Convention on the Law of the Sea, also known as the "constitution for the oceans," which was intended to provide protection to the marine environment, conserve fisheries, provide a global legal order for shipping and secure a more equitable approach to resource development.

Environmental law, once a specialized, perhaps even, esoteric, field of law is now part of the basic competency for a wide range of legal practitioners as environmental and resource related concerns regularly feature in the media.

Today, lawyers involved in business transactions such as industrial and natural resource development, product import and export, international trade, prop-

erty transactions, banking and corporate reporting find that they need to be conversant with topics such as the "Kyoto Protocol", emissions trading, environmental impact assessments, site audits, environmental management systems, corporate and other liability for environmental harm and for site clean up, corporate reporting requirements, land use planning, marine protected areas as well as host of other concerns including the role of international environmental conventions and organizations.

Responding to the transformative events of the '70s, Ronald St. John Macdonald, then Dean of Law at Dalhousie Law School, recruited Professors Douglas Johnston and Edgar Gold and others to the faculty to develop an academic specialization in marine and environmental law within the LLB curriculum.

In 1974 the Marine & Environmental Law Programme, more usually known as "MELP", was designated as "an area of special interest" for the Law School.

30 years have passed since that decision and MELP and strength of its faculty in those two areas remain one of the distinguishing features of the LLB and LLM and Doctoral programmes at Dalhousie Law School, attracting students from all parts of Canada and around the world.

With over 12 full- and part-time faculty members currently teaching in the MELP curriculum, students have a unique opportunity to learn about public and private law practice in marine



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(including shipping) and environmental law taught from domestic and international perspectives.

Students wishing to specialize in these fields have the option of obtaining a certificate of specialization in either Marine or Environmental Law or both, while completing the three-year LL.B.

degree. Courses recognized for the MELP Specialization Certificates include: Maritime Law and Practice, Law of the Sea, Coastal Zone Management, Fisheries Law, Maritime Law and Policy, Ocean Law and Policy, Oil and Gas Law, International Trade Transactions, Marine Environmental Protection Law, First Nations Law, International Trade Law, Animals and the Law, Environmental Law, International Environmental Law, Business and Environmental Law, Environmental Law II and Planning Law.

In keeping with the rapidly changing issues in these two fields, the content of these courses and the nature of what is considered "environmental law" are always developing to respond to emerging contemporary concerns such as biosecurity, and biotechnology. Students at Dalhousie with an interest in these and other areas can also take advantage of faculty expertise and courses offered under the auspices of the interdisciplinary Health Law Institute and the Law and Technology Institute, also based at Dalhousie Law School.

The legacy of 30 years of teaching and research excellence of the Dalhousie Law School MELP faculty was formally recognized by the Dalhousie Board of Governors in 2004 with the creation of a Marine & Environmental Law Institute.

The Institute, which is housed in the Law School, carries out

research and consultancy activities and also directs the MELP academic specialization. Its primary researcher, Dr. David VanderZwaag, is the holder of an appointment as a senior Canada Research Chair in Ocean Law & Governance.

In addition to our scholarly research and publication activities, the MELP faculty and Associates of the Institute carry out research projects and provide advisory services on a range of environmental and maritime law matters to agencies of the United Nations, international and Canadian non-governmental organizations, regional organizations as well as assisting government departments in Canada and other countries.

The Marine & Environmental Law Institute is also the editorial office of the Ocean Yearbook, a major international interdisciplinary annual, devoted to ocean affairs.

Dalhousie law students have the chance to gain experience working as research assistants on the Institute's research projects, publications and workshops, and assisting with editing the Ocean Yearbook.

The Marine & Environment Law Institute also works closely with on-campus student groups such as the Environmental Law Students' Society and frequently collaborates closely with other disciplinary and interdisciplinary graduate programmes and other scholars at Dalhousie University.

Dr. McConnell, a professor of Law at Dalhousie Law School, is the Director of the Marine & Environmental Law Institute. Her areas of interest are Law of the Sea, Maritime Law and policy and regulatory system design.

Boyd considers *Charter* implications of arbitration

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tion, to the detriment of women, children and other vulnerable people."

After meeting with more than 50 groups and reviewing the material in the six pages of bibliography and eight appendices, Boyd produced her scholarly report dealing first with the *Arbitration Act* itself and the safeguards contained in it (section 2), family and inheritance law (section 3), a summary of the opinions and arguments presented to her (section 4), limits of applicability of the *Charter* (section 5), analysis of the issues (section 6), suggestions received in the submissions for reforms (section 7), and, finally,

her recommendations (section 8).

Perhaps of greatest interest to lawyers is Boyd's treatment of the constitutional issues. She begins by examining several Supreme Court of Canada cases to establish that there must be both an institutional and a structural link between a public body and the government in order for the *Charter* to apply. (See, for example, *McKinney v. University of Guelph* [1990] 3 S.C.R. 229; *Slaight Communications v. Davidson* [1989] 1 S.C.R. 1038; and *Eldridge v. British Columbia (A.G.)* [1997] 3 S.C.R. 624.)

She notes that where a public service is being performed independently of government control, the required link is not present and

the *Charter* will not apply. As to whether the *Charter* applies to arbitrations in Ontario, she writes that there are no court decisions on this issue, and it is not clear whether a court would find the necessary link between government and a private arbitrator.

She concludes, "Agreeing to be bound by an arbitrator's decision falls into the category of an action that is private and therefore, in my view, is not subject to *Charter* scrutiny.

"The action is private because it is a reflection of the parties' relationship and because the authority of the arbitrator flows directly from the parties' agreement to be bound. Arbitrators do not derive their authority from the government through the *Arbitration Act*. In addition, arbitration is a private action ... The existence of the *Arbitration Act* does not force people to arbitrate."

IDR hosts conferences on conflict resolution, First Nations rights

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and Human Security and the United Nations: the prevention and resolution of armed conflict.

IDR has been involved in providing conferences, *inter alia*, on First Nations rights and Conflict Resolution, Reconciliation after the Iraq war and the first Research and Dispute Resolution Conference in B.C.

In addition the Institute provides professional education and training in dispute resolution for both public and private sector organizations. A variety of professional development workshops are offered from time to time. A main focus has been Aboriginal

treaty making negotiations.

Other professional development workshops include environmental disputes, university issues, arbitration tribunals, mediation in the workplace, mediation in conflictual situations, and advanced restorative justice training. Upcoming professional development programs include: Managing Public Policy Disputes, Advanced Mediation, The Art of Empathy: Non-Violent Communication and Conflict Resolution, and Leadership and Change Processes in the Workplace.

Professor Maureen Maloney is the Director of IDR and holds the Lam Chair of Law and Public Policy.