
CLIMATE LAW IN OUR HANDS



**A campaign, legal theory & conversation
about people power & responsibility for
climate change costs**

A PROJECT OF



WEST COAST
Environmental Law

THE POWER TO FIGHT CLIMATE CHANGE IS IN YOUR HANDS...

Wildfires. Drought. Flooding. Rising sea levels. Climate change is already reshaping and impacting communities around the world – and BC communities too – in profound and disturbing ways. As the blanket of fossil fuel pollution enveloping our planet continues to push global temperatures ever higher, many of us are frightened for our communities, for people around the world, and for the world we leave our children. It's easy to feel powerless – that anything we do is insignificant against the global causes of climate change.

The world's fossil fuel addiction seems too lucrative for governments and corporations to move away from. Of course, that's because those who profit don't expect to pay the resulting costs.

That's bad economics. As long as fossil fuel polluters don't pay anything for climate harm, they will continue to invest in more pollution rather than cleaner technologies, and spend billions misleading the public and flooding our governments with lobbyists to block real climate action.

But communities around the world are demanding that fossil fuel companies start cleaning up their fair share of this mess – insisting that polluters must pay.

In BC, more than 60 community groups challenged local governments to hold fossil fuel companies accountable, and a growing number of governments are doing so by sending “climate accountability letters” demanding that major fossil fuel companies pay a share of local climate costs.

A community in Peru and over a dozen local governments in several US states are suing fossil fuel giants for the costs of preventing impacts from flooding and sea level rise. The Philippines Human Rights Commission is investigating a complaint brought by community groups against 47 global fossil fuel companies for their role in causing climate change.

We have a range of political, moral and legal tools to expose the invisible costs of climate change and demand accountability from the global fossil fuel industry. The time to use these tools is now.

We are not powerless.



WHAT'S IN THIS BRIEF

This Campaign Brief is divided into three main sections.

PART 1 - Building a Conversation (pages 3-12)

First, we examine the importance of a public demand for accountability, starting a public conversation about the role of fossil fuel companies in causing local climate costs and their obligation to pay a fair share of those costs. These demands force fossil fuel companies into a discussion that they do not want to have – about the fact that their fossil fuel products are harming our communities. A key tool in this conversation is the “Climate Accountability Letter” – letters sent by local government representatives to fossil fuel companies demanding accountability for their role in causing climate change.

Getting more people to recognize the true costs of the fossil fuel economy is itself an important goal.



Aftermath of Hurricane Harvey, Texas, 2017. Photo by Texas Military Department.

PART 2 - Legal Tools for Accountability

(pages 13-20)

Second, we look at legal options to force fossil fuel companies, and society, to address the debt that their business model is increasingly imposing on our communities. These options include (but are not limited to) climate damages litigation, climate accountability legislation and shareholder action.

As communities around the world begin to sue fossil fuel companies, climate lawsuits are increasingly recognized as real risks by financial experts and by the fossil fuel companies themselves. In 2016 the Governor of the Bank of England, Mark Carney, warned the insurance industry of the risks faced by, among others, fossil fuel companies if the “parties who have suffered loss or damage from the effects of climate change seek compensation ...” And in February 2017, Chevron notified its shareholders for the first time that climate litigation could have an impact on its profits.

Once we recognize that we can demand accountability from fossil fuel companies, we realise that the barriers to requiring companies to take responsibility for the harm caused by their products are political – and in fact our communities have a range of realistic options.

PART 3 - Messaging for Fossil Fuel Accountability

(pages 21-23)

Third, we share some lessons about how to communicate about fossil fuel company accountability.



Part 1: **BUILDING A CONVERSATION**

Think back to news coverage about climate change that you've seen. Often polar bears or Pacific Islanders are mentioned, but the fact that BC communities are already incurring costs to prepare for or deal with the impacts of climate change is rarely mentioned. And even if it is, the role of the fossil fuel industry in causing those impacts is almost never discussed – instead we are usually told that consumers are driving too much, using too much energy.

Similarly, news stories about flooding, drought and wildfires in BC only rarely mention climate change. More often these impacts are “natural disasters” or “acts of God,” without mention of the role of the fossil fuel economy.

We need to start a new conversation – in media, in social media and amongst our family and friends. Asking fossil fuel companies to acknowledge and take responsibility for their role in causing climate change is an act of empowerment. While we do need to look at how to reduce our own fossil fuel use, we get to recognize that individuals have relatively few options within an economic system that has been skewed towards fossil fuel use.

We need to discuss the role of large fossil fuel companies, in making hundreds of billions of dollars of profits from that same system, while lobbying to slow down action on climate

change. We need to recognize that Exxon, and other fossil fuel companies, funded misinformation campaigns to confuse the public on climate science, while registering patents on hybrid vehicles and other technology which, if they had been developed, would have given consumers alternatives to gas-guzzling vehicles.

In short, we need to talk about the fact that some players in the global fossil fuel economy are a lot more responsible for the harm being caused than individuals and need to pay their fair share. Indeed, until they do so, they will have every incentive to continue working against global climate action.

The mere act of talking about the role of fossil fuel companies, and their responsibility for a share of the costs of climate change, increases the likelihood that this shift in public understanding will happen soon. We cannot be shy about incorporating this message into all of our climate change actions.



A sign from a Peoples Climate Summit protest in Melbourne, Australia, 2014. Photo by Takver.

FAIR SHARES

What exactly is the fossil fuel industry's fair share of climate costs?

In 2013 scientist Richard Heede published a peer-reviewed article that looked at how much oil, gas and coal the world's fossil fuel companies told their shareholders that they produced, and then calculated the volume of greenhouse gas emissions that resulted from the operations and products of each company.



The 'Carbon Majors', 90 companies responsible for 63% of global emissions in the past 150 years. www.carbonmajors.org

Based on Heede's work, we can say that just 90 entities – mostly fossil fuel companies:

- Have caused almost 2/3 of the world's human caused greenhouse gas emissions (directly or through their products);
- Made trillions of dollars doing so;
- Invested hundreds of millions of dollars in delaying action to fight climate change; and
- Plan to continue developing fossil fuel reserves that scientists say must stay in the ground.

Some of these companies are responsible for huge amounts of the world's greenhouse gases. The top 5, for example – Chevron, Exxon, Saudi Aramco, BP and Gazprom – have caused 14% of the greenhouse gases in the global atmosphere today.

Heede's work provides a starting point for discussions about the relative responsibility of different companies for climate change.



CLIMATE ACCOUNTABILITY LETTERS

The most straightforward and inexpensive way to start a conversation about the accountability of the fossil fuel industry for local climate costs – challenging the assumption that taxpayers will pay the full costs of climate change – is for a community to send individual oil, gas and coal companies a Climate Accountability Letter.

A Climate Accountability Letter talks openly about how climate change harms our community and then firmly and publicly tells fossil fuel companies that we expect them to take responsibility for the harm caused by their products – likely by paying a fair share of climate impacts.

Municipalities and Regional Districts from across BC - as well as the Association of Vancouver Island and Coastal Communities representing 53 local governments - have voted to send Climate Accountability Letters.

Climate Accountability Letters are a hugely flexible tool. Ideally the letter should be sent by an appropriate level of government or official agency that is recognized as representing the community and is incurring or expects to incur climate costs. We've focused on local governments – because that's a great place to have a concrete discussion about local climate costs. But other levels of government, or even community groups, could choose to send their own letter.

Letters can demand the company pay specific compensation, raise the question of what a company's fair share of climate costs is, or suggest other ways for the company to take responsibility for its products.

Our website provides a number of resources to help local governments write and send these letters. You'll also find resources to support community groups in asking their local government to do so.

Check out our Resources page:

www.wcel.org/program/climate-law-in-our-hands/resources

PUBLIC SUPPORT:

Recent polling reveals that 75% of British Columbians support their local government sending a climate accountability letter to fossil fuel companies demanding a fair share of local climate costs.



A firefighter calms a flame in the BC interior. Photo by the Province of British Columbia (2011).

COMMUNITY ROADMAP

What could a campaign for climate accountability look like?



STEP 1

Form a group. This could be an existing organization, a loose group of friends or a community Facebook group on fossil fuel accountability.

STEP 2

Information gathering – Find out what you can about your community's climate impacts and what your local government has already done to address climate impacts. Meet with a sympathetic councillor to discuss how best to get the issue before Council.



STEP 3

Draft a climate accountability letter that discusses your community's climate costs and asks the fossil fuel companies to pay a fair share. We have templates available.

STEP 4

Meet with local government officials – It's a good idea to have some preparatory meetings before going to Council with your proposal (or to use a first presentation to Council as an initial introduction to the idea, and follow up with individual meetings). Discuss the idea with each councillor and ask for their support, and then go to Council when you've got a reasonable level of support.



Note: this is only one possible pathway that a community group could take to demand fossil fuel accountability. The campaign possibilities are endless - your creativity and strategic thinking will come in handy.



STEP 5

Have supporters write to councillors and to local media to indicate public support. Look for opportunities to speak out on radio, TV and newspapers.

STEP 6

Appear as a delegation to Council – If Council agrees to send the letter, great. Ask a sympathetic councillor (in advance) to move that if Council is not ready to, they refer the letter to an advisory committee to examine the issue further and make a recommendation back to Council.



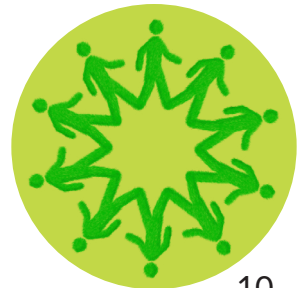
STEP 7

Hold a town hall meeting or a rally, send more letters, and keep up the pressure on the local government until they agree to send the letter.



STEP 8

Meet further with Council to discuss incorporating discussion of fossil fuel industry accountability into climate adaptation plans, the possibility of litigation and other follow up.



OTHER CONVERSATION STARTERS

Community groups can call out the fossil fuel industry for their role in causing climate impacts – and can use all types of media to help start a public conversation. In addition, public education and community conversations are essential in understanding how climate change is harming your community, and the role of the fossil fuel industry.

Here are a few ideas of what your community group might do:

- 1. Press your local elected officials and your local government to hold the fossil fuel industry accountable by sending accountability letters and (once they've done that) by considering a class action lawsuit.**
 - Write to and meet with local government officials
 - Appear as a delegation to your Council
 - If you are in BC, sign on to our Open Letter to BC's Local Governments.
 - Rally at your town hall to ask your local government to write climate accountability letters. Or write to them to ask the same.
- 2. Educate yourselves and the public about how fossil fuel driven climate change is impacting your community:**
 - Find out about existing climate modeling for the impacts that your community is expected to suffer from climate change. In BC, the Pacific Climate Impacts Consortium is a great go-to place for resources and analysis tools. For some communities there will be existing assessments and resources. In others you'll be starting at ground zero, but you can certainly ask why this work has not been done.
 - Participate in public consultations around community planning and raise the issue about the need for climate adaptation, and accounting for those costs.

- Participate when your community develops plans for infrastructure that will be impacted by climate change or develops climate adaptation plans. Ask questions about how much climate change has increased the costs and how to recover those costs from companies that have played a role in causing the problem.
- Organize a public meeting to discuss how climate change is affecting your community, and the major role of the fossil fuel industry.
- With a bit of technical training, citizen scientists can collect the data that documents how your region is changing due to climate change – and comment on the role of the fossil fuel economy in causing those impacts.
- Picket a local Chevron, ESSO or other major gas station to ask the company when it will pay its fair share.

3. Use all types of media to build a conversation about fossil fuel accountability in your community to force fossil fuel companies into a public conversation they don't want to have:

- Write an op-ed or letter to the editor for publication in your local paper, or use social media in creative ways.
- Ask for a feature or segment on community radio stations.
- Raise public awareness about the history of the fossil fuel industry's denial of climate change.
- Try to get coverage in your local media and share stories about your actions on social media. If you give us a heads up, we'll do our best to share your stories with our networks as well.

It's a conversation that has the potential to seriously affect the industry's profitability and social licence, and their ability to outcompete renewable energy – and we can all force this conversation to happen publicly. In doing so, we begin to shift the balance of power between the industry and our communities.



Part 2: LEGAL TOOLS FOR ACCOUNTABILITY

While Climate Accountability Letters and public conversations about fossil fuel industry accountability may encourage difficult questions about our fossil fuel economy, they are unlikely – by themselves – to result in real consequences for the fossil fuel industry. What they will do is create the public space for community groups, shareholders and governments to pursue some of the tools discussed in this part of the Brief.

Those tools include:

- Lawsuits and other legal action against fossil fuel companies under current laws;
- New laws that clarify how and when fossil fuel companies can be sued for their share of climate impacts; and
- Shareholders raising questions about Climate Accountability Letters and the risks of litigation.

It is important to emphasize the relationships between the public conversation discussed in Part I and these tools. Fossil fuel companies know that a public conversation about their role in causing climate change can lead to litigation – so even that public conversation creates a financial risk for the companies.

Similarly, shareholders, governments, judges and other key stakeholders are aware of broader public debates and active public support for fossil fuel company accountability increases the likelihood of these key decision-makers taking action.

The legal advantage of focusing on accountability

Canada has contributed about 2% of historic global greenhouse gas emissions, and BC's share is less than 0.2%. No wonder climate activists often hear: "Why are you focused on Canada's emissions? They're insignificant." That thinking is flawed – each additional tonne of fossil fuel pollution imposes significant costs on the world. But these numbers do show that focusing only on Canada's emissions cannot by itself solve climate change.

The world's top 20 fossil fuel companies, on the other hand, are responsible for 29.4% of historic emissions. And by focusing on legal accountability for climate harm, BC governments and courts can create global consequences for harm occurring in the province (as can authorities elsewhere).

That's a game changer, since it means that the global operations of fossil fuel companies are accountable to individual countries – and to the communities in those countries.

For detailed analysis on the legal principles that allow the laws of one country to claim global jurisdiction over climate harm suffered in that jurisdiction, see [Taking Climate Justice into our Own Hands](#), a report you can find on the West Coast Environmental Law website (www.wcel.org).



Aftermath of Hurricane Harvey, Texas, 2017. Photo by Jill Carlson (jillcarlson.org).



LAWSUITS

Big Tobacco boasted for years that it would never lose a court case, never need to settle with a victim of smoking-related cancer or other diseases. That changed very rapidly in the late 1980s and early 1990s, when public opinion began to shift around the role of giant tobacco companies in the health issues faced by smokers.

Big Oil strenuously resists the parallels between tobacco and oil, but there is no doubt that large-scale, successful litigation against the industry is a worst-case scenario for the fossil fuel industry, and one which could defend our communities and our global atmosphere while sending an international message to the world's fossil fuel polluters.

We believe that in many countries actions by governments on behalf of our communities are likely to be successful – as well as creating the potential for public discussion. Every country's laws – and each type of case – will be different in terms of how a case might be brought and the likelihood of success.

Recently, over a dozen U.S. cities and counties, including (for example) New York City, San Francisco and Bolder, have filed lawsuits against fossil fuel companies for the costs associated with preparing for climate change.

To date no lawsuits of this type have been filed in Canada, but in our opinion, BC's communities – represented by our provincial government or in a class action brought by local governments – are well-placed to claim compensation for the costs of preparing for climate change.

Community groups can ask their governments to bring this type of litigation in BC. Community groups may also wish to engage in public education on the need for litigation, support litigation publicly in the media, blogs, newsletters, etc. and fundraise to help support the cost of bringing a case.

A class action lawsuit could play a key role in changing the public conversation about who's responsible for climate change, but we need to make sure that the discussion does not only take place in the courtroom.

A BC Climate Damages Lawsuit

A class action lawsuit brought by BC municipalities against a number of fossil fuel companies is a realistic possibility – an important way for BC's communities to recover a share of their climate costs from these companies.

This class action would claim that large-scale fossil fuel pollution itself is a public nuisance – degrading the global atmosphere – and would claim a share of the costs of preparing our communities for future climate impacts.

Recent polling reveals that 63% of British Columbians would support climate litigation brought by their local government to recover a share of climate costs from fossil fuel companies. We encourage groups to open a discussion with their local government about the possibility of cooperating with other municipalities and regional districts to bring a class action lawsuit. However, care should be taken to emphasize that sending a climate accountability letter does not commit anyone to litigation – and to explore litigation after this important first step has been taken.

Any local government with an active interest in bringing a class action should be referred to West Coast Environmental Law.

A NEW LAW TO ENSURE FOSSIL FUEL ACCOUNTABILITY

Some lawyers think that climate litigation is doomed to fail under current laws. We don't agree, but there clearly are unanswered questions about how a court should evaluate the role of fossil fuel companies in causing climate change.

Community groups can press the BC and Canadian governments to answer these questions – by passing a new law to clarify the legal rules for such litigation. Such legislation – including possible language for a “Climate Compensation Act” – is discussed in detail in *Taking Climate Justice into our own Hands*, but would:

"depending on one's interpretation of the law, either clarify the law related to climate change litigation or alter the law to make climate litigation possible. ... Where possible a Climate Compensation Act should be based on existing and well recognized legal principles and be focused on fair compensation ..."

Similar laws were enacted by Canada's provinces to establish a legal basis for lawsuits against tobacco companies for healthcare costs.



Maldives Minister of Fisheries & Agriculture Dr. Ibrahim Didi signs an "underwater decree" as a statement about the international climate negotiations, 2009.

Photo by Maldives Presidency.

SHAREHOLDER ACTION & DIVESTMENT

The risks of litigation, and of climate compensation legislation, to fossil fuel companies are real. As discussion becomes more widespread, and the likelihood of such actions being taken and being successful rise, fossil fuel companies will face increasing questions from their shareholders to address these risks.

Investors and shareholders have already started asking fossil fuel companies about the risks that climate change, renewable energy and future regulation of greenhouse gas emissions pose for their future profitability. However, these discussions have not usually examined the risks of a fossil fuel company being forced to pay a share of a community's local climate costs.

Shareholders and investors in fossil fuel companies have extensive rights to information about the companies that they own, and can use those legal rights to ask questions about climate accountability letters and risks of litigation. Here are a couple of ideas:

- Representatives of your community can get assigned “proxy shares” – the right to represent a shareholder – giving them the right to speak at a fossil fuel company's annual general meeting about the climate impacts being suffered by your community and to ask for accountability.
- Shareholders can ask fossil fuel companies to answer questions about climate accountability letters received by the company – including whether the company intends to answer the letters, whether the companies owe our communities a fair share of climate costs and the risks of litigation or other legal consequences if these issues are ignored.

In addition to shareholder action, fossil fuel divestment campaigns can speak about climate accountability letters and risks of litigation as one more reason for investors to steer clear of fossil fuel companies.

PART OF A GLOBAL MOVEMENT

It's not just BC communities that are demanding that climate polluters pay their fair share. Communities around the world – in Peru, in the Philippines, in the South Pacific, in the United States – are increasingly realizing that they have the power to send a global message by asking fossil fuel companies to be accountable for the harm caused by their products.

With fossil fuel companies facing this type of demand on all sides, they're going to have to come clean to their investors and shareholders about the potential liabilities of their business model.

Philippines – The Human Rights Commission of the Philippines is investigating whether the role of 47 fossil fuel companies in contributing to climate change amounts to a human rights violation. The investigation is a result of a petition brought by 12 community groups, 20 individuals and 1,288 Filipinos who supported the petition through a website.

Peru and Germany – Peruvian farmer Saul Luciano Iluiya, with the permission of his community of Huaraz, has sued the German coal giant, RWE, for its share of the costs of preparing for flooding from a glacial lake – a risk made worse by climate change. In November, 2017, a German court confirmed that the case is sound in principle, and allowed Iluiya and his lawyers to start presenting evidence. Meanwhile, Germanwatch, in addition to raising funds for Iluiya's lawsuit, has mounted an effective campaign to get ordinary Germans thinking about the costs of RWE's climate pollution.

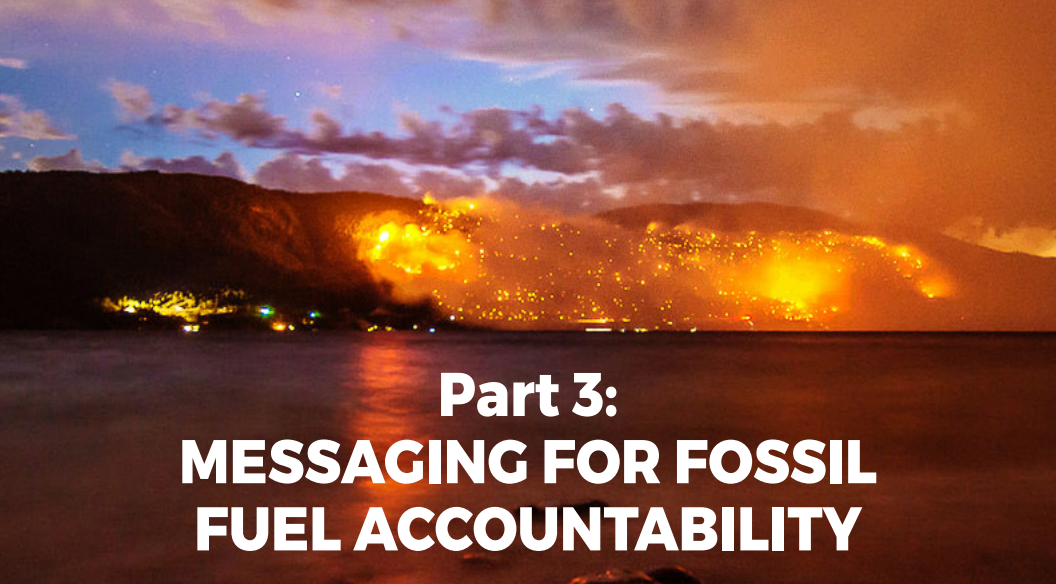
California, New York &

elsewhere – Cities and counties in California (including San Francisco), New York (NYC), Colorado and Washington have sued fossil fuel companies for a share of the costs of preparing for rising sea levels and/or climate change.

Texas – In the aftermath of Hurricane Harvey, a billboard rented by Public Citizen and the Center for Climate Integrity asked residents of Houston: “When will climate polluters pay their fair share?”

International – Organizations from around the world have signed the “climate damages tax declaration” calling for a global tax “on producers of oil, gas and coal to pay for the damage and costs caused by climate change.” The funds raised from the climate damages tax would fund international efforts to alleviate and avoid “the suffering caused by severe impacts of climate change in developing countries, including those communities forced from their homes.”

Figures as famous and diverse as Archbishop Desmond Tutu and Dr. James Hansen have called on fossil fuel companies to pay their fair share for the impacts of climate change. In the words of Archbishop Tutu, doing so will “change the profit incentive by demanding legal liability for unsustainable environmental practices.”

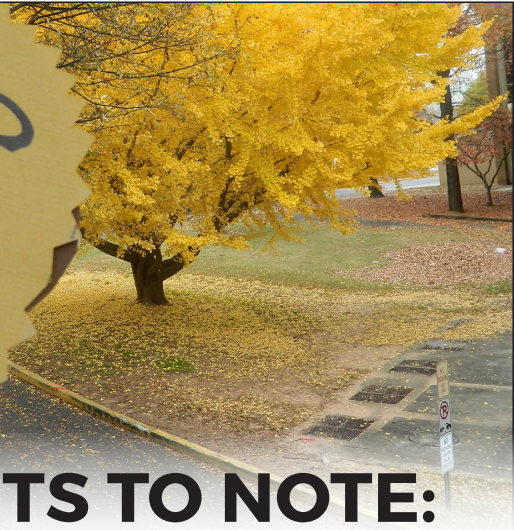


Part 3: MESSAGING FOR FOSSIL FUEL ACCOUNTABILITY

Supported by research and message testing, we've found the messages below to be the most effective in changing the public debate about the role of the fossil fuel economy in harming our communities. The message may need to be tweaked depending on your audience, but please use this messaging as a starting point in your materials, speaking points and discussions.

- Our communities are experiencing climate costs here and now – both direct impacts and the current costs of preparing our communities for expected future impacts. Industry and governments currently assume that we, as taxpayers, need to pay the ever-increasing costs of preparing for climate change.
- We all need to do our part to solve climate change, but the fossil fuel industry has been a major player in causing climate change, and needs to pay its fair share. They have made billions of dollars extracting, processing, manufacturing and selling products that they know degrade the global atmosphere, causing massive economic and human harm to communities around the world.

- Fossil fuel companies knew that their products cause climate change as early as the 1960s and instead of working to develop alternatives, they have stood in the way of developing a more sustainable world – through funding mis-information on climate science and lobbying governments against climate action.
- If the industry had paid its fair share of climate costs from when it became aware of them, we would have a dramatically different world. If the industry were responsible for the true cost of fossil fuels, their products could not hope to compete with renewable energy and other alternatives. Until the fossil fuel industry pays its fair share for climate impacts, they – and the governments that support them – are going to have no incentive to move to a sustainable future.
- Focusing on the responsibility of individuals to address climate change through our lifestyle choices – without dealing with the billions of dollars of profits being made by the fossil fuel economy – ignores the elephant in the room.
- There is broad support for fossil fuel companies paying a share of climate costs. 82% of British Columbians agree that fossil fuel companies should pay a share of climate costs. 75% would support their local government writing a climate accountability letter to fossil fuel companies demanding this, and 63% would support litigation by local governments to recover a share of climate costs.
- Communities have the right to demand accountability from the global fossil fuel industry for the harm caused in their community.



A FEW POINTS TO NOTE:

- Be careful about suggesting that fossil fuel companies are the sole cause of climate change. Rather, acknowledge that individuals and governments also play a role, but that the fossil fuel industry is a major player that has profited from the pollution of our atmosphere – and that it has not been doing its share to prevent climate change (and, in fact, has often worked against climate action). Polling suggests that few people see the industry as primarily to blame, but most people support the idea that the industry is a significant player in causing the problem, and should pay a fair share of local climate costs.
- In talking about the local government role in Climate Law in our Hands, emphasize that governments have a fiscal responsibility not to simply pass on climate costs to taxpayers, but to raise the question about whether other parties should bear a fair share of those costs.
- Speak from the heart about the climate impacts and costs that worry you and about your anxiety around how your community will pay for the costs that are already coming.
- As much as possible, be specific about the types of climate impacts that your community is experiencing or needs to prepare for. Increasingly people see climate impacts as occurring now or in the near future.

CONTACT US

West Coast Environmental Law would love to hear from you if you decide to take any of the steps discussed in this brief, or other steps to demand fossil fuel company accountability.

We are happy to provide support, answer technical or legal questions or work with you in other ways.

Please contact us at aappadurai@wcel.org.



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WEST COAST
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West Coast Environmental Law harnesses the power of law to solve complex environmental challenges. We are transforming environmental decision-making and strengthening legal protection for the environment through collaborative legal strategies that bridge Indigenous and Canadian law. By putting the law in the hands of communities and creating legal risk for those who would harm our land, air and water, we are building the collective power to achieve a more just and sustainable future for all.