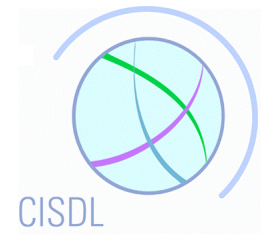


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## **PROPOSAL**

### ***‘Judicial Education on Environment and Sustainable Development Law in Canada’***

**A proposal for a CISDL – CIAJ – NJI course  
in environment and sustainable development law for Canadian judges.**

Approved by:	<b>CISDL Directors, McGill University</b>
Contact:	Marie-Claire Cordonier Segger Centre for International Sustainable Development Law

The Centre for International Sustainable Development Law (CISDL) is based in the McGill University Faculty of Law. Its mission is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. CISDL works in cooperation with the McGill School of the Environment, the Université de Montreal Faculty of Law, and the Université de Québec à Montreal. It has guidance from the three Montreal-based multilateral environmental accords (the NAFTA Commission for Environmental Cooperation, the UNEP Biodiversity Convention, and the Montreal Protocol multilateral fund). It is the leader of a 'Type II' Outcome from the World Summit for Sustainable Development, in partnership with the International Law Association and the International Development Law Institute, to build knowledge, analysis and capacity on international law for sustainable development.

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## **Draft Proposal for Canadian Judicial Education:**

### **Environmental and Sustainable Development Law**

Environmental law, and law in the field of sustainable development, is one of the fastest growing and most complex fields at the national, provincial and international levels. 30 years ago, the field almost did not exist. Now, there are over 500 international treaties, many of global significance, and thousands of domestic regulations and laws on the municipal, provincial and federal levels simultaneously.

It is proposed that this course be developed to address the educational needs of Judges dealing with cases where environmental priorities need to be balanced against social and economic issues, cases which raise complex environmental science or economic policy issues, legal disputes arising out of recent developments environmental law and appropriate remedies, administrative review of complex environment or sustainable development laws, and the domestic application of international law in the field of sustainable development.

The National Judicial Institute with the support of a planning committee of judges and other experts, and a partnership with the Centre for International Sustainable Development Law (CISDL), an international research centre involving senior judges, academics and lawyers, propose to develop a series of seminar designed to provide judges in Canada and potentially, in developing countries, with an understanding of recent advancements in environmental and sustainable development law, and an opportunity to consider the scientific and legal issues, from environmental, economic and social viewpoints, raised by the major provincial, national and international developments in this field.

The course could include modules on:

#### **1. Sustainable development, Ethics and the Law.**

A seminar for a restricted number of judges, scientists, ethicists and legal scholars that enables participants to learn about recent advancements in environmental science and economics; provincial, national and international law and guiding principles relating to sustainable development; how to manage and address the interests of future generations in decision making today; and to discuss, in small group sessions, the issues raised by a number of hypothetical case situations.

*Hypothetical problems which could be tested by the participants include:*

- A Charter challenge to a law imposing a heavy consumer tax on Sport Utility Vehicles (SUVs), as part of a legislative scheme to help meet Canada's international commitments under the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change.
- An administrative review of the provisions of the Species at Risk Act (SARA), as these impose controls on development projects that risk degrading the habitat of an endangered or vulnerable species. These developments might even inadvertently provide access for others to steal and export these species. A defense might draw upon domestic legislation enacting the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), and recent decisions evoking the precautionary principle.

- A civil case between an aboriginal band council and a pharmaceutical and agri-business company, whereby the plaintiff accuses the defendant of having appropriated traditional knowledge concerning land use management practices and collective intellectual property rights concerning plant-based medicines, whereby one relies on Canada's international commitments under the 1992 United Nations Biodiversity Convention, and Benefit Sharing Covenants between other communities and companies to indicate current industry practice.

This seminar can be offered several times in different locations, and can be adapted and delivered, on request, at the court level.

## **2. Environmental and Sustainable Development Law in the Courtroom**

Environmental law is one of the most complex and fastest growing areas of legislation with shared jurisdiction at provincial and federal levels in Canada. A computer taught course can use two or three issues in environmental law to enable judges to acquire information about recent environmental law developments, including relevant aspects of social and economic law where these intersect, questions of legal standing, administrative or constitutional review of complex new environmental legislation, the most appropriate remedies, and other kinds of legal issues that are brought before the courts.

## **3. Courts International 'Working Conversations' on Sustainable Development Law**

A series of three seminars with three overall objectives: to identify and characterize the tools that courts will need for managing sustainable development cases related to the interests of future generations in 2010 and 2020, how to implement the Johannesburg Principles of Global Judges in developed and developing countries of the world, and to determine the best means to continue and reinforce a meaningful dialogue on sustainable development law involving the world's independent court systems. These seminars or National and Regional Judges Workshops can take place in different countries and involve communities of judges, environmental scientists, economists and other experts as well as Federal Courts which are part of the UNEP Global Judges Programme.

## **4. Education Modules on Sustainable Development**

A number of educational modules and capacity building manuals on issues of sustainable development and the law can be developed and made available for court-based programming. These could include issues such as:

- Civil and common environmental law for judges
- Sustainable development principles for judges
- Climate change, emissions trading and clean energy technologies
- Biological diversity and traditional knowledge
- Trade and investment law, the environment and development
- Eco-labelling, certification and lifecycle analysis
- Corporate social and environmental responsibility
- Persistent organic pollutants and prior informed consent
- The precautionary principle, and the principle of prevention
- Civil society participation in sustainable development law-making

