

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 THE PROPOSED INTERVENER, ELIZABETH MAY
Filed pursuant to Rules 47, 55, and 56 of the *Rules of the Supreme Court of Canada*

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(APPELLANTS)

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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 Rules 52(1), 55, and 56
of the *Rules of the Supreme Court of Canada*

TAKE NOTICE that Elizabeth May (The Applicant) 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 Applicant leave to intervene in the Application for Leave to Appeal;
2. an order granting The Applicant leave for her 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 Applicant be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
4. an order specifying that The Applicant 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 National Energy Board's (NEB) refusal to consider climate change during the review process for the Kinder Morgan Trans Mountain Pipeline Project. The failure to consider climate change as an impact of an energy project renders the review process not comprehensive of all issues related to the project.

2. The Applicant 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) Climate change is of national importance given the scientific evidence on the effects of fossil fuels into the atmosphere;

 - ii) The work of countless organizations, including those in this leave to intervene, work with thousands of Canadians who support climate change mitigation policies and stronger environmental assessments for energy projects such as the Kinder Morgan Trans Mountain Pipeline Project.

 - iii) The refusal to incorporate climate change into the NEB's review process is a blatant infringement on the 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*. This act of censorship during a public review process is a violation of a democratic right enshrined in our Canadian Constitution.

Dated at Ottawa, Ontario, ~~British Columbia~~ this 21st day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY



<p>Counsel for the Proposed Intervener, Elizabeth May</p> <p>Glen Orris, Q.C. Barrister 500 – 815 Hornby Street Vancouver, B.C. V6Z 2E6 Tel: <u>604-669-6711</u> Fax: <u>604-669-5180</u></p>	<p>Agent for the Counsel for the Proposed Intervener, Elizabeth May</p> <p>D. Lynne Watt GOWLING LAFLEUR HENDERSON LLP 2600 – 160 Elgin Street Ottawa, ON K1P 1C3 T: 613.786.8695 F: 613.563.9869</p>
<p>Counsel for the Applicants Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzaporah Berman, John Clarke, and Bradley Shende</p>	<p>Agent for the Applicants Lynne M. Quarmby, Eric Doherty, Ruth Walmsley, John Vissers, Shirley Samples, ForestEthics Advocacy Association, Tzaporah Berman, John Clarke, and Bradley Shende</p>
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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 CANADA)**

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 ELIZABETH MAY
MOTION FOR INTERVENTION OF ELIZABETH MAY**

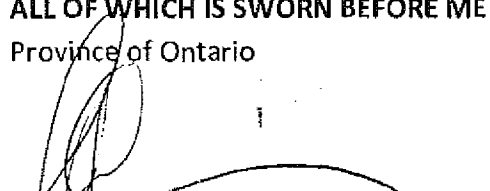
I, Elizabeth May, of Sidney, British Columbia, make oath and say as follows:

- 1) That I have personal knowledge of all the matters herein deposed, unless stated to be by way of information and belief;
- 2) That I am the Member of Parliament for Saanich-Gulf Islands on southern Vancouver Island having been elected in the May 2011 federal election;
- 3) That I am an Officer of the Order of Canada and a lawyer in non-practicing status, having been admitted to the Barristers Society of Nova Scotia and the Law Society of Upper Canada;
- 4) That I am the Leader of the Green Party of Canada;

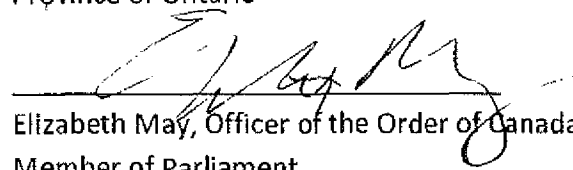
- 5) That I have decades of experience in environmental protection and environmental law, including serving as Executive Director of the Sierra Club of Canada from 1989-2006;
- 6) That my constituents are deeply concerned about the risk of spills of the toxic mixture called "dilbit," an 80-20 mixture of unprocessed bitumen and a fossil fuel condensate known as diluent, that the Respondent Company Trans Mountain Pipeline ULC proposes to ship in increasingly large quantities, through the pipeline expansion and on Aframax tankers out of the Port of Vancouver passing through the waters adjacent to Saanich-Gulf Islands;
- 7) That citing my personal experience in environmental law and my obligation to represent my constituents I was granted intervener status by the Respondent National Energy Board in the matter forming the substance of this action, as a person with "information or expertise;"
- 8) That I have appeared before the National Energy Board (NEB) in hearings and am familiar with the status of the board as a quasi-judicial tribunal;
- 9) That I have experience as an intervener in many environmental assessments, going back to environmental reviews before the passage of the Canadian Environmental Assessment Act, the first being the Wreck Cove hydroelectric project review in 1976 held under an Order in Council, called the Environmental Assessment Review Process (EARP);
- 10) That as Senior Policy Advisor to the Minister of Environment, in 1987, I assisted in the preparation of the internal government documents to persuade the Privy Council Office, Machinery of Government process, to allow the drafting of the Canadian Environmental Assessment Act;
- 11) That when I recognized the federal government had violated its own non-legislated environmental review process, EARP, in approval of the Rafferty-Alameda Dams in Saskatchewan, I resigned on principle from my position as Senior Policy Advisor to the Minister of Environment in June 1988;
- 12) That I have participated in numerous federal-provincial panel reviews under the former Canadian Environmental Assessment Act;
- 13) That one of the fundamental principles in the Canadian environmental assessment process has been public participation;
- 14) That I attempted to protect the previous Act as it was repealed and replaced through C-38, the spring 2012 omnibus budget bill, by presenting over 400 amendments, many of which essentially re-wrote the sections pertaining to CEAA in C-38;
- 15) That I offer the above as evidence of my deep and abiding commitment to environmental assessment policy and law, the rule of law, the Charter of Rights and Freedoms and natural justice.

- 16) That the decisions taken by the NEB have prejudiced my ability to participate in the review, even though I was granted intervener status;
- 17) That the refusal of the NEB to allow any evidence of the wide-spread environmental impacts of the threats posed by climate change is unreasonable;
- 18) That the refusal of the NEB to allow oral cross-examination violates rights of natural justice;
- 19) That it is an unreasonable interpretation of even Bill C-38 and its new environmental assessment law, CEAA 2012, to refuse to fully study and hear witnesses as to the nature of the climate impacts of the proposed expansion;
- 20) That the responses from the Respondent Trans Mountain Pipeline ULC, ruled acceptable by the NEB, are evasive and often non-responsive;
- 21) That I believe the paper exercise of mere exchange of written questions and answers violates reasonable public expectations of how evidence is to be tested in a quasi-judicial tribunal;
- 22) That I believe refusal of the NEB to interpret its mandate under CEAA2012 to comply with the requirement for a meaningful environmental review represents a further failure to meet its statutory mandate;
- 23) That I believe the application in this matter is a significant and non-trivial effort to protect the rights of Canadians for full and fair review of pipeline projects currently undermined by interpretations of the law by the NEB that are overly narrow and perverse, offending fundamental and natural justice, as well as the Charter of Rights and Freedoms.

ALL OF WHICH IS SWORN BEFORE ME this 21st day of April, 2015 in the City of Ottawa,
Province of Ontario



Commissioner for taking Oaths in the
Province of Ontario



Elizabeth May, Officer of the Order of Canada,
Member of Parliament

IN THE SUPREME COURT OF CANADA
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BETWEEN:

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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)

MEMORANDUM OF ARGUMENT

MOTION FOR INTERVENTION IN THE APPLICATION FOR LEAVE TO APPEAL
Filed pursuant to Rule 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, Elizabeth May (The Applicant) 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. The Applicant is the Member of Parliament for Saanich-Gulf Islands, an Officer of the Order of Canada and the leader of the Green Party of Canada.
- Affidavit of Elizabeth May paras. 2 - 4**
3. The Applicant is a lawyer in non-practicing status and has decades of experience in environmental

protection and environmental law, including serving as Executive Director of the Sierra Club of Canada from 1989-2006.

Affidavit of Elizabeth May paras. 3 and 5

4. The Applicant is an intervener in the NEB review of Kinder Morgan's Trans Mountain Expansion Project.

Affidavit of Elizabeth May para. 8

5. In 1987 The Applicant played a role in the creation of the Canadian Environmental Assessment Act in her role at the time as Senior Policy Advisor to the Minister of Environment.

Affidavit of Elizabeth May para. 10

6. The Applicant applies for leave to intervene in this Application for Leave to Appeal and the opportunity to make submissions as to why this Court should hear the Appeal. The Applicant 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 importance of public participation in environmental assessment process.

PART II – QUESTION IN ISSUE

7. The question in this motion is whether The Applicant should be granted leave to intervene in this Application for Leave to Appeal such that her present submissions will be taken into consideration by this Court in the determination of the said Application.

PART III – STATEMENT OF ARGUMENT

8. The Applicant 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. Interest in the Application for Leave to Appeal

9. This case concerns the extreme relevance of climate change to any energy projects that are directly tied to the expansion of the Alberta tar sands. The Applicant is committed to environmental justice issues that impact Canadian citizens and their democratic right to speak to their concerns about energy projects.
10. For there to be meaningful public engagement the NEB must consider the full scope of concerns generated by the Canadian public about a project in review. Anything otherwise is an unconstitutional censorship of our Charter of Rights and Freedoms, sec 2 (b).

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

11. One of the fundamental principles in the Canadian environmental assessment process has been public participation.
12. Decisions taken by the NEB have prejudiced the Applicant's ability to participate in the review, even though she was granted intervener status.
13. The refusal of the NEB to allow oral cross-examination violates the principles of natural justice.
14. It is an unreasonable interpretation of even Bill C-38 and its new environmental assessment law, CEAA 2012, to refuse to fully study and hear witnesses as to the nature of the climate impacts of the proposed expansion.
15. The refusal of the NEB to interpret its mandate under CEAA2012 to comply with the requirement for a meaningful environmental review represents a further failure to meet its statutory mandate.
16. The application in this matter is a significant and non-trivial effort to protect the rights of Canadians for full and fair review of pipeline projects currently undermined by interpretations of the law by the NEB that are overly narrow and perverse, offending fundamental and natural justice,

as well as the Charter of Rights and Freedoms.

PART IV – SUBMISSIONS ON COSTS

17. The Applicant do not seek costs and asks that no costs be awarded against them.

PART V – ORDERS SOUGHT

18. The Applicant request the following relief:

- (1) an order granting The Applicant leave to intervene in the Application for Leave to Appeal;
- (2) an order granting The Applicant leave for her 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 Applicant be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
- (4) an order specifying that The Applicant is not liable for any party's costs; and
- (5) any further or other order that the Court may deem appropriate.

Dated at Ottawa, ^{Ontario} British Columbia this 21st day of April, 2015.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

SIGNED BY

Elizabeth May
as Agent

fr.

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