

Carbon Pricing & the Constitution

Professor Jocelyn Stacey

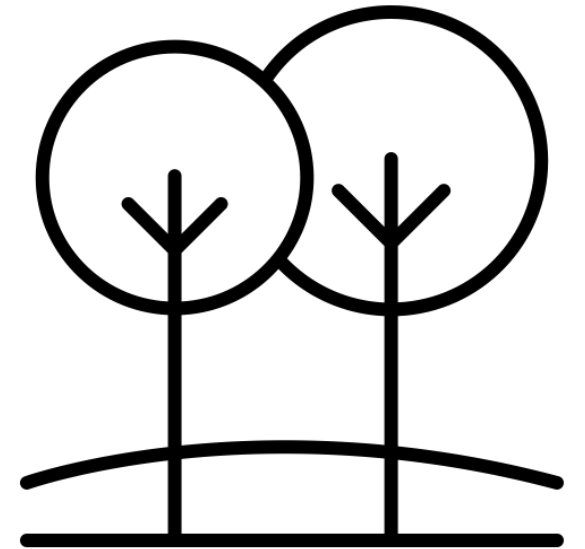


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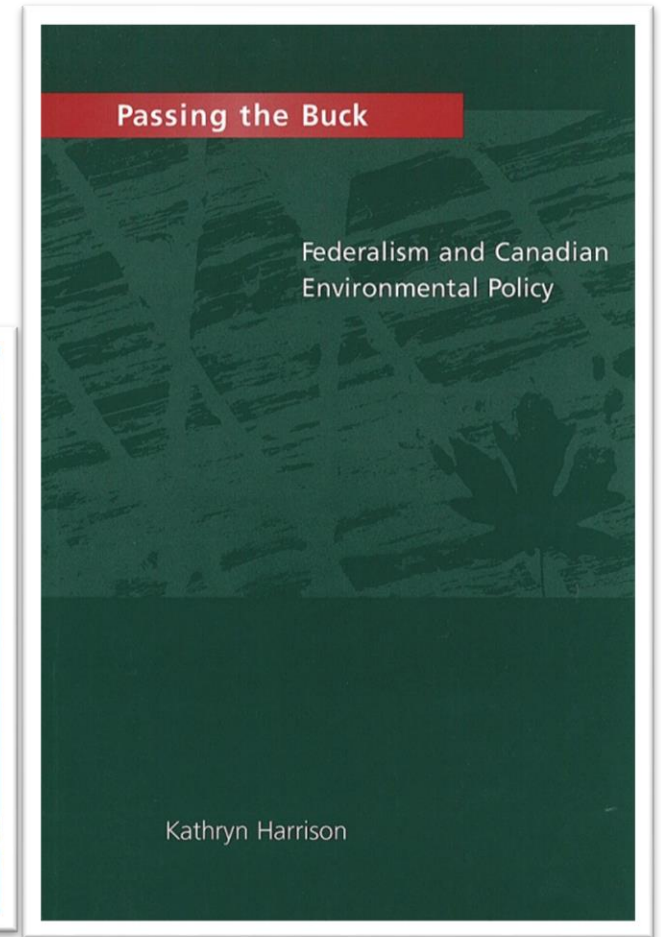
THE UNIVERSITY OF BRITISH COLUMBIA

Outline

1. Environmental law significance
2. Environmental law aspirations:
 - Hold the Line
 - The Stewardship Shift

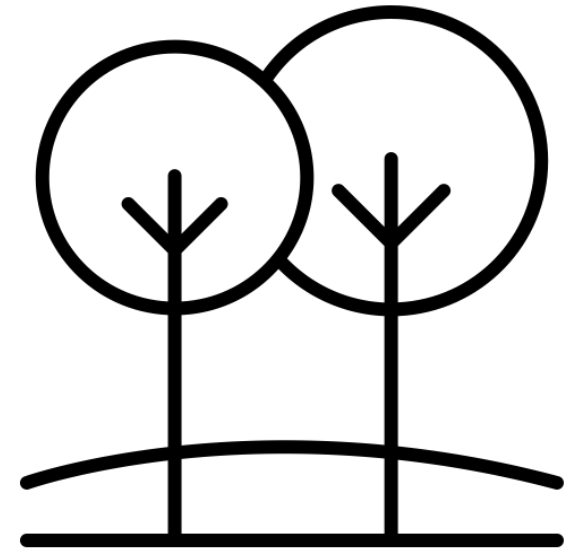


Canadian Environmental Law



Environmental Federalism

- *Crown Zellerbach* (1988)
- *Friends of the Oldman River* (1992)
- *Hydro-Quebec* (1997)
 - *Spraytech* (2001)
 - *Orphan Well* (2018)



Hold the Line

“The all-important duty of Parliament and the provincial legislatures to make full use of the legislative powers respectively assigned to them in protecting the environment has inevitably placed upon the courts the burden of progressively defining the extent to which these powers may be used to that end. In performing this task, it is incumbent on the courts to secure the basic balance between the two levels of government envisioned by the Constitution. However, in doing so, they must be mindful that the Constitution must be interpreted in a manner that is fully responsive to emerging realities and to the nature of the subject matter sought to be regulated.”

Hold the Line

- POGG – National Concern
- POGG – Emergency
- POGG – Gap
- Criminal Law, Trade & Commerce

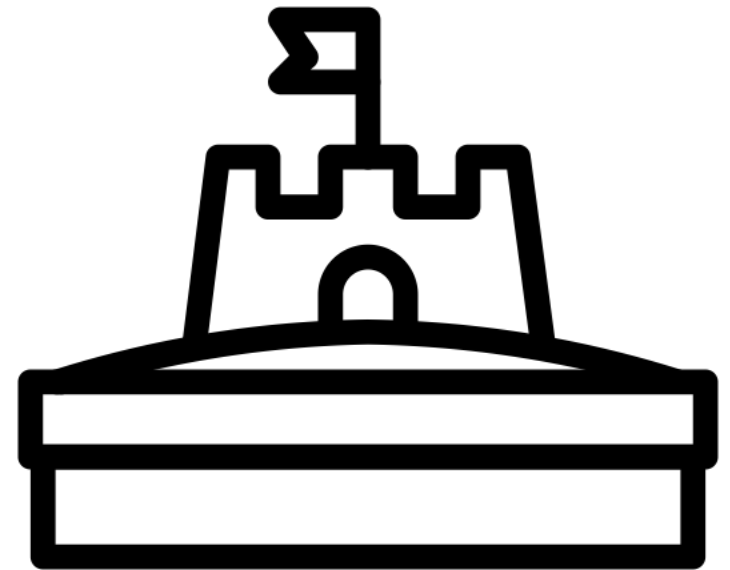
“GHG emissions, when viewed as marine pollution, present the same extra-provincial and international character and implications as the forms of marine pollution listed as prohibited and restricted substances regulated by the Ocean Dumping Control Act in Crown Zellerbach.”

Factum, Oceans North Conservation Society

The Stewardship Shift

“With great power comes great responsibility.”

- Stan Lee (the Peter Parker principle)



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The Stewardship Shift

- Living tree doctrine
- *Charter*: Life, liberty & security of the person (s 7) and equality protection (s 15)
 - Children and future generations
 - Women
- Aboriginal and Treaty Rights (s.35 *Constitution Act*)

“Given the gendered implications of climate change, the division of powers must be interpreted in a manner that enables Parliament and provincial Legislatures to concurrently use the full extent of the legislative powers assigned to them in the Constitution to reduce GHG emissions. To do otherwise risks rendering equality rights formalistic and hollow.”

Indigenous jurisdiction & climate change

“Indigenous Peoples have inherent rights of governance over and in respect of their territories. No resolution of the present matter can be complete without making room for the exercise of these rights.

- Factum for the Council of the Haida Nation, *EMA Reference*