



Affidavit #4 of Shauna Stewart
Affirmed on April 10, 2017

No. S170912
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEMOCRACY WATCH and PIPE UP NETWORK

PETITIONERS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(PREMIER OF BRITISH COLUMBIA, MINISTER OF ENVIRONMENT and MINISTER
OF NATURAL GAS DEVELOPMENT)**

RESPONDENT

AFFIDAVIT

I, Shauna Stewart, of 601-510 Hastings Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a paralegal employed by Jason Gratl of Gratl & Company, counsel of record for the petitioners, Democracy Watch and PIPE UP Network, and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.
2. The following documents are attached to this affidavit:

Exhibit "A" is a copy of the letter from Angus Gunn, QC, to Jason Gratl dated February 21, 2017, with respect to him being retained as counsel for the Respondent in this matter;

Exhibit "B" is a copy of emailed correspondence between Jason Gratl and Angus Gunn dated February 22, 2017;

Exhibit “C” is a copy of emailed correspondence between Jason Gratl and Angus Gunn dated February 28, 2017, with respect to the filing of the Respondent’s response and record of proceedings;

Exhibit “D” is a copy of emailed correspondence from David Crossin to Jason Gratl dated March 3, 2017, advising that he has been retained to represent the Premier of British Columbia in the event that she is named as a Respondent in this proceeding;

Exhibit “E” is a copy of emailed correspondence from David Crossin to Jason Gratl dated March 15, 2017, with respect to filing a response on behalf of the Premier;

Exhibit “F” is a copy of emailed correspondence from Jason Gratl to Angus Gunn and David Crossin enclosing the Notice of Application filed March 16, 2017 and requesting confirmation of service;

Exhibit “G” is a copy of the Notice of Application filed March 16, 2017, in this matter with respect to disclosure of fundraising documents from the British Columbia Liberal Party;

Exhibit “H” is a copy of emailed correspondence between Jason Gratl, Angus Gunn and David Crossin dated March 15, 2017;

Exhibit “I” is a copy of the letter from Angus Gunn to Jason Gratl dated March 16, 2017, with respect to the style of proceeding, service on all persons whose interests may be affected, next steps and Petitioner’s Notice of Motion dated 16 March 2017;

Exhibit “J” is a copy of emailed correspondence from David Crossin to Jason Gratl and Angus Gunn advising that he joins Mr. Gunn in the views expressed in Mr. Gunn’s March 16, 2017, letter;

Exhibit “K” is a copy of emailed correspondence between Jason Gratl and David Crossin dated March 17, 2017, where Mr. Crossin confirms that service of anything in relation to the Premier can be served on him;

Exhibit "L" is a copy of emailed correspondence between David Crossin and Jason Gratl dated March 17, 2017, with respect to the filing of responding materials;

Exhibit "M" is a copy of emailed correspondence between Jason Gratl and David Crossin dated March 17, 2017, with respect to the filing of responding materials;

Exhibit "N" is a copy of the letter from Angus Gunn to Jason Gratl dated March 17, 2017, with respect to Mr. Gratl's request that Mr. Gunn confirm whether he is acting for Her Majesty the Queen in Right of the Province of British Columbia, the Minister of Environment, and the Minister of Natural Gas Development; and

Exhibit "O" is a copy of the emailed correspondence from Angus Gunn to Jason Gratl and David Crossin confirming that the Attorney General of British Columbia has asked that all correspondence or service of process for her in relation to this proceeding be directed to his attention.

AFFIRMED BEFORE ME at the City of
Vancouver, in the Province of BC, this
10th day of April, 2017

A Commissioner for taking Affidavits
for British Columbia

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SHAUNA STEWART

This Affidavit is Commissioned by Jason Gratl of Gratl & Company, Barristers and Solicitor
601-510 West Hastings Street, Vancouver, B.C. V6B 1L8 Tel: 604-694-1919 Fax: 604-608-1919

**EYFORD MACAULAY
SHAW & PADMANABHAN LLP**
BARRISTERS AND SOLICITORS

ANGUS M. GUNN QC
DIRECT: 604 899 5237
AGUNN@EMLAWYERS.CA

21 February 2017

FILE NO.: 0000-000

VIA EMAIL TO jason@gratlandcompany.com

Gratl & Company
Barristers and Solicitors
601 – 510 West Hastings Street
Vancouver, BC
V6B 1L8

Attention: Jason B. Gratl

Dear Sirs and Mesdames:

RE: ***Democracy Watch and PIPE UP Network v. Her Majesty the Queen in
Right of the Province of British Columbia (Premier of British
Columbia, Minister of Environment and Minister of Natural Gas
Development)***
Supreme Court of British Columbia Vancouver Registry No. S-170912

We have recently been retained on behalf of the respondent to this petition. We write to introduce ourselves on the file and look forward to working with you on it.

Several preliminary points arise for discussion.

1. Petitioners' Legal Status

The petition pleads that Democracy Watch "is a national non-profit, non-partisan society". We understand this to mean that Democracy Watch is incorporated pursuant to federal law as a not-for-profit corporation. Could you please confirm?

Similarly, the petition pleads that PIPE UP Network "is a British Columbia non-profit society". We understand this to mean that PIPE UP Network is incorporated pursuant to the *Society Act* of British Columbia. Could you please confirm?

2. Petitioners' Standing

The petition does not identify the basis upon which the petitioners assert standing in this proceeding. From the nature of the petitioners and their allegations, we understand that the

This is Exhibit "A" referred to in the
affidavit of SHAWNA STEWART
sworn before me at Vancouver
this 10th day of April 2017

.....
A Commissioner for taking Affidavits
for British Columbia

☒ VANCOUVER
3000 – 650 WEST GEORGIA STREET
PO BOX 11635 VANCOUVER BC
CANADA V6B 4N7

TEL 604 899 5240
FAX 604 899 5216
WWW.EMLAWYERS.CA

☐ KELOWNA
207 – 3500 CARRINGTON ROAD
WEST KELOWNA BC
CANADA V4T 3C1

TEL 778 754 0285
FAX 778 754 0287
WWW.EMLAWYERS.CA

petitioners are asserting public interest standing. Could you please confirm whether that is the case and whether any other form of standing is being asserted?

3. Proper Respondent(s)

The petition names Her Majesty the Queen in Right of the Province of British Columbia ("HMTQBC") as the sole respondent, and then in parentheses refers to "(Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development)".

HMTQBC is not a proper respondent to a judicial review proceeding.¹ This raises the question of who the proper respondents are to the petition. The petition seeks an order setting aside or quashing the "KMP Approval". The petition's overview defines that approval as "a decision dated January 10, 2017 to approve the Kinder Morgan Pipeline made jointly by the Premier of British Columbia, the Minister of Environment and the Minister of Natural Gas Development." Despite that definition, in paragraph 12 the petition states that the KMP Approval "entailed the issuance of Environmental Assessment Certificate E17-01 (the "EA Certificate") pursuant to the *Environmental Assessment Act*, S.B.C. 2002, c. 43 and reasons for issuing the EA Certificate, which were signed by the Minister of Environment and Minister of Natural Gas Development." Subsection 17(3) of the *Environmental Assessment Act* confers statutory decision-making authority on solely those two ministers. Subsection 17(3) confers no statutory decision-making authority on the Premier of British Columbia. In the result, we consider that on the pleadings as they stand the only proper respondents are the Minister of Environment and the Minister of Natural Gas Development.

It will facilitate the orderly adjudication of this petition to have these pleading concerns addressed sooner than later. Please let us know whether the petitioners are prepared to amend their petition to address those concerns.


4. Timing of Response to Petition

Given the recency of our retainer, and the concerns raised in this letter, we request an extension of time for filing and serving the response to petition. If the petitioners intend to amend their petition, we would propose to defer a response until after the amendment is made. Please let us know if there are any concerns in respect of this approach.

We look forward to hearing from you.

Yours truly,

EYFORD MACAULAY
SHAW & PADMANABHAN LLP

Per: 
Angus M. Gunn QC

¹ See, for example, *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244 at paras. 16-25, and *West Van Cab Ltd. v. British Columbia*, 2009 BCCA 47 at paras. 4-6.

Jason Gratl

From: Angus Gunn [AGunn@emlawyers.ca]
Sent: February 22, 2017 2:39 PM
To: 'Jason Gratl'
Cc: 'Shauna Stewart'
Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Dear Jason:

Thanks for your two emails. By way of response:

1. We were retained on Friday, 17 February 2017, and I was out of the country until Sunday, 19 February 2017.
2. As for the timing of materials in response, including the question of the "record of the proceeding", I will not be in a position to provide you with an estimate of the time required until I have had an opportunity to take instructions, review the file, consider what materials form the record, review them, and prepare the materials in response.
3. Without conceding that the Premier of British Columbia is a proper respondent in this proceeding, if you consider that the proper respondents to your petition are the Premier of British Columbia, the Minister of Environment, and the Minister of Natural Gas Development then in our view the style of proceeding would properly be:

Between:

Democracy Watch and PIPE UP Network

Petitioners

And:

Premier of British Columbia, Minister of Environment, and Minister of Natural Gas Development

Respondents

Please let us know whether the petitioners are prepared to amend their pleading along these lines.

- Thank you for the points of clarification with respect to the petitioners' status and standing.
- The portions of our letter dated 21 February 2017 to which you refer were limited to the question of the statutory authority conferred by subsection 17(3) of the *Environmental Assessment Act*.

Regards,

Angus

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

This is Exhibit "B" referred to in the
 affidavit of SHAUNA STEWART
 sworn before me at Vancouver
 this 10th day of April 2017

.....
 A Commissioner for taking Affidavits
 for British Columbia

From: Jason Gratl [mailto:jason@gratlandcompany.com]
Sent: Wednesday, February 22, 2017 12:11 PM
To: Angus Gunn
Cc: 'Shauna Stewart'
Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Hi Angus,

Did you receive my email yesterday?

I had asked when you were retained and how much more time you needed.

I had also asked how you thought the Premier's role in decision-making on the KMP Approval should be reflected in the style of cause, as I am open to hearing your views on that subject.

I note with some concern that your letter of February 21, 2017 misstates the decision under review, which is defined in the Petition as the "KMP Approval" and consists of the EA Certificate E17-01 and related Reasons for Decision, as well as interim decisions setting criteria for issuing the KMP Approval. The Premier is specifically stated in the Petition to be a joint decision-maker on the KMP Approval.

Your letter of February 21, 2017 suggests that only the Ministers who are signatories to the Reasons for Decision are the decision-makers for the purposes of a judicial review. In my view, that is a misstatement of the issues and a misstatement of the Petition. The Premier's fingerprints are all over the KMP Approval, particularly in the interim decision setting conditions for approval and in deciding that the conditions are satisfied, as expressed clearly at numerous places in the Petition. In my view, it just will not do for the Premier to hide behind her Ministers on this.

Further, I can advise as a courtesy that Democracy Watch and PIPEUP Network are incorporated societies. PIPEUP claims private and both PIPEUP and Democracy Watch claim public interest standing. PIPEUP was granted standing by the NEB in respect of the KMP hearings.

I further note that your letter of February 21, 2017 appears to admit that the Premier did not have statutory power to make any decisions regarding the KMP Approval. If so, it would appear that the Respondent would be saying, in response to the Petitioner's challenge to the Premier's exercise of power or purported exercise of power (see, for example, paragraphs 16 and 17 of the Petition), that there is no statutory basis for the 5 conditions of approval determined by the Premier. Please confirm whether that is the formal position taken by the Respondent.

I look forward to hearing from you regarding the date of your retainer and how much time you need to file your Response. I would also ask that you advise me how much time you need to file the Record of the Proceeding as defined by s.1 of the *Judicial Review Procedure Act* (which includes any "intermediate order" made by the tribunal.

Best regards,

Jason Gratl*

Gratl & Company
The Standard Building
601-510 West Hastings St

Vancouver, BC V6B1L8
604-694-1919 (office)
604-608-1919 (fax)
604-317-1919 (mobile)
www.gratlandcompany.com

*A Law Corporation

This communication is private and may be privileged and confidential. Please delete misdirected emails and notify the sender.

From: Angus Gunn [<mailto:AGunn@emlawyers.ca>]
Sent: February 21, 2017 4:14 PM
To: 'jason@gratlandcompany.com'
Subject: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

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Jason Gratl

From: Angus Gunn [AGunn@emlawyers.ca]
Sent: February 28, 2017 12:46 PM
To: 'Jason Gratl'
Cc: 'Shauna Stewart'
Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Hi Jason:

Thanks for yours. Per my earlier email, I am in the process of taking instructions, reviewing the file, considering what materials form the record, reviewing them, and preparing the materials in response. Once I have had a chance to do that I will be in a position to provide you with a target date for our materials in response. Will revert back as soon as able.

Regards,

Angus

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

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This is Exhibit "C" referred to in the
 affidavit of SHAUNA STEWART
 sworn before me at Vancouver
 this 10th day of April 2017

.....
 A Commissioner for taking Affidavits
 for British Columbia

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From: Jason Gratl [mailto:jason@gratlandcompany.com]
Sent: Tuesday, February 28, 2017 9:13 AM
To: 'Jason Gratl'; Angus Gunn
Cc: 'Shauna Stewart'
Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

I have not heard from you regarding the deadline for filing a Response and Record. Could you please respond?

Thank you,

Jason Gratl*

Gratl & Company

The Standard Building

601-510 West Hastings St

Vancouver, BC V6B1L8

604-694-1919 (office)

604-608-1919 (fax)
 604-317-1919 (mobile)
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Sent: February 22, 2017 2:46 PM
To: 'Angus Gunn'
Cc: 'Shauna Stewart'
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Hi Angus,

Even without an explanation as to why your client waited under the 17th to retain you, I agree to extend the deadline for filing a Response to March 8, 2017. As for the Record, I propose that the Record be filed on or before March 22, 2017. Is that agreeable?

I'll give the amendment some thought.

Best regards,

Jason Gratl*

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 601-510 West Hastings St
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Dear Jason:

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1. We were retained on Friday, 17 February 2017, and I was out of the country until Sunday, 19 February 2017.

2. As for the timing of materials in response, including the question of the "record of the proceeding", I will not be 8 in a position to provide you with an estimate of the time required until I have had an opportunity to take instructions, review the file, consider what materials form the record, review them, and prepare the materials in response.
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Between:

Democracy Watch and PIPE UP Network

Petitioners

And:

Premier of British Columbia, Minister of Environment, and Minister of Natural Gas Development

Respondents

Please let us know whether the petitioners are prepared to amend their pleading along these lines.

- Thank you for the points of clarification with respect to the petitioners' status and standing.
- The portions of our letter dated 21 February 2017 to which you refer were limited to the question of the statutory authority conferred by subsection 17(3) of the *Environmental Assessment Act*.

Regards,

Angus

Angus M. Gunn QC

Direct: 604 899 5237

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Barristers & Solicitors

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Sent: Wednesday, February 22, 2017 12:11 PM

To: Angus Gunn

Cc: 'Shauna Stewart'

Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

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Did you receive my email yesterday?

I had asked when you were retained and how much more time you needed.

9

I had also asked how you thought the Premier's role in decision-making on the KMP Approval should be reflected in the style of cause, as I am open to hearing your views on that subject.

I note with some concern that your letter of February 21, 2017 misstates the decision under review, which is defined in the Petition as the "KMP Approval" and consists of the EA Certificate E17-01 and related Reasons for Decision, as well as interim decisions setting criteria for issuing the KMP Approval. The Premier is specifically stated in the Petition to be a joint decision-maker on the KMP Approval.

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Further, I can advise as a courtesy that Democracy Watch and PIPEUP Network are incorporated societies. PIPEUP claims private and both PIPEUP and Democracy Watch claim public interest standing. PIPEUP was granted standing by the NEB in respect of the KMP hearings.

I further note that your letter of February 21, 2017 appears to admit that the Premier did not have statutory power to make any decisions regarding the KMP Approval. If so, it would appear that the Respondent would be saying, in response to the Petitioner's challenge to the Premier's exercise of power or purported exercise of power (see, for example, paragraphs 16 and 17 of the Petition), that there is no statutory basis for the 5 conditions of approval determined by the Premier. Please confirm whether that is the formal position taken by the Respondent.

I look forward to hearing from you regarding the date of your retainer and how much time you need to file your Response. I would also ask that you advise me how much time you need to file the Record of the Proceeding as defined by s.1 of the *Judicial Review Procedure Act* (which includes any "intermediate order" made by the tribunal.

Best regards,

Jason Gratl*

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From: Angus Gunn [<mailto:AGunn@emlawyers.ca>]

Sent: February 21, 2017 4:14 PM

To: 'jason@gratlandcompany.com'

Subject: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

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Jason Gratl

From: Lucy Fenekoldt [LFenekoldt@smrlaw.ca] on behalf of David Crossin [DCrossin@smrlaw.ca]
Sent: March 3, 2017 3:58 PM
To: jason@gratlandcompany.com
Cc: 'Angus Gunn'
Subject: Democracy Watch

Jason,

This is to advise you that in the event you are in fact naming the Premier as a Respondent in this proceeding; I have been retained to represent her. I think you would agree that as matters now stand the style of cause is not properly constituted and requires amendment. I would urge you not to name the Premier as I do not think she is a proper party; but I leave that with you. Could you please let me know your intentions. If in fact you are proceeding against the Premier, then I of course will file a Response. Pleased to talk about it and I look forward to your advice.

Yours truly,

E. David Crossin
 Sugden, McFee & Roos LLP
 Barristers and Solicitors
 700 - 375 Water Street
 Vancouver, BC V6B 4N3
 Telephone: (604) 687-7700

This is Exhibit " D " referred to in the
 affidavit of... SHANNA STEWART
 sworn before me at... Vancouver
 this... 10th day of... April... 20... 17

.....
 A Commissioner for taking Affidavits
 for British Columbia

Jason Gratl

From: David Crossin [DCrossin@smrlaw.ca]
Sent: March 15, 2017 12:37 PM
To: Jason Gratl
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Jason I'm not sure I follow you. In any event you have named the Premier in the style of cause as a Respondent. I will file a Response on her behalf unless you indicate you will remove her from the style of cause.

Sent from my iPhone

On Mar 15, 2017, at 10:20 AM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi Angus,

David called me this morning to discuss the style of cause and proper parties to this Petition. I have given it some thought and the answer is not obvious.

I try to express in the Petition that there were numerous stages of approval, including a determination of five conditions, a determination that the five conditions were satisfied and further determinations of risk and benefit under the Environmental Assessment Act, with three primary contributing decision-makers: the Premier and the two ministers. The situation is further complicated by the lack of obvious statutory authority for the Premier's requirement that the project proponent make side-payments to the Province.

In these circumstances, I chose to express the Respondent compendiously as Her Majesty the Queen. You have pointed me to Lang and West Van Cabs, but these cases are not on all fours with the facts in Democracy Watch. Upon reflection, it is my view that the Respondent could also be expressed as Attorney General of British Columbia (Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development).

Although the defect is at most a defect of form, I would be prepared to amend the Petition on consent if you agree with the proposed change to the style of cause, provided it did not result in further delay.

I should also clarify that I would not object to the Premier claiming party or participant status if she wished to do so.

Best regards,

Jason

Jason Gratl*

Gratl & Company
 The Standard Building
 601-510 West Hastings St
 Vancouver, BC V6B1L8
 604-694-1919 (office)

This is Exhibit "E" referred to in the
 affidavit of SHAYNA STEWART
 sworn before me at Vancouver
 this 10th day of April 2017

A Commissioner for taking Affidavits
 for British Columbia

604-608-1919 (fax)
604-317-1919 (mobile)
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*A Law Corporation

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From: Angus Gunn [<mailto:AGunn@emlawyers.ca>]
Sent: February 21, 2017 4:14 PM
To: 'jason@gratlandcompany.com'
Subject: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

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From: Jason Gratl [jason@gratlandcompany.com]
Sent: March 16, 2017 10:02 AM
To: 'Angus Gunn'; 'David Crossin'
Cc: 'Shauna Stewart'; 'Toby Rauch-Davis'
Subject: Democracy Watch v. Province (BCSC Vancouver S170912)
Attachments: Notice of Application (LPBC Fundraising Documents) filed March 16 2017.pdf

Dear Mr. Gunn and Mr. Crossin,

I attach for service upon you a Notice of Application filed this morning on behalf of my clients.

Mr. Gunn, please confirm whether you will accept service of the Notice of Application by email, and on whose behalf.

Mr. Crossin, please confirm whether you will accept service on behalf of Ms. Clark, Ms. White and the Liberal Party of British Columbia.

Best regards,

Jason Gratl*

Gratl & Company
The Standard Building
601-510 West Hastings St
Vancouver, BC V6B1L8
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A Commissioner for taking Affidavits
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.....
 A Commissioner for taking Affidavits
 for British Columbia

No. S170912
 Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of review of a Decision to approve the Kinder Morgan Pipeline made
 January 10, 2017, pursuant to the *Judicial Review Procedure Act*, RSBC 1996 c. 87.

BETWEEN:

DEMOCRACY WATCH and PIPE UP NETWORK

PETITIONERS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
 (PREMIER OF BRITISH COLUMBIA, MINISTER OF ENVIRONMENT and MINISTER
 OF NATURAL GAS DEVELOPMENT)

RESPONDENT

NOTICE OF APPLICATION

Names of applicants: The Petitioners, Democracy Watch and Pipe UP Network.

To: The Liberal Party of British Columbia

And To: Sharon White, QC
 President of the Liberal Party of British Columbia

And To: Christina Joan Clark
 Leader of the Liberal Party of British Columbia

And To: The Respondent, Her Majesty the Queen in Right of the Province of
 British Columbia (Premier of British Columbia, Minister of Environment
 and Minister of Natural Gas Development).

TAKE NOTICE that an application will be made by the applicants to a Judge or Master
 presiding in Chambers at the courthouse at 800 Smithe Street, in the City of Vancouver,
 in the Province of British Columbia, on the 12th day of April, 2017 at 9:45 a.m. for the
 order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

The Applicants seek the following orders:

1. An Order that the Liberal Party of British Columbia, the President of the Liberal Party of British Columbia and the Leader of the Liberal Party of British Columbia shall, within ten (10) days of issuance of this Order, prepare and deliver to the solicitor for the Petitioners copies of the following documents:
 - a. Copies of all documents dealing with the receipt, solicitation of or event organizing in respect of, funds paid by each of the following, and any of their parent companies, subsidiaries, employees or lobbyists, to the Liberal Party of British Columbia:
 - i. Kinder Morgan Canada Inc.;
 - ii. Trans Mountain Pipeline Inc.;
 - iii. Trans Mountain Pipeline ULC;
 - iv. Canadian Natural Resources Ltd.;
 - v. Cenovus Energy Inc.;
 - vi. Devon Canada Corp.;
 - vii. Imperial Oil Ltd.;
 - viii. Suncor;
 - ix. Nexen Marketing Inc.;
 - x. Chevron Canada Ltd.; and
 - xi. Canadian Association of Petroleum Producers; and
 - b. Copies of all documents dealing with payments made by the Liberal Party of British Columbia to the Premier of British Columbia, the Minister of Environment and Minister of Natural Gas Development from October 11, 2011 to present;
2. The Petitioner shall promptly enter this Order and deliver a copy to the Petition Respondent and the Liberal Party of British Columbia, the President of the Liberal Party of British Columbia and the Leader of the Liberal Party of British Columbia.

Part 2: FACTUAL BASIS

The Parties

1. Democracy Watch is a national non-profit, non-partisan society and Canada's leading citizen group advocating democratic reform, government accountability and corporate responsibility.
2. PIPE UP Network ("PIPEUP") is a British Columbia non-profit society representing the interests of British Columbia residents directly affected by the Kinder Morgan Pipeline ("KMP"). PIPEUP members have local expertise and academic credentials in air quality, agriculture, water quality, fish and fish habitat, endangered species, and health and safety requirements. PIPEUP members and their families live, work and attend schools near water, land and air that is put at risk by the KMP. PIPEUP was granted intervener status by the National Energy Board ("NEB") in respect of the application hearings for the KMP.
3. Christina Joan Clark was appointed the Premier of British Columbia on March 14, 2011. She is the current Premier of British Columbia. She is also the leader of the Liberal Party of British Columbia. Section 9 of British Columbia's *Constitution Act* provides that the Premier is also the President of the Executive Council. The Executive Council is a body of government appointed by the Premier to exercise various statutory powers and to direct the implementation of statutes by the civil services. The Premier has the power to appoint Ministers and to designate what powers are to be exercised by each Minister.
4. Mary Polak was appointed the Minister of Environment on June 10, 2013. Rich Coleman was appointed the Minister of Natural Gas Development on June 7, 2013. Both were appointed by the Honourable Christina Joan Clark, as members of her Executive Council, and both serve at her pleasure.
5. The Application Respondent, the Liberal Party of British Columbia, is a registered political party in the Province of British Columbia.
6. The Application Respondent, Sharon White, Q.C., is the President of the Liberal Party of British Columbia.

Crux of the Claim

7. On January 31, 2017, the Petitioners initiated a judicial review of a decision (including interim decisions) made jointly by the Premier, the Minister of Environment and the Minister of Natural Gas Development to approve the Kinder Morgan Pipeline (the "KMP Approval").
8. The Petitioners seek to set aside the KMP Approval on the basis that the KMP Approval is tainted by a reasonable apprehension of bias arising from payments of more than \$560,000.00 made to the Liberal Party of British Columbia from

companies with an interest in the outcome of the KMP Approval process, coupled with payment of a salary to the Premier by the Liberal Party of British Columbia totaling more than \$300,000.00 over the period of the KMP Approval process.

The Pipeline

9. The Kinder Morgan Pipeline ("KMP") is an interprovincial pipeline approximately 987 kilometres long between Edmonton, Alberta, and a marine terminal on the Pacific coast in Burnaby, British Columbia.
10. In 2013, Kinder Morgan filed an application with the federal National Energy Board ("NEB") to build the KMP. Long before applying to the NEB for approval to build the KMP, Kinder Morgan applied to the NEB to set the shipping rates for KMP in the event that construction of the KMP was approved by the NEB (the "KMP Tolling Application").
11. Before the KMP Tolling Application was initiated, and beginning in early 2011, Kinder Morgan began discussing the idea of an "open season" process with potential shippers in an effort to garner corporate interest and financial support for the pipeline project. The "open season" formally began on October 20, 2011 and resulted in 15 and 20 year contractual commitments from oil and gas companies that intended to ship diluted bitumen using the KMP (the "KMP Shippers").
12. The KMP Shippers that agreed, as a result of the open season, to a Transportation Service Agreement ("TSA") for the use of the KMP are outlined at paragraph six of the Petition. The open season process resulted in the pre-sale of approximately 80 percent of the KMP's bitumen capacity to the KMP Shippers.
13. In 2012 the KMP Tolling Application resulted in the NEB approving shipping rates for the proposed pipeline and the allocation of various financial risks as between Kinder Morgan and the KMP Shippers.

The Provincial Approval Process

14. On July 23, 2012, Premier Clark publicly stated that she was against recommending the expansion project unless she could be satisfied that five conditions for approving the KMP were met (the "KMP Conditions"). These conditions are outlined at paragraph 8 of the Petition. The legal basis for imposing the KMP Conditions has never been publicly articulated by the Premier, to the knowledge of the Petitioners.
15. On January 13, 2016, the Honourable Madam Justice Koenigsberg determined that a decision under both the NEB and the Provincial *Environmental Assessment Act* would be necessary to ratify an inter-provincial pipeline project. Prior to this decision, and particularly at the time that the Premier imposed the KMP Conditions, it was believed that Provincial *Environmental Assessment Act*

approval was not required as that approval had been delegated to the NEB and Government of Canada.

16. Notwithstanding the belief that Provincial *EAA* approval was not necessary, the KMP Conditions were repeatedly reaffirmed by Premier Clark and other representatives of the British Columbia government while awaiting the NEB decision on KMP.
17. On May 19, 2016, the NEB recommended approved of the KMP subject to 157 conditions. On November 29, 2016, the Government of Canada gave federal approval for the KMP project. On November 30, 2016, the Premier publicly reaffirmed that the KMP Conditions applied to Provincial approval of KMP.
18. On January 11, 2017, Premier Clark personally announced the KMP Approval, which included her determination that the KMP Conditions had been met, to the public through the media. The KMP Approval included an Environmental Assessment Certificate (numbered E17-01) and reasons for its issuance, signed by the Minister of Environment and the Minister of Natural Gas Development. The reasons include 37 conditions meant to supplement the 157 NEB conditions and makes repeated reference to the five KMP Conditions.

Donations to the Liberal Party of British Columbia

19. Payments (called "donations") to the Liberal Party of BC are disclosed by Elections BC.
20. Elections BC receives updates on political party contributions from political parties registered in British Columbia once a year, usually towards the end of March. Elections BC then updates their website data with the previous year's donations. At the time of filing this application, donations are not available past early February 2016. For this reason the Petitioners set out in their judicial review payments made from the start of the open season, October 21, 2011 up until December 31, 2015. Amounts contributed after December 31, 2015 are relevant but largely unknown to the Petitioners at this time.
21. Of the 12 KMP Shippers, Elections BC reveals that six have made significant contributions to the Liberal Party of British Columbia. Those six companies are:
 - a. Canadian Natural Resources Ltd.,
 - b. Cenovus Energy Inc.,
 - c. Devon Canada Corp.,
 - d. Imperial Oil Ltd.,
 - e. Suncor, and
 - f. Nexen Marketing Inc.

22. Since October 21, 2011 to December 31, 2015 these six KMP Shippers made payments totaling \$330,470.00 to the Liberal Party of British Columbia.
23. Additionally, from October 21, 2011 to December 31, 2015, Kinder Morgan made payments totaling \$16,800.00 to the Liberal Party of British Columbia.
24. There have also been sizable donations to the Liberal Party of British Columbia from two corporations that were intervenors in the KMP Tolling Application: (1) the Canadian Association of Petroleum Producers ("CAPP") and (2) Chevron Canada Ltd. ("Chevron").
25. From October 20, 2011 to December 31, 2015, CAPP paid a total of \$74,100.00 and Chevron paid a total of \$140,563.44 to the Liberal Party of BC.
26. Combined, from October 20, 2011 to December 31, 2015, Kinder Morgan, the KMP Shippers and two of the KMP Tolling Application intervenors paid a total of \$561,933.44 to the Liberal Party of British Columbia.

The Premier's Private Liberal Party of BC Salary

27. From October 20, 2011 until she and the Ministers granted the KMP Approval, Premier Clark received an annual salary of approximately \$50,000.00 from the Liberal Party of BC in consideration for the performance of duties as the leader of the Liberal Party.
28. One aspect of the Premier's duties as leader of the Liberal Party, for which she is paid her salary, is to engage in fundraising. It can be inferred by a reasonable observer that if Liberal Party fundraising were insufficient, the Liberal Party would cease to pay a salary to the Premier.
29. The Petitioners do not know if the Minister of Environment or Minister of Natural Gas Development also receive a salary or other payments or benefits from the Liberal Party of BC, but that issue is certainly relevant to this judicial review.

Private Functions

30. Premier Clark has admitted to attending private "pay-for-access" events where tickets providing exclusive access to the Premier and other cabinet Ministers are sold by the Liberal Party for \$20,000.00 or more. Ms. Clark, in her role as Premier of British Columbia, hosts these small, invitation only, "pay-for-access" events.
31. The donations by Kinder Morgan, the KMP Shippers and the other KMP intervenors were often paid in closely grouped clusters, in which high value donations, often for the same amounts, were given on the same date or within a few days of one another. The Petitioners infer that the clusters of donations are the product of ticket sales for "pay-for-access" events and/or Liberal Party

fundraising campaigns targeted at parties with a pecuniary interest in the outcome of the KMP approval process.

Reasonable Apprehension of Bias

32. The Petitioners say that a rational and informed observer would conclude that due to the payment of approximately \$560,000.00 by the interested companies, including Kinder Morgan, to the Liberal Party of British Columbia, especially when coupled with payment of approximately \$300,000.00 by the Liberal Party to the Premier, it is more likely than not that the Premier and the Ministers were consciously or unconsciously affected by these enormous payments. The KMP Approval was tainted by the payments.

Part 3: LEGAL BASIS

1. As a general rule, the court's review of a decision of the executive must be based on the Tribunal's record of proceedings as that term is defined in s.1 of the *Judicial Review Procedural Act*:

"record of the proceeding" includes the following:

- (a) a document by which the proceeding is commenced;
- (b) a notice of a hearing in the proceeding;
- (c) an intermediate order made by the tribunal;
- (d) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to which or the purpose for which a document may be used in evidence in a proceeding;
- (e) a transcript, if any, of the oral evidence given at a hearing; and
- (f) the decision of the tribunal and any reasons given by it.

2. However, documents extraneous to the record of the proceeding can be compelled in certain cases. The test for admission of such evidence is as follows:

[17] The court's power to admit evidence beyond the record of proceeding must be exercised sparingly, and only in an exceptional case. Such evidence may be admissible for the limited purpose of showing a lack of jurisdiction or a denial of natural justice. In *Ross*, Silverman J. said the following at paras. 26-27 after reviewing the relevant case law:

[26] The general rule with respect to the admissibility of extrinsic material is that it is, except in very special circumstances, inadmissible. This is because a judicial review is a review of a decision on the tribunal's record of proceedings. It is that very record which is the subject of the judicial review. Affidavit material describing evidence not before the tribunal or attaching documents that were not before the decision-maker is not part of that record and is generally inadmissible on judicial review. ...

[27] There are, however, exceptions to the general rule where extrinsic evidence may sometimes be admissible. For example, it may be admissible for the limited purpose of showing a lack of a jurisdiction or a denial of natural justice. In circumstances where the grounds for judicial review are a breach of natural justice or procedural fairness, the petitioner may be entitled to adduce new evidence. However, the new evidence must be both relevant and necessary before it will be admissible[.]

Kinexus Bioinformatices Corp v. Asad, 2010 BCSC 33 at para 17

3. The Petitioners say that the documents sought from the Liberal Party of British Columbia are both relevant and necessary to the determination of whether there is a reasonable apprehension of bias with respect to the KMP Approval, including the imposition and satisfaction of the KMP Conditions stated by the Premier.
4. The extraordinary circumstances are not speculative or unfounded. The Petitioners have laid a solid evidentiary foundation showing the receipt of funds from Kinder Morgan and the KMP Shippers by the Liberal Party and payment of \$300,000.00 by the Liberal Party to the Premier. The Petitioners have tailored their request for documents from the Liberal Party to the commencement of the KMP application process before the NEB.
5. The Respondent has not yet, but is expected to, file a complete record of the proceeding, including all documents dealing with the internal government process leading to the Premier setting the KMP Conditions. These documents should include documents showing direct contact between Kinder Morgan and its subsidiaries and the Premier and the Ministers as the KMP Conditions were determined and during the process for determining whether the KMP Conditions were met to the satisfaction of the Premier and the Ministers.
6. However, it can be anticipated that the Province will not have possession or control of any of the documents dealing with fundraising and payments to the Liberal Party of British Columbia by Kinder Morgan and its subsidiaries, the KMP Shippers and NEB Interveners ("Fundraising Documents").

7. The Fundraising Documents provide relevant context for assessing whether the Premier or the Ministers were consciously or unconsciously affected by the payments by Kinder Morgan, the KMP Shippers and NEB Interveners.
8. The Fundraising Documents will reveal whether the Premier or Ministers were informed of the payments by the Kinder Morgan and the KMP Shippers to the Liberal Party of British Columbia. If the Premier or Ministers were informed of the payments to the Liberal Party, that fact would be relevant to whether a reasonable person would consider that they were likely to be consciously or unconsciously affected by the payments.
9. The Fundraising Documents will also reveal whether the Premier or the Ministers personally attended intimate fundraising events at which Kinder Morgan and the KMP Shippers paid for access to the Premier and the Ministers. The clusters of payments of the same amount at about the same time by multiple KMP Shippers strongly suggests that such fundraising events occurred, or else the Liberal Party may have specifically targeted companies on the basis of their interest in specific projects.
10. The Fundraising Documents are necessary to the determination of whether bias tainted the KMP Approval because the law regarding administrative bias consistently requires the Court to put itself into the perspective of the informed observer. A person who did not ascertain whether the Premier or Ministers knew of the payments by Kinder Morgan and the KMP Shippers to the Liberal Party could not be considered informed. Similarly, a person who did not ascertain whether Kinder Morgan or the KMP Shippers paid the Liberal Party to attend pay-for-access events with the Premier or the Ministers could not be considered informed.

Committee for Justice and Liberty v. Canada (National Energy Board),
1976 CanLII 2 (SCC), [1978] 1 SCR 369 at p.394.

11. Documents dealing with the salary paid to the Premier of British Columbia, the Minister of Environment and Minister of Natural Gas Development from October 11, 2011 to present ("Salary and Benefits Documents") are relevant and necessary to determine whether the KMP Approval is tainted by bias. In particular, documents dealing with whether the Premier's salary is paid to compensate her for fundraising for the Liberal Party are important for the informed observer. Salary and Benefits Documents dealing with whether the Premier's salary is determined by or contingent on fundraising success are important for the informed observer.
12. The Donations Documents and Salary and Benefits Documents can only be in the possession and control of the Liberal Party of British Columbia, the Leader of the Liberal Party of British Columbia and the Executive Director of the Liberal Party of British Columbia.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Shauna Stewart, affirmed January 30, 2017.
2. Affidavit #2 of Shauna Stewart, affirmed January 30, 2017.
3. Affidavit #3 of Shauna Stewart, affirmed January 30, 2017.
4. Such other materials as counsel may identify.

The applicant(s) estimate(s) that the application will take 90 minutes.

This matter is within the jurisdiction of the Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c)) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated this 16th day of March, 2017



Jason Gratl
Gratl & Company
Barristers & Solicitors
601-510 West Hastings Street
Vancouver, B.C.
V6C 1L8

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
☐ with the following variations and additional terms:

Date: _____

Signature of Judge Master ☐ Judge ☐ Master _____

Jason Gratl

From: David Crossin [DCrossin@smrlaw.ca]
Sent: March 15, 2017 2:11 PM
To: Jason Gratl
Cc: Angus Gunn
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

So I will await your advice on this Jason before taking any steps. Happy to discuss at any time.

Sent from my iPhone

On Mar 15, 2017, at 1:27 PM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi David,

In my view, a judicial review is better conceived as a challenge to a decision rather than a decision-maker. As long as Angus responds in a meaningful way to the substance of the challenge as set out in the Petition, my clients will be satisfied.

That being said, if your client, the Premier, is of the view that she has a separate legal interest apart from that of the government, I do not oppose your filing a Response on her behalf to articulate that legal interest. I will leave it to you and Angus to confer and decide how to defend the KMP Approval, as defined in the Petition.

In the meantime, I will wait to hear back from Angus regarding the proposed amendment to "Attorney General of British Columbia (Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development".

Best regards,

Jason Gratl*

Gratl & Company
 The Standard Building
 601-510 West Hastings St
 Vancouver, BC V6B1L8
 604-694-1919 (office)
 604-608-1919 (fax)
 604-317-1919 (mobile)
www.gratlandcompany.com

*A Law Corporation

This communication is private and may be privileged and confidential. Please delete misdirected emails and notify the sender.

From: David Crossin [<mailto:DCrossin@smrlaw.ca>]
Sent: March 15, 2017 12:37 PM
To: Jason Gratl

This is Exhibit "H" referred to in the
 affidavit of Shauna Stewart
 sworn before me at Vancouver
 this 10th day of April, 2017

.....
 A Commissioner for taking Affidavits
 for British Columbia

Jason I'm not sure I follow you. In any event you have named the Premier in the style of cause as a Respondent. I will file a Response on her behalf unless you indicate you will remove her from the style of cause.

Sent from my iPhone

On Mar 15, 2017, at 10:20 AM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi Angus,

David called me this morning to discuss the style of cause and proper parties to this Petition. I have given it some thought and the answer is not obvious.

I try to express in the Petition that there were numerous stages of approval, including a determination of five conditions, a determination that the five conditions were satisfied and further determinations of risk and benefit under the Environmental Assessment Act, with three primary contributing decision-makers: the Premier and the two ministers. The situation is further complicated by the lack of obvious statutory authority for the Premier's requirement that the project proponent make side-payments to the Province.

In these circumstances, I chose to express the Respondent compendiously as Her Majesty the Queen. You have pointed me to Lang and West Van Cabs, but these cases are not on all fours with the facts in Democracy Watch. Upon reflection, it is my view that the Respondent could also be expressed as Attorney General of British Columbia (Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development).

Although the defect is at most a defect of form, I would be prepared to amend the Petition on consent if you agree with the proposed change to the style of cause, provided it did not result in further delay.

I should also clarify that I would not object to the Premier claiming party or participant status if she wished to do so.

Best regards,

Jason

Jason Gratl*

Gratl & Company
The Standard Building
601-510 West Hastings St
Vancouver, BC V6B1L8
604-694-1919 (office)
604-608-1919 (fax)

*A Law Corporation

This communication is private and may be privileged and confidential. Please delete misdirected emails and notify the sender.

From: Angus Gunn [<mailto:AGunn@emlawyers.ca>]
Sent: February 21, 2017 4:14 PM
To: 'jason@gratlandcompany.com'
Subject: Democracy Watch v. HMTQBC (BCSC Vancouver S170912) - Introduction and Pleadings Issues

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

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**EYFORD MACAULAY
SHAW & PADMANABHAN LLP**
BARRISTERS AND SOLICITORS

ANGUS M. GUNN QC
DIRECT: 604 899 5237
AGUNN@EMLAWYERS.CA

16 March 2017

FILE NO.: 0000-000

VIA EMAIL TO jason@gratlandcompany.com

Gratl & Company
Barristers and Solicitors
601 – 510 West Hastings Street
Vancouver, BC
V6B 1L8

This is Exhibit "I" referred to in the
affidavit of Shirley Stewart
sworn before me at Vancouver
this 10th day of April 2017

A Commissioner for taking Affidavits
for British Columbia

Attention: Jason B. Gratl

Dear Sirs and Mesdames:

RE: ***Democracy Watch and PIPE UP Network v. Her Majesty the Queen in
Right of the Province of British Columbia (Premier of British
Columbia, Minister of Environment and Minister of Natural Gas
Development)***
Supreme Court of British Columbia Vancouver Registry No. S-170912

We write further to our letter dated 21 February 2017 and our subsequent email exchanges.

1. Style of Proceeding

The manner in which the petitioners have styled their proceeding continues to be a issue. We do not agree that the issue is merely one of form or a housekeeping matter that can be deferred to a later stage. Rather, it goes to whether this proceeding has been properly constituted. As the Honourable Madam Justice Southin has noted:

In my view, it is the duty of the Attorney General to insist on proceedings under the *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209, being properly constituted. For that reason and because it appears that many of the Crown's solicitors do not know what they are about, I suggest the Attorney General should require all solicitors employed in the Crown's services to attend lectures on the Constitution.¹

¹ *Rustad Brothers & Co. v. British Columbia (Minister of Forests)* (1988), 23 B.C.L.R. (2d) 188 at 189 (S.C.).



VANCOUVER

3000 – 650 WEST GEORGIA STREET
PO BOX 11635 VANCOUVER BC
CANADA V6B 4N7

TEL 604 899 5240
FAX 604 899 5216
WWW.EMLAWYERS.CA



KELOWNA

207 – 3500 CARRINGTON ROAD
WEST KELOWNA BC
CANADA V4T 3C1

TEL 778 754 0285
FAX 778 754 0287
WWW.EMLAWYERS.CA

The petition currently names Her Majesty the Queen in Right of the Province of British Columbia ("HMTQBC") as the sole respondent, and then in parentheses refers to "(Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development)". Whether or not this proceeding is on all fours with *Lang v. British Columbia (Superintendent of Motor Vehicles)*² and *West Van Cab Ltd. v. British Columbia*,³ there is no scenario in which HMTQBC is a proper respondent to a judicial review petition.

As an alternative, you have suggested that the respondent could also be expressed as "Attorney General of British Columbia (Premier of British Columbia, Minister of Environment and Minister of Natural Gas Development)." We consider this to be equally wrong, though for different reasons. The determination of the proper respondent to a judicial review petition is determined by reference to the remedy sought.⁴ In the current proceeding, the petitioners seek only one remedy other than costs: "An order in the nature of certiorari quashing and setting aside the Decision to approve the Kinder Morgan pipeline made January 10, 2017." Given the nature of the relief sought, the only proper respondent is the decision-maker (or decision-makers) that made the decision of 10 January 2017. The Attorney General of British Columbia did not make that decision, and she should not be named as the sole respondent in lieu of the decision-maker(s) who did.

We remain of the view expressed in our email of 22 February 2017 – namely, that (without conceding that the Premier of British Columbia is a proper respondent in this proceeding) if you consider that the proper respondents to your petition are the Premier of British Columbia, the Minister of Environment, and the Minister of Natural Gas Development then the style of proceeding would properly be:

BETWEEN:

Democracy Watch and PIPE UP Network

Petitioners

AND:

Premier of British Columbia, Minister of Environment,
and Minister of Natural Gas Development

Respondents

We are alive to your view that judicial review is better conceived as a challenge to a decision than to a decision-maker. We also recognize that the petitioners allege that there were numerous stages of approval by multiple decision-makers in this case. We do not consider that styling the proceedings in the manner proposed would limit in any way the petitioners' ability to pursue these positions. Amending the style of proceeding as we propose will permit us to come on record for the respondent Ministers, will permit Mr. Crossin to come on record for the respondent Premier (if the petitioners still name her), and will permit the substance of the petitioners' challenge to be engaged properly.

² 2005 BCCA 244.

³ 2009 BCCA 47.

⁴ *Re Allen and Superintendent of Motor Vehicles and Attorney General of British Columbia* (1986), 2 B.C.L.R. (2d) 255 at 260-261 (S.C.).

2. Service on All Persons Whose Interests May Be Affected

Another concern should be surfaced. Supreme Court Civil Rule 16-1(3) requires that "a copy of the filed petition and of each filed affidavit in support must be served by personal service on all persons whose interests may be affected by the order sought." On its face, the petition does not indicate that it has been served on all parties whose interests may be affected by the order sought on judicial review. We are thinking in particular of Trans Mountain Pipeline ULC and the approximately 29 First Nations that made submissions during the course of the environmental assessment process before the Minister of Environment and the Minister of Natural Gas Development.

We consider that no further step should be taken in this proceeding until all persons whose interests may be affected by the relief sought in it have received proper service of the petition and all affidavits in support.

3. Next Steps

We are not in a position to file a response to the petition until it has been constituted properly. We would again ask the petitioners to consider the style of proceeding we have proposed, which will place this matter on a proper footing. If the petitioners are unprepared to amend the style of proceeding, we anticipate being instructed to apply for an Order that HMTQBC be removed from the style of proceeding.

We note your indication that the petitioners will seek a remedy without further notice to us or Mr. Crossin if responses are not filed by 17 March 2017. We trust that the petitioners will reconsider that position in light of the concerns expressed in this letter. If they do not, though, we would ask that this letter be brought to the attention of the court on any step that is taken without notice to us and Mr. Crossin.

4. Petitioners' Notice of Motion Dated 16 March 2017


Although as a matter of course we do not provide email addresses for service, we are prepared on request to consider acknowledging service of any document sent by email. In respect of the petitioner's notice of motion dated 16 March 2017, we are prepared on behalf of the Minister of Environment and the Minister of Natural Gas Development to accept service as of today's date.

- 4 -

We look forward to hearing from you.

Yours truly,

EYFORD MACAULAY
SHAW & PADMANABHAN LLP

Per: 
Angus M. Gunn QC

cc: Sugden McFee & Roos LLP
700 – 375 Water Street
Vancouver, BC
V6B 5C6

Attention: E. David Crossin QC
(via email to dcrossin@smrlaw.ca)

Jason Gratl

From: David Crossin [DCrossin@smrlaw.ca]
Sent: March 16, 2017 11:38 PM
To: Angus Gunn
Cc: jason@gratlandcompany.com
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Jason, I join Mr. Gunn in the views expressed. I am flying tomorrow and will be in Ottawa on Monday and back in the office on Wednesday. I would ask that whatever view you come to, you await my return and allow me to take whatever steps are then required. If you cannot accommodate me in that regard please let me know. Regards.

Sent from my iPhone

On Mar 16, 2017, at 11:11 PM, Angus Gunn <AGunn@emlawyers.ca> wrote:

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

This is Exhibit "J" referred to in the
 affidavit of Shauna Stewart
 sworn before me at Vancouver
 this 10th day of April 2017

 A Commissioner for taking Affidavits
 for British Columbia

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<2017-03-16 Letter to Gratl & Company.pdf>

From: jason@gratlandcompany.com
Sent: March 17, 2017 7:31 AM
To: Shauna Stewart
Subject: Fw: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

From: David Crossin <DCrossin@smrlaw.ca>
Sent: Friday, March 17, 2017 7:29 AM
To: jason@gratlandcompany.com
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Oh yes. Anything in relation to the Premier you can serve me.

On Mar 17, 2017, at 7:01 AM, "jason@gratlandcompany.com" <jason@gratlandcompany.com> wrote:

David,

Please confirm whether you accept service of the Notice of Application.

Best regards,

Jason

Jason Gratl*

Gratl & Company
Barristers and Solicitors
601-510 West Hastings St
Vancouver, BC. V6B 1L8
604-694-1919 (o)
604-608-1919 (f)
604-317-1919 (c)
www.gratlandcompany.com
*A Law Corporation

This is Exhibit " K " referred to in the
affidavit of Shauna Stewart
sworn before me at Vancouver
this 10th day of April 2017

.....
A Commissioner for taking Affidavits
for British Columbia

From: David Crossin
Sent: Thursday, March 16, 2017 11:38 PM
To: Angus Gunn
Cc: jason@gratlandcompany.com
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Jason, I join Mr. Gunn in the views expressed. I am flying tomorrow and will be in Ottawa on Monday and back in the office on Wednesday. I would ask that whatever view you come to, you await my return and allow me to take whatever steps are then required. If you cannot accommodate me in that regard please let me know. Regards.

Sent from my iPhone

On Mar 16, 2017, at 11:11 PM, Angus Gunn <AGunn@emlawyers.ca> wrote:

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

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<2017-03-16 Letter to Gratl & Company.pdf>

Jason Gratl

From: David Crossin [DCrossin@smrlaw.ca]
Sent: March 17, 2017 9:23 AM
To: Jason Gratl
Cc: Angus Gunn; Shauna Stewart
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Yes I have that. What I mean by accommodation is that you extend me a professional courtesy and allow me to return next week to deal with a Response and in the interim you not take any steps in default; whatever that might be. Will you do that?

Sent from my iPhone

On Mar 17, 2017, at 9:12 AM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi David,

I'm not sure what you mean by accommodate you. I have been very clear in saying that if no Response is filed, I will take further steps. I don't intend to postpone any filings beyond the deadline I previously set.

Best regards,

Jason Gratl*

Gratl & Company
 The Standard Building
 601-510 West Hastings St
 Vancouver, BC V6B1L8
 604-694-1919 (office)
 604-608-1919 (fax)
 604-317-1919 (mobile)
www.gratlandcompany.com

This is Exhibit "L" referred to in the
 affidavit of Shauna Stewart
 sworn before me at Vancouver
 this 10th day of April, 2017

 A Commissioner for taking Affidavits
 for British Columbia

*A Law Corporation

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From: David Crossin [mailto:DCrossin@smrlaw.ca]
Sent: March 16, 2017 11:38 PM
To: Angus Gunn
Cc: jason@gratlandcompany.com
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Jason, I join Mr. Gunn in the views expressed. I am flying tomorrow and will be in Ottawa on Monday and back in the office on Wednesday. I would ask that whatever view you come to, you await my return and allow me to take whatever steps are then required. If you cannot accommodate me in that regard please let me know. Regards.

Sent from my iPhone

On Mar 16, 2017, at 11:11 PM, Angus Gunn <AGunn@emlawyers.ca> wrote:

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

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<2017-03-16 Letter to Gratl & Company.pdf>

Jason Gratl

From: David Crossin [DCrossin@smrlaw.ca]
Sent: March 17, 2017 1:57 PM
To: Jason Gratl
Cc: Angus Gunn; Shauna Stewart
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Well I'm not refusing. I thought we were having a discussion about the style of cause so we have your considered view as to who you intend to name as a party and consequently must file a Response; and who is not. Have you settled on that?

Sent from my iPhone

On Mar 17, 2017, at 9:41 AM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi David,

Given that your client has already refused to file a Response, I do not see why my clients should postpone any filings. I can extend the courtesy of not scheduling an appearance before the Court for when you are in Ottawa, but I will not suspend all action on this matter entirely because you are travelling out of Province.

Best regards,

Jason Gratl*

Gratl & Company
 The Standard Building
 601-510 West Hastings St
 Vancouver, BC V6B1L8
 604-694-1919 (office)
 604-608-1919 (fax)
 604-317-1919 (mobile)
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This is Exhibit "M" referred to in the
 affidavit of Shauna Stewart
 sworn before me at Vancouver
 this 10th day of April 2017
 A Commissioner for taking Affidavits
 for British Columbia

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From: David Crossin [mailto:DCrossin@smrlaw.ca]
Sent: March 17, 2017 9:23 AM
To: Jason Gratl
Cc: Angus Gunn; Shauna Stewart
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Yes I have that. What I mean by accommodation is that you extend me a professional courtesy and allow me to return next week to deal with a Response and in the interim you not take any steps in default; whatever that might be. Will you do that?

Sent from my iPhone

On Mar 17, 2017, at 9:12 AM, Jason Gratl <jason@gratlandcompany.com> wrote:

Hi David,

I'm not sure what you mean by accommodate you. I have been very clear in saying that if no Response is filed, I will take further steps. I don't intend to postpone any filings beyond the deadline I previously set.

Best regards,

Jason Gratl*

Gratl & Company
The Standard Building
601-510 West Hastings St
Vancouver, BC V6B1L8
604-694-1919 (office)
604-608-1919 (fax)
604-317-1919 (mobile)
www.gratlandcompany.com

*A Law Corporation

This communication is private and may be privileged and confidential. Please delete misdirected emails and notify the sender.

From: David Crossin [<mailto:DCrossin@smrlaw.ca>]
Sent: March 16, 2017 11:38 PM
To: Angus Gunn
Cc: jason@gratlandcompany.com
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Jason, I join Mr. Gunn in the views expressed. I am flying tomorrow and will be in Ottawa on Monday and back in the office on Wednesday. I would ask that whatever view you come to, you await my return and allow me to take whatever steps are then required. If you cannot accommodate me in that regard please let me know. Regards.

Sent from my iPhone

On Mar 16, 2017, at 11:11 PM, Angus Gunn <AGunn@emlawyers.ca> wrote:

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC
Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

3000 - 650 West Georgia Street

Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

Facsimile: 604 899 5216

www.emlawyers.ca

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<2017-03-16 Letter to Gratl & Company.pdf>

**EYFORD MACAULAY
SHAW & PADMANABHAN LLP**
BARRISTERS AND SOLICITORS

ANGUS M. GUNN QC
DIRECT: 604 899 5237
AGUNN@EMLAWYERS.CA

17 March 2017

FILE NO.: 0000-000

VIA EMAIL TO jason@gratlandcompany.com

Gratl & Company
Barristers and Solicitors
601 – 510 West Hastings Street
Vancouver, BC
V6B 1L8

Attention: Jason B. Gratl

This is Exhibit "N" referred to in the
affidavit of Shauna Stewart
sworn before me at Vancouver
this 10th day of April 2017

.....
A Commissioner for taking Affidavits
for British Columbia

Dear Sirs and Mesdames:

RE: ***Democracy Watch and PIPE UP Network v. Her Majesty the Queen in
Right of the Province of British Columbia (Premier of British
Columbia, Minister of Environment and Minister of Natural Gas
Development)***
Supreme Court of British Columbia Vancouver Registry No. S-170912

We respond to your various emails of earlier today, in which you have asked us to confirm whether we are acting for Her Majesty the Queen in Right of the Province of British Columbia ("HMTQBC"), the Attorney General of British Columbia (the "AGBC"), the Minister of Environment, and the Minister of Natural Gas Development. By way of response:

- (a) As noted in our letter of 21 February 2017, we have been retained on behalf HMTQBC with a mandate of getting her removed from the style of proceeding.
- (b) We have also been retained on behalf of the AGBC, to the extent of maintaining that she is not a proper party to this proceeding.
- (c) We have also been retained on behalf of the Minister of Environment and the Minister of Natural Gas Development to represent them in this proceeding if and when they are properly named as respondents to it.

We understand that Mr. Crossin has been retained on behalf of the Premier of British Columbia to represent her in this proceeding if and when she is properly named as a respondent to it.

☒ VANCOUVER
3000 – 650 WEST GEORGIA STREET
PO BOX 11635 VANCOUVER BC
CANADA V6B 4N7
TEL 604 899 5240
FAX 604 899 5216
WWW.EMLAWYERS.CA

☐ KELOWNA
207 – 3500 CARRINGTON ROAD
WEST KELOWNA BC
CANADA V4T 3C1
TEL 778 754 0285
FAX 778 754 0287
WWW.EMLAWYERS.CA


- 2 -

The questions you have raised illustrate the confusion that can abound when a judicial review proceeding is not styled correctly. We again urge the petitioners to consider the amendment we have proposed, and look forward to hearing from you.

Yours truly,

EYFORD MACAULAY
SHAW & PADMANABHAN LLP

Per:


Angus M. Gunn QC

cc: Sugden McFee & Roos LLP
700 – 375 Water Street
Vancouver, BC
V6B 5C6

Attention: E. David Crossin QC
(via email to dcrossin@smrlaw.ca)

Jason Gratl

From: Angus Gunn [AGunn@emlawyers.ca]
Sent: March 17, 2017 6:13 PM
To: 'Jason Gratl'
Cc: 'Shauna Stewart'; 'David Crossin'
Subject: RE: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Dear Jason:

Thank you for your email. The Attorney General of British Columbia has asked that all correspondence or service of process for her in relation to this proceeding be directed to my attention.

Regards,

Angus

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors
 3000 - 650 West Georgia Street
 Vancouver, BC Canada V6B 4N7
 Telephone: 604 899 5240
 Facsimile: 604 899 5216
www.emlawyers.ca

This is Exhibit " 0 " referred to in the
 affidavit of Shauna Stewart
 sworn before me at Vancouver
 this 10th day of April 2017

.....
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From: Jason Gratl [mailto:jason@gratlandcompany.com]
Sent: Friday, March 17, 2017 10:09 AM
To: Angus Gunn; 'David Crossin'
Cc: 'Shauna Stewart'
Subject: FW: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Dear Mr. Gunn,

If I do not hear from you before 4:00 p.m. today, Friday, March 17, 2017, on the question of whether you act on behalf of the Attorney General of British Columbia, I will feel free to communicate directly with that office and to serve that office directly with an application to compel a response.

Best regards,

Jason Gratl*

Gratl & Company
 The Standard Building

601-510 West Hastings St
 Vancouver, BC V6B1L8
 604-694-1919 (office)
 604-608-1919 (fax)
 604-317-1919 (mobile)
www.gratlandcompany.com

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From: jason@gratlandcompany.com
Sent: Friday, March 17, 2017 7:45 AM
To: Angus Gunn
Cc: dcrossin@smrlaw.ca; Shauna Stewart
Subject: Re: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Dear Mr. Gunn,

Please confirm whether you act on behalf of the Attorney General of British Columbia.

When you first contacted me on this matter, you told me that you were acting on behalf of the Respondent. Now you appear to be saying that you act only for the Ministers, and Mr. Crossin acts for the Premier, and both of you have refused to file Responses unless I amend the style of cause.

Normally in these judicial reviews, the Attorney General responds, and the Attorney General is sometimes perceived to have a special relationship to the Courts and a special duty to uphold the rule of law. I understand from your letter that you say that the Attorney General is not a proper respondent on this judicial review, and so it is of importance for me to determine whether you act for the Attorney General. If you do not, I will be free to communicate with that office directly, and apply to Court to compel the Attorney General to respond.

Please confirm whether you act on behalf of the Attorney General.

Best regards,

Jason Gratl*

Gratl & Company
 Barristers and Solicitors
 601-510 West Hastings St
 Vancouver, BC. V6B 1L8
 604-694-1919 (o)
 604-608-1919 (f)
 604-317-1919 (c)
www.gratlandcompany.com
 *A Law Corporation

From: Angus Gunn
Sent: Thursday, March 16, 2017 11:11 PM
To: jason@gratlandcompany.com

Cc: dcrossin@smrlaw.ca

45

Subject: Democracy Watch v. HMTQBC (BCSC Vancouver S170912)

Dear Sirs and Mesdames:

Please see attached correspondence.

Yours sincerely,

Angus M. Gunn QC

Direct: 604 899 5237

Eyford Macaulay Shaw & Padmanabhan LLP

Barristers & Solicitors

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Vancouver, BC Canada V6B 4N7

Telephone: 604 899 5240

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