

(Changes have been made to the original for posting.)

No. CA46312, CA46313
Vancouver Registry

IN THE COURT OF APPEAL FOR BRITISH COLUMBIA

CA46312

Between

REGINA

Respondent/Application Respondent

and

SUSAN MARTA SMYTH

Appellant/Application Respondent

CA46312

Between

REGINA

Respondent/Application Respondent

and

PIA MASSE

Appellant/Application Respondent

and

350VANCOUVER CLIMATE ACTION ASSOCIATION AND CLIMATE
CONVERGENCE

Applicants/Proposed Intervenors

AFFIDAVIT

350Vancouver

1. **350VANCOUVER CLIMATE ACTION ASSOCIATION** (“350Vancouver”) is a grassroots organization which centers the climate emergency as our core focus. We are non-profit involved in climate-related campaigns, projects and non-violent actions. We are an independent organization, but aligned with the larger 350.org movement that was

founded in 2009 and now exists in over 180 countries worldwide.

2. 350 Vancouver works with front-line communities, indigenous peoples, faith, youth, labour, environmental and other groups as well as with individuals in the fight against climate change and its causes.
3. Since our founding in 2015, 350 Vancouver has organized or been a partner in over 40 events in and around the Lower Mainland. These range from small educational workshops on divestment from fossil fuels to large-scale organizing for the October 7th, 2019 Climate Strike in Vancouver that brought over 100,000 people onto the streets. We organize letter writing, petitions, government lobbying as well as small targeted and large-scale protests.
4. Our group began as a collective of individuals brought together by concerns around the climate impacts related to the Transmountain pipeline expansion project (“TMX”). Using Oil Change International’s analysis of the North American pipeline and refinery system, the Transmountain pipeline would facilitate a major expansion of tar sands extraction – releasing as much as 162 million additional tonnes of CO₂ per year. This is the equivalent to putting 34 million new cars on the road, or operating 42 coal plants.
5. We have worked tirelessly through the system to have the climate impacts of the Transmountain project considered as part of the National Energy Board (“NEB”) and government evaluations and approvals of this project to no avail. The climate impacts of large-scale fossil fuel projects like Transmountain have been ignored.

6. As recently admitted by the Federal Government by virtue of its Climate Emergency Declaration, we are out of time. Immediate action is required if our children are to have a livable planet on which to live. There is no carbon budget for TMX.
7. We are supporting the appeal brought forward by Pia Masse (“Pia”) and Susan Marta Smyth (“Marta”) because they have supported our group and been involved in climate advocacy for many years. They have spoken for us, at their TMX performance and many times before and since. We are taking this opportunity to speak for them. We believe we can offer a unique perspective in this matter.
8. This court case is about the existential threat of both the climate crisis and the crisis in public discourse, and about the ability of the public to respond and engage their governments in discourse. In a democratic society like ours, the right to protest and the right to symbolic opposition is a well established and highly valued principle. As an organization that advocates diverse views in symbolic protest, we have the ability to bring greater context and colour to Pia and Marta’s appeal.

Three existential threats

9. The climate emergency is the unprecedented Statement of Fact that underlies this legal case and can no longer be sidelined or dismissed by a court who has a fundamental duty to protect the public, in accordance with the Charter of Rights and Freedoms.
10. The recent Doomsday Clock Statement from Bulletin of Atomic Scientists is pertinent to this court case and to our intervention. A copy of this report is attached to my Affidavit and marked as **Exhibit “A”**.
11. Page 3 of Exhibit A states the following:

To: Leaders and citizens of the world

Re: Closer than ever: It is 100 seconds to midnight

Date: January 23, 2020

Humanity continues to face two simultaneous existential dangers—nuclear war and **climate change**—that are compounded by a threat multiplier, **cyber-enabled information warfare**, that undercuts society’s ability to respond. The international security situation is dire, not just because these threats exist, but because world leaders have allowed the international **political infrastructure** for managing them to **erode**.

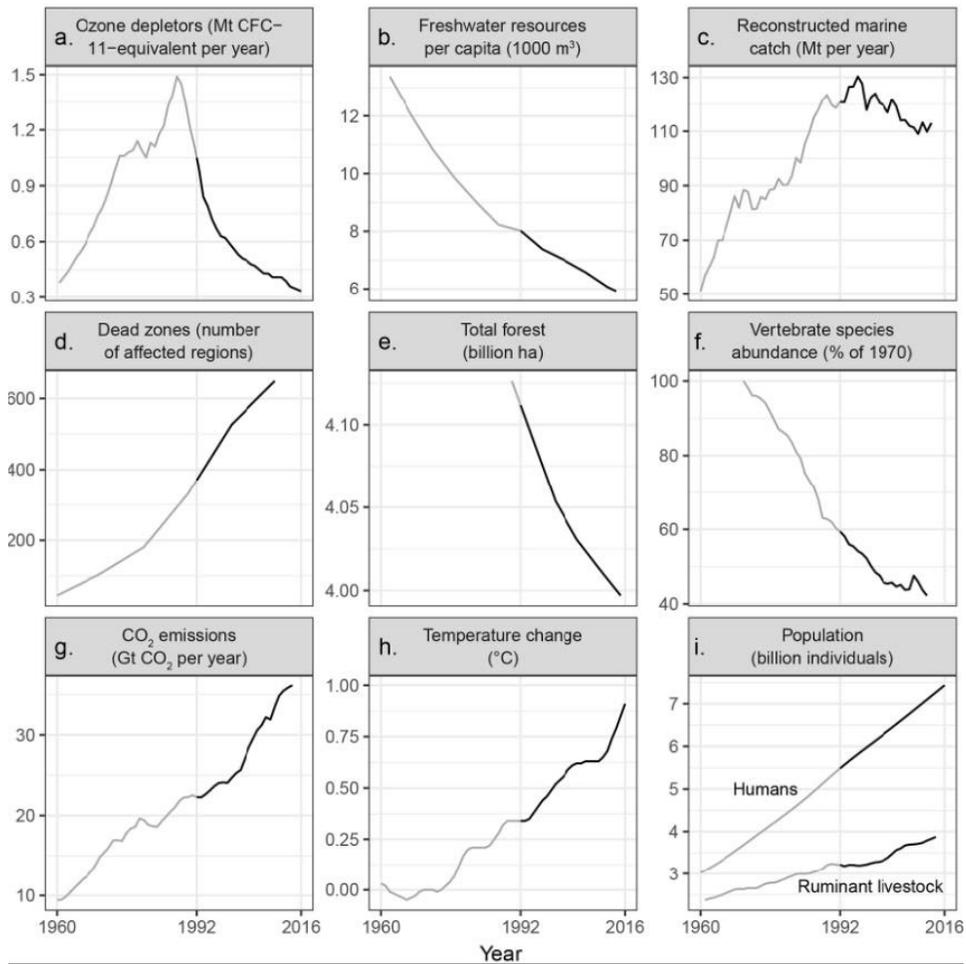
[emphasis added]

12. After the nuclear strikes on Hiroshima and Nagasaki, the Doomsday Clock was established in 1947 to monitor the threat of a nuclear Armageddon. Today, the Doomsday Clock has moved to the closest it has ever been to midnight because of two new, modern-day crises: climate change and the disintegration of public discourse.
13. 350Vancouver has a mission to respond to both of these new emergencies.

14. At the same time as we advocate for concrete steps to reduce climate-damaging greenhouse gasses, we must also counter the corroding influence of propaganda by climate crisis deniers. In fact, there is a clear reason that governments have not acted on the climate crisis: a well-funded campaign of propaganda and disinformation has been so successful that civil society can no longer marshal a clear vision of what needs to be done to make the world a safer place. As the Bulletin of Atomic Scientists correctly warns, there will be no solution to the climate crisis without a solution to the disintegration of public discourse.

The climate emergency

15. Humans have benefited from a long evolutionary history that has made certain responses to danger almost automatic. We respond viscerally to a dog's bared teeth and we are often almost pathologically afraid of snakes and spiders. Fear of sharks has become the subject of an array of horror films.
16. In November 2017, the peer-reviewed academic journal *BioScience*, from the American Institute of Biological Sciences, published "World Scientists' Warning to Humanity: A Second Notice" by eight named authors with 15,364 scientist signatories from 184 countries. A copy of this article is attached to my Affidavit and marked as **Exhibit "B"**.
17. Page 1027 of Exhibit B shows graphs displays data collected by scientists from 1996 to 2016. The trends these graphs depict are stark, and quantify the impact and consequences of climate change. However, I believe they lack a visceral impact even when people take the time to understand them intellectually.



18. Unfortunately, there is ample evidence that societies are impervious to these kinds of facts. It takes something more to alert the public; something that communicates the crisis in another way. That was the goal of Marta and Pia when they were arrested at the TMX oil depot.

19. Page 1026 of Exhibit B states the following:

As most political leaders respond to pressure, scientists, media influencers, and lay citizens must insist that their governments take immediate action as a moral imperative to current and future generations of human and other life. **With a groundswell of organized grassroots efforts, dogged opposition can be overcome and political leaders compelled to do the right thing.**

[emphasis added]

The Disinformation Crisis

20. There is overwhelming evidence that public discourse in Canada and in the world has changed in the past 30 years, and, because of social media, most dramatically in the last ten years. Those who work for a just society have no choice but to adapt their efforts to this new, degraded media context. The growing global environmental action group, Extinction Rebellion (“XR”), founded in 2018, offers a clear example of how environmental groups have responded to the change. The efforts of environmental groups are now divided between fighting environmental degradation and fighting disinformation.
21. XR has grown exponentially since 2019, after a massive act of civil disobedience in London, where roads and institutions were blockaded for several days. At the end of the blockade, Great Britain became the first parliament in the world to declare a climate emergency. XR has three demands:
- a. Government must **tell the truth** by declaring a climate and ecological emergency, working with other institutions to **communicate** the urgency for change.
 - b. Government must act now to halt biodiversity loss and reduce greenhouse gas emissions to net-zero by 2025.
 - c. Government must create, and be led by the decisions of a **citizens' assembly** on climate and ecological justice.

[emphasis added]

22. Two of these three core demands directly address corruption in public discourse. Point 1 is directed at government cover-ups, omissions and disinformation that obscure the public’s understanding of climate change. Point 3 counters the various attempts to recast business-as-usual, with its pollution-as-usual, as a credible response to the climate crisis.

A citizens' assembly would serve as a safeguard against ineffective, "greenwashed" policies that do not deal with real and urgent climate threats.

23. Disinformation comes in many forms and has many sources. Lies by omission are just as pernicious as disinformation. XR blockaded the BBC in London and locations across the UK to protest the failure of the press to report on climate change. I submit the following as evidence of an unprecedented corruption of public discourse which is widespread and varied:

- a. The tobacco industry implemented one of the first examples of a massive, well-funded and cynical disinformation campaign that willfully placed the profits of a few over public safety;
- b. The fossil fuel industry has funded a similarly structured, even more effective and far-reaching campaign of climate change denial, often with the same lawyers, advertisers and media personalities from the tobacco companies' campaign;
- c. Tabloid-style disinformation, from outlets such as Breitbart and Rebel Media to Fox News, has been weaponized for political gain. Impartial, objective, and balanced reporting on events has been sacrificed to sensationalism and fact-impervious anti-science ideology;
- d. Social media, such as Facebook, allow disinformation to go unchecked and reap profits from the debate around established facts;
- e. Russia's direct intervention in elections, most prominently during the 2016 US Presidential elections, through social media and computer hacking has disrupted public trust in democratic institutions; and
- f. Unscrupulous politicians, including Trump, Bolsonaro, Modi, and Johnson, have been elected with the help of corrupt media. Cambridge Analytica has been found

to have engineered targeted, fine-grained disinformation campaigns in over 68 elections around the world and was involved in the Brexit referendum.

24. In Canada, elections have been tainted by robocalls that misdirect electors to the wrong polling station. The United Conservative Party in Alberta is under investigation by the RCMP for leadership election tampering. The NEB has been described as captured by industry and its decisions thrown out. The previous Minister of Justice resigned because of political interference in a criminal case by the Prime Minister's office.
25. This crescendo of corruption can be traced to neoliberal policies put into place since the 1980s. The deregulation of financial markets became the model for removing common-sense safeguards for the public. Our common spaces, and crucially the common space of dialogue that mainstream press offered, has suffered greatly.
26. Marta's and Pia's protest should be viewed in the context of a general breakdown of trust in public discourse.

Communicating the Climate Crisis

27. Pia and Marta are artists and educators. Three photos of their art pieces have been attached to this Affidavit and marked as **Exhibit "C"**.
28. The artist's work of art crystallizes something that is deeply felt by everyone, but for which there are no appropriate words, and that can perhaps never be expressed in language. Artists are compelled to ground their work in those zones of intense wordless feelings shared by the whole society.

29. Marta's placards, shown in Photo 1 in Exhibit C, say it clearly for the children: "Speak for us."



30. I firmly believe the artist speaks for us all, and for all life. At the Art Action Hub, designed and run by Marta and Pia, Marta's salmon and sea creatures,

shown in Photo 2 in Exhibit C, are on the walls at a poetry reading. They too say: "Speak for us."

31. The message is simple in a way. We are all worried about the destruction of all life on the planet. But the words "destruction of all life on the planet" are much like scientists'



graphs; they don't have emotional appeal. For someone who doesn't speak English, they are just noise – no more than the scraping of dead leaves tumbling across the ground. And even for the English speaker, they are still too abstract. I have asked myself, "what does 'destruction of all life on the planet' mean?" I believe we immediately begin to intellectualize, contest and refuse the idea. When we turn to consulting data, marshaling graphs, and looking at published scientific papers, we have turned our attention away from how heart-wrenching the loss would be.

32. Marta's and Pia's art is designed to make us feel the real place of the things threatened by the climate crisis. Already, the climate crisis means children are no longer able to live as children. Already, it means the oceans are losing their lush diversity life. Their art teaches us to keep in mind, specifically in our emotions, how precious these things are.
33. A painting is put in a frame, and then hung in a gallery. Art needs a frame to bring its message to the public. The gates of Transmountain were the frame for Marta's and Pia's performance art; art like the salmon and child placards, but taken to a more extreme level, where the artists' bodies became part of their work of art. Part performance, part ritual, this kind of art is public discourse of a different nature.
34. People are motivated by art. They are able to come together and act. Photo 3 in Exhibit C demonstrates one such example.
35. At a time when disinformation campaigns have critically undermined our institutions and the public's ability to conclude about an issue and act on it, at a time when action is acutely needed, Marta and Pia have responded in the only way available to them, in the frame most appropriate: public performance art at the TMX gates. To meet the dire threat of the climate crisis, we need that artistic message that brings everyone together.

36. At the TMX gates, Marta and Pia were speaking for everyone.

