



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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Mr. Tom Pawlick
Chief Editor, CERES
Food and Agriculture Organization of the
United Nations
Via delle Terme di Caracalla
00100 Rome, Italy

Dear Mr. Pawlick:

Please find enclosed my review of the Journal of Environmental Law. My colleague, Steven Shrybman, who is away on holidays this month, asked whether I could do the review and I agreed. We understand you will be paying a fee of \$400 US. A cheque should be made payable to the Canadian Environmental Law Association.

Please contact me if you have any questions. I would appreciate seeing a final version (if edited) before it is printed. The Journal was very interesting, and I would be willing from time to time, to review other books or journals for your magazine.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Toby Vigod
Toby Vigod
Executive Director
TV/sf

Book Review of Journal of Environmental Law

Not so long ago, the Chief Justice of the High Court of Ontario in 1979, spoke that year to students at one of Ontario's law schools, admonishing them to stay away from the practice of environmental law. He went so far as to say that to teach Environmental Law "is a terrible waste of the taxpayers' money, and it's a waste of the guy's life. Environmental Law is about as new as the law of torts. You can learn it all in torts."

How times change! In 1990, environmental concerns are at the top of the public agenda in a number of countries, including Canada. The air and water pollution concerns of the 1960s and 1970s have given way to more complex issues such as biotechnology, global warming and toxic pollution. In each case, legal regimes are being developed and the practice of environmental law is burgeoning. Further, every major world leader in the past few years has donned the green environmental cloak and promised to take steps to protect the environment.

It is into this milieu that the Journal of Environmental Law emerged with its first volume in 1989. It is heralded as the first legal journal published in the United Kingdom devoted exclusively to the subject of environmental law. The Journal quite rightly notes that environmental law is increasingly being recognized as a significant field of legal research and practice. The Editor-in-Chief is Richard Macrory from the Imperial College Centre for Environmental Technology in London. The masthead states that the Journal will encourage innovative and sustained appraisals of current and emerging concepts, policies and practice. The emphasis on analysis is a welcome one, as is the stated intention to encourage multidisciplinary input of material relevant to both academic and practicing circles.

The first issue tries to offer something for everyone- and it works well. Appropriate for the Journal's debut, are two overview articles on environmental law. The first is entitled "The Open Society, its Lawyers and its Environment" by Ludwig Kramer, from the European Commission. He talks about the general consensus among environmental lawyers that the principle of preventative action should govern the setting of standards and that intervention should take place where there are reasons to believe that damage will occur-even without full evidence. Mr. Kramer also discusses a number of preconditions necessary to deal with environmental matters in an open society. The first is access to environmental information, which he admonishes Western European countries for the present 'mafia of silence.'

Kramer's second condition for a more open society is the need for public participation in environmental decision-making, to restore some of the checks and balances in the setting of standards. The author then goes on to challenge environmental lawyers to be

preventive, innovative and active. He recognizes that ensuring our survival and that of future generations demands changes in attitudes-particularly those of lawyers.

The other overview article is by Professor Gerd Winter from the Centre for European Legal Policy, University of Bremen, West Germany entitled "Perspectives for Environmental Law- Entering the Fourth Phase." Professor Winter's four phases can be placed in an historical context and deal with the relationship of humans and nature.

The first is a cyclical economy where man primarily uses renewable energy resources, produces wastes which are primarily organic and consumes little. The second phase is the exploitation of nature by man which leads to an enormous waste of non-renewable energy sources, increased use of chemical products as pesticides or fertilizers and utilization of nature as a huge depository for toxic pollutants. In this phase, environmental laws merely assure the rights of exploitation and the efficient allocation of natural resources. Police powers to protect the environment are only invoked when a broad tolerance limit is exceeded.

The third phase which emerged after years of degraded air and water, is referred to as the planned management of nature phase. Here environmental allocation law becomes environmental protection law. Professor Winter notes that while phase three may sound very progressive, there has been very little success in dealing with emerging environmental problems. He says we are now in the fourth phase; an interlude of thinking about new solutions. In this phase, the author says that a reorientation is necessary and concludes that all law must become environmental law where environmental considerations become part of the development of other laws and policies. It is hoped that these themes are pursued in upcoming issues of the journal and that mechanisms for integrating environmental concerns into economic planning are examined.

In addition to the two overview articles, there are three articles which focus on specific environmental issues: water pollution, radiological risks and marine oil pollution offences. These articles deal with recent developments in case law and legislation in the United Kingdom. The Journal then reproduces the judgments from four recent cases- three in the United Kingdom and one from the United States with a detailed analysis following. This approach is extremely useful to practitioners and it provides an opportunity to learn about cases before they are reported elsewhere. A Materials section then follows where various new laws and international protocols are reproduced- again material that is of value to those in the field. A book review section is provided.

The first issue also provides a listing of US Environmental Law looseleaf services, treatises, news services, document services and

journals. The US has seven journals devoted to environmental law, the earliest, the Ecology Law Quarterly from the University of California, Berkeley published its first issue in 1971. These journals focus largely on developments in US environmental law. It is clear that the Journal of Environmental Law can fill a niche in addressing developments in domestic environmental law in the United Kingdom.

The editors of the Journal also state that they welcome comparative articles. If the editors pursue this approach, the Journal should appeal far beyond the United Kingdom. As environmental practitioners it is extremely valuable to hear about leading edge developments in how other jurisdictions deal with environmental issues. For example, our office found it very difficult to locate legal precedents in other countries to address the issue of excess packaging. The Materials section of the journal would be a good place to reproduce progressive environmental legislation from other jurisdictions. While other journals cover off the area of international environmental law, a discussion of innovative domestic law from other countries would be welcome.

The one drawback of the Journal is the price. US \$80 or £40 for two issues a year is prohibitive to public interest groups with a limited budget, especially those in the third world. Perhaps in the future the editors might consider a special public interest rate.

Toby Vigod, B.A., LL.B. is Executive Director of the Canadian Environmental Law Association, a public interest environmental legal aid clinic located in Toronto, Canada. She also teaches the Environmental Protection Law course at the Faculty of Law and an Environmental Policy Course at the School of Public Administration, Queen's University, Kingston, Ontario, Canada.