



Court file No. T-1532-22

FEDERAL COURT

BETWEEN:

**WORLD WILDLIFE FUND CANADA and THE DAVID SUZUKI
FOUNDATION**

Applicants

- and -

**MINISTER OF NATURAL RESOURCES, THE ATTORNEY GENERAL OF
CANADA, CHEVRON CANADA LIMITED and EXXONMOBIL CANADA
PROPERTIES**

Respondents

**APPLICATION UNDER SECTION 18.1
of the *Federal Courts Act*, RSC 1985, c F-7**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicants. The relief claimed by the applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor or, if the applicants are self-represented, on the applicants, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: **JUL 26 2022**

Issued by: 
(Registry Officer) **PRISCILLA LAM**
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6

TO: MINISTER OF NATURAL RESOURCES and ATTORNEY GENERAL
OF CANADA
British Columbia Regional Office
Department of Justice Canada
900 - 840 Howe Street
Vancouver, BC V6Z 2S9

AND TO: CHEVRON CANADA LIMITED
Exploration and Production
500-5th Avenue S.W.
Calgary, AB T2P 0L7

AND TO: EXXONMOBIL CANADA PROPERTIES
c/o ExxonMobil Canada Ltd and ExxonMobil Canada Resources
Company
505 Quarry Park Blvd SE
Calgary, AB T2C 5N1

APPLICATION

1. This is an application for judicial review of the Minister of Natural Resources' ongoing policy (**Extension Policy**) or practice purporting to indefinitely extend the term of offshore oil and gas permits issued by the Minister and owned by Chevron Canada Limited and ExxonMobil Canada Properties over lands within two protected marine areas offshore British Columbia: the Scott Islands Protected Marine Area and the Hecate Strait/Queen Charlotte Sound Glass Sponge Reefs Marine Protected Area (**Permits**). The Extension Policy is unlawful: it contravenes the *Canada Petroleum Resources Act*, RSC 1985, c 36 (2nd Supp) (**Act**), which precludes the Minister from indefinitely extending the term of exploration interests. In adopting and continuing the Extension Policy, the Minister acted unreasonably and without jurisdiction. In the alternative, the Minister's ongoing course of conduct applying the Extension Policy to extend the term of the Permits is unreasonable.

THE APPLICANTS MAKE APPLICATION FOR:

2. The Applicants seek the following relief:
 - i) an order declaring that (a) the Extension Policy is unlawful and (b) the Minister lacks the jurisdiction to indefinitely extend the Permits;
 - ii) in the alternative to paragraph 2 (i), an order declaring that the Minister's ongoing course of conduct applying the Extension Policy to extend the term of the Permits is unreasonable;
 - iii) an order declaring that the Permits have expired and the frontier lands they cover are deemed to be surrendered and have become Crown reserve lands;

iv) an order that each party shall bear its own costs; and,

v) such other relief as counsel may advise and the Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

The parties and background

3. The applicant World Wildlife Fund Canada (**WWF-Canada**) is an environmental not-for profit organization, incorporated under the *Canada Not-for-profit Corporations Act*. For more than 50 years, WWF-Canada has worked to conserve Canada's biodiversity and natural environment as part of the global WWF network. WWF-Canada's mandate is to reverse wildlife declines and amongst other things, to work towards preserving, enhancing and protecting healthy marine ecosystems and habitat off the Pacific, Atlantic and northern coasts of Canada. With the support of millions of people in 80 countries around the world and hundreds of thousands more in Canada, it is one of the largest conservation organizations in the world.

4. The applicant The David Suzuki Foundation is incorporated under the *Society Act* of British Columbia and is a federally registered charity that works to conserve and protect the natural environment and promote a sustainable Canada. The David Suzuki Foundation is a national organization supported by 27,000 donors across Canada and over 300,000 other supporters.

5. The applicants are public interest litigants and have no personal, proprietary or pecuniary interest in the outcome of this application.

6. The applicants have a genuine interest in conserving and protecting Canada's marine biological diversity and natural environment through the establishment of

formal protected areas. As part of this work, WWF-Canada participated in the establishment of the Scott Islands protected area, which is the first protected marine area established under the *Canada Wildlife Act*. WWF-Canada has also been active in marine protection within the Hecate Strait, including with respect to the protection of glass sponge reefs. The David Suzuki Foundation has participated in management planning for the Scott Islands protected area, has supported protection within the Glass Sponge Reef protected area, and generally advocates for the conservation of marine ecosystems in British Columbia.

7. Both protected areas are of outstanding ecological value and vulnerable to damage from human impacts, including oil and gas activities.

8. The applicants have a genuine interest in protecting the marine environment against the threats posed by offshore oil and gas activities and in ensuring that the Minister complies with the mandatory duties that Parliament has imposed upon him under the *Act*.

9. Under the *Act*, the Minister has administrative responsibility for the natural resources in the lands covered by the Permits. His predecessor adopted the Extension Policy and issued the Permits. The Minister has maintained the Extension Policy on an ongoing basis.

10. The Attorney General of Canada is responsible for the regulation and conduct of all litigation against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada, under s 5(d) of the *Department of Justice Act* and

s 18(1)(b) of the *Federal Courts Act*. Further or in the alternative, the Attorney General of Canada is named as a respondent under Rule 303(2) of the *Federal Courts Rules*.

11. Chevron and ExxonMobil hold the twenty exploration permits that collectively constitute the Permits.

12. Chevron holds exploration permits W7044-7048 and W7148-W7160, which cover lands that lie wholly within the boundaries of the Scott Islands protected area. Chevron also holds exploration permit W7064, which covers lands that lie wholly within the boundaries of the Glass Sponge Reefs protected area. The Minister first issued these permits to Petrotar Development Ltd; however, they were eventually transferred to Chevron in the late 1990s.

13. ExxonMobil holds exploration permit W5338, which covers lands that lie partially within the boundaries of the Scott Islands protected area. The Minister first issued this permit to Citizens Pipeline Limited; however, the permit was eventually transferred to ExxonMobil (then Mobil Oil Canada Ltd) in 1989.

The Former Permits have expired

14. In the late 1960s and early 1970s, the Minister's predecessor issued the Permits under the *Canada Oil and Gas Land Regulations*, SOR/61-253 as amended (now CRC, c 1518) (*Land Regulations*).

15. Each Permit had a six-year term, after which it would expire. Before they could expire, the Governor in Council extended each Permit through successive orders-in-council issued under the *Public Lands Grants Act*, RSC 1952, c 224. The last such extensions occurred in 1981.

16. In 1982, the statutory framework governing the Permits changed. The new *Canada Oil and Gas Act*, SC 1980-81-82-83, c 81 required owners to negotiate the permits into exploration agreements or to convert them into provisional leases. The owners of the Permits at that time did not do so.

17. The statutory framework changed again in 1987 when the relevant provisions of the *Act* came into force. Because of these changes, the owners of the Permits had to take certain steps to preserve the permits, failing which the permits would lapse.

18. The *Act* recognizes “former permits,” including exploratory permits issued under the *Land Regulations*, as types of oil and gas “interests” that are subject to the *Act*. Each of the Permits is a former permit under the *Act*.

19. Although it recognizes these former permits, the *Act* no longer authorizes the Minister to issue them. Instead, the *Act* creates a new type of interest with similar, but not identical, characteristics: the exploration licence. Among other things, the *Act* limits exploration licences to a maximum term of nine years and prohibits the Minister from extending this term, except in very limited circumstances which do not apply to the Permits.

20. To ensure that all pre-existing oil and gas interests were brought fully into the new statutory framework, the *Act* established detailed transitional rules. Under these rules, some types of pre-existing interests were automatically deemed to be exploration licences. However, under section 113(1), the Permits were not.

21. Instead, to bring the Permits into the new statutory framework and preserve their validity, the Permits' owners had to negotiate with the Minister to convert them into exploration licences.

22. Under section 113(1) of the *Act*, the owner of the Permits had to complete these negotiations within a prescribed time. They did not do so. To this day, the Permits have not been converted to exploration licences.

23. As a result, under section 113(2) of the *Act*, the lands covered by the Permits are automatically deemed to be surrendered to the Crown.

The Extension Policy unlawfully circumvents the statutory scheme

24. To circumvent this statutory outcome, the Minister adopted and continues to maintain the Extension Policy. The Extension Policy purports to extend the terms of the Permits indefinitely through an ongoing policy not to negotiate them into exploration licences.

25. The Extension Policy is unlawful. By adopting and maintaining the Extension Policy to indefinitely extend the terms of the Permits, the Minister is engaging in an ongoing course of conduct, or an overarching policy under which continuing decisions are made, and is doing so unreasonably, without jurisdiction, beyond his jurisdiction, or in a manner otherwise contrary to law.

26. The Extension Policy conflicts with section 115 of the *Act*, which gives the Minister a limited power to extend the negotiation period, and thus delay the automatic surrender of unconverted Permits.

27. Under section 115 of the *Act*, where a permit owner could not, for any reason not attributable to it, negotiate its permit into an exploration licence by the deadline, the Minister had to “extend that period to allow for that negotiation within a reasonable time.”

28. In adopting and maintaining the Extension Policy, the Minister unreasonably interpreted section 115 as conferring on him the power to indefinitely extend the Permits simply by choosing not to negotiate them.

29. The Minister’s interpretation of his authority to make and maintain the Extension Policy contravenes the broader statutory scheme, granting the Minister powers he was never intended to have. It purports to allow the Minister and companies to achieve the very outcomes the *Act* aims to prevent. It circumvents and renders meaningless the *Act*’s deemed surrender provision, the maximum term limits that the *Act* establishes for exploration licences, and the substantial constraints the *Act* imposes on the Minister’s powers to extend exploration licences.

In the alternative, the Minister’s course of conduct applying the Extension Policy to extend the Permits is unreasonable

30. In the alternative, if the Minister had the authority to extend the negotiation deadline under section 115, he has exercised it unreasonably through a course of conduct in which he applied the Extension Policy to the Permits.

31. The Minister’s course of conduct conflicts with relevant legal and factual constraints and lacks transparency, justification, and intelligibility.

32. The Minister’s application of the Extension Policy conflicts with the clear language of the *Act*, which requires that any extension of the negotiation period be

within a “reasonable time.” Through his course of conduct, the Minister purports to have preserved the Permits for approximately forty years and undermines Parliament’s intent in circumscribing timelines for any extension of the negotiation period.

33. The Minister’s application of the Extension Policy also conflicts with the broader statutory scheme, including the term limits for exploration licences and corresponding limits on the Minister’s power to extend them.

34. The Minister’s application of the Extension Policy also conflicts with his past practice. The Minister relies on a policy-based moratorium on oil and gas activities for British Columbia’s offshore waters to justify adopting, maintaining, and continuing to apply the Extension Policy to the Permits.

35. However, this moratorium, which does not legally prevent oil and gas activities, did not reasonably prevent the negotiation of the Permits into exploration licences. The Minister negotiated other former permits in British Columbia into exploration licences despite this moratorium while the Extension Policy was in place.

Costs

36. The applicants are public interest litigants with a genuine interest in conserving Canada’s natural environment, including ecologically and biologically significant marine areas, such as the Scott Islands protected area and Glass Sponge Reefs protected area. The applicants have no personal, proprietary or pecuniary interest in the outcome of the proceeding. The issue of the lawfulness of the Minister’s reliance on a policy to extend exploration permits indefinitely is of public importance and has not previously been determined by a court in a proceeding against the same respondents. An order

pursuant to Rule 400 that each party shall bear its own costs is just and appropriate in the circumstances.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

37. Affidavit(s) on behalf of WWF-Canada;
38. Affidavit(s) on behalf of The David Suzuki Foundation;
39. Affidavit of Emma Billard, Office Manager and Application Support Specialist, Ecojustice;
40. Materials from the certified tribunal record produced under Rules 317-318 of the *Federal Courts Rules*; and
41. Such other affidavits and material as counsel may advise and this Court may allow.

RULE 317 REQUEST

Pursuant to Rules 317 and 318 of the *Federal Courts Rules*, the applicants request that the Minister of Natural Resources send to the applicants and to the Federal Court Registry a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Minister of Natural Resources:

1. All material considered by the Minister in adopting and maintaining the Extension Policy.
2. Without limiting the generality of the foregoing, all material and correspondence
 - a. provided by the Minister to the Permit owners documenting the status of or the Extension Policy's application to the Permits;
 - b. provided to the Minister by the Permit owners, or otherwise in the

Minister's possession, about negotiations related to the Permits, beginning January 1, 1980, including any applications by the Permit owners to convert the Permits into exploration agreements under the *Canada Oil and Gas Act*, SC 1980-81-82-83, c 81 or exploration licences under the *Canada Petroleum Resources Act*, RSC 1985, c 36 (2nd Supp); and

- c. provided to the Minister by the Permit owners, or otherwise in the Minister's possession, about applications to convert the Permits into provisional leases under sections 63 and 66-70 of the *Canada Oil and Gas Act*, SC 1980-81-82-83, c 81.
3. Such further and other material as may be requested.

July 26, 2022



Ian Miron and Rachel Gutman

Ecojustice Canada Society
Suite 390, 425 Carrall Street
Vancouver, BC V6B 6E3

Tel: 416-368-7533 ext. 540 and/or
Tel: 604-685-5618 ext. 267
Fax: 604-685-7813
Email: imiron@ecojustice.ca
rgutman@ecojustice.ca

**Solicitors for the Applicants,
World Wildlife Fund Canada and The
David Suzuki Foundation**