

SIERRA LEGAL DEFENCE FUND

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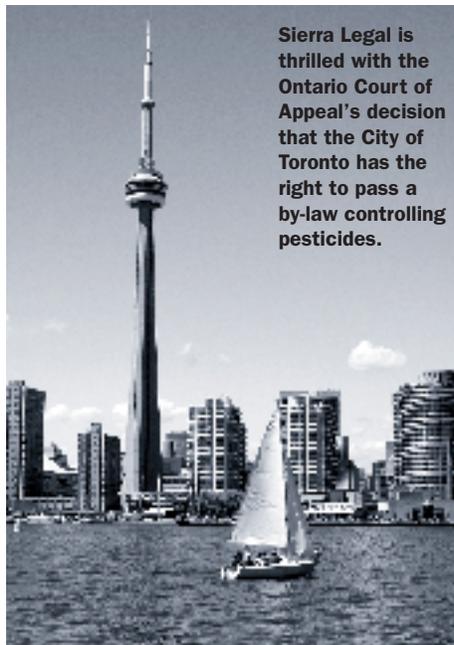
ONTARIO COURT OF APPEAL

Another major victory for municipal pesticide bylaws

EARLIER THIS SUMMER THE ONTARIO COURT of Appeal released its widely anticipated decision regarding a challenge of a City of Toronto by-law brought by Croplife Canada on behalf of the pesticide industry. In a decision hailed by environmentalists, public health advocates and municipalities across the country, the Court ruled that the City does indeed have the authority to pass the by-law controlling pesticides.

“We are absolutely delighted that the Court has echoed the Supreme Court of Canada and ruled that corporate interests cannot trump the ability of municipalities to protect their citizenry and maintain a healthy environment,” said Sierra Legal lawyer Justin Duncan. Co-counsel Robert Wright added, “Instead of spending their seemingly limitless resources fighting concerned citizens and local government agencies, perhaps the pesticide industry will now focus their energies on developing more environmentally friendly products and ways of doing business.”

The Toronto pesticide by-law battle follows a similarly decided legal battle over a pesticide control by-law passed by the town of Hudson, Quebec fourteen years ago. Sierra Legal had successfully argued



Sierra Legal is thrilled with the Ontario Court of Appeal's decision that the City of Toronto has the right to pass a by-law controlling pesticides.

before the Supreme Court of Canada in 2001 that the Hudson by-law should be upheld. And now the highest court in Ontario has applied that decision in Ontario, finding that municipalities have the right to protect their citizens and environment.

The ruling means that Ontario municipalities concerned with the reduction of pesticide use in their community can

continue to pass by-laws to control such use. There are currently more than 70 municipalities across Canada with similar by-laws.

Sierra Legal represented the Federation of Canadian Municipalities and World Wildlife Fund as interveners to support the city's pesticide by-law. We also worked closely with Canadian Environmental Law Association and the City of Toronto on the case.

Croplife Canada announced in late August that it is seeking leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. Sierra Legal expects that leave will be denied given that the Court has already ruled on this issue in the Hudson case.

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This Land is Their Land exposes weak oil and gas laws

IN JUNE, SIERRA LEGAL RELEASED *This Land is Their Land*, a scathing report that provides a much-needed assessment of B.C.'s booming oil and gas sector. The comprehensive audit, which grades the government on factors such as landowner rights and environmental protection, exposes major weaknesses in B.C.'s oil and gas laws.

The audit gives B.C.'s laws an 'F' for failing to protect landowners' rights, as companies in B.C. currently have the right to drill for oil and build pipelines on private lands, even when property owners object. Landowners are simply notified when oil and gas rights are sold from underneath them, but have no right to appeal an approval of a well site on their land. Moreover, potentially fatal sour gas wells can be built within 80 metres of a family home without providing an emergency response plan for the neighbourhood.

"This report is a very important tool for landowners," said Gwen Johansson, a Peace County landowner who collaborated on the report. "Only when you see all the laws, policies and regulations together in one document can you see how powerless B.C. landowners are when a petroleum company wants access to their land. This report demonstrates how uneven the playing field is."

For inadequate environmental protection and enforcement laws, the audit gives B.C. a 'C'. The vast majority of B.C.'s environmental rules concerning oil and gas development are non-enforceable and backed up by an understaffed enforcement team that cannot even prosecute offenders. The report also reveals that recent field audits show a startling 64 per cent non-compliance rate with environmental and safety rules, highlighting the need for immediate action to improve B.C.'s poor record.



"We're looking at transforming north-east B.C. from a beautiful landscape of wildlife and a wide range of habitat into this kind of chopped up patchwork where there's going to be little toxic sumps," says Tim Howard, report author and Sierra Legal staff lawyer. "The B.C. government has thrown individual rights and environmental interests by the wayside in order to make economic gains."

The report received considerable local and national media coverage and we hope that it will prompt the province to re-examine and overhaul its current oil and gas laws.

To view a full copy of the report, visit www.sierralegal.org.

BOREAL FORESTS

Sierra Legal appeals harmful logging in Canada's north

Following investigations by the Saskatchewan Environmental Society, the Rainforest Action Network and concerned local citizens it was revealed that forestry giant Weyerhaeuser may be logging illegally in Canada's Boreal forests. Thus, Sierra Legal has signed on to represent the Saskatchewan Environmental Society in an appeal of the logging company's "sustainable" forestry certification status granted by the Canadian Standards Association (CSA). Saskatchewan government documents show that Weyerhaeuser has exceeded its legal summer logging allowance by 100 per cent and its 20-year road building allowance by 70 per cent in less than five years.



Sierra Legal will appeal Weyerhaeuser's "sustainable" status because of its logging practices in the Boreal forest.

In addition to the legal appeal, conservation groups are requesting that corporations such as Xerox, which use Weyerhaeuser products, boycott the logging company until it achieves Forest Stewardship Council (FSC) certification for all of its operations. Under the FSC certification system, third-party certification bodies assess forest management based on specific principles, criteria and regional standards. The CSA, however, provides no such guiding criteria or indicators, thus making the FSC a significantly more credible system that is able to ensure sustainable logging practices are being followed.

We'll keep you posted on the developments of the appeal.

Sierra Legal challenges U.S. coal plants

ON BEHALF OF ORGANIZATIONS FROM across eastern Canada, earlier this summer Sierra Legal filed a complaint with the U.S. government regarding emissions from 250 coal-fired power plants in the U.S.-Midwest that cause smog and acid rain in Canada.

It is estimated that these power plants emit millions of tonnes of smog causing pollutants such as sulphur dioxide and nitrogen oxides each year. Carried by prevailing winds into the populous Windsor to Quebec City corridor, these pollutants contribute to the region's unprecedented smog levels and result in thousands of premature deaths and dramatically increased respiratory illnesses in children and other vulnerable groups. In major Canadian cities like Toronto and Montreal, up to half of the smog is from U.S. sources. These emissions also contribute to acid rain in eastern Canada, particularly the Atlantic provinces. New Canadian government research has established that further dramatic reductions of sulphur dioxide will be needed to bring thousands of lakes back to health.

Emissions from these plants also have serious global consequences associated

with climate change. By releasing millions of tonnes of carbon dioxide each year, these power plants are contributing to various climate change impacts, including heat waves, drought, and violent storms.

The petition was submitted to the U.S. Environmental Protection Agency under Section 115 of the U.S. *Clean Air Act* on



Sierra Legal filed a complaint with the US government regarding emissions from 250 coal-fired power plants such as this one.

behalf of a coalition of concerned groups including Friends of the Earth-Canada, Citizens Environment Alliance of Southwestern Ontario, Toronto Environmental Alliance, Centre for Environmentally Sustainable Development, STOP, Ecology Action Centre and Conservation Council of New Brunswick. The petitioners are all situated in the path of the U.S. Midwest contaminant plume.

The coalition hopes that the petition will spur the EPA to clean up its act, but caution that it is simply the first step. If the EPA fails to take appropriate action to reduce emissions from the coal fired power plants, the groups are entitled to pursue further legal action in U.S. courts.

“This petition is both a challenge and an opportunity for the U.S. government,” said Albert Koehl, Sierra Legal lawyer representing the groups. “We would rather sit down and work with the EPA administrator to clean our air and protect our climate than fight him in court. But we will not continue to stand idly by as tens of thousands of Canadian and American lives are cut short by easily preventable emissions from coal-fired power plants.”

LABRADOR FISHERIES AND WATERWAYS

Labrador rivers dammed by Federal Court

THE FEDERAL COURT DELIVERED A CONTROVERSIAL DECISION THIS July in a case concerning alleged contraventions of the federal *Fisheries Act* that occurred during construction of Phase 2 of the Trans-Labrador Highway, between Red Bay and Cartwright.

On behalf of the Labrador Métis Nation (LMN), Sierra Legal lawyers Robert Wright and Justin Duncan argued that construction of bridges and culverts during this phase of the highway resulted in extensive damage to salmon-bearing rivers and streams – thereby violating the *Fisheries Act*.

The case began in fall 2003 when the LMN launched private prosecutions under the *Fisheries Act* against the Province of Newfoundland and Labrador for allowing the destruction of fish habitat and the blockage of the Paradise and St. Lewis Rivers.

Late last year the Attorney General of Canada stepped in and stayed the prosecutions. Sierra Legal then launched a judicial

review of that decision on behalf of the LMN, arguing that the Attorney General had failed to adequately consult with the Métis who comprise the majority of the population in areas affected by the highway.

Despite finding that there were likely contraventions of the *Fisheries Act*, that the province did not properly follow original construction plans, and that Métis interests may have been adversely affected, the Court declined to overturn the Attorney General's decision to shut down the prosecutions because it did not feel there had been a “flagrant impropriety.”

The groups are considering appealing the decision and hope that the federal government will better protect the fisheries of Labrador in future and impose appropriate measures during the construction of the final phase of the highway to ensure protection of Labrador's fisheries and waterways.

EMPOWERING TO PROTECT

Justin Duncan

Justin enjoys the outdoors when he's not busy protecting it. Here, he vacations near Terra Nova National Park in Newfoundland in the summer of 2003.



GROWING UP IN GRIMSBY, ONTARIO, A SMALL TOWN between Toronto and Niagara Falls, Justin Duncan developed a love for nature by exploring the forests of the Niagara Escarpment and through his work on local farms.

He also spent most summers visiting family in Britain, where the lack of wild spaces cultivated his appreciation for Canada's abundant natural beauty and instilled the desire to see that our green spaces are preserved for future generations.

Setting out to learn as much as he could about the environment, Justin obtained his undergraduate degree in Biology and Environmental Science from the University of Western Ontario before continuing on with law school at Queen's University. He knew he wanted to practice environmental law, so when a colleague from his work litigating for the Ontario government mentioned that Sierra Legal was hiring, Justin had his application package in the next day.

"It's always been a goal of mine to be directly involved in developing better environmental laws to protect our natural heritage," says Justin. "As the leading national environmental law organization, Sierra Legal is the best place for me to apply all aspects of my academic and professional training and experience to have a direct impact on laws that will shape the future of our environment."

Working as a staff lawyer with Sierra Legal since the

summer of 2003, Justin has done remarkable work on matters involving strengthening pesticide regulations and reductions, invasive species, parks, mining, forestry and aboriginal peoples. In just two short years with the organization, Justin has achieved major successes with cases like the Toronto pesticide by-law case (see cover story) and the Lake Superior case, in which Sierra Legal stopped the re-opening of a road through a provincial park.

For Justin, the most rewarding aspect of his work is knowing that he can give a voice to those trying to raise public awareness by ensuring that laws and government policy reflect the need to protect the environment and sustain the connection that all humans have with our natural world. The feedback he receives from clients fuels his momentum to continue working.

"To be able to empower people and to give them a voice in a process where they don't feel they have one is a very rewarding part of my job," says Justin. "For example, our work on ensuring that municipalities have the authority to pass by-laws controlling pesticides has a far-reaching effect by giving citizens in other jurisdictions the same tools to work in their own communities for better environmental laws."

When he is not busy working to protect the environment, Justin makes a point to get outside and enjoy it. He regularly hikes and mountain bikes in local conservation areas and also enjoys astronomy and gardening.

Tim Howard leaves an unforgettable legacy at Sierra Legal

COMBINING HIS PASSION FOR THE environment and the law, Tim Howard has carved a career as one of Canada's most respected environmental lawyers.

Receiving his law degree from the University of British Columbia in 1994, Tim graduated at the top of his class with the distinction of receiving the prestigious gold medal. He joined Sierra Legal Defence Fund two years later and represented the organization on a variety of prominent issues.

Tim frequently spoke out against the now cancelled Duke Point Power Proposal for Vancouver Island. In Alberta, he helped highlight the need for public consultation and environmental assessment before the construction of coal-fired power plants. More recently, Tim generated considerable buzz with his audit of BC's oil and gas regulations *This Land is Their Land* (see page two).



Tim Howard is leaving Sierra Legal to pursue new challenges. Here, he smiles with daughter Aliya.

But more important than any individual victory in the courts or clever comment in the press, Tim's commitment to the issues, his clients and the organization made him a very important and special part of our team. Coworkers appreciated his passion, humour, integrity and seemingly unending energy.

With the birth of daughter Aliya in January this year, Tim is on top of the world. He has just finished travelling through Italy with Aliya and his wife Julie.

This fall Tim will start working at Mandell Pinder, a Vancouver firm specializing in Aboriginal law. He will still continue to work with Sierra Legal on fighting American Sumas Energy 2's appeal to build a power line in Canada.

Everyone at Sierra Legal wishes Tim and his family the best. He will be missed.

Former Sierra Legal lawyer wins Green Award

Former Sierra Legal lawyer Jerry DeMarco was recently announced as one of the first ever recipients of the Green Toronto Awards presented by the City of Toronto. Jerry received the award under the Leadership category for his life long dedication to environmental issues, especially his work with Sierra Legal fighting to uphold the ability of communities to protect their local environment by passing pesticide restriction by-laws. Sierra Legal staff and friends wish to congratulate Jerry on his award.

Sierra Legal's Ontario office participated in Toronto's annual Dragon Boat races this summer...



ON THE BOOKS

Updates on Sierra Legal
Defence Fund Cases

GRIZZLY FOI COSTS AWARDED

After winning the grizzly Freedom of Information case on behalf of the Raincoast Conservation Society, a victory which led to the B.C.'s government's release of important data about the number and location of grizzly bear kill sites in the province, Sierra Legal moved to collect costs for the case. The Rules of Court provide for an award of costs to the victorious party in such a case; however, the Guide Outfitter Association of B.C. challenged this move, alleging that the usual rule should not apply in this case. After further submissions by both parties Sierra Legal was eventually awarded costs for the lower court and appeal proceedings.

ONTARIO "SPILLS BILL" PASSED

After much debate and extensive input from Sierra Legal, the Ontario government finally passed Bill 133 "The Spills Bill" in June. The legislation is intended to combat chronic non-compliance with the province's pollution laws by large industrial facilities. In March, Sierra Legal released information documenting that in 2002-2003 there were more than 2,100 water pollution violations by industry across Ontario. The data also revealed that in 2003 alone the volume of illegal spills into water totaled more than five million litres. Polluters will now face immediate environmental penalties of up to \$100,000 per day for hazardous spills.

LOG SALVAGE DECISION

Sierra Legal is disappointed with a recent Federal Court decision that ruled against us in our log salvage case. In March, we argued that the salvage regulations under the B.C. *Provincial Forest Act* are unconstitutional and that the federal government should have exclusive jurisdiction over navigation and shipping. We argued

that the current provincial regulations discourage salvage and contribute to environmental damage and that salvors should be adequately compensated, particularly when they protect against harm to the environment.

Unfortunately, the court found that the current provincial log salvage regulations are valid as part of the B.C.'s scheme to regulate forestry and that jurisdiction should not be turned over to the federal government.

the movement calling for binding national standards for sewage treatment. We will continue to monitor this process to ensure that strong regulations are developed.

TCE: FEDS FINALLY UPDATE DRINKING WATER STANDARD

After several years of delay, the federal government has finally acted on demands from Sierra Legal to update its drinking water guidelines for the toxic chemical Trichloroethylene. In 2000, high levels of TCE,



Sierra Legal is thrilled that the federal government has finally agreed to update its drinking water guidelines for the toxic chemical Trichloroethylene.

SEWAGE REPORT STILL MAKING WAVES

Less than a year after Sierra Legal called for major improvements to Canada's sewage standards in our National Sewage Report Card, Environment Minister Stephane Dion has now publicly stated that all Canadian cities should have a minimum of secondary treatment – a key recommendation from the report.

In early July, Dion said he is negotiating with provincial environment ministers to come up with a national standard for sewage treatment. His recommendation that all Canadian cities should have a minimum of secondary treatment will force cities like Victoria, Saint John and Halifax to stop dumping sewage into waters without any treatment whatsoever.

Sierra Legal has been at the forefront of

an industrial solvent, were discovered in drinking water in the community of Beckwith, Ontario. On behalf of local residents, Sierra Legal immediately petitioned the government to have the outdated Canadian TCE guideline lowered to the stricter US limit of 5 parts per billion. Sierra Legal's research revealed that European and US drinking water standards for TCE were significantly lower and that federal government studies estimate that hundreds of thousands of households across the country have this toxic chemical in their drinking water. Largely as a result of the persistent work by Sierra Legal staff scientist Dr. Elaine MacDonald, after a series of missed deadlines and broken promises, the federal government finally acted on Sierra Legal's recommendations early this summer and imposed the stricter limit.

Working with communities to protect the environment



Robert Mitchell

OUR COVER STORY IN THIS NEWSLETTER talks about our involvement in an Ontario Court of Appeal decision that will allow the City of Toronto to maintain its municipal by-law restricting pesticide use within the city. The decision is a major victory for public health and the environment, and demonstrates how Sierra Legal is using the courts to empower communities to protect the environment in which they live.

Since our inception in 1990, Sierra Legal has had far-reaching effects through not only our own litigation, but also through our work with community groups across the country in informing and educating the greater public. With our limited resources, Sierra Legal cannot fight every battle in the courts, but we are dedicated to ensuring that concerned citizens know what their rights are and what legal tools they have to protect themselves from environmental harm.

Despite this most recent victory in courts the celebration might be short-lived. As this newsletter went to press, the pesticide industry announced it would try and appeal the case to the Supreme Court of Canada. This is eerily reminiscent of the legal battle over a similar pesticide by-law from the Town of Hudson, Quebec that went to the Supreme Court in 2001. Fortunately Sierra Legal was able to capitalize on that opportunity to argue before the country's highest court, successfully arguing that communities should have the power to pass by-laws to protect their citizenry and local environment.

In the unanimous landmark Hudson ruling the Court ruled that the municipality did not contravene any provincial or federal jurisdictions. Not only did the justices agree on the ruling, they went much further. For the first time in Canada, they endorsed the precautionary principle, which holds that governments should act to mitigate risks to public health or the environment despite a lack of absolute scientific certainty as to the likelihood, magnitude, or causation of that harm. Since the Hudson ruling, dozens of municipalities across the country, including Toronto, began passing their own pesticide by-laws.

Building on hard won victories in the Hudson and Toronto cases, we intend to assess the ability of municipalities across Canada to enact similar by-laws to protect the environment and their citizen's health in a report to be published in the fall.

As pleased as we are that Ontario's top court has echoed the Hudson decision, we know that much work lies ahead. It appears that the pesticide industry is intent on continuing to use their resources to fight municipal governments through the courts. We will continue to be there to give a legal voice to communities wanting the basic right to protect what's put in their environment – but we cannot do it alone. With your support, we will work to ensure that the Hudson case ruling is upheld once again.



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SIERRA LEGAL DEFENCE FUND is a Canadian charity (BN 13474 8474 RR0001) providing free legal services to environmentalists in Canada. We are completely separate from the Sierra Club.

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AN APPEAL TO SUPPORTERS

Sierra Legal to change its name in 2006 – You can help

When Sierra Legal Defence Fund began in Vancouver in 1990, we did so with only two lawyers and a start up grant. Today we have lawyers and scientists in two offices, Vancouver and Toronto, and we are working on environmental cases from every province and territory through the support of 30,000 generous donors. Our mission then, as it is now, is to defend Canadians' fundamental right to a healthy natural environment. Over the last fifteen years, we have taken on some of the most significant and ground breaking environmental cases in the country – and we have won. The important environmental law precedents we have established will have wide-ranging and long-lasting impacts.

However, at present our Vancouver and Toronto offices are working at maximum capacity, and we are turning away more work every week than we have the ability to take on. We must add capacity in our two offices, and because environmental protection is a national concern, we also seek to broaden our presence by opening new offices across Canada. To grow our program capacity, build our supporter base and take on more cases, we have to raise awareness of who we are and the importance of the work we take on. To accomplish this, we have decided to select a new name for our organization that captures the essence of what we do and offers a clear vision for a sustainable future. We will launch the new name in Spring 2006 and are asking for your help to do this.



Sierra Legal Defence Fund is changing its name and we need your help!

Later this year we will be conducting a brief phone survey of our supporters to find out more about your thoughts on Sierra Legal and our program work. This survey will be critical in advising us on changing our name and in laying the foundation for future growth.

If you are interested in participating in this survey, please tick the appropriate box on the reply form enclosed with this newsletter and return it to us in the business reply envelope enclosed. The information you provide will be completely confidential and your personal information will not be shared with others.

Your thoughts and opinions are critical to our future success, and we value your input on our ongoing work.

Sierra Legal Defence Fund is grateful for gifts made

IN HONOUR OF:

William Charlton's graduation	Bruce Simpson's birthday
Erin & Bill Couchie's wedding	Meegan Simpson-Cooke
Sarah Dover's graduation	

IN MEMORY OF:

Olga Williams Klement
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To make a gift in honour of an important event, or in memory of a friend or family member please call 1-800-926-7744 ext. 230