

Greg McDade, QC

BY PENNY CHOLMONDELEY

When it comes to the environment, Gregory McDade pulls no punches. “I think the battle for climate change is largely lost. Our kids will inherit a very different world than the one we live in.” Spoken by one of Canada’s top environmental lawyers, these words must not be taken lightly.



For four decades, McDade has fought the good fight, working on some of the most important environmental law cases in Canadian legal history. Along the way, he gained the experience and wisdom to back up his grave prediction. He was the first executive director of the Sierra Legal Defence Fund (now Ecojustice) and handled seminal cases for clients like Greenpeace Canada, the Canadian Parks and Wilderness Society, and the Canadian Environmental Law Association. He has witnessed the changing tides of the environmental movement and has relentlessly argued that to bring about meaningful change, the system itself must be transformed.

As a young environmentalist, McDade believed the law was the most effective way to make an impact, and in 1975, he moved from Alberta to attend UBC Law. UBC had a reputation as a corporate law school and McDade expected to exist on the fringes. When he arrived, he was astonished to discover that the law school had an active environmental law club.

“I was surprised by how many law students were like me—students who went to law school with the hope of changing the world. I liked law students and law school a lot more than I expected to... To pat UBC on the back, British Columbia has been a dominant force in environmental law in the country and has engendered an awful lot of lawyers who are at the forefront of Aboriginal, environmental, and social justice law cases.”

By his final year of law school, the ambitious environmental law club transformed into the West Coast Environmental Law Association (WCELA), of which McDade became executive director. The association championed environmental causes through advocacy, law reform and research. The dominant issues at that time were pesticides and pollution. “Almost all the great environmental laws—the Clean Air Act and the Clean Water Act in the US, for instance—were passed in the early seventies. There was great public concern for the environment back then, but it was about toxins, pesticides, and clean water and air.”

For three years, the WCELA ran primarily as a summer program utilizing UBC law students and government funding, with McDade acting as the sole administrator in the winter. They offered a collective approach to environmental issues, something McDade still ardently supports. Relying on individual lifestyle choices to fix environmental problems is an approach doomed to fail, he says.

“In the environmental field we talk about the tragedy of the commons, which means everybody has an equal common interest in protecting the environment but an individual self-interest in exploiting it. The only answer to the tragedy of the commons is to have a collective approach to environmentalism.”

In 1990, McDade took over as executive director of the Sierra Legal Defence Fund (SLDF). Recognizing that accessing the legal system requires money, the SLDF offered free legal representation for environmental groups across Canada.

"One of the consequences of the tragedy of the commons is that those people who want to destroy the environment or avoid protecting it are the ones who can afford to hire lawyers. Those people who want to protect the environment have no financial stake in it. So they can't pay for lawyers... The only way you can have lawyers who protect the collective interest in the environment is to have organizations like West Coast Environmental Law and Sierra Legal Defence Fund that are funded commonly."

Under McDade's leadership, the SLDF tackled defining cases in Canadian environmental law. During the 1990s the great environmental battles centred on wilderness, forestry, and endangered species and wildlife habitat. In *Friends of Oldman River Society v. Canada (Ministry of Transport)* (1991), a Supreme Court of Canada decision that established enforceability of Canadian environmental assessment, the SLDF acted as an intervener. In *Greenpeace Canada v. MacMillan Bloedel* (1996), the SLDF represented Greenpeace Canada in the Supreme Court of Canada over the 1994 public protests against logging operations in BC's Clayoquot Sound.

"Environmentalists began to use the courts in a much more creative way," McDade explains. "They began to have more impact on the political debates and learned to fundraise more effectively. The size and the power of the various environmental groups increased dramatically over the course of that decade."

The group also developed critical relationships with First Nations on environmental issues. When McDade left SLDF in 1997, his experience working with First Nations helped him secure a position with Ratcliff and Company LLP. He was appointed Queen's Counsel in 1996, and is now Managing Partner and a senior litigator. He works primarily in Aboriginal law, but has not abandoned the practice of environmental law.

"I have been able to accomplish as much or more in terms of environmental protection in my work with First Nations than I ever did working as a public interest environmental lawyer," muses McDade.

He cites *Haida Nations v. British Columbia* (2004), which established the duty of consultation with First Nations, as an example of a Supreme Court of Canada case that was both an Aboriginal rights case and an environmental law case. "First Nations have a collective view of property and see self-interest in protecting the land. They will pay for lawyers to fight environmental battles that protect the land and the wildlife and the fish... And they have legal rights. I find dealing with environmental rights with my First Nations clients to be a much more satisfying experience and hopeful way of resolving things."

Despite inroads made in Aboriginal law and increased media attention on the climate crisis, McDade laments that the environmentalists of his generation must recognize they have largely failed to turn society

around as needed. "We've tried to build awareness of these problems, and we have, but awareness hasn't changed the trends of society... As long as we are consuming so much more than the environment can possibly support, we're in deep trouble."

The irony is that many of the mechanisms for change are actually in place. He points to Canada's Fisheries Act and the Canadian Environmental Assessment Act as two powerful pieces of legislation that could make a tangible difference in Canada's response to climate change and environmental issues. The problem is a lack of application and enforcement.

"I think that the government is responding in a partial and inadequate way, and I think most politicians know it... But it's what the voters want them to do. Most voters don't want to make the necessary lifestyle changes and will punish any politician who tries to make them."

As for individuals and organizations committed to living in balance with nature and protecting the planet, McDade believes they still play a role. "It's fighting a holding battle," he explains. "A small percentage of people are working and dedicating their lives to it, and eventually they'll knock away at it. Where would we be without poverty activists? Where would we be without anti-smoking activists? Those activists don't have the power to change society because, by definition, they are a very small minority. But they do have the ability to stop society from making really huge mistakes."

If the war on climate change is lost, and environmental movements of the past four decades have failed, what keeps McDade going? "There are choices we make about how we are going to spend our lives that define who we are as people. Environmental issues are the greatest risk to us and our way of life, and what has become the highest quality of living for humans in all of civilization. If we want to preserve that, we *have* to be environmentalists."

"In the environmental field we talk about the tragedy of the commons, which means everybody has an equal common interest in protecting the environment but an individual self-interest in exploiting it. The only answer to the tragedy of the commons is to have a collective approach to environmentalism."