

Amended pursuant to the Orders of Case Management Judge Kathleen Ring made and December 20, 2024

Original filed February 7, 2020; Amended filed March 31, 2025

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, MADELEINE ROSE MEAD, by his guardian ad
litem Katrina Mead, and LEANDREA TAYLOR REEVES

Plaintiffs

- and -

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

Defendants

AMENDED STATEMENT OF DEFENCE

A. Admissions/Denials/No Knowledge

1. The defendants admit the allegations contained in paragraphs 12-16, 17 (last three sentences), 18, 19 (first two sentences), 20-21, 23 (first sentence), 24, 46, 47 (first sentence), 48 (first three sentences), 54 (first and third sentence), 55-58, 59 (first two sentences), 60-61, and 62(a) of the further amended statement of claim, filed on January 13, 2025 (the “Claim”), subject to any qualifications set out below.
2. The defendants deny the allegations contained in paragraphs 9-11, 17 (first sentence), 22, 23 (last sentence), 28-30, 48 (last two sentences), 49-53, 54 (second sentence), 59

(last sentence), 62(b), 62(c), 62(d), 62(e), 63, 64 (first two sentences), 65, 66 (last sentence), and 67 of the Claim.

3. The defendants have no knowledge of the allegations contained in paragraphs 19 (last two sentences), 25-27, 31-45, 47 (last sentence), 64 (last sentence), and 66 (first sentence) of the Claim.

B. Overview

4. Global climate change is real, measurable, and documented. It is not a distant problem, but one that is happening now and that is having very real consequences on people's lives.
5. Climate change has no boundaries and addressing climate change is the shared responsibility of multiple different actors, including both governmental and non-governmental institutions at all levels of jurisdiction – international, national, provincial, territorial, and local. Canada has been working diligently to fulfill its international obligations.
6. Canada's constitutional division of powers does not give Parliament exclusive jurisdiction over climate change. While aspects of the fight against climate change involve legislation passed by the Parliament of Canada and regulation by the federal government, addressing climate change also necessarily involves the provinces and territories. Canada's laws and regulations must respect constitutional boundaries.
7. The *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 (the "*Net-Zero Act*") is a key tool for delivering on Canada's international commitments to combat climate change. The *Net-Zero Act* sets out procedural requirements that reflect the federal government's commitment to achieve net-zero greenhouse gas ("GHG") emissions by 2050. The *Net-Zero Act* requires the Minister of the Environment and Climate Change (the "Minister") to set national GHG emissions reduction targets and emissions reduction plans that are informed by the best scientific information available, Indigenous knowledge, international commitments, advice from experts and input from provinces, territories, Indigenous partners and Canadians. The *Net-Zero Act*

supports Canada's transition to net-zero emissions in a manner that contributes to making Canada's economy more resilient, inclusive and competitive.

8. At its core, the Claim seeks to establish a constitutional right for all individuals to a certain level of environmental protection which would require the federal government to take positive measures to protect this right. There is no such freestanding right under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). Section 7 of the *Charter* does not place positive obligations on the state to ensure that each person enjoys life, liberty or security of the person.
9. Moreover, while the Plaintiffs frame their challenge to the *Net-Zero Act* as a deprivation of their section 7 *Charter* rights, what they are really claiming is that the Act does not go far enough and that the targets and plans made under the Act are insufficient. This amounts to a positive rights claim that is not supported by the jurisprudence.
10. Further, the Plaintiffs cannot establish the required causal connection between the *Net-Zero Act* and the harms they have allegedly suffered because of climate change. These alleged harms cannot be attributed to the Act's encouraged reduction of GHG emissions. In any event, any deprivation of the Plaintiffs' section 7 interests is in accordance with the principles of fundamental justice.
11. The remedies sought by the Plaintiffs invite the Court to move beyond its appropriate role and beyond its institutional competence. In essence, the Plaintiffs ask the Court to decide whether the executive is governing well and to mandate that Parliament exercise its jurisdiction in a particular manner. The Court is not equipped to evaluate the scientific, economic, political, and other complexities required to craft policy addressing global climate change or to supervise the development and implementation of such a policy. The Claim should be dismissed.

C. Climate Change Impacts and Canada's Role

1. Global Impacts

12. Future emissions of GHGs and the impacts of climate change that ultimately arise from

these cannot be predicted with precision and are contingent on many uncertainties. Key uncertainties about future GHG emissions include economic growth patterns, the pace of technological change, and world energy prices.

13. However, the scientific properties of GHGs and the role they play in global climate change are well established. Simply stated, GHGs trap some of the outgoing heat the Earth emits after being warmed by the Sun, instead of letting it escape directly to outer space. This makes the surface of the Earth and the lower atmosphere warmer than they would otherwise be. Human activities have led to a build up of GHGs in the atmosphere. This has strengthened the heat-trapping properties of the atmosphere and driven climate warming and other changes in climate (anthropogenic climate change).
14. Cumulative emissions of carbon dioxide (“CO₂”), the most prevalent GHG, are the main determinant of global warming. These CO₂ emissions are long-lived in the atmosphere. In order to stabilize global temperatures and limit global warming, global anthropogenic CO₂ emissions must be brought down to net-zero and emissions of other anthropogenic GHGs, like methane and hydrofluorocarbons, must be significantly reduced. Achieving net-zero emissions means Canada’s economy either emits no GHG emissions or offsets its residual emissions, for example, through actions such as tree planting or employing technologies that can remove carbon from the air.
15. GHG emissions create a global risk of harm to human health and the environment. This risk is not correlated to the location of the GHG emission source. Science is unable to establish causal connections between the effects of climate change and a specific source of GHG emissions. GHG emissions circulate in the atmosphere, so emissions anywhere raise atmospheric concentrations everywhere. This means that Canada’s climate is impacted not only by its own GHG emissions, but by the total volume of GHG emissions occurring around the world.
16. In response to paragraph 4 of the Claim, the term “Safe Climate System” is not a term that is used by or defined in the *Net-Zero Act*.
17. In response to the second sentence of paragraph 64 of the Claim, climate change is a

global issue, and Canada cannot address this issue on its own. The Government of Canada is working through international fora to reduce emissions and to encourage all major worldwide emitters to do the same.

18. In 2023, global atmospheric CO₂ concentrations rose to 420 parts per million, which represents a higher level than at any time in at least 2 million years. The increasing atmospheric concentrations of CO₂ have been the main driver of rising global temperatures. With respect to the Earth's temperature:
 - a. Since the mid 1930s, global temperatures have consistently been above the pre-industrial baseline (1850-1900).
 - b. 19 of the 20 warmest years have occurred in the last 20 years.
 - c. The past ten years (2015-2024) are the ten warmest years on record, with 2024 being the hottest.
19. In addition, ocean temperatures are at record highs and global mean sea levels continue to rise. The year 2024 was the warmest recorded year for the world's oceans. The global mean sea-level in 2018 was approximately 3.7 millimeters higher than in 2017, which was the highest on record at that time.

2. Impacts on Canada

20. Notwithstanding its global nature, the impacts of climate change are significant in Canada. Changes in climate are increasingly affecting Canada's natural environment, economic sectors and the health of Canadians.
21. Overall, Canada is warming at twice the global rate, while northern Canada is warming at three times the global rate. The effects of widespread warming are evident in many parts of Canada and are projected to intensify in the future with additional warming. These effects include more extreme heat, less extreme cold, longer growing seasons, shorter snow and ice seasons, thinning glaciers, thawing permafrost, warmer oceans and rising sea level. Increases in the severity of heatwaves will increase drought and wildfire risks. More intense rainfalls in the future will increase urban flood risks. Local sea level rise is expected to increase coastal flooding in many areas of Canada.

22. Climate change poses risks to the general health and well-being of Canadians. Indigenous peoples, who have a strong cultural connection to the land, water and air, are experiencing, and will continue to experience, particular challenges in the face of climate change.

3. Climate Change Requires a Collective Response Both Internationally and Domestically

23. Since global anthropogenic CO₂ emissions will need to reach net zero in order to limit global warming, addressing climate change requires a collective response, both within Canada and internationally. The Government of Canada is committed to fighting climate change through actions to reduce domestic emissions and through multilateral efforts to support international action.

a) Key International Agreements

24. In response to paragraph 50 of the Claim, Canada is committed to fighting climate change through multilateral efforts to support effective international action.
25. In response to subparagraph 50(a) of the Claim, the 1988 International Conference on the Changing Atmosphere (“Conference”) called upon governments to reduce CO₂ emissions by 20% below 1998 levels by 2005. The fact that Canada participated in the Conference does not mean that Canada adopted this voluntary call for action as its own national GHG emissions target. The Conference did not give rise to a specific legal commitment.
26. Canada was one of the first countries to ratify the *United Nations Framework Convention on Climate Change* (“UNFCCC”). The UNFCCC is an international treaty providing an international cooperation framework to combat climate change. Canada ratified the UNFCCC in 1992 and there are currently 198 Parties to the UNFCCC.
27. To enable and support effective international action, the UNFCCC established the Conference of the Parties (“COP”) to bring all of its Parties together. The COP reviews implementation of the UNFCCC and makes decisions necessary to achieve its objectives.

28. The *Kyoto Protocol*, the *Copenhagen Accord*, the *Cancun Agreements* and the *Paris Agreement* are important outcomes in the UN Climate Change process.
29. In December 1997, the COP adopted the *Kyoto Protocol*, which established specific reduction commitments. In response to subparagraph 50(c) of the Claim, Canada ratified the *Kyoto Protocol* in December 2002 and subsequently withdrew from the *Kyoto Protocol*, effective December 2012.
30. In December 2009, the COP took note of the *Copenhagen Accord*, in which the endorsing Parties underlined that “climate change is one of the greatest challenges of our time.” Canada joined the *Copenhagen Accord* in 2009. In response to subparagraphs 50(e) and 62(b) and paragraph 59 of the Claim, Canada reiterated its commitment to the *Copenhagen Accord* by participating in the adoption of the *Cancun Agreements* in 2010. The *Cancun Agreements* recognized the recommendation of the Intergovernmental Panel on Climate Change (“IPCC”), an internationally recognized authority on climate change data, that developed Parties collectively reduce emissions 25 to 40% from 1990 levels by 2020. However, the fact that Canada participated in the adoption of the *Cancun Agreements* does not mean that Canada adopted this recommendation as its own national GHG emissions target. The *Cancun Agreements* did not give rise to a specific legal commitment.
31. In December 2015, the international community committed to strengthen the global response to climate change through adoption of the *Paris Agreement*. Canada ratified the *Paris Agreement* on October 5, 2016, which entered into force in November 2016. There are currently 195 Parties that have committed to implement the *Paris Agreement*.
32. The *Paris Agreement* “aims to strengthen the global response to the threat of climate change” by “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”
33. Under the *Paris Agreement*, all Parties must report and account for their progress made

towards achieving their nationally determined contributions (“NDC”). Canada’s initial NDC included a target to reduce its emissions by 30% below 2005 levels by 2030. Canada voluntarily enhanced this target in 2021 by updating its NDC to a 40-45% reduction below 2005 levels by 2030. In February 2025, Canada submitted its NDC for 2035 to reduce emissions by 45-50% below 2005 levels.

34. In response to subparagraph 50(f) of the Claim, Canada’s updated 2030 and 2035 NDC targets demonstrate the increasing ambition required of Canada by the *Paris Agreement* and are consistent with scientific consensus on the need for significant emissions reductions over the next decade and net-zero by mid-century.
35. In 2020, the Government of Canada introduced the *Net-Zero Act*, which came into force in June 2021. The *Net-Zero Act* lays out the process the federal government must follow with respect to setting national GHG emissions reduction targets in furtherance of the *Paris Agreement*.

b) Shared Regulation of GHG Emissions in Canada

36. In response to paragraph 52 of the Claim, the Government of Canada’s authority to act on GHG emissions is limited to actions that fall within its constitutional authority. The federal government does not have exclusive jurisdiction over the environment.
37. In response to subparagraph 52(b) of the Claim, the Government of Canada may enact regulations to prohibit GHG emissions under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.
38. In response to subparagraph 52(c) of the Claim, the *Impact Assessment Act*, SC 2019, c 28, s 1 (“IAA”), and the IAA’s predecessor, the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 (“CEAA 2012”), both require the Government of Canada to make decisions about designated projects that effectively allow those projects to proceed or not. These projects may emit GHGs, but for most designated projects the Government of Canada does not have authority to base decisions under these Acts on GHG emissions.

39. Many projects subject to IAA or CEAA 2012 are primarily regulated through provincial powers over local works and undertakings or natural resources, and as a result are subjected to provincial approval. The Government of Canada's approval authority for these projects under the IAA is limited to decisions about whether any adverse effects within areas of federal constitutional jurisdiction are significant, and if so whether they are justified in the public interest.
40. For projects that would be located on federal lands or that are federal works or undertakings, all non-negligible adverse effects fall within federal jurisdiction and any of those effects, if significant, could be the basis of a decision by the Government of Canada to approve or not approve a project.
41. In response to subparagraph 52(d)(i) of the Claim, the Government of Canada released the Inefficient Fossil Fuel Subsidies Government of Canada Self-Review Assessment Framework and Guidelines in July 2023. These tools provide a methodology for assessing whether federal measures should be identified as inefficient fossil fuel subsidies and, if determined as such, phased out. This methodology considers all fossil fuel subsidies to be inefficient, and therefore ineligible for federal support, unless they meet one of six exemption criteria. Examples of these criteria include: subsidies that enable significant net GHG emissions reductions in Canada or internationally in alignment with Article 6 of the *Paris Agreement*; subsidies that support clean energy, clean technology, or renewable energy; and, subsidies that support abated production processes, or projects that have a credible plan to achieve net-zero emissions by 2030.
42. In response to subparagraphs 52(d)(i) and 52(d)(ii) of the Claim, Canada signed onto the Statement on International Public Support for the Clean Energy Transition (the "Glasgow Statement") in 2021. The Glasgow Statement committed Canada and other signatories to ending new direct public support for the international unabated fossil fuel energy sector, except in limited and clearly defined circumstances. In December 2022, the Government of Canada released the Guidelines for Canada's International Support for the Clean Energy Transition to guide federal departments, agencies, and Crown corporations, including Export Development Canada ("EDC"), in implementing

the Glasgow Statement in their respective operations.

43. In response to subparagraph 52(d)(ii) of the Claim, EDC does not offer subsidies or grants. As a crown corporation, EDC operates at arm's length from government, is governed by a Board of Directors, and led by a President and Chief Executive Officer. The Minister of International Trade is responsible for providing strategic direction to the Board, and for monitoring the performance of the EDC but does not intervene in decisions on specific transactions.
44. As part of EDC's commitment to net zero, EDC supports Canadian companies operating in carbon-intensive sectors as they innovate to reduce their emissions. EDC only supports these companies if they meet EDC's requirements, including alignment with its net zero targets, and EDC's commitments under the Glasgow Statement. Furthermore, and consistent with paragraph 42, as of January 1, 2023, EDC no longer provides new direct financing to the unabated international fossil fuel sector. As well, EDC no longer provides new indirect business support (i.e., insurance, bonding, guarantees) for Canadian oil and gas producers' international upstream and downstream operations.
45. In response to subparagraph 52(d)(iii) of the Claim, while the federal corporate income tax system contains a range of deductions, allowances, and credits available to businesses across the Canadian economy, including fossil fuel businesses, the Inefficient Fossil Fuel Subsidies Government of Canada Self-Review Assessment Framework and Guidelines outlined in paragraph 41 also apply to tax measures.
46. The shared nature of environmental jurisdiction under the *Constitution Act, 1867* means that close co-operation among the federal, provincial and territorial governments is essential to taking effective domestic action to combat GHG emissions.
47. For example, provincial governments have primary jurisdiction over most types of industries, including mining and manufacturing, and, accordingly, also have the jurisdiction to regulate emissions from these industries. The federal government may also regulate emissions from multiple sources pursuant to its own powers over matters

such as criminal law or federal property.

48. Other areas that fall primarily under the jurisdiction of provincial governments, either directly or indirectly through municipalities exercising delegated provincial authority, include electricity and waste management. With respect to electricity, several utilities are provincially owned Crown corporations or privately owned utilities that are regulated by provincial utility regimes. In some cases, municipal governments own utilities. Similarly, waste management falls under the jurisdiction of the provinces and territories, while municipal authorities or private firms manage the collection, diversion, and disposal of waste. Provinces and territories also have jurisdiction over most of the country's forests and management decisions related to forested lands. Provinces and territories are also responsible for most zoning decisions in Canada, whether directly or through municipalities and other bodies. Provinces and territories also have primary responsibility for emergency management and fire services on their territory.
49. The provinces and territories have taken different approaches to the regulation of GHG emissions within their jurisdictions. Examples of those differing approaches include:
 - a. setting GHG emissions reduction targets that roughly align with Canada's 2030 target of 40–45% below 2005 levels by 2030 (British Columbia, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Yukon);
 - b. setting GHG emissions reduction targets that are smaller than Canada's 2030 target (Ontario, Newfoundland and Labrador, Northwest Territories);
 - c. setting sector-based targets on GHG emissions in specific areas such as transportation, industry, and buildings (British Columbia, Alberta, Saskatchewan); and,
 - d. anticipated legislation that will include further GHG reduction targets (British Columbia, New Brunswick, Nova Scotia, Prince Edward Island).
50. In addition, while many provincial and territorial jurisdictions have made public commitments to achieve net-zero emissions by 2040 (Prince Edward Island) or 2050

(British Columbia, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon), others have not adopted any such targets (Saskatchewan and Nunavut).

4. Canada's Emissions and Climate Change Reporting

51. Notwithstanding that climate change is fundamentally a global problem requiring a response founded on international co-operation, Canada's share of world cumulative emissions decreased from 1.76% in 2005 to 1.40% in 2021. In 2021, Canada ranked as the 12th largest GHG emitting country/region. Like that of other economically developed countries, Canada's share is anticipated to continue to decline due to the expected rapid increase in emissions from economically developing and emerging countries.
52. Canada's share of global cumulative emissions must be considered in the context of the varying GHG emissions and related trends within Canada and from province to province. For example:
 - a. Since 2005, GHG emissions:
 - i. have increased in British Columbia, Manitoba, Alberta, Yukon, and Nunavut; and
 - ii. have decreased in Prince Edward Island, Nova Scotia, New Brunswick, Québec, Saskatchewan, Ontario, Northwest Territories, and Yukon.
 - b. Ontario's emissions reductions are primarily due to the closure of coal-fired electricity generation plants, coupled with additional complementary measures.
 - c. The five provinces with the highest rates of emissions in 2022 were Alberta, Ontario, Québec, Saskatchewan, and British Columbia. Together they released 91% of Canada's national total GHG emissions.
53. In response to paragraph 49, Canada reports its emissions annually through National Inventory Reports ("NIR") to the *UNFCCC*. Canada prepares its NIR in accordance

with the *UNFCCC* Reporting Guidelines, which were developed by the IPCC.

54. Canada published its most recent NIR on March 21, 2025, reporting emissions estimates between 1990 and 2023. These estimates show that, since 2005:
 - a. Annual emissions fluctuated between 2005 and 2008, dropped in 2009, then gradually increased until 2014.
 - b. Emissions dropped slightly in 2015 and again in 2016, before slightly increasing in 2017. Emissions then stabilized until 2019 and dropped below 2009 levels in 2020. Since 2020, emissions increased slightly again, then decreased between 2022 and 2023.
 - c. Canada's emissions in 2005 were 759 megatonnes of carbon dioxide equivalent ("Mt CO₂e"). In 2023, Canada's GHG emissions were 694 Mt CO₂e. Over the 2005-2023 period, total emissions are down by 65 Mt or 8.5%.
 - d. Canada's economy has grown more rapidly than its GHG emissions: the emissions intensity for the entire economy (GHG per Gross Domestic Product) has declined by 34% since 2005 and 45% since 1990.
55. Canada provides additional regular reporting of climate change related emissions and measures, including the following:
 - a. Biennial Transparency Reports on Climate Change (provided every 2 years to the *UNFCCC*);
 - b. National Communications to the *UNFCCC* (provided every 4 years); and,
 - c. progress reports on the implementation of emissions reduction plans established in accordance with the *Net-Zero Act*.

D. The *Net-Zero Act*

56. The *Net-Zero Act* enshrines in legislation the federal government's commitment to achieve net-zero GHG emissions by 2050. The Act provides a procedural framework of accountability and transparency in support of that commitment.

57. In response to the second sentence of paragraph 54, the objectives of the *Net-Zero Act* are revealed by the text, context and scheme of the Act as a whole, rather than only by section 4 of the Act and its preamble. The objectives of the *Net-Zero Act* are:
- a. to require the setting of national emissions reduction targets to progressively reduce emissions to reach the target of net-zero emissions by 2050;
 - b. to increase government transparency and accountability in achieving those targets; and,
 - c. to support Canada's transition to net-zero emissions in a manner that contributes to making Canada's economy more resilient, inclusive and competitive.
58. In response to paragraph 57, the *Net-Zero Act* requires the Minister to set GHG emissions targets. The Act is procedural in nature and establishes a transparent process to plan, assess, report on and adjust Canada's efforts to achieve its national targets.
59. The *Net-Zero Act* requires the Minister to report to Parliament with respect to each GHG emissions target. For each target, the Act requires the Minister to table in Parliament:
- a. an emissions reduction plan five years before the target date, outlining the measures and strategies the Government of Canada will take to achieve the target;
 - b. a progress report to update on the ongoing implementation of the emissions reduction plan; and,
 - c. an assessment report to indicate whether a target has been met and to assess how the measures contributed to meeting the target. If the target has been missed, then the Act requires the Minister to describe, in the assessment report, the reasons why Canada failed to meet the target and the actions the Government of Canada will take or is taking to address that failure.
60. In further response to paragraph 57, the *Net-Zero Act* provides for additional accountability by requiring the Commissioner of the Environment and Sustainable

Development to examine and report on the Government of Canada's implementation of the measures aimed at mitigating climate change, including those aimed at achieving the most recent emissions target, at least once every five years. The Commissioner's report may also include recommendations to improve the effectiveness of the implementation of the measures the Government of Canada committed to undertake in an emissions reduction plan.

61. The *Net-Zero Act* also requires the Minister of Finance, in cooperation with the Minister, to prepare and publicize an annual report respecting key measures the federal public administration has taken to manage its financial risks and opportunities related to climate change.

1. GHG Emissions Reduction Targets

62. In response to paragraphs 58 and 60, the *Net-Zero Act* requires the Minister to set five-year national GHG emissions targets for the four milestone years of 2030, 2035, 2040, and 2045, as well as an interim GHG emissions objective for the year 2026. Each of those targets must be more ambitious than the previous target, and at least as ambitious as Canada's most recent NDC communicated under the *Paris Agreement*.
63. In response to the last sentence of paragraph 59 and the first sentence of paragraph 64, the 2030 emissions reduction target aims to reduce Canada's GHG emission by 40-45% below 2005 levels by 2030. The latest data from Canada's 2025 NIR indicates that this target equates to overall emissions of 417.45 Mt to 455.40 Mt.
64. When setting targets, the *Net-Zero Act* provides that Minister must take into account:
 - a. the best scientific information available;
 - b. Canada's international commitments with respect to climate change;
 - c. Indigenous knowledge;
 - d. submissions from the Net-Zero Advisory Body; and,
 - e. the Net-Zero Advisory Body's annual report.
65. Under the Act, the Minister must also provide the governments of the provinces,

Indigenous peoples of Canada, the Net-Zero Advisory Body, and interested persons, including any expert the Minister considers appropriate to consult, with the opportunity to make submissions when setting or amending GHG emissions reduction targets.

66. The 2030 emissions reduction plan, which was released in 2022, sets the interim objective for 2026 as 20% below 2005 levels.
67. The Minister announced the 2035 emissions reduction target in December 2024, which is to reduce GHG emissions by 45-50% below 2005 levels by 2035.

2. Net-Zero Advisory Body

a) Role and Composition of the Advisory Body

68. The *Net-Zero Act* establishes the Net-Zero Advisory Body to provide independent advice to the Minister with respect to achieving net-zero emissions by 2050, including advice on GHG emissions reduction targets, plans, measures, and strategies the Government of Canada could implement to achieve its emissions targets.
69. The *Net-Zero Act* requires the Minister, when recommending members to be appointed to the Net-Zero Advisory Body, to consider the need for that body to have expertise or knowledge in the following:
 - a. climate change science;
 - b. Indigenous knowledge;
 - c. other relevant physical and social sciences, including economic analysis and forecasting;
 - d. climate change and climate policy at the national, subnational, and international levels, including the likely effects and efficacy of potential responses to climate change;
 - e. energy supply and demand; and,
 - f. relevant technologies.
70. In addition to providing submissions to the Minister to assist the Minister in setting or

amending an emissions target, or establishing or amending an emissions reduction plan, the Net-Zero Advisory Body must also produce an annual report to the Minister with respect to its advice and activities.

71. When providing advice or preparing its annual report, the Net-Zero Advisory Body must take into account a range of factors, including:
 - a. environmental, economic, social, and technological factors; and
 - b. the best available scientific information and knowledge, including Indigenous knowledge, about climate change.

b) Guiding Observations from the Net-Zero Advisory Body

72. In 2021, the Net-Zero Advisory Body published *Net-Zero Pathways: Initial Observations*, which summarized existing domestic and international pathways to net-zero and set out a list of foundational values and design principles essential to the Advisory Body's mandate.
73. Some of the foundational values recognized by the Net-Zero Advisory Body included:
 - a. Seize the upsides: There are major economic, environmental, health and social benefits directly linked to climate action.
 - b. Put people first: A net-zero transition must be just and fair. Equity and inclusion should be hard-wired in net-zero pathways, and that is particularly true to address the needs of groups that are disproportionately impacted by the physical and economic risks of climate change and energy system transition, and/or by workforce and supply chain disruptions due to energy system changes.
 - c. Collaborate every step of the way: Pathways to net-zero must be grounded in the reality facing everyday, hardworking Canadians and built on an understanding of the real issues and barriers Canadians face.
 - d. Recognize and respect regional differences and circumstances: Climate change is a national issue that requires cooperative action from all orders of Canadian governments. Diverse regional perspectives and experiences,

especially from rural, remote and northern communities, need to inform the development of pathways. There is no one-size-fits-all approach for Canada, and the most likely pathways to net-zero prioritize place-based solutions.

3. Emissions Reduction Plans

a) Legislative Requirements for Emissions Reduction Plans

74. The *Net-Zero Act* requires the Minister to establish a GHG emissions reduction plan for achieving the national GHG emission reduction targets for the years 2030, 2035, 2040, 2045, and 2050. The Act required the 2030 emissions reduction plan to be established six months after the Act came into force, and all subsequent plans must be established at least five years before the beginning of the year to which the target relates.
75. Emissions reduction plans must contain the GHG emissions reduction target for the relevant year and explain how that target and the key measures and strategies that the plan describes will contribute to Canada achieving net-zero emissions by 2050.
76. When establishing an emissions reduction plan, the *Net-Zero Act* requires the Minister to provide, in the manner the Minister considers appropriate, an opportunity for certain parties to make submissions. That includes governments of the provinces, Indigenous Peoples, the Net-Zero Advisory Body, and interested persons.

b) 2030 Emissions Reduction Plan: Canada's Next Steps for Clean Air and a Strong Economy (the "2030 Plan")

77. The Government of Canada released the 2030 Plan in 2022.
78. In response to paragraph 65, the 2030 Plan is designed to continually evolve. The Government of Canada continues to adapt the 2030 Plan as new opportunities arise and new pathways to achieving the 2030 target and net-zero emerge. In particular, the progress reports associated with the 2030 Plan, described further below, provide the Government of Canada with the opportunity to evolve the plan in response to emerging opportunities and data respecting Canada's GHG emissions.

79. The 2030 Plan is separated into five main chapters:
- a. Chapter 1 discusses Canada's emissions profile and the progress Canada had made up to the time of the 2030 Plan's publication on bending its emissions curve. This included investing over \$100 billion and introducing over 100 measures in support of climate-related commitments in the six years preceding the 2030 Plan's release.
 - b. Chapter 2 sets out strategies for emissions reduction and economic growth across the entire economy, then discusses strategies and progress for each of the key economic sectors in Canada, including, among others, oil and gas, transportation, and agriculture. This chapter concludes by looking at sustainable jobs, skills, and communities and discusses the importance of ensuring Canada's transition to a net-zero future is consistent with the Net-Zero Advisory Body's essential principle of "putting people first." In other words, no individual or region should be left behind as Canada transitions to a net-zero future.
 - c. Chapter 3 details the modelling approach adopted by Canada to forecast the emissions reductions that can be expected from the adoption of climate-related measures across Canada. The 2030 Plan notes the uncertainties inherent in attempting to forecast future emissions: any projection cannot account for future changes in labour availability, technology, and infrastructure requirements, or for additional actions that may or may not be taken by provinces, territories, Indigenous Peoples, industry, and the financial sector.
 - d. Chapter 4 highlights the interrelated and collaborative nature of any climate change response. This chapter discusses Canada's international commitments and some of the key cooperative measures and agreements between Canada and the provincial and territorial governments. These domestic measures include collaborative councils, such as the Canadian Council of Ministers of the Environment, which enable the governments to come together to advance shared climate change objectives and recommend enhancements to governments' climate action. These measures also include cooperative policy

frameworks, like the *Pan-Canadian Framework on Clean Growth and Climate Change*, which is a national climate change plan adopted in 2016 that includes commitments from the federal, provincial, and territorial governments with respect to climate action. Collaborative measures specific to each province and territory are further outlined in Annex 1 to the 2030 Plan, along with a summary of the various climate actions undertaken by each provincial and territorial government.

- e. Chapter 5 sets out how the measures outlined in the 2030 Plan support key elements of the transition to net-zero by 2050 and discusses next steps for future emissions reduction plans and tracking progress of Canada's climate actions.
80. In response to subparagraphs 62(b) and 62(c) of the Claim, the 2030 Plan uses a combination of two modelling approaches to forecast potential emissions reductions:
- (1) a “bottom-up” approach that provides a floor for projected emissions reductions achievable from existing climate measures and some new measures contained in the 2030 Plan; and,
 - (2) a “back-casting” that caps emissions at the level required to meet the 2030 target and allocates emission reductions across sectors in an economically efficient manner.
81. While emissions reductions using the bottom-up approach were forecasted to reach 36% below 2005 levels by 2030, under the back-casting approach, Canada's total emissions were capped at the level needed to achieve the 2030 target of 40% below 2005 levels and the model allocated reductions across sectors in an economically efficient manner.
82. In response to subparagraph 62(e), in addition to the discussion of Canada's modelling approaches in Chapter 3 of the 2030 Plan, Annex 5 and its appendix provide further details about Canada's modelling and the assumptions underpinning that modelling. Annex 8 provides an implementation table that sets out a detailed summary of current

and new measures and strategies and describes each measure's status and upcoming milestones. Examples of these measures include:

- a. Major funding projects such as the Low Carbon Economy Fund ("LCEF"), which provides funding to invest in projects that generate clean growth, reduce emissions, and contribute to meeting Canada's targets under the *Net-Zero Act*. Between 2018 and 2024, Canada committed \$1.4 billion in funding to hundreds of projects across Canada through the various funding streams under LCEF.
 - b. Regulatory measures such as:
 - i. Regulations that phase-out coal-fired electricity generation by 2030 and that set GHG emissions limits for natural gas-fired electricity generation;
 - ii. Regulatory requirements to reduce methane emissions from the oil and gas sector by 40-45%;
 - iii. The *Clean Fuel Regulations* which reduce the carbon intensity of liquid fossil fuels in Canada, including by reducing emissions from oil and gas production; and,
 - iv. Regulations to reduce emissions caused by hydrofluorocarbons, a powerful GHG.
83. In response to subparagraph 62(d), the 2030 Plan contains 149 measures to reduce GHG emissions; it does not rely on carbon offsets (e.g. international offset credits) without actual GHG emissions reductions. The Government of Canada is still considering its approach to international carbon offsets.
84. Pursuant to the *Net-Zero Act*, the Minister received submissions in respect of the 2030 Plan from the governments of the provinces and territories, Indigenous Peoples, the Net-Zero Advisory Body, and interested members of the public. Those submissions and a summary of public engagement are attached to the 2030 Plan in Annexes 1-4.
85. The submissions from Indigenous Peoples and the public include a diversity of views

regarding the best pathways to net-zero. Those submissions highlight the importance of ensuring Canada's transition to net-zero emissions is undertaken in a sustainable and fair manner. For example, submissions from the Assembly of First Nations describe a concern that an over-reliance on developing technological and market-based solutions to climate change, without critically examining the inequitable ways these solutions may interact with the lived realities of First Nations, may further harm First Nations and contribute to a new form of 'climate' colonialism. Submissions from the public include a concern that a net-zero transition would encourage a wealth gap and leave certain groups behind, highlighting the importance for an equitable transition for all, including workers currently employed in high-emitting sectors.

4. Progress Reports

a) Legislative Requirements for Progress Reports

86. The *Net-Zero Act* requires the Minister to prepare at least one progress report relating to the years of 2035, 2040, 2045, and 2050. These progress reports must be prepared no later than two years before the beginning of the relevant year.
87. For the year 2030, the Act requires the Minister to prepare at least three progress reports, one each by the end of the years 2023, 2025 and 2027.

b) 2023 Progress Report on the 2030 Plan

88. The 2023 Progress Report assessed Canada's progress on the path to meeting the 2030 target that was set out in the 2030 Plan. The 2023 Progress Report concluded that Canada could and would meet its 2030 target with additional actions, and engagement from provinces, territories, municipalities, Indigenous Peoples, the financial sector and the business sector. At the time the 2023 Progress Report was released, Canada was on pace to surpass its previous 2030 target of 30% below 2005 levels and was on track to exceed the 2026 interim objective.
89. The 2023 Progress Report concludes that additional actions will be necessary for Canada to meet its updated 2030 target (40-45% reduction below 2005 levels) and

provides a potential path forward to meeting that goal. The 2023 Progress Report's back-casting modelling approach identifies economically efficient opportunities to reach the 2030 target by achieving additional emissions reductions in certain key sectors of the economy.

90. As expressly noted in the 2023 Progress Report, the path to meeting the 2030 target requires other orders of government, and the private sector, to take climate action within their respective spheres of jurisdiction and responsibility. As a result of the shared constitutional jurisdiction over the environment, the provinces and territories are responsible for many of the regulations and policies that are needed to meet the 2030 target and net-zero.
91. In response to paragraph 50, the 2030 Plan outlines numerous federal strategies and measures as part of Canada's commitment to reducing GHG emissions. The 2023 Progress Report includes a measure-by-measure update on all federal strategies and measures under the 2030 Plan, which includes commitments that have been under development, initiated, ongoing, adopted, and concluded.
92. In response to subparagraph 62(c), while the 2030 Plan did not identify measures Canada would use to account for the remaining 4% reduction in emissions, the 2023 Progress Report includes 32 additional actions to keep Canada on track to meet its 2030 target. Some of these new measures include:
 - a. six federal tax incentives that support the development and deployment of clean technologies, attract new investments, create jobs, and build Canada's clean economy, representing \$94 billion in federal incentives by 2034-2035;
 - b. *Faster and Further: Canada's Methane Strategy*, a plan to reduce domestic methane emissions across the broader Canadian economy by more than 35% below 2020 levels by 2030. Studies have confirmed that reducing short-lived climate pollutants, like methane, in conjunction with reductions of longer-lived GHGs, such as CO₂, are necessary to meet the temperature goals under the *Paris Agreement*; and,
 - c. the updated Hydrogen Strategy, published in May 2024, which includes

progress results since 2020. During that timeframe, the Hydrogen Strategy provided over \$1 billion in federal/provincial government funding across 13 programs.

93. In addition to measures focused on emissions reductions, the 2023 Progress Report also sets out examples of adaptation measures that focus on enhancing Canada's ability to adapt to a changing climate. Adapting to current and future impacts of climate change is a central priority under the *Pan-Canadian Framework on Clean Growth and Climate Change*. Adaptation measures can help protect Canadians from the risks associated with climate change and build resilience to help ensure that society thrives in a changing climate.
94. A new adaptation measure reported in the 2023 Progress Report is Canada's first National Adaptation Strategy ("Adaptation Strategy"). The Adaptation Strategy builds upon and complements adaptation strategies led by provinces, territories, municipalities, Indigenous Peoples, and others. It lays out a framework to reduce the risk of climate-related disasters, improve health outcomes, protect nature and biodiversity, build and maintain resilient infrastructure, and support a strong economy and workers. It also identifies goals, objectives, and targets to focus the efforts of governments and communities across these key areas and to help ensure future investments are targeted and effective.
95. Released alongside the Adaptation Strategy, the Government of Canada Adaptation Action Plan is the federal government's contribution to achieving the goals and objectives of the Adaptation Strategy. It lays out how the federal government is taking strategic and targeted action in areas within the federal role and authority for action.
96. Canada has continued to develop and implement climate action measures since the release of the 2030 Plan and the 2023 Progress Report. For example, the federal government recently expanded climate consideration across all Cabinet, budget, and regulatory decision-making through the Cabinet Directive on Strategic Environmental and Economic Assessment ("SEEA"). Introduced in April 2024, the SEEA requires new policy, program, budgetary, and regulatory proposals to explicitly consider GHG

emissions, both increases and decreases, contributions to Canada's climate resilience, and climate change's likely impacts on the proposal itself (adaptation). This will provide the timely and high-quality information necessary to support the federal government in achieving its climate goals.

E. The Future Impacts of Climate Change are Uncertain and Dependent on Numerous Factors

97. As explained above, the Government of Canada's efforts to combat climate change are not and will not be, on their own, sufficient to address climate change globally. Rather, the efficacy of any response to climate change is dependent on coordinated international action.
98. Scientific assessment reports by the IPCC have made clear that adverse impacts have already been observed at current levels of global warming, that impacts of climate change increase with the magnitude of global warming, and that the risk of abrupt and irreversible changes increase as the magnitude of warming increases. The *Paris Agreement* articulated a goal of holding the increase in global average temperature to well below 2°C above preindustrial levels and pursuing efforts to limit the increase to 1.5°C, recognizing that this would significantly reduce the risks and impacts of climate change.
99. Stabilization of global average surface temperature does not imply stabilization for all aspects of the climate system. Shifting biomes, re-equilibrating soil carbon, ice sheets, ocean temperatures and associated sea level rise all have their own intrinsic long timescales that will result in ongoing changes for hundreds to thousands of years after global surface temperature has been stabilized.
100. While the science can provide projections of future climate change and its associated impacts based on scenarios of possible future emissions of GHGs, there is an inherent level of uncertainty regarding future GHG emissions. This is largely contingent on key uncertainties in any analysis, notably: economic growth, the pace of technological change, world energy prices, geopolitical factors, and international collaboration.

F. Legal Bases for Defence

1. Institutional Limits: Complexities of Climate Change Policy-Making

101. At its core, the Plaintiffs' Claim seeks to have this Court recognize and impose a stand-alone positive constitutional obligation, untied to any specific law or government action, to maintain a climate system that is capable of sustaining human life, liberty and security of the person. This Claim exceeds the limits of the Court's institutional competence and ignores the separation of powers within our democratic system that limits the remedies available to the Court.
102. Addressing climate change necessarily requires collective federal, provincial, territorial and international action because climate change has no boundaries and its effects have no direct connection to a specific source of GHG emissions. Further, due to the interconnectedness of the global economy, the potential benefits of any action taken to reduce GHG emissions by Canada must be balanced against the fiscal costs and risk of negative economic impacts on Canadians, and the possibility that those reductions will be offset by other countries, resulting in a net increase in global emissions.
103. Additional flaws in the Plaintiffs' Claim arise from the division of powers between federal and provincial levels of government. While aspects of the fight against climate change involve legislating and regulating by the federal government, addressing climate change also involves the provinces and territories, which have jurisdiction over natural resources and primary responsibility for regulating many GHG-emitting industries.
104. The Plaintiffs ask the Court to require Parliament to regulate Canada's GHG emissions in accordance with a judicially-determined standard based on the "best available science". However, the question of how Parliament should act to limit GHG emissions or otherwise address climate change cannot be answered without considering the scientific, economic and political complexities involved. These complexities are reflected in the *Paris Agreement*, which recognizes the inherent difficulties of an overly prescriptive approach to climate change and, instead, sets a collective objective of meeting the long-term global temperature goal through a regime of increasingly

ambitious NDCs, established by each Party according to its best judgment.

105. The Plaintiffs also ask the Court to supervise and direct the government's development, implementation and compliance with a GHG-emissions reduction plan for an indeterminate period of time. These remedies fall outside the Court's institutional limitations and highlight the Plaintiffs' attempt to have the Court take on the role of climate change policy-making.

2. The Plaintiffs do not have public interest standing

106. The Defendants acknowledge the Plaintiffs have private interest standing to challenge the constitutionality of the *Net-Zero Act* and administrative decisions made under it. As such, the Plaintiffs do not need to establish public interest standing.
107. In any event, the Plaintiffs cannot meet the criteria for public interest standing "to assert the rights of all children and youth in Canada at present and in the future". It is not reasonable nor effective to bring a claim for rights violations that have not occurred, to persons who do not exist, and about which no facts can be proved. Accordingly, to the extent the Plaintiffs' claims are made in respect of children and youth in the future, those claims do not raise a serious justiciable issue.

3. There is no breach of the Plaintiffs' section 7 rights

108. The Plaintiffs' allegations do not give rise to valid claims under section 7 of the *Charter*. They have not identified any law or state conduct that interferes with their section 7 interests, and section 7 does not impose positive obligations on Canada to legislate or mobilize public resources to ensure the enjoyment of life, liberty and security of the person.

a) Section 7 does not create freestanding environmental rights

109. There is no freestanding right under section 7 of the *Charter*, untied to any piece of legislation or administrative action, to a certain level of environmental protection.
110. The established framework for the section 7 analysis – which reflects the text of section 7 itself – requires the Plaintiffs to establish that a specific law or government

action deprives them of life, liberty or security of the person, and that the deprivation is not in accordance with the principles of fundamental justice.

111. Adjudicating the Plaintiffs' Claim that Parliament and the Government of Canada are in breach of a stand-alone constitutional obligation to put and keep Canada on a certain GHG-emissions trajectory would require the court to evaluate the entirety of Canada's response to climate change and determine whether it meets the alleged obligation "to put and keep Canada on a GHG-emissions trajectory that is consistent with what the best available science says is required to restore and maintain a climate system that is capable of sustaining human life, liberties, and the security of the person."
112. The Plaintiffs ask the Court to usurp the legislative and executive spheres of jurisdiction and to craft policy in an area with no objective legal standards. Developing such a policy would require balancing a broad range of interests and objectives, in a context where Canada's actions at the federal level have little or no control over the ultimate impacts of globally fueled climate change.
113. Even if such an assessment were within the scope of the Court's institutional competence, the Plaintiffs have not proposed a workable analytical framework for assessing whether the federal legislature and executive's alleged failure to meet any positive obligation under section 7 of the *Charter* is in accordance with the principles of fundamental justice, which is required for the Plaintiffs to establish a breach of section 7.
114. In any event, even if section 7 is interpreted to impose a positive duty to take measures to combat climate change, the Government of Canada is fulfilling that obligation.

b) The Net-Zero Act Does Not Violate Section 7

115. The Plaintiffs also cannot establish that the *Net-Zero Act*, or the 2030 Plan and GHG emissions reduction targets established under that legislation, breach their section 7 rights to life, liberty and security of the person.
116. The Plaintiffs are not challenging any existing rights-limiting measure in the *Net-Zero*

Act or the 2030 Plan. Instead, they claim that the *Act*, the 2030 Plan and GHG emissions reduction targets do not go far enough. Given that the *Act* encourages a reduction of GHG emissions, the Plaintiffs do not seek to be free from the law; they would like the law to go further. This aspect of the claim is also properly characterized as a positive rights claim and suffers from the same issues outlined above with respect to the Plaintiffs' express positive rights claim.

117. In any event, the Plaintiffs cannot establish the required causal connection between the *Net-Zero Act*, Canada's GHG emissions reduction targets and the 2030 Plan, and the harms they have allegedly suffered as a result of climate change. The harms alleged by the Plaintiffs do not flow from the impugned law, the emissions targets or the 2030 Plan, all of which encourage a reduction of Canadian GHG emissions that aligns with Canada's international obligations.
118. In the alternative, if the *Net-Zero Act*, the GHG emissions reduction targets or the 2030 Plan have caused any deprivation of the Plaintiffs' life, liberty, and security of the person, which is denied, those deprivations are in accordance with the principles of fundamental justice.
119. Specifically, any effects of the *Net-Zero Act*, the GHG emissions reduction targets or 2030 Plan on the Plaintiffs are neither arbitrary nor grossly disproportionate to the objectives of the *Act*. As noted above, the *Net-Zero Act* has multiple important objectives, including the setting of national emissions reduction targets to progressively reduce emissions to reach the target of net-zero emissions by 2050; increasing government transparency and accountability in achieving those targets; and, supporting Canada's transition to net-zero emissions in a manner that contributes to making Canada's economy more resilient, inclusive and competitive.
120. None of the novel principles of fundamental justice proposed by the Plaintiffs satisfy the established criteria for recognizing a new principle of fundamental justice.
121. The Plaintiffs have not explained how Canada's international obligations nor the Crown's *parens patriae* jurisdiction might constitute principles of fundamental justice.

The mere existence of such obligations is not sufficient to establish a principle of fundamental justice. The Plaintiffs' previous claim regarding the Crown's *parens patriae* responsibilities was struck by the Federal Court of Appeal and cannot be impermissibly revived as a novel principle of fundamental justice. Further, and in any event, Canada's conduct has been consistent with its international obligations.

122. The proposed new principle of fundamental justice that "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" is not a principle that has been expressed in the legal system, nor is it capable of guiding the determination of legal disputes.
123. The Plaintiffs' argument that "equal protection of the law" is a principle of fundamental justice is an improper attempt to import the Plaintiff's claim under section 15 of the *Charter*, which was struck by the Federal Court of Appeal as having no reasonable prospect of success, into their section 7 claim. There is no basis to find that the equality rights guaranteed under section 15 of the *Charter* should be transposed into the section 7 analysis.
124. Several of the Plaintiffs' arguments concerning the principles of fundamental justice could only properly be considered within the justification analysis, if a breach of the Plaintiffs' section 7 rights were established. These include the Plaintiffs' argument that Canada cannot "justify" its current trajectory of GHG emissions and the suggestion that the "principle of proportionality" should be applied to balance any limits on the Plaintiffs' section 7 rights against the government's objectives.
125. If the *Net-Zero Act* were found to limit the Plaintiffs' section 7 rights, which is denied, those limits are reasonable and justified under section 1 of the *Charter*. Similarly, if any decisions made under the *Net-Zero Act*, including Canada's GHG emissions targets and the 2030 Plan, were found to limit the Plaintiffs' section 7 rights, which is also denied, those limits are reasonable and justified under the Supreme Court of Canada's framework for considering the *Charter* compliance of administrative decisions.

126. The Defendants request that the Claim be dismissed with costs.

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