

This is the 1st affidavit  
of Andrew Frank in this case  
and it was made on January, 23, 2012

**AFFIDAVIT**

I, Andrew Frank, Senior Communications Manager, of [REDACTED] [REDACTED],  
Vancouver, British Columbia, SWEAR (OR AFFIRM) THAT:

1. I am 30 years old. I currently am employed by ForestEthics Canada ("ForestEthics"). I have been employed by ForestEthics as a Senior Communications Manager since October 2011, and before that from 2007 to 2010 as a Communications Officer on contract. My primary job duties include envisioning, planning and executing communications strategies for ForestEthics' Tar Sands and Sacred Headwaters campaigns, and I provide ongoing advice about media aspects of each campaign. ForestEthics is a charitable project of Tides Canada ("Tides"), a charitable foundation. I am technically employed by Tides. Tides holds charitable funds in trust for its respective charitable projects, including ForestEthics.
2. On January 5, 2012, I and other Vancouver staff of ForestEthics were called into an office and informed over the phone by our senior supervisor, Pierre Iachetti, that the Government of Canada had informed Tides President and CEO, Ross McMillan, that ForestEthics was considered an "Enemy of the State." Mr. Iachetti related that Ross McMillan was given a set time period by the Prime Minister's Office (PMO) by which to "cut loose" ForestEthics, or the government would "take down" all of Tides' charitable projects. I was told that the purpose of this conversation was to give us warning as employees of Tides that our jobs were at risk. Mr. Iachetti told us that ForestEthics was attempting to find ways to survive financially as an organization with the realization that we were likely about to lose our charitable funding. The assumption was that Mr. McMillan had already decided to dissolve ForestEthics' public work in criticizing the proposed Enbridge Northern Gateway oil tanker and pipeline plan, in order to save the rest of Tides' charitable projects.

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3. On the evening of Friday, January 6, 2012, at a public event held at a private residence at 289 Alexander Street, attended by Mr. McMillan and Merran Smith, Director of the Tides Canada Energy Initiative, Ms. Smith reiterated Mr. Iachetti's story to me, but with more specific detail. She said that Mr. McMillan had been in a meeting with the PMO and that someone at the PMO had described ForestEthics as "An enemy of the Government of Canada" and "An enemy of the people of Canada" and had then made the threat that if ForestEthics was not dissolved or removed, Tides would meet an undesirable fate. After her recounting of the story, I asked Ms. Smith to confirm that I had heard her correctly, that it was indeed ForestEthics that had been singled out, and that the language of "Enemy of the Government of Canada" and "Enemy of the people of Canada" had in fact been used to describe ForestEthics. She replied in the affirmative.
  
4. In the weeks following January 6, 2012, I heard this story recounted by several members of the ForestEthics Strategic Management Team, most notably from ForestEthics Executive Director, Todd Paglia. Mr. Paglia explained that he had been in personal contact with Mr. McMillan. Mr. Paglia sent me and two other senior communications staff an email that mentions a personal conversation he had with Mr. McMillan at which he took notes. He suggests in the email that Tides' story has changed since the initial threat from the PMO in order to protect Tides. Attached hereto and marked as **Exhibit "A"** is a true copy of the text of this email dated January 17, 2012.
  
5. On the morning of January 19, 2012, I was told by ForestEthics Deputy Director, Kristi Chester Vance, that it was critical that our organization stay quiet until we had secured funding from Tides. This position ran counter to several earlier strategies we had discussed about how to go public with the news. I came to the realization that Tides and its charitable project, ForestEthics Canada, had no intention of going public with the story about being threatened by the PMO and the PMO's use of the language "Enemy of the Government of Canada" and "Enemy of the People of Canada," for fear of reprisals from the Conservative government. I then consulted a lawyer in order to swear this affidavit so that some record of this attempt by the federal government to undermine or


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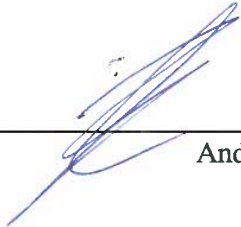
silence the voice of one of the National Energy Board's (NEB) registered intervenors in the Joint Review Panel process examining the proposed Enbridge Northern Gateway oil tanker and pipeline project (ForestEthics is a registered intervenor in the NEB review), would form part of the legal record for future court challenges, should the oil tanker/pipeline route ever be given federal approval. It is my opinion that this effort by the PMO severely undermines the NEB's review of the proposed Enbridge Northern Gateway pipeline, and compromises its role in determining whether this project is truly in the "national interest."

6. On the afternoon of January 20<sup>th</sup> I made an appointment to meet with Mr. McMillan in Tides Canada's offices at 400-163 West Hastings Street, Vancouver on my day off. My intention in meeting with Mr. McMillan was to inform him that an effort to bring this story to the media's attention had already been put in motion. Mr. McMillan and his Vice President, Sarah Goodman, who was also present in the room, were clearly agitated by this news. Mr. McMillan described it as like, "setting off a bomb in your own house" and that the consequences for the environmental movement would be severe. He and Ms. Goodman suggested there were better ways of "fighting back." When Mr. McMillan challenged me about what I knew in relation to the story, I told him I knew that he had spoken to the PMO and that someone in the PMO's office had described ForestEthics as an "Enemy of the Government of Canada," and an "Enemy of the people of Canada." Both he and Ms. Goodman were silent in response to my quotations. At the close of our meeting, which was tense and uncomfortable, Mr. McMillan thanked me for the "heads up" and then said to Ms. Goodman, "let's get planning."
7. For the next twenty hours both my cell phone and home line were inundated by calls from senior staff at ForestEthics and Tides Canada, including Ms. Merran Smith, Director of the Tides Canada Energy Initiative, and Pierre Iachetti, my senior supervisor with Tides Canada. Mr. Iachetti left two messages on my home line the morning of Saturday, January 21, 2012 at approximately 9:00am and 10:30am respectively. Attached hereto and marked as **Exhibit "B"** is a true copy of transcripts of these two messages that I copied from my voicemail.

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8. When I went to check my ForestEthics email account late Saturday afternoon, I discovered it had been shut down. The following morning, ForestEthics Executive Director, Todd Paglia emailed a written explanation copied to the general ForestEthics staff list in response to an email I had sent to staff alerting them to the fact that my account appeared to have been disabled. Attached hereto and marked as **Exhibit "C"** is a true copy of this email from Mr. Paglia dated January 22, 2012.
  
9. The greatest umbrage I take in this affair is not the reaction of Tides Canada or ForestEthics, who I understand are reacting out of fear of reprisals from the federal government, but rather that the Government of Canada has used the language of anti-terrorism, language that is violent and above the law, to describe legitimate critics of unsustainable resource development. When ForestEthics staff received this news, I saw our office administration coordinator Christina Bruning tear up. She has since explained to me that this reaction was based on a fear of the effects this news would have on her fellow employees. Our campaign staff, including Jolan Bailey and Nikki Skuce looked shocked, and ill. In the days that followed, staff shared their stories of sleepless nights, poor appetites, stress and general concern about their personal safety and civil liberties as Canadian citizens. I experienced all these effects too, as well as deep anger and indignation as a Canadian citizen that my own government would use language like, "Enemy of the Government of Canada" and "Enemy of the people of Canada," to describe its own citizens. I feel that this language is immoral, possibly illegal and is clearly designed to scare and intimidate. I believe that it is the language of bullying, and I think Canadians will be shocked to learn their government is using it.

SWORN (OR AFFIRMED) BEFORE )  
 ME at Vancouver, British Columbia, )  
 on 23 January, 2012 )  
 )  
  
 )  
 A commissioner for taking affidavits )  
 for British Columbia )

\_\_\_\_\_ )  
  
 Andrew Frank )

**Scott E. Bernstein**  
*Barrister and Solicitor*  
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January 17, 2012

From: todd.paglia <todd.paglia@hushmail.com>

Sobering update from Merran - first, sounds like Tides story is changing (Ross is saying to Merran this was all about advocacy restrictions and nothing about PMO and FE and enemy of the state, etc. - radical shift of story line from my convo with Ross for which i have notes). But - i would assume we will have zero Tides cooperation on any part of this. Also, Merran thinks that Harper is on track for what he wants to do - yes we won the general media battle but what i have been saying about Canada entering its Bush years is no joke - Harper is playing to his 38% and that's it according to Merran - he is willing to be unpopular like Bush in his own country and internationally. He doesn't care. And he reiterated this stuff which was a loser all last week last night on Manbridge which he chose to do now and he didn't have to and that it is all calculated and working for him. Of course they no doubt wished last week went better but it was not enough to slow them down and we can expect more of the same.

Tides also feels it is safe now - has gotten some assurance i think from PMO in some form that they will not be taken out - she thinks they will affiliate with us on Boreal/GBR and claims they are out of the woods in some key way.... Not sure what this is about.

This is Exhibit "A" referred to in the  
affidavit of ANDREW FRANK  
sworn before me at Vancouver, BC  
this 23 day of January, 20 12

  
Commissioner for taking Affidavits  
within British Columbia

January 21, 2012

**Transcript of Call #1 from Pierre Iachetti, at 9:00am:**

Hi Andrew, it's Pierre from ForestEthics, it's Saturday morning at nine. I'm sure you're probably getting tonnes of messages from various folks, but uh, you seriously need to call me as soon as possible, and as I said it doesn't matter what time of the day or what day, you need to get in touch with me. We're hearing some troubling news from Ross basically, and just need to find out if, what the real story is because it sounds, it doesn't make sense and so we need to hear from you what's going on, so call me please at [REDACTED] or my home number [REDACTED] and what I can say is if the information that we have is true there are some serious consequences as of Monday. So you really need to get in touch with me, okay? Thanks, bye.

**Transcript of Call #2 from Pierre Iachetti, at approximately 10:30am:**

Hey Andrew it's Pierre calling I'm sure you're getting loads of message from me and others at ForestEthics. Just want to get to the bottom of a message that was passed on to me by Ross and wanna make sure to get your... whats going on with you and clear this up because right now it sounds really bad, and it has some pretty serious consequences for you (emphasis), so you know, just wanna hear from you what's going on before jumping to any conclusions, so give me a ring on my cell [REDACTED] or call me at home [REDACTED]. It's Saturday morning at about 10:30, feel free to call me anytime this weekend, yes, and hopefully we can clear this up and it's not as serious as everyone thinks, okay? Talk to you soon, bye.

This is Exhibit <sup>B</sup> referred to in the  
affidavit of Andrew FRANK  
sworn before me at Vancouver BC  
this 23 day of January, 2012

  
Commissioner for taking Affidavits  
within British Columbia

from: **Todd** todd@forestethics.org  
to: Andrew Frank <andrew@andrewfrank.ca>  
cc: "staff@forestethics.org" <staff@forestethics.org>  
date: Sun, Jan 22, 2012 at 9:37 AM  
subject: Re: That Dastardly Andrew  
signed- forestethics.org  
by:  
: Important mainly because it was sent directly to you.

This is Exhibit C referred to in the affidavit of Andrew Frank sworn before me at Vancouver, BC this 21st day of January, 2012  
*[Signature]*  
A Commissioner for Taking Affidavits within British Columbia

Andrew - the reason your email account was shut down is that 1. It appears you have done something directly against what your direct supervisor and I said we were doing at that time and more importantly, 2. You have thrown this bomb whatever it is and have refused to talk to your supervisor, me, and many other staff trying to reach you so we could prepare for whatever it is you have done. This is unprofessional and insulting to everyone on this team. And even up to now you refuse to speak with anyone leaving us all and Tides at extreme risk.

Todd

Sent from my handheld - apologies for grammatical and other errors...

On Jan 21, 2012, at 9:36 PM, Andrew Frank <[andrew@andrewfrank.ca](mailto:andrew@andrewfrank.ca)> wrote:

- >
- > Dear friends and colleagues at ForestEthics,
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- > It's awfully hard to explain oneself when you've had your FE email account shutdown on a Saturday afternoon. I could of course take to ForestEthics' Facebook page to express myself, but then again I'm a decent person (Will or Hilary, I trust you'll catch that slip in censorship and remove me shortly).
- >
- > As thoughtful people, I know you won't judge the purpose or outcome of my meeting with Ross and his VP Sarah, this past Friday (which lasted close to forty minutes), until you hear it from the horse's mouth. It was a productive conversation that affirmed for me, both the truth of how the

Canadian government is attempting to silence the voice of civil society in this country, and also sadly, that Tides and ForestEthics have no intention of going public with what has happened. Not now, and not in the future. As a citizen, that's not something I can accept.

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> Due to the hectic nature of my schedule this week, including picking up my girlfriend who is just returning from Ohio after having taken care of her dying grandfather for the past two weeks, the 20 hours I give to ForestEthics each week, will have to wait until the latter half of the week.

>

> I invite you to watch the news over the next few days, to see what I felt personally compelled to share with Canadians as a citizen.

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> While the powers that be may have already decided to cut my work with the organization short (though I expect them to have a very good reason and rationale for that), I've enjoyed this brief reunion with FE staff, and I wish you the best in all of your important work, and I look forward to continuing to cross paths in the future.

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> Talk to you soon and best regards,

>

> Andrew.

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