

Greenpeace Canada response to the draft report of Allan Inquiry

Greenpeace Canada is proud of our work defending the climate and biodiversity. As further set out below, we request that the draft report¹ be amended to correct the misrepresentations of both the reality and severity of climate change, which we note the Commissioner had previously indicated he would not be taking a position on.² While the Commissioner acknowledges that our organization has done nothing illegal, dishonest or that could in any way be impugned, the substance of his report unfairly vilifies and stigmatizes Greenpeace Canada as being “anti-Alberta” for no reason other than the fact that it has engaged in public interest environmental advocacy to address a challenge of unprecedented magnitude. In its current form, this report will have an anti-democratic effect curtailing freedom of expression and intimidating environmental advocates.

Our principal concerns are:

1. The report misrepresents climate science and the severity of the climate crisis and thereby misrepresents the motives of the organizations under investigation
2. The Commissioner is misinterpreting the Inquiry’s Terms of Reference in a way that identifies conservation or climate initiatives as ‘anti-Alberta’ and exaggerates funding levels
3. It is disingenuous to claim that the label ‘anti-Alberta’ is not stigmatizing
4. In the interest of safety, the unsupported and inflammatory allegations in the “motives” section should be removed
5. The Commissioner’s conclusions are not supported by evidence
6. The Commissioner hasn’t ensured procedural fairness
7. The result is a chilling effect on public participation and free expression of ideas in a free and open society

1. The report misrepresents climate science and the severity of the climate crisis and thereby misrepresents the motives of the organizations under investigation

The climate and biodiversity crises are major threats, including to Albertans. By commissioning and publishing research³ that has been described as “textbook climate denialism”,⁴ the Commissioner has loaned the authority of his office to a repeatedly disproven claim (that the burning of fossil fuels is not the primary cause of climate change). The Commissioner refused to disavow this position when asked why

¹ Commissioner Steve Allan shared selected portions of sections 1-5 and 7 of the draft report of the Public Inquiry into Anti-Albertan Activities with representatives of Greenpeace Canada at 10:41 pm ET on June 29. He subsequently shared the section of part 3 dealing directly with Greenpeace Canada at 5:24 pm ET on July 1, with a deadline of July 16 to respond. Greenpeace Canada has done its best to meet the Commissioner’s compressed timeline, but this has meant we haven’t been able to fully address all of the issues raised in the dozens of documents from the Inquiry.

² On January 15, 2021, the Commissioner stated that he “does not consider the science of climate change to be part of his mandate under the TOR, and he does not intend to make any findings of fact respecting climate science in his Final Report” (see <https://albertainquiry.ca/engagement-process/#eng20210115>).

³ <https://albertainquiry.ca/sites/default/files/2021-01/Nemeth%20Report.pdf>

⁴ <https://www.cbc.ca/news/canada/edmonton/alberta-inquiry-reports-commissioned-critics-1.5873580> and <https://ablawg.ca/2021/01/14/textbook-climate-denialism-a-submission-to-the-public-inquiry-into-anti-alberta-energy-campaigns/> among others.

he chose to commission, publish and distribute these materials.⁵ These materials are cited in the report (footnote 2) without addressing the concerns raised about the misrepresentation of climate science and presentation of baseless conspiracy theories in those materials.

While the Commissioner acknowledges that the groups he claims are engaged in “anti-Alberta energy campaigns” are (at least in part) motivated by a concern over climate change, he downplays the consequences of a failure to transition off of fossil fuels which misrepresents the motivation of advocates. For example, in paragraph 532 the Commissioner puts concern over the well-documented harms from climate change (outlined below) on a par with baseless and unsubstantiated conspiracy theories as a motivating factor for organizations he claims are engaged in anti-Alberta activities.

Notwithstanding his previous statement that he would not be making findings of fact with respect to climate change, he both implicitly and explicitly downplays the threat of climate change (the motivating factor for Greenpeace Canada in our work on responsible oil and gas development), accusing environmental groups of extremism, polarization and endorsing the need for further study before societies take action. Specifically, he cites Rosling in paragraph 535 to the effect that environmentalists are too alarmist with respect to climate change and then agrees with that statement. Rosling is cited as saying: “Climate change is way too important a global risk to be ignored or denied, and the vast majority of the world knows that. But it is also way too important to be left to sketchy worst-case scenarios and doomsday prophets. When you are called to action, sometimes the most useful action is to improve the data.” The Commissioner then agrees with this position in the following paragraph (536): “The concerns identified by Rosling are concerns that I share.” (paragraph 536).

These sort of references and comments serve no purpose and are especially unfair and unbalanced when the Commissioner declines to refer to the many highly credible reports in his possession which speak to the seriousness of climate change. With respect, it is also unclear what expertise (or evidence) that the Commissioner draws on to say that these concerns are valid and he agrees with them. These references and comments ought to be omitted from the final report.

It is particularly troubling that the Commissioner accuses eNGOs of extremism and polarization (at paragraph 537) without bothering to cite a single report or finding by the United Nations' Intergovernmental Panel of Climate Change (IPCC).

To address these substantive failings and ensure fairness, the Commissioner must acknowledge in his report that the findings of the IPCC that aggressive action to limit global warming will have clear benefits to people and natural ecosystems: “Limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes in all aspects of society,” the IPCC said in a new assessment. “With clear benefits to people and natural ecosystems, limiting global warming to 1.5°C compared to 2°C could go hand in hand with ensuring a more sustainable and equitable society.”⁶

The Commissioner should also take notice that the Supreme Court of Canada has found⁷ that climate change poses “an existential threat to human life in Canada and around the world” (paragraph 171) and that “it is well established that climate change is causing significant environmental, economic and human harm nationally and internationally, with especially high impacts in the Canadian Arctic, coastal regions

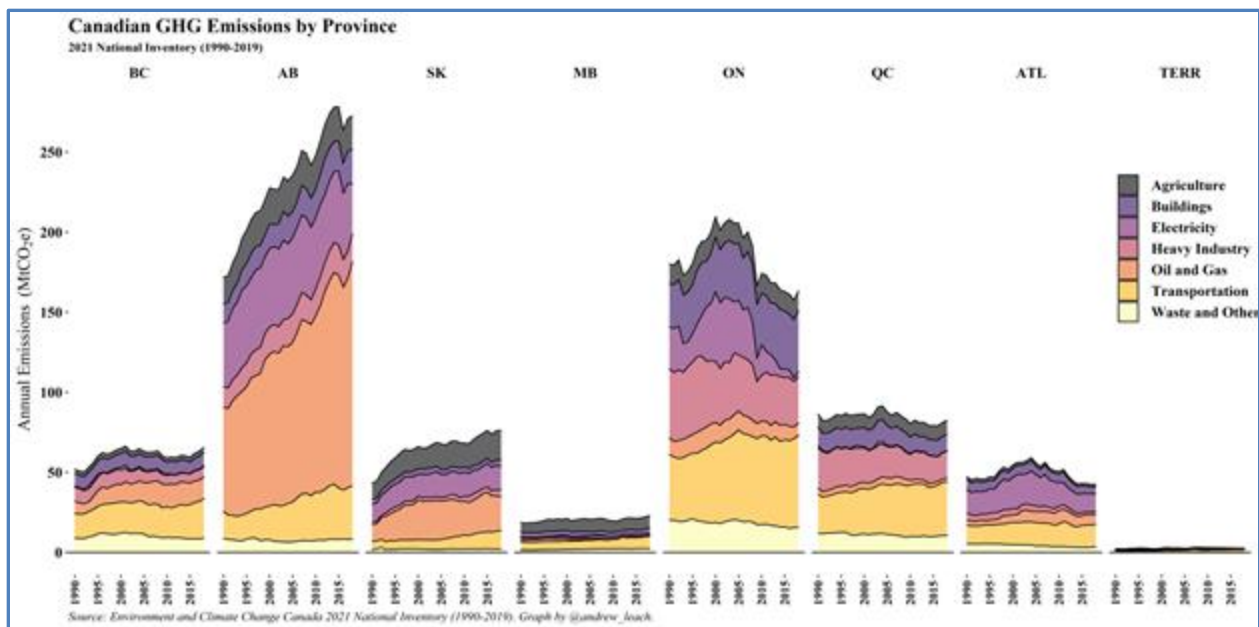
⁵ <https://edmontonjournal.com/news/politics/alberta-inquiry-responds-to-criticism-it-commissioned-reports-based-on-junk-science>

⁶ https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/pr_181008_P48_spm_en.pdf

⁷ <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18781/index.do>

and on Indigenous peoples” (paragraph 287). Further, the Supreme Court ruling speaks directly to the need to matter before the Inquiry: the need to consider the irreversible harms from climate change in determining a balance between economic and environmental considerations: “Although this restriction [imposition of carbon pricing] may interfere with a province’s preferred balance between economic and environmental considerations, it is necessary to consider the interests that would be harmed — owing to irreversible consequences for the environment, for human health and safety and for the economy — if Parliament were unable to constitutionally address the matter at a national level. This irreversible harm would be felt across the country and would be borne disproportionately by vulnerable communities and regions in Canada” (paragraph 206).

The Commissioner should also acknowledge the following facts as relevant to the national and international focus from environmental organizations on Albertan oil and gas extraction. Environment Canada has identified upstream oil and gas operations as the largest (26% of national emissions) and fastest rising source of greenhouse gas emissions in Canada. Emissions from Alberta’s oil and gas sector (141.3 MT, or 19% of national emissions) is larger than all other provincial emissions other than Ontario (161 MT) and Alberta (276 MT).⁸ The graph below (prepared by Andrew Leach) illustrates these trends in GHG emissions. In addition, the bitumen in the tar sands represents the third largest reserve of oil in the world, meriting a global focus.



It is not only environmental groups who argue that we must take drastic action to deal with what the Supreme Court of Canada has called “an existential threat to human health.” The Commissioner should acknowledge that the Parliament of Canada has declared a climate emergency and that, inter alia, states that: “(a) climate change is a real and urgent crisis, driven by human activity, that impacts the environment, biodiversity, Canadians' health, and the Canadian economy; (b) Canadians are feeling the impacts of climate change today, from flooding, wildfires, heat waves and other extreme weather events which are projected to intensify in the future; (c) climate change impacts communities across Canada, with coastal, northern and Indigenous communities particularly vulnerable to its effects; and (d) action to

⁸ <https://www.canada.ca/en/environment-climate-change/services/climate-change/greenhouse-gas-emissions/sources-sinks-executive-summary-2021.html#toc5>

support clean growth and meaningfully reduce greenhouse gas emissions in all parts of the economy are necessary to ensure a safer, healthier, cleaner and more prosperous future for our children and grandchildren.”⁹

He should also acknowledge that the Government of Canada has committed to the achievement of net-zero emissions by 2050,¹⁰ that this commitment is now embedded in federal legislation¹¹ and that the International Energy Agency has found that “Net zero means a huge decline in the use of fossil fuels. They fall from almost four-fifths of total energy supply today to slightly over one-fifth by 2050.”¹² In advocating for rapid reductions in greenhouse gas emissions, environmental groups are supporting these policies which will benefit all Canadians, including Albertans.

It should be noted that from the very beginning of the campaign, Greenpeace Canada and others have advocated for practical policies that would ensure workers be protected through “just transition” policies. For example, the 2009 “ENGO Declaration” letter¹³ cited as evidence of Greenpeace Canada’s involvement in anti-Alberta campaigns includes the following recommendation:

“Strengthen investments in renewable energy and in energy efficiency and conservation through creating new clean energy jobs and increasing prosperity through new technologies. A continental commitment to enhanced energy efficiency and rapid expansion of renewable energy, that minimizes impact on the natural world, is critical. Moreover, energy security is best achieved through investment in the cleanest available energy and through ending our dependence on fossil fuels.”

Similarly, the EDC Divestment Letter¹⁴ that is cited calls for the Government of Canada to ensure that EDC:

“Rapidly scale up support for sustainable, renewable and equitable climate solutions that respect human rights, including but not limited to renewable energy, energy efficiency, batteries and storage, interconnectors, smart-grid technologies, the electrification of heat and transport and accessible public transit.... [and] Uphold the six Principles for a Just Recovery in all of its business. This framework seeks to eliminate economic, gender, racial and social inequalities and guide us to a society that prioritizes resilience and wellbeing for all.”

In 2009, Greenpeace Canada co-published a report on green jobs with the Alberta Federation of Labour and the Sierra Club.¹⁵ In 2016, we published a follow-up report on the green job potential of full implementation of the provincial climate plan.¹⁶ And as noted in the Commissioner’s report, Greenpeace

⁹ <https://www.ourcommons.ca/Members/en/votes/42/1/1366/>

¹⁰ <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050.html>

¹¹ <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/canadian-net-zero-emissions-accountability-act.html>

¹² https://iea.blob.core.windows.net/assets/405543d2-054d-4cbd-9b89-d174831643a4/NetZeroby2050-ARoadmapfortheGlobalEnergySector_CORR.pdf

¹³ <https://www.pembina.org/reports/us-can-ceo-declaration.pdf>

¹⁴ https://environmentaldefence.ca/report/edc_climate_target_letter/

¹⁵ https://www.afl.org/environmental_groups_and_afl_release_groundbreaking_green_jobs_report

¹⁶ <https://globalnews.ca/news/2656320/green-economy-will-create-145000-alberta-jobs-greenpeace-report/>

Canada's 2010 grant from the Oak Foundation supported our efforts to promote wind power as an economic alternative to oil and gas.

2. The Commissioner is misinterpreting the Inquiry's Terms of Reference in a way that identifies all conservation or climate initiatives as 'anti-Alberta' and exaggerates funding levels.

The Inquiry's Terms of Reference established by the Government of Alberta required the Commissioner to inquire into the role of foreign funding in "anti-Alberta energy campaigns". The Terms of Reference define this as direct or indirect attempts to "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".

On his own motion, and without notice to others, the Commissioner ruled on September 14, 2020 that the Terms of Reference – and in particular "anti-Alberta energy campaigns" - should be interpreted broadly. Notwithstanding the clear language of the Terms of Reference, the Commissioner reasoned that it is not his role to determine whether a particular oil project is "timely, economic, efficient and responsible". He expressed instead that he would proceed on the basis that "some level of oil and gas development" in Alberta is necessarily "economic, efficient and responsible", and therefore stated that he would focus on opposition to development of Alberta's oil and gas resources "in a broad and general sense". In the same decision, the Commissioner says he will likely not inquire into whether any particular statements by certain groups are "misleading or false".

We believe that the Commissioner has exceeded his jurisdiction by adopting an overly broad interpretation of the terms of reference and choosing to ignore words in his terms of reference. Terms of reference are subordinate legislation and must be interpreted in the same manner as a statute.¹⁷ The Commissioner is not free to interpret his terms of reference in any way he deems fit, but must do so in accordance with principles of statutory interpretation. To do otherwise would be to exceed the jurisdiction given to him by the Governor in Council through the terms of reference.¹⁸ As the Supreme Court of Canada says, "The general canon of interpretation of course requires a court to ascribe some meaning to each word used by the legislature."¹⁹

The Commissioner's ruling effectively reads out the words "economic, efficient and responsible" from the Inquiry's Terms of Reference. In doing so, he has deprived Greenpeace Canada from the right to argue that it has never been opposed to - and in fact has advocated for - economic, efficient and responsible oil and gas development in Alberta. Critically, and as further set out below, it is Greenpeace Canada's view that much of tar sands development has not been responsible, economic or efficient, and it can point to numerous independent expert reports over the years that support its view.

¹⁷ Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law) (2009) at p. 281

¹⁸ *Stevens v. Canada (Attorney General)*, 2004 FC 1746 at para 36

¹⁹ *Atco Ltd. v. Calgary Power Ltd.*, [1982] 2 SCR 557 at 569

Moreover, Greenpeace Canada was not provided with a reasonable opportunity to argue that the information it has disseminated is reasonably accurate - and not “misleading and false” - and therefore contributes to legitimate debate on important matters of public concern.

The Commissioner's broad definition, which posits that “some level of oil and gas development” in Alberta is necessarily “economic, efficient and responsible”, is then exploited to cast a very wide net over what constitutes an ‘anti-Alberta’ campaign. The Commissioner's tortured logic seems to be that since *any* level of oil development is responsible, then *any* land conservation (paragraph 200), coastal rainforest (210), marine (228), boreal forest (248) or wetland (261) protection program is “an anti-Alberta energy campaign in a broad and general sense.” The implication is that entirely unfettered development is responsible and efficient, which is surely incorrect. Again, Alberta's Cabinet included the words “economic, efficient and responsible” in the Inquiry's terms of reference for a reason, and those words necessarily imply that some forms of oil and gas development are inefficient and irresponsible.

The Commissioner also takes aim at divestment campaigns anywhere in the world (paragraph 171) even when Alberta is not the sole or even primary target of these campaigns which are targeted at coal or fossil fuels in general. Similarly, children's climate cases (paragraph 272) do not solely or primarily target Alberta, as even the Commissioner acknowledges that these cases have been brought forward in 14 countries (i.e. they are not unfairly targeting Alberta) and they target governments, not industry. In addition, the Commissioner deems the “ExxonKnew” lawsuits brought by the Attorney Generals of New York, Massachusetts, Minnesota, Connecticut, Rhode Island, Delaware, and the District of Columbia, and Massachusetts to all be anti-Alberta (paragraph 281), even though they address the global operations and practices of ExxonMobil, including its history of supporting the types of climate science denial campaigns that the Commissioner has promoted via the materials he commissioned and published.

Put most simply, because the vast majority of these campaigns – including Greenpeace Canada's -- are aimed at combating climate change, which is a global threat, the Commissioner interprets them as anti-Alberta. It is akin to arguing that anti-smoking initiatives are anti-Kentucky, or anti-North Connecticut, where tobacco crops are grown.

Extensive evidence challenging the timeliness and responsibility of the development of Alberta's oil and gas development was presented to the Commissioner in the submissions of University of Calgary Law professor Martin Olszynski.²⁰ With regard to both substance and procedural fairness, the evidence from these materials must be included in the final report of the Inquiry.

This use of such a broad net - capturing virtually any conservation or climate initiative as in some sense anti-Alberta - results in an unfairly exaggerated calculation of funding. As a concrete example of this overreach, in the table presented in paragraph 421 of his report, the Commissioner has included \$1.473 billion in government funding to the Toronto Regional Conservation Authority as potentially “anti-Alberta”.

We believe that the Commissioner misrepresents the findings of Deloitte research to exaggerate the extent of ‘anti-Alberta’ campaigns. Table 11 in paragraph 77 of Deloitte report identifies funding for “Alberta Resource Development Opposition” over the 2003-2019 period. It shows only **\$37.5M** for direct opposition to Alberta oil and gas development, and **\$21.3M** for indirect opposition. Of that **\$58.9M** total, only **\$16.8M** came to organizations in Canada (i.e. an average of just over \$1M/year).

²⁰ <https://albertainquiry.ca/sites/default/files/2020-12/Letter-to-Allen-Ruling-20201013.pdf>

The Deloitte report separately found that “Foreign Funding provided by foreign organizations in respect of Canadian based environmental initiatives is approximately \$1.28 billion over the Period of Review when including conservation initiatives as reflected in Table 12.”

The Deloitte report acknowledges the limitations of their research and that funding for Alberta Resource Development Opposition may well be higher than the \$58.9M they identified. But without any evidence, and contrary to the findings of the Deloitte report, the Commissioner implies that the bulk of that \$1.2B was for anti-Alberta activities. In paragraph 438, the Commissioner states “I cannot find that all of these funds were used to fund anti-Alberta energy activities. However, by the same token, I also cannot find that a larger portion of the \$1.28 billion in foreign funding of Canadian-based environmental initiatives, noted above, was not used in an effort to block, hinder or delay the development and/or transportation of Alberta oil and gas.”

This is an extraordinary claim and should require extraordinary proof.

A further unsupported leap in logic allows the Commissioner to name only some of the organizations (who received a minority of that \$1.28 billion) as “anti-Alberta” yet includes all of the funding for all of the groups as potentially/broadly anti-Alberta.

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We request that if the Commissioner isn't going to name specific organizations, then he should not include their funding in his report. In addition, if he is going to include a named organization's total government or foreign funding, then he should only include the portion of that funding that he can prove was for work focusing on Alberta.

In addition, the identified funding levels for Greenpeace Canada in the table above (\$1,439,248) are almost double the amount (\$740,091) found in the Greenpeace Canada-specific materials in Part III. The Deloitte report identifies \$100,000 in government funding to Greenpeace Canada, but we do not accept government funding so we would like to know the rationale for this inclusion. The materials in Part III correctly state that Greenpeace Canada did not receive government funding.

3. It is disingenuous to claim that the label ‘anti-Alberta’ is not stigmatizing

The Commissioner appears to be claiming that he isn't making any adverse findings against Greenpeace. He notes that we have done nothing unlawful, dishonest or that could be in any way impugned. In paragraph 11, he attempts to qualify the anti-Alberta label as harmless: "I find that the term "anti-Alberta" refers to Alberta as a geographic modifier, and should not import any connotation that opposition to oil and gas development in Alberta is "against Alberta" or its interests in any sense."

This is dishonest. From the moment this public inquiry was launched by the Government of Alberta, the term 'anti-Alberta' was described in the media and by the Premier and government ministers as inextricably linked to a campaign of disinformation and defamation by environmental groups, including Greenpeace Canada, that is harmful to Alberta's interests.

At the July 4, 2019 press conference announcing the Public Inquiry into Anti-Alberta Energy Campaigns, Alberta Premier Jason Kenney (accompanied by Commissioner Allan) described the purpose of the Inquiry in the following way: "I am here today to make an important announcement about how we will be addressing the problem of foreign meddling to hurt Alberta by interfering in our economy and our politics. Here's what we know. For more than a decade, Alberta has been the target of a well-funded political propaganda campaign to defame our industry and landlock our resources."²¹ Premier Kenney further stated that "it's main tactics have been disinformation and defamation, litigation, public protest and political lobbying" and named Greenpeace as a group which engaged in these activities.

The Commissioner is aware of these statements, as he was on stage with the Premier as these claims of disinformation and defamation by Greenpeace Canada were made. His presence there could be seen as lending support to those statements, which received extensive media coverage.

Given that unfounded claims of disinformation and defamation were central to the public launch of the Inquiry, it is not enough for the Commissioner to state that he lacked resources to investigate these aspects as it allows those claims to stand unchallenged. Nor can he credibly claim that "anti-Alberta" will be seen as a purely geographic descriptor.

Perhaps the clearest example of the fundamental problem with the Commissioner's tortured interpretation of "anti-Alberta energy campaigns" comes from his own Inquiry website. Notwithstanding the Commissioner's ruling that "economic, efficient, timely and responsible" development means "some level" of development, his own FAQs still refer to opposition to "economic, efficient, timely and responsible development":

30. In recent months, some news stories report that the Commissioner will not be conducting fact checking – is that the case?

No, it is not accurate to say the Inquiry will not undertake any "fact-checking". On the contrary, the Inquiry is conducting an in-depth factual examination to determine the facts regarding foreign funding of opposition to the timely, economic, efficient and responsible development of Alberta's oil and gas resources.²²

²¹ The Government of Alberta video of the press conference is available at <https://www.youtube.com/watch?v=d8prcxDWzI4>

²² <https://albertainquiry.ca/faq2> accessed July 11, 2021.

A lay person reading this paragraph would not conclude that Greenpeace Canada merely opposed “some level” of development, but rather that they were opposed to “responsible” development. This illustrates perfectly the danger in the Commissioner claiming the authority to essentially change the plain meaning of the ToR and underscores the unreasonableness of his interpretation.

The Commissioner should acknowledge that the “anti-Alberta” label represents an adverse finding. The Commissioner should either choose a different term or provide Greenpeace Canada with the full procedural and evidentiary rights that come with an adverse finding.

4. In the interest of safety, the unsupported and inflammatory allegations in the “motives” section should be removed.

Public inquiries cannot affect legal rights, cannot order damages, and cannot make any decisions that have a material impact on a person or entity. However, public inquiries have the potential to harm an individual or organization’s reputational interests. That is why there is a legal right to respond to potentially adverse findings. In this particular case, the Inquiry has unfairly vilified and stigmatized Greenpeace Canada as being “anti-Alberta” for no reason other than the fact that it has engaged in public interest environmental advocacy on a matter of superordinate importance. This can fuel inflammatory and vitriolic attacks on individuals and groups. Given the current climate of rising political violence by extremist right-wing groups, Greenpeace Canada staff and volunteers have every reason to be concerned about safety.

As a concrete example, one of the most high-profile participants in the Inquiry (Brett Wilson) has publicly called for individuals involved in what the Commissioner characterizes as anti-Alberta campaigns to be hung for treason (“Bastards. Slimy Bastards. Hang them for treason...”).²³ When criticized for joking about hanging anti-pipeline activists he replied “I didn’t joke. I was serious about hanging foreign funded protestors – undermining our nation – for treason. What would you do?”²⁴

We understand that you have a submission before you that details more of these kinds of attacks, including death threats against individuals named in your report. We hope you will take these concerns seriously.

Greenpeace Canada is not alone in having these concerns. Amnesty International has expressed its concerns in this regard in an open letter to Premier Kenney. That letter states:

“Amnesty International is writing this Open Letter in response to the “Fight Back Strategy” that has been launched by your government, specifically the establishment of an energy “war room” devoted to defending the oil and gas industry in Alberta and a public inquiry into the foreign funding of groups who oppose or criticize energy developments in the province.

“Amnesty International is deeply concerned that these initiatives undermine and violate a range of Alberta’s human rights obligations, under the Canadian Charter of Rights and Freedoms and international law, including freedom of expression, freedom of association, the rights of Indigenous peoples and gender equality. The Fight Back Strategy also risks setting back the

²³ <https://twitter.com/wbrettwilson/status/969013358556057600?lang=en>

²⁴ <https://twitter.com/wbrettwilson/status/978319995657584642?lang=en>

province's responsibility to advance comprehensive action to address the human rights impacts of the global climate crisis.

"Amnesty International is also gravely concerned that these initiatives, and the rhetoric surrounding them, feeds into a worsening climate of hostility towards human rights defenders – particularly Indigenous, women, and environmental human rights defenders – exposing them to intimidation and threats, including threats of violence."²⁵

In response to these criticisms from Amnesty International, Premier Kenney expressed admiration for Russia's jailing of Greenpeace activists protesting Arctic oil development as "instructive": "Their [Greenpeace's] crew was arrested and thrown in a Siberian jail for six months and funnily enough, they've never been back. I'm not recommending that for Canada but it's instructive" (note this is inaccurate: Greenpeace Russia is still very active on oil-related campaigns). Amnesty International's Secretary General Alex Neve responded that this kind of rhetoric creates the idea that it's fine for governments to jail human rights and environmental activists.

Furthermore, the Commissioner lends his credibility in the "motives" section to conspiracy theories that endanger environmental advocates. In paragraphs 525-529, he lists a range of theories suggested to him yet unsupported by any evidence in the report (e.g. "the movement has its roots in the "one world government" philosophy"; "it is a progressive/socialist movement"; "the foundation for the movement is based on Malthusian theory": "the movement is driven by those who will benefit from trading in carbon credits, subsidies for renewable energy, the ownership of rail cars, or some other scheme that will be economically beneficial for the participants"). Then in paragraph 532, the Commissioner validates these theories by stating: "it may very well be a combination of more than one of these theories. It is a question that this Inquiry did not have the resources to ultimately determine." Given the threats from individuals such as Mr Wilson and his ilk, it is frankly irresponsible for the Commissioner to offer any speculation on these theories when he admits he did not have the resources to inquire into them.

The Commissioner then goes on to advance other ideas of his own, but they are not connected to any specific activities of the organizations named in the report. For example, he claims that the organizations are adopting an "extremist" approach: "I have been directed to observations with which I agree, to the effect that activism that leads to extremism has the potential to seriously undermine the ability to achieve positive outcomes." (paragraph 537). He claims to base this assessment on interviews he conducted, but he does not provide a record of those interviews for Greenpeace Canada to be able to cross-examine.²⁶ Moreover, he has not attempted to discuss motivation with the groups he is investigating. To the best of our knowledge he has not interviewed anyone involved with any of the organizations he has named as anti-Alberta. He would not even reply to multiple letters from Greenpeace Canada.

There is no evidence of "extremism" in his report other than this vague reference. It is a very serious charge and will surely be seized upon by commentators to inflame sections of the public against environmentalists.

²⁵ <https://www.amnesty.ca/sites/default/files/Open%20Letter%20to%20Premier%20Kenney.pdf>

²⁶ We have not seen any reference to such interviews in the materials provided. Though admittedly Greenpeace was only provided access to the "Dataroom" on July 1, 2021. There are tens of thousands of pages and it is possible we missed this reference. If the information was present, we ask the Commissioner to confirm it and provide us with an opportunity to address it.

In our opinion, the “Motives” section of the Commissioner’s report should be deleted in its entirety as it is not supported by evidence and will contribute to this kind of inflammatory and vitriolic attack on individuals and groups.

5. The Commissioner’s conclusions are not supported by evidence

Although the rules of evidence for administrative tribunals are “relaxed”, this does not mean that “anything goes”²⁷. Inquiries must still “act on a principled basis” with respect to receiving evidence. Normally, evidence should be received directly from sources, and the evidence should be sworn. The Commissioner may admit “hearsay” evidence – that is, evidence or documents that do not come directly from the source – where (1) it is relevant; and (2) it can be “fairly regarded as reliable”, with some circumstantial guarantees of reliability and authenticity.

Throughout the Draft Report, the Commissioner relies on unnamed sources or interviews, newspaper stories, and random documents and reports with unknown origins. In the Commissioner’s *Rules of Procedure and Practice*, Participants are theoretically afforded the opportunity to cross-examine people. Without knowing the identity of these interviewees, Greenpeace Canada has no ability to cross-examine on their claims. Many of these sources of information would, in our opinion, fail to meet any standard of admissibility. We strongly believe that much of the information the Commissioner relied upon is either inadmissible or has no or little evidentiary weight.

Furthermore, common law rules of evidence are bolstered by the fact that many provisions of the Public Inquiries Act speak to sworn evidence, subpoenas, a process for the admission of copies of original documents, etc.²⁸

6. The Commissioner hasn’t ensured procedural fairness

The common law rules of procedural fairness and natural justice require the Commissioner to provide Greenpeace Canada with a reasonable opportunity to respond to potential adverse findings. Greenpeace Canada should also have access to all information upon which the Commissioner relies.

These obligations are codified in the Alberta *Public Inquiries Act*, where section 13 provides:

No report of a commissioner or commissioners that alleges misconduct by any person shall be made until reasonable notice of the allegation has been given to that person and the person has had an opportunity to give evidence and, at the discretion of the commissioner or commissioners, to call and examine witnesses personally or by that person’s counsel in respect of the matter, notwithstanding that the person may have already given evidence or may have already called and examined witnesses personally or by that person’s counsel.

²⁷ *Fraser Health Authority (Re)*, 2006 BCIPCD No. 26, cited in, e.g., *British Columbia Lottery Corporation v Skelton*, [2013 BCSC 12](#)

²⁸ *Public Inquiries Act*, RSA 2000, c P-39, sections 4, 5, 8, 9 and 10

The notice requirement is to ensure that an organization such as Greenpeace Canada be provided with reasonable particulars and information. However this did not occur until the evening of June 30, 2021, which is effectively July 2, 2021 due to the statutory holiday.

Greenpeace Canada wrote to the Commissioner on three occasions over an 18 month period (16 October 2019, 18 January 2021 and 20 April 2021). In the aforementioned letters we expressed our concerns with the Inquiry process including our expectations of procedural fairness and the inclusion of inaccurate references to Greenpeace in a package of materials provided to Participants for Commentary and other content that Participants were asked to comment on referring to Greenpeace Canada or other Greenpeace entities. We did not receive a substantive reply from the Commissioner beyond acknowledgement of receipt.

7. The result is a chilling effect on public participation and free expression of ideas in a free and open society

The right to freedom of expression is a cornerstone of our constitutional system in Canada. The Supreme Court of Canada has stated:

“the connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity. The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.”²⁹

Moreover the Court has held that chilling debate on matters of legitimate public interest raises issues of inappropriate censorship and self-censorship. Public controversy can be a rough trade, and the law needs to accommodate its requirements.³⁰

In *Harper v. Canada (Attorney General)*, the Court has specifically discussed in detail the importance of protecting political speech and has stated that: “Political speech is the single most important and protected type of expression. It lies at the core of the guarantee of free expression.”³¹ Citing *R. v. Keegstra* the Court said in *Harper* that: “the right of the people to discuss and debate ideas forms the very foundation of democracy. The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy.”³² It went on to say:

“The ability to engage in effective speech in the public square means nothing if it does not include the ability to attempt to persuade one’s fellow citizens through debate and discussion. This is the kernel from which reasoned political discourse emerges. Freedom of expression must allow a citizen to give voice to her vision for her community and nation, to advocate change through the

²⁹ *R. v. Keegstra*, [1990] 2 SCR 697

³⁰ *WIC Radio v. Simpson*, [2008] 2 SCR 420

³¹ *Harper v. Canada (Attorney General)*, 2004 SCC 33 (CanLII), [2004] 1 SCR 827, par. 11.

³² *Id.* at par. 12.

art of persuasion in the hope of improving her life and indeed the larger social, political and economic landscape.”³³

The Commissioner’s final report and its findings that Greenpeace Canada has in his view engaged in “Anti-Alberta” activities ignore the importance of the type of expression that Greenpeace Canada exercises and the constitutional protections afforded to it in this regard. All of this was recently laid out succinctly in the context of the Inquiry by University of Calgary Professor Jennifer Koshan.³⁴

Greenpeace Canada’s work on the Alberta oil and gas industry and in particular its tar sands development is a matter of significant public interest especially when our nation and planet are facing the dire consequences of human-made climate change. The Commissioner’s report will undoubtedly cast an unfair and negative light on Greenpeace Canada by labeling it as “Anti-Alberta” when that term could not be further from the truth. This characterization vilifies Greenpeace Canada and will have a chilling effect on its freedom to express itself and contribute to a meaningful process of debate in a democratic and free society.

At the very least, the Commissioner must, in his report, address these concerns and explain why he thinks the report and Inquiry do not engage s. 2(b) of the Charter, or, if he agrees that they do, why he thinks such infringement is justified or otherwise consistent with what the Supreme Court of Canada has described as Charter values.

Summary of recommendations

In summary, Greenpeace Canada makes the following recommendations. The Commissioner must:

1. Acknowledge in his report that the findings of the IPCC that aggressive action to limit global warming will have clear benefits to people and natural ecosystems
2. Take notice that the Supreme Court of Canada has found that climate change poses “an existential threat to human life in Canada and around the world” and that “it is well established that climate change is causing significant environmental, economic and human harm nationally and internationally, with especially high impacts in the Canadian Arctic, coastal regions and on Indigenous peoples.”
3. Acknowledge that environmental groups were responding to the evidence that Albertan oil and gas extraction is a large and rising source of greenhouse gas emissions (19% of national emissions in 2019), and that the bitumen in the tar sands represents the third largest reserve of oil in the world, meriting a global focus.
4. Acknowledge that measures advocated by environmental groups are consistent with the Parliament of Canada’s declaration of a climate emergency and the Government of Canada’s international climate commitments.
5. Clarify that Deloitte’s assessment of the funding for “environmental initiatives” is distinct from “Alberta Resource Development Opposition” and in the absence of compelling evidence, the Commissioner should delete his implication that the majority of the former was for anti-Alberta campaigns. Further, if the Commissioner isn’t going to name specific organizations, then he should not include their funding in his report. In addition, if he is going to include a named

³³ *Id.* at par. 16.

³⁴ <https://ablawg.ca/2019/12/17/the-alberta-inquiry-and-freedom-of-expression/>

organization's total government or foreign funding, then he should only include the portion of that funding that he can prove was for work focusing on Alberta's oil and gas sector.

6. Acknowledge that the "anti-Alberta" label represents an adverse finding. The Commissioner should either choose a different term or provide Greenpeace Canada with the full procedural and evidentiary rights that come with an adverse finding.
7. Delete the "Motives" section of the Commissioner's report as it is not supported by evidence and will contribute to this kind of inflammatory and vitriolic attack on individuals and groups.
8. Acknowledge that the "anti-Alberta" characterization vilifies Greenpeace Canada and will have a chilling effect on its freedom to express itself and contribute to a meaningful process of debate in a democratic and free society. The Commissioner should address these concerns and explain why he thinks the report and Inquiry do not engage s. 2(b) of the Charter, or, if he agrees that they do, why he thinks such infringement is justified or otherwise consistent with what the Supreme Court of Canada has described as Charter values.