

ecojustice

formerly Sierra Legal QUARTERLY NEWSLETTER | MARCH 2008 | ISSUE 54



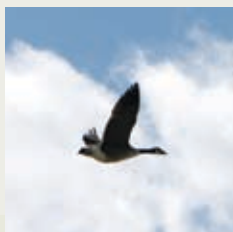
Tar sands battle goes to court



TAKING ON BIG OIL...2



RESEARCHER LIAT PODOLSKY...4



RIGHT TO KNOW VICTORY IN BC...5



VOLUNTEER JO THOMAS...7

While the Premier of Alberta traveled to Washington, DC in January to sell his message promoting the province's tar sands, Ecojustice was stealing his thunder in an Edmonton courthouse.



In Federal Court, Ecojustice lawyer Sean Nixon was challenging the approval of the Kearl tar sands proposal. The massive project would swallow up an area of Alberta's northern Boreal forest larger than 20,000 football fields and strip-mine it for a dirty fossil fuel called bitumen – commonly referred to as “tar.” Despite leaving an undeniable impact visible from space, the joint panel assessing the proposed 50-year mining operation concluded continuing operations would cause “no significant environmental effects.”

Representing the Pembina Institute, Toxics Watch, Sierra Club of Canada and Prairie Acid Rain Coalition, Ecojustice lawyers told a packed courtroom how the proposed open-pit mine and processing plant would indeed carry a heavy environmental burden, devastating wildlife and leaving a permanent scar on the wetlands, forests and waters of the Boreal.

The Court will render its verdict in the coming months. Ecojustice believes the ruling will show the Kearl project's assessment was fundamentally flawed, and that the government must put the brakes on tar sands development until proper safeguards are in place.

Regardless of this case's outcome, Ecojustice and its client groups will continue to pressure government to clean up its act and put a stop to Big Oil's ambition to bulldoze the Boreal, exhaust Alberta's water supply and accelerate global warming – all in the name of profit.

ecojustice.ca

Lawsuit ensures east coast refinery won't duck assessment

Another oil mega-project, another inadequate environmental assessment – where but here in Canada, and who but Ecojustice's legal team to take action?

It's been nearly 25 years since an oil refinery has been built in Canada. But that could soon change. The massive Irving oil refinery planned for Saint John, New Brunswick is one of three currently proposed refineries. Yet despite the obvious environmental impact of this massive operation, the federal government chose to dramatically reduce the scope of assessment saying it need only assess a wharf associated with the refinery rather than the refinery itself. Arguing that this environmental slight of hand must end, Ecojustice took the matter to the courts.

"The environment minister's decision to turn a blind eye to assessing the impact of the refinery is not only illegal, it is absurd," says Ecojustice lawyer Justin Duncan. "The law is clear; the federal government must conduct an assessment of the entire project in order to evaluate the impact this refinery will have on the health of the region's residents and the environment."

The latest in a growing list of legal challenges against the federal government over weak environmental assessments of major industrial projects, the lawsuit filed on behalf of Conservation Council of New Brunswick and Friends of the Earth Canada aims to ensure the proposed Irving Refinery faces a full assessment. Environment Minister John Baird's decision to order that the environmental assessment ignore massive components of the project – including ones specifically listed under regulations – circumvented the obligation to consult the public on the scope of assessment and defeats the purpose of federal environmental assessment.

The Irving case will likely be heard in Federal Court in mid-2008.



ENERGUIDE CUTS

Taking eco-rebates from the poor to give to Big Oil

Soon after coming to office the Harper government abruptly scrapped the \$500 million EnerGuide for Low-Income Households program. In stark contrast, the government continues to give away more than \$1 billion of taxpayer money to wealthy oil and gas corporations each year.

The federal government's Robin-Hood-in-reverse approach to global warming triggered Ecojustice and KAIROS, an international church-based nonprofit, to file two petitions to the Auditor General questioning the federal largesse to oil barons while taking from the poor.

The inability to pay energy bills is the second leading cause of evictions in Canada. The EnerGuide program was intended to help low income households to reduce energy use; cutting greenhouse gas emissions by about 3.4 tonnes per home annually.

Canada's low-income seniors and families have a big stake in the fight against global warming. "We know from experience that climate change impacts like hurricanes, drought and heat waves harm poor people first, and most seriously," says Paul Hansen, KAIROS Board Chairperson.

A previous 2005 Ecojustice petition on oil and gas industry subsidies was followed by a government decision to phase out the Accelerated Capital Cost Allowance, a generous tar sands subsidy, but on a very lax time frame stretching to 2015. The government's response to the new petitions is expected shortly.



Mining for answers in western Quebec

Ecojustice is demanding answers from Quebec's Minister of Natural Resources and Wildlife concerning a potential connection between the province's recent decision to reject a moratorium on uranium exploration in western Quebec and mining claims held in the region by a government-owned corporation.

Enlisting the help of Ecojustice, the West Quebec Coalition Against Mining Uranium, a grassroots group, learned last year of the apparent conflict between the minister's obligations to protect the environment and regulate mining activities while simultaneously operating the crown mining corporation, SOQUEM.

Ottawa-based Ecojustice lawyer Will Amos has written the minister, expressing concerns over the potential conflict of interest and dozens of controversial mining claims held by SOQUEM near Gatineau Park, a federally protected wildlife refuge. Amos also noted that SOQUEM owns 37 claims in La Pêche, a municipality whose urgent call for a moratorium on uranium mining in the municipality has been rejected by the province.



With the government failing to respond to our inquiries to date, Amos has submitted a request to the provincial Ombudsperson seeking to compel the province to provide answers and uphold its legal duty to protect the environment.

FEDERAL MINING POLLUTION SECRETS

Exposing the toxic truth

As if protecting the big oil companies isn't enough, the federal Minister of Environment is now under fire for allegedly concealing the mining industry's dirty secrets.

In 2006, the federal government took a step in the right direction by removing an exemption that allowed mining facilities to get away with not reporting their pollution under Canada's National Pollutant Release Inventory. Now, even though mining companies are legally required to report, they've somehow managed to avoid doing so. Ecojustice, representing Great Lakes United and MiningWatch Canada, is consequently challenging Environment Minister John Baird to enforce the law.

Spearheading the battle to ensure this information gets back to the public is MiningWatch Canada's Joan Kuyek. She has been monitoring the federal government's reporting of mining pollution for a decade. "The government is simply not living up to its promise to make mining companies report all the toxic chemicals they emit – especially the massive amounts

of toxic chemicals in tailings and waste rock. This lawsuit will hold the government accountable and help protect Canadians from these toxic secrets," says Kuyek.

"Everyone knows that pollutants such as arsenic, lead and mercury are harmful," adds Ecojustice lawyer Justin Duncan. "Without legal enforcement against mining facilities, people will stay in the dark about where these pollutants are."

The case could land in court this summer, although Ecojustice is optimistic that the issue may be resolved before then if the environment minister acts on a recent public statement that he would ensure mines publicly report.



LIAT PODOLSKY

“Although my childhood dream was always to become a ballerina, I am quite happy with where my career path has led me,” confides Ecojustice Scientific Researcher Liat Podolsky. While she pursued her dreams of dancing, she was always fascinated with the wonders of the natural world, spending hours studying books on wildlife.

After starting university, Liat was “concerned that pursuing a career in environmental studies might not be the most advantageous choice,” opting instead to study human biology on a path to medical school. Unable to shake her interest in the natural world, she earned a Zoology degree and a Masters in Forest Conservation from the University of Toronto.

Prior to finding the Ecojustice job she calls an “ideal fit,” Liat conducted research in waterbird conservation at Cape Cod, helped develop corporate partnerships with WWF-Canada, and contributed to health policy for the Ontario government.

Since becoming the scientific researcher for Ecojustice’s Toronto office in March 2007, Liat has proven herself a welcome fit with the organization. Providing in-house scientific research on files including Ontario’s Boreal Forest and migratory birds, Liat is a trusted resource person on whom Ecojustice staff regularly rely to help gather scientific evidence to support their casework.

When not at Ecojustice, Liat takes time to fulfill her other passions, including kickboxing, yoga, reading and enjoying a good movie. She also volunteers locally with a Toronto tree planting group.

While she is inspired by doing work she loves with people she admires, Liat is especially empowered to help build a case when scientific evidence is ignored by policy makers. She says, “It’s frustrating when governments disregard science for political or bureaucratic reasons.” It gives Liat peace of mind knowing she is part of a team dedicated to holding decision-makers accountable. “The way that the lawyers and scientists at Ecojustice work together is both inspiring and effective.”

staff profile

Evidence reveals government interfering with science

The federal government remains under attack for not enforcing its own Species at Risk Act (SARA), and in December, Ecojustice and the Wilderness Committee uncovered evidence showing that the BC government is making a bad situation worse by directing scientists to remove key information from recovery planning documents.

This demand is in response to a confidential BC government document obtained under the province's Freedom of Information Act that instructs scientists working on recovery strategies to always claim insufficient scientific knowledge when identifying critical habitat. Quite plainly, the document directs, "it should be made clear that critical habitat is not being proposed at this time."

"We already have one lawsuit underway where the federal government interfered with scientists and their recovery strategy," says lawyer Devon Page, "and we will bring others if necessary." Ecojustice will be reviewing all forthcoming BC



recovery strategies to ensure they do not violate SARA through failure to identify critical habitat.

Victory clears the air in BC

After years of frustration trying to get information from the BC government, environmental and legal groups are rejoicing that the province's freedom of information authority has put his foot down. BC's Information and Privacy Commissioner, David Loukidelis has found a "systemic pattern of discrimination" against conservationists seeking documents from the Ministry of Environment.

Dedicated right-to-know advocate, Darrell Evans of the Freedom of Information and Protection of Privacy Association says, "We finally have public acknowledgement that enough is enough, and we should no longer have to jump through hoops to get information that should be readily available to the public."

The Ministry of Environment has agreed to implement changes to improve the way it responds to environmental groups and consented to issue an annual report card evaluating its progress beginning this March. "We're optimistic that increased transparency will ultimately lead to more getting done to protect the environment," says Ecojustice lawyer Randy Christensen. A link to the Commissioner's report can be found in our January 22nd, 2008 media release at www.ecojustice.ca/media-centre/press-releases.



On the books

brief updates about the cases we're working on

Climate lawsuit heating up

In our last newsletter we told you about Ecojustice's precedent-setting climate change lawsuit against the federal government for flouting the Kyoto Protocol Implementation Act, passed into law last summer. The lawsuit seeks a court order requiring the government to live up to its commitments under domestic law. The federal government has since



missed three more deadlines under the Act. On behalf of Friends of the Earth, we are working with eminent Canadian lawyer Chris Paliare who views the case as so important that he is sharing his expertise free of charge. The first court hearing is expected in late spring.

Canada dodging nuclear watchdog

Following the controversial firing of Canadian Nuclear Safety Commission president Linda Keen in January, Ecojustice joined Greenpeace and

the Canadian Environmental Law Association in demanding an end to political interference with the supposedly independent watchdog agency. We also called on Parliament to pass legislation to move oversight and ministerial responsibility for the Commission to a department that is more in line with the Commission's mandate to protect human health and the environment. In February, our request was granted when a private member's bill that would move responsibility for the nuclear regulator to Environment Canada was introduced.

Policies still not for the birds

Following a scathing report by NAFTA's environmental watchdog highlighting illegal destruction of tens of thousands of migratory bird nests each year in Ontario, Ecojustice filed a complaint with the province's Environmental Commissioner on behalf of a coalition of environmental groups. The complaint alleges that specific Ontario forestry policies are inadequate to protect migratory birds. In February, Ecojustice also critiqued a federal proposal that would allow birds nests to be destroyed as long as overall bird populations remain stable. We continue to assert that the federal government does not have the resources to manage and enforce such a system – a point well documented in the NAFTA watchdog's report.

Big win for tiny minnow

Ecojustice lawyers successfully fended off the federal government's attempt to derail a precedent-setting lawsuit over the tiny, endangered minnow known as the Nooksack dace. The government attempted to have key evidence from scientific experts struck from the record, describing their affidavits as biased and irrelevant – despite employing the same scientists as top advisors. The Court rejected the challenge and ruled that the material could stand. The lawsuit will determine the fate of the minnow, facing extinction due to habitat loss in BC's Fraser Valley, as well as clarify that the government cannot ignore its scientists. A full hearing date has not yet been set.

Winds of change blowing through Ontario

In September 2007, Ecojustice challenged Ontario's energy minister to ban development agreements restricting the use of clotheslines. Clothes dryers in Ontario produce 700,000 tonnes of greenhouse gas emissions each year. Ecojustice also asked that the Energy Conservation Leadership Act be added to the list of laws for which citizens can ask for reviews under the Environmental Bill of Rights. In December 2007, the province agreed to review our request and in January, it announced plans are under way to ban clothesline restrictions by summer 2008.

ECOJUSTICE SUPPORTERS

Lifelong environmentalist gives back



As one of Ecojustice's most dedicated donors and loyal volunteers, Jo Thomas' life tells a story of fighting to protect the health of our natural world.

A deep connection to nature, instilled in her while growing up along the Ottawa River in Hudson, Quebec, would lead to Jo's commitment to advocate for the environment. Her mother played an active role in a local battle to reduce pesticide use in Hudson – that ultimately went all the way to the Supreme Court of Canada in 1991 and resulted in one of Canada's greatest ever environmental precedents – bridging a connection to Ecojustice 14 years later when that precedent helped Ecojustice win a Toronto pesticide bylaw case at the top court.

Jo reflects, "I spent 10 years of my life exploring the mountains in Jasper and Banff. During that time, I took up photography which brought me even closer to nature." While in Alberta, Jo dedicated much of her time campaigning to protect the pristine wilderness that surrounded her. She continues to ponder for solutions to prevent further destruction of the environment, asking, "How can we make



Jasper National Park, Mt. Edith Cavel & Angel Glacier, Aug. 1963. JO THOMAS PHOTO

activities that heal the planet more profitable than the ones that are destroying it?"

Retired now after a 25-year career as a fitness promoter at Vancouver Parks Board, Jo's love of nature and life-long dedication to health and wellness are what inspire her to volunteer at Ecojustice. Jo's connection to Ecojustice is solid and her activism speaks to our shared value of placing the health of the environment ahead of everything we do. "Ecojustice is about health and wellness, and holding corporations and governments accountable for the health of our planet, our communities, and all of our citizens."

Words well said, Jo.

our thanks

Ecojustice acknowledges the kind and thoughtful contributions of the many volunteers whose service and dedication to the environment were gratefully accepted in 2007. With your help our work continues toward our objective of a healthy environment for all Canadians. Thank you!

COMMUNICATIONS

Jake Axelrod
Marie-Pierre Desrosiers
Carol Feilberts
Reyna Ramolette Hayashi

FINANCE/ADMIN

Aliya Tejani

FUNDRAISING

Marco Bagnasco
Nancy Cheng
Bob Cutting
Amy Dong
Annie Fernback
Lisa Heinzinger
Jeanette Lim
Maggie Louie
Margareth Oud
Katie Planzer
Elaine Pusic
Bruce Sholdice
Joanne Thomas

LEGAL SUPPORT

Jesse Allen
Arthur Churchyard
Prof. Robert Godin
Chris Graham
Pat Hamilton
Judah Harrison
Jocelyn Kearney
Ian Klesmer
Shannyn Kornelsen
Graham Mayeda
Dana McLean
Vera Slawinski
Vicky Wong

SCIENCE SUPPORT

Prof. Gabriel Blouin-Demers
Lesley-Ann Chiavarelli
Albert Dugal
Prof. Scott Findlay
Sara Gagne
David R. Hampson
Prof. David Lean
Heather Litwin
Mary Lou McDonald
Prof. Fred Michel
Kira Montgomery
Prof. Antoine Morin
Prof. Nigel Roulet
Dr. Fred Scheuler
Dr. Clarke Topp
Sarah Young



What's next

“It is horrifying that we have to fight our own government to save our environment”

American photographer Ansel Adams became famous for documenting the astounding beauty of national parks in the US West. His iconic black and white images captured these natural spaces before freeways made these now popular areas accessible. A long-time environmental advocate, Adams once said, “It is horrifying that we have to fight our own government to save our environment.”



We couldn't agree more.

At Ecojustice we are dedicated to protecting Canada's natural spaces but too often our battles are not against polluters that flout the law or careless profit-driven corporations. Instead we find ourselves taking on the very government agencies charged with stewarding our natural resources.

In this newsletter you can read about our efforts to hold our governments accountable. We are battling to stop government agencies from sidestepping environmental assessments for open-pit mines in the tar sands and massive oil refineries in the east. Fighting to uncover dirty

government secrets about Canada's nuclear commission, toxic mining waste and endangered species, we are continually campaigning for an end to political interference and lax enforcement of our laws.

Yet there is progress. After years of withholding key public data from environmental groups, BC was scolded by its privacy commissioner and has promised to change its ways. In Ottawa, after months of swirling controversy over Canada's nuclear watchdog, a private members bill was tabled to end this political interference.

So while Adams' horror at the inability of government to protect the environment remains prescient, times are changing. Each and every day Canadians are becoming more aware of the urgent need to reduce our collective environmental footprint and begin the much needed shift towards sustainability. In the meantime, Ecojustice continues to fight the good fight for all Canadians.

Rob Mitchell
DIRECTOR

ecojustice.ca
formerly Sierra Legal

VANCOUVER: Suite 214, 131 Water St., Vancouver, BC V6B 4M3
TORONTO: Suite 900, 30 St. Patrick St., Toronto, ON M5T 3A3
OTTAWA: 35 Copernicus Street, Room 107, Ottawa, ON K1N 6N5
1-800-926-7744 | info@ecojustice.ca | www.ecojustice.ca

BOARD OF DIRECTORS John E. S. Briggs, Dr. Elizabeth Christie, Peter Day, Jennifer J. Klimek, Tamara Lorincz, Brenda McLuhan, Judge William A. Newsom, Doug Rae, Paul Richardson, John Swaigen, Chris Tollefson, Sandy Treagus, Trip Van Noppen, Erika Weller

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: WWW.UNISOURCE.CA