

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

LYNNE M. QUARMBY, ERIC DOHERTY, RUTH WALMSLEY,  
JOHN VISSERS, SHIRLEY SAMPLES, FORESTETHICS ADVOCACY  
ASSOCIATION, TZEPORAH BERMAN, JOHN CLARKE,  
and BRADLEY SHENDE

APPELLANTS  
(APPELLANTS)

AND:

ATTORNEY GENERAL OF CANADA,  
TRANS MOUNTAIN PIPELINE ULC,  
CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
NATIONAL ENERGY BOARD

RESPONDENTS  
(RESPONDENTS)

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**MOTION OF INTERVENTION OF THE COUNCIL OF CANADIANS  
IN THE APPLICATION FOR LEAVE TO APPEAL OF  
LYNNE M. QUARMBY, ERIC DOHERTY, RUTH WALMSLEY, JOHN VISSERS, SHIRLEY  
SAMPLES, FORESTETHICS ADVOCACY ASSOCIATION,  
TZEPORAH BERMAN, JOHN CLARKE, AND BRADLEY SHENDE**

Filed pursuant to Rule 25(1)(f), 47, 55, and 56 of the *Rules of the Supreme Court of Canada*

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# **TAB 1**

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

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CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
NATIONAL ENERGY BOARD

RESPONDENTS  
(RESPONDENTS)

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**NOTICE OF MOTION**

**LEAVE TO INTERVENE IN THE APPLICATION FOR LEAVE TO APPEAL**

Filed pursuant to Rule 52(1), 55, and 56  
of the *Rules of the Supreme Court of Canada*

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TAKE NOTICE that the Council of Canadians (“Council”) hereby applies to the Court for leave to intervene in the Application for Leave to Appeal, pursuant to Rules 55 to 57 of the *Rules of the Supreme Court of Canada*, and requests the following relief:

1. an order granting the Council leave to intervene in the Application for Leave to Appeal;
2. an order granting the Council leave for its submissions in the present motion to be considered by this Court in the determination of the Application for Leave to Appeal;
3. an order that the Council be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
4. an order specifying that the Council shall not seek costs and is not liable for any party’s costs; and
5. any further or other order that the Court may deem appropriate.

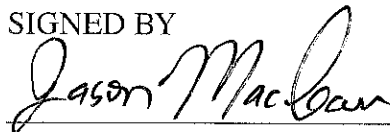
AND FURTHER TAKE NOTICE that the motion is made on the following grounds:

1. The Council has an interest in the Application for Leave to Appeal. The Council is Canada's leading social action organization and represents thousands of Canadians across the country. The Council has an abiding interest in promoting both meaningful public participation in democratic governance and environmental protection, the two core issues raised in the Applicant's motion for leave to appeal to this Court.
2. The Council will make the following useful submissions different from those of the Applicants:
  - i) Submissions regarding the broader legal framework governing the sustainable development of energy projects in Canada as determined by the National Energy Board's ("NEB") own mandate, the *Federal Sustainable Development Act*, and this Court's own jurisprudence;
  - ii) More specific submissions regarding:
    - (a) the NEB's legal obligation to *integrate* economic, environmental, and social considerations in assessing energy project applications;
    - (b) the NEB's legal obligation to consider the *cumulative environmental effects* of proposed energy projects; and
    - (c) the NEB's legal obligation to allow for meaningful public participation in its administrative process; and
  - iii) Submissions regarding the proper administrative law principles governing the NEB's assessment of energy project applications under Canadian law, and as further illustrated by the vast and rich body of U.S. administrative environmental law jurisprudence, which the Council submits may be of considerable use to this Court.

Dated at the City of Thunder Bay, in the Province of Ontario this 20th day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY

  
\_\_\_\_\_

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# TAB 2

IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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AND:

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CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
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RESPONDENTS  
(RESPONDENTS)

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COUNSEL’S CERTIFICATE

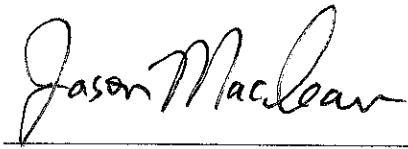
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I, Jason MacLean, legal counsel for the Council of Canadians, certify that:

- (a) there is no sealing or confidentiality order in effect in the file from a lower court or the Court and whether any document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation;
- (b) there is not, under an order or legislation, a ban on the publication of evidence or the names or identity of a party or witness and whether any document filed includes information that is subject to that ban; and
- (c) there is not, under legislation, information that is subject to limitations on public access and whether any document filed includes information that is subject to those limitations.

Dated at Thunder Bay, Ontario, this 20<sup>th</sup> day of April, 2015.

SIGNED BY



---

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**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

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JOHN VISSERS, SHIRLEY SAMPLES, FORESTETHICS ADVOCACY  
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APPELLANTS  
(APPELLANTS)

AND:

ATTORNEY GENERAL OF CANADA,  
TRANS MOUNTAIN PIPELINE ULC,  
CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
NATIONAL ENERGY BOARD

RESPONDENTS  
(RESPONDENTS)

**AFFIDAVIT OF ANDREA HARDEN  
MOTION FOR INTERVENTION OF THE COUNCIL OF CANADIANS**

I, Andrea Harden, of the City of Ottawa, in the Province of Ottawa, **AFFIRM THAT:**

1. I have personal knowledge of the matters discussed in this Affidavit.
2. I work for the Council of Canadians ("Council") as an Energy and Climate Justice Campaigner. I have worked for the Council since 2008.
3. The Council is Canada's leading social action organization. Through its national and local campaigns, the Council advocates for clean water, fair trade, green energy, public health care, and a vibrant participatory democracy.

4. The Council is a registered non-profit organization and does not accept financial contributions from corporations or governments. The Council's work is made possible by the donations and time volunteered by many thousands of individuals across Canada.
5. More specifically, the Council defends the right of Canadians to assert their democratic rights and to demand that our governments make policy in the interests of citizens and communities.
6. As one of Canada's largest public advocacy groups, the Council is committed to effecting transformational social, political, and economic change. The Council is decidedly non-partisan, and works to compel all political parties and governments to address the key issues of democracy, sovereignty, and social justice.
7. Canadian Courts have recognized the Council's distinct and useful expertise in respect of polycentric issues of national importance, including both the constitution and the environment.
8. In particular, the Council has considerable experience and expertise in the polycentric factual and legal issues arising in the Applicants' motion for leave to appeal to this Court. Indeed, the Council has a long and successful history of participation in public interest proceedings involving both constitutional interpretation and environmental protection.
9. For example, the Council intervened before the Supreme Court of Canada in *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 regarding ss. 2(d) and 6 of the *Canadian Charter of Rights and Freedoms* ("Charter").
10. In *Haydon v. Canada*, [2000] 192 F.T.R. 161 (F.C.), the Council intervened before the Federal Court and made submissions regarding the importance of participation in public dialogues



to the constitutional protection and promotion of open, democratic societies.

11. In 2004, the Council participated as an intervener in the seminal environmental and patent law case of *Monsanto Canada Inc. v. Schmeiser*, [2004] 1 S.C.R. 902.

12. In 2006, the Council brought an application challenging the constitutionality of Canada's agreement as part of the *North American Free Trade Agreement* (NAFTA) to establish arbitration tribunals to resolve claims made by foreign investors in *Council of Canadians v. Canada (Attorney General)*, [2006] 217 OAC 316 (Ont. C.A.).

13. More recently, in 2011, the Council intervened in an application before the Federal Court concerning a judicial review of a provision of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24 in *Friends of the Canadian Wheat Board v. Canada (Attorney General)*, 2011 FC 1432 (F.C.). In that application, the Federal Court allowed the Council to make submissions concerning the proper interpretation of the *Canadian Wheat Board Act* in accord with NAFTA and the *Charter*.

14. In 2012, the Federal Court of Appeal granted the Council's motion seeking leave to intervene in the appeal from the Federal Court's decision in *Friends of the Canadian Wheat Board* and, in so doing, the Federal Court of Appeal acknowledged that the Campbell J. of the Federal Court had "extensively and approvingly quoted from the moving parties' [primarily the Council's] submissions concerning the impact of the rule of law on the interpretation of section 47.1 of the *Canadian Wheat Board Act* (at para. 27 of his reasons), and gave weight to their argument that this section is important to Canada's international trade obligations under NAFTA (at para. 28 of his reasons)": *Canada (Attorney General) v. Canadian Wheat Board*, 2012 FCA 114.

15. Most recently, the Federal Court of Appeal granted the Council's Thunder Bay, Ontario

Chapter intervener status in *Forest Ethics Advocacy Association v. The National Energy Board*, 2014 FCA 245, a case raising materially similar legal issues as the Applicants' present Motion for Leave to Appeal. In *Forest Ethics Advocacy Association v. The National Energy Board*, the Council's chapter made written and oral submissions about the jurisdiction and mandate of the National Energy Board, the proper administrative law principles applicable to the National Energy Board's review of oil pipeline project applications (in that case, the Enbridge Line 9B reversal proposal), and the legal framework governing sustainable development in Canada. The Council is represented in the within motion is represented by the same legal counsel who represented the Council's chapter in *Forest Ethics Advocacy Association v. The National Energy Board*, Jason MacLean, who is an assistant professor specializing in constitutional and environmental law at the Bora Laskin Faculty of Law at Lakehead University.

16. Finally, the Council has acquired additional relevant experience and expertise in the factual and legal issues arising in the Applicants' present motion through the Council's application to participate as an intervener in the National Energy Board's hearings regarding TransCanada Pipelines Ltd.'s application for a certificate pursuant to s. 52 of the *National Energy Board Act* in respect of its proposed Energy East oil pipeline project. At the time of making this Affidavit the status of the Council's application to the National Energy Board in respect of the Energy East hearing remains pending.

17. I believe a proper administrative review of the Trans Mountain oil pipeline project – and all other oil pipeline projects – must include a comprehensive assessment of its environmental impacts, including upstream and downstream effects, the end uses of the oil to be transported by the pipeline, and the development of the Alberta oil sands.

18. I further believe that the National Energy Board is legally obligated to integrate environmental, economic, and social considerations in the public interest in making certificate recommendations. I also believe that the public interest is inclusive of all Canadians.

19. Accordingly, I believe that the Applicants' motion seeking leave to appeal raises issues of profound national importance. The National Energy Board erred in refusing to allow Canadians – including established scientists – to discuss the climate change implications of the Trans Mountain project proposal, thus violating the National Energy Board's own mandate, relevant administrative law principles, and the *Charter*. Moreover, I believe that the Federal Court of Appeal erred in refusing the Applicants' motion for leave to appeal from the Board's decision. The Council fully supports the Applicants' present motion.

20. I further believe that, if granted intervener status in the present motion, the Council would make distinct and useful submissions to this Court from its unique perspective as Canada's leading social action organization.

21. If granted intervener status, the Council would make submissions regarding the broader legal framework governing sustainable development in Canada, including unique and non-duplicative submissions about the National Energy Board's mandate to regulate oil pipelines in a sustainable manner, the National Energy Board's legal obligation to *integrate* economic, environmental, and social considerations in its administrative decision-making process (pursuant not only to its own mandate but also under the *Federal Sustainable Development Act*, S.C. 2008, c. 33), and the proper administrative law process that ought to govern the integrated consideration of economic, environmental, and social considerations in respect of energy development projects under Canadian administrative law and as suggested by the vast and rich body of environmental

administrative law that has developed in the United States.

22. This Affidavit is made in support of the present motion and for no improper purpose.

AFFIRMED BEFORE ME at the City  
of Ottawa, in the Province of Ontario,  
on April 16, 2015.

  
A Commissioner for taking affidavits

Lucy Joan Draper-Chislett, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 22, 2017.

  
Andrea Harden

**TAB 4**

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

LYNNE M. QUARMBY, ERIC DOHERTY, RUTH WALMSLEY,  
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CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
NATIONAL ENERGY BOARD

RESPONDENTS  
(RESPONDENTS)

---

**MEMORANDUM OF ARGUMENT OF THE COUNCIL OF CANADIANS**  
**MOTION OF INTERVENTION IN THE APPLICATION FOR LEAVE TO APPEAL**  
Filed pursuant to Rule 25(1)(f), 47, 55, and 56 of the *Rules of the Supreme Court of Canada*

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## PART I – STATEMENT OF FACTS

1. This is a motion to request that the Council of Canadians (“Council”) be granted leave to intervene in the Application for Leave to Appeal brought by the Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzeporah Berman, John Clarke, and Bradley Shende (the “Applicants”).
2. The Council is Canada’s leading social action organization. Through its national and local campaigns, the Council advocates for clean water, fair trade, green energy, public health care, and a vibrant participatory democracy.

Affidavit of Andrea Harden, para. 3

3. As one of Canada’s largest public advocacy groups, the Council is committed to effecting transformational social, political, and economic change. The Council is decidedly non-partisan, and works to compel all political parties and governments to address the key issues of democracy, sovereignty, and social justice.

Affidavit of Andrea Harden, paras. 5-6

4. Moreover, the Council is a responsible and well-respected organization. In particular, Canadian courts have explicitly recognized the Council’s distinct and useful expertise in respect of polycentric issues of national importance, including both constitutional interpretation and environmental protection.

Affidavit of Andrea Harden, paras. 7-16

5. The Council applies to intervene in this Application for Leave to Appeal to be granted the opportunity to make submissions as to why this Court should hear the Appeal. The Council has a unique perspective to contribute to the Court’s consideration of the issues raised in this Application for Leave to Appeal and proposes to make submissions regarding the requested appeal’s national importance to the National Energy Board’s (“NEB”) assessment of energy project applications and the proper interpretation and application of s. 2(b) the *Charter of Rights and*



*Freedoms* (“*Charter*”) to the NEB’s administrative processes.

Affidavit of Andrea Harden, para. 21

**PART II – QUESTION IN ISSUE**

6. The question raised by this motion is whether the Council should be granted leave to intervene in this Application for Leave to Appeal such that its present submissions will be taken into consideration by this Court in the determination of the within Application.

**PART III – STATEMENT OF ARGUMENT**

7. The Council has an interest in this Application for Leave to Appeal and will make submissions different from those of the Applicants. This perspective will be useful to the Court in considering this Application for Leave to Appeal.

**A. The Council’s Interest in the Application for Leave to Appeal**

8. This case concerns the NEB’s mandate to assess energy project applications in compliance with its own mandate (including its mandate to regulate energy a sustainable manner and in the public interest of all Canadians), the *Charter*, and Canadian administrative law.
9. The Council has an interest in the requested appeal. As large public advocacy group representing thousands of Canadians on issues including (among others) participatory democracy and environmental protection, the Council is interested both in the outcome of the Applicants’ motion for leave to appeal and, should the Court grant the Applicants’ motion, the outcome of the appeal. Accordingly, the Council satisfies the first prong of Rule 55 of the *Rules of the Supreme Court of Canada*.

*Reference re Workers’ Compensation Act, 1983 (Newfoundland)*  
(*Application to Intervene*), [1989] 2 S.C.R. 335.

**B. The Council's Unique and Useful Submissions on the Public Importance of the Appeal**

10. Should the Counsel be granted leave to intervene, it will urge this Court to hear the requested appeal.
11. The Counsel proposes to make submissions that have not been made by the Applicants. The Council will argue that the requested appeal raises issues of public importance and issues of law of such significance as to warrant a decision by the Supreme Court of Canada.

*Supreme Court Act*, RSC 1985, c S-26, s. 40(1)

12. In addition to those issues raised by the Applicants, the requested appeal raises the following issues of public importance:
  - a. First, the requested appeal concerns the broader legal framework governing the sustainable development of energy projects in Canada as determined by the NEB's own mandate, the *Federal Sustainable Development Act*, and this Court's own jurisprudence.

The *Federal Sustainable Development Act*, and the federal government's legal framework regarding its "Federal Sustainable Development Strategy," are particularly relevant to the Applicants' motion for leave to appeal. Pursuant to s. 5 of the *Act*, for example, "[t]he Government of Canada accepts the basic principle that sustainable development is based on an ecologically efficient use of natural, social and economic resources and *acknowledges the need to integrate environmental, economic and social factors in the making of all decisions by government.*"

These issues are plainly of national importance.

*Federal Sustainable Development Act*, S.C. 2008, c. 33, ss. 3-5 [emphasis added].

- b. Second, the requested appeal concerns the NEB's legal obligations to (i)

*integrate* economic, environmental, and social considerations in assessing energy project applications; (ii) consider the *cumulative environmental effects* of proposed energy projects; and (iii) allow for meaningful public participation in its administrative process.

Indeed, the NEB's own express mandate mirrors the overarching sustainability objectives and obligations of the federal government. In its "Strategic Plan," the NEB describes its purpose as regulating "pipelines, energy development and trade in the Canadian public interest." The NEB defines the "public interest" as being "inclusive of all Canadians and refers to *a balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time.*"

And yet the NEB refuses to entertain Canadians' concerns – let alone assess – regarding the climate change implications of oil pipeline projects, including Trans Mountain. These issues are likewise of considerable national importance.

National Energy Board, "Strategic Plan" [emphasis added]

- c. Third, the requested appeal concerns regarding the proper administrative law principles governing the NEB's assessment of energy project applications under Canadian law, and as further illustrated by the vast and rich body of U.S. administrative environmental law jurisprudence, which the Council submits may be of considerable use to this Court. In particular, it is a well-established principle of U.S. administrative environmental law that an administrative agency may not consider only the economic benefits of a proposed project, but that it must also consider the project's potential costs. The NEB's refusal to properly integrate economic, environmental, and social considerations when assessing energy projects violates this principle and results in a decision that is, under U.S. administrative environmental law, "arbitrary and capricious." Given the NEB's own express mandate to regulate energy in a sustainable manner, its refusal to

integrate economic, environmental, and social considerations, the integration of which is the *sine qua non* of sustainability, the NEB's decision below is unreasonable under Canadian administrative law. Likewise, the NEB's refusal to consider the cumulative environmental effects of energy projects is equally "arbitrary and capricious," and gives rise to a reasonable apprehension of bias under Canadian administrative law, because the administrative process that it has created and presided over appears to be impermissibly biased in favour of energy project proponents and project recommendation. This too is an issue of national importance.

*High Country Conservation Advocates et al. v. United States Forest Service et al.*, Civil Action No. 13-cv-01723-RBJ (U.S. Dist. Ct., Colorado, 2014); *MidStates Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8<sup>th</sup> Cir. 2003); *Sierra Club v. Sigler*, 695 F.2d 957 (5<sup>th</sup> Cir. 1983).

13. The above issues are different than those advanced by the Applicants and will, in the Council's respectful submission, assist the Court in determining the proper outcome of the Applicants' motion for leave to appeal. Accordingly, the Council satisfies the requirement that proposed interveners make "submissions which will be useful and different from those of the other parties."

*Reference re Workers' Compensation Act, 1983 (Newfoundland)* (*Application to Intervene*), [1989] 2 S.C.R. 335, at p. 339.

14. The Council's intervention in the Applicants' motion seeking leave to Appeal is further warranted in light of the *Charter* issues raised, which call for "increased openness on the part of the courts to the views of a wide range of citizens."

John Sopinka, "Intervention" (1988) 46 *The Advocate* 883, at p. 884.

15. Moreover, the Council respectfully submits that its application for leave to intervene ought to be granted because it is advantageous to the Court to have the benefit "of the submissions of responsible organizations particularly public bodies with a past history of helpful intervention." The Council meets this description.

*Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1990 S.C.B. 2140 (unreported reasons of Cory J., rendered October 15, 1990)]; see also John Sopinka and Mark Gelowitz, *The Conduct of an Appeal*, 3<sup>rd</sup> ed. (Toronto: LexisNexis, 2012), at pp. 358-359.

**PART IV – SUBMISSIONS ON COSTS**

16. The Council does not seek costs and asks that no costs be awarded against it.

**PART V – ORDERS SOUGHT**

17. The Council requests the following relief:

- (1) an order granting The Council leave to intervene in the Application for Leave to Appeal;
- (2) an order granting the Council leave for its submissions in the present motion to be considered by this Court in the determination of the Application for Leave to Appeal;
- (3) an order that the Council be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
- (4) an order specifying that the Council is not liable for any party's costs; and
- (5) any further or other order that the Court may deem appropriate.

Dated at Thunder Bay, Ontario this 20<sup>th</sup> day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY

  
\_\_\_\_\_

**Counsel for the Applicant to the Motion**

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## PART V – TABLE OF AUTHORITIES

	<b>Cases</b>	<b>Factum para.</b>
1	<i>High Country Conservation Advocates et al. v. United States Forest Service et al.</i> , Civil Action No. 13-cv-01723-RBJ (U.S. Dist. Ct., Colorado, 2014)	12
2	<i>MidStates Coalition for Progress v. Surface Transportation Board</i> , 345 F.3d 520 (8 <sup>th</sup> Cir. 2003)	12
3	<i>Reference re Workers' Compensation Act, 1983 (Newfoundland) (Application to Intervene)</i> , [1989] 2 S.C.R. 335	13
4	<i>Sierra Club v. Sigler</i> , 695 F.2d 957 (5 <sup>th</sup> Cir. 1983)	12
5	<i>Zurich Insurance Co. v. Ontario (Human Rights Commission)</i> , [1990 S.C.B. 2140 (unreported reasons of Cory J., rendered October 15, 1990)	15
	<b>Commentary</b>	
6	John Sopinka, "Intervention" (1988) 46 <i>The Advocate</i> 883	14
7	John Sopinka and Mark Gelowitz, <i>The Conduct of an Appeal</i> , 3 <sup>rd</sup> ed. (Toronto: LexisNexis, 2012)	15
	<b>Legislation</b>	
8	<i>Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (U.K.)</i> , 1982, c. 11, s. 2(b)	5, 8, 14
9	<i>Federal Sustainable Development Act</i> , S.C. 2008, c. 33, ss. 3-5	12
10	National Energy Board, "Strategic Plan"	12
11	<i>Supreme Court Act</i> , RSC 1985, c S-26, s. 40(1)	11

## PART VII – LEGISLATION

*Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11*

- |  |  |
|--|--|
| 2. Everyone has the following fundamental freedoms:  | 2. Chacun a les libertés fondamentales suivantes :   |
| (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication[.] | b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication[.] |

*Federal Sustainable Development Act, S.C. 2008, c. 33*

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|--|--|
| 3. The purpose of this Act is to provide the legal framework for developing and implementing a Federal Sustainable Development Strategy that will make environmental decision-making more transparent and accountable to Parliament.   | 3. La présente loi vise à définir le cadre juridique pour l'élaboration et la mise en oeuvre d'une stratégie fédérale de développement durable qui rend le processus décisionnel en matière d'environnement plus transparent et fait en sorte qu'on soit tenu d'en rendre compte devant le Parlement.                                    |
| 4. This Act and the regulations are binding on Her Majesty in right of Canada.   | 4. La présente loi et ses règlements lient Sa Majesté du chef du Canada.   |
| 5. The Government of Canada accepts the basic principle that sustainable development is based on an ecologically efficient use of natural, social and economic resources and acknowledges the need to integrate environmental, economic and social factors in the making of all decisions by government. | 5. Le gouvernement du Canada souscrit au principe fondamental selon lequel le développement durable est fondé sur l'utilisation écologiquement rationnelle des ressources naturelles, sociales et économiques et reconnaît la nécessité de prendre ses décisions en tenant compte des facteurs environnementaux, économiques et sociaux. |

**National Energy Board, "Strategic Plan"***Purpose*

We regulate pipelines, energy development and trade in the Canadian public interest <sup>111</sup>.

*Vision*

The NEB is active and effective in Canada's pursuit of a sustainable energy future.

*Goals*

- NEB-regulated facilities and activities are safe and secure.
- The environment is protected throughout the lifecycle of NEB-regulated facilities and activities.
- Canadians benefit from efficient energy infrastructure and markets.
- The rights and interests of those affected by NEB-regulated facilities and activities are respected.

*Values*

**Integrity:** We are fair, transparent, and respectful.

**Regulatory Leadership:** We are responsive, proactive and innovative.

**Accountability:** We are accountable and support each other to deliver timely, high quality results.

*Strategies*

- Take action on Safety
- Engage with Canadians
- Lead Regulatory Excellence

[1] The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time.

***Supreme Court Act, RSC 1985, c S-26***

40. (1) Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its

40. (1) Sous réserve du paragraphe (3), il peut être interjeté appel devant la Cour de tout jugement, définitif ou autre, rendu par la Cour d'appel fédérale ou par le plus haut tribunal de dernier ressort habilité, dans une province, à juger l'affaire en question, ou par l'un des juges de ces juridictions inférieures, que l'autorisation d'en appeler à la Cour ait ou non été refusée par une autre juridiction, lorsque la Cour estime, compte tenu de l'importance de l'affaire pour le public, ou de l'importance des questions de droit ou des questions mixtes de droit et de



public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.

fait qu'elle comporte, ou de sa nature ou importance à tout égard, qu'elle devrait en être saisie et lorsqu'elle accorde en conséquence l'autorisation d'en appeler.

# **TAB 5**

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

LYNNE M. QUARMBY, ERIC DOHERTY, RUTH WALMSLEY,  
JOHN VISSERS, SHIRLEY SAMPLES, FORESTETHICS ADVOCACY  
ASSOCIATION, TZEPORAH BERMAN, JOHN CLARKE,  
and BRADLEY SHENDE

APPELLANTS  
(APPELLANTS)

AND:

ATTORNEY GENERAL OF CANADA,  
TRANS MOUNTAIN PIPELINE ULC,  
CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and  
NATIONAL ENERGY BOARD

RESPONDENTS  
(RESPONDENTS)

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**ORDER**

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UPON APPLICATION by the Council of Canadian for an order granting leave to intervene and to have its submissions included in the motion for intervention considered in the determination of the Application for Leave to Appeal;

IT IS HEREBY ORDERED THAT the motion of intervention of the Council of Canadians is granted ad the submissions included in the said motion will be considered by this Court in the determination of the Application for Leave to Appeal, all without costs.

IT IS FURTHER ORDERED THAT the Council of Canadians may make an application for leave to intervene in the appeal, should leave be granted.

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REGISTRAR