

EXAMINING THE EVIDENCE



Do climate lawsuits serve the interests of municipalities and local residents?

RESOURCE WORKS SOCIETY

www.resourceworks.com

VANCOUVER, BRITISH COLUMBIA

SEPTEMBER 2019

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COMMUNITY VIEWS: Climate lawsuits seen as ineffective, costly, and misplaced

Local governments in B.C. have to bring climate change into their long-term planning, but suing fossil-fuel companies to recover costs would be a waste of time and money.

On the lower Island, rising sea levels are just one of the effects of climate change that will transform the lives of residents and heap new burdens on municipal governments.

A Capital Regional District report said that storm surges combined with a one-metre rise in sea level could result in business disruption losses of \$415,557 per day, by the year 2100.

Victoria and other municipalities have already sent letters to big oil and gas companies asking them for compensation.

Shell Canada president Michael Crothers wrote back that his company recognizes the challenge of climate change and is working hard on new energy technologies. It was a gentle way of saying: “No dice.”

If cities and towns do go ahead with lawsuits, those sympathetic words will be replaced by an army of expensive lawyers.

B.C. has been fighting Big Tobacco for 20 years for compensation for the health costs of smoking. Despite having a strong moral case, the province is lost so deep in the courts that there is not even a glimmer of light at the end the tunnel.

Fighting Big Oil would be many times harder, not only because of its immense resources but because just about everyone in the world is complicit in the use of fossil fuels.

Assessing responsibility would be a moral and legal nightmare.

Some battles are worth fighting, no matter how difficult. This one isn't.

— *Victoria Times Colonist editorial, January 2019*



The experience of Whistler and Victoria showed the importance of looking before you leap. Both municipalities are heavily dependent on tourism industries that require dependable, economically viable fuel supplies. Both experienced an ongoing backlash after initially joining the litigation campaign.

Collaboration, rather than conflict, is a better way for Canadian municipalities to promote successful climate leadership.

Working through staff to first get baseline information is a good starting point for negotiating successfully through this issue.

Climate litigation favours conflict over collaboration

*A message from
the Resource Works Society*

Since January, 2017 a campaign has been underway to hold fossil fuel companies financially ‘accountable’ for the effects of a changing climate on BC communities by taking several actions including writing demand letters to the top 20 fossil fuel companies and connecting with other cities to explore options for legal action against such companies.

Through our work, we at Resource Works have given a lot of thought to the idea of lawsuits and demand letters aimed at oil companies. We

know that civic officials are continually seeking the best path forward in times of change. This policy brief sets out a few facts about the litigation campaign and proposes a path to address climate concerns while working collaboratively with those who are positioned to contribute to the solution.

The experience of other municipal governments in recent years tells us that an adversarial and legalistic approach will result in a poor outcome – not to mention significant taxpayer-funded legal costs and distraction from more effective solutions. Dividing residents on this

issue is one approach, another is to unify residents of the city, the province, and the country around values they share.

Setting aside the adversarial campaigning and focusing civic efforts on finding ways to work together to address climate impacts seems the most reasonable and most productive way forward for communities in BC. Communities are already doing significant work towards ameliorating the impacts and effects of climate change and these efforts shouldn’t be undermined or minimized to promote more confrontational campaigns.

PROVINCES SAYING ‘NO’ TO CLIMATE LITIGATION

One objective of climate litigation proponents is to persuade provincial governments to change the law to allow litigation against fossil fuel companies. The reality is that provincial governments, quite sensibly, are rejecting this alarmist approach. Here is evidence from B.C. and Ontario.

The following text snippet is from a letter from B.C. Environment Minister George Heyman to Mayor Mary-Ann Booth and Councillors, District of West Vancouver:

The causes and solutions to climate change are many and complex. At this time, the Province is not considering legislation or other action directed towards fossil fuel producers. Our approach to addressing the causes of carbon pollution is to price the emissions in a way that allows consumers to understand the impact of their actions and the value of alternatives, to support the development of alternatives that reduce or avoid impact to our economy and to provide assistance and support to British Columbia’s families and businesses to adopt these

Under the previous Ontario government, a private member’s bill was proposed that would have enabled climate litigation. It was defeated at 2nd reading in October 2018. Text snippet from the proposed bill:

- Reduced the burden of proving causation by setting out a number of criteria for strict liability and various assumptions that create lower evidentiary standards than would normally apply in court without the legislation;
- Applied the legal concept of ‘strict liability’ to all producers (exploration, recovery, refining, sale) of fossil fuels where globally detectable levels of greenhouse gas emissions can be attributed to their actions/product; and
- Enabled those in Ontario who suffer harms related to climate change impacts to prosecute the fossil fuel industry and seek compensation.

OPINION: Climate litigation groundswell? Nope. FOIs reveal a tightly scripted campaign

BY STEWART MUIR – EXECUTIVE DIRECTOR, RESOURCE WORKS

The city councils of Vancouver and Richmond recently voted for motions that put the cities on a path towards pursuing class action lawsuits against fossil fuel companies. Across the country, Toronto Council is also being pushed to consider a similar lawsuit.

The widespread debate and consideration of these lawsuits would lead one to believe that there is a groundswell of public support for this approach, however, a closer examination reveals that it is being pushed entirely by a group of activists who oppose all resource development.

In fact, the only impetus for lawsuits against fossil fuel companies emanates from the offices of political activists like West Coast Environmental Law group (WCEL) in BC or Greenpeace Canada in Ontario.

WCEL is familiar to us on the 'left coast' as an eco-socialist group of lawyers who fight resource and energy projects via lawsuits. WCEL worked on the recent tanker ban Bill C-48 for years. They are noted for working on the legal case that stalled the Trans Mountain pipeline project in 2018. WCEL has a long history of opposing most resource-based activities in BC including logging, mining and aquaculture.

The multi-national environmental group Greenpeace needs no introduction and has offices in both Vancouver and Toronto. Greenpeace is vehemently opposed to the fossil fuel industry in general, and the Alberta oil sands in particular, and wages a constant public relations battle against it. The seven protesters who dangled under the Second Narrows bridge in Vancouver last July is an example of a typical Greenpeace PR stunt against the fossil fuel industry.

The climate accountability or litigation campaign in Canada is basically a product of these two large environmental groups. These two groups seem to be orchestrating the entire campaign of pushing civic councils to sue fossil fuel companies.

Moreover, from researching council meetings and reviewing meeting minutes, it becomes apparent there are no large numbers of emails or letters on the subject received by councils or councillors.

Worse yet is the evidence of behind the scenes activity by these groups in lobbying civic councils. FOI inquiries show the campaigners orchestrating the whole process from approaching potentially supportive councillors, drafting motions and letters for them, accessing council agendas, then finally providing presenters and speakers to support the motions. The activists are in constant contact with certain councillors and even offer to provide them with messaging to support the cause. In Toronto, for example, Greenpeace obligingly proofread the suggested motion by a councillor, providing tips on the accompanying news release for his press conference on the motion. Last year, the municipality of Whistler was offered, and used, damage-control messaging from the litigation lobbyists once the issue went sideways.

The campaigners provide this assistance to busy councillors in order to both control the messaging and ease the passage of the motions.

Activists are skilled at stacking the microphone at local council meetings to craft the appearance that there is public support for climate litigation. In reality, there are often no members of the ordinary public in attendance at council meetings who speak in favor of these motions. In BC, almost all the presentations made to local councils were conducted by someone affiliated with WCEL or was only one step removed from the organization.

An example of the activist driven campaign can be seen by looking at the speakers list for the recent Vancouver Council meeting where the climate accountability issue was

debated. Twenty members of the 'public' were signed up to speak to the motion. You might think that out of 20 people some might be truly average citizens concerned with an issue but alas that wasn't the case at all. Every one of the people who spoke had some association, direct connection with, or were organized by the campaigners to speak.

Unfortunately, councillors weren't informed of these ties in most cases. A retired teacher was introduced as a 'concerned grandfather' when he is in reality a hardcore anti oil activist who has been fighting the Trans Mountain expansion for years and is one of the 10 people named in a judicial injunction against protesters. Hardly an average citizen just walking in off the street.

Another speaker just happened to be the spouse of a WCEL volunteer who has presented the accountability campaign to numerous other councils in the lower mainland. Another activist portrayed herself as a mother concerned about the world her daughter will inherit, when in her spare time, she organizes other volunteers for Vancouver Greenpeace. She was also briefed by the Toronto Greenpeace campaigners behind Councillor Mike Layton's accountability campaign prior to a meeting with Vancouver Councillor Boyle. Before the Council meeting, she set up a practice session where the speakers she arranged were coached on how to present. Hardly an average citizen.

While the theme of this climate campaign is 'accountability' and making fossil fuel companies 'pay their fair share', given the histories of the activists involved it seems more accurate to state the true motivation behind the climate litigation campaign is to use the threat of legal action from municipalities against energy producers, and the negative press that accompanies that, as just another tool to achieve their ultimate goal: the elimination of resource development in Canada.

Six questions to ask climate lawsuit delegations that appear before your council

- 1** This campaign is driven primarily by activists with little evidence of public support. Councillors should seriously consider how much public backing there is for lawsuits. How many emails or letters has Council received on this issue prior to any WCEL presentations? How many local citizens have spoken in support?
- 2** The litigation concept is largely based on the American experience, yet none of the cases cited or brought to court so far has been successful, with many cases already dismissed. Why would we follow a flawed strategy such as this?
- 3** The most recent IPCC Special Report states we have possibly only 12 years within which to limit rising temperatures to moderate levels. Most court cases of this scale and nature would take far longer than this to wind through the

courts. Why waste time and limited resources on such lengthy and uncertain outcomes?

- 4** How can costs be determined when the suggested impacts are from computer models and have yet to actually occur?
- 5** There is no mention of budget allotments required for participation in these lawsuits. What are the true costs of such litigation?
- 6** Why the selective focus on fossil fuel companies? If the motion is suggesting suing GHG emitters, why then does it not include building owners or other emitters? Studies show buildings emit up to 30% of greenhouse gases. Other large emitters can fly under the radar. For example, why focus on fuel suppliers when cement makers use highly GHG-intensive manufacturing processes?



Do's and don'ts when your municipality is being asked to take part in a climate lawsuit

Do...

1. **Focus** on positive alternatives to litigation that show you are creative and open-minded, and committed to addressing citizens' real concerns about climate.
2. **Tell** people what your municipality is already doing about climate, including its collaborations with other governments and industry.
3. **Remember** that if this request was a practical step, you'd probably already be doing it.
4. **Keep in mind** that this issue has been known to generate a lot of passion. It can be surprisingly easy for members of your community to be swayed by emotional arguments instead of the facts.

Don't...

1. **Expect** advocates for litigation to provide both sides of the argument. Their job is to pressure you to take their side. Give your municipal staff a chance to research pertinent questions and provide balanced advice back to council.
2. **Feel** you are alone in facing this issue. Other municipalities have already dealt with these requests. (The vast majority declined to participate.) As with any other issue, your counterparts elsewhere are usually more than happy to be contacted to share their learnings with you. Resource Works also provides information at the links here.
3. **Believe** that threatening someone with a lawsuit is a path to true collaboration.

Little support for lawsuits

Of 190 British Columbia communities approached, only 24 have voted to support climate litigation.

Despite some enthusiastic claims to the contrary that we have heard, there is no evidence to suggest that there is a groundswell of municipal government support for climate litigation.



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municipalities in B.C. have agreed to some of the climate litigation asks. It is not clear how many have followed through.

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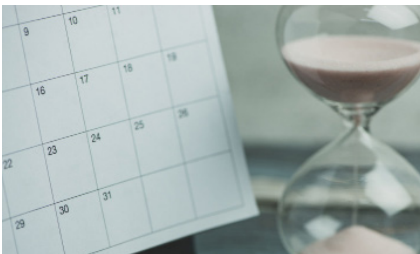
municipalities have taken a pass on the litigation motion.

5 reasons not to litigate



Lawsuits are expensive

Climate accountability lawsuits are new and essentially unproven. The costs to communities could be enormous.



Lawsuits drag on forever

Campaigners like to compare climate lawsuits to tobacco lawsuits, except in Canada some tobacco lawsuits are still in process. BC's tobacco lawsuit started in 1998 and is still ongoing.



Lawsuits are adversarial

Contrary to campaign messaging, lawsuits do not foster cooperation. Lawsuits are inherently adversarial in nature and immediately create opponents.



Lawsuits take resources away from other issues

Lawsuits take away scarce resources in communities. Civic staff time, finances, and effort are all drained by focusing on lawsuits. These resources could be better utilized elsewhere.



Collaboration and engagement win over lawsuits

Working with all those concerned about the possible impacts of climate change on communities is the preferred and prudent way forward.



Climate Action Toolkit

<https://www.toolkit.bc.ca/toolkit>

BC Climate Charter

<https://www2.gov.bc.ca/gov/content/governments/local-governments/climate-action/bc-climate-action-charter>

BC Government

<https://www2.gov.bc.ca/gov/content/governments/local-governments/climate-action>

Federation of Canadian Municipalities: Municipalities for Climate Innovation Program

<https://fcm.ca/en/programs/municipalities-climate-innovation-program>

Pacific Climate Impacts Consortium

<https://www.pacificclimate.org/>

Local Governments for Sustainability global network

<http://www.icleicanada.org/about/about-us>

New report on 'Canada's Top Climate Risks' by the Council of Canadian Academies for the federal Treasury Board, research suggesting that by focusing on six areas most at risk of being impacted by climate change, Canadians can mitigate those impacts by up to 75 per cent.

Green Bonds: A *POSITIVE* alternative to lawsuits

An alternative to litigation for communities contemplating cost impacts of climate change is the bond market. 'Green bonds' or 'climate bonds' are becoming popular.

Green bonds are a way forward for municipalities to raise the forecasted funds for their adaptation and mitigation efforts. Some BC communities are in the early stages of exploring this option. They are utilizing bond funding to finance public low carbon transport infrastructures, such as light rail and other transportation projects. Vancouver is an example of a city that has issued green bonds to fund clean projects with the first issue of \$85 million in September of 2018.

According to the Smart Prosperity group in 2018, the annual Canadian green bond issuance reached C\$5.5 billion. Smart Prosperity sees the Canadian green bonds market as potentially "instrumental in steering private sector, and international capital flows to finance this transition" to a low-carbon future. "Green bonds offer an environmental and social investment tool that will support the City's efforts to build sustainable infrastructure for many generations to come." said then-Mayor Gregor Robertson.

Recently, on July 19, 2019, the Bank of Nova Scotia closed its inaugural 'Green Bond' offering valued at \$500 million. The Green Bond offering will be used "to fund the financing or to refinance, in whole or in part, of eligible green assets, which refer to new or existing assets, businesses or projects that meet the Scotiabank Green Bond Framework Eligibility Criteria, including renewable energy, clean transportation, and green buildings."

Areas of investment for the Green Bonds may include sustainable water and wastewater management, environmentally sustainable management of living natural resources and land use, energy efficiency, terrestrial and aquatic biodiversity conservation, and pollution prevention and control. The Bank sees Green Bonds as a growing sector.

This method of raising funds has many positive aspects that far outweigh the costs



and risks of litigation.

Planning a municipality's long term finances based on climate litigation is like planning retirement based on the expectation of winning the lottery. The only certainty is that litigation will cost a lot of money and offer very low odds.

Green bonds can offer an effective and positive opportunity to both the investor and the issuer, providing guaranteed financial benefits in a much shorter time-frame than litigation.

Investing in your community provides a sense of provides positive social

contributions. It is surprising how litigation is being pushed so hard by some groups when there are better alternatives.

— Resource Works

Resource links

<https://vancouver.ca/your-government/investor-relations.aspx>

<https://www.sustainalytics.com/sustainable-finance/2019/04/02/green-bonds-social-bonds-sustainability-bonds-issuance-green-finance/>

<https://resourceworks.com/betterpath>

About this publication

This brochure is brought to you by the Resource Works Society, which communicates with British Columbians about the importance of the province's resource sectors to their personal well-being.



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More on climate litigation:

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