

Premier John Horgan,  
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Victoria BC V8W9E1

\*\*\* BY FAX @ 250 387-0087 AND MAIL \*\*\*

Dear Premier Horgan:

**Re: Liability for Climate-related Harms Act and Climate Leadership**

We write to ask your government to take immediate action to hold global fossil fuel companies accountable for climate change-related harm and costs that occur in British Columbia, through the enactment of a *Liability for Climate-related Harms Act* – a statute to clarify the legal rules of liability for harm caused by climate change.

This statute is essential both to protect BC taxpayers against a rising tide of climate change costs and to give global fossil fuel companies financial incentives to work to solve the climate crisis.

**Climate impacts in BC**

We are frightened about what climate change means for our planet, British Columbia and our communities. As a result of fossil fuel pollution, the world has already seen a 1°C increase in average temperatures. In BC we are already seeing:

- droughts and heat threatening us with increased wildfires and water shortages,
- extreme weather and early melting of snow-pack leading to flooding, landslides, and resident evacuation,
- sea level rise requiring expensive coastal protection measures, and
- the spread of diseases and pest species, such as Lyme Disease and the Mountain Pine Beetle.

As unchecked increasing fossil fuel pollution continues to push global temperatures ever higher, climate impacts like these, which hit poor and vulnerable groups especially hard, will only get worse. The government of British Columbia and other levels of government are on the hook to fund infrastructure upgrades and changes to services, in efforts to shield British Columbians from the worst of these climate impacts. Estimates of the potential costs to British Columbia run in the tens of billions of dollars.<sup>1</sup>

**Polluters must pay**

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<sup>1</sup> Figures for the costs of coastal flooding to BC illustrate the point. Paying the Price, a 2010 report of the National Roundtable on Environment and Economy (NRTEE) estimates the costs to Canada by 2020 at \$5 billion per year, rising to \$21-43 billion per year by 2050 (and much more than that if global temperature increase is not kept to below 2°C). The same report estimates that flooding in BC by 2050 is likely to cost the province an average of between \$0.8 and \$7.6 billion **each year** if the world is **successful** in keeping temperature increases below 2°C. (p. 72). If governments build infrastructure to deal with the potential flooding, this figure will be reduced, but the infrastructure needed for the Lower Mainland has been estimated at \$9.5 billion by 2100 to deal with a 1 metre sea-level rise (Delcan. Cost of Adaptation - Sea Dikes and Alternative Strategies (Province of BC, 2012)). Some models suggest that the actual sea level rise may be considerably higher and faster than 1 metre by 2100. Economic loss figures for the Mountain Pine Beetle are also instructive. It has been estimated that the epidemic will see BC's GDP lose \$57.37 billion over a 45 year period: L. J. Corbett, P. Withey, V. A. Lantz, T. O. Ochuodho; The economic impact of the mountain pine beetle infestation in British Columbia: provincial estimates from a CGE analysis, *Forestry: An International Journal of Forest Research*, Volume 89, Issue 1, 1 January 2016, Pages 100–105, <https://doi.org/10.1093/forestry/cpv042>.

Until now, governments, industry and the public have largely assumed that these costs will be fully borne by taxpayers – much as it was at one time generally assumed that smokers and health care systems would bear the full health costs of smoking.

Not only is that unfair to taxpayers, but it also means that fossil fuel companies and their investors lack economic incentives to transition to a more sustainable business model.

Fossil fuel companies have made massive profits selling products that they know contribute to climate change. Ninety fossil fuel producers are responsible (through operations and products) for about two-thirds of greenhouse gases in the global atmosphere today.<sup>2</sup> Many of these same companies knew about the impacts of their products as early as the 1950s or 1960s. Instead of acting on this information to address the effects of their products, they funded misinformation campaigns about climate change, lobbied against action on climate change and sat on renewable energy patents that would have significantly reduced greenhouse gas emissions.<sup>3</sup>

While individual lifestyles and consumer choices play a role in causing greenhouse gas pollution, the contribution of, and the choices available to, individuals are insignificant compared to the role of fossil fuel companies. And yet currently taxpayers and individuals are on the hook for 100% of climate costs, while fossil fuel companies pocket their profits. In effect, fossil fuel companies are transferring costs of managing the climate impacts of their products to taxpayers.

To prepare for the coming climatic changes from fossil fuel pollution, BC communities will need funding at levels that are only beginning to be appreciated. Already, credit ratings agencies are warning governments that their credit ratings are at risk if they fail to prepare for expected climate risks.<sup>4</sup> Fossil fuel companies, who have profited most from the climate crisis, should pay their fair share of those costs.

### **BC can hold fossil fuel companies accountable**

The province of British Columbia has the legal power – through a *Liability for Climate-related Harms Act* – to define the legal consequences associated with climate costs and impacts that are currently being incurred within its borders. The Act can ensure that global fossil fuel companies pay a fair share of those costs – even where the companies that contributed to the impacts are outside the province’s borders.<sup>5</sup>

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<sup>2</sup> Heede, Richard, “Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010”, *Climatic Change*, Jan 2014.

<sup>3</sup> Muffet, C. and Feit, S. *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis*. (Washington, DC: Center for International Environmental Law, 2017), available on-line at <http://www.ciel.org/wp-content/uploads/2017/11/Smoke-Fumes-FINAL.pdf>, last accessed 30 April 2018; Union of Concerned Scientists. *The Climate Deception Dossiers*. (Washington, DC: Union of Concerned Scientists, 2015).

<sup>4</sup> Moody’s Investor Services Inc., *Announcement: Climate change is forecast to heighten US exposure to economic loss placing short- and long-term credit pressure on US states and local governments*, Nov 28, 2017.

<sup>5</sup> See Gage, A. and Wewerinke, M., *Taking Climate Justice into our own Hands* (Vancouver, BC: West Coast Environmental Law, 2015); Byers, M., Franks, K. and Gage, A. *The Internationalization of Climate Damages Litigation*. *Washington Journal of Environmental Law & Policy*, Volume 7, issue 2, July 2017, <http://hdl.handle.net/1773.1/1709>, last accessed 23 April 2018.

BC was the first province in Canada to enact a *Tobacco Damages Recovery Act*, to enable lawsuits to recover health care costs from cigarette manufacturers,<sup>6</sup> a precedent noted recently by Ontario NDP Environment and Climate Change Critic, Peter Tabuns, when he proposed a *Liability for Climate-related Harms Act*<sup>7</sup> in the Ontario Parliament.

While fossil fuel companies could be sued under existing common law principles,<sup>8</sup> there are significant advantages to the Legislature, rather than the courts, clarifying the legal rules for liability in such cases. Enacting a *Liability for Climate-related Harms Act* may clarify the legal rules more quickly and cheaply than could occur through protracted litigation, as well as giving the public's representatives an important opportunity to investigate and quantify the costs of climate change and to discuss the role of the fossil fuel industry in paying for those costs.

## Conclusion

BC's government, communities, taxpayers and individual victims cannot afford the rising tide of climate costs that is bearing down upon us. Communities in BC and around the world are demanding that fossil fuel companies pay their share of climate costs.<sup>9</sup> As the City of Victoria wrote in a letter to 20 fossil fuel companies about its expected climate impacts: "It would be financially irresponsible of us to assume that our taxpayers will bear the full costs of these impacts of fossil fuel production, while your shareholders continue to benefit financially from the sale of fossil fuels."<sup>10</sup>

A relatively small number of companies have the resources, scale, knowledge, technology and expertise to either block or advance climate action. We must ensure that they have every incentive to use that power to build the sustainable economy that we need.<sup>11</sup>

In enacting a *Liability for Climate-related Harm Act*, you would protect BC taxpayers and individuals from massive costs, avoid the need for protracted and expensive litigation to clarify legal responsibility for climate impacts, and, perhaps most importantly, you would send a global message to the fossil fuel industry that its business model can no longer ignore the harm that it is causing.

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<sup>6</sup> S.B.C. 1997, c. 41. For commentary on the potential for a climate act based on the Tobacco Damages Recover Act, see Olszynski, Martin and Mascher, Sharon and Doelle, Meinhard, From Smokes to Smokestacks: Lessons from Tobacco for the Future of Climate Change Liability (April 24, 2017). Georgetown Environmental Law Review, 2017. Available at SSRN: <https://ssrn.com/abstract=2957921>; Also Gage and Wewerinke, above, note 2 at p. 9; L. Collins & H. McLeod-Kilmurray. The Canadian Law of Toxic Torts. (Canadian Law Book, 2014), pp. 290-291.

<sup>7</sup> Bill 21, the *Liability for Climate-related Harms Act*, 2018, available at [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=5835&detailPage=bills\\_detail\\_the\\_bill](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=5835&detailPage=bills_detail_the_bill); the Bill was referred to committee, but has since died with the 2018 Ontario election.

<sup>8</sup> Communities in California, Colorado, Washington and New York have sued fossil fuel companies for local climate costs in their own state's courts. In addition, a German court is currently considering a claim brought on behalf of a Peruvian community against a German coal company for climate costs.

<sup>9</sup> Here in BC, over 10 local governments, plus the Association of Vancouver Island and Coastal Communities (representing 53 local governments) have voted to send letters to 20 fossil fuel companies demanding that they pay their share of local climate impacts. A human right complaint is being investigated in the Philippines against many of these same companies for their contribution to climate change. Also the lawsuits referenced in note 6.

<sup>10</sup> Letter from City of Victoria to Chevron, November 28, 2017.

<sup>11</sup> In many other contexts, the BC government has long required industry to pay for the full costs of their products, as through Extended Producer Responsibility which is a well-established principle of BC's laws regarding recycling and waste management.

Signed by: