

Amended pursuant to the Orders of Case Management Judge Kathleen Ring made May 16, 2024 and May 30, 2024

Original filed October 25, 2019

Court File No. T-1750-19

FEDERAL COURT

BETWEEN:

CECILIA LA ROSE, SIERRA RAINE ROBINSON, SOPHIA SIDAROUS, MONTAY JESSE BEAUBIEN-DAY, by his guardian ad litem Sarah Dawn Beaubien, SADIE AVA VIPOND, HAANA EDENSHAW, ZOE GRAMES-WEBB, by her guardian ad litem Annabel Webb, LAUREN WRIGHT, SÁJ MILAN GRAY STARCEVICH, by her guardian ad litem Shawna Lynn Gray, MIKAEEL MAHMOOD, by his guardian ad litem Asiya Atcha, ALBERT JÉRÔME LALONDE, MADELINE LAURENDEAU, KIRA YOUNG by her guardian ad litem Sarah Cook, and MADELEINE ROSE MEAD, by his guardian ad litem Katrina Mead

PLAINTIFFS

- and -

HIS MAJESTY THE KING IN RIGHT OF CANADA and THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

AMENDED STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and

the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613.992.4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: May 31, 2024

Issued by:

(Registry Officer)

Address of local office: Federal Court of Canada
Pacific Centre, PO Box 10065
3rd Floor, 701 West Georgia Street
Vancouver BC V7Y 1B6

TO: His Majesty the King in Right of Canada

AND TO: Attorney General of Canada
Department of Justice Canada
900 - 840 Howe Street
Vancouver BC V6Z 2S9

CLAIM

1. The plaintiffs claim as follows:
 - a. an order declaring that the defendants have unjustifiably infringed and continue to unjustifiably infringe the plaintiffs' rights under s. 7 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**") and put at risk the s. 7 rights of all children and youth now and in the future by causing, contributing to, and allowing a level of greenhouse gas ("**GHG**") pollution inconsistent with a climate system that is capable of sustaining human life and liberties ("**Safe Climate System**");
 - b. an order declaring that the defendants have a constitutional obligation to adopt and diligently implement a climate recovery plan that: (i) is designed to achieve a target consistent with restoring and maintaining a Safe Climate System, based on the best available science; (ii) is consistent with a justifiable approach to achieving Canada's share of necessary global emissions reductions; (iii) sets interim targets consistent with meeting the overall goals within a suitable time line; and (iv) includes realistic measures to effectively achieve the identified targets;
 - c. an order declaring that the defendants have breached and continue to breach their obligation under (b);
 - d. an order requiring the defendants to develop and implement a climate recovery plan consistent with its obligation under (b);
 - e. an order retaining jurisdiction over this action until the defendants have fully complied with the orders of this Court;
 - f. costs, including special costs on a full indemnity basis and applicable taxes on those costs; and
 - g. such further and other relief as this Honourable Court deems just.

OVERVIEW

2. Dangerous climate change is upon us and is occurring due to human activities, specifically the emission of GHGs and the accumulation of GHGs in the atmosphere. The threats posed by GHG pollution to Canadians, and especially our children and youth, are existential and time is quickly running out to avert catastrophic consequences.
3. The release of GHGs into the atmosphere is already triggering a host of adverse consequences that interfere with the life, liberty and security of the person of the plaintiffs. The effects of GHG emissions on the plaintiffs include severe harms to their mental and physical health, serious negative impacts on their security of their homes, threats to the basic infrastructure of their communities, and interference with their ability to engage in cultural and other activities that are key to their well being.
4. The ability of children and youth to live in a Safe Climate System is a fundamental freedom that is central to the life, liberty and security of the person of those children and youth, and a prerequisite to the ability to exercise all of the other rights and freedoms protected by the *Charter*. By continuing to cause, contribute to, and allow a level of cumulative and ongoing GHG pollution inconsistent with a Safe Climate System, the defendant unjustifiably interferes with the s. 7 rights of the plaintiffs, in a manner inconsistent with the principles of fundamental justice.
5. The nature of GHG pollution and the existential threat posed by the effects of that pollution constitute special circumstances that impose a duty on the defendants to protect the plaintiffs and all Canadian youth from further deprivations of their life, liberty and security of the person interests. This duty requires the defendants to act in a manner consistent with what best available science says is required to avoid catastrophic impacts. Not only have the defendants failed in that duty, they have instead committed to a GHG

emissions trajectory that has and will continue to cause or contribute to such catastrophic impacts.

6. The defendants have and continue to cause, contribute to, and allow a level of cumulative and ongoing GHG emissions inconsistent with a Safe Climate System, including by:
 - a. consistently failing to meet Canada's historic GHG emissions reduction targets and failing to reduce Canada's GHG emissions on a trajectory that is inconsistent with a Safe Climate System;
 - b. setting prices on carbon under the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186 (the "**GGPPA**") that are inconsistent with the necessary level of GHG emissions reductions to avoid dangerous climate change and restore a Safe Climate System;
 - c. adopting GHG emissions reduction targets and plans, including under the *Canadian Net-Zero Emissions Accountability Act*, S.C. 2021, c. 22 (the "**Net-Zero Act**"), that are inconsistent with the best available science about what is necessary for Canada to live within a justifiable carbon budget to avoid dangerous climate change, and restore and maintain a Safe Climate System; and
 - d. continuing to actively authorize and support projects that emit GHGs, including by approving and regulating GHG-emitting projects, and providing financial support and subsidies to GHG-emitting industries.

7. In the circumstances, in order to fulfill its constitutional obligations to the plaintiffs, the defendants must, based on the best available science, adopt GHG emissions reduction targets and implement a climate recovery plan that puts Canada on a GHG emissions reduction trajectory that restores and maintains a Safe Climate System. While a court must be mindful of the proper role of the judiciary, the plaintiffs are not asking the Court to direct Canada as to how to decrease emissions, the constitution allows this Court to require the defendants

to demonstrate that its actions with respect to GHG pollution are justifiable in light of the best available science, and the severe and irremediable nature of the threats posed to the plaintiffs.

FACTS

A. The Parties

8. The plaintiffs are children and youth across Canada. They have been and will continue to be exposed to climate change impacts that interfere with their physical and psychological integrity and their ability to make fundamental life choices. Because of their vulnerability and their age, these individuals and the generations of children and youth to follow will continue to bear a disproportionate share of the burden of climate change. Specific impacts to the plaintiffs are described below at paragraphs 30-43.
9. Each of the plaintiffs have constitutional rights that have been and will continue to be unjustifiably interfered with by the defendants' conduct.
10. In addition, each of the plaintiffs, or the plaintiffs as a group, have public interest standing to assert the rights of all children and youth in Canada at present and in the future. Each of the plaintiffs have a demonstrated, serious and genuine interest in the subject matter of this litigation. This claim is, in all of the circumstances, a reasonable and effective way to bring the issue before the courts for reasons that include:
 - a. the claim raises issues that transcend the interests of the plaintiffs and clearly impact all children and youth, present and future generations;
 - b. the plaintiffs have the support of non-profit organizations and lawyers who have the expertise, resources and commitment to see their claim through and who will ensure that their claim will be presented in a sufficiently concrete and well-developed factual setting;

- c. it is not reasonable to expect other children or youth to have to bring their own claims and it is impossible that those of future generations can do so now; and
 - d. the plaintiffs will ensure that all children and youth, present and future, who are disadvantaged by not having access to the political process, in the way that those who have a right to vote do, will have access to justice.
11. The defendant, His Majesty the King in Right of Canada, is named pursuant to s. 48 of the *Federal Courts Act* and the corresponding Schedule, and all references to the defendant, the Crown, or HMTQ in this claim include the Government of Canada.
12. The defendant, the Attorney General of Canada, is named pursuant to the *Department of Justice Act*, R.S.C. 1985, c. J-2, and the *Crown Liability and Proceedings Act*, R.S.C, 1985, c. C-50.
13. In this claim, references to the “defendants” or the “defendant” include either or both His Majesty the King in Right of Canada and the Attorney General of Canada, as the circumstances require.

B. GHG Pollution Leads to Global Warming

14. It is now well-understood that carbon dioxide (“CO₂”) is the GHG that is most responsible for trapping excess heat within Earth’s atmosphere. Excess CO₂ and other GHGs (measured together in terms of “**carbon dioxide equivalents**” or “CO₂e”) create an “Earth energy imbalance” that drives warming temperatures and climate change. Scientists have known since the late 1800s that atmospheric concentration of CO₂ affects Earth’s temperature and have understood that the burning of fossil fuels will cause CO₂ to increase and accumulate in the atmosphere and warm the Earth’s temperature.

15. A substantial portion of every tonne of CO₂ emitted by human activity persists in the atmosphere for as long as a millennium or more. As a result, CO₂ steadily accumulates in the atmosphere. It is the cumulative effect of GHG emissions that causes climate change. If GHG emissions continue at current rates, Earth will continue to warm in response to atmospheric concentration of GHG caused by past emissions, as well as future emissions. This scientific concept has been well understood and accepted by the defendants for many decades.
16. For over 11,000 years prior to the Industrial Revolution, the concentration of GHGs in the atmosphere was consistent with a Safe Climate System. During that time, CO₂ levels ranged between 260 and 280 parts per million (“ppm”). The rate of increase of atmospheric CO₂ concentration since the end of the pre-industrial era is unprecedented in the measurable paleoclimate record. The concentration of other GHGs in the atmosphere, including methane and other short-lived climate pollutants, has also increased since the end of the pre-industrial era because of human activity.
17. Global average CO₂ concentration has been increasing at a rate that is significantly faster than the natural increase in CO₂ during the end of the last ice age and subsequent interglacial period, and reached approximately 421 ppm in 2023.
18. Further, the present level of global average warming is approximately 1.2°C to 1.3°C above pre-industrial levels. Canada has experienced twice as much warming as the global average and the Canadian North is warming at three times the global mean rate. As a result, the plaintiffs are already experiencing drastic climate change impacts. With additional GHG emissions, the plaintiffs will experience more heating and worsening impacts over current dangerous conditions.
19. To avert catastrophic climate change, preserve conditions that are safe for human life, and avoid triggering tipping points after which runaway climate change becomes irreversible, atmospheric CO₂ concentrations must be reduced

to no more than 350 ppm or lower by 2100. This is feasible and requires complete elimination of fossil fuel GHG emissions as rapidly as possible but no later than 2050. If fossil fuel CO₂ emissions are eliminated before irreversible climate tipping points are triggered, Earth's natural carbon cycles are sufficient to reduce atmospheric CO₂ concentrations to 350 ppm.

C. Impacts of Global Warming from GHG Pollution

20. Canada is one of the fastest warming countries in the world. Absent GHG emissions reductions according to best available science, Canada's temperature will continue to warm at a faster rate relative to the global average, with the strongest warming occurring in the winter and far northerly latitudes.
21. According to the defendant's projections, by 2031-2050 temperatures in Canada will be approximately 0.8 to 1.9°C warmer under a low GHG emissions scenario, and 1.9 to 5.2°C warmer under a high GHG emissions scenario, relative to a 1986-2005 baseline. Any level of warming falling within these ranges is unsafe. Humans have never lived on Earth with those temperature ranges; indeed, humans have never before lived in the Americas at the current level of global warming.
22. The costs of climate change are increasing rapidly. Every year of delay on GHG reductions and mitigation efforts increases the costs and the harms to which children and youth are exposed.
23. Global GHG emissions and temperatures are rapidly approaching a critical threshold, which if surpassed will lock-in catastrophic and dangerous climate change impacts for these children and generations to come.

i. Biophysical Impacts

24. The plaintiffs are experiencing the harms due to the biophysical impacts of climate change, including:

- a. extreme weather events like wildfires, storm surges, flooding, drought and heatwaves which will increase in frequency and severity;
- b. decline in sea ice and thawing permafrost;
- c. retreat and disappearance of glaciers;
- d. rising sea level; and
- e. degradation of soil and water resources.

ii. Human Health Impacts

25. The plaintiffs are experiencing human health impacts of climate change, including:

- a. heat-related illness and exposure to increased risk of death, and exacerbating existing health conditions like allergies and asthma;
- b. prevalence and spread of life-threatening diseases;
- c. injuries and increased risk of deaths from increased flooding, and exposure to dangerous pollutants and respiratory illness;
- d. respiratory illness from wildfires, including asthma and pneumonia;
- e. health risks from harmful algal blooms; and
- f. mental health disorders including anxiety, distress and institutional trauma.

iii. Impacts on Canadian Communities

26. Climate change has and continues to have impacts on Canadian communities, including those in which the plaintiffs have grown up and reside, jeopardizing their safety and security, including:

- a. unstable shorelines; flooding damage to property and agricultural lands; permanent loss of archaeological sites and cultural heritage landmarks; contamination of water supplies; loss of water supplies; increasing costs for protection, maintenance and insurance; disrupted transportation along previously navigable rivers, trade routes and infrastructure; and impacts on human health, such as waterborne diseases;
- b. extreme rainfall leading to urban flooding, heatwaves, wildfires and coastal infrastructure failing during storm-surge events;
- c. catastrophic impacts on Arctic communities due to thawing permafrost; and
- d. adverse impacts to the livelihoods and cultural rights to Indigenous communities including hunting, fishing and other Indigenous rights.

iv. Disproportionate Impacts on Children and Youth

27. Climate change has and continues to have serious and disproportionate impacts on Canadian children and youths, including the plaintiffs.
28. Because of their developing brains and bodies, the plaintiffs as children and youths are uniquely vulnerable to the impacts of climate change and air pollution associated with fossil fuels. Along with the direct effects on children and youths' health, climate change threatens basic needs – clean air and water, sufficient food and nutrition and adequate shelter, with particularly harsh impacts on children.
29. Children are at higher risk from, among other things:
 - a. particulate matter from wildfires;
 - b. severe heat exposure;

- c. increased and repeated exposure to extreme weather events such as hurricanes, flooding and wildfires;
- d. loss of physical and cultural activities vital to young people's health, wellbeing, safety, security and cultural autonomy;
- e. climate change-related diseases; and
- f. adverse mental health impacts including elevated levels of anxiety, depression, post-traumatic stress disorder and a distressing sense of loss, all further exacerbated by the fact that government, an institution charged with protecting children, is actively making the crisis worse.

D. Impacts Specific to the Plaintiffs

- 30. Cecilia La Rose is 19 years old and resides in Toronto, Ontario. Her severe allergic asthma, for which she has visited the Emergency Room, is exacerbated by increasingly extreme temperatures, which increases her risk of anaphylactic shock, and by exposure to hazardous air quality due to wildfire smoke. Severe flooding events, wildfire smoke and repeated power outages have adversely impacted her health and wellbeing. The impacts of climate change have also had a serious emotional and psychological effect on Cecilia, including limiting her choices about where to live and jobs to pursue.
- 31. Sierra Raine Robinson is 22 years old and a farmer in the Cowichan Valley, Vancouver Island, British Columbia. Raine has health issues that make her more susceptible to injury during periods of higher temperatures and extreme weather events. Increasing temperatures, exposure to a heat dome and wildfire smoke, as well as drought and flooding have restricted her and her family's ability to farm, have resulted in the deaths of her animals, and have prevented her from working outdoors. Raine experiences anxiety and bouts of depression as a result of climate change and experiences significant stress as result of being repeatedly forced to prepare to evacuate because of approaching wildfires.

32. Sophia Sidarous is 22 years old, of Mi'kmaq descent and a member of the Metepenagiag First Nation, who currently resides in Halifax, Nova Scotia. Extreme temperatures have disrupted traditional seasons and harmed her ability to harvest traditionally important food and plants like salmon, lobster, moose, chaga, sweetgrass, cedar, black ash, birch bark and red ochre. Increasing extreme heat has limited her ability to participate in various cultural practices, like sweat lodges, and her ability to participate in jingle dress dancing. She has also been harmed by flooding, tornados and other extreme climate change-induced events including, for the first time, wildfire smoke from a nearby wildfire that engulfed her community and forced her to prepare for evacuation. She has existential anxiety, depression and hopelessness about her future because of climate change.
33. Montay Jesse Beaubien-Day is 16 years old and resides in Smithers, British Columbia. His mother is Wet'suwet'en and his father is Tahltan. Climate change has limited his and his family's ability to harvest traditionally important animals and plants like salmon, deer, moose, berries and devil's club. In recent years, there have been very few huckleberries and no soapberries, which is a significant cultural and dietary loss to Montay and his family. A wildfire destroyed Montay's family home (and many relatives homes) in Telegraph Creek in August 2018 and the now-regular wildfires continue to expose Montay to harmful air pollution.
34. Sadie Ava Vipond is 18 years old and resides in Calgary, Alberta. In June 2013, the Bow River flood forced her and her family to evacuate. This was a traumatizing event and was compounded when in 2022 there was another threatened evacuation due to extreme precipitation. Heatwaves, wildfires and smoke have restricted her ability to participate in recreational activities and bicycle to school, preventing her from getting exercise essential to her health and wellbeing. The early season wildfires in 2023 exposed Sadie to hazardous air quality for days and further trauma.

35. Haana Edenshaw is 20 years old and is from Masset, Haida Gwaii, British Columbia. She is a member of the Tsitts Gitanee clan of Haida Nation. Sea-level rise and shoreline erosion has damaged her family home. Warmer temperatures and lower rainfall have adversely impacted her ability to harvest traditional foods like salmon, berries and seaweed, or engage in traditional activities like harvesting cedar. Wildfire smoke and extreme heat, including the heat dome, have restricted her ability to partake in activities and schooling, and have caused heat exhaustion.
36. Zoe Grames-Webb is 17 years old and resides in Vancouver, British Columbia, and also spends significant time in Hopkins Landing, British Columbia. Historically unprecedented wildfire smoke, flooding, landslides, species loss and shoreline erosion have adversely affected her health and wellbeing. Increasing temperatures and the “heat dome” in the last few years, along with severely degraded air quality due to wildfire smoke, have prevented Zoe from engaging in normal daily activities, scheduled sports activities and special events due to extreme heat and poor air quality.
37. Lauren Wright is 20 years old and resides in Saskatoon, Saskatchewan. Extreme temperatures and weather events have adversely impacted her family’s ability to farm. Drought and record low water levels in the South Saskatchewan River (her family’s primary source of drinking water) have impacted her ability to fish and access the river. Extreme weather events, including flooding and storms, have disrupted her ability to attend school, trapped her inside of her home, caused increased power outages for her family and damage to her family’s property. She has Raynaud’s syndrome and her symptoms are exacerbated due to periods of extreme cold and rapid shift in temperature. She also suffers from nausea, pain and dizziness due to extreme heat. Lauren has generalized anxiety disorder and clinical depression relating to her concerns about climate change. In the summer of 2023, significant wildfire smoke forced her inside for weeks at a time and prevented most outdoor activities, with air quality at dangerous levels.

38. Sáj Milan Gray Starcevich is 17 years old and resides in Melfort, Saskatchewan. She is of Carry the Kettle Nakoda Nation (Cega'Kin). Increased precipitation and heavy rain causing frequent and severe flooding, increasing drought and wildfires, extreme temperatures, and increased algal blooms at her cabin at Kipabiskau Lake have negatively impacted her health and wellbeing. Exposure to hazardous air quality from wildfire smoke has harmed Sáj's lungs and made her eyes watery, forcing her to stay inside to protect herself. Sáj is worried for her future and struggles with how climate change is impacting so many aspects of her life.
39. Mikaeel Mahmood is 14 years old and resides in Mississauga, Ontario. Mikaeel has experienced repeated heatwaves, flooding, thunderstorms and other extreme weather events that jeopardize his health and safety like polar vortexes and a derecho. These have resulted in exacerbations to his allergies, heat exhaustion, other restrictions to outdoor activities, his schooling and his employment. Mikaeel has been exposed to wildfire smoke, forcing him inside and canceling practices, games and his ability to ride his bike and work outside.
40. Albert Jérôme Lalonde is 21 years old and resides in Montréal, Quebec. He has experienced increased heatwaves in the summer, and unpredictable winter weather including increasing "frost-defrost" events and blizzards. For the first time in his life, last summer Albert was exposed to the worst air quality in the world for several days due to wildfire smoke, forcing him to stay inside and cancel outdoor activities. Climate change has caused "eco-anxiety" and resulted in mental and psychological pain, including fatigue, anxiety, inability to focus and other depressive symptoms.
41. Madeline Laurendeau is 21 years old, a Red River Métis, and a member of the Manitoba Métis Federation and grew up in Winnipeg, Manitoba. She is currently attending college in Vancouver, British Columbia. She and her family have experienced severe early season snowstorms, damaging her house. She has asthma and an autoimmune disease called granulomatosis with

polyangiitis, and idiopathic subglottic stenosis, which make her more susceptible to health injuries when she is exposed to extreme cold temperatures or wildfire smoke. Increased wildfire smoke, humidity and other extreme weather events like “polar vortex” events have triggered and exacerbated her conditions. While at college in Vancouver, she experienced power outages due to extreme snowfall, flooding, the heat dome and a tornado on her campus. She is diagnosed with generalized anxiety disorder and social anxiety disorder. Climate change exacerbates her anxiety on a regular basis.

42. Kira Young is 17 years old, from Yellowknife in the Northwest Territories, and currently residing in British Columbia for school. Last summer, unprecedented wildfires drove Kira, her entire family, as well as her entire town of over 20,000 people, to evacuate from their homes and community. In the days leading up to the evacuation, ash was falling from an orange sky, and as they fled, there were fires on the side of the highway. She and her family were displaced from their home for over one month, moving between hotels and friends’ homes. An avid runner, hiker, kayaker and canoe guide, the increased wildfire smoke has inhibited Kira from safely participating in the activities that she loves and relies upon for her health and wellbeing.
43. Maddy (Madeleine) Mead is 18 years old, lives just outside of Whitehorse, Yukon, where he was born and raised, and goes to school in British Columbia. He has been harmed by the increasing summer temperatures and wildfires that have plagued the Yukon in recent years. As a member of the Yukon Youth Conservation Crew, Maddy has seen heritage sites, and homes of members in his community, along the Yukon River be threatened and destroyed by flooding. Increasingly-pervasive wildfire smoke prevents him from participating in conservation efforts and other outdoor activities, like fishing, that are a vital part of his life. In addition, warming water temperatures have played a part in a massive decline in salmon populations in the Yukon. Due to this decline, he has not been able to fish for them. This lack of salmon has not

only been harmful to him but also has had a widespread impact on his community.

E. Canada's Role in Domestic and Global GHG Emissions

44. Every tonne of CO₂ emissions adds to global warming, which increases the frequency and intensity of climate change impacts. With every additional increment of global warming, changes in extremes continue to become larger.
45. Taking into account Canada's direct and upstream emissions, Canada ranks as the 11th largest GHG emitting country in the world. Canada's historic, present and future GHG emissions are substantial, and contribute to the plaintiffs' climate change-related injuries.
46. Fossil fuel extraction in Canada contributes to global GHG emissions. Canada is the fourth largest oil producer in the world. In 2022, Canada extracted on average 5,576 thousand barrels of crude oil a day and 17.90 billion cubic feet of natural gas per day, large portions of which were exported. When combusted, these fossil fuels release about 868 million metric tonnes of CO₂ ("MMT CO₂") and about 359 MMT CO₂, respectively. Consequently, taking into account downstream GHG emissions, Canada is responsible for about 1,230 MMT CO₂ due to its fossil fuel extraction, which is greater than the 2022 territorial emissions (excluding downstream emissions) of every country in the world save China, the United States, India and Russia.
47. In addition, the defendant has and continues to significantly mismeasure and under-report Canadian GHG emissions, including from the Alberta oil sands (which has a significantly higher carbon footprint than other oil sources) and the forestry sector. As a result, Canada's contribution to global GHG emissions is even higher than official numbers indicate.

i. Previous Failures by Government of Canada to Meet Its GHG Reduction Commitments

48. The defendant has made numerous commitments regarding GHG reductions but has consistently and repeatedly failed to meet these commitments:
- a. At the 1988 International Conference on the Changing Atmosphere, held in Toronto, the defendant agreed to reduce CO₂ emissions by approximately 20% from 1988 levels by 2005. In 1988, Canada's emissions were about 594 million tonnes of CO₂e ("MtCO₂e"). However, between 1988 and 2005, GHG emissions actually increased by about 23% (136 MtCO₂e) above 1988 levels. The 2005 target was approximately 475 MtCO₂e. The actual 2005 emissions were about 730 MtCO₂e.
 - b. In 1992, as part of the *United Nations Framework Convention on Climate Change* (the "*UNFCCC*"), the Government of Canada ("GoC") committed to reduce GHG emissions to 1990 levels by 2000. The 1990 emissions were 602 MtCO₂e. In 1992, when the commitment was made, Canada's emissions were only about 8 Mt in excess of 1990 levels (610 MtCO₂e). However, Canada's actual emissions in 2000 rose, rather than decreased, to about 731 MtCO₂e.
 - c. Under the 1998 *Kyoto Protocol*, the GoC agreed to reduce its GHG emissions by an average of 6% below 1990 levels between 2008 and 2012. However, between 2008 and 2012, Canada's average annual GHG emissions increased by about 17% from 1990 levels instead. The average reduction target for the period between 2008 and 2012 was 566 MtCO₂e. Canada's actual average emissions for that period were about 702 MtCO₂e.
 - d. Under the 2009 *Copenhagen Accord*, the GoC agreed to reduce its GHG emissions by 17% below 2005 levels by 2020. This target meant that Canada's GHG emissions should not exceed 606 MtCO₂e in 2020.

In fact, Canada's national GHG emission level in 2020 was 672 MtCO_{2e}.

- e. Under the 2010 *Cancun Agreement*, the GoC reiterated its commitment under the *Copenhagen Accord*. In addition, by signing this agreement, the GoC agreed to a recommendation of 25 to 40% reduction from 1990 levels by 2020 for countries like Canada. This target was drawn from an Intergovernmental Panel on Climate Change (“**IPCC**”) report, which the GoC approved. Meeting this target would require Canada's 2020 emissions to be between 361 and 452 MtCO_{2e}, but Canada's GHG emissions in 2020 were 672 MtCO_{2e}.
 - f. Under the *Paris Agreement*, international political efforts have focused on keeping the rise in global mean surface temperature to well below 2°C above pre-industrial levels, and pursuing efforts to limit the increase to 1.5°C. Canada as a signatory is not on track to meet its commitments under the *Paris Agreement*, nor are those commitments consistent with the best available science to restore and maintain a Safe Climate System.
49. The historic failures by the defendants to meet its GHG reduction commitments cause or contribute to the climate change impacts experienced by the plaintiffs.
- ii. The GGPPA**
50. The subject matter of the *GGPPA* is to establish minimum national standards of GHG-price stringency to reduce GHG emissions. Enacted in 2018, the preamble to the *GGPPA* recognizes the “broad scientific consensus” of climate change and its impacts. It also “recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations.” It references the defendant's commitments under the *UNFCCC*, the *Paris Agreement*, Canada's Nationally Determined Contribution (“**NDC**”),

and the defendant's 2016 *Pan-Canadian Framework on Clean Growth and Climate Change*. Finally, it recognizes that GHG emissions pricing reflects the "polluter pays" principle and that "the absence of GHG emissions pricing in some provinces and a lack of stringency in some provincial GHG emissions pricing systems could contribute to significant deleterious effects on the environment, including its biological diversity, on human health and safety and on economic prosperity."

51. However, the carbon price framework established and implemented under the *GGPPA*, and the defendants' actions taken under that statute, are inconsistent with a Safe Climate System as established by the best available science, ineffective in reducing emissions, and inconsistent with the purposes of the statute itself. The manner of establishing carbon prices under the *GGPPA* and its regulations, including the manner in which these carbon prices discount the value of children's lives and that of future generations, in effect provides subsidies to GHG emitters.
52. The *GGPPA* consists of several Parts, Schedules, and regulations. Schedule 4 and Parts 1 and 2 of the *GGPPA*, along with the *Output-Based Pricing System Regulations*, SOR/2019-266 ("**OBPS Regulations**"), operate together to cause, contribute to and allow a level of GHG emissions inconsistent with a Safe Climate System.
53. Schedule 4 of the *GGPPA* sets out the price for GHG emissions on a per annum basis. In 2019, the initial price was \$20 per tonne of CO₂e, and the price increased \$10 per tonne to reach \$50 per tonne in 2022. From 2023 to 2030, the carbon price will increase annually at a rate of \$15 per tonne; the price is presently \$80 per tonne. The *GGPPA* caps the price on carbon emissions at \$170 per tonne in the year 2030. The prices set out in Schedule 4 apply to Parts 1 and 2 of the *GGPPA*.
54. Part 1 of the *GGPPA* establishes a fuel charge that applies to producers, distributors and importers of various types of carbon-based fuel.

55. Part 2 of the *GGPPA* sets out a pricing mechanism for industrial GHG emissions by large emissions-intensive industrial facilities. Part 2 is subject to “output-based standards” that are set out in the *OBPS Regulations*.
56. Under the *OBPS Regulations*, covered industrial facilities pay for the GHG emissions associated with their industrial output. Importantly, covered facilities only pay the applicable carbon price under Schedule 4 of the *GGPPA* if they exceed a prescribed threshold of emissions intensity, specifically the “output-based standards” set out in Schedule 1 of the *OBPS Regulations*.
57. Moreover, covered facilities that emit above their applicable “output-based standard” only pay the carbon price under Schedule 4 of the *GGPPA* to the extent that they exceed their applicable standard. Covered facilities may also purchase carbon offset credits to bring them into compliance with their standard. Lastly, covered facilities whose emissions meet the applicable standard are not liable to pay the carbon price, and covered facilities whose emissions are below the applicable standard generate credits that they can sell to other covered facilities.
58. Parts 1 and 2, along with applicable schedules and regulations under the *GGPPA*, together form the federal carbon pollution pricing benchmark, which provides the minimum national standards of carbon pricing noted above and set out in Schedule 4 of the *GGPPA*.
59. The *OBPS Regulations* promulgated under the *GGPPA* to further implement Part 2 of the Act exempt several industrial emitters that emit GHGs below certain prescribed standards and allow for compliance through the purchase of ineffective carbon offset credits without requiring actual GHG emissions reductions.

iii. **The Canadian Net-Zero Emissions Accountability Act (the “Net-Zero Act”)**

60. The defendant continues to set targets and adopt plans that are inconsistent with a Safe Climate System as established by the best available science, causing or contributing to the climate change impacts experienced by the plaintiffs.
61. The *Net-Zero Act* was enacted in 2021. The purposes of the *Net-Zero Act* are set out both in the preamble and in s. 4. The preamble explains, *inter alia*, that “climate change poses significant risks to human health and security” and that “the science clearly shows that human activities are driving unprecedented changes in the Earth’s climate.”
62. Section 4 of the *Net-Zero Act* provides:

The purpose of this Act is to require the setting of national targets for the reduction of greenhouse gas emissions based on the best scientific information available and to promote transparency, accountability and immediate and ambitious action in relation to achieving those targets, in support of achieving net-zero emissions in Canada by 2050 and Canada’s international commitments in respect of mitigating climate change. [Emphasis added.]

63. Under s. 2, “*net-zero emissions* means anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere over a specified period” [Emphasis in original]. The Act neither defines nor limits activities that can be considered “anthropogenic emissions” or “anthropogenic removals” of GHGs.

(1) Interim Targets

64. The Act provides for the setting of GHG emissions reduction targets for four “milestone years”, which are 2030, 2035, 2040 and 2045.
65. Section 7(2) of the Act sets the national GHG target for 2030 to be the same as Canada’s NDC under the *Paris Agreement*. Under the 2021 update to Canada’s

NDC, the defendants commit to reducing Canada's GHG emissions by 40-45% below 2005 levels by 2030. This emissions reduction target equates to authorizing national GHG emissions in 2030 to about 401-438 MtCO_{2e}, which is within the range the defendants committed, but failed, to achieve by 2020 under the 2010 *Cancun Agreement* over 14 years ago.

66. The Act does not prescribe any targets for milestone years other than 2030. While the Act requires the responsible minister to set targets for the 2035, 2040 and 2045 milestone years pursuant to s. 7(4), those targets will not be set until December 1 of the year ten years preceding the date to which the target relates.

(2) Emissions Reduction Plans

67. Under s. 9 of the Act, the responsible minister must prepare emissions reduction plans for how to achieve the net-zero target for 2050 and the interim targets for milestone years. Canada's 2030 Emissions Reduction Plan was published in March 2022 (the "**2030 Plan**"). The remaining plans are not required until five years before the beginning of the target year to which the plan relates.

68. The 2030 Plan:
- a. acknowledges that limiting global warming to 1.5°C above pre-industrial levels "would cause unavoidable increases in multiple hazards and present multiple risks to ecosystems and humans";
 - b. predicts that, based on projected emissions reduction achievable from existing climate measures and those included in the 2030 Plan, Canada's GHG emissions would only reach 470 MtCO_{2e} or 36% below 2005 levels by 2030 – 4% short of the 40% required by the Act, and higher than what the defendant committed, but failed, to achieve by 2020 under the *Cancun Agreement* 14 years ago;

- c. does not detail measures that the defendant intends to rely upon to account for the remaining 4% reduction necessary to meet the Act's 2030 target;
 - d. relies on carbon offsets that would count towards the meeting of a target without actual GHG emissions reduction; and
 - e. lacks detail as to how the measures and investments contained in the 2030 Plan will actually contribute to achieving the 2030 target under the Act and ensure that disproportionate burdens will not be placed on future generations to achieve subsequent targets.
69. The 2030 target under the *Net-Zero Act* allows Canada to emit about 401 to 438 MtCO_{2e} that year. The trajectory of emissions contemplated by this 2030 target is consistent with a global average of 2.2 to 2.8°C of warming by 2100 (and a much higher level of warming in Canada), which is inconsistent with restoring and maintaining a Safe Climate System as established by the best available science. The consequences of 2.2 to 2.8°C of global warming would be catastrophic and would have disproportionate impacts on the plaintiffs as children and youth.
70. Canada's GHG emissions can increase under the *Net-Zero Act* because the Act only sets targets and requires the development of plans, but it does not require any actual reduction in GHG emissions. Further, it does not require Canada to live within any total carbon budget during the period covered by the Act. The process prescribed in the Act contains no requirements that Canada remain on an emissions trajectory to achieve net-zero, let alone zero or negative GHG emissions.
71. Even if the defendant's actions were consistent with limiting global warming to 1.5°C or 2°C above pre-industrial levels, as contemplated in the *Net-Zero Act*, this level of global warming is not safe for children and youth in Canada. Such warming will likely result in various tipping points which would occur in

or impact Canada, including the abrupt thaw of the permafrost in the boreal forest, and the end of an ocean current system in the Labrador Sea.

72. A global average of warming to 1.5°C corresponds with at least 4 to 5°C of warming in Canada’s arctic region, which will lead to catastrophic climate impacts in Canada and on Canadians living in Canada’s North.

iv. The Defendant Continues to Authorize and Supports GHG-emitting Activities

73. The defendant exercises authority over GHG emissions in Canada in numerous ways. First, the defendant directly regulates GHG emissions under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 and its regulations.

74. Second, the defendant approves GHG producing projects under the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 (the “*IAA*”), the *IAA*’s predecessor the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 19, s. 52 (the “*CEAA, 2012*”), the *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10 (the “*CER Act*”), and the *CER Act*’s predecessor the *National Energy Board Act*, R.S.C. 1985, c. N-7 (the “*NEB Act*”). Through this legislative authority the defendant authorizes GHG emissions from fossil fuel projects. These projects include:

- a. The Trans Mountain Expansion project, including the defendant’s approval of the pipeline expansion project under the *CEAA, 2012* and the *NEB Act*, the defendant’s subsequent purchase of and financial investments in the project, its ongoing operation of the project through its Crown corporation Trans Mountain Corporation, and its continuing regulation of the project under the *CER Act*;
- b. The defendant’s approval of the LNG Canada natural gas project under the *CEAA, 2012*, and its continuing regulation of the project under the *IAA*; and

- c. The defendant's approval of the Bay du Nord offshore oil exploration project under the *CEAA, 2012*, and its continuing regulation of the project under the *IAA*.
75. Third, the defendant actively supports GHG emitting industries by providing direct financial support for such industries through its spending power, and by providing:
 - a. fossil fuel subsidies through the Crown corporation Export Development Canada ("**EDC**") established under the *Export Development Act*, R.S.C. 1985, c. E-20 (the "**EDA**"); and
 - b. fossil fuel businesses with tax incentives, deductions, allowances, credits and other subsidies under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "**ITA**") and the *Income Tax Regulations*, C.R.C., c. 945 (the "**ITR**").
76. The *EDA* establishes the EDC. Section 10 provides that the purposes of the EDC are, *inter alia*, to support and develop domestic businesses and Canada's export trade, and to provide "development financing and other forms of development support in a manner that is consistent with Canada's international development priorities".
77. EDC provides subsidies to Canadian businesses, including those in the oil and gas sector in several ways including credit insurance, performance security insurance, investments, financing, working capital guarantees and surety bonds.
78. The *ITA* governs how federal income tax is calculated. The *ITA* includes provisions that provide tax breaks or incentives to companies and individuals for certain spending behaviour. Specific provisions in the *ITA* subsidize the fossil fuel industry.

79. The *ITR* include many capital cost allowances that apply specifically to the fossil fuel industry, allowing those companies to deduct from their taxable income. There are also a number of deductible expenses under the *ITA* and *ITR* relating to various aspects of oil and gas activities, including activities relating to research, exploration, operation and reclamation. For example:
- a. Additional Allowances in Respect of Certain Oil and Gas Wells – *ITR*, s. 1208;
 - b. Canadian Development Expense (CDE) – *ITA*, s. 66.2(5);
 - c. Canadian Exploration Expense (CEE) – *ITA*, s. 66.1(6);
 - d. Canadian Oil and Gas Property Expenses (COGPE) – *ITA*, s. 66.4(5);
 - e. Flow Through Share (FTS) Deductions – *ITA*, ss. 66 and 66.3;
 - f. Foreign Resource Expense (FRE) – *ITA*, s. 66.21;
 - g. Frontier Exploration Allowances – *ITR*, s. 1207;
 - h. Qualifying Environmental Trust (QET) – *ITA*, Part XII.4;
 - i. Resource and Processing Allowances – *ITR*, Part XII; and
 - j. Scientific Research & Experimental Development (SR&ED) Investment Credit – *ITA*, ss. 127 and 127.1.
80. Supporting these activities is inconsistent with restoring and maintaining a Safe Climate System, thus causing or contributing to the climate change impacts experienced by the plaintiffs.

F. Legal Basis

i. Infringement of Section 7

81. Section 7 of the *Charter* states as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

82. GHG emissions are already harming the plaintiffs, and exposing them to potentially life-threatening injury, up to and including death. Every tonne of GHG emitted, as sanctioned by the defendants, increases the risk, frequency and severity of climate change impacts, which in turn cause severe harm to the plaintiffs' physical and mental wellbeing and impair the plaintiffs' capacity for growth and development, and ability to lead safe and healthful lives.
83. The ability to grow up with a Safe Climate System is an essential component of the plaintiffs' life, liberty and security of the person. The instability of the climate system caused by excess GHG emissions due to the defendant's conduct is harming the plaintiffs' basic health and development (or security of the person) and threatens their survival (or life interest). It also interferes with fundamental personal choices protected by the liberty interest, including the right to decide where to live, the right to access education, the right to participate in cultural activities and whether to have children.
84. The ability to exist within a Safe Climate System is a fundamental freedom or right underpinning s. 7, and on which all other *Charter* rights depend. The plaintiffs and all children and youth present and future are being deprived of the ability to exercise that right or freedom now and into the future because of high levels of GHG emissions.
85. Through their conduct, the defendants have and continue to knowingly cause, contribute to and allow the dangerous destabilization of the climate in contravention of the best available science, thereby depriving the plaintiffs and all children and youth in Canada present and future of their constitutionally guaranteed rights under s. 7.

86. Furthermore, the defendants' conduct infringes the right to life, liberty and security of the person of the plaintiffs and of all children and youth present and future by:
- a. increasing the risk of and frequency of exposure to adverse childhood experiences, up to and including death for children growing up with dangerous climate change;
 - b. increasing the risk of physical injury and disease, and serious psychological, social and spiritual trauma resulting from climate change impacts, which interferes with their capacity for growth and development;
 - c. interfering with their freedom of movement, right to choose where to establish a home, right to personal and cultural autonomy and right to make other decisions of fundamental importance;
 - d. for the plaintiffs who are Indigenous and for all future generations of Indigenous youth, interfering with the ability to meaningfully engage in traditional practices and cultural rights which rely on a Safe Climate System; and
 - e. irreversibly offloading major emission reduction burdens onto the plaintiffs and all children and youth present and future.
87. These deprivations are not in accordance with the principles of fundamental justice because, *inter alia*:
- a. there is no principle of fundamental justice that could justify permitting a level of GHG emissions consistent with the catastrophic and existential threats that climate change is causing the plaintiffs and all children and youth present and future;
 - b. these deprivations are arbitrary because they undermine and conflict with the purposes of the *Net-Zero Act* and the *GGPPA*;

- c. the effects of the defendants' conduct are grossly disproportionate to the purposes of the *Net-Zero Act*, the *GGPPA* or any economic, national security or other objective that may be served by that conduct, given the severity and irreversibility of the harms from climate change impacts;
 - d. these deprivations are incompatible with the obligation on the defendants to protect children's and youths' lives and health under the *parens patriae* power when it is necessary to do so;
 - e. the defendants' conduct is inconsistent with its international commitments and obligations under international law and agreements relating to children's right to life and wellbeing, relating to Indigenous people, and relating to climate change, including the *UN Convention on the Rights of the Child*, the *UN Declaration on the Rights of Indigenous Peoples*, and the *International Covenant on Civil and Political Rights*;
 - f. a government cannot engage in conduct that will, or could reasonably be expected to, result in the future harm, suffering or death of a significant number of its own citizens;
 - g. these deprivations infringe the plaintiffs' and all children and youth present and future right to equal protection of the law; and
 - h. the principle of proportionality in the context of global climate change requires the defendants to adopt and diligently implement an effective means of addressing its GHG emissions.
88. In addition to the deprivations of the plaintiffs' life, liberty and security of person interests caused or contributed to by the defendants, the existential crisis posed by climate change constitute special circumstances which impose positive obligations on the defendants to protect the plaintiffs from further

deprivations of their life, liberty and security of the person caused by GHG emissions.

89. These positive obligations require the defendants, *inter alia*, to set GHG emission targets consistent with restoring and maintaining a Safe Climate System and to develop and implement a plan capable of achieving those targets. The special circumstances here require the Court to order that the defendants adopt and diligently implement a plan to restore and maintain a Safe Climate System that: (i) is designed to achieve a target consistent with restoring and maintaining a Safe Climate System, based on the best available science; (ii) is consistent with a justifiable approach to Canada's share of necessary global emissions reductions; (iii) sets interim targets consistent with meeting the overall goals within a suitable time line; and (iv) includes a realistic plan to achieve the stated target.
90. The defendants have failed to implement a strategy which is consistent with restoring and maintaining a Safe Climate System, the principle of proportionality, or even its own legislated objective under the *GGPPA*, targets under the *Net-Zero Act*, or its international commitments.

ii. Basis for Seeking Special Costs

91. The plaintiffs seek special costs on a full indemnity basis on the basis that this is public interest litigation of exceptional importance.

The plaintiffs propose that this action be tried at Vancouver, British Columbia.

May 31, 2024



Signature of solicitor for the plaintiffs

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