

**COURT OF APPEAL FOR SASKATCHEWAN**

**IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, BILL C-74, PART 5**

**AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL FOR SASKATCHEWAN UNDER *THE CONSTITUTIONAL QUESTIONS ACT*, 2012, SS 2012, c C-29.01**

**BETWEEN**

**ATTORNEY GENERAL OF SASKATCHEWAN**

Party Pursuant to Section 4 of  
*The Constitutional Questions Act, 2012*

**and**

**ATTORNEY GENERAL OF CANADA**

Intervener Pursuant to Section 5(2) of  
*The Constitutional Questions Act, 2012*

**and**

**ATTORNEY GENERAL OF ONTARIO**

Intervener pursuant to s. 6 of The  
*Constitutional Questions Act, 2012*

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**FACTUM OF THE INTERVENOR CLIMATE JUSTICE *et al***

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**KOWALCHUK LAW OFFICE**

18 Patton Street  
Regina, SK, S4R 3N9  
Per: Larry Kowalchuk  
Phone: (306) 529-3001  
Fax: (306) 244-7707  
E-mail: [larry@kowalchuklaw.ca](mailto:larry@kowalchuklaw.ca)  
**Counsel for Climate Justice *et al***

**TO:**

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada

Prairie Region

123 2nd Ave South,

10th Floor Saskatoon, SK, S7K 7E6

**Per: Sharlene Telles-Langdon, Brooke  
Sittler, Mary Matthews, Neil Goodridge,  
and Ned Djordjevic**

Phone: 204-983-0862

Fax: 204-984-8495

E-mail: sharlene.telles-langdon@justice.gc.ca

**Counsel for the Attorney General of  
Canada**

**AND TO:**

**ATTORNEY GENERAL OF  
SASKATCHEWAN**

Ministry of Justice (Saskatchewan)

Constitutional Law Branch

820-1874 Scarth St,

Regina, SK, S4P 4B3

**Per: P. Mitch McAdam, OC, and Alan  
Jacobson**

Phone: 306-787-7846

Fax: 306-787-9111

Email: mitch.mcadam@gov.sk.ca

**Counsel for the Attorney General of  
Saskatchewan**

**AND TO:**

**ATTORNEY GENERAL OF ONTARIO**

Constitutional Law Branch

720 Bay Street, 4th Floor Toronto, ON, M7A  
289

**Per: Josh Hunter, Padraic Ryan, and  
Andrea Bolieiro**

Phone: 416-326-3840 Fax: 416-326-4015

Email: joshua.hunter@ontario.ca

**Counsel for the Attorney General of  
Ontario**

**AND TO**

**THE ATTORNEY GENERAL OF NEW  
BRUNSWICK**

William E. Gould

675 King Street, Room 2078, Floor 2

P. O. Box 6000 Fredericton, NB E3B 5H1

**Counsel for the Attorney General of New  
Brunswick**

**AND TO:**

**ATTORNEY GENERAL OF BRITISH  
COLUMBIA**

British Columbia Ministry of Attorney

General Legal Services Branch

1001 Douglas Street

Victoria, BC V8W 2C5

**Per: J. Gareth Morley**

Phone: 250-952-7644 Fax: 250-356-9154

Email: Gareth.Morley@gov.bc.ca

**Counsel for the Attorney General of British  
Columbia**

**AND TO: AGRICULTURAL  
PRODUCERS ASSOCIATION OF  
SASKATCHEWAN INC.**

Griffin Toews Maddigan

1530 Angus Street Regina, SK S4T 171

Per: Daniel Maddigan

Phone: 306-525-6125

Fax: 306-525-5226 Email: gtmb2@sasktel.net

**Agent for Agricultural Producers  
Association of Saskatchewan Inc.**

**AND TO:**

**CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION AND ENVIRONMENTAL  
DEFENCE CANADA INC.**

Canadian Environmental Law Association  
1500 - 55 University Avenue  
Toronto, ON M5J 2H7

**Per: Jacqueline Wilson**

Phone: 416-960-2284 ex 7213

Fax: 416-960-9392

Email: jacqueline@cela.ca

**Counsel for Canadian Environmental Law  
Association and Environmental Defence  
Canada Inc.**

**AND TO:**

**CANADIAN TAXPAYERS FEDERATION**

Crease Harman LLP Barristers and Solicitors  
800 - 1070 Douglas Street  
Victoria, BC V8W 2C4

Per: R. Bruce E. Hallsor, Q.C

Phone: 250-388-5421

Fax: 250-388-4294 Email:

hallsor@crease.com

**AND**

Kanuka Thuringer LLP Barristers and  
Solicitors 1400 -- 2500 Victoria Avenue  
Regina, SK S4P 3X2

Per: Alexander Shastashniy

Phone: 306-525-7200

Fax: 306-359-0590 Email:

ashalashniy@ktllp.ca

**Counsel for Canadian Taxpayers  
Federation**

**AND TO:**

**CANADIAN PUBLIC HEALTH  
ASSOCIATION**

Gowling WLG (Canada) LLP

1 First Canadian Place

100 King Street West, Suite 1600

Toronto, ON M5X 1G5

**Per: Jennifer King, Michael Finley, and  
Heather Fisher**

Phone: 416-862-7525

Fax: 416-862-7661

Email: jennifer.king@gowlingwlg.com

michael.finley@gowlingwlg.com

heather.fisher@gowlingwlg.com

**Counsel for Canadian Public Health  
Association**

**AND TO:**

**ATHABASCA CHIPEWYAN FIRST  
NATION**

Ecojustice Canada Society

216 - 1 Stewart Street

Ottawa, ON K1N 6N5

Per: Amir Attaran

Phone: 613-562-5800 ext. 3382

Fax: 613-562-5319 Email:

aattaran@ecojustice.ca

**AND**

Woodward & Company Lawyers LLP

200 - 1022 Government Street

Victoria, BC V8W 1X7

Per: Matt Hulse

Phone: 250-383-2356

Fax: 250-380-6560

Email: mhulse@woodwardandcompany.com

**Counsel for the Athabasca Chipewyan First  
Agent in Saskatchewan for Assembly of  
First Nations**

**AND TO:**

**ASSEMBLY OF FIRST NATIONS**

Assembly of First Nations  
55 Metcalfe Street, Suite 1600  
Ottawa, ON K1P 6L5  
Per: Stuart Wuttke and Victor Carter  
Phone: 613-241-6789  
Fax: 613-241-5808  
Email: swuttke@afn.ca

**AND**

Gerrand Rath Johnson LLP #700 - 1914  
Hamilton Street  
Regina, SK S4P 3N6  
Per: Scott Hopley  
Phone: 306-522-3030  
Fax: 306-522-3555  
Email: shopley@gry.ca  
**Counsel for Assembly of First Nations**

**AND TO:**

**ECOFISCAL COMMISSION OF  
CANADA**

University of Ottawa  
57 Louis Pasteur Street  
Ottawa, ON K1N 0N5  
Per: Stewart Elgie and Nathalie Chalifour  
Phone: 613-562-5800 ext. 1270  
Fax: 613-562-5124 Email:  
stewart.elgie@uottawa.ca  
natchali@uottawa.ca  
**Counsel for the Ecofiscal Commission of  
Canada**

**AND TO:**

**INTERGENERATIONAL CLIMATE  
COALITION**

Ratcliff & Company LLP 500 - 221 West  
Esplanade North Vancouver, BC V7M 3J3  
Per: Nathan Hume and Emma K. Hume  
Phone: 604-988-5201 Fax: 604-988-1352  
Email: nhume@ratcliff.com  
ehume@ratcliff.com  
**Counsel for the Intergenerational Climate  
Coalition**

**AND TO:**

**INTERNATIONAL EMISSIONS  
TRADING ASSOCIATION**

DeMarco Allan LLP  
333 Bay Street, Suite 625  
Toronto, ON M5H 2R2  
Per: Lisa DeMarco and Jonathan  
McGillivray  
Phone: 647-991-1190 Fax: 1-888-734-9459  
Email: lisa@demarcoallan.com  
jonathan@demarcoallan.com  
**Counsel for the International Emissions  
Trading Association**

**AND TO:**

**UNITED CONSERVATIVE  
ASSOCIATION AND ALBERTA UNITED  
CONSERVATIVE PARTY**

McLennan Ross LLP  
600 McLennan Ross Building  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4  
Per: Steven Dollansky  
Phone: 780-492-9135  
Fax: 780-733-9707  
Email: sdollansky@mross.com  
**Counsel for United Conservative  
Association and Alberta United  
Conservative Party**

**AND TO:**

**DAVID SUZUKI FOUNDATION**

Ecojustice Canada Society  
216 - 1 Stewart Street Ottawa, ON K1N 0N5  
Per: Joshua Ginsberg and Randy Christensen  
Phone: 613-562-5800 ext. 3399 Fax: 613-562-  
5319 Email: jginsberg@ecojustice.gca  
**Counsel for David Suzuki Foundation**

**AND TO:**

**SASKATCHEWAN POWER  
CORPORATION AND SASKENERGY  
INCORPORATED**

McKercher LLP

374 – 3rd Avenue South

Saskatoon, SK S7K 1M5

**Per: David M.A. Stack, Q.C.**

Phone: 306-653-2000

Fax: 306-653-2669

Email: [d.stack@mckercher.ca](mailto:d.stack@mckercher.ca)

**Counsel for Saskatchewan Power Corporation and SaskEnergy Incorporated**

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## I. INTRODUCTION

1. Almost all governments and jurisdictions recognize the issue of climate change as requiring co-operation with a sense of some urgency and commitment to, amongst other objectives, reducing greenhouse gas ("*GHG*") emissions for the benefit of all citizens of Canada and the world. Towards that objective, the federal government, most provincial and territorial governments have committed to working together on various means to meet that objective – including setting a benchmark for carbon pricing to be established by 2018 as set out in the *The Pan-Canadian Framework on Clean Growth and Climate Change*.
2. It is our plea and hope that, given the urgent need to address climate change across all jurisdictions and reduce GHG emissions as fast as possible, this concept of co-operation is supported, nurtured and reinforced by this Honourable Court as a premise in law when interjurisdictional matters such as environmental preservation, international obligations, and Charter values, including the right to life for present and future generations, are at risk of significant harm. We therefore encourage the Court to interpret constitutional principles in a way that empowers our governments to respond to the threats our nation faces as a result of changing climate.
3. Our main position is that, in conjunction with the other arguments made in support of the *Greenhouse Gas Pollution Pricing Act* ("*GGPPA*"), the *GGPPA* is constitutional for the following reasons:
  - a. GHG emissions and climate change are a global emergency that affect the rights and interests of all Canadians and are thus matters of a national concern;
  - b. GHG emissions, including Saskatchewan's, do impact other provinces, territories, and countries of the world;
  - c. The precautionary principle supports the *GGPPA* as legislation dealing with GHG emissions in a constitutionally sound and necessary way; and

- d. Canada has duties rooted in s. 7 of the *Canadian Charter of Rights and Freedoms*<sup>1</sup> and international obligations, which can be met with the aid of the *GGPPA*.

## II. JURISDICTION

4. We agree with the Attorney General of Canada's position, stated in paragraph 6 of their factum, that the Court has the jurisdiction to address this reference question as stated by the Lieutenant Governor in Council regarding whether the *GGPPA* is unconstitutional in whole or in part.

## III. SUMMARY OF FACTS

5. We agree on the facts set out by the Attorney General of Canada beginning in paragraph 7 of their factum.

## IV. POINTS IN ISSUE

6. The points in issue that this factum will address include:
  - a. Are GHG emissions and climate change a national concern?
  - b. Is the *GGPPA* constitutional under POGG national concern?
  - c. Might Canada have duties grounded in s.7 of the *Charter* and international obligations to act on climate change?
7. In the factum below, we conclude that GHG emissions and climate change are a national concern and we ask that this Honourable Court find the *GGPPA* constitutional in light of Canada's international obligations to reduce its contributions to climate change and the increased risk of harm that will come to Canadians, whose rights to life, liberty, and security of the person are protected under s. 7 of the *Charter* if Canada fails to do so.

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 [*Charter*].



## V. ARGUMENT

### A) POGG and the Precautionary Principle

8. We support the Attorney General of Canada's position that the federal government has the constitutional ability to enact the *GGPPA* using their POGG national concern powers. We provide the following:
  - a. That GHG emissions and climate change are matters of national concern given the impact on Saskatchewan and the global community;
  - b. That the Court of Appeal has the ability to incorporate international law, such as the precautionary principle, into its constitutional analysis;
  - c. That the precautionary principle supports viewing GHG emissions as a single, distinct, and indivisible matter; and
  - d. That the precautionary principle supports interpreting the *GGPPA* as a piece of legislation focused on preventing environmental harm by controlling GHG emissions.

#### *i) GHG Emissions are a Matter of National Concern*

9. We disagree with the Attorney General of Saskatchewan's position that this case is not about the risks of climate change. In order to determine whether the *GGPPA* addresses a matter of national concern, we must look at the dangers posed by GHG emissions and climate change to Canadians and the global community.
10. The affidavits of Dr. David Maenz, sworn December 16, 2018, ("Dr. Maenz Affidavit") (Tab M) and Mr. Glenn Wright, sworn December 17, 2018, ("Wright Affidavit") (Tab O), and Dr. James Hansen's report ("Hansen Report") (Tab R and see paragraph 21 of the Wright Affidavit for the most recent updated version) support the notion that climate change is a national and international concern.
11. As stated in para. 4 - 7 of the Dr. Maenz Affidavit; 3 and 10 of the Wright Affidavit; and pages 25-31 of the Hansen Report, the implications of inaction include, but are not limited to, the following:
  - a. 3-4° C of surface warming during the second half of this century;

- b. Increased harm from food and water supply issues, child malnutrition, and diseases;
  - c. Increased harm to coastal communities in Canada and around the world from sea level rise;
  - d. Damages from climate change resulting in a loss of around 25-35% of global GDP annually; and
  - e. Putting the livelihood of Canadians, such as Saskatchewan farmers, at risk.
12. The Hansen Report in particular provides a substantial amount of scientific data and evidence that show the dangers of GHG emissions and climate change.

**a) Impact of Climate Change on Saskatchewan**

13. Saskatchewan's economy, indeed its identity, relies heavily on the agricultural sector. However, this sector is at significant risk of harm as a changing climate means increasingly unpredictable weather, longer and more severe drought conditions, and an increased number of extreme precipitation events.
14. As stated in para. 3 of the Wright Affidavit, written on behalf of the National Farmers Union, farmers depend on a stable climate in order to produce food. Climate change, however, disrupts farming practices in a number of ways, causing "water security, infrastructure damage, drought, erosion, [and] wild fires".<sup>2</sup> Which is more disruptive to a family farm: the possibility of slightly increased costs or a failed harvest because of drought or hail? With carbon pricing, farmers can predict the costs they must cover, but the costs associated with climate change are almost impossible to predict or control.

**b) Saskatchewan's Impact on Canada and the World**

15. Saskatchewan and Canada both play an important role in reducing GHGs on a global scale. We disagree with the Attorney General of Saskatchewan's position implying that reductions achieved by the *GGPPA* and Canada's role in global emissions are minimal.

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<sup>2</sup> Wright Affidavit at paragraph 10.

16. Dr. Bigland-Pritchard's affidavit sworn December 17, 2018, ("Pritchard Affidavit") (Tab N) makes a number of points about Saskatchewan's GHG emissions and its effect on the rest of the world. As he states in para. 9, "Emissions are local but impacts are global".
17. Saskatchewan has the highest per capita emissions in Canada.<sup>3</sup> The Affidavit of Mr. Emberger ("Emberger Affidavit") (Tab P) on behalf of the New Brunswick Anti-Shale Gas Alliance, sworn December 18, 2018, reflects similar concerns at para. 16:

GHG emissions from any and every provincial jurisdiction, including Saskatchewan and New Brunswick, threaten the lives of citizens in all of Canada and the rest of humanity by adding to the already dangerous levels in our atmosphere. Those emissions, and the damage they cause, do not stop at political borders drawn on a map. We do not wish to be either victims or perpetrators of climate change.

18. Dr. Bigland-Pritchard further explain how lower-emitting countries bear the burden of the consequences from high levels of emissions, as they do not have the same capacity to adapt to climate change as do wealthier countries. In other words, the effects of GHG emissions are not uniformly distributed. The effect of climate change on a farmer beside the Niger River, just south of Timbuktu, is not necessarily the same as the impact on a Saskatchewan farmer who may have access to additional resources to help them adapt. The Dr. Maenz Affidavit elaborates on this further in para. 7. This reinforces the importance of international agreements and signatories doing what they can to achieve their national goals.
19. As established above and in the filed affidavits, the people of Saskatchewan and Canada as a whole will be negatively impacted by climate change. Regulating and reducing GHG emissions in Saskatchewan is of concern for the entire country and a minimal standard for a price on carbon pollution is essential to help curb these emissions.

*ii) The GGPPA meets the POGG Test*

20. We submit that the precautionary principle is a useful tool to inform the POGG analysis, particularly when looking at the following:

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<sup>3</sup> Pritchard Affidavit at paragraph 19.

- a. The science behind the impacts of GHG emissions and climate change, and
- b. Defining the character and purpose of the *GGPPA*.

21. Below we explain that even if there was an absence of certainty regarding the measurability of the impacts of GHG emissions, we must conclude that the *GGPPA* is centred on preventing environmental harm.

**a) Precautionary Principle**

22. As stated by the Supreme Court of Canada (“SCC”) in *Castonguay Blasting Ltd. v Ontario (Environment)* (Tab C), the precautionary principle is an international law principle that “recognizes that since there are inherent limits in being able to determine and predict environmental impacts with scientific certainty, environmental policies must anticipate and prevent environmental degradation”.<sup>4</sup>

23. The precautionary principle is further explained in *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*<sup>5</sup> (Tab A):

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation.

24. Also stated by the SCC in *R v Hape* (Tab J), Canadian courts have the power to adopt international law into common law rules.<sup>6</sup> Specifically, the SCC states:

39 ... Absent an express derogation, the courts may look to prohibitive rules of customary international law to aid in the interpretation of Canadian law and the development of the common law.

25. We therefore ask the Court to consider applying the precautionary principle in their constitutional analysis.

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<sup>4</sup> *Castonguay Blasting Ltd. v Ontario (Environment)*, 2013 SCC 52, 3 SCR 323, foll’d *Prospective Appellant v Mudjatik Enterprises Inc.*, 2015 SKCA 15 (Tab I); *Morton v Canada (Fisheries and Oceans)*, 2015 FC 575 [Morton] (Tab G).

<sup>5</sup> *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 at para 31, 2 SCR 241, foll’d *Morton*; *Newfoundland and Labrador (Environment and Climate Change) v Atlantic Salmon Federation (Canada)*, 2018 NLCA 53 (Tab H).

<sup>6</sup> *R v Hape*, [2007] 2007 SCC 26 at paras 35-39, 2 SCR 292, foll’d *Bulmer v Nissan Motor Co., Ltd.*, 2017 SKCA 19 (Tab B).

26. The Attorney General of Saskatchewan has voiced doubts about the traceable or measurable impacts of GHG emissions coming from Saskatchewan and the *GGPPA*'s usefulness in mitigating climate change. This leads them to conclude that GHG emissions do not meet the requirements of singleness, distinctiveness, and indivisibleness test to prove that the *GGPPA* is aimed at addressing matters of national concern. The Attorney General of Saskatchewan also asserts that the pith and substance of the *GGPPA* is not to reduce GHG emissions. We respectfully disagree, and ask that this Honourable Court do so as well.
27. The precautionary principle requires us to view environmental policies as anticipating and preventing environmental degradation. As such, we submit that the *GGPPA* is a piece of legislation appropriately designed to reduce and control Canada's GHG emissions as a single, distinct, and indivisible manner. This must be the case even in the absence of complete certainty regarding how emissions from Saskatchewan would impact other provinces or the rest of the world.
28. Also note that consistent with the above, the concept in law of the **precautionary principle** as it relates to environment protection has been adopted into Canadian law by our courts and by Parliament in their statutes, such as section 9(1) of the *Federal Sustainable Development Act*<sup>7</sup>, which states:
- 9 (1) Within two years after this Act comes into force and within every three-year period after that, the Minister shall develop, in accordance with this section, a Federal Sustainable Development Strategy based on the precautionary principle.
29. Lastly, we submit that the precautionary principle also helps inform the analysis regarding the application of the provincial inability test (the test is explained in the Attorney General of Canada's factum beginning in paragraph 93). The precautionary principle encourages us to conclude that harmful substances with "diffuse, persistent, and serious" effects, such as GHG emissions, supports a *prima facie* case that a province failing to effectively regulate

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<sup>7</sup> *Federal Sustainable Development Act*, SC 2008, c 33, s 9(1).

that substance results in “grave consequences”.<sup>8</sup> We can reach a similar conclusion regarding provinces failing to properly regulate GHG emissions.

## **B) Section 7 and International Obligations**

30. We submit that the s. 7 *Charter* right to life, liberty, and security of the person, and Canada’s various international human rights and climate change obligations weigh in favour of finding the *GGPPA* constitutional, as environmental harm threatens the health and well-being of current and future generations in Canada and around the world.
31. We respectfully request that the Court consider both legal and moral obligations to respect and nurture the rule of law in accordance with the Living Tree doctrine of our constitution. *Charter* values have played an important role in shaping the law in Canada and we hope this Honourable Court will continue to uphold the rights and values Canadians have worked hard to protect and of which they are proud.
32. We encourage this Honourable Court to continue including structural, pragmatic, and ethical aspects into their constitutional analyses. We plead and hope that the Court will consider how the *GGPPA* fits in the contemporary context of interpreting constitutional rights and obligations and the influential and instructive role that international law is meant to play in the interpretation and enforcement of rights and obligations in Canada.
33. We submit that the *GGPPA* responds to the growing recognition of international and domestic moral and legal obligations to reduce GHG emissions, and that the nature and scope of the issues sought to be addressed by the *GGPPA* calls for action that goes beyond a single province’s ability and jurisdiction.
34. In the recent case *Saskatchewan Federation of Labour v Saskatchewan*<sup>9</sup> (Tab L) involving the relationship of international law and our *Charter*, the courts reinforced their jurisprudential history that when interpreting and applying words in our *Charter*, we must

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<sup>8</sup> *R v Hydro-Québec* (1997), 3 SCR 213, 1997 CanLII 318 (SCC) (Tab K), foll’d *Groupe Maison Candiac Inc. v Canada (Attorney General)*, 2018 FC 643 (Tab F).

<sup>9</sup> *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at paras 64-67, 1 SCR 245 [SFL].

be guided by international law and look to similar words being given a meaning at least equal to that of international law. As stated by the Supreme Court of Canada in *SFL*:

[64] LeBel J. confirmed in *R. v. Hape*, [2007] 2 S.C.R. 292, that in interpreting the Charter, the Court “has sought to ensure consistency between its interpretation of the Charter, on the one hand, and Canada’s international obligations and the relevant principles of international law, on the other”: para. 55. And this Court reaffirmed in *Divito v. Canada (Public Safety and Emergency Preparedness)*; [2013] 3 S.C.R. 157, at para. 23, “the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified”.

[65] Given this presumption, Canada’s international obligations clearly argue for the recognition of a right to strike within s. 2(d). Canada is a party to two instruments which explicitly protect the right to strike. Article 8(1) of the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, to which Canada acceded in May 1976, provides that the “States Parties to the present Covenant undertake to ensure . . . (d) the right to strike, provided that it is exercised in conformity with the laws of the particular country”...

[66] In addition, in 1990, just over two years after the Alberta Reference was decided, Canada signed and ratified the Charter of the Organization of American States, Can. T.S. 1990 No. 23...

[67] Besides these explicit commitments, other sources tend to confirm the protection of the right party to the International Labour Organization (ILO) Convention (No. 87) concerning freedom of association and protection of the right to organize, ratified in 1972. Although Convention No. 87 does not explicitly refer to the right to strike, the ILO supervisory bodies, including the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have recognized the right to strike as an indissociable corollary of the right of trade union association that is protected in that convention....

35. We note that the SCC cites commentary from international agencies on the proper interpretation of the international Covenants. Very recently, the UN agency was given responsibility by the governments of the world regarding the *International Covenant on Civil and Political Rights* (“ICCPR”), the UN Human Rights Committee, has issued the following regarding the meaning of the words **right to life** (Tab Q)<sup>10</sup>:

<sup>10</sup> General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Human Rights Committee OR, 124th Sess, CCPR/C/GC/36 (2018).

Human Rights Committee General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights ICCPR, on the right to life\*

I. General remarks

1. This general comment replaces earlier general comments No. 6 (16th session) and 14 (23rd session) adopted by the Committee in 1982 and 1984, respectively.

2. Article 6 recognizes and protects the right to life of all human beings. It is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights.

3. The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.

4. Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. It lays the foundation for the obligation of States parties to respect and to ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.

...

25. The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with article 6, as well as from the specific duty to protect the right to life by law which is articulated in the second sentence of article 6. States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State.

...

65. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and



future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the **precautionary approach.**”

36. Canada is a signatory to the International Covenant on Civil and Political Rights, which guarantees explicitly the right to life in Article 6.1.
37. Courts around the world are recognizing that citizens including future generations have the right to life which support explicitly the submissions stated above and herein regarding the legal obligations on all governments to act to mitigate the causes and effects of climate change including the reduction and elimination of GHG emissions. Reflective of this jurisprudential trend in courts in the Ukraine, the Philippines, and the Netherlands (see the recent appeal court decision in Urgenda (Tab E)). We quote extensively from the English summary of the recent decision from the Columbia Supreme Court as translated by Dejusticia (Tab D):

“Bogotá, D.C., fifth of April of twenty eighteen (2018)

1. The plaintiffs plead for the protection of “supralegal” rights, highlighting those of “enjoying a healthy environment,” life, and health, allegedly violated by the accused.

2. They explain that in the Paris Agreement and in Law 1753 of 2015, the government acquired national and international commitments to achieve “..reduction of deforestation and the emission of greenhouse gases in a context of climate change...”

14. Daniel M. Galpern, attached an amicus “on behalf of” **James E. Hansen, Director of Climate Science**, Awareness and Solutions at the Earth Institute at Columbia University (USA), :

“While we are late in acting with purpose to arrest global warming, the precautionary principle still counsels us to act now to avert calamitous climate change before every last detail is fully known (or fully appreciated). Similarly, while sea level rise and ocean acidification derived from deforestation-induced regional and global warming conflicts with the fundamental rights and interests of the present generation, it will impact and thus violate the rights of future generations more severely still.”

“Accordingly, the principle of intergenerational equity compels action without further delay so as not to burden disproportionately young persons and future generations. As well, the principles of solidarity, participation, and the best interest of children counsel consideration of interests retained by persons beyond those wielding present political authority. Considered interests, as well, must not be limited to those within the specific region of this Court’s usual jurisdiction. Neither should they be limited to those of the present generation.”

By virtue of what has been said, it can be preached, that the fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, subjects of law and sentient beings in general will not be able to survive, much less protect those rights, for our children or for future generations. Neither can the existence of the family, society or the state itself be guaranteed.

The increasing deterioration of the environment is a serious attack on current and future life and on other fundamental rights; it gradually depletes life and all its related rights. The inability to exercise the fundamental rights to water, to breathe pure air, and to enjoy a healthy environment is making Colombians sick. It also increases the lack of fresh water and decreases the ability to enjoy a dignified life.

4. Due to multiple simultaneous causes, derived, connected, or isolated, that negatively impact the ecosystem, environmental issues occupy a prominent place on the international agenda, not only of scientists and researchers, but also of politicians, the common people and, naturally, judges and lawyers.

Day to day the news, articles and reports of different tiers presenting the gravity of the planetary conditions are abundant. There is a growing threat to the possibility of existence of human beings. These imminent dangers are evident in phenomena such as the excessive increase of temperatures, the thawing of the poles, the massive extinction of animal and plant species, the increasingly frequent occurrence of meteorological events and disasters outside margins previously considered normal. There are unusual and unforeseen rainy seasons, permanent droughts, hurricanes or destructive tornadoes, strong and unpredictable tidal waves, draining rivers, increasing disappearance of species, etc.

...p.16

Humanity is the main actor responsible for this scenario, as its global hegemonic position led to the adoption of an anthropocentric and selfish model, whose characteristic features are harmful to environmental stability, namely: i) the excessive demographic growth; ii) the adoption of a rapid development system

guided by consumerism and the current political-economic systems; and iii) the excessive exploitation of natural resources.

...pg.18

We are all obligated to stop exclusively thinking about our self-interest. We must consider the way in which our daily actions and behaviors affect society and nature. In the words of Peces-Barba, we must shift from "private ethics," focused on private goods, to "public ethics," understood as the implementation of moral values that aim to achieve a particular notion of social justice.

5.2 The protection of fundamental rights not only involves the individual, but implicates the "other." The neighbor is otherness; its essence, the other people that inhabit the planet, also include other animal and plant species. But in addition, this includes the unborn, who also deserve to enjoy the same environmental conditions that we have.

5.3 The environmental rights of future generations are based on the (i) ethical duty of the solidarity of the species and (ii) on the intrinsic value of nature.

...p.20

The first is explained by the fact that natural resources are shared by all inhabitants of Planet Earth, and by their descendants or future generations who do not yet have a physical hold of them, but who are tributaries, recipients, and owners of them, even if they, in a contradictory way, are increasingly insufficient and limited. Thus, without an equitable and prudent approach to consumption, the future of humankind may be compromised due to the scarcity of essential life resources. In this way, solidarity and environmentalism are "related until they become the same. The second transcends the anthropocentric perspective, and focuses on "ecocentric- anthropic" criteria, which places the human being on par with the environmental ecosystem, whose purpose is to avoid arrogant, dismissive, and irresponsible treatment of the environmental resources, and its entire context, to satisfy materialistic ends, without any protectionist or conservationist respect...

...p. 21

What has been stated then, develops a binding legal relationship regarding the environmental rights of future generations, such as an "omission," whose impact translates into a limitation to the freedom of action of present generations, while simultaneously implicitly demanding new burdens of environmental commitments, to the extent that they take on the care and stewardship of natural resources and the future world.

... 22

6. In view of the foregoing, numerous regulations have emerged in the international field, hard and soft law, which constitute a global ecological public order and serves as guiding criteria for national legislation, as to resolve citizen complaints on the destruction of our habitat, in favor of the protection of the subjective rights of people, of present and future generations.

The most relevant legal instruments are the following:

(6.1 discusses the International Covenant on Economic, Social and Cultural Rights, 6.2 discusses the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification

Techniques as well as the additional protocol to the Geneva Convention and 6.3 discusses the Stockholm Declaration.)

6.4 The Conference of the United Nations on the Environment and Development held in Rio de Janeiro in 1992: concerted with the objective of "...elaborating strategies and measures to stop and reverse the effects of environmental degradation in the context of the efforts directed to promote a sustainable and environmentally balanced environment, carried out both at the international and national levels..."

6.5 The Framework Convention on Climate Change in Paris 2015: after several unsuccessful attempts to adopt a binding document for the states that consigned the current needs in environmental matters, in Paris this purpose was achieved, as the countries agreed upon:

"... maintain and promote regional and international cooperation in order to mobilize more vigorous and ambitious action to address the climate, by all parties and by non-parties, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples..."

Never before has a tool of this type established binding measures to mitigate climate change, requiring countries to make concrete commitments to reduce pollution and the increase of global temperatures.

...

11.3 The principle of solidarity, for the specific case, is determined by the duty and co-responsibility of the Colombian state to stop the causes of the GHG emissions from the abrupt forest reduction in the Amazon; thus, it is imperative to adopt immediate mitigation measures, and to protect the right to environmental welfare, both of the plaintiffs, and to the other people who inhabit and share the Amazonian territory, not only nationals, but foreigners, together with all inhabitants of the globe, including ecosystems and living beings.

11.3 The previous reality, in addition to transgressing the regulations pertaining to the Environmental Charter of the country, and the international instruments that make up the global ecological public order, constitutes a serious ignorance of the obligations acquired by the State in the Framework Convention on Climate Change of Paris 2015,

12. Therefore, the excessive intensification of this problem is evident, showing the ineffectiveness of governmental measures adopted to confront this, and, from that perspective, granting the protection for the breach of fundamental guarantees to water, air, a dignified life, health, among others in connection with the environment.

13. It is clear that despite several international commitments, legislation, and jurisprudence on the subject, the Colombian State has not efficiently tackled the problem of deforestation in the Amazon.

...p.45

Consequently, we grant the relief, and order the Presidency of the Republic, the Ministry of Environment and Sustainable Development, and the Ministry of Agriculture and Rural Development, in coordination with the actors of the National Environmental System and the participation of the plaintiffs, the affected

communities, and the interested population in general, to formulate a short, medium, and long term action plan within the next four (4) months from today's notice, to counteract the rate of deforestation in the Amazon, tackling climate change impacts.

38. We encourage this Honourable Court and parties to these proceedings and governments at all levels as well as people everywhere to endorse the above words as both our moral responsibility as well as our legal premise in implementing laws and policies in a manner which honours these words for present and future generations.

## VI. RELIEF SOUGHT

39. Reducing GHG emissions to mitigate harm from climate change is one of the most difficult and pressing problems of our time. We also understand the importance of preserving the balance of powers between governments and respecting the division of responsibilities as set out in the *Constitution Act, 1867*<sup>11</sup>.

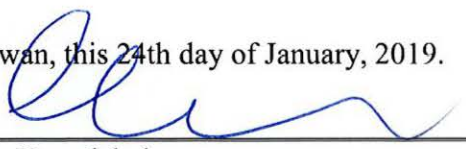
40. The main question is whether the federal government has the ability to legislate a minimum price on carbon pollution in an effort to curb the level of emissions, a main contributor of climate change. We submit that they do for the following reasons:

- a. That the level of GHG emissions has major impacts on Saskatchewan and Canada such that it has become a national concern;
- b. That the precautionary principle empowers the Court to find that the *GGPPA* attempts to prevent environmental harm due to GHG emissions; and
- c. That s. 7 *Charter* rights and international obligations further support the *GGPPA* as it helps Canada fulfil its duties to Canadian citizens and the global community.

41. We therefore ask that this Honourable Court uphold the *GGPPA* as constitutionally enacted piece of legislation.

All of which is respectfully submitted.

Dated at the City of Regina, in the Province of Saskatchewan, this 24th day of January, 2019.

  
Larry Kowalchuk  
Counsel for Climate Justice et al

<sup>11</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.



TO: The Local Registrar of the Saskatchewan Court of Appeal

This document was delivered by: KOWALCHUK LAW OFFICE: 18 Patton Street, Regina, SK, S4R 3N9, Per: Larry Kowalchuk; Phone: (306) 529-3001 E-mail: larry@kowalchuklaw.ca

## VII. AUTHORITIES

LEGISLATION	TABS
<a href="#"><i>Canadian Charter of Rights and Freedoms</i>, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982 c 11</a>	-
<a href="#"><i>Constitution Act, 1867</i> (UK), 30 &amp; 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.</a>	-
<a href="#"><i>Federal Sustainable Development Act</i>, SC 2008, c 33, s 9(1)</a>	-
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<a href="#"><i>Morton v Canada (Fisheries and Oceans)</i>, 2015 FC 575</a>	G
<a href="#"><i>Newfoundland and Labrador (Environment and Climate Change) v Atlantic Salmon Federation (Canada)</i>, 2018 NLCA 53</a>	H
<a href="#"><i>Prospective Appellant v Mudjatic Enterprises Inc.</i>, 2015 SKCA 15</a>	I
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<a href="#"><i>R v Hydro-Québec</i> (1997), 3 SCR 213, 1997 CanLII 318 (SCC)</a>	K
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SECONDARY MATERIALS: AFFIDAVITS	
Affidavit of Dr. David Maenz, sworn December 16, 2018	M
Affidavit of Dr. Mark Bigland-Pritchard, sworn December 17, 2018	N
Affidavit of Glenn Wright, sworn December 17, 2018	O
Affidavit of James Emberger, sworn December 18, 2018	P

SECONDARY MATERIALS: INTERNATIONAL DOCUMENTS	
<a href="#"><u>General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Human Rights Committee OR, 124th Sess, CCPR/C/GC/36 (2018)</u></a>	Q
SECONDARY MATERIALS: REPORTS	
<a href="#"><u>James Hansen, "Declaration of Dr. James E Hanson in Support of Plaintiffs' Complaint for Declaratory and Injunctive Relief", Affidavit for <i>Kelsey Cascadia Rose Juliana, Xiuhtezcatl Tonatiuh M. et al. v United States, Barack Obama et al.</i></u></a>	R