

ecojustice

FORMERLY SIERRA LEGAL

SUMMER 2009 | ISSUE 58

Freshwater victory over mining secrecy

Canadians finally have the right to know whether mines are threatening their water with arsenic, mercury and other dangerous pollutants.

All mines – including metal mines and Alberta's tarsands – must now tell Canadians about the pollution they cause, thanks to a lawsuit by Ecojustice on behalf of MiningWatch and Great Lakes United. The free "reveal nothing" pass these industries enjoyed is finally over, and citizens will now have a powerful tool to hold mining companies accountable.

"This is an incredible win that empowers people in every corner of the country," says lawyer Marlene Cashin. "Knowing where pollution occurs is absolutely key in planning for possible mining and tailings pond disasters. Without it, decision-makers, along with those who will suffer the consequences of these incidents, are left in the dark."

When information is published later this year, the public can learn exactly which chemicals are being left behind simply by exploring the online National Pollutant Release Inventory. With tarsands releasing known human carcinogens, and gold mines releasing cyanide, this information deserves public scrutiny.

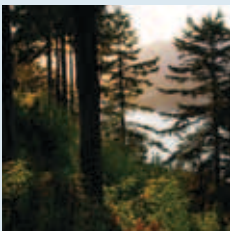
"Metal mines are an enormous source of pollution. The amount of mining waste churned out in Canada in just one year is enough to bury the entire Greater Toronto Area in four feet of waste," says lawyer Justin Duncan.



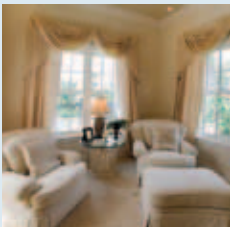
Protecting the Prairie dancer...3



Marlene Cashin staff profile...4



Environment and the recession...5



Toxic ban means healthier homes...7

ecojustice.ca

ecojustice

formerly Sierra Legal Defence Fund

info@ecojustice.ca
ecojustice.ca

VANCOUVER: 604-685-5618
Suite 214, 131 Water Street
Vancouver, BC V6B 4M3

TORONTO: 416-368-7533
Suite 900, 30 St. Patrick Street
Toronto, Ontario M5T 3A3

OTTAWA: 613-562-5800 x 3382
Room 107, 35 Copernicus Street Ottawa,
Ontario K1N 6N5

ALBERTA: 403-830-2032

BOARD OF DIRECTORS

Brenda McLuhan, Chair
Paul Richardson, Vice Chair
Mike Cormack, Treasurer
Doug Rae, Secretary

MEMBERS: John E. S. Briggs, Dr.
Elizabeth Christie, Peter Day, Michele
Guerin, Jennifer J. Klimek, Tamara
Lorincz, Judge William A. Newsom,
John Swaigen, Chris Tollefson, Trip Van
Noppen, Cathy Wilkinson

WE INVITE your feedback about the
Ecojustice newsletter. For questions
or comments, contact editor Laura
Hendrick at lhendrick@ecojustice.ca
or reach her by phone by at
604-685-5618 x 242.

ECOJUSTICE IS COMMITTED to
the use of environmentally responsible
papers. By choosing 100 per cent
post-consumer recycled fibre instead
of virgin paper for this printed material
the following savings to our natural
resources will be realized this year.

Trees saved: 41

Wood reduced: 10,698 kgs

Water reduced: 131,312 litres

Landfill reduced: 1,668 kgs

Net greenhouse emissions: 3,236 kgs

Energy reduced: 47 million Btu

SOURCE: UNISOURCE.CA



A word from the ED

Polluters finally come clean

When you think of a healthy environment, do you picture a vast stretch of untouched wilderness? What about your backyard or local park?

At Ecojustice, we believe our role in protecting your right to a healthy environment includes not only Canada's wonderful natural places, but your neighbourhood as well. Your home is often the battle ground where we fight for safe drinking water, clean air, and green spaces free from harmful pesticides.

As you'll discover in this newsletter, our latest work hits close to home. Don't let bulky names fool you. While I still get tongue-tied describing the flame retardant polybrominated diphenyl ethers (PBDEs), or the tarsands pollutant polycyclic aromatic hydrocarbons, these are toxic chemicals that are frequently found in your home, backyard and local parks.

For that reason, I'm proud to say household air will now be cleaner thanks to our successful efforts to encourage the federal government to have toxic flame retardants that contain PBDEs banned in Canada. Drinking water will also be safer thanks to our recent win that forces all mines, including tarsands, to begin informing the public about the pollution they produce. And finally, eight years of work following one of our seminal Supreme Court victories has led to the Ontario government passing province wide controls on harmful cosmetic pesticides.

The result is that you can breathe easier knowing we're on the case. That's something all Canadians can enjoy but I hope it has extra significance for our monthly donors whose reliable support allowed these campaigns to take root and grow.

In just over a year, we will celebrate our 20th anniversary. This milestone could not have happened without the generous donors who share our commitment to a healthy environment – whether it's a pristine lake in northern Ontario or a bustling kitchen with kids reaching for a cool glass of water.

Your support has allowed us to make a difference in so many ways. And when the countdown to our 20th birthday begins, the celebration will be in your honour.



Devon Page

EXECUTIVE DIRECTOR

Fight to save tiny dancer

Yet another iconic species in Canada is about to slip into oblivion. This time it is the greater sage-grouse – a Prairie bird with a spectacular mating dance.

Ecojustice is fighting for the bird's survival with a lawsuit that could force the federal government to give the sage-grouse the protection it needs to continue its famed dance for generations to come.

In May, lawyer Keith Ferguson and executive director Devon Page spent three days in federal court arguing a lawsuit against the Minister of Environment for refusing to identify sage-grouse critical habitat in a species recovery plan. Despite decades of research on sage-grouse habitat including a key study by leading sage-grouse expert Dr. Mark Boyce, the government claimed they did not know where to find the key habitat.

"It seems no amount of science is enough for the government to take action. While officials avoid their responsibilities, Canadians are rapidly losing a cherished species," says Ferguson.

Sage-grouse survive in remote areas in south-eastern Alberta and south-western Saskatchewan. The devastating effects of oil and gas development on their grasslands habitat are forecasted to completely wipe out Alberta's sage-grouse residents within six years.



DID YOU KNOW? Each spring, the male sage-grouse with the most impressive dance emerges from the mating ritual as the dominant male. He goes on to breed with about three quarters of the hens in the breeding region. PHOTO COURTESY DAVE.R/SIGMAEYE

"Like our other cases for the resident killer whales and Nooksack dace, these birds need habitat protection to survive," says conservation biologist Susan Pinkus.

For now, Ecojustice awaits the federal court decision on the case.

Species protection at a snail's pace

In its six year history, Canada's Species at Risk Act has resulted in one disappointment after another by offering full protection to only one species: the Banff Springs Snail.

Needless to say, Canadians expected more from the law.

A team at Ecojustice is in a race to improve the way the federal government protects species as time runs out for plants and animals such as the Boreal woodland caribou, northern spotted owl and polar bear. A series of flawed recovery strategies has shown that ignoring science is an all-too-common way for government to duck its own laws and avoid protecting critical habitat.

Currently, a mandatory five-year review of the Act is underway in Ottawa, and conservation biologist Susan Pinkus and lawyer Keith Ferguson will be speaking at the review this fall. They are seeking to close loopholes the federal government is exploiting to avoid its

obligation to protect species and their homes. Our appearance in Ottawa will cap a long year of preparation that included our release this spring of a widely publicized report card that highlights the government's despicable track record on species protection. The report card gave the Government of Canada a failing grade.

"The government we've trusted to save our disappearing plants and animals has a habit of tossing out scientific research," says Pinkus. "When this review is complete, we hope the Act is strong enough to help much more than one lucky snail."

i Canada's Species At Risk Act: Implementation at a snail's pace can be downloaded at www.ecojjustice.ca.

A portrait of Marlene Cashin, a woman with shoulder-length brown hair, smiling at the camera. She is wearing a dark blazer over a light-colored top. The background is a solid blue color.

Marlene Cashin

Marlene Cashin still misses the ocean, but 16 years after moving to Ontario from Newfoundland she has found her place in Toronto's urban grind, as a lawyer for Ecojustice.

staff profile

It's been a titanic leap for someone from Port Au Port East, Newfoundland and Labrador. In the small town of 600 people, Marlene not only knew every face she encountered, but also the name of every plant and animal in her home town.

"My father was a big influence on me. He made a point of teaching us every tree, every berry, every footprint. I knew the name of everything in the woods," she recalls.

Soon, she would learn how to protect it. Marlene's first experience with environmental activism came in the early 90s. Running a bed-and-breakfast with her husband Donald outside of St. John's, she helped lead a grassroots campaign to stop a proposed garbage incinerator from being built in her community. The group's efforts were successful and the incinerator proposal was eventually scrapped.

When Marlene and her family opted to move to Ontario for new challenges, Marlene's interest in environmental protection continued to guide her. Working for the Canadian Environmental Network for several years gave her an idea of the broad scope of

work needed to protect the environment. She took a program in Law Procedures from Ryerson University and found her way to Ecojustice, where she began as acting office manager of the Toronto office.

But an old aspiration continued to follow her. The mother of two had once dreamed of becoming a lawyer and she decided finally to pursue it. "When you're living in Toronto and passing by Osgoode Hall everyday, you think, 'Gee, maybe I could be a lawyer after all,' " she says.

Marlene did just that, attending Osgoode Hall Law School and working for several years with the Canadian Environmental Law Association before returning to Ecojustice in 2007, this time as a lawyer.

Since becoming a lawyer, Marlene has been lucky enough to experience several significant victories including our newsletter's cover story on mining pollution.

Seeking the right path out of recession

When it became clear last winter that Canada's slumping economy needed help, part of Prime Minister Harper's solution was to illegally slash environmental assessments to speed up infrastructure projects.

Under the new Exclusion List Regulations and Adaptation Regulations, federal environmental assessments could be skipped for thousands of projects including highways, bridges, roads, sewer systems and dumps.

This reckless approach disappointed environmentalists and was the spark behind one of our current cases. In April, Ecojustice filed a lawsuit in federal court claiming the Government of Canada broke the law by gutting key environmental controls, making these projects off-limits from environmental scrutiny.

"We can't save the economy by squandering our ecological wealth," says lawyer Justin Duncan. "These assessments are the most important tool we have to identify and address the environmental costs associated with major projects."

To make matters worse, the government's initial estimate that the new loophole would allow 2,000 projects to evade environmental assessments over a two-year period quickly burgeoned into a whopping 14,000 projects. The move also has the effect of silencing the public, since a crucial component of any federal



A new loophole allows up to 14,000 projects to evade environmental scrutiny – 12,000 more than first anticipated.

environmental assessment is the public's right to provide input before major decisions are made.

"Solid leadership in response to the recession would ensure we get out of both the fiscal and environmental deficits we're facing. In lieu of that, we are bringing this lawsuit to protect public rights and the environment from this assault," says lawyer and economist Anastasia Lintner.

Other economic stimulus packages, such as those introduced in the US, China and India do not propose reductions to environmental assessments.

Fighting pesticide company lawsuit

As a growing number of provinces err on the side of caution by banning pesticides with possible links to cancer – Ecojustice continues its decade-long fight to defend this important step forward.

After years of encouragement from concerned groups including Ecojustice, Ontario recently followed in Quebec's footsteps by banning cosmetic pesticides such as 2,4-D that have been associated with neurological and reproductive disorders, as well as cancer.

But cosmetic pesticide bans are unpopular with companies that sell the chemicals. In April, the US chemical company Dow AgroSciences announced that it was bringing a lawsuit against the federal government under the North American Free Trade Agreement (NAFTA). The company is seeking \$2 million in damages and a reversal of Quebec's ban on 2,4-D.

"We can't let US investors overturn legitimate provincial public health regulations under the guise of free trade" says Will Amos, a lawyer with the University of Ottawa-Ecojustice Environmental Law Clinic.

In March, Amos appeared before the Standing Committee on International Trade to defend Quebec's right to ban lawn chemicals on the basis of the precautionary principle – a principle we helped establish in Canada's Supreme Court back in 2001. Ecojustice is now planning to intervene before the NAFTA tribunal with submissions to ensure the views of public health and environmental groups are heard as this important debate unfolds.



On the books

brief updates about the cases we're working on

Treasured land becomes land use battleground

The Oak Ridges Moraine, comprised of rolling hills and river valleys, is one of the richest and most significant landforms in southern Ontario. But a local developer is seeking to turn part of this national treasure into an 18-hole golf course and condominium complex.



The Oak Ridges Moraine is home to many rare species including the Jefferson salamander.

LEO KENNEY PHOTO

The Westhill Redevelopment Company recently brought an appeal to the Ontario Municipal Board to have the development approved. Given the environmental cost of the proposed project, local landowners requested the Board to convene a joint panel to hear the case. When the Board refused the request, the landowners appealed the decision to the Ontario Divisional Court. Ecojustice has intervened in this potentially precedent-setting case to ensure that the environmental importance

of the decision is clearly articulated to the court. The hearing of the matter is expected in the fall.

Shell abandons green commitments

When it comes to giant oil companies, actions speak louder than words. Despite voluntarily signing pollution reduction agreements with the Oil Sands Environmental Coalition and Pembina Foundation, the oil company Shell has failed to meet its greenhouse emissions cuts. Shell's voluntary commitments would have trimmed 900,000 tonnes of carbon dioxide per year from their Jackpine Mine project and Muskeg River Mine expansion – the equivalent to taking 200,000 cars off Canadian roads.

Instead, Shell has opted to wait for the federal government to come up with emissions regulations. With that decision, the company has forfeited an opportunity to set a much-needed positive example in the oil sands.

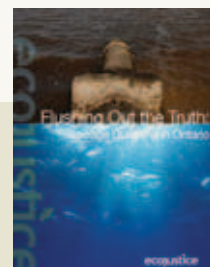
Now Ecojustice is demanding Alberta's energy regulator give the projects new public hearings since earlier approvals by the Alberta and federal government were based on broken promises.

Proposed legislation isn't floating Canadian boats

The purpose of the Navigable Waters Protection Act is quite simple: it protects the public's right to enjoy Canadian waterways by boat. This means that a legacy of outdoor recreation is sure to continue on almost any water body that can float a canoe. But the federal stimulus budget unveiled this winter jeopardizes that right by giving the Transport Minister the option of exempting certain projects under the Act to facilitate shovel-ready projects.

Not surprisingly, boaters, anglers, paddlers and environmentalists were upset by the legislation. Ecojustice, along with other environmental groups, testified before the Finance and Transport Committees in February urging them to reconsider the changes. Now that they have been adopted, these amendments result in less protection for white-water rivers, seasonal waterways and the needs of boats with less than a one-metre draft, such as kayaks. Ecojustice will continue the fight to have these navigation rights restored.

Just released: *Flushing out the truth*, a report on sewage dumping in Ontario.
Download it at www.ecojustice.ca



Oil sands and freshwater don't mix

Alberta's freshwater supply is going down the drain as mismanaged tarsands projects make the precious commodity increasingly scarce and contaminated.

This was the message Ecojustice lawyers Karin Buss and Barry Robinson delivered to the House of Commons Standing Committee on the Environment and Sustainable Development in Calgary this May.

"The fisheries are at risk, wetlands are disappearing and water levels in the Athabasca River are dropping," said Buss. "The federal government continues to allow the oil industry to waste water and destroy tributaries and fish habitat in the Athabasca River basin. The oil companies are operating under a loose, laissez faire regulatory regime."

The evidence presented by Ecojustice demonstrated that the federal government has the power to protect freshwater and the native fishery but has shown little leadership when it comes to tarsands developments. Buss and Robinson demanded the government take immediate action to protect water flows on the Athabasca River and address leaking tailings ponds.

"There needs to be a long-term management plan for the Athabasca River," says Robinson. "The federal government also needs to identify and enforce stream flow needs for fish."



DID YOU KNOW? It takes up to 4.5 barrels of freshwater to produce 1 barrel of bitumen from Alberta's tarsands.

ATHABASCA RIVER PHOTO COURTESY H2OIL

Cleaning up the tarsands means cleaning up Canada's image, he noted, since international concerns about Alberta's "dirty oil" have become an international embarrassment.

Chemical ban makes households safer

A toxic chemical that sneaks into homes through TVs, computers and other household items will finally be banned from electronics in Canada, thanks in part to the dedication of our own scientist Elaine MacDonald.

Following her formal legal action, the federal government has moved to ban DecaBDE – the most prevalent form of a group of toxic chemicals called PDBEs. The proposed ban now restricts the use, import, and sale of electronics containing this dangerous flame retardant.

"Canadians can feel safer buying electronics now that they have the assurance they are not bringing a toxic chemical into their homes," she says.

PBDEs are a family of chemicals that are known to build up in the food chain and are highly toxic to humans with links to cancer as well as brain, immune, reproductive, and hormonal disorders. By banning the most common form of these chemicals, the government is ensuring a far greater level of protection for Canadian families.

The ban has already been adopted by the European Union. As more nations follow suit, MacDonald hopes that the dangerous chemical will begin to disappear from the many places it quietly resides including the Great Lakes, household dust, human blood and breast milk.

SUPPORTERS

Caring for self by caring for environment

Following the edge of a meandering creek near her home in Red Deer Alberta led a young Gina Dolinsky to one life-altering conclusion: if people don't stand up for the environment they will lose it.



GINA DOLINSKY

As a child, she watched as erosion and flooding destroyed that enchanting creek. Her father advocated for its restoration, but the county's efforts were not enough to undo years of damage.

"At the time I felt helpless but it became a source of inspiration,"

Gina recalls. "I took up my father's cause and found my own ways to protect the environment."

Since joining us in 1993 when we were Sierra Legal Defence Fund she remains a committed supporter of Ecojustice and makes ongoing monthly gifts as a member of the Defenders Club. Still, it bothers her to know that groups like Ecojustice are needed to keep government and industry in line. "In a way, I wish

Ecojustice didn't have to exist; if only everyone chose to make decisions that respected the environment."

Gina donates to Ecojustice for many reasons, one of the top being our efforts to protect natural spaces that species depend on for survival.

"What I appreciate most about Ecojustice is that regardless of the cause, they deliver what they promise. They live up to their goals and achieve what they set out to do – great, necessary work."

Gina has since left Red Deer and now lives in Calgary where she enjoys hiking and cross-country skiing. As successful feng shui consultant, she strives to be in touch with her surroundings, noting that by protecting the environment, we are looking after ourselves as well.

"The environment isn't simply something that is at our disposal. We need to see ourselves as part of it. By degrading our environment, we degrade ourselves. That is why Ecojustice is so important; they advocate for us and for our survival."

Thank you to all our Defenders Club Donors!

Ecojustice's Defenders Club donors are a collective of 4,600 committed individuals whose reliable and ongoing monthly contributions support our work protecting and restoring the health of Canada's environment all year round. To all our monthly Defenders Club donors we extend our heartfelt gratitude for your extraordinary commitment to funding our work, there is not room enough to name you all. The following acknowledges the support of our Defenders Club donors whose monthly contributions total \$1,000 or more annually.

DEFENDERS CLUB CHAMPIONS

Anonymous

Joseph April

Frances Armstrong

Diana Bainbridge

F.R. Blair

Nancy Braithwaite

Jane and Craig Campbell

Judith and David Goodings

Deirdre J. Harris

Frederick I. Hill

Dr. Walton W. Langford

Raymond and Anne Morris

Wendie R. Nelson

Victoria Olchowecki

Bill and Joan Paterson

Tony D. and Tania Pearse

Barbara J. Scott

John and Barbara Taylor

Gordon Thompson

Carolyn Turnbull

Dr. Jan Versendaal

Charles King and Wendy Wulff

While all those who support Ecojustice are proud to contribute to our work, some wish to remain anonymous. To our Defenders Club Champions whom we were unable to reach for permission to publish your name in print, we are pleased to recognize you in upcoming publications. Please call Sheri Urquhart at (604) 685-5618 ext. 249 for details.

For more information on joining Defenders Club, please visit www.ecojustice.ca or call Shauna Blair in Donor Relations. ext. 243.

ecojustice.ca