



## Supreme Court decision leaves taxpayers with the bill for cleaning up AbitibiBowater's pollution

**(Ottawa, December 7, 2012)** The Supreme Court of Canada released its decision today in *Newfoundland and Labrador v. AbitibiBowater Inc. et al.*, which addresses the legal obligations of insolvent companies with respect to contaminated sites.

Friends of the Earth, represented by legal counsel from Ecojustice and Fasken Martineau DuMoulin LLP, intervened in the case to argue that the law requires that insolvent corporations retain their environmental obligations through a restructuring and must not burden taxpayers with the costs of cleaning up contaminated sites.

The Supreme Court decided that remediation orders, which required AbitibiBowater (now Resolute Forest Products) to clean up after years of pollution, are equivalent to private financial claims under insolvency law. The end result is that taxpayers will bear much of the financial and environmental costs associated with cleaning up Abitibi's industrial sites.

Beatrice Olivastri, CEO, Friends of the Earth observed, "The Supreme Court missed an important opportunity to affirm the correct application of the "polluter pays" principle in insolvency proceedings. The Court's decision effectively limits a polluter's liability to what it can pay as part of a compromise it designed, not out of the billions (in this case) in profit going forward".

This ground-breaking case represents the first time Canada's insolvency law has confronted the polluter pays principle – in this case, for historic contamination by AbitibiBowater's mining, shipping, and pulp and paper operations in Newfoundland and Labrador. The company filed for insolvency protection in 2008, leaving a toxic legacy of heavy metals and other hazardous chemicals.

When companies fail, the typical result is that communities and governments must deal with pollution clean-up costs. Friends of the Earth believes that corporations must be made to disclose the clean-up costs for their contamination – historic and continuing – in financial reports on an ongoing basis. "They should not be allowed to pass the buck on to taxpayers, leaving a toxic burden for communities when a plant shuts down," says Olivastri.

"The Supreme Court has delivered a clear message: if the federal and provincial governments are not proactively issuing remediation orders, then taxpayers risk being left with the cleanup costs after companies file for insolvency protection. Remediation orders must be issued and acted upon before a company goes under," says Ecojustice lawyer Will Amos.

"In the context of a natural resource economy, protecting the environment also means protecting future resource-based industry," says Graham Phoenix of Fasken Martineau DuMoulin LLP. "To draw an analogy to the environmental law principle of intergenerational equity: the businesses of today must be good stewards of the environment for the businesses of tomorrow. If not, we are ensuring not only a legacy of environmental contamination but also a stagnant economic future."

"This decision proves that federal insolvency laws require significant reform so that they don't serve to protect companies and investors at the expense of taxpayers and environmental protection. The Companies Creditors Arrangement Act must be amended by Parliament so that taxpayers are not left holding the bag when companies go insolvent," says Hugh Wilkins of Ecojustice. "Polluter pays is about corporate liability. The fundamental objective of the polluter pays principle is to ensure the polluter internalizes the environmental costs of business. Taxpayers should not be left with clean-up costs for toxic legacies from abandoned mines and mills.

The polluter pays principle is among the most important environmental law concepts in Canada. It is the basic idea behind clean-up orders, penalties and cost recovery decisions. Implementing polluter pays involves polluters taking responsibility for remedying contamination for which they are responsible and imposes on them the direct and immediate costs of pollution. As pioneers advocating for this principle to be put into practice, Friends of the Earth, represented by legal counsel at Ecojustice, intervened in one of the earliest, precedent-setting polluter pay cases in Canada - *Imperial Oil Ltd v. Quebec (Minister of the Environment)* - in 2003.

### **Background information:**

Media Release, November 16, 2011

Friends of the Earth, Ecojustice ask Supreme Court to respect polluter pays principle  
<http://foecanada.org/en/2011/11/respect-polluter-pays-principle/>

Supreme Court of Canada Decision

<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/12749/index.do>

Friends of the Earth Factum

<http://foecanada.org/en/files/2012/12/factum-intervener-foe-canada-abitibibowater.pdf>

Background / chronology — Polluter Pays: Newfoundland and Labrador v. AbitibiBowater Inc.

<http://foecanada.org/en/2012/12/polluter-pays-newfoundland-and-labrador-abitibibowater/>

### **For more information contact:**

Beatrice Olivastri

Friends of the Earth Canada

Email - [beatrice@foecanada.org](mailto:beatrice@foecanada.org)

Tel - 613 241 0085 ext. 26

William Amos (Contact for French language interview and bilingual support)

Ecojustice Environmental Law Clinic

Email - [wamos@ecojustice.ca](mailto:wamos@ecojustice.ca)

Tel - 613 562 5800 ext. 3378

R. Graham Phoenix

Fasken Martineau DuMoulin LLP

Email - [gphoenix@fasken.com](mailto:gphoenix@fasken.com)

Tel - 416 865 4511

Hugh S. Wilkins

Ecojustice Canada

Email - [hwilkins@ecojustice.ca](mailto:hwilkins@ecojustice.ca)

Tel - 416 368 7533 ext. 534

***Friends of the Earth Canada*** is the Canadian member of Friends of the Earth International, the world's largest grassroots environmental network campaigning on today's most urgent environmental and social issues.

***Ecojustice*** is a non-profit charitable organization dedicated to defending Canadians' right to a healthy environment. We defend Canada's environment through law. We have one planet and we believe it is our collective responsibility to take care of it.