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## ACCOUNTABLE FOR PROTECTING VULNERABLE SPECIES

Ecojustice celebrated an important victory for species-at-risk in Nova Scotia. Ecojustice lawyers successfully intervened in a case on behalf of clients, and organizational partner East Coast Environmental Law (ECE LAW) to advocate for the protection of Nova Scotia's endangered species.

Through our intervention, Ecojustice and our clients were able to ensure that species-at-risk in the province are afforded the necessary protections for survival and recovery, and that the Nova Scotia Department of Lands and Forests (NSDLF) fulfills its legal obligations to some of Nova Scotia's most vulnerable inhabitants. In its decision, the court specifically cited the importance of legal organizations such as Ecojustice providing opportunities for communities to bring legal actions to speak for species-at-risk that cannot speak for themselves.

Nova Scotia's Endangered Species Act (NSES A) came into effect in 1999 to provide for the protection and recovery of species-at-risk. Among other things, it includes mechanisms to identify and classify species-at-risk as endangered, threatened or vulnerable. According to the NSES A, the Minister of Natural Resources (now the NSDLF) is required

to appoint recovery teams and prepare recovery strategies for each endangered and threatened species within established time frames. However, a 2015 report by ECELAW found that the NSDLF had been systematically failing to meet its legal obligations under the NSES A, especially with respect to completing recovery plans and identifying core habitat. Further, in June 2016, the Auditor General of Nova Scotia found that NSDLF was increasing the risk facing Nova Scotia's most at-risk species by failing to meet its legal obligations to protect and recover species-at-risk in the province.

Through our intervention in this case, Ecojustice successfully helped to hold the government accountable for executing their duties to protect iconic and endangered species such as the Mainland Moose, Ram's Head Lady Slipper, and the Wood Turtle. Without the free legal services that Ecojustice offers, few individuals or communities could afford to bring successful cases such as this one.

We are proud to be funded by individuals and organizations who share our values and enable our fearless independence and ability to act on behalf of community groups, non-profits, Indigenous communities, and individuals. Your support allows us to continue to offer our strategic legal services to clients free of charge.

PHOTO BY RON WILLIAMS

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# LETTER FROM THE EXECUTIVE DIRECTOR

The concept of environmental racism isn't new —though it may have gained traction in recent years. In North America, Black, Indigenous, and people of colour (BIPOC) communities have fought for hundreds of years to protect the air, land, water, species, and cultural connections to the land from discriminatory policies and actions.

In 1982, Benjamin Chavis, a Black civil rights leader from the United States, coined the term environmental racism." Chavis defined the concept as,

*"... racial discrimination in environmental policy-making, the enforcement of regulations and laws, the deliberate targeting of communities of colour for toxic waste facilities, the official sanctioning of the life-threatening presence of poisons and pollutants in our communities, and the history of excluding people of colour from leadership of the ecology movements."*

Environmental racism is a form of systemic racism, rather than individual racism. That means it is the result of institutional policies and practices, rather than individual beliefs and actions.

Systemic racism is embedded in the laws, policies and institutions that govern our lives — and it has been since European settlers first colonized this land.

There is no quick fix for undoing environmental racism. But there are a few initiatives that could move us in the right direction, and work that Ecojustice can do on this issue that can push things forward.

First, Ecojustice is calling on the government to modernize the Canadian Environmental Protection Act (CEPA). Among other updates, we want to see a 21st-century CEPA that recognizes everybody's right to a healthy environment and defends people in vulnerable situations.

There is also a private member's bill that could change how Canada addresses environmental racism. Lenore Zann, the MP for Cumberland-Colchester tabled Bill C-230, the National Strategy to Redress Environmental Racism Act, in February. If passed, the bill would require the Minister of Environment and Climate Change to "develop a national strategy to promote efforts across Canada to redress the harm caused by environmental racism." The bill is scheduled to move to a second reading when Parliament resumes in the fall.

Finally, it's important to acknowledge the mainstream environmental movement's complicity in upholding environmental racism. In his original definition, Chavis listed "the history of excluding people of colour from leadership of the ecology movements" as an example of environmental racism. This shortcoming has hindered the movement's ability to achieve justice for all.

Environmental organizations, including Ecojustice, can and must do better to acknowledge their past and commit to an anti-racist framework going forward.



EXECUTIVE DIRECTOR



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In a victory for the T̓silhqot̓in Nation, but also for the integrity of environmental assessment processes, the Supreme Court of Canada dismissed Taseko Mines Ltd.'s application for leave to appeal last year's Federal Court of Appeal (FCA) ruling about the federal assessment of Taseko's proposed New Prosperity copper-gold mine in T̓silhqot̓in territory in central British Columbia.



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## SUPREME COURT CONFIRMS DEATH OF PROSPERITY MINE PROJECT

A federal assessment panel found in 2013 that the mine project would have several significant environmental effects, including *“effects on water quality in Fish Lake, on fish and fish habitat in Fish Lake, on current use of lands and resources for traditional purposes by certain Aboriginal groups, and on their cultural heritage”*.

The FCA found that the federal review panel was well within its authority to make these findings, and that Taseko had not shown any inadequacies in the way the panel had evaluated the information it received. The Supreme Court's decision today means that the FCA's ruling stands.

MiningWatch Canada, ably represented by Ecojustice, has intervened in this case from the beginning. As we noted when the appeal went to court in January, 2019, following the Federal Court's 2017 dismissal of Taseko's lawsuit.

MiningWatch Canada, represented by Ecojustice lawyer Sean Nixon, intervened in the court case in order to reinforce the integrity of several key aspects of the environmental assessment process, which echoed earlier findings that the project in its

original form posed an unacceptable risk to the environment and specifically to Teztan Biny (“Fish Lake”), a site of great importance to the T̓silhqot̓in Nation. When the case originally went to court...we described how Taseko took a backwards approach to the environmental assessment by claiming that it would address any serious environmental problems after the assessment process. We submitted to the Court, and the Court agreed, that one of the core purposes of environmental assessment is precisely to look at a range of scenarios and investigate potential problems – and their solutions – before a project can be approved.

While this case was brought under the old Canadian Environmental Assessment Act, 2012, the principle upheld by both the Federal Court and Federal Court of Appeal will help guide new federal and provincial environmental assessment processes: namely, that industrial projects should not be allowed to proceed without being assessed as to whether, and how, the serious environmental risks they pose can be managed and mitigated.

# PROTECTING PIPING PLOVER HABITAT IN ONTARIO

Piping plovers are an endangered species that breed along the Great Lakes shorelines in Ontario. Due largely to human activity, such as shoreline development and raking of beaches, the population of piping plovers in Ontario declined to only one pair in 1977. After significant efforts to recover the North American population of piping plovers, the first nest was found in Ontario in 2007. Now in the summer, these shorebirds can be found along beaches from Prince Edward County to the South Bruce Peninsula to Port Colborne in Southern Ontario.



2018, Ecojustice sought an emergency injunction to prevent destruction of the endangered piping plovers' nesting habitat at Ontario's South Bruce Peninsula. In spite of the Endangered Species Act (ESA) which prohibits habitat destruction, the town was determined to groom and remove vegetation from the beach. Before we could argue our case, the Ontario Ministry of Natural Resources and Forestry issued a stop work order to the town and as a result

we withdrew our injunction. When the town appealed the order, Ecojustice represented Ontario Nature and Environmental Defence to obtain party status to participate in the hearing. At the hearing, Ecojustice successfully had our expert's recommendations included in the hearing officer's report and recommendations, effectively strengthening the stop work order. The stop order expired before a final decision was made on the order. In the fall of 2019 the town was found guilty of damaging piping plover habitat in Sauble Beach and fined \$100,000.

Earlier in this year, in June 2020, the Ministry posted the details of the Town of South Beach Peninsula's application for a permit to mechanically rake the beach while the birds are still in the area. Ecojustice lawyers assisted environmental groups in submitting comments on the proposed permit. Ecojustice lawyers are monitoring the situation closely and weighing options for litigation against Ontario's Minister of Environment, Conservation and Parks in the event the Minister issues a permit that fails to protect piping plovers and their habitat.

## ENVIRONMENTAL RESPONSIBILITY

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