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MEDIA RELEASE

Legal victory for Fisheries Act

Decision in Kingston water pollution case preserves integrity of Canada's strongest water pollution prevention legislation

May 13, 2004

KINGSTON, ON - In a unanimous decision, the Ontario Court of Appeal has upheld the effectiveness of Canada's most important water pollution prevention legislation, the federal Fisheries Act. The decision, released late yesterday, re-affirmed the standard for enforcement of the Act, which will assist water pollution prosecutions across the country.

"This decision maintains the Fisheries Act as the strongest legislation protecting against water pollution in Canada," said Sierra Legal Defence Fund lawyer Robert Wright. "The Act is "preventative" or "precautionary" at its core, which is a theme that other municipalities have picked up in making the connection between the health of our environment and the health of our citizens."

The decision is the culmination of a court process begun in 1997 as a private prosecution by a concerned citizen, Janet Fletcher. Crown prosecutions followed in the fall of 1997 and the proceedings have progressed through the courts jointly.

"This has been a long haul," said Ms. Fletcher. "It's all been worth it because the appeal court has upheld this important legal tool that enables strong enforcement of the Fisheries Act and a high standard of environmental protection. It can continue to be used to effectively to battle pollution at this site and others like it."

In the Court of Appeal last December, Sierra Legal lawyers represented Ms.



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Fletcher and argued on the same side as Crown lawyers John Semenoff and Jerry Herlihy that the trial court had applied the correct legal test under the Fisheries Act. The Court agreed that the legal test for water pollution under the Act should focus on the substance being added to water frequented by fish, and not the body of water that the substance is put into.

A lower Ontario court decision had left practical enforcement of the Act against most polluters in doubt. In upholding three convictions against the City of Kingston for illegally discharging toxic leachate from a landfill site into the Cataraqui River in 1997, the Court restored the decision of the trial judge. Four additional convictions against the City resulting from a private prosecution were not upheld due to the test methods used, but could be retried. The also Court clarified the technical laboratory procedures that should be followed in future cases.

Electronic copies of the full decision are available at: www.ontariocourts.on.ca

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