WE ARE DESTROYING THE EARTH FOR VANITY:
An Interview with Bev Sellars

Deborah Curran

Bev Sellars is a member of the Xatśūll First Nation (in whose territory the Mount Polley Mine operates) and was Chief at the time of the Mount Polley tailings storage facility disaster. Bev is also a former leader of First Nations Women Advocating for Responsible Mining (FNWARM). Xatśūll First Nation members are part of the Secwépemc society and cultural group of seventeen First Nations. This commentary is drawn from a conversation between the authors on 30 August 2023 about the Mount Polley Mine. Deborah Curran is professor in the Faculties of Law and Social Sciences (School of Environmental Studies) and executive director of the Environmental Law Centre (ELC), at the University of Victoria. Students in the ELC Clinic course and staff lawyers worked on several files related to the environmental impact of the Mount Polley tailings storage facility failure. Thanks to Patrick C. Canning for providing the legal record of the private prosecutions for our use.

In each interview segment Bev raises substantive and systemic issues concerning the operation of Canadian law and the ongoing impacts of colonialism. We have included commentary and quotes from other initiatives and investigations to highlight ongoing efforts to assess and address these impacts. Ultimately, the failure of the Mount Polley tailings storage facility is a symptom of the inadequate attention paid to relationships of socio-ecological health and the environmental, economic, and cultural injustices borne by Indigenous Peoples.

Bev Sellars: I know exactly when I saw the Mount Polley Mine for the first time. We were out at Quesnel Lake, and we went up to, they call it Spanish Mountain now, but the Elders have another name for that mountain. And we went up there and we were picking berries. When we got out I looked across the lake, and there was that mine. Mount Polley Mine. It was when I was away at UVic and UBC that they put it in there, and so when I got back to the community there was this huge blight on the landscape. I can't remember who was Chief at that time,

but I made some inquiries about it and it seemed like they were a little surprised too. The whole referral process should have made someone at the Nation aware. Maybe the company did have some little box that the Band had to tick or something like that. But yeah, that's when I was made aware of it, but we were more concerned about the Gibraltar Mine growing at that time.

> Most of the engagement [with Indigenous Nations] is triggered by … the duty to consult and accommodate required through Canada's constitutional recognition of aboriginal and treaty rights, and engagement under specific statutes such as the EA [*Environmental Assessment*] *Act*. Both of these processes for consultations are activated by actual proposals for mining activities after mineral claiming and exploration have occurred. There are two structural problems with locating engagement at this stage.
>
> First, the mine permitting and EA processes are incapable of assessing whether or not it is appropriate to locate a mine in a specific location. Mineral tenure is a fundamental issue that is often addressed for the first time at the EA stage and environmental assessment is not typically designed to examine if a particular site will ever be appropriate for a mine based on Indigenous knowledge, laws, and customs. Instead, environmental assessment is largely concerned with under what conditions it is acceptable to operate a mine in the proposed location. True influence by Indigenous peoples would address the threshold question of mineral tenure and location of extraction activities well before any mine permitting or an environmental assessment for a specific project arises.
>
> The second structural problem is that once a mine is operating there are not necessarily ongoing state government decisions that trigger a duty to consult either based on aboriginal or treaty rights or by statute. The Indigenous communities that feel the impacts of operating, closed, or abandoned mines do not have transparent avenues through which their concerns can be lodged and addressed. (Allard and Curran 2023, 8)

Bev Sellars: When I was Chief the Mount Polley Mine wasn't really on my radar. There are so many things that you're dealing with when you're Chief. They were after us to sign a participation agreement – I think that's what they called it – as were other mining companies, and we weren't

interested in it at the time. I think we had a few meetings with them. But it wasn't until our concern about Gibraltar Mines really heightened that we signed something. That's how we got that participation agreement with Mount Polley because we were worried about Gibraltar Mines but we didn't have any money. And that's the thing about these extraction companies – they use Indigenous poverty against us. We were worried about Gibraltar Mines, Mount Polley was offering us a participation agreement, and so we held our nose, signed the participation agreement to get the money, but we were looking at using the money to hire the experts that were needed for dealing with the Gibraltar Mine. It was not too long after that that the Mount Polley disaster happened.

> On one view of IBAs [Impact Benefit Agreements], Indigenous communities are exercising jurisdictional autonomy as self-determining nations when they negotiate directly with industry toward goals of economic self-reliance. Critics, on the other hand, say that the agreements, because they are "one-offs," confidential, and have no minimum requirements, undermine the practical ability of First Nations to determine desired land uses for themselves and instead leave them to "self-determine" within the very narrow confines of extractive capitalism and a wage economy. But in the end, it is clear that the opportunity to negotiate a deal represents a chance for a community to "not only gain economically ... but also affect the trajectory and scale of development" – an outcome that is hard to otherwise come by through the settler state's public law framework.
>
> And there is the rub: the fundamental problem is that the Indigenous communities whose lands are threatened by extractive projects are not recognized as holding the jurisdiction to decide whether or not permits should be granted in the first place. Strictly considering the current state of doctrine in settler law today, notwithstanding the adoption of the [United Nations Declaration on the Rights of Indigenous Peoples], the idea of [free, prior and informed consent] FPIC – and conversely, the possibility that "no" could mean "no" – is not yet a feature of the public law regime in Canada. (Scott 2020, 277)

Bev Sellars: I was in Vancouver when the disaster happened and I saw it on Facebook. I thought it was one of these fake things. I didn't believe it. Willie Sellars, who is now the Chief of the Williams Lake First Nation and was a councillor then, phoned me and said, "Bev, did you see what happened at Mount Polley"? And I asked him, "Is that real? That

actually happened?" Because it seemed too much and I didn't believe that it could happen. I thought somebody knows how to manipulate pictures. Anne Louie, who was the Chief of the Williams Lake First Nation at the time, phoned me and let me know they were having an emergency meeting at her community the next day. So we rounded up our people in our community and brought them over to Williams Lake First Nation for this emergency meeting.

> The preceding account is in many ways a story of too little, too late. From the beginning, dam raising proceeded incrementally, one year at a time, driven by impoundment storage requirements for only the next year ahead. More reactive than anticipatory, there was little in the way of long-term planning or execution. This was most clearly displayed by the absence of an adequate water balance or water treatment strategy, and the overtopping failure that nearly resulted. Moreover, the related absence of a well-developed tailings beach violated the fundamental premise of the design as a tailings dam, not a water-storage dam. (Independent Expert Engineering Investigation 2015, 75)

Bev Sellars: At the meeting everybody we know got up, and all of the Elders they got up there and they were crying when they were talking about it because around the Quesnel Lake area the first thing that came to mind was that the salmon were swimming up the Fraser River at the time where we catch our fish, which is connected to Quesnel River and Lake. People quit fishing. They wouldn't fish in the river because they didn't know what was in those millions of gallons of effluent from the tailings pond. We didn't know. Elder after Elder at the meeting got up and they were crying, talking about the spill, and thinking about the whole area. They knew the salmon were swimming up the river and I think it's the second biggest spawning area after Adams Lake, and they were wondering what was going to happen with all the salmon and with all the fry in the lake, as well as all the other fish. Quesnel Lake is an area where we get certain medicines and certain berries and cedar. We don't have it in the other part of our territory. It's like there was a real death in our communities. We just didn't know what was happening.

> The Mount Polley mine disaster released a huge quantity of metal-contaminated mine tailings into surrounding freshwater ecosystems. Although contaminant concentrations were highest immediately after the breach and have been falling ever since, sites are still contaminated several years after the initial event. [R]esults from this study indicate

> that Cu [copper] and Al [aluminum] are bioavailable to mayfly larvae [*Ephemeroptera*] and Cu is bioavailable to H. azteca [freshwater scuds, *Hyalella azteca*] even four years after the initial breach. Our study suggests that sediment, not overlying water, is the likely source of potentially toxic contaminants.
>
> Benthic invertebrates comprise a significant source of nutrition for some fish species. Future studies should examine the ecological considerations for ongoing metal contamination in this system … metal-contaminated macroinvertebrates could serve as a significant source of metals to fish populations … Much more research is required to fully understand the full extent of the ecological ramifications of this significant mine disaster. (Pyle et al. 2022, 70393–94)

CUMULATIVE IMPACTS IN *YAHEY V. BRITISH COLUMBIA (2021)*

The Blueberry River First Nation challenged the Province of British Columbia's ongoing approval of industrial and other activities in its 38,000 square-kilometre traditional territory in the Peace River area of northeastern British Columbia. In determining the overall scale of disturbance and development in Blueberry Territory from oil and gas, forestry, agricultural, and mining activities approved by the province, the Court relied on evidence that, in 2018, 80 percent of the Blueberry Claim Area was "disturbed when a 250-metre buffer was applied," and 91 percent with a five-hundred-metre buffer (at para. 906). In the 2021 court decision *Yahey v. British Columbia*, Justice Burke found that the Province of British Columbia's continual approvals of industrial development and failure to develop an effective cumulative effects framework infringed Blueberry's treaty rights (paras. 3 and 1809). Despite having notice of Blueberry's concerns for nearly a decade, the province failed to develop an adequate mechanism for assessing and managing cumulative effects, continuing to allow significant industrial development and infringing Blueberry's treaty rights. This case is the first to specifically assess the infringement of Indigenous rights in the context of cumulative effects arising from a variety of provincially authorized activities, and from the impact of entire regulatory regimes rather than on a project-by-project basis.

> The Province has not, to date, shown that it has an appropriate, enforceable way of taking into account Blueberry's treaty rights or assessing the cumulative impacts of development on the meaningful

> exercise of these rights, or that it has developed ways to ensure that Blueberry can continue to exercise these rights in a manner consistent with its way of life. The Province's discretionary decision-making processes do not adequately consider cumulative effects and the impact on treaty rights. (*Yahey v. British Columbia*, 2021, paras. 3 and 1809)

Bev Sellars: We heard there was going to be a meeting out at Quesnel Lake right after the disaster, so we gathered up everybody at the community meeting and we went out to Quesnel Lake right at Likely. When we arrived we saw Christie Clark [the premier of British Columbia at the time] was there. Nobody had let us know! The mine hadn't let us know. The province hadn't gotten a hold of us. The president of Imperial Metals was there too and they were trying to make it out as if the tailings storage pond failure was just like an avalanche, like a snow avalanche. But we could see that it was just unreal. And then we started demanding answers. Chief Louie and I were after the government, and that was when John Horgan came up there, he was in opposition at the time. He was walking with me and said he was going to do everything in his power to make them accountable. That lasted only until he got in as premier. I encouraged people to vote for him because I thought he was good for what he said but he didn't do it.

> For example, in 2016 the Auditor General of BC found that the regulatory compliance and enforcement activities of the provincial Ministry of Mines and Ministry of the Environment were inadequate. Noting that the Ministries' behavior has increased environmental risk and limited the state government's ability to protect the environment, the Auditor General recommended that the compliance and enforcement functions be removed from the Ministry of Mines which is also responsible for promoting mine development …
>
> The Auditor General criticized the absence of a compliance and enforcement program in the EA Office, noting a failure to ensure adherence with EA certificates, carry out site inspections and issue penalties or cancel EA certificates. The Auditor General also found that the Ministry of Mines' focus was predominantly on project applications and was under high risk of regulatory capture by the mining industry …
>
> BC advertises itself as "the ideal business environment for extractive industries" and is home to the largest concentration of mineral

> exploration and mining professionals in the world, with over 700 having Vancouver as their global operations base. With 72 major developed mine sites across BC [now 78] and 16 environmental assessment processes underway, the estimated value of production in 2019 was $8.8 billion, with $423 million in exploration spending in 2020. Mining exports increased by 139 percent between 2013 and 2016. (Allard and Curran 2023, 6, 9, 3)

Bev Sellars: So, the First Nations got a bilateral table with the BC government and we got Dave Porter who was the head of the First Nations Energy and Mining Council at the table with us. He really guided us through what we needed to do. He was one of the first people that phoned me when that disaster happened and offered his help. We ended up getting a letter of understanding with the BC government. We kept going to meetings – Anne Louie and I and our people – we kept going to meetings trying to get government to hold Imperial Metals accountable, and then we went to the information sessions that the mining company was having out at Likely and they were just so frustrating. They didn't have a disaster plan; they just had this guy who was so smooth I kept telling people that he was their disaster plan. I really wish that I hadn't stepped down as Chief in 2015 for personal reasons because the government stopped the First Nations Energy and Mining Council from being at the table and then it just didn't go anywhere. I think we could have really done something. But the people that took over didn't insist that Dave stay at the table. They just let the government make him walk away. During that time and with the letter of understanding was where we could've really made some headway because it talked about the mining laws in BC, [saying] that they needed to be reformed, and I don't think they have been.

> Chief Bev Sellars, Soda Creek Indian Band (Xatśūll First Nation): "Until now, there has not been the level of cooperation and collaboration required between the provincial government and our nations to adequately respond to the Mount Polley mine disaster. Not only does this agreement commit our respective governments to joint oversight and decision-making in regards to all aspects of response to the Mount Polley mine disaster, it also allows First Nations and the provincial government to begin a necessary conversation about the adequacy of existing laws, regulations and policy in regards to the overall mining sector in British Columbia." (Province of British Columbia 2014)

> Chief Ann Louie, Williams Lake Indian Band: "This letter of understanding is only the beginning of a process for mining reforms in British Columbia. The provincial government bears the responsibility to effectively collaborate with First Nations on a government-to-government basis on meaningful reforms to build confidence with all our communities that mineral exploration and mining is a safe industry. At this point that confidence still needs to be earned." (Province of British Columbia 2014)

Bev Sellars: I was chair of First Nations Women Advocating Responsible Mining (FNWARM) at the time and we were involved in different things. The Environmental Law Centre let us know a couple of days before the limitation period was up for provincial offences and they were wondering who could bring a private prosecution. I talked to the FNWARM ladies and we decided that we would do it. My daughter and I went in and filed the papers on the deadline. We were having such a hard time – 4:30 I think was the deadline – when the office closed and when the statute of limitations was over. There was a lady in the office there that just worked her ass off to help us file those papers. She could have easily said to us "come back when you have them all" or whatever but she knew it was important and so she helped us to file those papers.

PRIVATE PROSECUTION 2017

On 4 August 2017, exactly three years after the Mount Polley tailings storage facility catastrophe, Bev Sellars filed a private information initiating a private prosecution. The information alleged that she had reasonable and probable grounds to support fifteen charges against Mount Polley Mining Corporation under the *Environmental Management Act* (EMA), the *Mines Act*, associated regulations, and permits issued pursuant to those laws. Allegations included:

- Introducing waste into the environment without complying with the conditions of a permit issued under the EMA;
- Introducing waste into the environment in the course of conducting a prescribed industry, trade, or business;
- Introducing waste into the environment in such a manner as to cause pollution;
- Failing to construct the tailings storage facility in conformance with the design requirements and by failing to prevent undue risk to the health and safety of individuals;

- Failing to maintain a water management plan and to remedy chronic water balance issues led to undue risk to the health and safety of individuals; and
- Failing to maintain adequate tailings beaches resulted in undue risk to the health and safety of individuals. (Canning 2017)

Bev Sellars: We found out the day before we were supposed to go to court that the province had stayed the charges. I found out through the CBC. Somebody from CBC phoned me. The province didn't even have the decency to phone me. CBC found out about it before I did. They were asking me about it. And I'm like, "What?" "No," I said, "I haven't heard anything." So, I hung up from them and phoned the lawyer and he confirmed that, yeah, the province had taken over the charges and refused to go forward with them.

> Generally, BC Prosecution Service Policy does not permit a private prosecution to proceed. Crown Counsel will usually take conduct of the prosecution or direct a stay of proceedings after making a charge assessment decision … In all cases the informant who swore the private Information should be advised of the charge assessment decision as soon as possible. (Province of British Columbia 2018, 1–2) [1]

Bev Sellars: We did stake a mining claim on Minister of Mines Bill Bennett's property. When I was chair of First Nations Women Advocating for Responsible Mining, I staked the claim on his private property in the Kootenay area, which is Ktunaxa territory. I phoned Kathryn Teneese, who was Ktunaxa Nation chair [and is currently] and let them know that we're staking a claim in your territory, and we didn't want to stake it without letting them know. Protocol dictates that we had to seek permission to do that. Kathryn was happy that we briefed them to allow them to be prepared in case the media got a hold of them. But nobody ever calls us in our territory – they just stake claims in our territory. They were happy and we wanted them to be prepared just in case the media got a hold of them. After we staked that claim I had all kinds of offerings of machinery to go in and dig up the property. If I could do it over again, I would go and make it really uncomfortable for them. But I didn't at the time. When the claim came due we let it lapse. We should have gone further. We should have done more.

[1] The 2018 version is substantially the same as the 2016 version (on file with author), which was in force at the time of the private prosecution.

MINERAL STAKING AND TENURE REFORM

The Gitxaała and Ehattesaht First Nation challenged British Columbia's free-entry mineral staking regime that permitted miners, for a mere $1.75, to register mineral claims on Indigenous territories without consultation or consent. In *Gitxaala v. British Columbia (Chief Gold Commissioner)* (2023) the Court found that the Province of British Columbia has a duty to consult with Indigenous Nations pursuant to section 35 of the *Constitution Act, 1982*, which recognizes and affirms Aboriginal and treaty rights prior to issuing mineral claims. This duty to consult is triggered by the adverse impacts such claims cause to areas of significant cultural and spiritual importance and the right of Indigenous Nations "to own, and achieve the financial benefit from, the minerals within their asserted territories" (para. 559). The Province of British Columbia has eighteen months (to March 2025) to reform the mineral tenure regime to ensure consultation with Indigenous Nations prior to the registration of claims.

Bev Sellars: When I was with First Nations Women Advocating for Responsible Mining we tried to make sure that everybody knew what was going on. We would have regular meetings and let people know. And then a couple of years ago I heard, or I think there was, a news article about my First Nation signing another agreement with Mount Polley, so I wanted a copy of it. But I wasn't allowed to have a copy. I had to go into the office and read it there. I wasn't allowed to take anything out of it. And I was like: this is so wrong. This is just hiding behind all of this bureaucracy, secrecy, and harm to the community. It affects all of the community, everybody should know about it, everybody out in Quesnel and along the river should know about it. It shouldn't be subject to non-disclosure.

> As they engage in this type of bargaining, Indigenous communities agree to put the exercise of their right to FPIC on the table, as an integral part of the negotiation process. They are in essence expected to trade their potential right to say no to a project in exchange for some tangible benefits. The problem is that this trade-off occurs through elite negotiations, often with very little input from the community … There is little room for community deliberations in this type of process.
>
> This, we suggest, is not consistent with the spirit and intent of FPIC, which, as argued, requires both negotiations and deliberation at the

> community level in order to clearly establish the legitimacy of the project prior to its approval …
>
> This distancing from the community is also compounded by the confidential nature of many IBAs. Paradoxically, both parties to IBAs often seek confidentiality clauses. For project proponents, confidentiality limits the risk that sensitive information about the project and its financial architecture will become public while for the Indigenous party, it reduces the risk that governments will clamp down their transfer payments to the community in light of this additional revenue source. However, these confidentiality clauses create additional obstacles for the creation of an open dialogue with and within the community and ultimately limit the possibility of free, open and informed deliberations on the content of the agreement. (Papillon and Rodin 2016, 220–21)

Bev Sellars: There's quite a bit of tension in the communities because people get paid good money out there. They're not in high-paying jobs but they make good money. At the last community meeting I went to, and they were talking about Gibraltar Mines, one of the people who works with the water sampling kept repeating Gibraltar's line: that dilution is the solution. I was thinking, well, if dilution is the solution, then the Fraser River wouldn't be on the endangered list. Common sense tells you that.

> We the Undersigned Indigenous Nations of the Fraser River Watershed Declare:
>
> We have inhabited and governed our territories within the Fraser watershed, according to our laws and traditions, since time immemorial. Our relationship with the watershed is ancient and profound, and our inherent Title and Rights and legal authority over these lands and waters have never been relinquished through treaty or war.
>
> Water is life, for our peoples and for all living things that depend on it. The Fraser River and its tributaries are our lifeline.
>
> A threat to the Fraser and its headwaters is a threat to all who depend on its health. We will not allow our fish, animals, plants, people and ways of life to be placed at risk …

> We are adamant and resolved in this declaration, made according to our Indigenous laws and authority. We call on all who would place our lands and waters at risk – we have suffered enough, we will protect our watersheds, and we will not tolerate this great threat to us all and to all future generations. (Save the Fraser Gathering of Nations: Protecting Our Watershed from Oil, 2010)

I know there's always going to be mining and I know there's a need for certain things. But the environment has to be placed above money. I think that people should only be allowed to mine if they can prove that there is a real need for things. There should be no more gold mining. As Jacinda [Nuskmata, Bev's daughter and leader in FNWARM] says, they dig it up only to bury it again somewhere else – in Fort Knox or wherever. And the majority of gold is for jewellery – so we're destroying Earth for vanity. If they are going to mine, the environment has to be front and centre, and maybe they don't make billions, maybe they only make millions, but then the environment is protected. And I think they should have to prove why they want to mine for gold. If it's for jewellery then the answer is no. We shouldn't even own all this junk that we have. People have to realize every time they buy something where it comes from, and maybe it's made where it is mined. If people could educate themselves about what mining actually does, I think they would do things to make it less harmful. I would hope so anyway. I wish I had the magic solution, and sometimes I get really discouraged. But you gotta keep trying.

> Beginning with the relationships people in the Secwépemc legal tradition have with land (including animals, plants, water, and specific places), we learn first that the Secwépemctsín concept of qwenqwént, which refers to humility and human dependency, is key to understanding legal principles and practices of respectful relations …
>
> A relationship with the land characterized by the concepts of qwenqwént and interconnection develops legal responsibilities that sustain such relations. People in the Secwépemc legal tradition are expected to learn from the land, and teach others about the land, in order to best understand Secwépemcúl̓ecw's laws. From this knowledge comes a responsibility to follow or apply these laws in daily life. One important expression of law in regard to land and resource use is that people should not seek to obtain more or other resources if there is no genuine need. People also have a responsibility to protect the land and make sure that non-human beings are able to sustain

> themselves and future generations through healthy seasonal and reproductive rhythms.
>
> Secwépemc law understands that legal responsibilities are designed to nurture and protect the rights the land and all its beings share. These rights are, in essence, reflections of the responsibilities introduced above – the right not to be over-harvested, for example, or the right to protection and self-sustainability. (Indigenous Law Research Unit n.d., 10)

Bev Sellars: Some of the laws need to change too – Canada's laws. The example I always give is about [how] in Canada a baby has rights only if it's born alive, and in the Indigenous world seven generations ahead have rights. So what you do today has to protect seven generations ahead. And those kinds of laws need to be changed. More Indigenous laws need to be incorporated into the way people do business here. And that's just one example. There are others, like take only what you need. I couldn't believe it when I used to see on TV those pictures of all those boats out in the ocean just scooping up all of those salmon and just so much waste. They throw the fins away, they throw the heads away, they throw the tails away, but there is a lot of meat in all of them still. We use everything. You boil it and you make soup and it's good. There's too much waste. Those kind of things need to be looked at.

MINING LAW REFORM

In 2019 organizations, including FNWARM, founded the BC Mining Law Reform Network to protect communities from toxic mine waste, modernize the *Mineral Tenure Act*, one of British Columbia's oldest laws, and ensure mining companies pay to clean up the environmental damage they cause (BC Mining Law Reform n.d.[a]). The Network's mining law reform platform sets the standard for law reform for the next decade (Environmental Law Centre, 2019) and provides interventions in current policy and law reform processes (BC Mining Law Reform Network n.d.[b]). In 2023, Bev created a new initiative to bring together Indigenous communities to secure whole-of-river protection for the Fraser River (Environmental Law Centre 2024).

> The failure of the Mount Polley mine tailings pond dam resulted in the catastrophic release of 25 million cubic metres of water and mine tailings into Polley Lake, Hazeltine Creek, and Quesnel Lake. The environmental effect of the breach is only just beginning to be

> understood and is likely to persist for decades. The public interest in information relating to the cause of the failure, as well as the subsequent investigations and mitigation measures, was predictable and understandable.
>
> The complaints … that led to this investigation are a manifestation of this public interest and should serve to focus the attention of public bodies on their obligation under FIPPA [*Freedom of Information and Protection of Privacy Act*] to proactively disclose information that is clearly in the public interest. While this has been a requirement of FIPPA since its enactment in 1992, disclosures pursuant to s. 25 have been few and far between …
>
> [Section 25 of FIPPA] requires the proactive disclosure of information related to a risk of significant harm or where the disclosure is clearly in the public interest. That obligation is extraordinary in that the Legislature chose to make s. 25 supersede all other sections of FIPPA, including those exceptions to disclosure set out in Part 2 of the Act.
>
> I conclude that s. 25(1)(b) should not be interpreted to require an element of temporal urgency in order to require the disclosure of information that is clearly in the public interest pursuant.
>
> Public bodies must proactively disclose information … where a disinterested and reasonable observer, knowing what the information is and knowing all of the circumstances, would conclude that disclosure is plainly and obviously in the public interest. (Denham 2015, 36–37, 35)

Bev Sellars: We had the Elders out on Quesnel Lake a few weeks ago and one of them started crying still.

REFERENCES

Allard, Christina, and Deborah Curran. 2023. "Indigenous Influence and Engagement in Mining Permitting in British Columbia, Canada: Lessons for Sweden and Norway?" *Environmental Management* 72: 1–18. https://doi.org/10.1007/s00267-021-01536-0.

BC Mining Law Reform. n.d.(a). https://reformbcmining.ca.

———. n.d.(b). Reports. https://reformbcmining.ca/reports/.

British Columbia, Province of. 2014. News Release. "First Nations and Government Partner on Rresponse to Mt. Polley Mine Breach." https://news.gov.bc.ca/releases/2014ARR0024-001208.

———. 2018. Criminal Justice Branch, Ministry of Justice Crown Counsel Policy Manual. https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/pri-1.pdf.

Canning, Patrick. 2017. Charge synopsis (on file with author).

Denham, Elizabeth. 2015. "Review of the Mount Polley Mine Tailings Pond Failure and Public Interest Disclosure by Public Bodies." Office of the Information and Privacy Commissioner for British Columbia Investigation Report F15-02, 2 July 2015. https://www.oipc.bc.ca/documents/investigation-reports/1726.

Environmental Law Centre. 2019. "A Plan of Action for Change Summary Recommendations." https://reformbcmining.ca/wp-content/uploads/2019/05/BCMLR-Summary-Recommendations.pdf.

———. 2024. "Whole-of-River Protection for the Fraser River: A Scan of Legal Protection." https://elc.uvic.ca/wordpress/wp-content/uploads/2024/01/2023-01-12-Fraser-River-Legal-Scan_10July2023.pdf.

Gitxaala v. British Columbia (Chief Gold Commissioner). 2023 BCSC 1680.

Independent Expert Engineering Investigation and Review Panel. 2015. "Report on Mount Polley Tailings Storage Facility Breach." https://www.mountpolleyreviewpanel.ca/sites/default/files/report/ReportonMountPolleyTailingsStorageFacilityBreach.pdf.

Indigenous Law Research Unit and Shuswap Nation Tribal Council. n.d. Secwépemc Lands and Resources Law Research Project online. https://ilru.ca/wp-content/uploads/2020/08/Secwepemc-Law-Book-July-2018-1.pdf.

Papillon, Martin, and Thierry Rodon. 2016. "Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada." *Environmental Impact Assessment Review* 62: 216–24. http://dx.doi.org/10.1016/j.eiar.2016.06.009.

Pyle, Gregory, Reagan D. Plomp, Lauren Zink, and Jaimie L. Klemish. 2022. "Invertebrate Metal Accumulation and Toxicity from Sediments Affected by the Mount Polley Mine Disaster." *Environmental Science and Pollution Research* 29: 70380–395. https://doi.org/10.1007/s11356-022-20677-1.

Scott, Dayna Nadine. 2020. "Extraction Contracting: The Struggle for Control of Indigenous Lands," *South Atlantic Quarterly* 119, no. 2: 269–99.

Save the Fraser Gathering of Nations: Protecting Our Watershed from Oil. 2010. "The Fraser Declaration." https://www.kairoscanada.org/wp-content/uploads/2012/04/SUS-RE-SaveTheFraserDeclarationMarch2012.pdf.

Yahey v. British Columbia. 2021 BCSC 1287.