

LETTERS TO THE EDITOR

Full speed ahead

On June 10, 2010, Sandy Pond Alliance (SPA) initiated a legal challenge in the Federal Court to have Schedule II of the metal mining effluent regulations declared as "ultra vires" (beyond the power of) the Fisheries Act.

Schedule II effectively grants the minister of fisheries the authority to "reclassify" any lake in Canada as a tailings impoundment area (TIA) for any mining process waste and effluent, including toxic materials. Fourteen lakes have already been reclassified and another dozen are proposed.

One such lake is Sandy Pond in Long Harbour. It was Vale's choice of a TIA for the toxic waste from its nickel processing plant and this beautiful, pristine, fish-filled lake was reclassified in 2009.

Though Sandy Pond was the catalyst for the legal challenge, the ultimate focus was the striking down of Schedule II to save all lakes in Canada.

Vale sought and was granted limited intervener status. During the intervener hearing on September of 2010, it argued that it was not "directly affected" by the matter of SPA's application.

In their view, a declaration from a successful ruling would not have "retroactive effect." In other words, Vale was confident that it could not lose the already-granted permission to destroy Sandy Pond.

However, the intervener hearing judge, Justice Elizabeth Heneghan, did not concur. In her Feb. 10, 2011, judgment she clearly stated with proper jurisprudence that "retroactive effect of a declaration of constitutional invalidity is to be decided on a case-by-case basis" and would be at the discretion of the application's hearing judge.

In a subsequent appeal of Justice Heneghan's decision, lawyers for Vale conceded on the possibility of having the right to destroy Sandy Pond reversed and now argued that Vale was directly affected and sought further intervener rights, including the right to appeal a final decision.

After a prolonged process, SPA's legal challenge was finally heard on Feb. 27 and 28 and it will likely take several months for a judgment to be rendered.

In the meantime, with the consent of both the federal and provincial govern-

ments and knowing an impending court decision could nullify their right to destroy Sandy Pond, Vale proceeded anyway. The area has been deforested, fish have been removed and all the necessary construction has been done to prepare the pond to accept toxic waste later this year.

Clearly, this rich, powerful mining giant has no regard for law, justice and due process.

Then again, when you know that you have the backing and support of Canada's most influential corporate advocate and benefactor, Stephen Harper, you can be pretty certain you will eventually get your lake.

When the last tree has been cut down, the last fish caught, the last river poisoned, only then will we realize that one cannot eat money. (Cree prophecy)

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