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# SUING FOSSIL FUEL GIANTS: AN INTRODUCTION

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The Sue Big Oil campaign calls on BC's local governments to band together to sue global fossil fuel companies to recover a share of the climate-related costs that our communities are experiencing. This campaign builds on the experience of dozens of similar lawsuits filed in United States and other countries. This document outlines how such lawsuits work and how they can help BC communities build a safer, healthier future.

## Why do climate lawsuits matter to our communities and our planet?

Wildfires, flooding and heat waves have shown us that BC communities face millions, and collectively, billions, of dollars of costs to prepare for and recover from events made worse by climate change. Canada is warming twice as fast as the global average, and the Insurance Bureau of Canada estimates that local governments need so spent about \$5.3 billion *each year* to prepare for the coming climate impacts,<sup>1</sup> not counting the huge costs when cities burn or are flooded, much of it attributable to climate change.<sup>2</sup> Failing to pay these costs will lead to even bigger climate costs down the road.

Fossil fuel companies — Chevron, Shell and other global corporations — have known for decades that their products cause this type of harm, but because they pay them, they continue to operate business as usual, filling our atmosphere with greenhouse gases, while lobbying hard against action on climate change. Right now taxpayers are paying climate costs, while these huge companies escape paying their fair share. As long as their

ledgers show someone else paying for the costs of climate change, these businesses appear hugely profitable to investors and governments, even as oil, gas and coal bake our planet.

Climate lawsuits force corporations, investors and governments to incorporate the costs that fossil fuels impose on our communities into their business decisions, while potentially generating the much-needed funds for our communities to prepare for the impacts of climate change. Corporate behaviour and investment is already shifting as a result of climate litigation in other jurisdictions, with companies investing more in renewable energy and notifying their investors of risks of climate lawsuits.

## Like climate change, climate litigation has a global impact

Climate litigation targets global fossil fuel companies for their *global* operations, giving local governments the power to demand accountability beyond Canada's borders. Canadian law on international disputes allows BC municipalities to sue global companies in Canadian courts because harm is experienced in BC.<sup>3</sup>

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<sup>1</sup> Insurance Bureau of Canada. *Investing in Canada's Future: The Cost of Climate Adaptation at the Local Level*. (February 2020).

<sup>2</sup> "Severe Weather Causes \$1.9B in Insured Damage in 2018" (Jan. 16, 2019), which estimates that Canadian governments

pay out \$3 to recover public infrastructure. \$1.9B in insured losses means approx \$5.7 billion in taxpayer costs.

<sup>3</sup> Gage, A. and Wewerinke, M. *Taking Climate Justice into our own Hands*. (Vancouver: West Coast Environmental Law, 2015).

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## What might a class action lawsuit look like?

The specifics would be up to the local governments and their lawyers. However, based on our research, and with input from senior litigation specialists, the lawyers at West Coast Environmental Law have the following general recommendations:

<b>A class action</b>	A class action would reduce the costs of multiple lawsuits by allowing plaintiffs to work together to settle key questions of fossil fuel company responsibility for climate change. BC's class action rules protect parties from having to pay the other side's legal fees if they lose.
<b>Brought by local governments for climate adaptation costs</b>	Legally, to protect their citizens, local governments must build infrastructure now to withstand future climate patterns, based on the best available science. A court is likely to accept the link between current costs and climate change, giving the municipalities the right to sue to recover the costs.
<b>In nuisance</b>	Nuisance is unreasonable interference with property, including municipal infrastructure (private nuisance) or with our common rights and interests in a healthy global atmosphere (public nuisance).
<b>Against fossil fuel companies</b>	Just five companies (Chevron, Exxon Mobil, Saudi Aramco, British Petroleum and Shell) are responsible for approximately 14% of historic greenhouse gas emissions. <sup>4</sup> A lawsuit could claim a contribution from each company based on their respective percentage as well as the efforts of companies to mislead the public and delay action on climate change.

## Can we win?

In 2019 28 law professors from across Canada wrote an open letter to BC local governments encouraging them to sue fossil fuel companies. They wrote:

"Such a case would be novel in the same way that the first court cases demanding recognition of indigenous rights or gay marriage, or claiming compensation against tobacco or asbestos companies, were novel. ... In our view, existing legal principles could form a solid basis for a lawsuit filed by a local government against fossil fuel companies for local climate costs."<sup>5</sup>

In other countries lawsuits against fossil fuel giants for climate costs are proceeding. In the Netherlands, the environmental organization MillieuDefensie won its lawsuit against Shell, although the company is appealing. German courts are currently investigating a claim against the coal company RWE brought by a Peruvian farmer for climate costs suffered by his town. And twenty local governments, and three states, in the U.S. are suing fossil fuel companies.

Big Tobacco, Big Asbestos, and Big Pharma all learned that if you sell products that you know will cause massive harm, sooner or later you will be sued. We can win against Big Oil too!

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<sup>4</sup> R. Heede. *Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854-2010*, Climatic Change [Vol. 122: 1-2, January 2014], pp. 229-241.

<sup>5</sup> [https://allard.ubc.ca/sites/default/files/2020-08/Climate-Litigation-LawProfsLetter\\_final2.pdf](https://allard.ubc.ca/sites/default/files/2020-08/Climate-Litigation-LawProfsLetter_final2.pdf).

## How can we manage the costs of litigation?

It is natural to be concerned about the cost of a lawsuit, which will be significant costs. However, because local governments would work together to bring one class action, they would share the costs. There are several options for funding the lawsuit.

- Sue Big Oil calls on local governments to set aside \$1 per resident to help pay for litigation.
- Lawyers will likely be willing to work at a lower cost or partly on a “contingency basis” (only getting paid if they win).
- Private foundations, philanthropists or independent investors may be willing to contribute funds.
- Crowdfunding and other community fundraising can help raise funds.

The first stage of a class action lawsuit asks a judge to certify that the case should proceed as a class action. Successful certification confirms that the case has value, raising its profile and increasing options for funding (including encouraging settlements which could help fund litigation against the remaining companies).

Parties in class action lawsuits in BC are not generally required to pay the other side’s legal costs if they lose (as in other types of lawsuits).

## Why sue fossil fuel companies?

There’s no way around it: solving climate change means dealing with our fossil fuel dependency. Plentiful and deceptively cheap energy from fossil fuels has benefitted modern

society, but we’re now realizing that there were enormous deferred costs to our communities.

In a society relying on fossil fuels, we’re all responsible for climate change. But right now taxpayers carry the entire burden of climate costs caused by fossil fuels, while fossil fuel producers continue to make a lot of money selling them. Asking companies to bear *some* of those costs is not about blaming the industry or denying individual responsibility – it’s about acknowledging our shared responsibility.

Chevron, Exxon Mobil and other fossil fuel companies knew in the 1960s that their products would cause devastating climate impacts around the world. Still, they:

- funded and participated in misinformation campaigns designed to mislead the public (consumers) on climate science;
- failed to use the patents they held for solar, wind and low-emission vehicle technologies (among others) that could have offered consumers less-polluting choices;
- lobbied against laws and international agreements to fight climate change.<sup>6</sup>

## Won’t climate litigation take too long?

On average class action lawsuits in Canada take three to four years, but complex litigation against fossil fuel companies could take significantly longer. However, once a class action is filed it would have immediate impacts.

Companies are required by law to inform their investors of lawsuits that represent a risk to their investments. Chevron warned its shareholders<sup>7</sup> before the first lawsuit was even filed against it,

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<sup>6</sup> CIEL. *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis* (November 2017), last accessed 10 April 2019.

<sup>7</sup> ThinkProgress. [“Chevron is first oil major to warn investors of risks from climate change lawsuits”](#) (Mar. 2, 2017).

and even state-owned companies like Saudi Aramco<sup>8</sup> have warned investors to factor climate litigation into investment decisions.

One of the first steps that the BC Supreme Court takes in a class action is to confirm that there is an arguable case, which will increase the pressure on companies to notify the investors of the risks and could lead to a settlement. It also paves the road for the companies to have to answer difficult questions, and disclose confidential documents, related to what they knew about climate change, when, and what they did about it.

Litigation can change corporate behaviour even in the short-term, but in the longer term the Sue Big Oil campaign also wants to help BC communities pay to protect themselves from future climate disasters. But to do that, we need to start now.

### **Why litigate instead of passing laws?**

We need every tool in the tool box to fight climate change, including both laws and litigation. However, governments have been slow to enact laws (or even stop subsidies) to reign in a fossil fuel industry that appears to be making a lot of money (since the harm from its products doesn't appear on its balance sheets.)

Ideally international treaties would place a global price on carbon for the actual costs of burning fossil fuels. Such a price would shift investment decisively to renewables, and could provide funding for communities harmed by climate change.<sup>9</sup> A global price would not allow companies to move around to avoid it.

But global pricing systems – for example, the International Oil Spill Compensation Funds – have often emerged *as the result* of national efforts to secure liability (through courts or legislation) against international polluters.<sup>10</sup>

Without the possibility of litigation, fossil fuel producing countries have so far opposed global carbon pricing proposals. While Canada has imposed a national carbon prices, but it applies only to emissions within Canada, leaving most global GHG emissions unaffected.

In the absence of strong global action to regulate greenhouse gases, litigation – which can claim compensation for harm caused by emissions that occur beyond Canada's borders – is a way for communities to build momentum for corporate and government climate action.

### **Conclusion**

A lawsuit by BC's local governments against global fossil fuel companies for climate costs will ensure that governments, corporations and investors start to address the true costs of fossil fuels in their financial decisions. Knowing that they may need to pay for the harm caused by their products gives these companies a strong incentive to invest their considerable expertise and resources in building a sustainable future. At the same time climate litigation helps ensure our communities have the resources needed to protect themselves from climate change.

### **Let's Sue Big Oil!**

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<sup>8</sup> Climate Home News, "[Saudi Aramco says climate lawsuits 'could result in substantial costs'](#)" (Apr. 2, 2019).

<sup>9</sup> <https://www.boell.de/en/carbon-levy-project>.

<sup>10</sup> P.D. Lowry. *The Shipowner and Oil Pollution Liability*. McGill Law Journal (1972) Vol 18(4) 577.