

*advocates for the environment*

# SIERRA LEGAL DEFENCE FUND

SEPTEMBER 2001

NEWSLETTER NO. 28

## LOCAL CONTROL

# Supreme Court upholds pesticide restrictions

SIERRA LEGAL LAWYERS ARE CELEBRATING the recent Supreme Court of Canada decision that upheld the power of municipal governments to restrict the use of pesticides within their communities. The landmark decision reinforces the authority of municipal governments to protect the health of their citizens and their environment from harmful contaminants.

The case involved a municipal bylaw passed in 1991 by the Town of Hudson, Quebec, which tightly restricted the use of pesticides for non-essential (or cosmetic) uses within its boundaries. Chemlawn and Spraytech, both companies that routinely apply pesticides, had lost challenges to the bylaw in two Quebec courts before appealing to the Supreme Court to strike down the bylaw.

Sierra Legal lawyers intervened on behalf of the Federation of Canadian Municipalities, World Wildlife Fund, and Nature-Action Quebec. Our lawyers Jerry DeMarco and Stewart Elgie argued that municipalities have a critical role in protecting the health of residents and the environment, and that pesticide reduction measures are within the bounds of their local powers.

The unanimous Supreme Court judgment emphasized the importance of envi-



**SUMMER JUST GOT SAFER:** A landmark Supreme Court of Canada ruling affirms municipalities' right to protect the health of residents like this one, by limiting the use of pesticides.

ronmental protection for all orders of government. The decision is expected to lead many municipalities throughout Canada to enact similar by-laws.

"The appeal by the pesticide companies threatened the ability of local governments to address environmental mat-

ters and put at risk many other current bylaws," says Sierra Legal managing lawyer Jerry DeMarco.

The judgment reaffirmed that "environmental protection has emerged as a fundamental value in Canadian society" and asserted that "our common future, that of

every Canadian community, depends on a healthy environment."

As a direct result of Sierra Legal's intervention, the court emphasized the need to take international law principles into account. For the first time it cited the 'precautionary principle' – a well-established concept asserting "environmental measures must anticipate, prevent and attack the causes of environmental degradation" and that a "lack of full scientific certainty"

should not be used to postpone preventative measures.

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### **MOUNTAIN BEAVER**

Endangered B.C. mammal



# Sierra Legal challenges NAFTA Chapter 11

## ***Case alleges that tribunals are unconstitutional***

SIERRA LEGAL RECENTLY LAUNCHED a legal challenge attacking the secrecy of NAFTA's Chapter 11 tribunals, arguing it violates Canadians' rights to freedom of the press and freedom of expression.

On behalf of the Canadian Union of Public Employees (CUPE) and Democracy Watch, Sierra Legal lawyers filed the challenge in the Ontario Superior Court of Justice, defending the rights guaranteed in the Canadian Charter of Rights and Freedoms.

Chapter 11 of NAFTA gives foreign corporations the power to sue governments for infringing on their investments. The resulting claims are heard behind closed doors by tribunals, the secrecy of which, the groups contend, calls into question the legitimacy of the entire Chapter 11 process.

"The secrecy of these tribunals flies in the face of long-established principles that the judicial system must operate under the penetrating light of public scrutiny. We believe Canada's agreement to NAFTA is unconstitutional, because it incorporates this secret process," said Raymond MacCallum, lawyer with the Sierra Legal Defence Fund.



**RAINING DISSENT:** Demonstrators protesting the secrecy of the Quebec City summit on Free Trade Area of the Americas are sprayed with a water canon by security forces earlier this year.

The groups believe Canadians need access to information and the decision-making process to hold public institutions to account – especially on environmental issues, given the poor environmental track record of international trade tribunals.

A win in the courts, leading to a declaration that Canada's agreement to NAFTA in its present form is unconstitutional, will

force Canada to negotiate with the United States and Mexico to amend the secrecy rules of Chapter 11. Any new provisions will have to uphold Canadians' Charter-guaranteed rights. The case is particularly pressing, considering that a leaked draft of the investment chapter of the Free Trade Area of the Americas includes a similar secretive process.

## **ENVIRONMENTAL SIDE AGREEMENTS**

# Commissions investigate charges

NAFTA'S 'ENVIRONMENTAL SIDE agreement' creates an avenue for challenging a government's failure to enforce its environmental laws – the citizen submission process. Any resident of Canada, Mexico or the U.S. may file a submission, which can lead to an investigation by the North American Commission for Environmental Cooperation.

Recently, the Secretariat of the Commission recommended that the 'B.C. Mining' complaint, filed by Sierra Legal on behalf of the Environmental Mining Council of BC, the Sierra Club of BC, and the Taku Wilderness Association, be investigated. The complaint alleges that discharges from mining sites violate the Fisheries Act by introducing 'deleterious substances' into fish-bearing waters. The environment

'ministers' from the three NAFTA countries will now determine if the investigation proceeds. While the Commission has no powers of enforcement, its findings carry considerable weight and can bring significant attention on the offending government.

"The B.C. Mining complaint highlights the all too common practice of companies taking profits from mines while leaving the public to pick-up the environmental cost," said Sierra Legal staff lawyer, Randy Christensen.

On the international front, Sierra Legal contributed to a first-ever complaint to the Canada-Chile Commission on Environmental Cooperation, concerning the failure of the Chilean environmental authority to conduct comprehensive environ-

mental assessment of a project by American forestry giant Boise-Cascade. This proposed woodchip plant would have consumed 100,000 hectares of old-growth forest over a 20-year period.

In this complaint, supported by AIDA (Interamerican Association for Environmental Defense), Sierra Legal worked closely with our Chilean counterparts, FIMA, and our sister-organization in the U.S., Earthjustice.

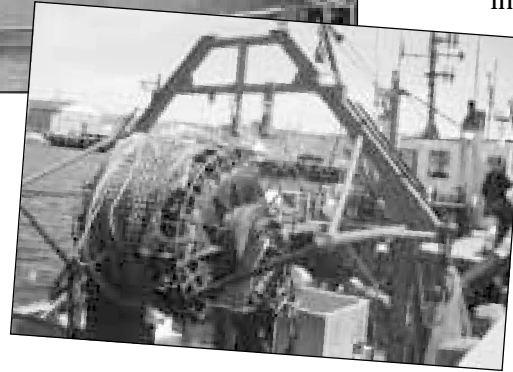
"This significant international effort addressed crucial environmental issues arising out of the globalization of the Americas," said Stella Bastidas, Sierra Legal international environmental lawyer.

However, in February this year, Sierra Legal learned that the project was cancelled, providing an excuse for the Commission to dismiss criticism of Chile's handling of the Boise project detailed in the complaint.



#### PLUNDERING THE OCEAN BOTTOM:

Dragger boat nets with chains and metal bobbins weighing hundreds of pounds scour the seabed for fish, leaving behind a ravaged ocean floor.



#### ATLANTIC COAST

# 'Draggers' tear up ocean floor

THE ECOLOGY ACTION CENTRE (EAC) OF Nova Scotia, assisted by Sierra Legal, is taking Fisheries and Oceans Canada (FOC) to the Federal Court of Canada for continuing to allow destructive fishing practices off the Atlantic coast that are destroying vital ocean habitat.

"Destruction of fish habitat is against Canadian law," Sierra Legal lawyer Margot Venton stated in a July press conference in Halifax. "But the federal government routinely allows boats using destructive fishing gear into areas of sensitive and important habitat."

At issue is the practice of dragger fishing, a method that uses nets consisting of heavily weighted chains and metal bobbins to scour the seabed and lift groundfish into trailing nets. There is widespread scientific evidence that this type of trawling has severe negative impacts on the ocean floor. The nets can destroy sensitive bottom habitat.

The Fisheries Act explicitly prohibits the harmful alteration, disruption or destruction of fish habitat. However, FOC continues to permit the use of bottom trawling fishing practices. George's Bank is one of the most important remaining fishing grounds in the Atlantic Fishery - yet the department announced it will re-open George's Bank to dragger boats again this year.

#### SIERRA LEGAL REPORT

### Pulp and paper mills pollute waterways as Feds fail to enforce the law

A recent report published by Sierra Legal has uncovered the federal government's outright failure to enforce water pollution laws for the pulp and paper industry in central and eastern Canada - an industry which consumes more water and produces more water pollution than any other in the country.

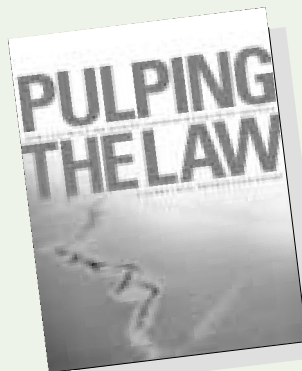
Using the most recent government data available for mills in Ontario, Quebec, and the Atlantic provinces, *Pulping the Law: How Pulp and Paper Mills Are Ruining Canadian Waters*, discovered more than 3,000 documented violations of federal law over a three-year period. Despite these numbers, the federal government has prosecuted only seven of those infractions.

"Many pulp and paper mills in central and eastern Canada have an abysmal compliance record, and the federal government has an even more abysmal enforcement record," says Sierra Legal lawyer Elizabeth Christie, who co-authored the report with volunteer forest conservationist Gillian McEachern. "The federal govern-

ment should ensure every reported violation is acted on and that every serious offender is prosecuted. Otherwise there will be no incentive for the mills to comply with pollution laws."

The report also addresses the serious, widespread environmental damage caused by water pollution from the pulp and paper industry in eastern Canada. Each year, the pulp and paper industry reports the release of almost 2,000 tonnes of chemicals into Canadian waters, more than twice the amount released by the mining, metals or chemical industries. The outdated manufacturing methods used by mills identified in the report add tonnes of harmful substances to waterways each year and continue to cause extensive harm to aquatic ecosystems.

The Sierra Legal report concludes that it is imperative that the federal government immediately enforce its water pollution laws responsibly. It also calls on Canada's pulp and paper industry to implement innovative, cleaner technology that has become the industry standard in other countries and to take responsibility for cleaning up the devastation it has caused to Canada's waterways. The report is available on-line at [www.sierralegal.org](http://www.sierralegal.org).





## THE HOLLICK CASE

# Supreme test for class actions

THE ONTARIO COURT OF APPEAL'S REFUSAL to allow a class action lawsuit concerning a landfill north of Toronto to proceed casts a spectre of doubt on the future of class action lawsuits as a viable legal tool for citizens seeking environmental justice.

Mr. John Hollick, on behalf of more than 30,000 Ontario residents, launched the lawsuit against the City of Toronto, alleging environmental harm caused by the landfill's operations. However, because the citizens were denied certification as a 'class' by the Ontario court, the lawsuit was unable to proceed.

In June, Sierra Legal lawyers intervened in the case, known as Hollick, before the Supreme Court of Canada and argued for the right of Canadians to pursue class action cases in defence of the environment and public safety.

The Hollick case is one of the first legal tests of environmental class action law to go to the Supreme Court of Canada.

If the Court or Appeal's narrow interpretation of class action legislation stands, it

could undermine class actions as a tool for environmental protection across Canada and restrict public use of the courts for legal remedies.

"Environmental cases are usually complex and expensive to litigate," said Sierra Legal lawyer Rob Wright. "Class actions are the only practical way for claims by large numbers of people regarding environmental issues to proceed through the courts. It is crucial that the certification test be flexible enough for difficult environmental actions to proceed."

Sierra Legal intervened in the Hollick case on behalf of Friends of the Earth, the West Coast Environmental Law Association and the Canadian Association of Physicians for the Environment.

The Supreme Court's decision is expected early in the new year.

# Endangered mammal gets help defending its habitat

WHEN INTERNATIONAL FOREST PRODUCTS Ltd. (Interfor) proposed construction of a helicopter landing area at the head of Jones Lake, just east of Chilliwack, B.C., they selected a site that was home to an ancient colony of mountain beavers.

Despite the requests of biologists from the provincial environment ministry not to allow the obliteration of the Jones Lake mountain beaver colony, the District Forests Manager approved Interfor's plans. Acting on a tip from a government source, John Werring, Sierra Legal's staff biologist, visited the site of the proposed helicopter landing. What he found amazed him: "The ground was like Swiss cheese - mountain beaver burrows and trails were everywhere," said Werring. "Depressions in the ground seemed to be the result of older burrows and trails collapsing over time, indicating that the colony was indeed long-established."

Mountain beaver are not beavers as we know them. Resembling a tailless muskrat, they are the most primitive species of

living rodents, a sort of a living fossil. These rarely seen, mysterious animals spend most of their time in underground burrows, coming out only to forage or migrate when young animals leave the nest. Mountain beavers have a limited range. Within B.C., they are found only in the southwest corner of the province. In B.C., mountain beavers are red-listed (threatened or endangered) by the BC Conservation Data Centre. They are also

A rare glimpse of a mountain beaver.



DALE STEELE PHOTO

listed as an "Identified Wildlife Species" under the Forest Practices Code of B.C. and are thus afforded special consideration when it comes to logging.

It was clear to Werring that a helicopter landing-pad would spell the end of the colony: the ground would need to be compacted and bulldozed, and the company would be dropping and storing logs on the landing and driving logging trucks over it.

Upon his return, Werring immediately contacted the local media and made the issue public. He also wrote to government officials in an effort to expose the utter disregard for an endangered species demonstrated by the Ministry of Forests and International Forest Products.

Subsequently, Sierra Legal received a letter from the Deputy Minister, B.C. Ministry of Forests, informing us that no further road construction or helicopter drop site works would proceed in the area until a new plan that provides for adequate protection of the mountain beaver had been prepared and approved by the local forest district manager. This chalks up a small but important victory for endangered species in Canada and shows how Sierra Legal can be effective in the court of public opinion as well as in the courts of law.



ROBERT MCCAW PHOTO

Purchase of the Lynde Marsh will protect Ontario's vulnerable black tern.

## ONTARIO

# Wetland preserved

After ten years of public debate, the government of Ontario has announced its purchase of 40 hectares of the Lynde Marsh in order to preserve one of the few remaining shoreline marsh ecosystems of Lake Ontario. Located east of Toronto, the Lynde Marsh is home to 35 species of fish and is an important breeding area for rare bird species, such as the provincially vulnerable black tern.

The move by the government of Ontario to protect the wetland habitat represents a significant victory for residents and environmentalists in the Lynde Marsh area. They have been fighting to protect the environmentally sensitive land from residential encroachment since 1990, when plans for a massive development adjacent to the marsh became public.

In 1997, Sierra Legal represented a local residents group called Save Lynde Marsh, and used the Environmental Bill of Rights to request the province take steps to protect Lynde Marsh with an environmental assessment. Sierra Legal's action came just as a residential subdivision was being constructed at the east end of the marsh in the second phase of a proposed development that would have devastated the wetland and its wildlife.

In response to Sierra Legal's submission, the province set aside \$4 million under the Natural Areas Protection Program to protect and restore the Lynde Marsh area, including \$1.67 million to purchase lands.

# BC Hydro ordered to carry out environmental assessments

BC HYDRO WILL NO LONGER BE ABLE TO disregard harm to fish and wildlife when exporting power to the U.S., thanks to legal actions taken by Sierra Legal. This spring the Federal Court of Appeal ruled unanimously that the National Energy Board (NEB) erred in permitting BC Hydro, one of Canada's largest hydroelectric power companies, to export up to one quarter of the power it generates without first considering how those exports might affect the environment.

Large-scale hydroelectric operations can have dramatic impacts on fish downstream. It can take only minutes for water released at some dams to go from zero to 50,000 cubic feet per second, with potentially devastating effects.

On behalf of the Steelhead Society of B.C. and the B.C. Wildlife Federation, Sierra Legal challenged two major ten-year power export permits issued by the National Energy Board to BC Hydro in December 1998. In the March decision, the Court of Appeal ruled that it was 'un-

reasonable' for the NEB to assume that issuing the permits would have no environmental effects.

Despite exporting enormous amounts of power to the U.S., BC Hydro has avoided serious environmental scrutiny on the grounds that these exports are produced by existing facilities and therefore do not require any further assessment. The Court of Appeal put this practice to rest.

Tim Howard, the staff lawyer who argued the case said, "If BC Hydro is going to export power throughout North America it is now going to have to assess the environmental consequences here in B.C."

Given the extent of BC Hydro's exports, this significant decision is good news for B.C.'s fish and wildlife."

BC Hydro must give the NEB complete information on environmental effects. If the Board is not persuaded, the permits could be set aside or referred to federal cabinet for a more extensive environmental review.



# Stumpage II cites more rip-offs

THIS SPRING SIERRA LEGAL RELEASED A second stumpage report exposing the shockingly low rates paid by forestry companies to the B.C. taxpayer for logging on public land. The *Interior Stumpage Report*, authored by Sierra Legal staff scientist Mitch Anderson, focuses on the Interior of B.C., where the majority of logging takes place. Analysis in the report showed that more than 30 per cent of the timber extracted from 1998-2000 - an amount which would load enough logging trucks to stretch end to end from

the Yukon border to Argentina - was taken by forestry companies for a mere \$10 per truckload. Over this same period, the B.C. government collected \$120 mil-

lion less than was expected if the logging companies had paid the "target rate" set by Victoria.

The report also includes a scathing commentary from a former Ministry of Forests scaling manager that provides a rare and disturbing glimpse into one of the most powerful branches of

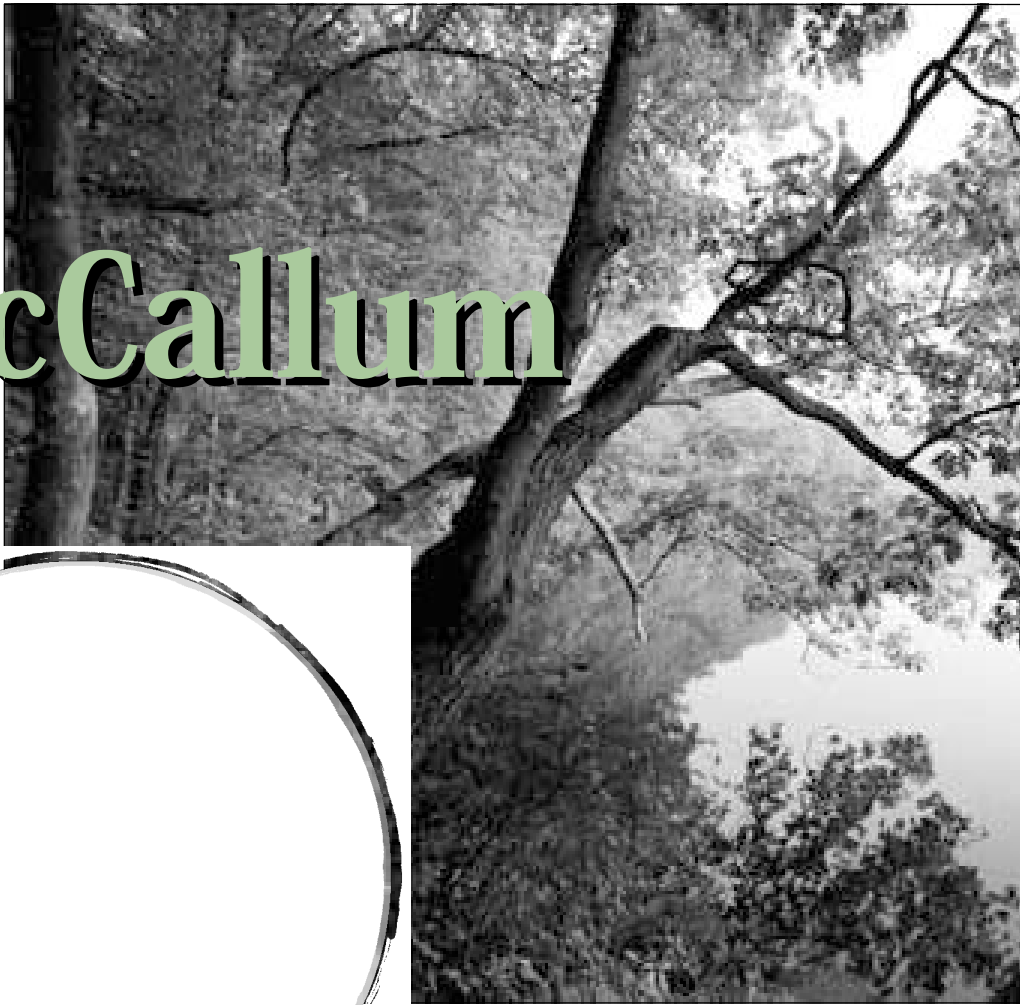
the government. The report is available on-line at [www.sierralegal.org](http://www.sierralegal.org).



ENVIRONMENTAL  
LAWYER LANDS HIS  
DREAM JOB

# Ray MacCallum

'In nature  
you realize  
you are  
a part of  
something  
so much  
greater'



BORN AND RAISED IN  
Canada's capital city,  
Ray MacCallum's career  
started out ordinary  
enough. "I was a bike co-

It was a great st

for a student. No boss look-  
ing over my shoulder and  
good money. I loved it."

Tripping off to Europe at  
17 and four months trav-  
elling through Asia after high

school left MacCallum with a broader view  
on the world, but still unsure about what  
he wanted to do with the rest of his life.

"I knew I wanted to do something in  
the environmental field and I'd always  
been successful in reasoning and arguing,"  
says MacCallum. "So ultimately I ended  
up at Dalhousie law school."

MacCallum met Sierra Legal founder  
Stewart Elgie after he interviewed for a  
summer job.

"I was really interested in Sierra Legal  
because I was so impressed with what

comparatively few re-  
sources," MacCallum recalls. "I just made  
a point to stay in touch with Sierra Legal  
and with Stewart because I knew this is  
where I wanted to put my energy." Mean-  
while, MacCallum spent a year clerking  
for a judge at the Supreme Court of  
Canada, attended Cambridge University to  
do graduate work in constitutional and in-  
ternational law, and worked for the fed-  
eral Department of Justice.

At one point he was asked to do work  
for Sierra Legal on the Ethyl Corporation  
case, but the federal government settled  
the NAFTA Chapter 11 challenge before  
he could get into it. It wasn't until Janu-  
ary of this year that he finally realized his  
long-held dream of working for Sierra  
Legal.

When not at work on cases such as Carden Plain and Scrubbers  
(see right), MacCallum rejuvenates by paddling, hiking and  
cycling.

"It feels good to know that the people  
who are familiar with Sierra Legal's work  
take us seriously," says MacCallum. "I don't  
think that anyone shakes in their boots  
when I call them up," he says with humour  
and modesty. "But in the Supreme Court I  
think that Sierra Legal is highly regarded,  
and our arguments are heavily weighted and  
considered. And believe me that is no small  
feat in the legal community."

One of MacCallum's higher profile cases  
is the challenge of NAFTA's Chapter 11.

"NAFTA is part of a disturbing trend that  
sees legal disputes between our democrati-  
cally-elected governments and foreign cor-  
porations resolved behind closed doors by  
secretive tribunals," says MacCallum. "The  
lawfulness of our government's actions,  
even to protect the environment, is being  
determined without public scrutiny and  
input."





# Carden Plain birds at risk

ONTARIO'S CARDEN PLAIN, HOME TO AN extraordinary array of grassland birds including the federally and provincially endangered loggerhead shrike, is under threat from a major quarry project. The Carden Plain is a vibrant ecosystem that has been designated as nationally significant under the international Important Bird Areas program. In fact, the Carden Plain is so critical as a habitat for the recovery of loggerhead shrike populations it has been selected as a priority for the Canadian Wildlife Service's Habitat Stewardship Fund.

Standing in the way of the loggerhead's recovery is a plan for a 950-acre quarry development that would slice into the Carden Plain, and severely impact loggerhead shrike habitat. After the City of Kawartha Lakes refused to alter its Official Community Plan and zoning bylaws to permit the quarry, Ferma Aggregates Ltd. appealed to the Ontario Municipal Board (OMB) to get the go-ahead.

In an effort to halt Ferma's quarry and challenge the effectiveness of the Ministry's stewardship of the loggerhead shrike, the

Carden Coalition for Responsible Planning (CCRP) sought representation from Sierra Legal lawyer Ray McCallum to appear before the OMB on its behalf. The CCRP is an alliance of conservation groups that includes the Canadian Nature Federation, Federation of Ontario Naturalists and local naturalist groups.

"This case is a classic example of the conflict between the habitat needs of an endangered species and the development desires of for-profit private property owners," says MacCallum. "Provincial law and policy is on the side of the former, and we are intent on making that case before the OMB."

Meanwhile, an interim bylaw by the municipality placed a freeze on all new quarry developments in the area. If Ferma's appeal of the freeze on quarrying is dismissed, the municipality would have up to two years to develop a planning strategy to address aggregate extraction activities within its boundaries – a strategy which would ultimately determine the fate of the Carden Plain, and the loggerhead shrike.

MacCallum is a passionate environmentalist. "I saw the environment as one of the major challenges facing society," he says. "You look at the issues and realize the huge problems that exist and at the same time you recognize how few resources are being applied to solving them."

A pragmatic answer from a pragmatic litigator.

But ask MacCallum what he likes about kayaking in Tofino, back-country camping in Kejimikujik National Park in Nova Scotia, or just heading up to Gatineau Park for the weekend and the pragmatic lawyer takes a long pause.

"I never feel more relaxed and peaceful than when I'm out there. The rustling in the woods, the sounds of birds, and the silence. You breathe in deeply and you are aware that there are no artificial sounds, no artificial smells. The total silence at night – that's when you feel you are a part of something so much greater."

## 'Scrubber' stacks spew toxins

RAY MACCALLUM IS LEADING THE CHARGE BY Sierra Legal to challenge a plan by operators of coal-fired generators to replace one form of pollution with another. The proposed scheme would extend the life of Ontario's dirty coal-fired generators by installing scrubbers that would remove nitrogen oxide but produce greater quantities of many other forms of air pollution.

The proposed scrubbers would not only produce fine particulate pollution, but would continue to emit mercury, sulphur dioxide, carbon dioxide, and several cancer-causing substances. Representing the Ontario Clean Air Alliance, Sierra Legal lawyers submitted petitions to the provincial and federal governments out-

lining the need for environmental assessments of the plan. If these petitions succeed, the scrubber scheme will require an

environmental assessment before proceeding. The petitions call for a full examination of the environmental and public health implications of the controversial project.

The petitions also request that the option of converting the plants to cleaner natural gas be considered as an alternative. In a history-making move, the Attorneys-General of the States of New York and Connecticut echoed the call for a federal environmental assessment after reviewing the petition prepared by Sierra Legal.



# Anti-SLAPP legislation passed

JUBILANT IS THE ONLY WAY TO DESCRIBE the mood at Sierra Legal's offices when the news finally came that the B.C. government had passed Bill 10 into law. The Protection of Public Participation Act was passed in parliament this spring, after many years of legal work by lawyers who believe in the fundamental rights of citizens to participate freely and openly on issues that affect their communities. Bill 10 is a law that will help to secure citizens' rights to free speech and protect them from lawsuits designed to stifle their voices on controversial issues.

"This law is about the fundamental democratic rights of citizens to speak

freely on matters of public importance," says Angela McCue of Sierra Legal. "This legislation is a significant step forward in protecting those rights."

Bill 10 specifically targets Strategic Lawsuits Against Public Participation or 'SLAPP' suits. A SLAPP is a lawsuit brought by a plaintiff to intimidate opponents from speaking publicly.

The new legislation was long-supported by Sierra Legal, the West Coast Environmental Law Association, the BC Civil Liberties Association and the Labour-Environment Alliance.

Craig Jones, President of the BC Civil Liberties Association said, "The association has long held the position that, ab-

sent malice, citizens should be free to participate in vigorous debate on issues of public importance. The BCCLA welcomes this initiative."

B.C. remains the only province in Canada to introduce such legislation. And though SLAPP suits are not uncommon, the issues they raise and the legal complexities of such cases can easily exhaust both the defendants and their lawyers. But with Bill 10 in place B.C. citizens have been given a fighting chance to defend their rights and to protect themselves from the costs of unnecessary legal battles. However, the jubilation that so many felt when Bill 10 was passed could turn to dismay. The newly elected Liberal Government had fought Bill 10 when it was passed by the then-NDP government, and could yet revoke it.

## New law protects citizens' right to speak freely

It happens in communities across Canada. A major development or industrial project is announced to go ahead. Perhaps it will emit harmful pollutants, or irrevocably alter the character and quality of the neighbourhood. Alarmed, local residents organize to oppose the project by writing letters to government, sending letters to the editor of local newspapers, and circulating petitions. And, in some cases, the citizens win. The bylaw is amended, or the permit is not granted, and the project is stopped in its tracks.

But in other cases, exercising these rights is a costly endeavour – the vocal citizens are hit with a lawsuit. Citing "interference in contractual relations," "conspiracy" and "defamation" a company with deep pockets and frustrated development plans is claiming its investments are at risk from the vocal opposition of the community. Referred to as SLAPP suits (Strategic Lawsuit Against Public Participation), these type of actions have a chilling effect on citizen participation in the democratic process.

Sierra Legal has defended several clients who have been sued based on their public statements in opposition to projects or developments. Preserving the public's right to be heard on land use decisions is essential to the democratic process and to preserving the environment.

In some instances, land developers have claimed they lost profits when their development application was denied, even though there is no law that guarantees the protection of potential profits from development proposals that are rejected by a community.

Yet SLAPP suits can penalize citizens by dragging them through the legal system to the tune of tens – even hundreds – of thousands of dollars.

Bill 10 protects the right of B.C. citizens to speak out about issues of public interest and to communicate their concerns to government. The new Act also allows a citizen facing a SLAPP suit to put the onus on the party bringing the lawsuit to prove that the lawsuit is not brought for improper purposes, such as stifling public debate. Such legislation will not only support the public's right to express its views on projects that affect their communities, it will also protect them from unnecessary and costly legal fees.

### Have you been SLAPPED lately?

If you support the right of citizens to engage in legal activities without fear of frivolous lawsuits, voice your support for the Protection of Public Participation Act by contacting the Honourable Geoff Plant, Attorney General for British Columbia at PO Box 9044, STN PROV GOVT, Victoria, B.C. V8W 9E2, fax: (250) 387-6411. To read the Act, go on-line to [www.legis.gov.bc.ca/2001](http://www.legis.gov.bc.ca/2001), click on "Third Reading Bills" and look for the Act in the alphabetical list of bills.



# ON THE BOOKS

## UPDATES ON SLDF CASES

### WOOD BUFFALO PARK UNDER THREAT FROM ROAD BUILDING

The Canadian Parks and Wilderness Society, with Sierra Legal lawyer Devon Page, has started the ball rolling on a judicial review of a proposed road through Wood Buffalo National Park, Canada's largest national wildlife reserve, located in northern Alberta and the southern Northwest Territories.

Construction of the 118-kilometre road would harm the park ecosystem by fragmenting the habitat of wildlife species such as the woodland caribou. "Parks Canada is violating the new Canada National Parks Act and the Canadian Environmental Assessment Act by allowing the road to be built," says Page.

Although the plan is to initially construct a winter-only road, the intent is to build an all-season road as soon as possible, for which Parks Canada has failed to complete an environmental assessment.

### ONTARIO ENVIRONMENT MINISTRY ACQUITTED

An unusual public-private prosecution of the Ontario Environment Ministry over a contaminated mine site north of Belleville, has resulted in an acquittal after four long years.

Although evidence presented in the 42-day trial established that toxic discharges from the provincially-owned Deloro mine site were responsible for contaminating adjacent waterways with heavy metals, the judge accepted the ministry's 'due diligence' defence on the basis of plans for a clean-up.

The Deloro site, developed as a gold mine in the 1860s, housed facilities to process and store radioactive and arsenic-rich ores. The provincial government has been responsible for the site since 1979.

The case started in 1997 when investigators from Sierra Legal and the Environmental Bureau of Investigation collected

samples at the Deloro site showing extremely high levels of toxic heavy metals, including arsenic.

On behalf of an informant from the EBI, Sierra Legal laid charges under the federal Fisheries Act and proceeded with a private prosecution. However, the provincial Attorney-General's office took over the prosecution.

The case marked an important first when the Crown Attorney asked Sierra Legal lawyer Doug Chapman and Mark Mattson of EBI to assist with the case. It was the first time lawyers from public-interest organizations assisted the provincial Attorney-General's office in prosecuting environmental offenders.



**DOMBIND CASE:** A public campaign by Sierra Legal clients has led to a dramatic reduction in the use of toxic pulp mill waste to suppress dust on Ontario roads.

### ONTARIO ROADS SPRAYED WITH TOXIC WASTE

Sierra Legal lawyer Elizabeth Christie has represented conservationists in a long battle to stop the use of toxic liquid pulp mill waste as a dust suppressant on Ontario roads. Norampac, the company that produces the waste and gives it away to municipalities, has been slow to implement the new environmental systems it has been promising for years.

Most recently, Norampac lost an appeal before the Environmental Review Tribunal of government orders directing it to install new equipment and end the use of Dombind within two years. In the midst of these ongoing legal battles, our clients have been able to mount a very effective campaign to end the use of Dombind and have succeeded in reducing the number

of municipalities who use it on their roads from over 100 to less than 15.

### CANDU REACTOR CASE GOES TO SUPREME COURT

Sierra Legal's long-running battle against the sale of two Candu nuclear reactors to China is now headed for the Supreme Court of Canada.

Representing the Sierra Club of Canada and working with co-counsel Franklin Gertler of Montreal, staff lawyer Tim Howard will be protecting the public's right of access to justice in this precedent-setting case.

The Candu case began in January 1997, after the federal government failed to conduct a Canadian environmental assessment before financing the sale of two reactors to China by Atomic Energy Canada Ltd. - prompting a Federal Court challenge. Sierra Legal is arguing that the decision by federal ministers to finance the deal with a \$1.5 billion commitment without

an assessment is a breach of law under the Canadian Environmental Assessment Act.

AECL tied up the case in preliminary motions and appeals for two years, including the recent attempt to persuade the Supreme Court to close the courtroom for confidential evidence - "secret" Chinese documents in support of its case. Howard defeated AECL's motion as well as its appeal to the Federal Court of Appeal, striking an important precedent for public access to justice. However, AECL has now taken the issue to the Supreme Court of Canada.

"The Supreme Court is being asked to decide between protecting corporate secrecy and protecting the public interest in open justice," says Howard. "Its decision will have implications for future environmental cases across the country."

## THE HOME FRONT

### UPDATES FROM SIERRA LEGAL

#### SIERRA LEGAL FOUNDER RECEIVES LAW SOCIETY MEDAL

Stewart Elgie, a founder of Sierra Legal Defence Fund, has been chosen to receive the 2001 Law Society of Upper Canada Medal - the first time in the Law Society's history it has given its most prestigious award to a public interest environmental lawyer.



Stewart Elgie

The Medal honours individuals who have made exceptional contributions to the practice of law and its highest ideals. Elgie's selection recognizes the considerable public interest achievements he has accomplished using the law to defend the environment and putting environmental issues on the public agenda.

During his ten years with Sierra Legal, Elgie was successful in his role as counsel on a number of significant environmental law cases in Canada, including three appearances before the Supreme Court of Canada. His many victories include: blocking commercial logging in Wood Buffalo National Park, Canada's largest national park; blocking Quebec's Great Whale Dam mega project; and halting the intrusion of a massive mine in a critical wildlife area bordering Jasper National Park.

Since 1995, Elgie has spearheaded a national campaign for a federal law to protect endangered species. This led to the introduction of a species protection Bill now before Parliament. Since 1996, Elgie also served as chair of Canada's national advisory committee to the North American Commission for Environmental Cooperation (created under the NAFTA environmental side-agreement).

Elgie was recently hired to lead the Canadian Boreal Trust, a new foundation dedicated to preserving Canada's boreal

forests. Although his new position will mark his departure from Sierra Legal, and from what Elgie describes as "the best law job in the country," he remains dedicated

to the cause that earned him the Law Society of Upper Canada Medal - environmental conservation. We wish him all the best in his new endeavours.

#### THREE LAWYERS JOIN SIERRA LEGAL DREAM TEAM

Devon Page joined Sierra Legal in April as Forest Team Leader in our Vancouver office. Devon has Bachelor of Science and Bachelor of Law degrees from the University of Saskatchewan and practised as a civil litigator. Devon is currently working on the Wood Buffalo Park and endangered Spotted Owl cases.

Robert Wright began with Sierra Legal as Senior Counsel in the Ontario office in April. Rob has worked for Sierra Legal in the past while busy running his own civil litigation practice. He will be working on the protection of the Oak Ridges Moraine in Ontario and recently represented Sierra Legal in one of the first legal tests of envi-

ronmental class action law to go to the Supreme Court of Canada.

A native of Ottawa, Ray MacCallum joined our Ontario office in January, following his work with the federal Depart-



Devon Page



Rob Wright



Ray MacCallum

ment of Justice. Ray has a law degree from Dalhousie Law School and a diploma in International Law from the University of Cambridge. Among his other cases, he is involved in a challenge to NAFTA's Chapter 11 before the courts of Ontario.

### IN MEMORIAM

THOMAS HALDANE WICKETT

## Respected board member and environment lawyer passes away

PASSIONATE ABOUT PUBLIC SERVICE, GOOD LITIGATORS AND THE NATURAL environment, Tom Wickett viewed Sierra Legal as the perfect match for his energies. Tom joined the Board of Sierra Legal in 1999 after retiring from a career in public interest law with the Attorney General of Ontario. He was a vital mentor to many, especially those who could survive his acerbic wit and keep up with his tireless spirit. Tom was counsel to the Crown on many important cases including leading authorities on cabinet privilege, Crown liability and negligence, and riparian rights. Those who had the privilege of working with Tom always learned something about paddling the Nahanni or hiking in Peru while they soaked up the strategies, intellectual rigour and infallible integrity of a master litigator. To the Board of Directors, Tom provided wisdom and boundless enthusiasm for the work of Sierra Legal. He will be sorely missed.

In his honour, Tom's family requested that in lieu of flowers, donations be made to Sierra Legal Defence Fund. As a tribute to Tom's influence on the careers of so many aspiring public interest litigators, donations will be used to support our student and young lawyer mentoring program.

# Thanks and good wishes

## Executive Director departs Sierra Legal

Many of you may already know of Karen Wristen's departure as Executive Director of Sierra Legal Defence Fund in June. The board and staff of Sierra Legal wish to thank Karen for her outstanding contribution to the protection of the environment, and her years of service as a staff lawyer and executive director. Karen's dedication to the preservation of the environment has been exemplary. In addition to her exceptional abilities as a litigator, Karen served us well as an articulate and gifted communicator for Sierra Legal.

Her sharp mind and her sense of humour will be missed. We wish her all the best in her future endeavours.

— Sierra Legal Board of Directors

IT IS IMPOSSIBLE TO LEAVE AN ORGANIZATION LIKE Sierra Legal without very mixed feelings. After nearly seven years, I find myself moving on to new challenges and leaving colleagues and friends to continue the work of organizational development that we undertook together.



Karen Wristen

I reflect with satisfaction on the fact that we have met our initial planning objectives, building a stronger infrastructure to support our program work and instituting the policies and controls essential for the further growth of the organization. At the same time, the phenomenal success of our litigation programme over those seven years has increased Sierra Legal's profile throughout Canada and placed it on the map internationally, as well.

My thanks to all of our donors. It has been my pleasure to meet many of you over the past few years and your support and good wishes for Sierra Legal will always be appreciated. Thanks also to

the clients who put their trust in us and without whom the victories would never be secured. And to all of the staff, volunteers and Board members who have devoted untold hours to making Sierra Legal the strong, respected organization it is today: well done! I know I will always hear of your future successes with pride and hope.

I know I will always hear of  
Sierra Legal's future successes  
with pride and hope.

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THE SIERRA LEGAL DEFENCE FUND is a Canadian charity (BN 13474 8474 RR0001) providing free legal services to environmentalists in Canada. Our sister organization in the United States is Earthjustice Legal Defense Fund. We are completely separate from the Sierra Club.

For details, visit our website at [www.sierralegal.org](http://www.sierralegal.org)

BOARD OF DIRECTORS: Dr. John Brennan, Jutta Brunnee, Liz Crocker, Meinhard Doelle, Linda Duncan, Allan Garber, Tom Heintzman, David Love, Leslie J. Muir, Judge William A. Newsom, Buck Parker, John Rich, Clayton Ruby, Derek Spratt, John Swaigen, Lori Williams and Dr. Jeremy Wilson. HONORARY DIRECTORS: Robert Bateman, Gregory J. McDade, Q.C. and Dr. David Suzuki.

NEWSLETTER ISSN: 1192-2591 • Information current as of July 22, 2001.



## KIDS MAKING A DIFFERENCE

# Making allowance for the environment

The Rio Earth Summit in 1992 gave rise to the realization that children have become a powerful force in the environmental movement. Severn Cullis-Suzuki, 13, drew international attention with her speech telling the world "if you don't know how to fix it, please stop breaking it." We've since seen many kids make an environmental difference in their homes, schools and communities. So it is inspiring that Danica Evering, 13, and brother Bryn, 10, are choosing to donate their allowance to the causes they believe in. We were so impressed with a letter accompanying their donation that we chatted with these dynamic, young individuals. We wanted to find out more about the kids that sent us their allowance because they "love animals and think it is the right idea to try and protect them."

Danica and Bryn explained how, with the help of their parents Brigitte and Geoffery (both Sierra Legal supporters since 1992), they have managed their allowance this way for the past seven years. They say their parents helped them to learn how to budget money, set and achieve goals and to become aware of the needs within their community.

Listening to Danica and Bryn, you would have to say they have learned their lessons

well. In recent years they collaboratively chose to save and contribute their allowance to local and national environmental, anti-poverty and healthcare organizations. They select their causes from reading newspapers and magazines.

And they practice what they preach. They don't have a television because, as Bryn points out, "appliances like TVs consume a lot of energy." They also try to keep water consumption down, bike as many places as

possible and grow their own organic vegetables. They avoid overly packaged products and seriously consider their needs before making any purchases.

"In our house,"

says mom Brigitte, "we are very aware of the web of life; our interconnectedness."

Danica is particularly concerned about the fate of the polar bear. She talks eloquently about how global warming melts polar ice, preventing bears from reaching traditional food areas, which results in malnourishment. She is aware that pesticides and chemicals in water accumulate in fish and that the bears eat the fish and concentrate toxins in their bodies. Nobody needs to tell her it is all connected. Danica and Bryn's example remind us all that our choices can make a difference.



Sierra Legal Defence Fund donors Geoffery, Danica, Bryn and Brigitte at home in Cobourg.

Two Sierra Legal donors named to the Order of British Columbia, the province's highest award for outstanding achievement.

## RAFFI Global Troubadour

Raffi moved from his early life in Egypt to the premier concert stages of Canada and the U.S., from modest coffee houses in Toronto, to sold-out children's concerts at Carnegie Hall. Over his 25-year career Raffi has produced countless musical recordings, videos and children's books. He recently founded the Troubadour Institute that honours children and promotes an environmentally sustainable world. Raffi has supported Sierra Legal since 1995 and in spite of a busy schedule he is often a presence at many Sierra Legal events.



## ROBERT BATEMAN Renowned Painter

Robert Bateman's distinctive and beautiful wildlife paintings are admired worldwide. After teaching high school geography and art for 20 years, Bateman moved to Salt-spring Island,



BIRGIT BATEMAN FREYBE PHOTO

B.C. in 1976 to dedicate himself to painting. He and his wife Birgit have been Sierra Legal donors since we opened our doors ten years ago. Last year he also became an honorary board member. Bateman recently donated one of his paintings, 'Keeper of the Land' for Sierra Legal's new Toronto offices.

## ABOUT THE DEFENDERS CLUB

Danica and Bryn's parents, Brigitte and Geoffery, are members of the Defenders Club. They support Sierra Legal with monthly contributions. Almost 2,500 of our donors give this way and they are the backbone of our organization. Knowing we have an assured source of funding on a monthly basis enables us to embark on new cases, write reports or hire new staff and plan for the future. Because of low overhead and quick processing, we can put more of these donations to work for the environment, faster. To become a monthly donor (through your chequing account, or your visa/mastercard) or to find out about other ways you can support Sierra Legal Defence Fund please call our member services department at 1-800-926-7744.