In his comprehensive analysis of Canadian environmental law, Professor David Boyd argues that if Canada is to achieve sustainability in the twenty-first century, it will be necessary for it to adopt “a new role model,” eschewing its historical emulation of American environmental law in favour of that of Europe.

While it would be a mistake to discount the significant contributions to this field of countries outside of Europe, the European Union (EU) has emerged as a world leader in environmental protection and sustainable development. Boyd notes that European over-achievers like Sweden have consistently (and significantly) surpassed Canada on measures of environmental performance. Europe’s environmental leaders have shaped an overarching and confident EU policy agenda that places environmental protection at the centre of the community’s legal and political activity. Further, the text of the new European Constitution would enshrine environmental protection as a fundamental hu-

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2 Ibid. at 275-276, 297-306.


6 Boyd, supra note 1 at 298-306.

7 See generally John Burchell, *The Greening of the European Union*, supra note 5.
Given the considerable success of EU environmental law and the diversity of policy and regulatory tools employed in Europe, Canadian environmental scholars and advocates would do well to look to the European literature for guidance. This Review first introduces the general structure and purpose of the Yearbook of European Environmental Law (YEEL). Second, a survey of each headlined article in YEEL Volume 5 (YEEL-5) is presented. As seen below, this volume highlights some of the developments in environmental human rights in Europe. In this respect, an argument will be made that its analysis of the European Court of Human Rights’ (ECtHR) jurisprudence on environmental deprivations of Convention rights is accurate and that not only the YEEL but the ECHR’s jurisprudence should serve Canadians as a guide in their pursuit for a comprehensive domestic environmental framework. The last part of this analysis examines the remaining articles (which cover divergent areas of European environmental law) and highlights some technical aspects of the volume. Finally, two lacunae of the YEEL are discussed.

YEEL is an exceptional source of commentary, information and analysis about the latest developments in the field of environmental law. It provides extensive coverage of EC law and policy and also touches upon environmental law developments in individual member states and sub-regions within Europe. The YEEL is divided into four parts: Articles, Current Survey, Reviews of Books, and Documents.

The Articles section consists of in-depth narrative analyses of specific concerns within European environmental law. These detailed yet somewhat concise pieces are balanced by the Current Survey section, which provides readers with a comprehensive survey of recent developments in ten areas of EC environmental law: Atmospheric Pollution, Energy, Biotechnology, Chemicals, Nature Conservation, Waste, Water, Horizontal Instruments, Miscellaneous Instruments, and Case Law of the European Court of Justice. Each sub-section is written by an expert in the field and includes both a detailed summary of recent EC legislation and case law on point, as well as the author’s analysis thereof. This part of the volume is invaluable to scholars and advocates, who specialize in any one of the covered areas. Researchers interested in any of these should also examine the relevant surveys in all five volumes of the YEEL to develop a detailed understanding of the European approach to the area of interest.

Finally, YEEL includes a section reviewing relevant recently published books. Finally, the Documents section summarizes European Commission Communications, Green Papers, White Papers, and Reports produced during the year of survey.

YEEL-5 contains seven articles addressing a variety of topics in European environmental law, with a concentration around four articles specifically addressing aspects of environmental human rights in Europe. Three of these focus more specifically on the procedural environmental rights enshrined in the 2001 Convention on Access to Infor-

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As its name implies, the Aarhus Convention codifies three categories, pillars, of procedural environmental rights. Namely, these are (i) the right to promptly receive environmental information held by public bodies (and the latter's duty to actively disseminate environmental information), (ii) the right to meaningfully participate in environmental decision-making (which includes notification, information, and an opportunity to comment on matters of environmental significance), and (iii) the right to challenge environmental decisions on procedural or substantive grounds before a court or quasi-judicial body.

YEEL-5 pulls together three distinct perspectives on the evolution and implementation of the Aarhus rights throughout Europe. Stephen Stec examines the development of procedural environmental rights in Eastern Europe both pre- and post-Aarhus. Stec argues convincingly that in many Eastern European countries, procedural environmental rights had already emerged previous to the Aarhus Convention as central components of the broader project of democratization. Frankie Schram, in turn, presents an analysis of access to environmental information at the European Community (EC) level. Schram's piece includes a highly detailed guide to the EC Regulation governing access to information, as well as an analysis of the extent to which that Regulation comports with the Aarhus Convention.

Focusing specifically on the third pillar of the Aarhus Convention, Jona Razzaque examines EC law governing the right of access to justice in environmental matters, and then explores the application and implementation of these principles in the United Kingdom (UK). Razzaque identifies a number of potential legal and practical obstacles to the realization of access to environmental justice in the UK, including the lack of a third-party right of appeal in environmental matters, the risk of adverse costs awards and the lack of accessibility to environmental information.

The fourth article dealing with environmental human rights addresses the substantive component of such rights under the European Convention on Human Rights (ECHR).
John McEldowney presents a case study of the House of Lords’ application of the ECHR in the environmental context. He concludes that the House of Lords seems inclined to follow the ECtHR’s previous tendency to grant substantial deference to government decision-making in environmental matters. Scholars of environmental human rights should note, however, that two significant decisions in this area have recently been rendered by the EctHR. These decisions indicate an increased stringency in evaluating environmental deprivations of rights under the ECHR.

In Oneryildiz v. Turkey, the ECtHR considered the effect of an environmental disaster on Articles 2 (right to life), 8 (right to private and family life), 13 (right to effective remedy for violation of Convention rights), as well as on Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions). The applicants alleged that Turkey was responsible for the deaths of their close relatives and the destruction of their property resulting from a preventable methane explosion at a nearby municipal waste dump. They further asserted that the administrative proceedings conducted in their case violated the requirements of fairness and promptness set forth in Article 6(1) (right to a fair hearing) of the Convention. Conclusively, the Court found violations of Articles 2 and 13 of the Convention, and of Article 1 of Protocol No. 1. In Taskin and Others v. Turkey this same Court recognized violations of Article 6 and Article 8 resulting from government permitting of a mining facility that posed threats to the neighboring population. It also acknowledged the existence of a “right to a healthy environment” under both Turkish and international law.

Given the similarity between the rights contained in the ECHR and those codified in the Canadian Charter of Rights and Freedoms (Charter), the ECtHR’s jurisprudence on environmental human rights is highly significant for Canadian environmental advocates. Although the Supreme Court of Canada has held that environmental protection is a fundamental value in Canadian society it has so far stopped short of recognizing that severe pollution may violate Charter rights. The jurisprudence of the ECtHR (and other tribunals interpreting constitutional provisions similar to our own) suggests that, at a

19 See also Case C-176/03, in which Advocate-General Ruiz-Jarabo Colomer recognized the “right to enjoy an acceptable environment” as a “citizenship right” in the course of his Opinion regarding whether the European Court of Justice the European Commission could require member states to criminalize certain serious environmental offences.


21 Ibid., at para. 2.


23 In Taskin, a gold mine was allowed to continue using a cyanide leaching process despite numerous scientific reports indicating that the mine’s use of cyanide “represented a threat to the environment and the right to life of the neighbouring population, and that the safety measures which the company had undertaken to implement did not suffice to eliminate the risks...” (para. 112). The applicants also alleged that several tons of explosives had been used in the gold mine’s operations, resulting in considerable noise pollution. The Court found violations of both Article 8 and Article 6 in connection with the issuance of the mine’s operating permit and the associated decision-making process. The Article 6 violation was based on a highly irregular permitting process involving, inter alia, the Turkish Prime Minister’s personal intervention in the judicial process surrounding the mine’s disputed permits. See Taskin at paras. 105 et seq.

24 Ibid., at paras. 26, 90, 98 et seq.


minimum, Canadian courts should recognize that the right to life contained in section 7 of the Charter includes the right not to be unjustly deprived thereof through environmental pollution.

The Articles section in YEEL-5 is rounded out by three unrelated contributions: Michael A. Mehling’s article addresses emissions trading in European climate policy,27 Harri Kalimo’s instructive analyses the legal effect of EC environmental directives within the Community28 and Nicolas de Sadeleur’s examines the evolution of EC law about habitat protection.29

Mehling’s article is particularly topical as 2003 saw the promulgation of a new emissions trading directive,30 establishing the largest supra-national trading system in the world. Mehling concludes that despite some key weaknesses (notably in the national allocation regime), the emissions trading regime will likely “grow to become a cornerstone of European climate policy.”31

The second part of YEEL-5 presents a detailed and comprehensive 200-page survey about recent developments in the 10 areas of EC environmental law outlined above. Highlights of this year’s survey include Thijs Etty’s explanation of the European Court of Justice’s (ECJ) elaboration of the precautionary principle in a case concerning Member States’ right to regulate genetically modified foods,32 Mark Stallworthy’s discussion of the EU’s 2003 “Water for Life” initiative (a program of water-related development aid),33 and Michael Rodi’s summary of the EU’s efforts towards Kyoto compliance.34

Following the annual Survey, YEEL-5 presents book reviews that address topics including global warming, the philosophical foundations of environmental law and comparative perspectives on EC and American environmental law. Finally, the YEEL-5 provides a summary and a discussion regarding recent reports, communications, action plans, and the like emanating from the EC.

This section is not arranged topically, but the summaries are succinct and the clear headings allow the reader to browse efficiently and concentrate on documents of interest. The Documents section provides an extremely helpful snapshot of the activities of the EC. This section is an important read for scholars or practitioners seeking to maintain general competence in EC environmental law and policy.

On the whole, Volume 5, like past volumes of the YEEL, is an extremely helpful and informative compendium of European environmental scholarship and information. The authors are eminent experts in their fields, representing a broad range of European perspectives, and the writing is generally engaging and accessible. The sheer volume of

30 Directive 2003/87/EC.
31 YEEL-5 at 156.
32 Ibid, at 305-309.
33 Ibid, at 431-432.
34 Ibid, at 266-285.
relevant information gathered within the Review is impressive and because of the high quality and encyclopaedic coverage, the YEEL should be a starting point for most research in European environmental law.

Finally, the criticisms for this Volume remain minor, but must be highlighted in order to testify its verity. First, given the complexity of EC law and politics, a good understanding of the topics discussed with YEEL requires a general background in the areas covered. Nevertheless, extensive experience with EC law is not necessary: many of the contributions are relatively self-contained and should be readily accessible by most readers. Second, given the time required to compile a work of this size, the YEEL is unable to provide the most current coverage. Volume 5 addresses the developments for the year 2003. Readers should therefore consult outside academic journals and EU-related websites in order to ensure their possession of relevant and up-to-date information.

35 See note 4 for a good introduction to the area. The EU’s web-sites, note 35, infra, also provide good explanations of the key institutions as well as the EU legislative process, and the relationship between the EU and member states.

36 Note, however, that the EU does have a number of web-sites containing helpful environmental information. See generally http://europa.eu.int/ (EU central site); http://europa.eu.int/comm/index_en.htm (the European Commission); http://ue.eu.int/cms3_fo/showPage.ASP?id=1&lang=en&mode=g (the European Council); http://www.europarl.eu.int/ (the European Parliament); http://www.eea.eu.int/ (the European Environmental Agency); http://europa.eu.int/pol/env/index_en.htm (EU environment page, with links to additional environmental sites within EU bodies).