

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 OF INTERVENTION BY THE PROPOSED INTERVENERS

THE LEADNOW SOCIETY AND THE SIERRA CLUB OF BC

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

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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 the LeadNow Society and the Sierra Club of BC ("The Organizations") 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 The Organizations leave to intervene in the Application for Leave to Appeal;
2. an order granting The Organizations 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 The Organizations be free to apply for leave to intervene in the appeal, should leave to appeal be granted;

4. an order specifying that The Organizations are not liable for any party's costs; and
5. any further or other order that the Court may deem appropriate;

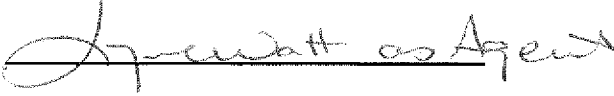
AND FURTHER TAKE NOTICE that the motion is made on the following grounds:

1. The National Energy Board's (the "NEB") 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 Organizations 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

 D. Lynne Watt as Agent

for:

Counsel for the Proposed Interveners the LeadNow Society and the Sierra Club of BC	Agent for Counsel for the Proposed Interveners the LeadNow Society and the Sierra Club of BC
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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,
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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 Jolan Bailey
MOTION FOR INTERVENTION OF Leadnow Society

I, Jolan Bailey, of the City of Vancouver in the Province of British Columbia AFFIRM THAT:

I am an Organizer at Leadnow in Vancouver, British Columbia. In this role, I have helped to lead our work to engage Canadians in the important policy debates related to climate change and resource extraction, especially as they relate to key infrastructure decisions such as those made by the National Energy Board.

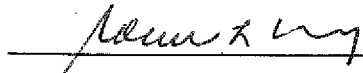
1. Leadnow envisions a country where people work together to build an open democracy, create a fair economy and ensure a safe climate for all generations. Our community has grown from a small youth-led team to include over 400,000 people across Canada, and our voice keeps getting stronger every day. Leadnow is powered by the contributions, actions, and values of its cross-generational community, who live across Canada.
2. The Leadnow community has consistently demonstrated its support for taking action to address climate change. Leadnow's expertise and contribution to the policy debates and discussions related to Canada's energy future and our environment comes from our ability to provide an opportunity for tens to hundreds of thousands of individuals to weigh in on policy debates on climate and energy, and to facilitate the participatory processes to develop a shared positive agenda for Canada's climate response and energy transition. Leadnow provides accessible information about complex issues, and facilitates the

inclusion of those individual voices in policy debates.

3. Leadnow is interested in this case because it is critical to challenge arbitrary and counter-productive barriers to citizen participation in decision-making. Further, the restrictions on the nature and kinds of arguments and evidence that the NEB can consider, including the critical issues related to climate change as they relate to energy infrastructure, preclude sound public policy decision-making. The exclusion of voices from public decision-making processes will result in decisions that are not in the public interest.
4. Leadnow has organized many campaigns on climate and energy issues in Canada, British Columbia and Vancouver. Most recently, we organized a campaign that engaged 15,000 people calling for a stronger spill response and a limit on supertanker traffic through Vancouver. We have also directly engaged with the NEB on several occasions, such as a recent campaign calling on climate change and community voices to be included in the Energy East process. In addition, we have been involved in legal challenges on issues relating to democratic process, energy projects and climate change. The most prominent example of this work was our community's years-long crowd-funding support of the Hupacasath First Nation's challenge of the Canada-China FIPA. We specialize in organizing community-level engagement, including the dozens and dozens of local events organized through our work during the Defend our Coast and Defend our Climate rallies, and thus have a particularly strong relationship to the many different local perspectives, concerns and suggestions about this pipeline decision.
6. The decision of the NEB involves risks for the local communities, Canadians across the country, and our long-term economic prosperity. Leadnow is applying to intervene in this case in order to ensure that there will be a formal channel for the over 400,000 members of our community will have a formal channel for contributing to this decision-making process.

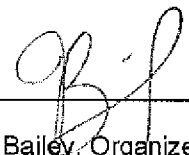
AFFIRMED BEFORE ME at the

City of Vancouver in the Province of British Columbia, on April 26, 2015.



 Commissioner for taking Affidavits

ADRIAN L. WONG
 A Commissioner for taking
 affidavits for British Columbia



 Jolan Bailey, Organizer at Leadnow

ADRIAN L. WONG
 Notary Public
 128 East Pender Street
 Vancouver, B.C., V6A 1T3
 Tel: 604-684-2381

**IN THE SUPREME COURT OF CANADA
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BETWEEN:

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APPELLANTS
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ATTORNEY GENERAL OF CANADA,
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NATIONAL ENERGY BOARD

RESPONDENTS

(RESPONDENTS)

AFFIDAVIT OF LARISSA STENDIE

MOTION FOR INTERVENTION OF SIERRA CLUB BC

I, Larissa Stendie, of the City of Victoria in the Province of British Columbia AFFIRM THAT:

I am the Energy and Climate Campaigner for Sierra Club BC (SCBC), Victoria, British Columbia.

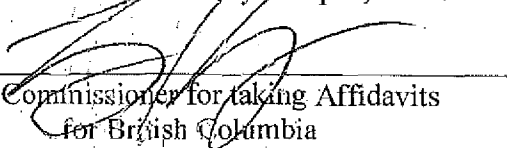
1. Sierra Club BC is a non-profit environmental organization whose mission is to protect and conserve British Columbia's wilderness, species and ecosystems, within the urgent context of global warming impacts. We advocate the responsible use of B.C.'s natural resources while promoting a modern, equitable economy that sustains our planet in every way. Rooted in our more than 40 year history, Sierra Club BC works with different levels of government, First Nations and the public to provide science-based conservation viewpoints and advice on policy decisions that affect a range of environmental issues.
2. As the Energy and Climate Campaigner, my role is to draw attention to the concerns and issues regarding natural resource development projects (e.g. pipelines and tankers facilitating tar sands

expansion) that put our ecosystems and climate at risk. I also work closely with communities celebrating and facilitating the active energy transition movement towards a low-carbon economy and increased local resiliency.

3. Taking our cues from our members and the public at large, we are very concerned with the current NEB process related to limits on participation and consideration of environmental and climate concerns.
4. For many years SCBC has worked on issues of environmental protection and public participation regarding proposed infrastructure and projects that jeopardize the health, jobs, climate, and ecosystems upon which British Columbian communities depend. Our science-based communications raise public awareness about climate change and connect the greenhouse gas emissions (i.e. climate impacts) of proposed tar sands pipelines. As well we seek to ensure that the voices of First Nations and the concerned public are heard and incorporated into decision-making about proposed energy infrastructure projects.
5. In 2012, we published a report on BC's Uncounted Greenhouse Gas Emissions called "Emissions Impossible". This report shows the potential future emissions related to the Enbridge pipeline, or equivalent proposals such as TMEP, are projected to produce approximately 100 million tonnes of GHGs.
6. SCBC supports the plaintiffs' desire to call into question the legitimacy of the current National Energy Board's (NEB) process in light of undemocratic changes to process and undermining their Charter rights to freedom of expression and participation.
7. We support this lawsuit because we question the NEB's consideration of long-term public interests. In the context of a carbon-constrained economy, SCBC is concerned about the implications of locking Canada into large-scale carbon-heavy infrastructure projects, particularly when healthy, green, competitive energy alternatives exist.

Affirmed before me at the City of
Vancouver in the Province of British
Columbia this 20th day of April, 2015.

A Commissioner for taking Affidavits
for British Columbia



LARISSA STENDIE

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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and BRADLEY SHENDE

APPLICANTS
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ATTORNEY GENERAL OF CANADA,
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CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, and
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RESPONDENTS
(RESPONDENTS)

MEMORANDUM OF ARGUMENT

MOTION OF INTERVENTION IN THE APPLICATION FOR LEAVE TO APPEAL
Filed pursuant to Rules 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, the LeadNow Society and the Sierra Club of BC (“The Organizations”) 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 Organizations believe that the NEB’s refusal to consider climate change in their review of the Kinder Morgan Trans Mountain Pipeline Project is an act of censorship to a public comment and review process that they are mandated to engagement in to review the full scope of an energy project. The Organizations believe it is unconstitutional a clear 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.

3. 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.

4. Sierra Club of British Columbia is non-profit environmental organization whose mission is to protect and conserve British Columbia’s wilderness, species and ecosystems, within the urgent context of global warming impacts. We advocate the responsible use of B.C.’s natural resources while promoting a modern, equitable economy that sustains our planet in every way. Rooted in our more than 40 year history, Sierra Club BC works with different levels of government, First Nation and the public to provide science-based conservative viewpoints and advice on policy decisions that affect a range of environmental issues.

Affidavit of Sierra Club of BC, para. 1

5. Leadnow envisions a country where people work together to build an open democracy, create a fair economy and ensure a safe climate for all generations. Our community has grown from a small youth-led team to include over 400,000 people across Canada, and our voices keeps getting stronger every day. Leadnow is powered by the contributions, actions and values of its cross-generational community, who live across Canada.

Affidavit of Leadnow Society, para. 2

6. Leadnow is interested in this case because it is critical to challenge arbitrary and counter-

productive barriers to citizen participation in decision-making. Further, the restrictions on the nature and kinds of arguments and evidence that the NEB can consider, including the critical issues related to climate change as they relate to energy infrastructure, preclude sound public policy decision-making. The exclusion of voices from public decision-making process will result in decision that are not in the public interest.

Affidavit of Leadnow Society, para. 3

7. Sierra Club of BC supports the plaintiffs' desire to call into question the legitimacy of the current NEB's process in light of undemocratic changes to process and undermining their Charter rights to freedoms of expression and participation.

Affidavit of Sierra Club of BC, para. 6

8. For many years, Sierra Club BC has worked on issues of environmental protection and public participation regarding proposed infrastructure and projects that jeopardize the health, jobs, climate and ecosystems upon which British Columbian communities depend. Our science-based communications raise public awareness about climate change and connect the greenhouse gas emissions (i.e. climate impacts) of proposed tar sands pipelines. As well we work to ensure that the voices of First Nations and the concerned public are heard and incorporated into decision-making about proposed energy infrastructure projects.

Affidavit of Sierra Club of BC, para. 4

9. The Organizations 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. The Organizations have 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 to maintain strong environmental regulations that keep companies accountable and allow for public participation in regulatory processes.

10. The Organizations interact regularly with the public on issues related to tar sands expansion and pipeline development, what is abundantly clear is Canadians not only expect the right to speak freely during a public process that is mandated to hear them but they have the protection of the constitutional to allow for their opinions to be heard.
11. Moreover, the opinions of those are concerned about local, provincial and global implications of energy projects are paramount to a government mandated public review process in a democratic society such as Canada.

PART II – QUESTION IN ISSUE

12. The question in this motion is whether The Organizations 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

13. The Organizations 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 this Application for Leave to Appeal.

A. Interest in the Application for Leave to Appeal

14. The Organizations believe 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 Organizations are committed to environmental justice issues that impact Canadian citizens and their democratic right to speak to their concerns about energy projects.
15. 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

16. Should The Organizations be granted leave to intervene, they will urge this Court to hear the requested appeal.
17. The Organizations propose to make submissions that have not been made by the Applicants. The Organizations 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. The NEB's refusal to hear issues related to climate change during their hearings is unconstitutional and a violation of the Canadian Charter of Rights and Freedoms Sec 2 (b).

PART IV – SUBMISSIONS ON COSTS

19. The Organizations do not seek costs and asks that no costs be awarded against them.

PART V – ORDERS SOUGHT

20. The Organizations request the following relief:
 - (1) an order granting The Organizations leave to intervene in the Application for Leave to Appeal;
 - (2) an order granting The Organizations 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 The Organizations be free to apply for leave to intervene in the appeal, should leave to appeal be granted;
 - (4) an order specifying that The Organizations are 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

 as Agent

for:

**Counsel for the Proposed Interveners the
LeadNow Society and the Sierra Club of
BC**

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