

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY CHIMBO GREFA,  
MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE  
PAYAGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE  
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LUSITANDE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE AND DELFIN  
LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON  
CANADA FINANCE LIMITED

Defendants

**MOTION RECORD OF THE NON-PARTIES, AMAZON WATCH,  
STEELWORKERS HUMANITY FUND AND FRIENDS OF THE EARTH  
CANADA**

Date: April 4, 2018

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**INDEX**

<b>Tab</b>	<b>Document</b>	<b>Page</b>
1	Notice of Motion	1 – 8
2	Affidavit of Paul Paz y Miño, sworn April 4, 2018	9 – 31
	A Copy of Amazon Watch’s mission on its website	
	B Copy of examples of reports about this litigation on the Amazon Watch website	
	C Copy of Open Letter to the People of Canada endorsed by Amazon Watch	
3	Affidavit of Douglas Olthuis, sworn April 4, 2018	32 – 47
	A Copy of the SHF’s description on its website	
	B Copy of an Open Letter to the People of Canada endorsed by SHF	
	C Copy of the UDAPT’s description on its website	
	D Copy of the main SHF page on the USW website	
4	Affidavit of Beatrice Olivastri, sworn April 4, 2018	48 - 78
	A Copy of the CNCA’s mandate and goals on its website	
	B Copy of the model legislation	
	C Copies of publications on the FOE website	

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**NOTICE OF MOTION OF THE NON-PARTIES, AMAZON WATCH,  
STEELWORKERS HUMANITY FUND AND FRIENDS OF THE EARTH  
CANADA**

## NOTICE OF MOTION

**TAKE NOTICE** that Amazon Watch, United Steelworkers Humanity Fund, and Friends of the Earth Canada (the “Moving Non-Parties”) will make a Motion to the court, on notice, on the earliest available date to be set by a Judge of the Commercial List at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

### THE MOTION IS FOR:

- (a) An Order pursuant to Rule 37.14(1)(a) to set aside or vary the Order of the Honourable Mr. Justice Patillo dated October 1, 2012 (the “**First Sealing Order**”), and the order of the Honourable Mr. Justice Hainey dated December 21, 2015 (the “**Second Sealing Order**”, and, together with the First Sealing Order, the “**Sealing Orders**”);
- (b) An expedited oral hearing, taking into account an appeal is scheduled to be heard by the Ontario Court of Appeal on April 17 and 18, 2018;
- (c) An order that there be no costs for or against the Moving Non-Parties; and
- (d) Such further and other relief as to this Honourable Court may deem just.

### THE GROUNDS FOR THE MOTION ARE

- (a) On October 1, 2012, the Honourable Mr. Justice Patillo made the First Sealing Order, sealing any and all “Confidential Information”, as that term is defined in the First Sealing Order;
- (b) On December 21, 2015, the Honourable Mr. Justice Hainey made the Second Sealing Order, sealing any and all “Confidential Information”, as that term is defined in the Second Sealing Order;
- (c) The Sealing Orders were both made on consent of the Parties;

- (d) The Sealing Orders have the effect of preventing public access to and knowledge of substantially all court proceedings and documents, as well as substantially all documents and evidence filed by the Parties herein;
- (e) There is no evidence that any of the proceedings, documents, evidence or information covered by the Sealing Orders are in fact confidential;
- (f) The common law and statutory principles of public access to the courts, as reinforced by the *Canadian Charter of Rights and Freedoms*' guarantee of freedom of expression and freedom of the press, include a fundamental, constitutional right of public and media access to court documents;
- (g) The issues and facts raised in this action relate to matters of high public interest and importance concerning the conduct of Canadian corporations in other countries that affect the global environment and the international rights of indigenous peoples;
- (h) The Moving Non-Parties all have mandates that include educating the public about social justice issues;
- (i) The Moving Non-Parties have each, to varying degrees, expressed public support for the indigenous people of the Amazon in their litigation against the defendants;
- (j) The Moving Non-Parties have each, to varying degrees, been involved in educating the public about the plight of the indigenous people of the Amazon, including about this litigation against the defendants;
- (k) The Moving Non-Parties wish to continue to educate the public about these proceedings and a sealing order impedes their doing so;
- (l) Sections 125 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;



- (m) Rules 1.04, 37, and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended; and
- (n) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Affidavit of Paul Paz y Miñon, sworn April 4, 2018, and exhibits attached thereto;
- (b) The Affidavit of Douglas Olthuis, sworn April 4, 2018, and exhibits attached thereto;
- (c) The Affidavit of Beatrice Olivastri, sworn April 4, 2018, and exhibits attached thereto; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 4, 2018

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YAIGUAJE et al      CHEVRON CORPORATION et al  
Plaintiffs      and      Defendants

Court File No.: CV-12-9808-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON  
CANADA FINANCE LIMITED

Defendants

**AFFIDAVIT OF PAUL Y MIÑO  
(Sworn April 4, 2018)**

I, PAUL PAZ Y MIÑO, of the City of Oakland, California, MAKE OATH AND  
SAY:

1. I am the Associate Director of Amazon Watch and as such, I have knowledge of the matters to which I hereinafter depose. Where I have relied upon information received from others, I have stated the source of that information and believe it to be true.
2. Amazon Watch is a nonprofit organization. Its mission is to protect the rainforest and advance the rights of indigenous people in the Amazon Basin. A copy of Amazon Watch's mission on its website is attached and marked as Exhibit "A".
3. Amazon Watch's activities include partnering with indigenous and environmental organizations in campaigns for human rights, corporate accountability and the preservation of the Amazon's ecological systems.
4. A significant part of our organization's mandate is to educate the public about developments that relate to the Amazon rainforest and the indigenous people in that region. Amazon Watch does this in part through its website [www.amazonwatch.org](http://www.amazonwatch.org), which features regular news releases and a blog ("Eye on the Amazon"). Through its website, Amazon Watch has reported extensively on this litigation. Attached and marked as Exhibit "B" are examples of reports about this litigation on the Amazon Watch website.
5. Amazon Watch has publicly condemned the actions of Chevron in the underlying dispute. Attached and marked as Exhibit "C" is a copy of an Open Letter to the People of Canada endorsed by Amazon Watch.
6. I understand that the court record is sealed. I verily believe the information sealed touches on facts and issues of significant public interest and upon which Amazon Watch wishes to continue to report.
7. This affidavit is sworn in support of this motion for an order setting aside or varying the sealing orders in this action.

SWORN AFFIRMED BEFORE ME at the  
City of Oakland, California, this 4 day of  
April, 2018.

\_\_\_\_\_  
A Commissioner for taking Affidavits (or as may be)

  
\_\_\_\_\_  
PAUL PAZ Y MIÑO

See Attached



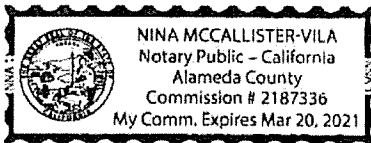
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

Subscribed and sworn to (or affirmed) before me on this 4th  
day of April, 2018, by Paul Paz Y Mino

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature Nina McCallister-Vila

This is Exhibit "A" referred to in  
the Affidavit of Paul Y Miño,  
sworn April 4, 2018

Twenty Years of Defending the Amazon.



[HOME \(HTTP://AMAZONWATCH.ORG/\)](http://amazonwatch.org/)

## The Amazon: A Global Treasure

Rainforests sustain us. They help regulate the global climate and are vital to maintaining the earth's fragile balance. The Amazon rainforest is the world's largest and most biodiverse tropical rainforest, covering an area larger than the continental United States. It houses one-third of the Earth's plant and animal species and produces one-fifth of all its flowing fresh water.

**2.4K**  
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Nearly 400 distinct indigenous peoples depend on the Amazon rainforest for their physical and cultural survival. At current rates of deforestation, nearly 50 percent of the Amazon could be lost or severely degraded by the year 2020, and the vast majority will no longer be in a pristine state.

With global deforestation contributing 20–25 percent of all greenhouse gas emissions, Amazon Watch and our indigenous partners are providing a service to all humanity as we together seek to defend the rainforest. Each of us can take action. We may be the last generation that has a chance to protect this precious gem of our world's cultural and ecological heritage – an irreplaceable source of life and inspiration.

## Our Mission

Amazon Watch is a nonprofit organization founded in 1996 to protect the rainforest and advance the rights of indigenous peoples in the Amazon Basin. We partner with indigenous and environmental organizations in campaigns for human rights, corporate accountability and the preservation of the Amazon's ecological systems.

## Our Vision

We envision a world that honors and values cultural and biological diversity and the critical contribution of tropical rainforests to our planet's life support system. We believe that indigenous self-determination is a critical component of any successful conservation strategy for the Amazon, and see that indigenous knowledge, cultures and traditional practices contribute greatly to sustainable and equitable stewardship of Mother Earth. We strive for a world in which governments, corporations and civil society respect the collective rights of indigenous peoples to free, prior and informed

consent over any activity affecting their territories and resources. We commit, in the spirit of partnership and mutual respect, to support our indigenous allies in their efforts to protect life, land, and culture in accordance with their aspirations and needs, as well as the needs of future generations.

## Share

293

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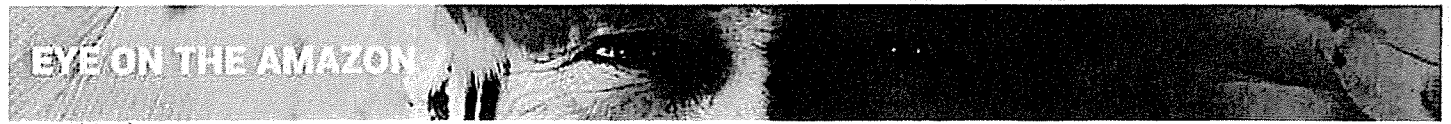
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## FEATURES

This is Exhibit "B" referred to in  
the Affidavit of Paul Y Miño,  
sworn April 4, 2018



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## Us and Them: Affected Peoples vs. Chevron in Canada

OCTOBER 12, 2017 | PAUL PAZ Y MIÑO

Roger Waters shows support for Ecuadorians' case against Chevron



The latest chapter in the decades-long struggle seeking justice for Chevron's crimes in Ecuador is [taking place in Canada \(news/2016/0919-calling-chevrans-bluff\)](#) right now. Unfortunately, as the years grind by the issues being debated get further and further away from the substantive problems of environmental contamination and human suffering, and the process becomes stuck in a legal quicksand of Chevron's design. The hearings before the Ontario Court of Appeals this week were a perfect example of that.

Amazon Watch continues to bear witness to this ongoing perversion of justice, both because we ourselves are a target of Chevron's attacks, and also because the cynical strategy the oil giant employs is a real and present danger to corporate accountability work everywhere. For that reason we attended the hearings in Toronto this week along with artist and activist Roger Waters, founding member of Pink Floyd. Waters spoke to the media to express his outrage (<http://www.ctvnews.ca/business/rocker-roger-waters-lends-star-power-to-ecuadorians-9-5b-chevron-fight-1.3626406>) at Chevron's endless legal maneuvers to escape justice for its crimes.

"It's a fundamental question of whether corporations like Chevron ... should be allowed to use their financial muscle to destroy people with an absolutely vital claim to reparations for damages that were caused to them over many years," Waters said before the hearing. "The way Chevron has behaved here is against everything that any of us might believe society ought to be like."

This week was supposed to see the beginning of the appeal of the previous decision in this case (<http://chevrontoxico.com/news-and-multimedia/2017/0120-ecuador-villagers-celebrate-victory-vow-to-seize-chevron-assets-after-canada-court-decision>) - which was mixed (upholding corporate separateness but granting the Ecuadorians the right to a trial to challenge Chevron's completely unfounded allegations of fraud). Instead the Ecuadorians were forced to confront Chevron's demand that the communities come up with almost \$1 million as a security fee for the appeal to proceed. This is yet another legal delay tactic from Chevron in their never ending hope that the people they harmed will either give up, run out of funds, or simply die off before they can force Chevron to pay up.

In 2014, the Supreme Court of Canada ruled unanimously that the Ecuadorians could seek enforcement of the \$9.5 billion verdict in Canada. Chevron's Canadian subsidiary, Chevron-Canada, holds approximately \$15 billion in assets and since Chevron famously fled Ecuador with its assets to avoid paying (and invented an elaborate lie about fraud and bribery so they could countersue in the U.S. to make enforcement there very difficult), the Ecuadorians have been forced to pursue Chevron to Canada like a fugitive deadbeat.

Try to wrap your mind around this: the third largest corporation in the U.S., after spending billions to drag out a cut-and-dry case of deliberate environmental contamination for decades, is now demanding the the Ecuadorian communities pay \$1 million for the right to an appeal which could finally permit seizure of their assets to pay for a clean-up.



To quote The Dark Side of the Moon: "And if your head explodes with dark forebodings, too..." yeah, that's an appropriate reaction at this point.

The lead lawyer for the Ecuadorians, Alan Lenczner, pointed out quite clearly that this was nothing more than a stunt by Chevron, stating that, "Chevron is one of largest companies in the world with over 1,500 subsidiaries, \$225 billion in annual revenue, which is \$1 billion a day for each working day, with a profit of \$25 billion annually, working out to \$1 million per DAY is hardly in need of protection!" In fact, just counting Chevron and Chevron-Canada's legal team in the room this week, there were at least twenty lawyers and their staff. The cost for their travel and billing right there is more than the security fund itself! That alone proves this is nothing but a punitive legal subterfuge, to our eyes.

But the hearing this week also had a new element which has previously played only a minor role in the several years this case has dragged on in Canada. The introduction of Peter Grant, a renowned Canadian aboriginal rights lawyer who recently helped to win a major case before the country's Supreme Court, had a profound impact on the proceedings. Peter made it clear to the appellate panel of Justices Hoy, Cronk, and Hourigan that this entire exercise was fundamentally an issue of access to justice for indigenous peoples. Grant, who had recently visited the Ecuadorian Amazon (<http://www.cbc.ca/news/indigenous/indigenous-ecuador-pollution-1.4310228>), to witness the contamination along with Canadian indigenous leaders Phil Fontaine and Ed John and Greenpeace co-founder Rex Weyler (<http://www.greenpeace.org/international/en/news/Blogs/makingwaves/chevron-amazon-indigenous-people-legal-case-canada/blog/60241/>), spoke with firsthand experience of what effect this order would have on the people still suffering today. This has even more resonance considering that Canada recently signed the UN Declaration on the Rights of Indigenous Peoples (<https://www.mcgilldaily.com/2017/09/canadas-treatment-of-indigenous-rights/>) and there is much more respect in Canadian political discourse for indigenous peoples.

And that's the genuine issue that not only the Canadian appeals court but Chevron and its lawyers should be made to face every single day. People are still dying from the deliberate contamination caused by Chevron in the Amazon. This is not an historic case about reparation for past harms, but a very real and urgent need for clean-up today. Every day Chevron evades paying for that clean-up, more people in the region risk sickness and death. It must end here. As Roger Waters said, "if Chevron can go on fighting this for another twenty years, and they will if they can, what does that say about us as a human race, that we would allow such a thing? It says that we've lost our grip on the reins of civilization."

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## Ecuadoreans Can Sue Chevron in Canada, Supreme Court Rules

SEPTEMBER 4, 2015 | SEAN FINE

[THE GLOBE AND MAIL \(HTTP://WWW.THEGLOBEANDMAIL.COM/NEWS/NATIONAL/ECUADORIANS-CAN-SUE-CHEVRON-IN-CANADA-SUPREME-COURT-RULES/ARTICLE26225413/\)](http://www.theglobeandmail.com/news/national/ecuadorians-can-sue-chevron-in-canada-supreme-court-rules/article26225413/)

Ecuadorean villagers can sue Chevron and its Canadian subsidiary in an Ontario court to enforce a \$9.5-billion (U.S.) judgment from Ecuador, the Supreme Court of Canada ruled Friday.

The ruling has major implications for Canadian multinational companies whose business activities raise environmental or human-rights concerns around the globe. The ruling weakens the so-called "corporate veil" that has shielded subsidiaries from responsibility for the actions of their corporate parents.

"In a world in which businesses, assets and people cross borders with ease, courts are increasingly called upon to recognize and enforce judgments from other jurisdictions," Justice Clément Gascon wrote in a 7-0 ruling. "Sometimes, successful recognition and enforcement in another forum is the only means by which a foreign judgment creditor can obtain its due."

A Chevron company spokesman once said that it would fight this case to the bitter end: "We're going to fight this until hell freezes over. And then we'll fight it out on the ice."

That looks like what is about to happen.

An intervenor group that provides legal support abroad to communities affected by Canadian resource companies says these communities can be exposed to a range of abuses, such as "war crimes, torture and environmental degradation."

"The outcome of this appeal has the potential to have a profound impact on the ability of such communities to seek redress," the Justice and Corporate Accountability Project told the Supreme Court in a written brief.

The lawsuit was brought by 47 indigenous villagers over harm to their lands and way of life from pollution between 1972 and 1990, allegedly caused by Texaco (which later merged with Chevron Corp., a U.S. company). An Ecuador trial court awarded \$18-billion (U.S.), later reduced to \$9.5-billion on appeal.

Chevron holds no assets in Ecuador so the judgment could not be enforced in that country. Chevron contends that the trial judgment was obtained through fraud and bribery, and has filed a countersuit in the United States.

The villagers have sued in Argentina, Brazil and Canada to enforce the judgment. An Ontario trial judge called the suit an academic exercise because Chevron Corp. has no assets in Ontario, but the Ontario Court of Appeal said in a 3-0 ruling that the enforcement attempt should be allowed to proceed.

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**Marvin S. Robinson II** · Temple University

So very PROUD of the vigilant focused unrelenting persistence of those residents in and from the AMAZON, I don't know what to other than keep THANKING GOD, for blessing HUMANITARIAN Futures with those who helped to tell the outside world about the "STRUCTURAL VIOLENCE" and "ROOT SHOOK" that their communities are enduring.

May God the divine creator continue to BLESS ~~the~~ the FUTURE with spiritual intelligence just like those being exhibited with AMAZON WATCH. Eternally grateful, Encouraged and Re-INSPIRED all over again.

Marvin S. Robinson, II  
QUINDARO RUINS / Underground Railroad- Exercise 2016



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**Patrick Monk RN** · School of Hard Knocks, The University of Life

NO RETREAT - NO SURRENDER.  
[www.movetoamend.org](http://www.movetoamend.org)

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**Gail E Dawson** · Monterey Community College

Love

Like · Reply · 1 · 2y



**Georges Radjou** · C.N.A.M.

Oil is "God" resource and the water pollution is man made

Like · Reply · 2y



**Peter Boehm**

Könnte Gott der perfekte Erfinder halten auf Geschenk die Zukunft mit jenseitigen wissen einfach wie gezeigt mit Amazon Watch. Kamagra <http://www.kamagrahub.biz/> kann sie wesentlich verbessern. Ewig dankbar, machtvolle und erneut selbstfahrenden einmal mehr.

Like · Reply · 1 · 2y



**Gigi Martinez** · Clerical Assistant at St.Michael's Hospital

Correa has addressed this in the U.N in New York. Chevron=corruption

Like · Reply · 2y

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Stand up for Women Defenders of the Amazon!

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## Countdown Begins for Chevron in Canada

JUNE 9, 2012 | PAUL PAZ Y MIÑO



After months of suspense, the Ecuadorian rainforest communities have finally opened up the first front in what is likely to be a worldwide legal battle to force Chevron to pay its \$18 billion ruling for environmental devastation in the Amazon.

On May 30, the Ecuadorians' Canadian lawyer, Alan Lenczner, [filed suit in Ontario provincial court in Toronto](http://www.montrealgazette.com/business/Chevron+Canada+pursued+Ecuadorian+pollution+case/6707981/story.html) (<http://www.montrealgazette.com/business/Chevron+Canada+pursued+Ecuadorian+pollution+case/6707981/story.html>) asking the court to seize the company's subsidiaries, Chevron Canada Ltd. and Chevron Finance Canada Ltd. These two

companies' assets include offshore oil production in Newfoundland, tar sands operations in Alberta, and a refinery and gasoline stations in British Columbia.

Here is the filing (<http://chevrontoxico.com/assets/docs/2012-05-30-issued-claim.pdf>), and here is a Q&A issued by the legal team (<http://chevrontoxico.com/assets/docs/2012-05-canadian-enforcement-q-and-a.pdf>).

Lenczner, one of Canada's most prominent litigators, asked the court to appoint a receiver over Chevron's assets, which would then be sold to pay the Ecuadorian ruling.

Legal observers quoted in media reports said Canada's courts generally defer to foreign courts' judgments. Unlike the United States, where unilateralism and America-first "exceptionalism" dominate debates over international issues, Canadian political and legal culture is generally respectful of international law.

The Ecuadorians are expected to file similar motions in other nations, seeking to add to the pressure on Chevron. Plaintiffs' attorney Pablo Fajardo has mentioned Venezuela (home to huge Chevron oil production operations) and Panama (where Chevron tankers often transit the canal) as likely targets.

The upshot is that Chevron's octopus-like worldwide presence has gone from being a strength to a critical weakness for the company. A legal sword of Damocles is swinging in the air, but where it will fall next, nobody outside the legal team knows. The company is embroiled in bitter controversies in many nations, including Australia, Angola, Brazil, Nigeria and Kazakhstan. Will one of those countries finally say "enough"?

For a summary of this rogue's gallery of misconduct, see the True Cost of Chevron report (<http://truecostofchevron.com/2011-alternative-annual-report.pdf>).

In the meantime, Chevron may face trouble much closer to home. On June 6th, Rep. Jan Schakowsky, D-Ill., wrote a letter to Mary Schapiro, chair of the Securities and Exchange Commission, asking her to investigate whether Chevron has concealed from the investment community the danger of its potential multi-billion-dollar liability in Ecuador.

Schakowsky referred to a recent report by Graham Erion, one of the Ecuadorians' attorneys, Chevron's Misrepresentations in Public Filings Regarding its \$18.1 Billion Environmental Liability in Ecuador (<http://chevrontoxico.com/assets/docs/2012-april-chevrons-failure-to-disclose.pdf>).

Schakowsky wrote (<http://chevrontoxico.com/assets/docs/2012-06-06-schakowsky-sec-letter.pdf>): "Chevron may have failed, over a period of years continuing through the present time, to disclose material information to investors concerning the likelihood, scope and impact of its potential liability for massive environmental damage to a large part of the Ecuadorian rainforest and the associated health and other negative effects of that damage upon tens of thousands of indigenous farmers and individuals."

Legal nightmares in Canada and possible SEC investigations at home are part of the ever-mounting pressures facing Chevron CEO John Watson. These pressures – and the danger for company shareholders – will keep rising until Chevron owns up to its responsibility to clean up its shameful mess in Ecuador.

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[Climate Justice Now! Keep It in the Ground!](#)

[\(news/2017/1205-climate-justice-now-keep-it-in-the-ground\)](#)

This is Exhibit "C" referred to in  
the Affidavit of Paul Y Miño,  
sworn April 4, 2018


## An Open Letter to the People of Canada

September 7, 2016




**GREENPEACE**  
CANADA

 **SIERRA CLUB BC**

 **FOUNDATION**  
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**MININGWATCH**  
CANADA

 **Friends of the Earth**  
**Les Ami(e)s de la Terre**



 **MINING**  
**INJUSTICE**  
**SOLIDARITY**  
**NETWORK**

**RightsAction**



**UNITED STEELWORKERS**  
**USW**

 **UNIFOR**  
the Union / le syndicat

We, the undersigned organizations and individuals, condemn the actions by Chevron and stand with the affected communities in Ecuador who continue their decades long quest for justice from Chevron for its deliberate contamination of the Amazon rainforest. In its efforts to evade justice Chevron has repeatedly sought to silence critics and continues to ignore the \$9.5 billion judgment against it for environmental damage in the Ecuadorian Amazon.

While Chevron continues its international litigation "shell game" thousands of people continue to be systematically poisoned and suffer daily from Chevron's refusal to pay a \$9.5 billion judgment to clean up its toxic waste in Ecuador. Chevron's refusal to honor the judgment against it has forced these communities to come to Canada in a last ditch effort to seize assets to force Chevron to comply with the rule of law.

After agreeing to jurisdiction in Ecuador, Chevron sold its remaining assets there to escape justice. Now Chevron claims its assets in Canada are immunized because they are held by wholly owned subsidiaries. Chevron is seeking to make a mockery of justice by creating a jurisdiction shell-game to deny the Ecuadorians full justice for its environmental crimes in Ecuador.

In 2015, the Canadian Supreme Court ruled unanimously in favor of the Ecuadorian communities to allow them to sue to seize Chevron Canada's assets to cover what is now a US\$10 billion debt. We applaud this decision as it demonstrates the proper respect for the rule of law.

Outside of Canada, Chevron have managed to overwhelm its opponents with unprecedented legal force (hiring 60 law firms and more than 2,000 legal professionals) and even convinced a

U.S. court to brand their opponents as criminals while formally excluding all evidence of Chevron's environmental harms. Chevron has paid hundreds of thousands of dollars to witnesses in the case, including a former judge who has admitted payments totalling over \$2 million USD from Chevron to testify about a bribe he later admitted was a lie.

As citizens deeply concerned with the social justice, indigenous rights and the environment, we make the following appeal to the government of Canada:

Do not allow Chevron to further abuse the law by permitting the company to sell off any of its Canadian assets before a decision can be reached in the trial. This would set a terrible precedent for other corporations intending to evade responsibility for environmental and human rights crimes.

To the people of Canada we urge you to stay vigilant in support of the affected communities, many of whom are indigenous peoples. Canada's population has a great deal in common with the people of Ecuador – who find their lives, culture and environment often at great risk due to irresponsible resource extraction.

Sincerely,

Amazon Watch

Asociación Q'anil

Cercle des Premières Nations de l'UQAM

Comité pour les droits humains en Amérique latine (CDHAL)

Friends of the Earth Canada

Greenpeace Canada

Idle No More Canada

Mining Injustice Solidarity Network

MiningWatch Canada

RightsAction (Canada)

Sierra Club British Columbia (BC)

Sierra Club Canada Foundation

Unifor

United Steelworkers (Canada)

Court File No.: CV-12-9808-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N :**

DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY CHIMBO GREFA,  
MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE  
PAYAGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE  
PAYAGUAJE, ANGEL JUSTINO PIAGUAJE LUCITANTE, JAVIER PIAGUAJE  
PAYAGUAJE, FERMIN PIAGUAJE, LUIS AGUSTIN PAYAGUAJE PIAGUAJE,  
EMILIO MARTIN LUSITANDE YAIGUAJE, REINALDO LUSITANDE YAIGUAJE,  
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AGUINDA, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO  
YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA  
TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, PATRICIO ALBERTO  
CHIMBO YUMBO, SEGUNDO ANGEL AMANTA MILAN, FRANCISCO MATIAS  
ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, NARCISA AIDA TANGUILA  
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TANGUILA GREFA, FRANCISCO VICTOR TANGUILA GREFA, ROSA TERESA  
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PATARON GUARACA, CELIA IRENE VIVEROS CUSANGUA, LORENZO JOSE  
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HUGO GERARDO CAMACHO NARANJO, MARIA MAGDALENA RODRIGUEZ  
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HORTENCIA VIVEROS CUSANGUA, GUILLERMO VINCENTE PAYAGUAJE  
LUSITANDE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE AND DELFIN  
LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON  
CANADA FINANCE LIMITED

Defendants

**AFFIDAVIT OF DOUGLAS OLTHUIS  
(Sworn April 4, 2018)**

I, **DOUGLAS OLTHUIS**, of the City of Toronto, MAKE OATH AND SAY:

1. I am Department Leader of Global Affaris and Workplace Issues at the Canadian National Office of the United Steelworkers ("USW") and act as the Executive Director of Steelworkers Humanity Fund ("SHF") and as such, I have knowledge of the matters to which I hereinafter depose. Where I have relied upon information received from others, I have stated the source of that information and believe it to be true.

2. SHF is a registered Canadian Charity funded by United Steelworkers member contributions. USW is the largest private sector union in North America. Members work in a variety of industries, such as call centers, credit unions, mines and manufacturing plants, offices, and oil refineries, restaurants, rubber plants, sawmills, steel mills and security. USW has 180,000 members in Canada and 600,000 members across the continent. A copy of the SHF's description on its website is attached and marked as Exhibit "A".

3. The USW and SHF's activities include mobilizing political action for economic and social justice in Canada and around the world.

4. SHF and the USW has supported the plight of the indigenous people of Ecuador, including by hosting the Union of People Affected by Chevron-Texaco ("UDAPT") on September 13, 2016 and April 16, 2018. The UDAPT is an organization formed to mobilize the communities affected by the contamination of Chevron in the Ecuadorian Amazon. It was co-founded by 6 indigenous national communities and about 80 rural, settler communities in the region. A copy of the UDAPT's description on its website is attached and marked as Exhibit "B".

5. The USW has publicly condemned the actions of Chevron in the underlying dispute. Attached and marked as Exhibit "C" is a copy of an Open Letter to the People of Canada endorsed by USW.

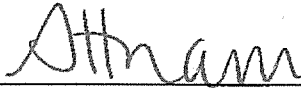
6. Part of SHF's mandate includes communicating with and educating the general public and its members about, among other things, social justice issues, which it does in part through the United Steelworkers Canadian website [www.usw.ca](http://www.usw.ca). The website includes pages devoted to SHF and numerous links to news and publications. Attached

and marked as Exhibit "D" is a copy of the main SHF page on the United Steelworkers website.

7. I understand that court records in this action are sealed. I verily believe the information sealed touches on facts and issues of significant public interest. SHF has an interest in educating its members and the public generally about this litigation.

8. This affidavit is sworn in support of this motion for an order setting aside or varying the sealing orders in this action.

SWORN AFFIRMED BEFORE ME at the  
City of Toronto, this 4<sup>th</sup> day of April, 2018.



A Commissioner for taking Affidavits (or as may be)

SHAHEEN HIRANI  
BARRISTER AND SOLICITOR  
LSUC# 40873J

  
DOUGLAS OLTHUIS

This is Exhibit "A" referred to in  
the Affidavit of Douglas Olthuis,  
sworn April 4, 2018

A handwritten signature in cursive script, appearing to read "Athani", written over a horizontal line.

A Commissioner for taking Affidavits

SHAHEEN HIRAM  
BACRISTER AND SOLICITOR  
LSUC # 40873J





UNITY AND STRENGTH FOR WORKERS



## Humanity Fund

The Steelworkers Humanity Fund is a registered Canadian Charity funded by USW member contributions. For more than 25 years, The Humanity Fund has supported international development projects, provided emergency humanitarian aid for disasters around the world, supported food banks across Canada and offered an

education program for Steelworker members.

## Humanity Fund | Resources »

### Annual Report 2016

[Read the Steelworkers Humanity Fund's 2016 members' report.](#)

### Annual Report 2015

[Read the Steelworkers Humanity Fund's 2016 members' report.](#)

### Board of Directors

[The Board of Directors of the Steelworkers Humanity Fund is made up of a mixture of elected directors of the United Steelworkers, local union activists drawn from the union's three Canadian Districts and USW staff.](#)

### Donate Individual

[The Steelworkers Humanity Fund is a registered Canadian Charity primarily funded by USW member contributions](#)

This is Exhibit "B" referred to in  
the Affidavit of Douglas Olthuis,  
sworn April 4, 2018

A handwritten signature in cursive script, appearing to read "Shaan", is written above a horizontal line.

A Commissioner for taking Affidavits

SHAHEEN HIRANI  
BARRISTER AND SOLICITOR  
LSUC # 40873J



Donate

## UDAPT – Unión de Afectados por Texaco



Portete E 12-79 y Abascal  
 Quito, Provincia de Pichincha 170122  
 Ecuador  
 +593 22273533  
 casotexaco@gmail.com

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**Network Champion:**   
 Marco Ciot

**Organization ID:** 79213

**Added on:** Nov 16, 2017

**Last Updated:** Dec 05, 2017

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*The UDAPT is based in Ecuador. The legal action is now carried also in*

***other countries of the American continent. There is also a work developed with indigenous communities based in the Amazon.***

Udapt, 24 años resistiendo contra Chevron.



**Presence in:** Ecuador

**Focus:** Community / Customary Land Rights, Corruption, Criminal Justice, Environmental Justice, Gender-based violence, Land & Natural Resources, Traditional / Customary Justice

We are the Union of People Affected by Chevron-Texaco – UDAPT, the organization that brings together the communities affected by the contamination of Chevron corporation (known before as Texaco), who in 1993 began the now legendary class-action lawsuit against Chevron for the damages it caused in the northern Ecuadorian Amazon.

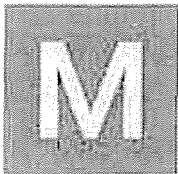
UDAPT is made up those who have been directly affected by Chevron Corporation, as part of an ongoing struggle to restore their home of the northeastern Ecuadorian Amazon that has been impacted by severe oil contamination from the corporation's negligent operations. UDAPT was co-founded by communities belonging to 6 indigenous nationalities (Waorani, Siekopaal, Siona, A'I Kofan, Shuar and Kichwa) and about 80 rural, settler communities in the impacted region.

UDAPT's mission is to ensure that these Amazon communities live with dignity and without contamination, through exacting corporate accountability for the violation of human rights by Texaco – now Chevron – and remediating the damages it left behind that continue to plague the Ecuadorian Amazon. It is to this end that we are taking various judicial actions in Ecuador and in other countries as the representatives of the affected people and as the

defenders of their human rights. We are demanding that Chevron comply with Ecuador's Supreme Court decision that has already held the oil giant responsible for the damages but also which the corporation has refused to recognize. In addition, we are behind the planning of the remediation process, prepared to implement full reparations for the environmental damage as soon as the judgment is enforced.

## PEOPLE ASSOCIATED WITH THIS ORGANIZATION

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**MARCO CIOT**

I am Marco Clot. I am from Pordenone (Italy). I studied Political Science in Trieste and Environmental Development and Cooperation in Torino. After graduating, I

📍 Ecuador

## Stay Informed

SUBMIT

## Join the Network

Be part of the movement for legal empowerment.

Meet practitioners from around the world, access practical resources, and join learning exchanges.

This is Exhibit "C" referred to in  
the Affidavit of Douglas Olthuis,  
sworn April 4, 2018



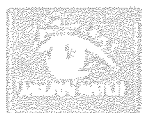
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A Commissioner for taking Affidavits

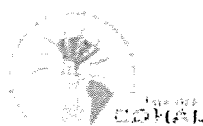
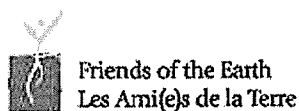
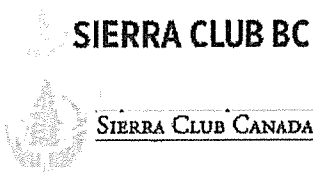
SHAHEEN HIRAM  
BARRISTER AND SOLICITOR  
LSUC # 40873 J

## An Open Letter to the People of Canada

September 7, 2016



We, the undersigned organizations and individuals, condemn the actions by Chevron and stand with the affected communities in Ecuador who continue their decades long quest for justice from Chevron for its deliberate contamination of the Amazon rainforest. In its efforts to evade justice Chevron has repeatedly sought to silence critics and continues to ignore the \$9.5 billion judgment against it for environmental damage in the Ecuadorian Amazon.



While Chevron continues its international litigation "shell game" thousands of people continue to be systematically poisoned and suffer daily from Chevron's refusal to pay a \$9.5 billion judgment to clean up its toxic waste in Ecuador. Chevron's refusal to honor the judgment against it has forced these communities to come to Canada in a last ditch effort to seize assets to force Chevron to comply with the rule of law.

After agreeing to jurisdiction in Ecuador, Chevron sold its remaining assets there to escape justice. Now Chevron claims its assets in Canada are immunized because they are held by wholly owned subsidiaries. Chevron is seeking to make a mockery of justice by creating a jurisdiction shell-game to deny the Ecuadorians full justice for its environmental crimes in Ecuador.

In 2015, the Canadian Supreme Court ruled unanimously in favor of the Ecuadorian communities to allow them to sue to seize Chevron Canada's assets to cover what is now a US\$10 billion debt. We applaud this decision as it demonstrates the proper respect for the rule of law.

Outside of Canada, Chevron have managed to overwhelm its opponents with unprecedented legal force (hiring 60 law firms and more than 2,000 legal professionals) and even convinced a

U.S. court to brand their opponents as criminals while formally excluding all evidence of Chevron's environmental harms. Chevron has paid hundreds of thousands of dollars to witnesses in the case, including a former judge who has admitted payments totalling over \$2 million USD from Chevron to testify about a bribe he later admitted was a lie.

As citizens deeply concerned with the social justice, indigenous rights and the environment, we make the following appeal to the government of Canada:

Do not allow Chevron to further abuse the law by permitting the company to sell off any of its Canadian assets before a decision can be reached in the trial. This would set a terrible precedent for other corporations intending to evade responsibility for environmental and human rights crimes.

To the people of Canada we urge you to stay vigilant in support of the affected communities, many of whom are indigenous peoples. Canada's population has a great deal in common with the people of Ecuador – who find their lives, culture and environment often at great risk due to irresponsible resource extraction.

Sincerely,

Amazon Watch  
Asociación Q'anil  
Cercle des Premières Nations de l'UQAM  
Comité pour les droits humains en Amérique latine (CDHAL)  
Friends of the Earth Canada  
Greenpeace Canada  
Idle No More Canada  
Mining Injustice Solidarity Network  
MiningWatch Canada  
RightsAction (Canada)  
Sierra Club British Columbia (BC)  
Sierra Club Canada Foundation  
Unifor  
United Steelworkers (Canada)



This is Exhibit "D" referred to in  
the Affidavit of Douglas Olthuis,  
sworn April 4, 2018

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A Commissioner for taking Affidavits



UNITY AND STRENGTH FOR WORKERS

## Humanity Fund

The Steelworkers Humanity Fund is a registered Canadian Charity funded by USW member contributions. For more than 25 years, The Humanity Fund has supported international development projects, provided emergency humanitarian aid for disasters around the world, supported food banks across Canada and offered an



education program for Steelworker members.

## Humanity Fund | Resources »

### Annual Report 2016

Read the Steelworkers Humanity Fund's 2016 members' report.

### Annual Report 2015

Read the Steelworkers Humanity Fund's 2016 members' report.

### Board of Directors

The Board of Directors of the Steelworkers Humanity Fund is made up of a mixture of elected directors of the United Steelworkers, local union activists drawn from the union's three Canadian Districts and USW staff.

### Donate Individual

The Steelworkers Humanity Fund is a registered Canadian Charity primarily funded by USW member contributions

## **Project Review Committee**

**The Project Review Committee of the Steelworkers Humanity Fund is responsible for reviewing proposals for funding for on-going development projects and worker exchanges.**

## **Applying for Funding**

**The Steelworkers Humanity Fund (SHF) supports development projects with trade unions and community organizations around the world.**

## **Sample Collective Agreement Language for the Humanity Fund**

**Supporting the Steelworkers Humanity Fund: Negotiating the Steelworkers Humanity Fund Clause**

## **Humanity Fund | News »**

**Feb 06, 2018**

### **Canadian Embassy's Role Questioned in Mexican Delegation's Complaint to Integrity Commissioner**

**Complaint formally requests an investigation into the Canadian embassy's acts and omissions.**

**Jan 17, 2018**

### **Proceed Quickly on New Ombudsperson, Steelworkers Urge Feds**

**"We need swift action to implement measures entrenching the independence and investigatory powers of the office." - Ken Neumann**

**Dec 19, 2017 · Media Release**

### **Steelworkers Humanity Fund Contributes \$196,850 to 106 Food Banks Across Canada**

**The Steelworkers Humanity Fund is proud to contribute to food banks and community food centres in communities across Canada where our union's members live and work.**

**Sep 19, 2017**

### **Steelworkers Humanity Fund Contributes \$25,000 to Hurricane Irma Relief in Caribbean**

**“Once again it is the poorest communities that will have the greatest difficulty recovering and re-establishing livelihoods. It is an all-too-familiar pattern.” - Ken Neumann**

**Contact Us** · **Privacy Policy**

United Steelworkers · National Office - 234 Eglinton Avenue East, 8th Floor - Toronto, Ontario M4P 1K7

Site by **Trilogy**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**B E T W E E N :**

DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY CHIMBO GREFA, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE PAYAGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE PAYAGUAJE, ANGEL JUSTINO PIAGUAJE LUCITANTE, JAVIER PIAGUAJE PAYAGUAJE, FERMIN PIAGUAJE, LUIS AGUSTIN PAYAGUAJE PIAGUAJE, EMILIO MARTIN LUSITANDE YAIGUAJE, REINALDO LUSITANDE YAIGUAJE, MARIA VICTORIA AGUINDA SALAZAR, CARLOS GREFA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRIA AGUINDA AGUINDA, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, SEGUNDO ANGEL AMANTA MILAN, FRANCISCO MATIAS ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, NARCISA AIDA TANGUILA NARVAEZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA TANGUILA GREFA, FRANCISCO VICTOR TANGUILA GREFA, ROSA TERESA CHIMBO TANGUILA, MARIA CLELIA REASCOS REVELO, HELEODORO PATARON GUARACA, CELIA IRENE VIVEROS CUSANGUA, LORENZO JOSE ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, JOSE GABRIEL REVELO LLORE, LUISA DELIA TANGUILA NARVAEZ, JOSE MIGUEL IPIALES CHICAIZA, HUGO GERARDO CAMACHO NARANJO, MARIA MAGDALENA RODRIGUEZ BARCENES, ELIAS ROBERTO PIYAHUAJE PAYAHUAJE, LOURDES BEATRIZ CHIMBO TANGUILA, OCTAVIO ISMAEL CORDOVA HUANCA, MARIA HORTENCIA VIVEROS CUSANGUA, GUILLERMO VINCENTE PAYAGUAJE LUSITANDE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE AND DELFIN LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON CANADA FINANCE LIMITED

Defendants

**AFFIDAVIT OF BEATRICE OLIVASTRI**  
**(Sworn April 4, 2018)**

I, BEATRICE OLIVASTRI, of the City of Ottawa, MAKE OATH AND SAY:

1. I am the Chief Executive Officer of Friends of the Earth Canada ("FOE") and as such, I have knowledge of the matters to which I hereinafter depose. Where I have relied upon information received from others, I have stated the source of that information and believe it to be true.

2. FOE is a non-profit Canadian Registered Charity. Its mission is to advance environmental justice. It has over 3,500 members in Canada. FOE is also an affiliate of Friends of the Earth/Les Ami(e)s de la Terre International. By affiliation, FOE's membership reaches 2 million worldwide.

3. FOE is a member of the Canadian Network on Corporate Accountability ("CNCA"). The CNCA's mandate is to promote corporate responsibility for the environmental and human rights abuses of Canadian companies operating overseas. A copy of the CNCA's mandate and goals on its website is attached and marked as Exhibit "A".

4. CNCA's activities include advocating for policy and law reform. For example, it drafted model legislation that creates a human rights ombudsperson for the overseas operations of Canadian mining, oil, and gas corporations. The legislation garnered the support of over 100,000 Canadians and 50 Canadian organizations. It was actively promoted by FOE. A copy of the model legislation is attached and marked as Exhibit "B".

5. FOE has followed this action with interest. It applied for leave to intervene as a friend of the court in matters currently before the Court of Appeal for Ontario.

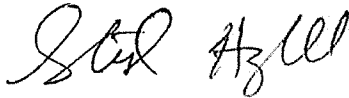
6. Part of FOE's mandate is to educate the Canadian public about environmental issues. This objective is advanced in part through publications on the FOE website [www.foecanada.org](http://www.foecanada.org), which features media releases and a blog. FOE has reported on this case through its website. Attached and marked as Exhibit "C" are copies of publications on the FOE website.

7. I understand that court records in this action are sealed. I verily believe the information sealed touches on facts and issues of significant public interest, on which FOE has an interest in continuing to educate the Canadian public.

8. In order to advocate for effective policy and law reform, the FOE needs access to the full, unredacted court record. Without access to the sealed materials, the FOE cannot fulfill its goals of advocating for proper environmental justice.

9. This affidavit is sworn in support of this motion for an order setting aside or varying the sealing orders in this action.

SWORN AFFIRMED BEFORE ME at the  
City of Ottawa, this 4 day of April, 2018.

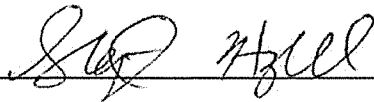


A Commissioner for taking Affidavits (or as may be)

Stephen Hazell  
LSUC 23466Q

  
BEATRICE OLIVASTRI

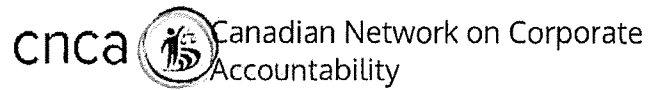
This is Exhibit "A" referred to in  
the Affidavit of Beatrice Olivastri,  
sworn April 4, 2018

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A Commissioner for taking Affidavits

Stephen Hazell LSUC 23466Q





Our members



## What we do

The CNCA has one simple mission: we work tirelessly to ensure that Canadian mining, oil and gas companies respect human rights and the environment when working abroad.

To do this, we advocate for policy and law reform, we monitor government policy and we provide advice to ensure that both government and business uphold Canada's international human rights and environmental commitments.

## What We Want

### 1. Access to justice

Those who believe they have been harmed by Canadian companies overseas should have access to Canadian courts and a human rights Ombudsperson for the international extractive sector in Canada.

### 2. Regulations with teeth

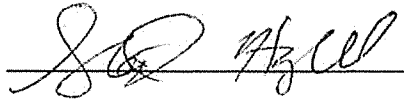
### The CNCA seeks to:

- Increase public engagement on these issues;
- Produce research and policy options that give decision-makers the tools to make change;
- Strengthen our members' voices (through information sharing, strategy and analysis);
- Coordinate with our partners in the global South to ensure that their priorities are reflected;
- Foster effective dialogue with government and industry including through the organization of public events; and
- Coordinate with national and international civil society partners.

About us	#Open4Justice campaign	Issues & analysis	Contact
What we do	Open for justice	Indigenous rights	280 Albert Street, Suite 100
How we work		Economic justice	Ottawa, Ontario K1P 5G8
Our members	Media	Government policy	Canada
	Press releases	International advocacy	+1 (613) 731-6315, ext 31
	In the news		
	Media contacts		
		A collaborative project of the Steelworkers Humanity Fund.	

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This is Exhibit "B" referred to in  
the Affidavit of Beatrice Olivastri,  
sworn April 4, 2018

A handwritten signature in black ink, appearing to read "Stephen Hazell", is written over a horizontal line.

A Commissioner for taking Affidavits

Stephen Hazell LSUC 23466Q



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**The Global Leadership in Business and Human Rights Act: An act to create an independent human rights ombudsperson for the international extractive sector**

**Draft model legislation, November 2, 2016**

**Commissioned by the Canadian Network on Corporate Accountability**

**1. Interpretation**

- 1.1) Nothing in this Act should be interpreted in any way to deprive any individual, or the Attorney General of Canada, of the duty or the right to bring a legal action or a criminal prosecution in a court in any jurisdiction in Canada against an entity for harms occurring in a foreign state instead of, or in addition to, availing themselves of any rights afforded by this Act.

**2. Definitions**

- 2.1) An entity is an "affiliate" of an entity if:
- i. It is a subsidiary of the entity; or
  - ii. both are subsidiaries of the same entity; or
  - iii. each of them is controlled by the same person.
- 2.2) "control" means that an entity, directly or indirectly:
- i. owns 20 or more percent of the voting interests in an affiliate or other entity; or
  - ii. ordinarily directs or instructs the conduct of the affiliate or other entity; or
  - iii. alone or in combination with another affiliate of the entity, is empowered through voting interests, or based on an agreement with another party, to elect at least 30 per cent of the Board of Directors of an affiliate; or
  - iv. has the power to cause direction of the management and policies of an entity; or
  - v. determines the salary level or bonus structure for executives or employees of an affiliate or other business entity.
- 2.3) "entity" means a corporation or a trust, partnership, joint venture, or other unincorporated organization:
- i. that is engaged in the commercial development of oil, gas or minerals; or
  - ii. that controls a corporation or a trust, partnership, joint venture, or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals.
- 2.4) "foreign state" means any state other than Canada;
- 2.5) "harm" means:
- i. infringement(s) of the international instruments listed in Schedule 1.
- 2.6) "person" includes a legal person.

- 2.7) "project" means the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project.
- 2.8) "subject of an investigation" means any entity named in a complaint under Part 4; or an entity identified by the Ombudsperson under Part 6, sections 1 or 2.
- 2.9) An entity is a "subsidiary" of an entity if:
  - i. It is controlled by
    - 1. That entity; or
    - 2. That entity and one or more entities each of which is controlled by that entity; or
    - 3. Two or more business organizations, each of which is controlled by that entity; or
  - ii. It is a subsidiary of an entity that is a subsidiary of that Entity.

### **3. Office of the Extractive Industries Human Rights Ombudsperson**

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#### **Ombudsperson**

- 3.1) Within three months of the coming into force of this Act the Governor in Council shall appoint the Extractive Industries Human Rights Ombudsperson following a vote by a majority of the members of the House of Commons and Senate in favour of the appointment of that person.
- 3.2) The Ombudsperson is an Officer of Parliament, and is independent from the Government.
- 3.3) The Ombudsperson holds office during good behaviour for a term of seven years, but may be removed for cause by the Governor in Council.
- 3.4) The Ombudsperson, on the expiration of a first term of office, is eligible to be re-appointed for one further term not exceeding seven years. For greater clarity, the Ombudsperson is eligible for only one re-appointment.
- 3.5) The Ombudsperson shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Ombudsperson under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.
- 3.6) The Ombudsperson shall be paid a salary, fixed by Parliament, equal to the salary of a judge of the Federal Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.
- 3.7) The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to the Ombudsperson, except that a person appointed as Ombudsperson from outside the public service, as defined in the Public Service Superannuation Act, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the Diplomat-

ic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Ombudsperson from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

- 3.8) The Ombudsperson is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.
- 3.9) The Ombudsperson shall have expertise and experience in the investigation and documentation of human rights infringements, and have knowledge of international best practices in gender-sensitive investigation and analysis. In addition, the Ombudsperson shall have expertise in one or more of the following areas: international best-practices in the investigation of sexual violence, extractive industries, human rights and environmental impact assessment and auditing, and indigenous rights.
- 3.10) No person shall be appointed as Ombudsperson if, within the previous five years he or she has been employed, on the Board of directors, or otherwise closely associated with an entity, or its affiliate, as defined in this Act.

#### **Assistant Ombudsperson**

- 3.11) The Governor in Council may, on the recommendation of the Ombudsperson, appoint one or more Assistant Extractive Industry Human Rights Ombudsperson(s).
- 3.12) An Assistant Extractive Industry Human Rights Ombudsperson is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament as the Ombudsperson considers reasonable.
- 3.13) The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to an Assistant Ombudsperson.
- 3.14) An Assistant Ombudsperson is deemed to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.

#### **Staff**

- 3.15) Such officers and employees as are necessary to enable the Ombudsperson to perform the duties and functions of the Ombudsperson under this Act or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.
- 3.16) The Ombudsperson may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Ombudsperson to advise and assist the Ombudsperson, Assistant Ombudsperson, and the officers and employees, in the performance of their duties and functions under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

#### **Delegation**

- 3.17) The Ombudsperson may authorize any person to exercise or perform, subject to such restrictions or limitations as the Ombudsperson may specify, any of the powers, duties or functions of the Ombudsperson under this or any other Act of Parliament except,
- i. in any case other than a delegation to an Assistant Ombudsperson, the power to delegate under this section.
- 3.18) An Assistant Ombudsperson may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Ombudsperson may specify, any of the powers, duties or functions of the Ombudsperson under this or any other Act of Parliament that the Assistant Ombudsperson is authorized by the Ombudsperson to exercise or perform.
- 3.19) The Ombudsperson is authorized to exercise the powers and perform the functions of the Treasury Board that relate to human resources management within the meaning of section 7(1)(b) and of the Financial Administration Act.

#### **Objects**

- 3.20) With respect to harms suffered by individuals and the natural environment in foreign states, in connection with extractive industries, the objects of the Ombudsperson are to:
- i. Increase accountability and transparency;
  - ii. Promote gender-sensitivity in the investigation, reporting, and resolution of harm;
  - iii. Promote remedies, including full reparations, for harm(s);
  - iv. Promote the avoidance of harm(s);
  - v. Promote the meaningful participation of individuals, groups and local communities in decisions that affect them;
- 3.21) The Ombudsperson shall, whenever possible, share information, and reports with, international corporate social responsibility standards-monitoring bodies, complaint mechanisms, and other institutions that have an interest in, and role in promoting, responsible and sustainable operations by extractive industry entities.

#### **Immunities**

- 3.22) The Ombudsperson or any person acting on behalf or under the direction of the Ombudsperson is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Ombudsperson or that person as a result of performing any duties or functions under this Act during an investigation, in any proceeding other than a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made under this Act, or a review before the Federal Court under this Act.
- 3.23) No criminal or civil proceedings lie against the Ombudsperson, or against any person acting on behalf or under the direction of the Ombudsperson, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Ombudsperson under this Act.



- 3.24) The Ombudsperson shall administer a fund for the purposes of financing the legal counsel of complainants engaged in mediation under Part 11, or who are parties to a judicial review under Part 14, to be dispersed by the Ombudsperson in his or her discretion.

#### **4. Complaints**

- 4.1) Any person, organization, or group of individuals, resident in Canada or elsewhere, may complain to the Ombudsperson about any harm that may be the subject of an Ombudsperson's investigation.
- 4.2) Every complaint to the Ombudsperson shall be made in writing, in French or in English, but
- i. A complainant may seek permission from the Ombudsperson to submit a complaint in a language other than English or French; and
  - ii. A complainant may seek permission from the Ombudsperson for an exception to the requirement for written complaints.
- 4.3) A complaint may include:
- i. A description of the incident or series of incidents leading to the complaint;
  - ii. The specific harm(s) that occurred, is occurring, or is at risk of occurring;
  - iii. The foreign state in which the alleged harm(s) occurred;
  - iv. The names of any entities involved in the alleged harm(s);
  - v. Any dates, names, places, and details that may assist the Ombudsperson in any investigation.
- 4.4) A complaint may be made at any time.
- 4.5) The Ombudsperson shall provide publicly accessible information about the complaints system under this Part and shall arrange for the provision of assistance to those who wish to file a complaint.
- 4.6) On request of a complainant, the Ombudsperson shall take any and all necessary steps to protect the identity of one or more complainants.
- 4.7) No act or omission of a complainant, or any individual with knowledge of a complaint, undertaken with the intent of taking advantage of the procedures outlined in this Act, or promoting the effective use of those procedures, including but not limited to, making a complaint to the Ombudsperson, publicizing a complaint, or participating in an investigation conducted by the Ombudsperson, may form the basis of any legal action against the complainant.

#### **5. Rules Respecting a Canadian Nexus**

- 5.1) There is a nexus between a subject of an investigation and Canada where:
- i. A subject of the investigation :
    - 1. Is listed on a stock exchange in Canada; or
    - 2. Is incorporated in any jurisdiction in Canada; or
    - 3. Has its principal place of business in Canada; or
  - ii. A subject of the investigation is a subsidiary, or an affiliate, of an entity listed in subsection i; or

- iii. A subject of the investigation is receiving, or has received, support, subsidy, promotion, partnership or protection from the Government of Canada or any of its Departments or Agencies.

## 6. Investigations

- 6.1) The Ombudsperson shall review every complaint made to him or her, and identify one or more subjects of an investigation;
  - i. The Ombudsperson may, at any time during an investigation, add one or more subjects of an investigation.
- 6.2) Subject to section 4 of this Part, and the provisions of Part 7, the Ombudsperson shall initiate an investigation in every case in which:
  - i. There is, in accordance with the Rules Respecting a Canadian Nexus under Part 5, a nexus between the subjects of an investigation and Canada; and
  - ii. The complaint alleges any of the following:
    - 1. One or more subjects of the investigation has, by act or omission, caused or contributed to harm(s) in a foreign state; or
    - 2. There is a significant risk that one or more subjects of the investigation will, by act or omission, cause or contribute to harm(s) in a foreign state; or
    - 3. A third party with which one or more subjects of the investigation is in a material contractual relationship has, by act or omission, caused or contributed to harm(s), in connection with the material contractual relationship, in a foreign state;
    - 4. There is a significant risk that a third party with which one or more subjects of the investigation is in a material contractual relationship has, by act or omission, caused or contributed to harm(s), in connection with the material contractual relationship, in a foreign state.
- 6.3) In addition to the procedures set out in section 2 of this Part for initiating an investigation, the Ombudsperson may initiate an investigation on his or her own motion where the Ombudsperson has reason to suspect that both sections 6.2i and 6.2ii apply.
- 6.4) Notwithstanding section 2 of this Part, the Ombudsperson may, in his or her discretion, decide not to investigate a complaint if and only if:
  - i. the harm(s) alleged in the complaint are trivial or are not serious;
  - ii. the complaint is frivolous or vexatious or is not made in good faith

For greater clarity, the Ombudsperson shall not decide not to investigate a complaint only on the basis that any individual, or organization, including but not limited to the complainant, has or continues to publicize the incidents and entities involved in the complaint.

- 6.5) In any case where the Ombudsperson decides not to investigate a complaint, the Ombudsperson shall inform the complainant in writing of that decision and state the reasons therefor.

- 6.6) The complainant may request a reconsideration of a decision of the Ombudsperson not to investigate.
- 6.7) The Ombudsperson may reconsider a decision not to investigate under section 4 of this Part if the Ombudsperson is satisfied that the complainant has established that there are compelling reasons to investigate.
- 6.8) The Ombudsperson shall give Notice of the investigation to the subjects of an investigation.
- 6.9) The Ombudsperson shall post a Notice of Investigation on the website of the Ombudsperson.
- 6.10) Subject to the provisions of Part 10, each of the Notices provided for in sections 8 and 9 of this Part shall include:
  - i. The name of the complainant, if applicable and appropriate;
  - ii. The subject(s) of the complaint; and
  - iii. The subject matter of the investigation.
- 6.11) Where the Ombudsperson has reason to suspect that the destruction of evidence may occur, the Ombudsperson may forego the notice requirements under sections 8 and 9 of this Part.

**7. Other Proceedings:**

- 7.1) Where a proceeding is or has been initiated in a court in any jurisdiction in Canada on a matter substantially similar to the matter of an Ombudsperson investigation, the Ombudsperson may, in his or her discretion, suspend the investigation until the litigation has concluded by settlement or otherwise, or decline to initiate an investigation if the proceeding has been withdrawn, abandoned, settled or decided.
  - i. The Ombudsperson shall not suspend or decline to initiate an investigation pursuant to this section, where there is reason to suspect that the purpose of the litigation in a court in any jurisdiction in Canada is to interfere in the Ombudsperson investigation;
  - ii. The Ombudsperson shall not suspend an investigation pursuant to this section, where, for any reason, the litigation does not, or cannot, proceed, or is in fact not proceeding, or is indefinitely suspended.
- 7.2) Nothing in this Act shall be interpreted in any way to deprive any person of any right to bring a proceeding in a court in any jurisdiction in Canada against any entity for wrongs alleged outside Canada.
- 7.3) Where a legal proceeding on a matter substantially similar to the matter of an Ombudsperson investigation is initiated outside Canada, the Ombudsperson may suspend the investigation until the litigation has concluded by settlement or otherwise or decline to initiate the investigation if the action has been resolved or a decision has been issued, if, and only if, in the opinion of the Ombudsperson:
  - i. There is no unjustified delay in the proceedings outside Canada which, in the circumstances, is inconsistent with an intent to seek a just resolution of the action; and
  - ii. The proceedings outside Canada are conducted independently and impartially, and they were or are being conducted in a manner which, in

the circumstances, is consistent with an intent to seek a just resolution of the action; and

- iii. The proceedings outside Canada determined the liability of all the subjects of the investigation, and not only the liability of one subject, or a third party.

- 7.4) For greater clarity, a proceeding instituted by, or on behalf of, or paid for by, the subject of an investigation, or an entity, its affiliate, a subsidiary or a third party with which the entity or its affiliate or subsidiary is in a material contractual relationship is not an action in a court in any jurisdiction in Canada, or a legal proceeding outside Canada, for the purposes of this Act.

## **8. Investigatory Powers of Ombudsperson**

- 8.1) In conducting an investigation, the Ombudsperson shall take appropriate measures to ensure effective investigations, and in doing so, shall respect the interests and personal circumstances of complainants, harmed individuals, and witnesses, including age, gender, and health, and take into account the nature of any harm alleged, in particular where it involves sexual violence, gender violence or violence against children.

- i. The Ombudsperson shall establish and make available procedural rules for:

- 1. the investigation of sexual violence, reflecting international best practice including the Rules of Procedures and Evidence of the International Criminal Court, which prohibit questioning about prior or subsequent sexual conduct, and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict;
    - 2. investigations involving children;
    - 3. the protection of the safety, physical and psychological well-being, dignity and privacy of harmed individuals and witnesses.

- ii. Before issuing procedural rules under this section, the Ombudsperson shall post a Notice of draft procedural rules on the website of the Ombudsperson, and invite comment on the draft before they are finalized and issued.

- 8.2) In the course of an investigation under this Act, the complainant, and the subjects of an investigation shall be given an opportunity to make representations to the Ombudsperson, and may be represented by a representative of their choice in making representations, but no one is entitled as of right to be present during representations made to the Ombudsperson by any other person.
- 8.3) In the course of an investigation under this Act, the Ombudsperson may rely on extrinsic reports or other information.
- 8.4) Within 30 days of the issuance of the Notice of Investigation under Part 6, the Ombudsperson shall make a formal request to any complainant; to the subject(s) of an investigation; to the individuals who suffered or may suffer the alleged harm; and any other interested parties, for any and all information, document or physical evidence relating to the subject matter of the investigation.

- i. The request shall be made in writing, and published on the website of the Ombudsperson.
- 8.5) Within 60 days of receiving the request described in section 4 of this Part, every recipient of a request shall respond to the letter in writing.
  - i. Such response shall:
    - 1. List the documents and the physical evidence provided in response to the request;
    - 2. Identify any document, part of a document, or physical evidence which has been provided, over which there is a claim of confidentiality or privilege under Part 10;
    - 3. List the persons to whom the Ombudsperson should speak to obtain further information about the investigation, including persons outside of Canada;
    - 4. Identify any exclusions from the request and the rationale for their exclusion;
    - 5. List the Codes of Conduct, if any, to which the recipient of the letter is a party, and any relevant Corporate Codes of Conduct.
  - ii. Any document or physical evidence provided to the Ombudsperson shall be included with the response, or otherwise promptly forwarded to the office of the Ombudsperson;
  - iii. Recipients of a request may provide detailed information relating to the investigation in the form of a written statement.
- 8.6) Where the Ombudsperson has reason to suspect that the destruction of evidence relevant to the investigation may occur, the Ombudsperson may forego the formal requests under section 4 of this Part.
- 8.7) The Ombudsperson may disclose to the Attorney General of Canada information relating to the commission of an offence against a law of Canada if, in the Ombudsperson's opinion, there is evidence of such offence.
- 8.8) The Ombudsperson may disclose to a foreign official, information he or she has obtained through an investigation if he or she has reason to believe the information relates to the commission of an offence under the law of the relevant foreign jurisdiction.

#### **Search Warrant**

- 8.9) Where a justice is satisfied by an information on oath submitted by the Ombudsperson to the justice by telephone, or in writing, that there are reasonable grounds to believe that there is in a building, receptacle or place, anything that there are reasonable grounds to believe will assist the Ombudsperson in his or her investigation of harm(s)
  - He or she may, at any time issue a warrant authorizing the Ombudsperson to search the building, receptacle or place for any such thing and to seize it, and
    - i. subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division;

- ii. If the building, receptacle or place is in another territorial division, the justice may issue the warrant with any modifications that the circumstances require, and it may be executed in the other territorial division, after it has been endorsed by a justice who has jurisdiction in that territorial division. The endorsement may be made on the original of the warrant or on a copy of the warrant transmitted by any means of telecommunication;
- iii. Where the Ombudsperson is authorized under this section to search a computer system in a building or place for data, he or she may:
  - (a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;
  - (b) reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;
  - (c) seize the print-out or other output for examination or copying;
  - and
  - (d) use or cause to be used any copying equipment at the place to make copies of the data.
- iv. Every person who is in possession or control of any building or place in respect of which a search is carried out under this section shall, on presentation of the warrant, permit the person carrying out the search:
  - (a) to use or cause to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this section to search for;
  - (b) to obtain a hard copy of the data and to seize it; and
  - (c) to use or cause to be used any copying equipment at the place to make copies of the data.

#### **Production Order**

- 8.10) On ex parte application made by the Ombudsperson or public officer, a justice may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing information that is in their possession or control at that time.
  - i. Before making the order, the justice must be satisfied by information on oath that there are reasonable grounds to believe that
    - (a) harm(s), as defined in this Act, has or have been or may be committed; and
    - (b) the document or data is in the person's possession or control and will afford evidence respecting the harm(s) under investigation.

#### **Investigative Interview**

- 8.11) The Ombudsperson may, for the purposes of furthering an investigation, apply ex parte to a judge for an order for the gathering of information.
- 8.12) The judge to whom the application is made may make an order for the gathering of information if they are satisfied that:

- (i) there are reasonable grounds to believe that harm(s), as defined in this Act, has or have been or may be committed;
  - (ii) information concerning the harm(s) is or are likely to be obtained as a result of the order; and
  - (iii) reasonable attempts have been made to obtain the information by other means.
- 8.13) An order made under section 11 of this Part shall order the examination, on oath or not, of the person named in the order and require the person to attend at the place fixed by the judge, or the judge named in subsection (ii) for the examination and to remain in attendance until excused by the presiding judge, and may:
  - i. order the person to bring to the examination any thing in their possession or control, and produce it to the presiding judge;
  - ii. designate another judge as the judge before whom the examination is to take place; and
  - iii. include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any ongoing investigation.
- 8.14) No answer given or thing produced in a proceeding under section 11 of this Part shall be used or received in any criminal proceedings against that person, save prosecution for perjury.
- 8.15) Evidence derived from the evidence provided at a hearing under section 11 of this Part may not be presented in evidence against the witness in another prosecution even if the Crown is able to establish, on a balance of probabilities, that it would have inevitably discovered the same evidence through alternative means.

## **9. Information-gathering in foreign jurisdictions**

- 9.1) Where the law of a foreign state does not prohibit it, the Ombudsperson may gather information in furtherance of his or her investigation, in a foreign state.
- 9.2) Where an investigation requires the Ombudsperson to gather information or meet with individuals in a foreign jurisdiction, he or she will inform the foreign government of his or her meeting and information-gathering activities.
- 9.3) In gathering information in foreign jurisdictions, the Ombudsperson shall endeavour to enter into mutual assistance agreements, letters rogatory, or other like legal agreement, with local authorities.
- 9.4) For greater clarity, the Ombudsperson shall not participate in law enforcement activities in any foreign jurisdiction.

## **10. Confidentiality claims**

- 10.1) If the Ombudsperson is satisfied, on a balance of probabilities, that any information or evidence, or the source of any information or evidence, received or obtained in the course of his or her investigation is:
  - i. personal information as defined in the Privacy Act or in any provincial or territorial privacy act; or

- ii. commercially sensitive; or
- iii. litigation or solicitor-client privileged;

The Ombudsperson shall undertake to protect the confidentiality of the evidence or information, or the source of the information or evidence.

- 10.2) If the Ombudsperson has reason to suspect that the publication of any evidence, information, the name of a complainant, or the source of any evidence or information, might endanger the safety of an individual or group of individuals, the Ombudsperson shall undertake to protect the confidentiality of the evidence or information, part thereof, or the source of the information or evidence.
- 10.3) If the Ombudsperson has reason to suspect that the publication of any evidence, information, or the source of any evidence or information may interfere in, or be put to a use that would constitute an abuse of the Ombudsperson process, in a separate legal proceeding, the Ombudsperson shall undertake to protect the confidentiality of the evidence or information, part thereof, or the source of the information or evidence.
- 10.4) For greater clarity, where the Ombudsperson has undertaken to protect the confidentiality of any evidence, or information, or part thereof, or the source of any information or evidence, then the information, evidence or source of information or evidence shall not be compellable to be produced in any criminal or civil proceeding in Canada or elsewhere.
- 10.5) Any recipient of a request for evidence or information from the Ombudsperson may request that all or part of the evidence or information he or she is providing to the Ombudsperson be kept confidential, or that the source of the evidence or information be kept confidential.
  - i. The Ombudsperson shall respond to any request made under this section in writing.
- 10.6) The Ombudsperson may decline to undertake to protect the confidentiality of evidence or information if the Ombudsperson is of the opinion that the public interest in disclosure outweighs the claim to confidentiality.
  - i. Any person who is affected by a refusal by the Ombudsperson under this section may apply to Federal Court for a ruling.

## **11. Mediation - Settlement**

- 11.1) Subject to section 2 of this Part, the Ombudsperson may attempt to resolve issues under investigation by means of dispute resolution mechanisms such as mediation and conciliation.
  - i. The Ombudsperson may delegate the powers listed under this Part to a mediator.
- 11.2) The powers in section 1 of this Part may be exercised if and only if:
  - i. The complainant and one or more subject(s) of the investigation give their informed consent to mediation or conciliation; and
  - ii. The matter under investigation is, in the opinion of the Ombudsperson, appropriate for mediation; and



- iii. The complainant involved in the mediation is a directly affected party, and in the opinion of the Ombudsperson, is well-suited to represent the individuals affected by the harm under investigation; and
  - iv. The investigation of the complaint has been carried out to such an extent that, in the opinion of the Ombudsperson, the relevant facts are before the parties; and
  - v. No more than 90 days have elapsed since the complainant and the entities consented to mediation or conciliation;
    - 1. On consent of the complainant and the subjects to an investigation, the Ombudsperson may agree to extend the mediation or conciliation period for a further 30 days, as many times as the parties consent.
- 11.3) A complainant or subject of an investigation may make a request to the Ombudsperson for meditation or conciliation at any time.
- 11.4) Any party to a mediation or conciliation may be represented by a representative or representatives of their choice.
- 11.5) The Ombudsperson may enter into legal arrangements to pay for the reasonable legal expenses of a complainant or group of complainants participating in mediation or conciliation under this Part.
- 11.6) Where a settlement of a complaint is agreed to, made in writing, signed by the parties to the settlement, and approved by the Ombudsperson, the settlement is binding upon the parties to the settlement, and the party alleging breach may apply to the Federal Court for enforcement.
- 11.7) In exercising his or her discretion to approve any settlement in this section, the Ombudsperson shall have regard to:
- i. The Ombudsperson's mandate to promote gender-sensitivity;
  - ii. The Ombudsperson's mandate to promote full reparation for harm(s);
  - iii. The Ombudsperson's mandate to promote the avoidance of harm(s);
  - iv. The Ombudsperson's mandate to promote meaningful participation by individuals, groups and communities in decisions affecting them; and
  - v. The capacity of the parties to the settlement to express their informed consent to the terms of the settlement.
- 11.8) The parties to a settlement may, as an alternative to the Ombudsperson report under Part 13, and with the approval of the Ombudsperson, agree to a written summary of the complaint, the investigation and the settlement.
- i. Any such summary shall be posted promptly on the website of the Ombudsperson;
  - ii. In exercising his or her discretion to approve any written summary in this section, the Ombudsperson shall have regard to the Ombudsperson's public interest mandate to improve transparency and accountability for entities and their affiliates.

## **12. Discontinuance of Investigation**

- 12.1) The Ombudsperson may discontinue an investigation if the Ombudsperson is of the opinion that

- i. The parties have entered into a settlement in accordance with the requirements in Part 11 of this Act and the Ombudsperson is of the view that no compelling reason remains to continue the investigation; or
  - ii. The Ombudsperson has completed the investigation and complied with the procedures under Part 13 of this Act; or
  - iii. The Ombudsperson has completed the investigation, and is of the opinion that the provisions of Part 13 section 1 do not apply, and that no compelling reason remains to continue the investigation.
- 12.2) Where the Ombudsperson discontinues an investigation pursuant to section 1 of this Part, the Ombudsperson shall:
- i. Notify the complainant, if any, of the discontinuance and the reason therefor;
  - ii. Notify the subjects of the investigation of the discontinuance and the reason therefor;
  - iii. Publish a summary of the investigation on the website of the Ombudsperson, unless a report has been prepared pursuant to Part 13 or Part 11 of this Act in which case that summary shall be published on the website of the Ombudsperson.

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### 13. Procedure after Investigation

- 13.1) In every case where, after making an investigation under this Act, the Ombudsperson is of the opinion that:
- i. A subject of the investigation has, by act or omission, caused or contributed to harm, in a foreign state; or
  - ii. There is a significant risk that a subject of the investigation will, by act or omission, cause or contribute to harm, in a foreign state, and the entity or its affiliate has not exercised reasonable due diligence to mitigate the risk;
  - iii. A third party with which a subject of the investigation is in a material contractual relationship has, by act or omission, caused or contributed to harm, in connection with the material contractual relationship, in a foreign state, and a subject of the investigation, knew or ought to have known at any time that the third party would or did cause harm; or
  - iv. There is a significant risk that a third party with which a subject of the investigation is in a material contractual relationship will, by act or omission, cause or contribute to harm, in connection with the material contractual relationship, in a foreign state, and a subject of the investigation, or the third party has not exercised reasonable due diligence to mitigate the risk;
- The Ombudsperson shall issue a public report with his or her opinion, and the reasons therefor, and may make such recommendations as he or she thinks fit.
- 13.2) In forming and reporting on his or her opinion regarding an alleged infringement of human rights, the Ombudsperson shall have reference to the practice of competent international bodies, and to:
- i. the Rio Declaration on Environment and Development;

- ii. the UN Guiding Principles on Business and Human Rights;
  - iii. the Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox: "Mapping report" (Human Rights Council).
- 13.3) In forming and reporting on his or her opinion under this Part, the Ombudsperson may also consider international norms including but not limited to:
- i. OECD Guidelines on Multinational Enterprises;
  - ii. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas;
  - iii. OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector;
  - iv. IFC Performance Standards on Environmental and Social Sustainability; Guidance Notes to those standards; the World Bank Group's Environmental, Health and Safety General Guidelines;
  - v. Voluntary Principles on Security and Human Rights;
  - vi. Sustainability reporting guidelines of the Global Reporting Initiative; and
  - vii. Any international Codes of Conduct, or Corporate Codes of Conduct, which the entity or affiliate has signed on to or adopted.
- 13.4) In his or her report under this Part, the Ombudsperson may make any recommendation of any kind, to any person, or any agency and body of the Government of Canada, including but not limited to:
- i. recommendations to a subject of the investigation, or a third party, regarding remedy and reparations for the harm(s) done;
  - ii. recommendations to a subject of the investigation, or a third party, regarding steps to be taken in the case under investigation to prevent further harm(s);
  - iii. recommendations to a subject of the investigation, or a third party, regarding steps to be taken in all its operations to avoid harm(s);
  - iv. recommendations to the complainant, a subject of the investigation, or a third party, regarding steps they might consider to resolve any conflict arising from the project;
  - v. recommendations to the Government of Canada or any governmental department or agency, regarding any acts or omissions in the case under investigation, or any practice, law or policy on which the act or omission was based, or the need for any practice;
  - vi. recommendations for further investigation by a separate authority or body, as appropriate;
  - vii. recommendations to a subject of the investigation regarding consultations in the project at issue, and policies and practices to meaningfully consult on this and other projects in the future.
- 13.5) The Ombudsperson shall specify a timeframe for the implementation of every recommendation made under this Part.
- 13.6) Any person, or any agency and department of the Government of Canada, who is the subject of a recommendation under this Part shall notify the Om-

budsperson, within the timeframe given, in writing, of the steps taken to give effect to each recommendation under this Part.

- i. After receiving the notice under this section, the Ombudsperson shall solicit the perspective of any complainant and other affected individuals on the steps taken to give effect to each recommendation under this Part.
- 13.7) The Ombudsperson shall issue a follow-up report, summarizing his or her opinion on the progress made in implementing the recommendations of his or her report under this Part, within 6 months of the latest deadline for a recommendation in its report under this Part.
- 13.8) Any report or follow-up report of the Ombudsperson under this Part shall be delivered to any and every person named in any report or recommendation under this Part, to any person named in a complaint, to any complainant, and to any person named in a Notice of Investigation under Part 6.
- 13.9) Any report or follow-up report of the Ombudsperson under this Part shall be delivered to the international corporate social responsibility standards-monitoring bodies, complaint mechanisms, and other institutions that have an interest in, and role in promoting, responsible and sustainable operations by extractive industry entities, as prescribed in regulation.
- 13.10) Any report or follow-up report of the Ombudsperson under this Part shall be published on the website of the Ombudsperson, and in the *Canada Gazette*, within 18 months of the issuance of the Notice of Investigation under Part 6.
  - i. The Ombudsperson may, in his or her discretion, extend the timeframe for the publication of the report when the investigation requires it;
  - ii. When the Ombudsperson exercises his or her discretion to extend the timeframe for the publication of the report, a notice of extension and reasons for extension shall be posted on the website of the Ombudsperson.
- 13.11) The Ombudsperson shall cause any report or follow-up report under this Part to be laid before both Houses of Parliament.
  - i. A committee of the House of Commons as may be designated or established by the House of Commons for that purpose shall review the report and submit a report on the review to the House of Commons within 60 days.
- 13.12) No adverse finding shall be made against any person until reasonable notice of the proposed finding has been given, and the person has been allowed the full opportunity to respond in writing. The Ombudsperson may, on request, grant an in person hearing.

#### **14. Public Support for Entities in Foreign Jurisdictions:**

- 14.1) This Part applies in every case where, after making an investigation under this Act the Ombudsperson is of the opinion that:
  - i. A subject of an investigation has, by act or omission, caused or contributed to harm(s), in a foreign state; or
  - ii. there is a significant risk that a subject of an investigation will, by act or omission, cause or contribute to harm(s), in a foreign state, and the sub-

ject of the investigation has not exercised reasonable due diligence to mitigate the risk;

- iii. a third party with which a subject of the investigation is in a material contractual relationship has, by act or omission, caused or contributed to harm(s), in connection with the material contractual relationship in a foreign state, and the subject of an investigation, knew or ought to have known at any time that the third party would or did cause harm; or
- iv. there is a significant risk that a third party with which a subject of an investigation is in a material contractual relationship will, by act or omission, cause or contribute to harm(s), in connection with the material contractual relationship, in a foreign state, and the subject of the investigation, or the third party has not exercised reasonable due diligence to mitigate the risk.

14.2) If, in any case to which this Part applies, the Ombudsperson is

- i. not satisfied that the subject of the investigation did or is undertaking all reasonable steps to comply with the terms of a settlement under Part 11, or any recommendations made under Part 13, whichever applies; or
- ii. of the opinion that the harm(s) done were of such a serious nature that it would be inappropriate for the Government of Canada to provide a support or subsidy, or promote or protect the subject of the investigation

the Ombudsperson may recommend to any and all government agencies or departments, that they withdraw any existing support or subsidy, and terminate any promotion or protection of the subject of the investigation or the project in which the harm(s) occurred for a stipulated period, or until specified conditions are met. The Ombudsperson may recommend that the subject of the investigation or the project in which the harm(s) occurred be ineligible for future support, subsidy, promotion or protection for a stipulated period or until specified conditions are met.

14.3) The Ombudsperson may make a recommendation under this section at any time after, or at the same time as, the issuance of a report under Part 13;

- i. The Ombudsperson shall, in making a recommendation under this Part, stipulate a timeframe within which the recommendation is to be implemented by the government agency or department;
- ii. A recommendation under this Part shall be made in a written report, and the Ombudsperson shall cause the report to be laid before both Houses of Parliament, posted on the website of the Ombudsperson, and published in the Canada Gazette;
- iii. A committee of the House of Commons as may be designated or established by the House of Commons for that purpose shall review the report and submit a report on the review to the House of Commons within 60 days.

14.4) If in the opinion of the Ombudsperson, a government agency or department to which he or she has issued a recommendation under this Part has failed to implement that recommendation within the stipulated timeframe, the Ombudsperson may serve the body with a Notice of Non-Compliance requiring it to

provide within 30 days reasons consistent with the objects of the Ombudsperson Office for its failure to implement the recommendation, or to establish that it has complied with the notice.

- 14.5) On receipt of a government agency or department's response to a Notice of Non-Compliance under section 4 of this Part, or 30 days after the Notice of Non-Compliance, whichever comes first, the Ombudsperson may apply to Federal Court for judicial review of the reasonableness of the government agency or department's response.
  - i. Where the Ombudsperson makes an application under this section for a judicial review of a failure to implement a recommendation, any complainant may appear as a party to the review.
    1. The Ombudsperson may enter into legal arrangements to pay for the reasonable legal expenses of a complainant or group of complainants acting as a Party under this Part.
  - ii. The head of a government agency or department who has failed to implement a recommendation under this Part shall forthwith on being given notice of any application made under this section give written notice of the application to any third party that may be affected by the review;
  - iii. Any third party that has been given notice of an application for a review under this section may appear as a party to the review;
  - iv. An application made under this section shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to section 46 of the Federal Courts Act.

## **15. Conflict of Interest**

- 15.1) No Ombudsperson, or Assistant Ombudsperson shall beneficially own, directly or indirectly, any shares of any entity, holding company, insurance holding company, or of any other body corporate, however created, which could be the subject of a complaint to the Ombudsperson, unless those shares are held in a blind trust.
- 15.2) The Ombudsperson, or Assistant Ombudsperson shall not accept or receive, directly or indirectly, any grant or gratuity from an entity, holding company, insurance holding company, or from a director, officer or employee of any of them, and no such extractive industry company, holding company, insurance holding company, external complaints body, director, officer or employee shall make or give any such grant or gratuity.

## **16. Review Clause**

- 16.1) At the start of the fifth year after the day on which this Act receives royal assent, the provisions enacted by this Act shall be referred to the Committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for the purpose of reviewing the provisions.
- 16.2) The Committee to which the provisions are referred is to review them and submit a report to the House or Houses of Parliament of which it is a Committee, including a statement setting out any changes to the provisions that the Committee recommends.

**Schedule 1:**

- i. the nine core human rights treaties:
  - 1. the International Covenant on Civil and Political Rights (ICCPR);
  - 2. the International Covenant on Economic, Social and Cultural Rights (ICESCR);
  - 3. the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
  - 4. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
  - 5. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
  - 6. Convention on the Rights of the Child (CRC);
  - 7. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW);
  - 8. Convention on the Rights of Persons With Disabilities (CRPD);
  - 9. the International Convention for the Protection of All Persons from Enforced Disappearance (CED);
- ii. the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- iii. International Labour Organization Convention 169, the Indigenous and Tribal Peoples Convention;
- iv. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;
- v. the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- vi. the Geneva Conventions;
- vii. the 8 core international Labour Organization Conventions:
  - 1. the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ;
  - 2. the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ;
  - 3. the Forced Labour Convention, 1930 (No. 29) ;
  - 4. the Abolition of Forced Labour Convention, 1957 (No. 105) ;
  - 5. the Minimum Age Convention, 1973 (No. 138) ;
  - 6. the Worst Forms of Child Labour Convention, 1999 (No. 182) ;
  - 7. the Equal Remuneration Convention, 1951 (No. 100) ;
  - 8. the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

**Consequential Amendments:**

To a range of Acts dealing with various forms of support, subsidy, promotion, protection of entities, including Export Development Canada, Foreign Affairs Act, etc.

Amendment to the Access to Information Act, creating a mandatory exemption for information covered by the confidentiality provisions in Part 10.

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This is Exhibit "C" referred to in  
the Affidavit of Beatrice Olivastri,  
sworn April 4, 2018

A handwritten signature in cursive script, appearing to read "Stephen Hazell", written over a horizontal line.

A Commissioner for taking Affidavits

Stephen Hazell. LSUC 23466Q



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76

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- Issues
  - The Bee Cause
    - Let It Bee
    - Great Canadian Bumble Bee Count
  - Environmental Justice
    - Corporate Accountability and Mining
    - Environmental Defenders
  - Climate Change and Energy
    - Time to Climate-Risk-Proof the CPP
  - Water
  - Biodiversity
- Take Action
- Blog
  - Lifestyle
  - Policy
  - Archive
    - 2017 Blog Posts
    - 2016 Blog Posts
    - 2015 Blog Posts
    - 2014 Blog Posts
    - 2013 Blog Posts
- Media
  - 2017 Media releases
  - In The News
  - Archive
    - 2016 Media Releases
    - 2015 Media Releases
    - 2014 Media Releases
    - 2013 Media Releases
    - 2012 Media Releases
    - 2011 Media Releases
    - 2010 Media Releases
    - 2009 Media Releases
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    - 2007 Media Releases
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## On Eve of Enforcement Trial, Canada's Civil Society Calls for Chevron's Assets To Be Frozen So Ecuador Judgment Can Be Paid

Filed in [2016 Media Releases](#), [Corporate Accountability and Mining](#), [Environmental justice](#) by [Friends of the Earth](#) on September 7, 2016



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77

## **Canadian environmental justice, labor, human rights, and First Nations groups blast Chevron and call for justice for Ecuadorians**

September 7, 2016 (Toronto, ON ) Some of Canada's largest environmental, labor and civil society organizations have now joined the growing international community demanding that Chevron clean up its toxic waste in the Ecuadorian Amazon and cease selling its assets in Canada while a debt collection action proceeds to force the company to comply with its US \$10 billion liability to the people of Ecuador.

In a [public letter released today](#), more than one dozen Canadian organizations -including Friends of the Earth, Greenpeace, Idle No More Canada, MiningWatch, Sierra Club and Sierra Club British Columbia, United Steelworkers, and Unifor -condemned Chevron not only for its actions in Ecuador, but its efforts to silence critics and abuse the civil justice system to evade paying the Ecuador judgment. The letter was published less than a week before a trial is scheduled to begin in Toronto to seize Chevron's assets in Canada to force the company to comply with its liability to remediate what many call the "Amazon Chernobyl" in Ecuador. Chevron confessed to deliberately dumping billions of gallons of toxic oil drilling waters over the course of decades in Ecuador's Amazon, resulting in massive environmental devastation and a health crisis affecting thousands of people.

Every court that has considered the evidence in Ecuador – including the country's Supreme Court — ruled against Chevron, yet the company still refuses to pay and has dragged out multiple legal battles in different countries over the course of decades to avoid paying for a cleanup. As a result, the communities in Ecuador affected by the pollution have been forced to pursue Chevron to Canada to collect on the company's debt.

The letter also calls on Canadian authorities to prevent Chevron from selling any of its Canadian assets before a decision can be reached in the trial, stating that it "would set a terrible precedent for other corporations intending to evade responsibility for environmental and human rights crimes." It has been reported recently that [Chevron is already trying to sell several billions of dollars worth](#) of its estimated US \$15 billion in Canadian assets. Chevron, after insisting the trial take place in Ecuador and promising to abide by any judgment there, stripped its assets from the country as the evidence mounted against it. The trial in Ecuador lasted from 2001 to 2013, largely because of the company's deliberate strategy of delay.

"The global community knows Chevron is guilty of deliberate and massive contamination in Ecuador," said Paul Paz y Miño, Associate Director of Amazon Watch. "Wherever Chevron runs to try to escape justice, the company will find itself already exposed as a global polluter and corporate criminal."

"The Canadian environmental and human rights community has joined forces with the affected communities in Ecuador because we recognize this to be one of the most important corporate accountability cases in history," said Melina Laboucan-Massimo Climate & Energy Campaigner with Greenpeace Canada. "Chevron must not be allowed to evade its legal and moral responsibilities simply because it has the right to fight on indefinitely in the courts," she continued.

"Canadians want justice for Ecuador's indigenous people. Prime Minister Trudeau should help them get it," added Beatrice Olivastri, CEO, Friends of the Earth Canada. "Canadians are working to make our country a place where the victims of transnational corporations can find justice — not to deny justice to people who have already suffered so much harm," said Jamie Kneen, Communications and Outreach Coordinator of MiningWatch Canada.

"For too long oil companies have operated with impunity, leaving a legacy of environmental destruction and human rights abuses," said Sierra Club BC campaigns director Caitlyn Vernon. "Whether in Canada or around the world, oil companies such as Chevron, Enbridge and Kinder Morgan must be held accountable for oil spills, climate change impacts and their treatment of local and indigenous populations."

"The people of Canada are not fooled by Chevron's tactic of smearing the very people it poisoned in an attempt to escape justice for crimes it admitted to in Ecuador," said Kevin Koenig, Amazon Watch's Ecuador Program Director. "The Supreme Court of Canada sided with the Ecuadorians unanimously and we expect Chevron will lose once again."

"Unlike Chevron's retaliatory [SLAPP suit in the United States \(also condemned by many human rights and environmental NGOs\)](#), the company will have to respond in Canada based on the merits of the case and its actual conduct in Ecuador," Koenig added. "Chevron stands no chance of winning on those grounds. It's time for the company's management team to stop delaying the inevitable, because every day it drags this case on more Ecuadorians get sick and die from toxic contamination and the more the company's own reputation suffers."

"We are grateful that the people of Canada, just like their Supreme Court, have chosen to side with those of us affected by Chevron's deplorable actions when it polluted our communities and water supply. The indigenous peoples of Ecuador deserve full access to justice and a healthy environment so that we and our Amazonian neighbors can live with dignity," said Humberto Piaguaje, President of the Union of Affected Communities in Ecuador who will be in attendance.

**For more information contact:**

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**Tags:** [Amazon Chernobyl](#), [Chevron](#), [contamination](#), [corporate accountability](#), [Ecuador Amazon](#), [environmental justice](#), [human rights](#), [mining](#), [oil spills](#), [Supreme Court](#), [toxic waste](#)

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YAIGUAJE et al  
Plaintiffs and CHEVRON CORPORATION et al  
Defendants

Court File No.: CV-12-9808-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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