



Cover photo by Nancy Jesland Dalsin, Kelowna, 2023

Sue Big Oil Toolkit for Local Governments: Recovering the costs of climate change for your residents

By West Coast Environmental Law for the Sue Big Oil Campaign

Contents

Executive Summary	3
Introduction.....	4
Why Sue Big Oil?	5
Fiscal responsibility and climate costs	5
Solving the climate crisis	7
A credible case.....	8
Talking about Sue Big Oil	9
The Sue Big Oil Resolution and Next Steps.....	10
Next Steps (Preparing for litigation)	11
Conclusion	11

The Sue Big Oil campaign gratefully acknowledges the support of our funders:



Executive Summary

Your community's climate costs may be clear and dramatic, due to wildfires, heatwaves, drought, flooding, and other extreme weather events, or they may be more subtle, in the form of incremental increases due to maintenance costs, operations, capacity needs, repairs and construction of municipal infrastructure and assets. Either way, these costs are only going to rise, and as a local government official, you have a fiscal responsibility to recover some of these costs and to protect your residents and taxpayers from the worst climate impacts.

A growing number of local governments around the world recognize that it's unfair for our communities to bear these rising costs alone and are suing global fossil fuel companies for a fair share of those costs. Oil, gas and coal companies knew in the 1960s that their products would cause climate change, and by the 1970s and 80s had detailed knowledge of the types of impacts that fossil fuel use would have on our communities. Despite this, they pursued a business as usual strategy, expanding oil, gas and coal production, while aggressively fighting any measures that could have moved society away from fossil fuel use.

This guide is for local government officials interested in cooperating with other BC communities in a class action lawsuit against oil, gas and coal companies. Such a lawsuit can save taxpayers tens or hundreds of millions of dollars as well as give financial incentives to fossil fuel companies and their investors to make decisions which are better for our planet. This guide provides more information, including links to other resources, on:

- Why joining the Sue Big Oil lawsuit is a fiscally responsible option to protect your residents from the costs and impacts of climate change while changing the business decisions of fossil fuel companies and their investors;
- The prospects for success of a class action,
- The importance of understanding and talking about the costs that your community faces due to climate change; and
- the necessary steps to pass a Sue Big Oil motion and to pursue a class action lawsuit.

Read on for more information.



Introduction

As a local government official, you are on the frontlines of addressing climate change – and it's probably putting a strain on your budget. Your community's climate costs may be clear and dramatic, due to wildfires, heatwaves, drought, flooding, and other extreme weather events, or they may be more subtle, in the form of incremental increases due to maintenance costs, operations, capacity needs, repairs and construction of municipal infrastructure and assets. But these costs are real and will only increase as climate change worsens.

Local governments have a fiscal responsibility to recover some of these soaring costs. Our communities and taxpayers cannot afford the many millions, and in some cases, billions, of dollars that climate change is causing and will cause in the future.

Climate change is the direct result of the burning of fossil fuels, and just 90 oil, gas, coal and cement producers are responsible for over $\frac{2}{3}$ of human-caused greenhouse gas emissions. Fossil fuel companies knew in the 1950s and 60s that their products would harm our communities by causing climate change and worked hard to expand societal dependence on oil and gas and to work to oppose any efforts to move away from fossil fuels. They make billions of dollars in profit every day as a direct result.

A growing number of local governments around the world recognize that it's unfair for our communities to bear these rising costs alone. In fact, over 40 US cities and states have launched climate change lawsuits against fossil fuel companies, and 28 Canadian law professors have said that we can do the same here in BC. By working with other BC local governments on a class action lawsuit, you can keep the costs manageable and avoid risks, while protecting your residents from having to pay 100% of the growing costs of climate change. It's just good economics.

This guide is a resource for local government officials interested in learning more about suing Big Oil and how to participate in a class action lawsuit in BC. Read on for more information and links to further helpful resources.

General resources about Sue Big Oil:

- [Suing Fossil Fuel Giants: An Introduction for Local Governments](#) – This document outlines how climate lawsuits work and how they can help BC communities build a safer, healthier future.
- [When Regional Districts Sue Big Oil](#) – This brief builds on information contained in *Suing Fossil Fuel Giants: An Introduction for Local Governments* (read it first), but discusses whether and how regional districts can participate (spoiler: they can!)
- [Sue Big Oil Campaign Launch \(video\)](#) - This video features narratives from experts and campaigners highlighting their experiences winning an international climate lawsuit lived experiences of the climate crisis, and the legal strategy for Sue Big Oil.
- Sue Big Oil [Frequently Asked Questions](#)

Why Sue Big Oil?

There are two main reasons why local governments should sue fossil fuel companies for climate costs. First, local governments have a **fiscal responsibility** to manage taxpayer dollars and **protect residents** from the impacts of climate change. Suing Big Oil could provide much-needed revenue for local governments to spend on climate impacts and adaptation. A climate lawsuit targeting Big Oil also tackles the climate crisis head on by holding major polluters accountable. Each of these concepts are discussed in this section.

Fiscal responsibility and climate costs

Local governments have an obligation to manage their budgets responsibly, and that includes taking reasonable steps to recover costs that are incurred due to the irresponsible actions of others. Local governments often sue parties that have damaged municipal infrastructure, and this is the clearest reason for them to sue fossil fuel companies for their role in causing climate change. It would be fiscally irresponsible to simply pass these costs onto taxpayers when a significant portion of climate costs have been caused by the decisions and business operations of fossil fuel companies.

This is not to say that fossil fuel companies are solely responsible for the climate crisis and your local climate costs – but that they are responsible for a significant amount of the damage and should compensate your municipality or regional district for a fair share reflecting that responsibility.

Local governments own and maintain 60% of public infrastructure, all of which was designed to withstand a range of expected weather and other conditions. With extreme storms, droughts, wildfires and heat happening more frequently, this infrastructure is increasingly overwhelmed.

The Insurance Bureau of Canada and Federation of Canadian Municipalities estimate that Canadian local governments collectively need to spend about \$5.3 billion annually to prepare for climate impacts. Neglecting to pay these costs will lead to even higher climate costs down the road.

Figure 1 shows some of the climate change impacts facing BC communities. Each of these impacts results in hefty costs, often borne by local governments.

Figure 1 – Impacts on our Communities, Economy, Health and Wellbeing (from BC's [Climate Adaptation and Preparedness Strategy](#) at p. 19)



Information about how climate change risks and impacts affect municipal budgets is necessary for good governance, and can also provide a basis for climate litigation brought by local governments. Therefore, it is helpful for local governments to gather information about climate costs facing their community to help support their lawsuit. You don't need to have all the calculations before joining the class action, but it is a good idea to start asking questions and deepening your understanding of current and future climate costs facing your community.

Municipal staff, budgets, asset management plans, climate adaptation plans, and climate vulnerability assessments, may help provide some information about what climate costs your community is experiencing or may experience.

Resources about understanding and calculating climate costs:

- [Resources on Costs of Climate Change](#): This resource identifies a number of possible sources of information for local government elected officials and Sue Big Oil campaigners to get a sense of what some of the climate costs may be.
- The Cost of Doing Nothing Toolbox (ICLEI Canada) ([toolkit](#) and [launch webinar](#)) – This toolbox provides a jumping off point for municipalities to assess the costs of doing nothing within their own local context, and

support their own climate adaptation planning process. It provides municipal decision makers with guidance on collecting locally-relevant data to weigh the costs of inaction when investing in climate action.

- [Investing in Canada's Future: the Cost of Climate Adaptation at the Local Level](#) – This report by the Federation of Canadian Municipalities and the Insurance Bureau of Canada demonstrates the urgent need for new investments in local climate adaptation.
- [Climate Accountability Letters](#) – Between 2017 and 2019 twenty-four local governments, as well as the Association of Vancouver Island and Coastal Communities, sent climate accountability letters to some of the world's largest fossil fuel companies outlining the climate impacts that they face and asking or demanding that the companies pay a fair share of the resulting costs. These letters can be useful to understanding the costs that those communities foresaw at that time.
- Vancouver [Climate Action Costs and Benefits Motion](#) (February 15, 2023)
- [Powell River Motion on asset management and climate change](#) (Agenda item 7.7, 2019)
- [Saanich Motion motion on UBCM resolution on climate costs](#) (at pp 8-11, 2023)



Solving the Climate Crisis

In 1992 the world's governments pledged to stabilize global greenhouse gas emissions in the atmosphere at levels that avoid dangerous anthropogenic interference with the global climate system. And yet greenhouse gases continue to steadily rise. In fact, over half of global greenhouse gas emissions have occurred **since** 1992. Why?

There are many reasons, but a 2021 interdisciplinary study called "[Three Decades of Climate Mitigation: Why Haven't We Bent the Global Emissions Curve](#)" showed that the answer boils down to power, including the economic and political influence of the fossil fuel industry.

Currently our economic system allows fossil fuel companies and their investors, including governments, to benefit financially from producing the products that cause climate change, without requiring them to pay any of the resulting costs. This separation of benefits from costs, a classic externality, gives the impression that the fossil fuel industry is a hugely profitable, wealth-creating industry.

As a result, industry, senior levels of government and investors have again and again favoured short-term gain over action on climate change. Examples include active campaigns by fossil fuel companies in the 1980s and 1990s to persuade the public that climate science was unreliable, to greenwashing advertising in the 2010s and 2020s, to advocacy for false solutions and decisions in 2023 by oil and gas companies to slow their transition to renewable energy because the "profits" to be made in fossil fuels are too massive.

A lawsuit against fossil fuel companies has the potential to put climate costs on the balance sheets of fossil fuel companies. Fossil fuel companies are required to notify their shareholders and investors when they are sued, and [recent research from the London School of Economics](#) reveals that filing litigation against fossil fuel companies has a measurable impact on stock prices – reflecting shifts in investor decisions.

Climate litigation, as a tool to fight climate change, has a number of advantages:

- It forces fossil fuel companies, investors and governments to grapple with the true costs of the fossil fuel economy;
- It can have a global impact. The Sue Big Oil lawsuit targets multinational fossil fuel companies for their global, historical emissions, 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. This is important because too often we hear that what occurs in Canada is globally insignificant.
- It uses existing legal rules. It has never been legal to knowingly sell a product that will inevitably cause massive property damage and loss of life.
- A class action is less costly than multiple lawsuits as plaintiffs can work together to settle key questions of fossil fuel company responsibility for climate change. In addition, BC's class action law also protects the parties against litigation rules that penalize unsuccessful parties by making them pay a portion of the other side's legal fees.

Resources on Solving the Climate Crisis

- [Geoff Dembicki on the Petroleum Papers \(video\)](#): Geoff Dembicki, an award-winning journalist, draws on hundreds of secret oil and gas industry documents to explain how fossil fuel companies responded to learning that their products were causing climate change.
- [Impacts of Climate Litigation on Firm Value](#) (Grantham Institute, 2023)



In 2021 MillieuDefensie (Friends of the Earth Netherlands) won a groundbreaking case against Royal Dutch Shell. Although the company is appealing, the Dutch court ordered it to take responsibility for emissions from its products and dramatically reduce its global emissions. This photo of the organization's Director, Donald Pols, with the winning court order, is used courtesy of MillieuDefensie.

A credible case

To achieve the goal of having fossil fuel companies pay a fair share of local government climate costs requires a successful class action lawsuit. As an elected official you will want to make sure that there is a reasonable prospect of success. This resource is not a comprehensive legal opinion (see below for information on getting a formal opinion) and a lawsuit doesn't come with any guarantees; however, there are many reasons to be optimistic about the prospects for success.

There are many legal precedents – from asbestos to opioids to tobacco – holding big corporations accountable for knowingly selling products that cause harm. These industries seemed untouchable; tobacco companies used to boast that they had never lost a case and never would. [Suving Fossil Fuel Giants](#) describes a potential BC-based class action lawsuit against Big Oil.

There are a growing number of legal actions against fossil fuel companies in the U.S., as well as in Germany, the Netherlands, France, Italy and elsewhere. In the Netherlands, the environmental organization Millieu Defensie (Friends of the Earth) successfully sued Royal Dutch Shell, obtaining an order that the company was responsible for reducing the emissions caused by their products, while lawsuits seeking compensation brought in the US by the City of Honolulu, and in Germany by a

Peruvian community, have been given the go ahead to go to trial.

Twenty-eight law professors from across Canada have [penned an open letter](#) to persuade local governments to consider climate litigation, stressing the need for swift action before time runs out in the climate crisis. They argue that litigation is one of the only ways to protect taxpayers from massive public costs that the climate crisis brings.

The noted law firm of Arvay Finlay has prepared a legal opinion on options to hold fossil fuel companies legally accountable, which it is willing to provide to local governments seeking to understand their options. Local governments wishing to review a copy of the opinion can contact David Wu, an Associate with the firm, at 604.283.9361 or dwu@arvayfinlay.ca.

Resources on the case's credibility:

- [Letter to local governments from 28 Law Professors](#)
- Arvay Finlay Option (available from Arvay Finlay, email dwu@arvayfinlay.ca).
- [Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis](#) (US based and 2017)

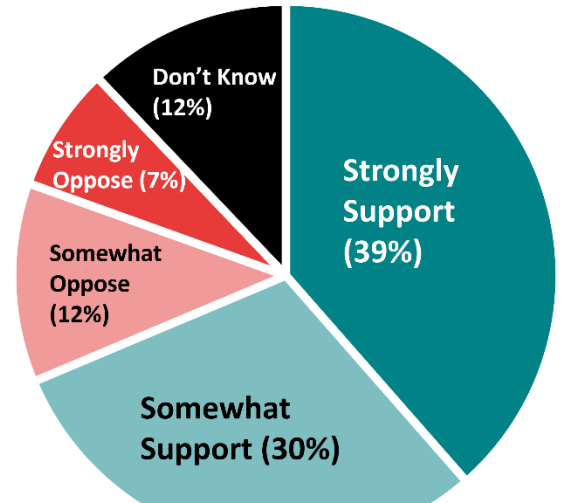
Talking about Sue Big Oil

British Columbians support suing fossil fuel companies when they understand that the case is intended to recover climate costs that are otherwise paid by taxpayers. 68.5% of British Columbians support a lawsuit brought by their local governments for this purpose, while fewer than 20% are opposed.

Support is significantly lower, however, if the public assumes that the purpose of the case is to punish fossil fuel companies or to make a symbolic statement. Support can also be lower if local governments are seen as claiming that the fossil fuel industry is entirely to blame and that the public bears no responsibility.

Here are some helpful talking points based on these findings:

- **Fair share.** Emphasize that the goal of the lawsuit is to recover a “fair share” of climate costs from global fossil fuel companies, who right now do not pay any of the climate costs caused by their products and their role in delaying climate action.
- **Emphasize local climate impacts and costs.** Be clear that your community is already experiencing climate costs – both direct impacts and the cost of preparing our communities for future impacts. Speak personally and honestly about specific examples of climate-impacts that you worry about. British Columbians are increasingly willing to make a link between climate change and the wildfires, floods, droughts, heat waves and other issues that we are seeing, and talking about specific types of climate impacts and related costs helps them understand this connection.
- **Fiscal responsibility.** Emphasize your responsibility as an elected official to ensure that residents are protected from the massive costs and impacts of climate change. The alternative to this lawsuit is either more tax increases or an erosion of local government services to pay for the costs of climate disasters.
- **We’re all responsible.** It’s true that we’re all responsible for climate change, and everyone needs to do their part – and this includes the fossil fuel industry. When we look at what their role has been and what their fair share might be, it turns out it’s massive. But all of us need to do our part.
- **Decades of delay.** The fossil fuel industry has known for decades that their products would cause drastic and harmful impacts to our communities and worked actively worked to delay action on climate change. History shows us that an industry that does not expect to take responsibility for the harm caused by their products often works to hide, and delay action to reduce, that harm. Even now fossil fuel companies continue to advocate for false solutions and to invest in expanded oil and gas development.



A 2022 Poll by Stratcom asked British Columbians “Some people say that instead of local communities and taxpayers paying all of the increasing costs of climate change, local governments in BC should work together to sue the world’s most polluting oil companies to make them pay for a share of these costs. Do you support or oppose this idea?”

Resources

- [Stratcom Polling Results, July 2022](#)
- [The Sue Big Oil Messaging Triangle](#)

The Sue Big Oil Resolution and Next Steps

Sue Big Oil asks local governments to (among other climate action), to formally commit to work with other local governments towards a class action lawsuit against fossil fuel companies and to allocate a small, but meaningful amount of funding relative to the size of your community.

Specifically:

1. Pass a Council motion that commits the local government to participate in the class action, and
2. Allocate \$1 per resident for that purpose (timing is flexible on this point, see further explanation below).

Passing this type of motion accomplishes a few things. It:

- allows local governments to identify other local governments to collaborate with;
- demonstrates to a judge who will be asked to certify a class action (see [Next Steps](#)) that there is a class of plaintiffs that are working to see this type of case brought; and
- provides funds to help cover the costs of the class action.

The \$1 per resident is an important part of the resolution, in that it shows that the local government is serious about taking legal action, while still being manageable for local governments of all sizes and situations.

While the commitment to work towards the lawsuit should be clear, there is flexibility on when and how the local government commits the funding. The actual allocation of funds must, in one form or another, be done by bylaw (potentially as part of a budget bylaw), but a resolution can be used to make the commitment where funds for legal proceedings have already been approved or to commit to include the funds in a future bylaw.

Some local governments are considering resolutions that state that they will provide support when a significant number of other local governments have also passed similar resolutions.

Resolutions can do more; for example, by:

- directing the Mayor or Chair to write to other local governments inviting them to join the case,
- committing to explore being lead plaintiff in the case,
- instructing staff to track climate costs; or
- offering to receive crowdfunded contributions from those supporting the case.

The commitments of \$1 per resident are intended to fund the first stage of a class action lawsuit, having the class action certified – which can likely be achieved if municipalities with a collective population of 500,000 or more join. Certification means that a judge confirms that the case is worthy of being heard as a class action, including that the local governments bringing the case could win. See [Next Steps](#) for more information about subsequent stages of the litigation.

Resources for drafting motions:

- The motion proposed in Powell River on July 11, 2023 (referred to a future Council Meeting) and based on View Royal's June 6, 2023 motion. [Both motions](#) propose to join the Sue Big Oil class action lawsuit when sufficient other local governments join.
- Gibson's March 7, 2023 motion to [set aside \\$1 per resident in the upcoming budget](#), towards the community fund to sue Big Oil.
- [Vancouver's July, 2022 motion](#) instructing staff to include \$1 per resident in the 2023 draft budget (due to a change in Council, these funds were not ultimately approved in the 2023 budget).
- The [Sue Big Oil Resolution Template](#).

Next Steps (Preparing for litigation)

The Motion to commit to the lawsuit is only a first step, of course. The actual steps to be followed will depend on the decisions made by the local governments that sign-on, and their lawyers.

Once a critical number of municipalities have agreed to pursue the case, they will need to:

- **Collaborate** – The local governments will need to hire a legal team to bring the case and determine which of the local governments will step forward to be the “lead plaintiff” (or lead plaintiffs) the actually file the lawsuit. While we hope that the other local governments will continue to support the lead plaintiff, at least one local government needs to step into that leadership role.
- **File and certify the Class Action** – With the case filed by the lead plaintiff(s), a judge will need to rule about whether the case should be heard as a class action. This is a crucial step, with the judge ruling on a number of issues, including whether the case could in principle be won by the local governments. The judge will also identify the “common issues” that will be heard in the class action lawsuit. Common issues are those that all of the local governments have in common – such as can local governments sue for climate costs; are fossil fuel

companies responsible for, and for what share of, climate costs?

- **Trial on the common issues** – There will then be a whole process leading up to and culminating in a trial about the common issues. Ideally this will determine that the fossil fuel companies are liable for their role in causing climate change and identify their fair share.
- **Settlement or individual trials** – If the local governments win the class action, the fossil fuel companies and the lead plaintiff(s) could negotiate a settlement to the lawsuit, agreeing how much will be paid out to the local governments. This agreement would need to be approved by the judge. Or, if the parties can’t agree to a settlement, then each local government will need to go to court to prove how much harm they have suffered from climate change and any other unique issues.

West Coast Environmental Law has prepared a memo exploring these steps in more detail and envisioning how the case might proceed after a sufficient number of local governments have signed on to bring the case.

Resource for next steps:

- The [Next Sue Big Oil Step](#)

Conclusion

In a society relying on fossil fuels, we’re all responsible for climate change. But that does not mean we’re equally responsible or that we’re all taking responsibility.

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.

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.

Please contact us at info@suebigoil.ca if you want to get involved.