

**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

**APPLICANTS
(APPELLANTS)**

AND:

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

**RESPONDENTS
(RESPONDENTS)**

**MOTION FOR INTERVENTION BY PROPOSED INTERVENERS
MICHELE LANDSBERG AND STEPHEN LEWIS**

Filed pursuant to Rules 47, 55, and 56 of the *Rules of the Supreme Court of Canada*

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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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ASSOCIATION, TZEPORAH BERMAN, JOHN CLARKE,
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APPLICANTS
(APPELLANTS)

AND:

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

RESPONDENTS
(RESPONDENTS)

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*

TAKE NOTICE that Michele Landsberg and Stephen Lewis (“Landsberg and Lewis”) hereby apply 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 request the following relief:

1. an order granting Landsberg and Lewis leave to intervene in the Application for Leave to Appeal;
2. an order granting Landsberg and Lewis 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 Landsberg and Lewis be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
4. an order specifying that Landsberg and Lewis are 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 National Energy Board's (the "NEB") exclusion of the public in its review for the Kinder Morgan Trans Mountain Pipeline Project (the "Proposed Project") based on what participants might say is an erosion of Canadian democracy.
2. Further, the NEB's failure to consider climate change as an impact of the Proposed Project, and other large-scale energy projects, renders its review process incomplete because it fails to include all issues related to the Proposed Project.
3. Landsberg and Lewis will make useful submissions different from those of the Applicants Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzeporah Berman, John Clarke, and Bradley Shende, in particular:
 - i) That participatory democracy is an essential element of Canadian decision making about whether large-scale infrastructure projects that have long-term implications for all Canadians are in the public interest;
 - ii) 8617 Canadians are concerned about the unreasonable limits on free expression in the NEB's review process and the exclusion of the issue of climate change in particular.

Dated at Ottawa, in the province of Ontario this 21st day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY

D. Lynne Watt as Agent

Counsel for the Proposed Interveners Michele Landsberg and Stephen Lewis	Agent for the Counsel for the Proposed Interveners Michele Landsberg and Stephen Lewis
Glen Orris, Q.C. Barrister 500 – 815 Hornby Street Vancouver, B.C. V6Z 2E6 Tel: 604-669-6711 Fax: 604-669-5180	D. Lynne Watt GOWLING LAFLEUR HENDERSON LLP 2600 – 160 Elgin Street Ottawa, ON K1P 1C3 T: 613.786.8695 F: 613.563.9869

Counsel for the Applicants Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzeporah Berman, John Clarke, and Bradley Shende	Agent for the Applicants Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzeporah Berman, John Clarke, and Bradley Shende
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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent or intervener may serve and file a response to this motion within 10 days after the service of the motion.

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)

AFFIDAVIT OF MICHELE LANDSBERG
MOTION FOR INTERVENTION OF Michele Landsberg

I, Michele Landsberg, of the City of Toronto in the Province of Ontario AFFIRM THAT: I am an Officer of the Order of Canada, a mother and grandmother, an author, and advocate for progressive social change. I am deeply concerned about democracy and climate change in Canada.

1. I am a Canadian journalist, author, public speaker and social activist. I am the recipient of two National Newspaper Awards, the YWCA Women of Distinction Award, the Dodi Robb Award from MediaWatch, the Robertine Barry Prize for journalism from the Canadian Research Institute for the Advancement of Women, the Florence Bird Award from the International Centre for Human Rights and Democratic Development, several honorary degrees, and the Canadian Governor General's Award in Commemoration of the 1929 Persons Case and Democratic Development, an award acknowledging contributions to equality for women which have resulted in positive change
2. In my long career as a journalist and commentator on issues of social relevance, it has been clear to me that Canada's choices around the building of further fossil fuel infrastructure will have serious consequences for the quality of life of future generations. Climate change is the clear and present threat to our lives on earth.
3. The National Energy Board is excluding the public and the expression of competing opinions from its assessment of whether major pipeline infrastructure proposals are in the public interest. The decision by the NEB to restrict participation in the assessment hearings for the Kinder Morgan pipeline to those whom they deem as "directly affected" represents a serious erosion of our democracy.
4. For the NEB to refuse individuals the right to make even a one page written submission demonstrates that this process is fatally flawed.

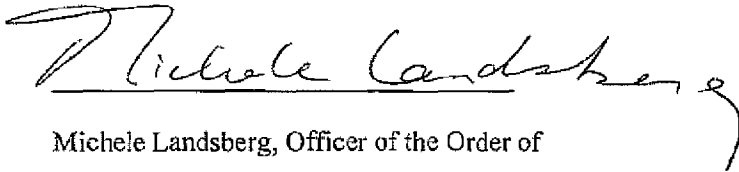
5. Together with my husband, Stephen Lewis, I wrote an open letter to Canadians asking them to sign a petition to show their support of this case. I am enclosing the names of all the signatories to that petition so that the court may understand the level of public interest in this important case. **Exhibit A.**
6. I am strongly interested in intervening in this leave on the grounds of the National Energy Board's (NEB) refusal to consider climate change in its review of the Kinder Morgan Trans Mountain Pipeline Project is unconstitutional and in violation of our *Charter of Rights and Freedoms sec 2, (b.) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.*

AFFIRMED BEFORE ME at the

City of Toronto in the Province of Ontario, on
April 21, 2015.



Commissioner for taking Affidavits



Michele Landsberg, Officer of the Order of
Canada, Author

OPEN LETTER FROM STEPHEN LEWIS AND MICHELE LANDSBERG

We are writing to you because we believe that the federal government and the National Energy Board are excluding the public by denying thousands of Canadians, like you and me, the ability to speak in the public process to assess new pipelines and by specifically refusing to let us speak about climate change.

In 2012, with minimal public input, the federal government amended the NEB Act and the Canadian Environmental Assessment Act to deliberately limit expression in the Board's proceedings.

As a result, all across Canada the Board is barring concerned residents and leading scientists from participating in its statutory public interest assessments of proposed pipelines because of what they might say.

Canadian citizen's constitutionally guaranteed free expression is being curbed based on the content of their speech, and the Board is failing to properly assess the public interest related to long-term energy infrastructure proposals.

That is why we're supporting the plaintiffs in Quarmby et al vs the National Energy Board in their application to appeal to the Supreme Court of Canada. These citizens are standing up for our right to free speech and fair process and they need our support.

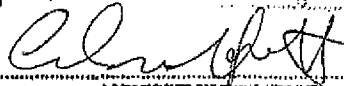
We are asking you to add your name to this letter and we'll carry your voice with us to the Supreme Court. Together we'll make ourselves heard.

For the future,

Stephen Lewis C.C. and Michele Landsberg O.C.

Signatories:

This is Exhibit A referred to in the
 affidavit of Michele Landsberg
 sworn before me, this 21st
 day of April, 2015.


 COMMISSIONER FOR TAKING AFFIDAVITS

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)

AFFIDAVIT OF STEPHEN LEWIS
MOTION FOR INTERVENTION OF Stephen Lewis

I, Stephen Lewis, of the City of Toronto in the Province of Ontario AFFIRM THAT: I am a Companion of the Order of Canada, a father and grandfather, and a life long advocate for democracy, justice, health and well being.

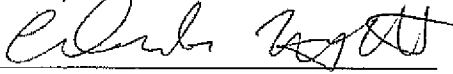
1. I am a Canadian politician, activist and diplomat. I was the leader the Ontario New Democratic Party from 1971 to 1978.
2. In 1984, I was appointed as Canada's Ambassador to the United Nations, by Prime Minister Brian Mulroney. In the 2000s, I served as the UN Secretary-General's Special Envoy for HIV/AIDS in Africa. In 2003, I gained investiture into the Order of Canada. As of 2014, I am Distinguished Visiting Professor at Ryerson University in Toronto.
3. I believe this case is of critical national importance because the refusal of the National Energy Board to entertain any testimony related to climate change is a clear subversion of democracy.
4. Together with my wife, Michele Landsberg, I wrote an open letter to Canadians asking them to sign a petition to show their support of this case. I am enclosing the names of all the signatories to that petition so that the court may understand the level of public interest in this important case. Exhibit A.
5. I am strongly interested in intervening on the grounds that the National Energy Board's (NEB) refusal to consider climate change in its review of the Kinder Morgan Trans Mountain Pipeline

Project is unconstitutional and in violation of our *Charter of Rights and Freedoms* sec 2, (b.) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.*

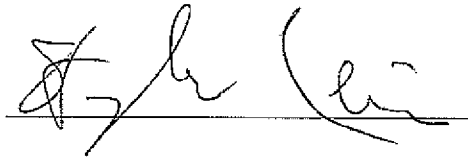
6. The NEB stated that it "does not have regulatory authority over upstream or downstream activities associated with the development of oil sands, or the end use of the oil to be transported by the Project." This is simply not true. The NEB is the federal regulatory authority responsible for reviewing the environmental impact of pipelines and other energy development projects in Canada. Pipeline projects do not exist in isolation from other industries; therefore the full scope of their impacts must be considered as part of a comprehensive review process.

AFFIRMED BEFORE ME at the

City of Toronto in the Province of Ontario, on
April 21, 2015.



Commissioner for taking Affidavits



Stephen Lewis, Companion of the Order of
Canada, Professor

OPEN LETTER FROM STEPHEN LEWIS AND MICHELE LANDSBERG

We are writing to you because we believe that the federal government and the National Energy Board are excluding the public by denying thousands of Canadians, like you and me, the ability to speak in the public process to assess new pipelines and by specifically refusing to let us speak about climate change.

In 2012, with minimal public input, the federal government amended the NEB Act and the Canadian Environmental Assessment Act to deliberately limit expression in the Board's proceedings.

As a result, all across Canada the Board is barring concerned residents and leading scientists from participating in its statutory public interest assessments of proposed pipelines because of what they might say.

Canadian citizen's constitutionally guaranteed free expression is being curbed based on the content of their speech, and the Board is failing to properly assess the public interest related to long-term energy infrastructure proposals.

That is why we're supporting the plaintiffs in Quarmby et al vs the National Energy Board in their application to appeal to the Supreme Court of Canada. These citizens are standing up for our right to free speech and fair process and they need our support.


We are asking you to add your name to this letter and we'll carry your voice with us to the Supreme Court. Together we'll make ourselves heard.

For the future,

Stephen Lewis C.C. and Michele Landsberg O.C.

Signatories:

This is Exhibit A referred to in the
 affidavit of Stephen Lewis
 sworn before me, this 21st
 day of April 2015.


 A COMMISSIONER FOR TAKING AFFIDAVITS

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,
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APPLICANTS
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AND:

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NATIONAL ENERGY BOARD

RESPONDENTS
(RESPONDENTS)

MEMORANDUM OF ARGUMENT

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*

PART I – STATEMENT OF FACTS

1. This is a Motion to request that Michele Landsberg and Stephen Lewis (“Landsberg and Lewis”) 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”) pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*.

2. Landsberg and Lewis are concerned about the exclusion of public voices from the National Energy Board’s (the “NEB”) review process for the Kinder Morgan Trans Mountain Pipeline Expansion Project (the “Proposed Project”). Landsberg and Lewis are particularly concerned that the Board is barring voices that would express views about climate change.

Affidavit of Michele Landsberg, paras. 3-5**Affidavit of Stephen Lewis, paras. 3-5**

3. Michele Landsberg is a distinguished Canadian journalist, author, public speaker and social activist. She is the recipient of two National Newspaper Awards, the YWCA Women of Distinction Award, the Dodi Robb Award from MediaWatch, the Robertine Barry Prize for journalism from the Canadian Research Institute for the Advancement of Women, the Florence Bird Award from the International Centre for Human Rights and Democratic Development, several honorary degrees, and the Canadian Governor General's Award in Commemoration of the 1929 Persons Case and Democratic Development, an award acknowledging contributions to equality for women which have resulted in positive change.

Affidavit of Michele Landsberg, para. 1

4. Based on her extensive experience as a journalist and commentator on issues of social relevance, Ms. Landsberg has come to appreciate that Canada's choices around the building of further fossil fuel infrastructure will have serious consequences for the quality of life of future generations. She is concerned that climate change is the clear and present threat to our lives on earth.

Affidavit of Michele Landsberg, para. 2

5. Stephen Lewis is a Canadian politician, broadcaster and diplomat. He was the leader of the social democratic Ontario New Democratic Party for most of the 1970s. In the mid-1980s, he was appointed as Canada's United Nations ambassador, by Progressive Conservative Prime Minister Brian Mulroney. In the 2000s, he served a term as the United Nations' special envoy for HIV/AIDS in Africa. In 2003, he gained investiture into the Order of Canada. As of 2014, he is a Distinguished Visiting Professor at Ryerson University in Toronto.

Affidavit of Stephen Lewis, paras. 1-2

6. Mr. Lewis considers this case to be of critical national importance because he views the NEB's refusal to entertain any testimony related to climate change to be a clear subversion of democracy.

Affidavit of Stephen Lewis, para. 3

7. Landsberg and Lewis wrote an open letter to Canadians asking them to sign a petition to show their support of the Applicants' Application for Leave to Appeal. The 8617 to that petition indicates the significant level of public interest in this important issue.

Affidavit of Michele Landsberg, para. 4, Exhibit "A"

Affidavit of Stephen Lewis, paras. 4

8. Landsberg and Lewis apply 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. Landsberg and Lewis have a unique perspective to contribute to the Court's consideration of the issues raised in this Application for Leave to Appeal and propose to make submissions regarding the requested appeal's importance for the future of all Canadians.

PART II – QUESTION IN ISSUE

9. The question in this motion is whether Landsberg and Lewis 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 said Application.

PART III – STATEMENT OF ARGUMENT

10. Landsberg and Lewis have 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 the Application for Leave to Appeal.

A. Interest in the Application for Leave to Appeal

11. Landsberg and Lewis are committed to, and deeply concerned about, democracy in Canada.

12. Landsberg and Lewis submit that the exclusion of public voices from the NEB's review process based on the content of participant's concerns undermines Canadian democracy. Further, Landsberg and Lewis submit that their exclusion is a clear and unconstitutional violation of the Canadian *Charter of Rights and Freedoms* section (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.
13. The NEB stated that it "*does not have regulatory authority over upstream or downstream activities associated with the development of oil sands, or the end use of the oil to be transported by the Project.*" This is simply not true. The NEB is the federal regulatory authority responsible for reviewing the environmental impact of pipelines and other energy development projects in Canada. Pipeline projects do not exist in isolation to other industries, therefore the full scope of their impacts must be considered as part of a comprehensive review process.
14. The NEB's refusal to allow individuals to make even a one-page written submission demonstrates that NEB's review process is fatally flawed. Denial of this most basic form of participation is inconsistent with Canadian democratic values and Canadian law.
15. Participatory democracy requires meaningful public engagement – not censorship. The NEB must consider the full scope of concerns generated by the Canadian public about a Proposed Project – to do otherwise is an unconstitutional violation of our *Charter* guaranteed s. 2(b) freedom of expression.

B. Unique and Useful Submissions on the Public Importance of the Appeal

16. If Landsberg and Lewis are granted leave to intervene, they will urge this Court to hear the requested appeal.

17. Landsberg and Lewis propose to make submissions that have not been made by the Applicants. Landsberg and Lewis 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)

18. In addition to those issues raised by the Applicants, the requested appeal raises the following issues of public importance:
- a. Participatory democracy is an essential element of Canadian decision making about whether large-scale infrastructure projects that have long-term implications for all Canadians are in the public interest; and
 - b. 8617 Canadians are concerned about the unreasonable limits on free expression in the NEB's review process, and the exclusion of the issue of climate change in particular.

PART IV – SUBMISSIONS ON COSTS

19. Landsberg and Lewis do not seek costs and ask that no costs be awarded against them.

PART V – ORDERS SOUGHT

20. Landsberg and Lewis request the following relief:
- (1) an order granting Landsberg and Lewis leave to intervene in the Application for Leave to Appeal;
 - (2) an order granting Landsberg and Lewis leave for their 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 Landsberg and Lewis be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
 - (4) an order specifying that Landsberg and Lewis are not liable for any party's costs; and

(5) any further or other order that the Court may deem appropriate.

Dated at Ottawa, in the Province of Ontario this 21st day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY

Spencer Watt as Agent

for:

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