



Strategic Plan Snapshot 2021-2025

ecojustice

Growing number of environmental battles 'soon fought in courts'

By Richard Watts
Times-Colonist staff

Unprecedented numbers of British Columbians soon will use the courts to fight environmental battles, an environmental lawyer told a UVic conference Friday.

Greg McDade, executive director of the Sierra Legal Defence Fund, said unlike Americans, who are often classed as "litigious jerks," Canadians in general are unwilling to fight things out in court.

But McDade said environmental issues will change that.

"You are going to see an explosion of litigation in the next four or five years in this province — and I don't think it is a bad thing," he said.

McDade was speaking at a conference, organized by UVic law students, called — Challenge of the Green Nineties: Law, the Environment and the Community.

McDade's group has recently fought several lawsuits arising out of environmental concerns — in the Walbran Valley over the threatened marbled murrelet seabird, in the Nahmint Valley over road building in the absence of proper procedural requirements, and in the Tsitika watershed over a similar issue.

McDade said he lost most of the cases, or the outcome did not have the desired effect. But he said that was unimportant.

"If you keep going at 'em, there is an inevitable move, and you get little chunks and that is how you build precedent," he said.

The laws may be weak, practically non-existent and need reforming, but the challenge for lawyers is to use existing laws and regulations to protect the environment, he said.

David Sutherland, a private Vancouver lawyer, recited how he tried to fight a case for a commercial crab fisherman whose livelihood was ruined by pulp-mill pollution.

Invoking a never-before-used section of the federal Fisheries Act, which gives fishermen the right to compensation for loss of a catch because of pollution, Sutherland tried to get some money out of the pulp mills.

For two years the pulp company spent millions on lawyers, who invoked hundreds of legal technicalities, right up to the constitution. Eventually the pulp mill won.

But like McDade, Sutherland said that was not important.

"They are setting up every conceivable roadblock but it is so exciting because ultimately there will be a breakthrough . . . and it will have serious repercussions," he said.

Sutherland called his case an example of how the courts are only just beginning to grapple with the systematic abuse of what he called "the common."

The common refers to aspects of the environment which nobody owns but everybody has a right to — clean air, clean water, or, in his case, the right to catch uncontaminated fish.

The law already deals effectively with accidents, such as oil spills or negligence. But the courts have been unwilling to tackle broad issues like a pulp mill which has systematically polluted the common environment.

The conference was opened by Tanner Elton, a consultant to the B.C. Environment Ministry and a UVic law professor, who said the environment as an issue has grabbed hold of society and is forcing the most profound changes this century.

He said the province urgently needs to come to grips with its land-use planning processes and strategy.

As an example of how far behind the province is, Elton said B.C. is the only jurisdiction in North America that has no laws to protect groundwater.

Recently, as we dug through some dusty file cabinets, we came across a news clipping in the *Victoria Times Colonist* dated November 2nd, 1991.

It quotes our Executive Director at the time, Greg McDade. Unlike Americans, he said, "Canadians in general are unwilling to fight things out in court." But, "you are going to see an explosion of litigation in the next four or five years."

Sometimes, the challenges we face as environmentalists living in Canada can feel daunting — from threats to biodiversity, to entrenched environmental racism, to fossil fuel extraction. This news clipping from 1991 is a reminder of just how much has changed — and how much we have accomplished together.

Thirty years ago, it was rare for Canadians to fight for the environment in court — now, Ecojustice is proud to be the 'law firm to the environmental movement,' with over 60 active legal cases, supported by more than 19,000 passionate members.

In 2021 alone, we:

- ✓ Defended wild salmon in B.C. and Newfoundland and Labrador.
- ✓ Brought about Keurig Canada's \$3 million fine for greenwashing its single-use K-cup pods.
- ✓ Cheered the end of thermal coal mining in Canada.
- ✓ Protected vital Ontario wetlands from being paved over.



With your support, we are meeting today's challenges by expanding the scope and impact of our work. It is a pleasure to share a snapshot of Ecojustice's strategic plan for 2021-2025. In the following slides, we're excited to share more about our three core strategic pillars:

And we're far from done.

01

Embed justice, equity, diversity and inclusion – along with Indigenous reconciliation – in our work

02

Maximize the impact of our legal program

03

Ensure that our leadership, resources, and systems support our impact

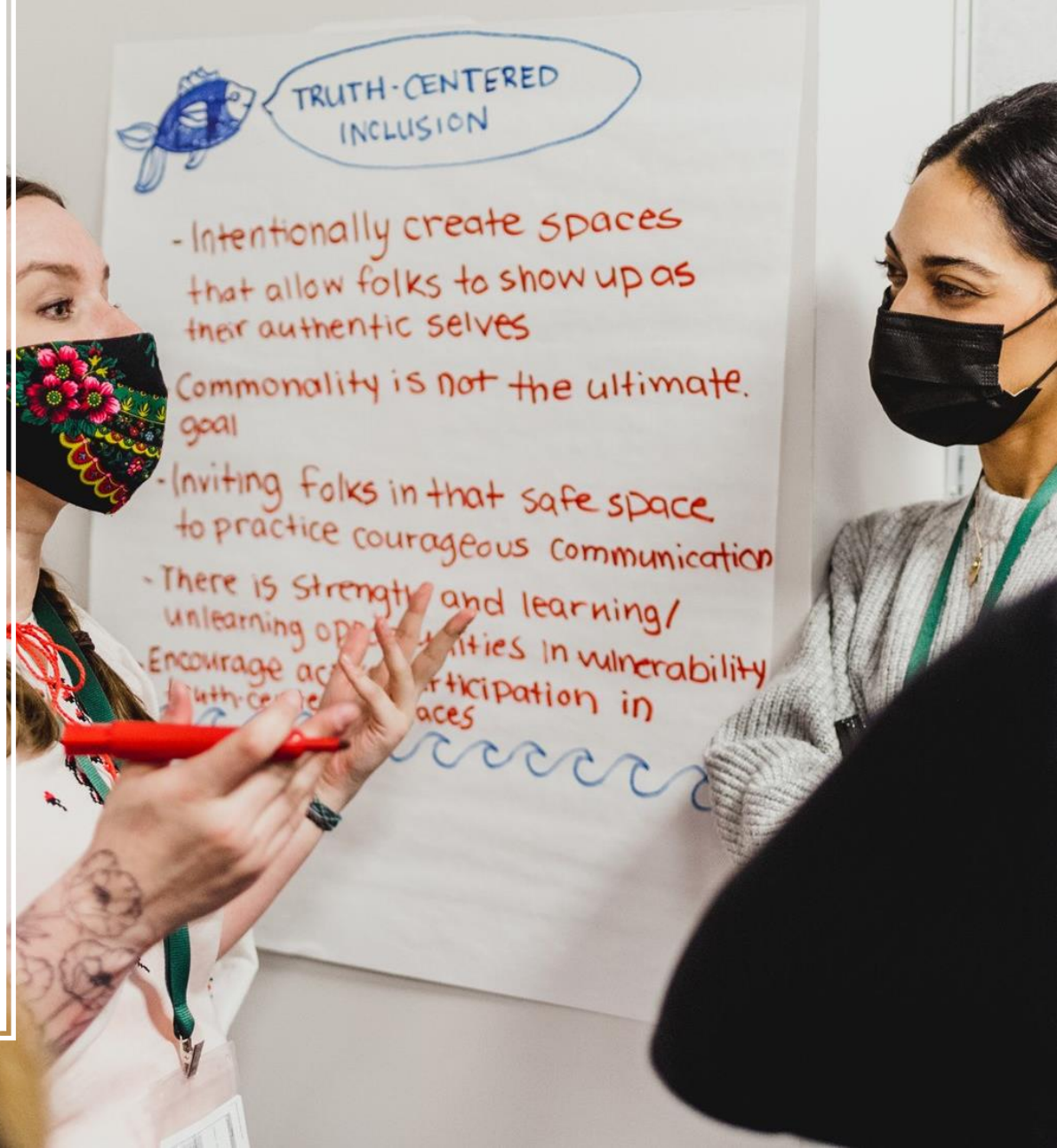
Pillar 1

Embed justice, equity, diversity, inclusion, and Indigenous reconciliation

Between historic flooding in B.C., new fossil fuel projects in Newfoundland, and wildfire smoke in the streets of Toronto, the last two years have been a wake-up call for many Canadians: the climate crisis is happening **now**.

But for racialized and Indigenous communities, the climate crisis has been happening for **decades**.

Although Ecojustice has long fought against systemic environmental racism, our vision for a healthy, sustainable environment is impossible in a world without racial justice and Indigenous reconciliation.



Racial justice is environmental justice.

In Canada, Indigenous and racialized communities face the most severe and immediate impacts of the climate crisis. They are disproportionately impacted by pollutants that spew from industrial plants, abandoned oil and gas wells, toxic waste dumps, and by the destruction of habitat and cultural sites by mining, pipelines and damming projects. **This is what environmental racism and injustice looks like in Canada.**

There's a close relationship between climate crisis, colonialism, and racism. Take biodiversity, for example. Indigenous lands currently make up about 20% of the world's territory – but they contain 80% of the planet's remaining biodiversity. Not only are Indigenous and racialized people bearing the brunt of the climate crisis – they are the most successful stewards of our planet.

We need to own our part, too.

We at Ecojustice honour and celebrate the enduring leadership, resilience, and strength of the many Indigenous Peoples and Nations who belong to this land. While we are proud to be Canada's largest environmental law charity and 'law firm for the environment', we recognize that Ecojustice's success is grounded in our long, positive experience navigating Canada's legal, judicial and Parliamentary systems—colonial institutions, infused with colonial traditions, practices and biases. Historically, the mainstream environmental movement – including Ecojustice – has lacked a diversity of perspectives and lived experiences. This has hindered our ability to achieve justice for all, and to uplift our partners in the wider environmental movement.

How can we move forward together?

There is no pathway to a sustainable, healed planet that does not prioritize justice for Indigenous and racialized communities – who are effective and knowledgeable stewards. It's on us to learn how to be better partners. At home, we are deliberately diversifying our people, our partners, and our culture, to uplift critically-important perspectives. And we are embedding Indigenous reconciliation into our day-to-day work. Putting Indigenous reconciliation and racial justice at the heart of our work makes us more effective partners and allies to the environmental nonprofits, Indigenous groups and communities, and clients who are fighting alongside us for a healthy environment.

Case highlight: Bay du Nord

In Spring 2022, the Minister of Environment and Climate Change approved Bay du Nord, a deeply controversial, \$12 billion deep-water oil and gas project off the coast of Newfoundland and Labrador. Over its lifetime, Bay du Nord is projected to produce between 300 million to one billion barrels of oil, which could in turn generate about 400 million tonnes of carbon — which is the equivalent of the emissions from 7-10 million cars per year.

But this isn't strictly a story about greenhouse gas emissions. Bay du Nord threatens the rights and the health of human and natural communities, as well. On a daily basis, the shipping lanes for these fossil fuels would heavily pollute sensitive marine ecosystems. This deep-water project would involve drilling underwater to a depth of 1200 meters, which is unprecedented in Eastern Canada, and entails a high risk of a catastrophic spill.

And — like every Canadian story about environmental degradation — this is a story about environmental racism and colonialism. These shipping lanes, and the inevitable pollution, violate the cultural and economic rights of Indigenous people to fish in waters they have stewarded for centuries. Although the Charter of Rights and Freedoms places a strict duty on the government to consult Indigenous people before approving major projects, that right was not respected.

To put it another way: when government and industry trample on Indigenous rights, pollution, biodiversity loss, and carbon emissions come with the territory.

In response, Ecojustice has filed a lawsuit in Federal Court to challenge Minister Guilbeault's approval. We're representing Équiterre, Sierra Club Canada Foundation and Mi'gmawe'l Tplu'taqnn Inc., which is a coalition of the 9 Mi'gmaq communities in New Brunswick. In the face of colonial law and industry, fighting for Indigenous rights and fighting for a sustainable planet are two sides of the same coin. We are proud to partner with them in the fight against the climate crisis, environmental racism, and colonialism.

Pillar 2

Maximize the impact of Ecojustice's legal program

Our extensive experience in Canadian courts has taught us that we must reach beyond existing laws if we are going to confront the climate, biodiversity, and pollution crises that we face.

In response, we are tightly integrating our legal, law reform, and communications teams – focusing their expertise on the most pressing and systemic issues.

And we're making ambitious investments to ensure that passionate, dedicated professionals – lawyers, law reform specialists, communicators, scientists, and legal administrators – thrive at Ecojustice.



A complex climate crisis ...

Ecojustice has over 30 years of experience litigating on behalf of the environment. In partnership with our supporters, we're proud of the role we play as Canada's 'law firm for the environment.' At the same time, we recognize that the law has limitations. In Canada, 'environmental law' is a patchwork of overlapping, uncooperative jurisdictions and creaky, often outdated laws. This legal system is riddled with gaps and weaknesses that leave the ecosystems and communities, vulnerable to pollution, habitat loss, and a changing climate.

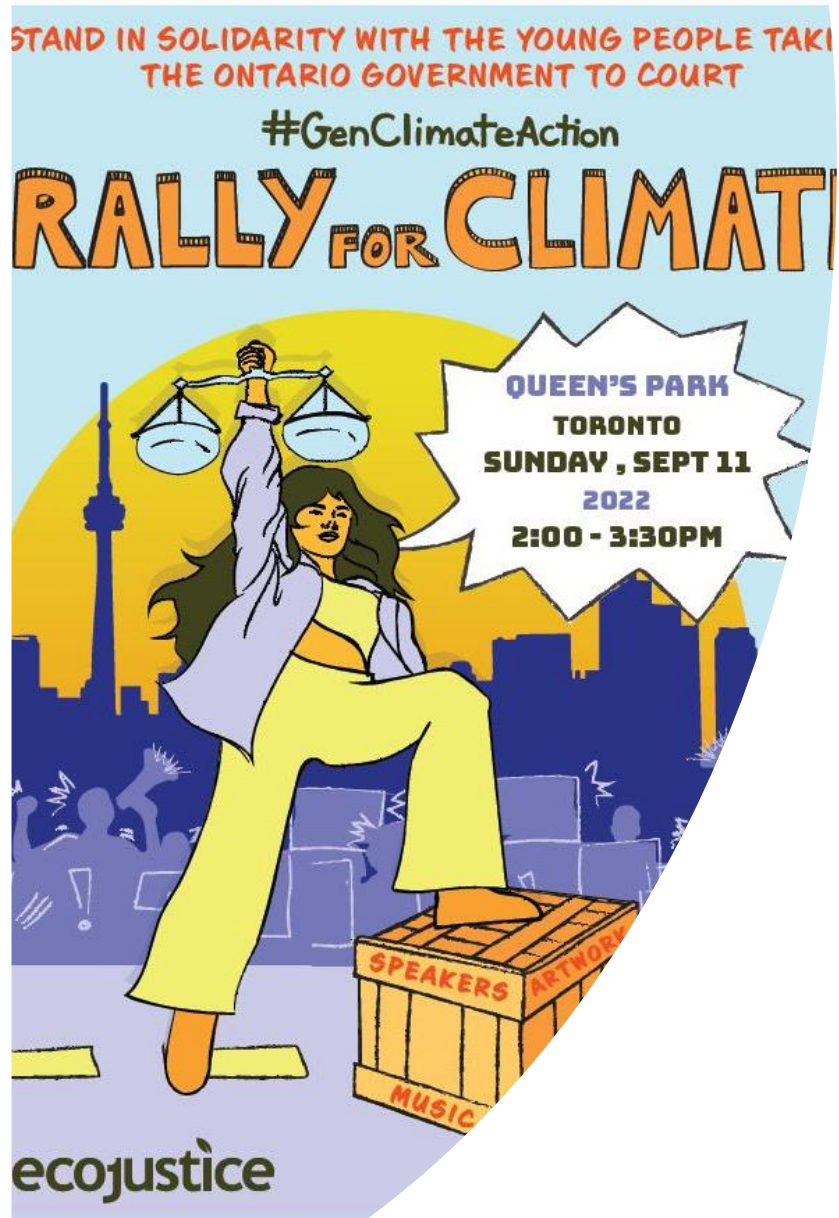
... demands a multi-pronged strategy.

Operating in such a fragmented space requires us to think creatively and strategically. How can we amplify the expertise of all three Ecojustice program teams – litigation, law reform, and communications? How can we work collaboratively to deploy all the tools we have available? Whenever we launch a case, advocate for a bill, or communicate with the public, how can we seize opportunities to have a broader, integrated impact?

An integrated program strategy:

Ecojustice is tightly integrating our litigation, law reform, and communications teams – multiplying our impact by integrating their respective expertise.

- Our litigation practice sets important legal precedents, and it also clarifies the weakest, most problematic areas in Canadian environmental law.
- In turn, our law reform team works to address those weaknesses – conducting policy analysis and advocacy for new legislation. By shaping *new* laws, we create opportunities to strengthen and go beyond existing legislation.
- Following a successful government relations campaign, our litigators can then leverage the new law in the courtroom and set an ambitious precedent for its implementation.
- Finally, our communications team mobilizes and educates audiences across Canada – making key strategic interventions on several levels. They work closely with our partners on-the-ground, amplifying local fights to a national audience. They educate Canadians about dishonest messages from government and industry actors. And they mobilize public pressure at key moments in the legislative process, ensuring that critical laws are passed swiftly.



Case highlight: *Mathur et. al. v. Ontario*

We've been leveraging the combined strengths of our program teams to maximize our impact in a precedent-setting lawsuit that challenges the Ontario government's woeful response to the climate crisis.

In 2018, the Ford government scaled back Ontario's greenhouse gas reduction targets, and has broadly undermined meaningful climate action ever since. These impacts are a threat to all Canadians, but especially to young people – who will bear the brunt of climate inaction.

That's why seven young climate leaders – aged 15 to 27, and hailing from communities across Ontario – courageously launched a legal battle against the Ontario government. Backed by Ecojustice, they argued that Doug Ford's government had violated their Charter rights to “life, liberty, and security of the person” by weakening Ontario's climate targets.

On Sept. 12, 2022, our clients finally had their day in court. At the start of the virtual hearing, each of our clients was introduced to Justice Vermette of the Ontario Superior Court, as well as to the lawyers representing the Ontario government. The government was forced to face just these seven representatives of the generations of young people who will be disproportionately impacted by climate change because of its refusal to act; it was an undeniably emotional moment in the virtual courtroom.

Alongside our litigators, our strategic communications team worked equally hard to seize the opportunity to engage and mobilize Canadians. In an **Ecojustice first**, we hosted a major public rally at Queen's Park on the day before the hearings. We are taking this fight to the courtroom, but we are also mobilizing the public to fight alongside us in the courts of public opinion.



Pillar 3

Ensure that Ecojustice's leadership, resources and systems support our impact

At Ecojustice, staff often joke that fighting the climate crisis in Canada is 'like building the bicycle while you're pedaling.' It's a line that draws a wry chuckle, but let's take the metaphor seriously for a moment. What kind of bicycle are we building together – as an organization, as a community of passionate environmentalists and supporters, as an environmental movement writ large?

We're building a bicycle that's fit for purpose ...

Ambitious litigation, impactful law reform, and compelling public communications are the pedals and drive chain of Ecojustice's advocacy. These are the program strategies that we deploy to hold governments and industry accountable – it's how 'the rubber meets the road.'

But a powerful drive train isn't very useful on its own – imagine attempting a hill climb without a frame, brakes, or tires. At Ecojustice, our impact is only possible thanks to the combined strength of every bicycle component: our leadership, our talented staff, our smart and responsive organizational structure, and the community of 19,000 supporters pedaling alongside us.

... because the hills are only getting steeper.

At Ecojustice, we would love nothing more than to work ourselves out of a job. A world where we become irrelevant is one where Canadian law and policy is aligned with ambitious climate targets; where public funds support a green economy, not the fossil fuel industry; where species at risk are robustly protected and recovering in the wild; where the rights of racialized and Indigenous communities are fully realized.

But these hills are steep, and we can't tackle them alone. What kind of bicycle do we *need*, to achieve the world we know is possible?

Here's how.

Ecojustice is evolving to meet these challenges – to have a greater impact, and to be a more effective, efficient partner.

- At Ecojustice, our team of deeply talented, passionate professionals are key to our success. We are making exciting investments in our people to build our capacity and expand our impact.
- In Canada, Quebec and the North are key environmental battlegrounds, where biodiversity, Indigenous rights, and extractive industries collide. We are working to expand our presence in these regions, and to build meaningful relationships with communities on the ground.
- Ecojustice plays a unique role in the Canadian environmental movement. We do not work alone: as a movement, we have the greatest impact when we collaborate closely. Growing our expertise and capacity means that we can be more effective partners – enhancing the impact of the entire environmental movement.

We are profoundly grateful to partner with you – our community of supporters - in the fight for a brighter environmental future.

Case highlight: Ring of Fire

These investments in our people, our relationships, and our capacity as an organization are enabling us to work effectively with key First Nations partners in northern Ontario – to uphold their inalienable rights, and to protect critical ecosystems from irresponsible development.

The Ring of Fire is a mineral-rich region in northern Ontario, which has been targeted for a massive mining development. This extractive industry would severely degrade the Hudson and James Bay Lowlands, which are covered in the world's second largest peatlands complex – a critical habitat for caribou, fish, and migratory birds.

Peatlands are an extraordinary ally in the fight against the climate crisis. A recent study by WWF-Canada, led by scientists at McMaster University, measured the amount of carbon which is stored in Canada's landscapes. Remarkably, Canada's peatlands store almost 100 billion tonnes of carbon – that's the equivalent of *8 years* of global greenhouse gas emissions. Destroying these lands would turbo-charge the climate crisis, leapfrogging us from 2022 to 2030 in a single bound.

The study also points out that "large carbon stores are often found in Indigenous territories, as a result of millennia of responsible management by Indigenous Peoples." And indeed, elders of the Kitchenuhmaykoosib Inninuwug First Nation, located 580 km north of Thunder Bay, call the peatlands 'the breathing lands.' Mining in the Ring of Fire peatlands would impact the surrounding First Nations' treaty rights, access to traditional lands and resources, and health and well-being.

Ecojustice is currently working with the Mushkegowuk Council, who represent 9 First Nations which are downstream from the Ring of Fire development, as they participate in the regional assessment process for the project. We are fighting for the regional assessment and approval process to be co-governed by the Mushkegowuk Council and the province of Ontario. Although co-governance is legally possible, this provision of the law has never been implemented. Achieving co-governance – and setting a key precedent – would be a remarkable opportunity for Canada to fulfill its commitment to nation-to-nation reconciliation.

Similar to Bay du Nord, extractive industry degrades biodiversity, accelerates the climate crisis, and tramples on the rights and lives of the Indigenous communities which have stewarded an irreplaceable ecosystem – 'the breathing lands' – for millennia. We are grateful that our investments in people, capacity, and relationships have enabled us to broaden our impact, and to partner meaningfully with the Northern communities who know these lands best.

The road towards environmental justice and a safe climate is a long one, and we're grateful that we don't have to travel it alone.

You are standing beside our lawyers and clients in courtrooms across the country.
You are amplifying the voices of those speaking out against environmental racism.
You inspire us with your commitment, at a time when more and more Canadians are feeling the impact of the climate crisis in our day-to-day lives.

As I begin my journey at Ecojustice, I am excited to be part of this amazing community fighting for a brighter environmental future. The momentum is building, and every day we are increasing the rate of change. With your support, I know that Ecojustice will continue to set legal precedents, pass new laws, and be a resounding voice for communities and ecosystems in these next crucial years.

Tracy London, Ecojustice Executive Director



ecojustice