



MiningWatch Canada Files Charges Against B.C. Government and Mount Polley Mine for 2014 Tailings Pond Disaster

Williams Lake, October 18 2016. MiningWatch Canada files today a private prosecution against the B.C. government and the Mount Polley Mining Corporation for violations of the federal *Fisheries Act* in connection with the largest mine waste disaster in Canadian history.

The mining watchdog claims that the massive 2014 spill was caused by the negligence of both the Province of B.C. and the Mount Polley Mining Corporation (MPMC), owned by Imperial Metals. As such, MPMC and the Province of B.C. are being charged for violating sections 35(1) and 36(3) of the Fisheries Act (see [background](#)).

MiningWatch is taking action now because almost two and a half years after the disaster, the Crown has failed to lay charges and enforce the Fisheries Act, despite clear and ample evidence to justify proceeding.

“We are all concerned that almost 30 months later, despite clear evidence of impacts on waters, fish, and fish habitat, no sanctions and no penalties have been brought forward by any level of government,” states Ugo Lapointe, Canada Program Coordinator for MiningWatch Canada. “This sends the wrong signal to the industry across the country and undermines public confidence in the capacity of our regulatory system to work effectively to protect our environment.”

MiningWatch filed the charges this morning in Provincial Court in Williams Lake. It used a specific provision of the Canadian Criminal Code which allows any citizen to initiate a private prosecution if he or she believes, on reasonable grounds, that a person has committed an indictable offence. These reasonable grounds clearly exist in this case, under the *Fisheries Act*.

Lilina Lysenko, lawyer for MiningWatch, states, “The legislation specifically provides an incentive for private persons to enforce federal laws like the Fisheries Act in order to ensure the protection of public resources, such as fish and fish habitat, even if against the Federal or Provincial Crown. It’s a valuable constitutional safeguard to protect the public interest against inertia or possible partiality on the part of authorities.”

This safeguard has been used several times recently in BC, including for biologist Alexandra Morton’s claim against the fish farm Marine Harvest Canada, which plead guilty for illegal possession of wild juvenile salmon, as well as for Marilyn Burgoon’s case in 2014 against Executive Fuel Flight Services in relation to a spill of 33,000 litres of jet fuel into Lemon Creek (case ongoing).

Lapointe says MiningWatch has a legal team prepared to carry the case to full trial if necessary, but also recognizes that the cost and expense associated with prosecuting a case against a mining corporation and the Provincial Government can be immense. For this reason, MiningWatch will be asking for the Federal Crown to carry the prosecution forward—which can decide to take over the case, or not.

“If Canada’s unique environmental values and waters are to be fully protected, it can only occur if the government stands against violations of the Fisheries Act and uses all the means and resources it has at its disposal to do so,” Lapointe says.

The next step will be a Process Hearing, which will be set in Provincial Court in Williams Lake within a few weeks. At that time, MiningWatch will present its evidence in more detail about how MPMC and the Province of B.C. failed to implement minimum safeguards, which led to the spill and to violations of the *Fisheries Act*. Once a summons is issued, then a court date will be held to set a trial date.

This legal action is supported by multiple local, provincial, and national groups, including West Coast Environmental Law Association-Environmental Dispute Resolution Fund (main funder), Amnesty International Canada, First Nations Women Advocating for Responsible Mining, Concerned Citizens of Quesnel Lake, Quesnel River Watershed Alliance, Kamloops Physicians for the Environment Society, Kamloops Area Preservation Association, Wilderness Committee, Sierra Club BC, Fair Mining Collaborative, Rivers Without Borders, British Columbia Environmental Network, Clayoquot Action, Forest Protection Allies, Alaska Clean Water Advocacy. A **website** will also be launched soon with more information on the case.

QUOTES:

“One of the principal objectives of criminal sentencing procedures is deterrence. However, in order to achieve deterrence, there needs to be consistent, speedy enforcement of the Fisheries Act, and that hasn’t occurred yet. If governments were more pro-active, these disasters might not have been allowed to happen the first place.”

— **Jeffrey Jones, former senior Crown prosecutor and legal adviser to the case**

“Canada and BC’s environmental laws need to be improved and enforced. The failure at Mount Polley and lack of charges, fines or compensation for those impacted since the 2014 incident all highlight the risks and consequences of a failing regulatory regime. We can’t afford the risks of major development projects unless there are consequences for not following the law, which makes the legal action being taken by MiningWatch Canada, even more important.” — **Andrew Gage, West Coast Environmental Law Association**

“The disaster that was the Mount Polley tailings pond collapse is not over for those of us who live and depend on the lands and waters, and particularly on the salmon that have always sustained us. Nor is it over for those living in the shadows of other existing and planned mines across BC, who are acutely aware of the government’s own panel of experts who reported we can expect to see two more such failures every decade. What is the point of having laws if governments and industry are not held accountable when they are violated?”

— **Bev Sellars, Chair, First Nations Women Advocating Responsible Mining**

“We are very concerned that the mine has been granted a license to resume full operations despite the fact that the RCMP’s and Conservation Officer Service’s criminal investigation has not yet concluded. While there is evidence of some impact on fish and fish habitat, many questions remain to be answered about long-term impacts and what role people affected by the spill will have in determining in any remedies that are required”

— **Tara Scurr, Amnesty International Canada**

“As local residents and businesses depending on these fish and waters, we want the BC Government to restore Quesnel Lake and surrounding watershed to pre-breach conditions. We want proper sanctions for industry and proper remedies for those affected. We are concerned with the ongoing discharge of mine effluent into Hazeltine Creek and Quesnel Lake, as well as the total lack of long term water management plan for the mine. Government oversight should be kept independent of mining companies, to ensure compliance monitoring and prompt law enforcement.” — **Christine McLean, Concerned Citizens of Quesnel Lake**

“We support this initiative by MiningWatch Canada because we believe that if our laws and regulations are to lead to better, safer, more responsible mining in the future, a message has to be sent that the laws and regulations will be upheld and enforced when it comes to protecting our waters, fish, and salmon, as well as the communities and livelihoods that depend on those precious natural resources.” — **Joe Foy, Wilderness Committee**

“We are very concerned about the Mount Polley mining disaster and the lack of sanctions to date. Imperial Metals is exploring the potential of opening two mines in Clayoquot Sound, near Tofino, in the heart of a UNESCO Biosphere Reserve. It’s a non sense for us.” — **Dan Lewis, Clayoquot Action**

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