

# Environment in the Courtroom: Inspections and Enforcement Issues: On-site and in Court

**February 26 & 27, 2016**  
**Room 12102, DMS Desmarais, 55 Laurier**  
**University of Ottawa, Ottawa, Ontario**

## **SPEAKERS**

### **Janet Bobechko**

Janet Bobechko has experience dealing with all types of environmental issues relating to day-to-day manufacturing. Her practice involves all aspects of environmental law with a particular emphasis on environmental compliance issues arising from federal, provincial and municipal regulatory regimes. She provides assistance regarding air approvals, waste management, importation of new substances into Canada, spills and the resulting regulatory and civil actions. Ms. Bobechko advises clients on corporate social responsibility and sustainability matters. She also advises boards of directors regarding environmental compliance, corporate governance and due diligence as well as corporate reporting strategies and risk mitigation.

Ms. Bobechko acted as counsel for a Ministry of Environment provincial officer at the Walkerton water inquiry and related proceedings and continues to have an active practice relating to issues arising from the *Safe Drinking Water Act* and source water protection plans. Ms. Bobechko was certified by the Law Society of Upper Canada as a specialist in environmental law in 2003. She is recognized by *Lexpert* as a repeatedly recognized practitioner in environmental law. She was a part of the formal advisory group for sustainability applied 2012, sponsored by The Bloom Centre for Sustainability (BLOOM).

As an original member of the Canadian Brownfields Network National Advisory Panel, a member of the Ministry of Municipal Affairs and Housing Brownfield Stakeholder Group and co-chair of ONEIA's Brownfield Subcommittee, Ms. Bobechko continues her active involvement in developing strategies for cleanup of legacy contaminated sites, including brownfield development, and environmental indemnity and insurance issues.

### **Dan Bunner**

Dan Bunner is President of Ramboll Environ Canada, Inc. Ramboll Group is a quiet foundation comprised of 13,000 engineers and scientists with annual revenues of about \$2.2 billion. Dan is also Co-Managing Principal in the Mississauga, Ontario office. Dan has over 25 years of extensive experience as a Project Director and Manager providing litigation support, expert witness assistance, hearing testimony, due diligence assessments, Phase I and Phase II Environmental Site Assessments, remedial planning and site remediation, site-specific risk assessments, compliance audits, decommissioning programs, and hydrogeological investigations. Dan is a registered Professional Geoscientist in several provinces and territories in Canada.

### **Jack D. Coop**

Jack is a partner with the law firm Osler, Hoskin & Harcourt LLP, Litigation Department, and a member of its Regulatory, Environmental and Aboriginal Law Group. His practice focuses upon environmental and regulatory litigation, including civil litigation, administrative hearings, judicial review applications, and the

defence of prosecutions. It includes providing advice on strategies for avoiding litigation and successfully dealing with government regulators. Jack's clients currently include a wide variety of privately and publicly held corporations (mining, petrochemical, agricultural, manufacturing, energy-producing, retail, service), public utilities, and industry associations

Prior to joining Osler in 2008, Jack enjoyed a 20 year career as Crown Counsel for the Ontario government where he represented many ministries, including Environment (where he served as Hearings Team Leader), Attorney General, Energy, Natural Resources, Health and Long-Term Care, and Municipal Affairs and Housing.

Jack has appeared before every Ontario environmental tribunal and every level of court in Canada including the Supreme Court. He has taught environmental regulation and advocacy at U. of T. Law School and Osgoode Hall Law School, is a contributing author to *Government Liability, Law and Practice* (Canada Law Book), and is certified by the Law Society as a Specialist in Environmental Law.

## **Rosalind H. Cooper**

Rosalind is a partner with Fasken Martineau and is Certified by The Law Society of Upper Canada as a Specialist in Environmental Law and is named in the *2015 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada*. Also listed in *The Best Lawyers in Canada 2011-2016 for Environmental Law* and in *Chambers Global 2013-2016*. Recognized by Lexpert® as most frequently recommended for Environmental Law and in the *International Who's Who of Environmental Lawyers* and the *PLC Cross-border Environment Handbook*.

Rosalind defends environmental charges, litigates contaminated land disputes and other environmental matters, and is involved in appeals and environmental assessment proceedings before the Environmental Review Tribunal. Rosalind has extensive experience advising on all environmental regulatory issues, including exposure to environmental liability, brownfields redevelopment, decommissioning and remediation of contaminated lands, project development, approvals and reporting requirements. Provides environmental advice in relation to business transactions. Also listed on the roster of mediators/arbitrators of the Canadian Centre for Environmental Arbitration and Mediation.

## **Jennifer Fairfax**

Jennifer Fairfax is a Partner with Osler, Hoskin & Harcourt LLP in Toronto. She has a B.A. (Hons.) from Queen's University and a LL.B. from the Osgoode Hall Law School, York University.

Jennifer Fairfax practises regulatory and environmental law and litigation, as well as commercial litigation and dispute resolution. Jennifer has significant experience conducting negotiations with, and making representations to, regulatory bodies, including the Ontario Ministry of the Environment and Climate Change and Environment Canada, as well as conducting environmental litigation, including civil actions/applications, judicial reviews, administrative tribunal proceedings, and defence of prosecutions. Jennifer also provides regulatory and environmental advice relating to regulatory orders, permits and approvals, waste and soil, contaminated lands, renewable energy projects, regulatory compliance, and corporate transactions, including advice on environmental representations and warranties and environmental due diligence.

Jennifer litigates business-critical issues in environmental law, construction disputes, complex contractual/negligence disputes, insurance disputes, commercial arbitrations, and constitutional law. She has broad advocacy and trial experience, and has appeared before the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Federal Court of Canada, the Federal Court of Appeal, and the Ontario Environmental Review Tribunal. Jennifer has also acted as lead appellate counsel in constitutional litigation. Jennifer is on the executive of the OBA Environmental Law Section.

Prior to joining Osler, Jennifer clerked for The Honourable Justice Edgar Sexton with the Federal Court of Appeal.

## **Jamie Flagal**

Jamie Flagal is counsel with Legal Services Branch, Ministry of Environment and Climate Change (MOECC). He graduated from the joint Masters Environmental Studies/Bachelors of Law program at Osgoode Hall Law School/York University and was called to the Bar in 1994. He subsequently earned a Masters in Law in A.D.R. from Osgoode Hall Law School. Jamie has taught courses at various post-secondary schools and has also served as an instructor in public law at the Bar Admission Course for several years. When Jamie first joined MOECC Legal in September of 1994, his practice focused on litigation, representing the MOECC before various tribunals including the Ontario Municipal Board, the Environmental Appeal and Assessment Boards, Divisional Court and the Court of Appeal. Between 1998 and 2000 Jamie's practice began to shift to solicitor's work involving the development of legislation. Since then he has worked on a number of MOECC-led legislative initiatives including, the *Environmental Enforcement Statute Law Amendment Act, 1998*, the *Brownfields Statute Law Amendment Act, 2001*, the *Safe Drinking Water Act, 2002*, the *Sustainable Water and Sewage Systems Act, 2002*, the *Environmental Enforcement Statute Law Amendment Act, 2005* (commonly referred to as Bill 133 which introduced "environmental penalties") the *Clean Water Act, 2006*, the *Lake Simcoe Protection Act, 2008*, and the *Water Opportunities and Water Conservation Act, 2010*. Jamie has most recently worked on the *Great Lakes Protection Act, 2015*, which, after being introduced three times finally received Royal Assent in November of 2015. Jamie continues to work on Ministry of Environment files related to the protection of water resources including the MOE Permit to Take Water Program, the implementation of the *Clean Water Act* and provides advice to MOE staff on a wide range of issues associated with MOE legislation. Jamie is also assisting with MOECC's proposed *Excess Soil Management Policy Framework* which was recently posted on the Environmental Registry for public comment and will result in the development of regulations under the *Environmental Protection Act*.

## **Jonathan S. Leo**

Jonathan S. Leo is an attorney licensed to practice law in the state and federal courts of California. He received his BA in Political Science with a minor in Russian from the University of California at Los Angeles (1971) and his JD from the University of Southern California (USC) Gould School of Law in 1977.

From 1979-1985, he worked in the Los Angeles City Attorney's Office: as a misdemeanor criminal trial deputy (1979-1981); an environmental crimes prosecutor (1981-1984); and, in the Civil Land Use and Environment Section as an advisor to the City Council on environmental issues, author of the City's underground hazardous substance storage tank and emergency response right-to-know ordinances, and a regulatory and litigation attorney on issues related to the City's environmental and land use permitting agencies and its Cultural Heritage Board.

From 1985-1998, Jon worked for the environmental practice group of the law firm Heller, Ehrman, White & McAuliffe in San Francisco. He specialized in hazardous waste and materials regulatory compliance, state and federal administrative agency industrial wastewater discharge permitting and counselling for commercial and industrial clients, environmental auditing for real estate and business transactions, and Superfund cost-recovery and toxic tort litigation.

From 1999-2011, he worked for Science Applications International Corporation (SAIC, Inc.) in its San Francisco, Oakland, Pasadena, and Brea, California offices as a senior environmental attorney. Jon managed projects and program elements under a CERCLA Enforcement Support Services contract with US EPA Region IX; provided special counsel on Appalachian surface coal mining federal environmental permitting and enforcement actions for the Energy Management and Climate Change Solutions Group; served as project manager for Union Pacific Railroad Company's permit application process to modernize

its Intermodal Container Transfer Facility at the combined Ports of Los Angeles and Long Beach; and served as project manager for the coordination and delivery of legal and technical services to the San Bernardino Valley Municipal Water District in connection with a conflict between the US EPA-led CERCLA remediation of a contaminated groundwater plume and the District's water resource management obligations.

From 2011-2012, Jon worked as an independent contractor for Toeroek Associates, Inc. on US EPA Region IX CERCLA enforcement support service contract projects primarily related to the settlement of federal response and remediation cost claims against potential liable private and public parties at the Operating Industries, Inc. landfill site in Monterey Park, CA.

From 1993-2002, Jon was Chair of the Board of Trustees of Pacific Environment, a federal non-profit organization which worked with Russian Far East and Siberian environmental organizations to protect non-Slavic indigenous populations and their ecosystems in the face of offshore oil and gas exploration, boreal forest logging, and industrial mining and fisheries operations.

From 2002 through the present, Jon has been involved with the Arava Institute for Environmental Studies, the premier environmental academic and research institute in the Middle East, which provides Israeli Jewish and Arab, Palestinian, and Jordanian undergraduate and graduate students to develop the personal and professional skills necessary to cooperatively identify, manage, and resolve transboundary environmental and public health issues. He taught at AIES in 2002-2003 and has served on the Board of Trustees of Friends of the Arava Institute since 2004.

## **Dr. Elaine MacDonald**

Dr. Elaine MacDonald is Senior Staff Scientist at Ecojustice in the Toronto office. She joined Ecojustice in 1999 and is a PhD level environmental engineer who also applies her expertise to work related to the Great Lakes, air and water quality, and oilsands operations. Elaine leads the Environmental Health team, where she's challenging all levels of government to protect every Canadian — especially our most vulnerable, children — from illnesses related to harmful chemicals. Elaine can often be found hanging out with her family, sailing on the Great Lakes and cycling around Toronto.

## **Fred L. Maefs**

Fred L. Maefs is Senior Counsel to the Ministry of the Environment, Legal Services Branch, and has been a member of the Prosecutions Team since July, 2003. He has also been an Acting Deputy Director of the Legal Services Branches of the Ministries of the Environment and of Finance. He graduated from the University of Western Ontario Law School and was called to the Ontario Bar in 1981. He has prosecuted numerous cases arising from violations of environmental legislation across Ontario, at trial and on appeal. Prior to joining the Ministry, he was a Crown Attorney in Toronto and eventually held senior positions within the enforcement units of securities industry regulators. As senior prosecutor for the Ontario Securities Commission and the Toronto Stock Exchange, he appeared at all levels of the courts, including the Ontario Court of Appeal and the Supreme Court of Canada.

## **Heather McCready**

Heather McCready is the Executive Director of Environmental Enforcement at Environment and Climate Change Canada (ECCC). Her experience at ECCC also includes Senior Advisor to the Chief Enforcement Officer, Manager of Operations Support, and Regulatory Analyst. She recently concluded a special assignment, leading the modernization of the Intelligence Program at ECCC. Prior to her career as a public servant, Heather was an attorney at Ropes & Gray, LLP in Boston, where her practice focused on private equity transactions.

Heather is a graduate of McGill University with degrees in Common Law, Civil Law, and Political Science. While at McGill, Heather was the Editor in Chief of the *McGill International Journal of Sustainable Development Law & Policy*. In 2013 she participated in the Strategic Management of Regulatory and Enforcement Agencies program, an Executive Education course at the Harvard Kennedy School.

## **Paul McCulloch**

Paul currently conducts hearings and prosecutions on behalf of the Ontario Ministry of the Environment and Climate Change throughout the Eastern Region. As a prosecutor, Paul appears mostly in the Ontario Court of Justice pursuing contraventions of MOECC legislation, but has also conducted appellant work including appearing before the Supreme Court of Canada. In addition, Paul represents the Ministry in administrative hearings before the Environmental Review Tribunal involving appeals of approvals, permits and orders.

From 2002 to 2004, Paul was involved in developing and implementing the *Safe Drinking Water Act, 2002* and its corresponding regulations, as well as new regulations governing Ontario's permit to take water program. From 2000 to 2002, Paul provided litigation support for government counsel appearing before the Walkerton Inquiry.

Prior to joining the Ministry in 2000, Paul worked at the Environmental Commissioner of Ontario after articling at the Canadian Environmental Law Association. He was called to the Bar in 1999. Paul graduated from York University in 1997 with a combined Masters degree in Environmental Studies and a law degree from Osgoode Hall Law School. He also has an honours Arts and Science degree from McMaster University.

## **Martin Olszynski**

Martin Olszynski is an Assistant Professor of Law at the University of Calgary. He joined the Faculty on July 1, 2013, following several years of public service in environmental and natural resources law and policy. From 2007 to 2013, he was counsel with the federal Department of Justice, practicing law in the legal services unit at Fisheries and Oceans Canada. During this period, he also spent time on secondment to the Legislative and Regulatory Affairs Division at Environment Canada.

Martin holds a B.Sc. (Biology) and an LL.B., both from the University of Saskatchewan, and an LL.M. (specialization in environmental law) from the University of California at Berkeley. Following law school, Martin clerked for the Hon. Justice Denis Pelletier of the Federal Court of Appeal (2006). Prior to joining the University of Calgary, he was a part-time professor with the University of Ottawa Faculty of Law, where he taught environmental law.

Martin's primary teaching and research interests are in environmental, natural resources, and water law and policy. He is also interested in the continuous development of related core areas of law, including constitutional, administrative, tort and regulatory law. His articles have been published in various journals, including the *Dalhousie Law Journal*, the *Queen's Law Journal*, the *Osgoode Hall Law Journal* and the *Canadian Bar Review*, as well as both of Canada's environmental law journals, the *Journal of Environmental Law and Practice* and McGill's *Journal of Sustainable Development Law and Policy*. He has also appeared as a witness in environmental hearings before both the House of Commons and the Senate.

## **Katia Opalka**

Katia Opalka is an adjunct professor at the McGill School of Environment. She has extensive experience in private practice advising corporations in connection with environmental risk exposure. For seven years, she was the Canadian legal officer investigating government environmental law enforcement at the CEC – the NAFTA environmental commission.