**RESPONSE SUBMISSION TO THE DRAFT REPORT OF THE PUBLIC INQUIRY INTO ANTI-ALBERTA ENERGY CAMPAIGNS**

**Submitted by**
**ECOJUSTICE CANADA SOCIETY**

**July 16, 2021**

1. On June 18, 2021, Ecojustice Canada Society ("Ecojustice") received a Notice to Participant for Response ("Notice") from J. Stephens Allan, Commissioner of the Public Inquiry into Anti-Alberta Energy Campaigns ("Inquiry") granting Ecojustice standing as a Participant for Response and inviting Ecojustice to make a submission with respect to the potential findings of the Inquiry by July 16, 2021.

2. This document is Ecojustice's submission to the Inquiry in partial response to the Notice. Ecojustice submits that the Commissioner erred in finding that Ecojustice "opposes the development of Alberta's oil and gas resources on a general basis and, as such, constitutes an anti-Alberta energy campaign."

3. Ecojustice seeks a formal ruling from the Commissioner that Ecojustice did not participate in an "anti-Alberta energy campaign". We further request that any reference to Ecojustice participating in an anti-Alberta energy campaign be removed from the Report.

## Background

4. Ecojustice received the Notice on June 18, 2021. On June 21, 2021, legal counsel for Ecojustice wrote to the Commissioner requesting that the Commissioner confirm that the Notice was not a notice pursuant to section 13 of the Alberta *Public Inquiries Act*, RSA 2000, c P-39 ("*Act*") and expressing concern about the limited time to respond to evidence presented to Ecojustice very late in the Inquiry process despite previous requests by Ecojustice for access to the Inquiry record.

5. On June 25, 2021, the Commissioner responded to Ecojustice by letter confirming that the Notice was not a notice pursuant to section 13 of the *Act* and indicating that the records relied on by the Commissioner would be made available by June 29, 2021.

6. On June 25, 2021, counsel for Ecojustice wrote again to the Commissioner indicating that it would be difficult to meet the Commissioner's July 16, 2021 deadline given that the documents had not yet been posted in the Dataroom and referencing the vacation schedules of Ecojustice's Executive Director and legal counsel. Ecojustice requested an extension until July 30, 2021 to complete an initial review of the relevant documents and indicate their intention to provide a response to the Notice.

7. On June 27, 2021, the Commissioner wrote to Ecojustice denying the request for a time extension and confirming again that the Commissioner did not intend to make any findings of

misconduct against Ecojustice. However, the Commissioner indicated that Ecojustice had been identified as being potentially involved in an anti-Alberta energy campaign.

8. A partial draft of the Commissioner's report was made available in a Dataroom on June 29, 2021. A further posting of information specific to Ecojustice was made available in the Dataroom on July 2, 2021. Therefore, Ecojustice had only 10 working days to respond to the draft documents.

9. This submission deals only with the Commissioner's error in finding that Ecojustice participated in an anti-Alberta energy campaign. Ecojustice has not been granted sufficient time to determine the accuracy of the alleged quotes from its website found at paragraphs 2, 4, 6 and 12 of Part III with respect to Ecojustice. However, on initial review, Ecojustice notes that the alleged quote found at paragraph 2 misquotes the Ecojustice website and wrongly conflates the Sierra Club Legal Defence Fund ("SCLDF") with the Sierra Legal Defence Fund ("SLDF"). Further, Ecojustice has not been granted sufficient time to review and confirm the funding information in paragraph 10 of Part III.

10. In his letter of June 27, 2021, the Commissioner indicated that he was open to consider any concerns that Ecojustice may have after having reviewed the material posted in the Dataroom. If the Commissioner concludes that Ecojustice did not participate in an anti-Alberta energy campaign and agrees to remove any such reference from the Report, then that ends the matter. If the Commissioner continues to allege that Ecojustice participated in an anti-Alberta energy campaign, then Ecojustice requires and formally requests an additional 30 days to complete a full review of the draft Report and respond to the Commissioner's evidence.

**Submissions**

11. In Part III of the draft Report dealing specifically with Ecojustice, the Commissioner finds that Ecojustice "opposes the development of Alberta's oil and gas resources on a general basis and, as such, constitutes an anti-Alberta energy campaign." This conclusion is based almost entirely on the Commissioner's review of material found on Ecojustice's website, much of which was intended as generic information for the public and Ecojustice supporters. The quoted passages, taken out of context, do not reflect the specifics of Ecojustice's legal work with respect to the Alberta oil and gas sector. At no point in the 24-month Inquiry process, prior to June 18, 2021, did the Commissioner interview any Ecojustice representative or invite specific information from Ecojustice with respect to its activities.

12. The Terms of Reference for the Inquiry define an "anti-Alberta energy campaign" as:

> Attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta's oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information.

13. In his September 14, 2020 Ruling on the Interpretation of the Terms of Reference ("Ruling"), the Commissioner stated, with respect to the definition of an "anti-Alberta energy campaign":

> Second, I do not interpret it to be my role to determine whether a particular project is "economic, efficient and responsible". Alberta and Canada have regulatory frameworks set up to make these determinations, which I do not interpret as my mandate to duplicate. Moreover, the Commission does not have the resources or time necessary to review the merits of individual projects at the regulatory level. Accordingly, I will proceed from the basis that some level of oil and gas development in Alberta is "economic, efficient and responsible" and focus on opposition to development Alberta's oil and gas resources in a broad and general sense.

14. Further, in his Ruling, the Commissioner stated:

> For clarity, I do not consider that a party is attempting to oppose the development of Alberta's oil and gas resources in a broad and general sense solely by reason of such party opposing a discrete aspect of a specific project, or by isolated opposition on specific grounds to a particular project (such as where a party's interests in land or traditional rights may be directly affected).

15. On October 13, 2020, Professor Martin Olszynski requested a reconsideration of the Commissioner's interpretation of the phrase "the timely, economic, efficient and responsible development of Alberta's oil and gas resources". Professor Olszynski argued that the Commissioner's interpretation amounted to a breach of procedural fairness in that it deprives potentially named groups of an important defence to any adverse findings or findings of misconduct, namely that they were not opposed to timely, economic, efficient, and responsible development but rather to uneconomic, inefficient, and irresponsible development.

16. On October 30, 2020, the Commissioner refused Professor Olszynki's request for reconsideration, primarily repeating his earlier ruling.

17. However, the Commissioner's Ruling and position with respect to the definition of an "anti-Alberta energy campaign" allows for three propositions:

> (a) a ruling that "some level of oil and gas development in Alberta is economic, efficient and responsible" leads to the corollary that some level of oil and gas development in Alberta may not be "economic, efficient or responsible";
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> (b) some specific oil and gas developments may not be "timely, economic, efficient or responsible"; and
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> (c) a party opposing a discrete aspect of a specific project is not participating in an anti-Alberta energy campaign.

18. Professor Martin Olszynski submitted evidence to the Inquiry supporting the first proposition. Professor Olszynski submitted six scientific reports establishing the negative environmental impacts of oil sands development.[1] However, the draft Report contains no reference to these negative impacts.

19. The Commissioner's conclusion that Ecojustice participated in an anti-Alberta energy campaign based on general information from Ecojustice's website and without any communication with Ecojustice on this issue prior to June 18, 2021 is not supportable. The draft Report suggests that Ecojustice opposed Alberta oil and gas development "on a general basis" simply for the purpose of opposing such development. That is not accurate. Ecojustice's mission is to represent clients using the courts and power of the law to defend nature, combat climate change, and fight for a healthy environment for all. All of Ecojustice's work with respect to Alberta oil and gas development raised discrete and specific concerns about the lawfulness of an action or the potential environmental impacts of a development.

20. Ecojustice, its supporters and clients, share a commitment to protecting nature, climate and our communities from a range of activities and to upholding the rule of law. Ecojustice is committed to furthering "responsible development", in the words of the Terms of Reference. Ecojustice only accepts donations according to strict criteria, which include a condition that donors will not influence litigation priorities or strategic choices. Ecojustice's mission and its clients' interests, and not its donors or an alleged "anti-Alberta energy campaign", guide the work that it conducts. Rather than participating in an anti-Alberta energy campaign, Ecojustice's activities relative to Alberta oil and gas development fall into one of two categories:

> (a) representing environmental organizations, First Nations or individuals in statutorily-required regulatory processes to ensure that the potential environmental impacts of the proposed project are fully and properly considered; or
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> (b) ensuring that oil and gas operators and the provincial and federal government carry out their activities relative to oil and gas development in a lawful manner.

21. Ecojustice's record with respect to Alberta oil and gas development speaks for itself:

> (a) In 2006, Ecojustice represented the Pembina Institute and other parties in the Joint Review Panel proceeding with respect to the proposed Imperial Oil Kearl oil sands project. The clients raised specific concerns and presented evidence with respect to the impact of the project on species at risk, the greenhouse gas emissions from the project and the cumulative impacts of the project. Following the release of the Joint Review Panel report recommending approval of the project, Ecojustice represented the same parties in a judicial review of the report before the Federal Court. On judicial review, the Federal Court overturned the Joint Review Panel report, stating:
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> > The Panel dismissed as insignificant the greenhouse gas emissions without any rationale as to why the intensity-based mitigation would be effective

[1] Letter from Martin Olszynski to Commissioner Steve Allan re Section 25 Application regarding the Commissioner's Ruling on Interpretation, (13 October 2020).

> to reduce the greenhouse gas emissions, equivalent to 800,000 passenger vehicles, to a level of insignificance. Without this vital link, the clear and cogent articulation of the reasons behind the Panel's conclusion, the deference accorded to its expertise is not triggered.[2]

Ecojustice and its clients did not raise broad and general opposition to oil and gas development. They raised specific concerns that the proponent had failed to identify effective mitigation measures for its greenhouse gas emissions and that the Joint Review Panel had failed to justify its conclusion with respect to the significance of those greenhouse emissions. The proponent's and Joint Review Panel's failures, as confirmed by the Court, were not consistent with responsible energy development in the face of a climate crisis.

(b) In April 2008, 1600 ducks died in the Aurora settling pond at the Syncrude oil sands operation. In December 2008, following what appeared to be unreasonable delay by the Crown in bringing charges against Syncrude, Ecojustice represented an individual in commencing a private prosecution under the federal *Migratory Birds Convention Act* and the Alberta *Environmental Protection and Enhancement Act*. The prosecution of these offences was ultimately taken over by provincial and federal prosecutors. In June 2010, Judge Tjosvold of the Alberta Provincial Court found Syncrude guilty of both charges. Judge Tjosvold found that Syncrude failed to follow its own bird deterrent plan[3] and were late in setting out their bird deterrent cannons in the spring of 2008.[4] The Court concluded:

> Syncrude did not establish a proper system to ensure that wildlife would not be contaminated in the Aurora Settling Basin or take reasonable steps to ensure the effective operation of the system.[5]

Commencing the private prosecution was not broad and general opposition to Alberta oil and gas development. Rather, it was ensuring that Syncrude was held accountable for systemic failures in its bird deterrent system and for acting contrary to the law. Such failures cannot be consistent with responsible energy development.

(c) In 2011, Ecojustice represented the Athabasca Chipewyan First Nation, the Beaver Lake Cree Nation, the Enoch Cree Nation and certain environmental organizations in a case before the Federal Court alleging that the federal Minister of Environment had failed to prepare a recovery strategy, as required by the *Species at Risk Act*, for seven herds of Boreal caribou in northeastern Alberta that were being impacted by oil sands development. The parties also alleged that the Minister erred by failing to issue an emergency protection order for those herds pursuant to subsection 80(2) of the *Species at Risk Act*. Justice Crampton of the Federal Court found that the Minister, in refusing to issue an emergency protection order, had failed to consider the First Nations

[2] *Pembina Institute for Responsible Development v Canada (Attorney General)*, 2008 FC 302, at para 78.
[3] *R. v Syncrude Canada Ltd.*, 2010 ABPC 229, at paras 22-27.
[4] *Ibid*, at paras 114-155.
[5] *Ibid*, at para 128.

Applicants' Treaty Rights and the honour of the Crown in interpreting subsection 80(2) of the *Species at Risk Act*. Justice Campton stated:

> Considering all of the foregoing, and keeping in mind that "[i]nterpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown" (*Badger*, above), the Minister clearly erred in reaching his decision by failing to take into account the First Nations Applicants' Treaty Rights and the honour of the Crown in interpreting his mandate under subsection 80(2). The Decision therefore warrants being set aside on that basis alone.[6]

Justice Crampton deferred his decision on whether the Minister had failed to produce a recovery strategy for the herds within the required timeline as the Minister committed to release the recovery strategy within five weeks of the decision.[7]

This was not the clients' broad and general opposition to Alberta oil and gas development. This was a specific situation in which the Minister failed to meet his legal obligations with respect to protecting species at risk from the impacts of oil sands development. Such a gap cannot be consistent with responsible energy development.

(d) In 2012, Ecojustice represented the Oil Sands Environmental Coalition ("OSEC", consisting of the Pembina Institute and the Fort McMurray Environmental Association) in the Joint Review Panel proceedings with respect to the proposed Shell Jackpine oil sands project expansion. OSEC presented evidence on several issues including air emissions, greenhouse gas emissions, water management, water quality and impacts on wildlife, wetlands and old growth forests. The Joint Review Panel concluded:

> The Panel finds that the Project would likely have significant adverse environmental effects on wetlands, traditional plant potential areas, wetland-reliant species at risk, migratory birds that are wetland-reliant or species at risk, and biodiversity. There is also a lack of proposed mitigation measures that have been proven to be effective. The Panel also concludes that the Project, in combination with other existing, approved, and planned projects, would likely have significant adverse cumulative environmental effects on wetlands; traditional plant potential areas; old-growth forests; wetland-reliant species at risk and migratory birds; old-growth forest reliant species at risk and migratory birds; caribou; biodiversity; and Aboriginal traditional land use (TLU), rights, and culture. Further, there is a lack of proposed mitigation measures that have proven to be effective with respect to identified significant adverse cumulative environmental effects.[8]

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[6] *Adam v Canada (Minister of the Environment)*, 2011 FC 962, at para 35.
[7] *Ibid*, at para 73.
[8] Joint Review Panel for the Shell Jackpine Mine Expansion Project, *Report of the Joint Review Panel Shell Canada Energy Jackpine Mine Expansion Project Application to Amend Approval 9756 Fort McMurray Area*, (9 July 2015) (2013 ABAER 011), at para 9.

This was not broad and general opposition to Alberta oil and gas development. By participating in the Joint Review Panel process, OSEC raised specific and legitimate concerns about the environmental effects of the project that were confirmed by the Joint Review Panel and informed the ultimate decision with respect to the project. A project that results in significant adverse environmental effects on a wide range of environmental components cannot be taken to be responsible development.

(e) Beginning in 2012, Ecojustice represented ForestEthics Advocacy, the Living Oceans Society and the Raincoast Conservation Foundation (together, the "Coalition") in the Joint Review Panel proceedings for the proposed Northern Gateway pipeline project. In those proceedings, the Coalition raised concerns with respect to, amongst other things, the failure to consider upstream induced environmental impacts when the upstream economic benefits were included, geohazards along the pipeline route, the risk and impacts of a marine oil spill, and the risk to species at risk. In its final report, the Joint Review Panel found that the project posed significant adverse effects, in combination with cumulative effects, for certain populations of woodland caribou and grizzly bear already experiencing habitat disturbance.[9] However, the Joint Review Panel recommended that the significant adverse effects were justified in the circumstances and recommended approval of the project.[10] In June 2014, the Governor in Council issued Order in Council PC 2014-809 approving the project.

In response to the approval, eleven parties, including the Coalition, brought a total of nine applications for judicial review of the approval on various grounds. In its decision in June 2016, the Federal Court of Appeal found that the Government of Canada had failed in its duty to consult with the impacted First Nations with respect to the project and quashed the Order in Council approving the project.[11]

In December 2016, after further consultation as required by the Federal Court of Appeal decision, the Governor in Council determined that the project was not required by the present and future convenience and necessity, and was not in the public interest.[12]

This was not broad and general opposition to Alberta oil and gas development. The Coalition, which had considerable scientific expertise with respect to potential impacts on marine and terrestrial bird, fish and mammal species, brought specific evidence that informed the Joint Review Panel report. Further, a government decision without proper consultation with impacted First Nations cannot be found to be consistent with timely or responsible development. Ultimately, the federal government determined that the project was not in the public interest.

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[9] Joint Review Panel for the Enbridge Northern Gateway Project, *Considerations: Report of the Joint Review Panel for the Enbridge Northern Gateway Project, Vol. 2*, (2013), at 13.
[10] *Ibid.*
[11] *Gitxaala Nation v Her Majesty the Queen*, 2016 FCA 187, at paras 8, 10.
[12] National Energy Board, "Decision Statement re Enbridge Northern Gateway Project", (6 December 2016), at 1.

(f) In 2016, Ecojustice represented Transition Initiative Kenora ("TIK") in the National Energy Board ("NEB") proceedings with respect to TransCanada Pipelines Ltd.'s proposed Energy East project. In August 2016, it became apparent that two members of the NEB panel hearing the matter had met privately with a lobbyist for Energy East outside of the hearing process. TIK, and other organizations, requested that the panel members recuse themselves because of the resulting reasonable apprehension of bias. The panel members recused themselves and a new panel was established in January 2017. In August 2017, the NEB determined that the issues to be considered in the assessment of the project would include the indirect upstream and downstream greenhouse gas emissions resulting from the project, as well as the direct greenhouse gas emissions of the project. On October 5, 2017, TransCanada withdrew its application for the Energy East project. TIK, with Ecojustice's assistance, properly brought forward the specific issues of bias and greenhouse gas emissions to ensure that the process was fair and thorough. TransCanada rendered its own decision with respect to the economic viability of the project.

(g) In 2015, Ecojustice represented the Living Oceans Society and the Raincoast Conservation Foundation in the NEB proceedings with respect to the proposed Trans Mountain pipeline expansion project. Living Oceans Society and Raincoast Conservation Foundation presented evidence with respect to, amongst other things, the risks and impacts of marine oil spills, and the impacts of shipping noise and ship strikes on Northern Resident Killer Whales. In its report, the NEB found that the project would have significant adverse effects on Northern Resident Killer Whales and Aboriginal cultural use associated with the Northern Resident Killer Whales.[13] The NEB also found that the greenhouse gas emissions from project-related marine vessels would likely be significant.[14] However, the NEB concluded that the project would be in the Canadian public interest and recommended approval of the project with 157 conditions.[15] The Governor in Council approved the project in November 2016 in Order in Council PC 2016-1069.

Following the approval of the project, the Living Oceans Society and the Raincoast Conservation Foundation, along with other organizations and First Nations, brought applications for judicial review of the approval before the Federal Court of Appeal. The Federal Court of Appeal found that the NEB unjustifiably defined the scope of the project under review to exclude project-related tanker traffic.[16] Further, the Federal Court of Appeal found that the Government of Canada failed to adequately discharge its duty to consult with the First Nations with respect to the project.[17] Accordingly, the Court quashed the Order in Council approving the project and sent the matter back to the Government of Canada for appropriate action.[18]

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[13] National Energy Board, *Trans Mountain Expansion Project*, OH-001-2014 (May 2016), at xiv.
[14] *Ibid.*
[15] *Ibid.* at xv.
[16] *Tsleil-Waututh Nation v Canada (Attorney General)*, 2018 FCA 153, at para 5.
[17] *Ibid*, at para 6.
[18] *Ibid*, at para 7.

In a Reconsideration Report issued in February 2019, the NEB again found that the project would have significant adverse effects on Northern Resident Killer Whales and Aboriginal cultural use associated with the Northern Resident Killer Whales, and significant greenhouse gas emissions from project-related marine vessels.[19] However, the NEB again recommended approval of the project.[20] The Governor in Council approved the project in June 2019 in Order in Council PC 2019-820.

The Living Oceans Society and Raincoast Conservation Foundation, as represented by Ecojustice, did not express broad and general opposition to Alberta oil and gas development. Rather, they presented evidence, based on their considerable expertise, with respect to the risk of marine oil spills and the potential impacts on the Northern Resident Killer Whales. The Joint Review Panel agreed that these were significant adverse effects.

(h) In 2018, Ecojustice represented OSEC in the Joint Review Panel proceedings for the Teck Frontier Oil Sands Mine Project. OSEC presented evidence with respect to greenhouse gas emissions from the project, limitations on Teck's ability to remediate and reclaim the mine site, and impacts on Boreal caribou. In July 2019, the Joint Review Panel found that the project would have significant adverse effects on wetlands, old-growth forests, wetland- and old-growth-reliant species at risk, including Boreal caribou, the Ronald Lake bison herd, and biodiversity.[21] Overall, the Joint Review Panel found the project to be in the public interest and recommended approval of the project.[22] On February 23, 2020, prior to the Governor in Council rendering a decision with respect to the project, Teck Resources Ltd. withdrew its application for the project, stating:

> ...global capital markets are changing rapidly and investors and customers are increasingly looking for jurisdictions to have a framework in place that reconciles resource development and climate change, in order to produce the cleanest possible products. This does not yet exist here today and, unfortunately, the growing debate around this issue has placed Frontier and our company squarely at the nexus of much broader issues that need to be resolved.[23]

Again, OSEC did not present broad and general opposition to Alberta oil and gas development. They presented scientific evidence with respect to impacts on the threatened Boral caribou herds, amongst other things, that ultimately informed the Joint Review Panel's report. Teck ultimately made its own decision as to whether the project was timely, economic, efficient and responsible.

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[19] National Energy Board, *National Energy Board reconsideration of aspects of its OH-001-2014 Report as directed by Order in Council P.C. 2018-1177*, MH-052-2018 (February 2019), at 38-39.
[20] *Ibid*, at 39-41.
[21] Joint Review Panel for the Frontier Oil Sands Mine Project, *Report of the Joint Review Panel, Teck Resources Limited Frontier Oil Sands Mine Project, Fort McMurray Area*, (25 July 2019) 2019 ABAER 008, at xiii.
[22] *Ibid*, at xii-xiii.
[23] Teck Resources Limited, "Letter to Jonathan Wilkinson, Federal Minister of Environment and Climate Change", (23 February 2020), at 1.

(i) In January 2019, Ecojustice represented the Athabasca Chipewyan First Nation, Mikisew Cree First Nation, Alberta Wilderness Association and David Suzuki Foundation in bringing an application for judicial review in the Federal Court alleging that the federal Minister of Environment and Climate Change failed to recommend a habitat protection order, as required by section 61(4) of the federal *Species at Risk Act*, for five herds of Boreal caribou impacted by oil sands development. A settlement was reached in the matter, ultimately leading the federal Minister and the Province of Alberta to enter into a conservation agreement with respect to Boreal caribou. Without such action, the federal Minister would have continued to ignore their obligation to protect the habitat of Boreal caribou in the oil sands area. This was not broad and general opposition to Alberta oil and gas development. This was a specific intervention which ensured that the federal Minister met his legal obligations with respect to the protection of threatened Boreal caribou and responsible oil sands development.

(j) Beginning in 2008, Ecojustice represented Tony and Lorraine Bruder, ranchers in southwestern Alberta, with respect to an inactive well site on their property. The well had been inactive for more than 14 years and the surface lease with respect to the well site had expired. The well operator ignored their obligation to decommission the well and reclaim the well site, as well as their obligation to maintain a valid surface lease. In 2010, Ecojustice assisted the Bruders in negotiating a new surface lease with the well operator which required the operator to either produce or abandon the well within three years. The operator failed to do either. Ecojustice had over 100 communications with the Alberta Energy Regulator over a 12 year period in an attempt to have the well decommissioned and the well site reclaimed. Ultimately, the Alberta Energy Regulator abandoned the well but did not complete the site reclamation. In 2020, the well site was moved into the Orphan Well Program. In 2021, more than 27 years since the well last operated, the well site remains unreclaimed. This is not timely, economic, efficient or responsible oil and gas development.

On a broader scale, Ecojustice has worked for 13 years to address the issue of unremediated and unreclaimed inactive well sites in Alberta. Ecojustice participated in Alberta Energy's stakeholder engagement on the well liability management system in 2016 and presented a number of alternatives to correct this situation. However, as of July 14, 2021, there remain over 95,000 inactive well sites in Alberta that have not been remediated or reclaimed. Over 32,000 of these wells have been inactive for more than 10 years. This is a burden on Alberta's landowners and the Alberta environment. Over 95,000 unreclaimed inactive wells cannot be indicative of timely, economic, efficient and responsible development of Alberta's oil and gas resources.

22. As stated in paragraph 20 above, Ecojustice's work is focused on furthering its and its clients' goals of protecting nature, climate and communities, and Ecojustice only accepts donations on the condition that this focus will not be compromised. As demonstrated in paragraph 21 above, Ecojustice has not participated in broad and general opposition to Alberta oil and gas development. Rather, Ecojustice has, in each situation, provided legal services to organizations, First Nations and individuals in either participating in statutorily-required regulatory proceedings or ensuring that companies and government officials meet their legal

obligations. Surely, providing legal representation to environmental organizations, First Nations and individuals participating in statutorily-required regulatory processes or ensuring that companies and government officials obey the law, cannot be classified as participating in an "anti-Alberta energy campaign." That would be an absurdity. Yet, the conclusion of the Inquiry is that Ecojustice participated in such a campaign.

23. The Commissioner's interpretation of "anti-Alberta energy campaign" and his ruling with respect to "timely, economic, efficient and responsible development of Alberta's oil and gas resources" deprives affected parties of the opportunity to argue that the development opposed was not timely, economic, efficient or responsible, and undermines legitimate legal and public discourse on matters of public concern. That cannot be in the public interest.

24. In fact, as demonstrated in paragraph 21 above, Ecojustice has never represented an environmental organization, First Nation or individual for the purpose of expressing broad and general opposition to the timely, economic, efficient and responsible development of Alberta's oil and gas resources. In each case, Ecojustice's clients raised specific and legitimate concerns with respect to the environmental impacts of specific oil or gas projects or legal concerns with respect to company or government actions. As indicated in paragraph 21 above, in most cases those concerns were confirmed or validated by the regulatory body or the courts.

25. The Commissioner, in his Ruling, states that a party opposing a discrete aspect of a specific project is not participating in an anti-Alberta energy campaign. All of Ecojustice's activities, and those of its clients as described in paragraph 21 above, fall within that exception. Therefore, the Commissioner's finding that Ecojustice participated in an anti-Alberta energy campaign is unfounded and unreasonable.

26. Further, while the Commissioner purports that his findings do not indicate that Ecojustice's activities have been unlawful or dishonest or should in any way be impugned, the entire tone and context of the Report damages Ecojustice's reputation by failing to state clearly and unequivocally that all of Ecojustice's actions and statements have been factual and lawful and are constitutionally protected forms of expression and association.

27. While the Commissioner acknowledges in the draft Report that specific activities with respect to land conservation, wetland restoration, tanker bans, the Boreal Forest Agreement and more generally public policy debates with respect to oil and gas development are "valuable and important", he must understand that by generically characterizing all of those activities as part of an "anti-Alberta energy campaign" he is undermining the future of those "valuable and important" activities. The Commissioner must know full well that his report will be used by the United Conservative Government of Alberta, and the Premier who on several occasions has referred to the "foreign-funded green left", as justification to undermine those important elements of environmental protection and public discourse.

28. Based on all of the above, Ecojustice submits that the Commissioner has erred in determining that Ecojustice participated in an anti-Alberta energy campaign as defined in the Terms of Reference and the Ruling. Ecojustice therefore formally requests a ruling that Ecojustice did not participate in an "anti-Alberta energy campaign" but rather represented its

clients in a manner consistent with the laws of Alberta and Canada. We further request that any reference to Ecojustice participating in an anti-Alberta energy campaign be removed from the Report. Ecojustice is prepared to use the courts to ensure procedural fairness and to ensure that its reputation is not damaged by the Commissioner's unreasonable and unfounded conclusions.

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