

# ecobrief

## Making the Case for a Better Earth.



Ecojustice is a unique legal practice, and our lawyers wear many hats. They are litigators fighting cases in court, deep thinkers developing cutting-edge laws to set precedents for our planet and stand scrutiny from the highest levels of courts in Canada, and communicators working with the public and the media.

Litigation is a specialization within the law, so our lawyers must have specific skills and knowledge of the rules of court and practice depending on the jurisdiction. Developing and maintaining that litigation expertise along with all our other areas of expertise is no small challenge. That's part of the reason why my role was created — to centralize the support of our lawyers and help them deliver litigation excellence.


In doing this, we enable our strategic leaders to focus on the broad issues of climate, nature, and healthy communities and how to tackle them. Once we've determined that an environmental issue warrants Ecojustice's involvement, we begin the case development process. This typically involves gathering information, researching, and building the legal theory we will bring forward in the appropriate court.

While every lawyer has a responsibility to continually teach ourselves, enshrined in the number of hours you must spend training annually, at Ecojustice we need to develop

and maintain substantive knowledge in topics beyond the law and continually work with brilliant experts that have a very deep understanding of these topics to go even further. This foundation allows us to take on big, impossibly complicated issues, like climate change and the biodiversity crisis, in our courts and make a difference.

That is one of the many things that amazes me about this organization; our ability to integrate this deep knowledge of topics with strong litigation skills, to create extremely high-caliber work and take on cases no one else can. For example, the Ontario Targets Case in court this September required substantive knowledge of climate change fully integrated with strong litigators. Thanks to donors like you, we can have these skills in-house and are uniquely able to take these cases on — thank you.

As we start 2023, I am excited to see Ecojustice's team grow and develop as we take on more critical cases in defense of this planet. Cases no one else in Canada can take on. We work on big, consequential cases every day and need to be at the top of our game. Thank you for continuing to support us in this.

  
**Julia Croome**

*director of litigation practice*

# Protecting Ontario's wetlands

As you may recall, the Bradford Bypass is a proposed new freeway that would bisect one of southern Ontario's largest remaining provincially significant wetlands. It presents a significant risk to fish habitat, migratory birds, and species at risk, as well as local communities via increased emissions and air pollution.

Two years ago, Ecojustice submitted a request to the Environment and Climate Change Canada (ECCC) on behalf of a group of ENGOs, to designate the project for an impact assessment under the *Impact Assessment Act* (IAA) to evaluate these risks. Unfortunately, in May of that year, the Minister of ECCC refused to designate the Bradford Bypass based on the information at hand and relying heavily on existing provincial environmental assessment processes to address these potential impacts.

In October 2021, Ontario passed a regulation that exempts the entire project from the requirements of Ontario's *Environmental Assessment Act*. In light of this, three community groups submitted a second IAA designation request in November 2021 including this updated information.

One year ago, the Minister announced his decision to not designate the Bradford Bypass project for a second time, saying there had been no "material changes to the project". However, the "material changes" test is not found in the IAA, and it could create a dangerous precedent. As projects develop, new information regularly surfaces, and a "material changes" test could prevent a Minister from considering this information – an outcome directly counter to the IAA's main goals.

That's why on November 2, 2022, Ecojustice lawyers were in court, challenging the Minister's decision. Ministers cannot ignore facts in subsequent requests because it does not meet



a made-up "material change" threshold in relation to the first request. If the facts included in subsequent requests are not considered it could mean that essential information, like a newly identified habitat for a species at risk, could be ignored simply because it came to light after an initial decision was made. We expect to hear a decision in early 2023. In the meantime, our clients are engaging with the government throughout the streamlined provincial assessment process.

Although this case will not stop the construction of the Bradford Bypass anymore, a win preserves public participation in project review processes and ensures the IAA fills dangerous gaps in provincial legislation.

# Ring of Fire

The mineral-rich region in Northern Ontario, called the Ring of Fire (ROF), is the target of a massive mining development that could have significant adverse impacts on the peatlands in the far north of Ontario – the second largest in the world. The proposed mining development lies within a vast area of carbon-rich peatlands that provide ecological benefits and support an interconnected web of biodiversity, including critical habits for caribou, fish, and migratory birds. Large-scale development could jeopardize surrounding First Nations' treaty rights, including access to traditional land and resources, socioeconomic conditions, health (including drinkable water and breathable air), and community well-being.

Ecojustice is representing the Mushkegowuk Council, which comprises eight First Nations as

they advocate for a Regional Assessment (RA) process which is co-governed by the Council. This would affirm their Treaty Rights and enable them to become key decision-makers in how the RA is conducted and how the complex effects of mining and related development are addressed.

Over the last two years, we have been working with our clients to include First Nations as co-leaders with the government for the RA. In December 2021 a draft terms of reference were released, which ignored the demands of the Mushkegowuk Council and other First Nations. As a result of Ecojustice and First Nations' advocacy and widespread outcries in response to the release, the Impact Assessment Agency came back to the table to work on a new approach with First Nations included as rights holders. In 2023, we will continue to work with our clients, to advocate for a Regional Assessment in which they have meaningful decision-making authority.

# BC Offshore permits

In the late 1960s, oil companies obtained hundreds of federal permits for oil and gas exploration in the richly biodiverse waters off British Columbia's coast. These permits should have expired decades ago under the governing *Canada Petroleum Resources Act* (CPRA), but the federal Minister of Natural Resources has allowed them to continue for more than 50 years, posing a threat to conservation efforts. As the Minister continues to indefinitely extend these permits, we, and our clients, believe this policy contravenes the law.

Many permits are located in the Scott Islands National Wildlife Area (NWA), home to the highest concentration of breeding seabirds on Canada's Pacific coast, including 40% of B.C.'s seabirds. Several others lie within other marine protected areas such as the 9,000-year-old Hecate Strait/Queen Charlotte Sound Glass Sponge

Reefs Marine Protected Area (MPA), containing internationally unique glass sponge reefs and providing crucial ecosystems for marine life.

As long as these permits exist, they threaten exploratory drilling that could pose a serious threat to surrounding marine areas and critical habitats to several migratory birds protected under Canada's *Species at Risk Act*. Despite the recognized ecological importance of the area, oil and gas exploration is not explicitly prohibited by the NWA.

Ecojustice is challenging the remaining oil and gas exploration permits in these areas on behalf of the World Wildlife Fund-Canada and the David Suzuki Foundation. We believe the permits have expired under the CPRA and indefinite extensions are unlawful. If successful, we will not only ensure the conservation of these areas but also stop new fossil fuel development to align with Canada's net-zero commitments.

# Areez Gangji

Ecojustice supporter and board member

## Philanthropy for a Brighter Environmental Future.



*“a world where climate justice is always the intention; where we protect spaces and empower communities to build and express what sustainability means to them.”*

Talking to Areez sparks a feeling of hope for the future that can be difficult to find these days. At thirty-something years old, he routinely reflects on how best to contribute his time, skills, and financial resources for the betterment of our planet and the lives of those with whom we share it.

After a successful early start to his career in the technology industry, Areez pivoted in 2021 to go back to school. Now, studying for a Master’s in Economics at Queens University in Ontario, he is particularly concerned about *who* bears the brunt of climate injustice and the economics of externalities that enable companies to pass on the costs of environmental exploitation to others. He thinks deeply about social and environmental injustices, wealth disparity in

Canada, and widespread ecological crises. Like many supporters in the Ecojustice community, Areez donates to Ecojustice because he believes in increasing access to justice for ecosystems and communities in Canada that are being hit hardest by concurrent crises of climate change, biodiversity loss, and pollution.

“Everyone at Ecojustice understands at the root of their being how important it is that we have a healthy planet,” says Areez. As an Ecojustice Board member, he has a unique vantage point on the passion that drives the lawyers, scientists, law reform specialists, communications experts, and all the skilled people at Ecojustice who use the power of the law to protect the environment.

We all have a part to play. Ecojustice’s community of supporters helps us meet the immense ecological challenges of the day and secure a brighter environmental future. For Areez, that future looks like *“a world where climate justice is always the intention; where we protect spaces and empower communities to build and express what sustainability means to them.”*



### Donor Inquiries

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