

Federal Court



Cour fédérale

Date: 20260617

Docket: T-1750-19

Citation: 2026 FC 821

Ottawa, Ontario, June 17, 2026

PRESENT: The Honourable Mr. Justice Fothergill

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

REASONS AND ORDER

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I. Overview

[1] The Plaintiffs are 15 children and youth residing throughout Canada. They claim that the Defendants have breached their rights under s 7 of the *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] by enacting and implementing the *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 [Net-Zero Act]. The Charter challenge encompasses the 2030 Emissions Reduction Plan promulgated under the Net-Zero Act, and the Government of Canada's alleged failure to fulfill a positive obligation to exercise stringent due diligence to avoid significant harm to the climate.

[2] The Plaintiffs bring this motion in writing for leave pursuant to Rule 52.4 of the *Federal Courts Rules*, SOR/98-106 [Rules] to call more than five expert witnesses at the trial of this action. The Plaintiffs seek to call eight expert witnesses.

[3] For the reasons that follow, the Plaintiffs' motion is granted.

II. Background

[4] On April 2, 2026, the Plaintiffs served the Defendants with eight expert reports:

- (a) Dr. Kirsten Zickfeld is a professor of climate science at Simon Fraser University and a convening lead author of the Seventh Assessment Report of the Intergovernmental Panel on Climate Change [IPCC]. Her report explains the

physical science of climate change, greenhouse gas [GHG] targets and trajectories, and carbon budgets.

- (b) Dr. Simon Donner is an interdisciplinary climate scientist at the University of British Columbia, a lead author of the Sixth Assessment Report of the IPCC, and former chair of the Net-Zero Advisory Body established under s 20 of the Net-Zero Act. His report explains the biophysical impacts of climate change and the concept of net-zero in climate science.
- (c) Dr. Elizabeth Pinsky is a pediatrician and assistant professor in psychiatry at the Harvard Medical School. Her report concerns the physiological and mental health impacts of climate change on children and youth, including the Plaintiffs.
- (d) Dr. Graeme Reed is a strategic advisor to the Assembly of First Nations and co-chair of the International Indigenous Peoples Forum on Climate Change. His report concerns the impacts of climate change on Indigenous peoples, including Indigenous youth, and considers the impact of Indigenous knowledge on the setting of GHG targets under s 8 of the Net-Zero Act.
- (e) Dr. Thomas Gunton is a professor and founding director of the Resource and Environmental Planning Program at Simon Fraser University, and a former senior civil servant for British Columbia and Manitoba. His report concerns the economic costs and benefits, as well as the feasibility, of achieving net-zero by 2050.

- (f) Dr. Nicholas Rivers is a professor in the Graduate School of Public and International Affairs and associate director of the Institute of the Environment at the University of Ottawa. His report describes the policy measures available to the Defendants to achieve net-zero by 2050 and analyzes the Defendants' progress towards achieving net-zero by this date.
- (g) Dr. Mark Jacobson is a professor of civil and environmental engineering at Stanford University and an atmospheric scientist. His report concerns the feasibility of Canada's transition of its energy infrastructure to an entirely clean and renewable energy system by 2050.
- (h) Dr. Neil Craik is a professor of law at the University of Waterloo and associate director of the Balsillie School of International Affairs. His report concerns the sources of Canada's international law obligations to reduce greenhouse gas emissions, and to adopt and implement measures to protect the climate system.

[5] The same day, the Defendants served the Plaintiffs with four expert reports:

- (a) Dr. David Sauchyn is a professor of geography and environmental studies at the University of Regina. His report focuses on climate change from a natural sciences perspective and climate change predictions.

- (b) Dr. David Anthoff is an associate professor in the Energy and Resources Group at the University of California at Berkeley with a PhD in economics. He opines on Canada's GHG emissions as a share of global emissions, future GHG emissions and climate policy design.
- (c) Dr. Andrew Leach is a professor of economics and law at the University of Alberta. His report addresses questions related to GHG emissions reduction targets and trajectories, the costs and benefits of regulations to mitigate climate change, and the challenges of achieving net-zero.
- (d) Dr. Benoit Mayer is a professor of climate law at the University of Reading, United Kingdom. His report considers international climate agreements, subsequent state practice and whether states have human rights obligations related to climate change.

III. Issue

[6] The sole issue raised by this motion is whether the Plaintiffs should be granted leave to call more than five expert witnesses at trial.

IV. Analysis

A. *Legislative Framework*

[7] Rule 52.4(1) provides that a party must seek leave of the Court in accordance with s 7 of the *Canada Evidence Act*, RSC 1985, c C-5 to call more than five expert witnesses at trial. Rule 52.4(2) lists the following non-exhaustive relevant matters for the Court to consider:

(2) In deciding whether to grant leave, the Court shall consider all relevant matters, including

(a) the nature of the litigation, its public significance and any need to clarify the law;

(b) the number, complexity or technical nature of the issues in dispute; and

(c) the likely expense involved in calling the expert witnesses in relation to the amount in dispute in the proceeding.

(2) Dans sa décision la Cour tient compte de tout facteur pertinent, notamment

a) la nature du litige, son importance pour le public et la nécessité de clarifier le droit;

b) le nombre, la complexité ou la nature technique des questions en litige;

c) les coûts probables afférents à la production de témoins experts par rapport à la somme en litige.

[8] The jurisprudence has established additional considerations to guide the Court's analysis under Rule 52.4(2). The Court should consider: (1) the principle of proportionality and the avoidance of excess (*Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2018 FC 829 [CCR] at para 25); (2) whether the evidence is necessary and non-duplicative (*Hospira Healthcare Corporation v Kennedy Trust for Rheumatology Research*, 2019 FC 1402 [Hospira] at para 8, citing *Airbus Helicopters v Bell Helicopter Textron Canada Limitée*, 2016 FC 590 at para 52; CCR at para 27); and (3) whether the additional evidence would cause strain on the time and resources of the Court and the parties (*Hospira* at para 8).

[9] The Court must have regard to the overarching principle of fairness and the best interests of justice in conducting its analysis (*Hospira* at para 8). The Court should ensure that strategic advantage is eliminated and that it has the proper evidence to perform its functions (*Ibid*).

B. *Nature of the litigation*

[10] The Plaintiffs argue that the public interest dimension of this litigation weighs heavily in their favour. They note that the Supreme Court of Canada has recognized climate change as “an existential threat to human life in Canada and around the world” (citing *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 171). The Federal Court of Appeal has ruled that this case raises novel issues regarding the scope of s 7 of the Charter and the claim of a right to a healthy and livable environment (*La Rose v Canada*, 2023 FCA 241 [*La Rose FCA*] at para 109).

[11] The Defendants respond that the complexities of this litigation arise from legal questions, rather than evidentiary concerns. They note the absence of any dispute between the parties regarding the reality of global climate change and the consequences for people’s lives. Instead, they submit that this case turns on matters of legal analysis.

[12] I agree with the Plaintiffs that the nature of this litigation weighs heavily in favour of granting leave to call more than five expert witnesses. This case is a matter of considerable public importance, not only because of the factual context but also because of its constitutional

implications. The Federal Court of Appeal has recognized the potential significance of this case for clarifying the boundaries of s 7 of the Charter.

[13] The Defendants’ submissions respecting this factor are more properly considered in connection with the second factor, *i.e.*, the number, complexity, or technical nature of the issues in dispute (Rule 52.4(2)(b)). Their argument concerning the lack of evidentiary complexity detracts from neither the public interest dimension of the litigation nor the importance of the legal issues. If the Plaintiffs are successful, particularly in respect of their assertion regarding the government’s positive obligations under s 7 of the Charter, the impact of this case may be profound (*La Rose FCA* at para 116). Jurisprudence has confirmed the need for a comprehensive record in complex Charter litigation (see, *e.g.*, *CCR* at para 16; *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357 at 361-362).

C. *The number, complexity, or technical nature of the issues in dispute*

[14] The Plaintiffs argue that climate science is complex and the impacts of climate change are far-reaching. They say that expert evidence is required to demonstrate how climate change harms children and youth, and what can be done to reduce the harm. They maintain that expert evidence is necessary to assess the impact of the Net-Zero Act. They note that s 4 of the Net-Zero Act provides that the purpose of the statute is to set targets for reducing GHG emissions “based on the best scientific information available”, and expert evidence is therefore required to advance their assertion that the Defendants’ actions are inconsistent with this purpose. The

Plaintiffs also submit that expert evidence is necessary to establish a causal link between the Defendants' conduct and the alleged breach of the Plaintiff's Charter rights.

[15] As previously noted, the Defendants emphasize that many of the underlying facts are not in dispute. They submit that any additional expertise that may be necessary can be provided without exceeding the statutory limit on the number of expert witnesses. They also argue that the Plaintiffs' experts needlessly inflate the issues, and the alleged Charter breaches should be established by the Plaintiffs' *viva voce* evidence rather than by expert reports.

[16] According to the Defendants, the Court does not require expert evidence to determine whether climate change constitutes "special circumstances" that warrant expanding the scope of s 7 of the Charter to impose positive obligations upon the government. They argue that prior judicial pronouncements on the seriousness of climate change, coupled with existing challenges, are sufficient to resolve this question (citing *Mathur v His Majesty the King in Right of Ontario*, 2023 ONSC 2316 [*Mathur*] at para 138).

[17] I agree with the Plaintiffs that the complexity of this case warrants the granting of leave to call more than five expert witnesses. While the parties may agree on many of the underlying facts, the proposed expert witnesses will help the Court to situate these facts in the context of the pertinent legal issues. The Plaintiffs note that the plaintiffs in *Mathur* relied on 17 expert witnesses, albeit in the context of an application rather than a civil action. Furthermore, one of the remedies sought by the Plaintiffs is an order requiring the Defendants to develop and

implement a climate recovery plan. The Plaintiffs say that the contents of such a plan must be guided by expert evidence.

D. *Likely expense involved in calling the expert in relation to the amount in dispute*

[18] The Plaintiffs do not seek damages. As Justice Alan Diner held in *CCR*, this means that this factor is not directly applicable, and it weighs neither in favour of nor against granting leave (*CCR* at para 23).

E. *Additional considerations*

[19] The Plaintiffs note that the length of the Defendants' four proposed expert reports, excluding appendices, is greater than that of the eight expert reports proposed by the Plaintiffs. While page count is an imperfect indication of the scope or complexity of the opinions advanced, this tends to support the Plaintiffs' contention that their proposed expert evidence is proportionate.

[20] The Defendants submit that the Plaintiffs' evidence is duplicative. They say that the opinions of Drs. Donner, Gunton, Jacobson, and Rivers all address existing or available climate change policies, their adequacy in meeting climate goals, and the feasibility of attaining net-zero emissions. I disagree.

[21] The expert witnesses proposed by the Defendants have distinct areas of expertise and offer opinions on different aspects of climate change policy and its effects. Dr. Donner focuses on the biophysical impact of climate change (Plaintiffs' Motion Record dated April 15, 2026 [PMR] at 670); Dr. Gunton's report considers the costs and benefits of achieving net-zero as well as Canada's financial support for fossil fuel production (PMR at 785); Dr. Jacobson considers the costs and benefits of Canada's approach to climate change with a focus on Canada's energy infrastructure (PMR at 286); Dr. Rivers addresses the policy measures available to Parliament and the Government of Canada to achieve net-zero emissions (PMR at 248).

[22] Contrary to the Defendants' position, it is not necessary for the Plaintiffs to identify which expert reports are "additional" to the five contemplated by the *Canada Evidence Act*. As occurred in *Apotex Inc v Sanofi-Aventis*, 2010 FC 1282, a party whose motion to call additional expert witnesses is denied may be directed to advise the Court and other parties which five of its expert witnesses it intends to rely upon.

[23] The admissibility of the expert reports is not before the Court on a motion to call more than five witnesses at trial (*Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2018 FC 829 at para 31). Accordingly, the Defendants' challenge to the admissibility of Dr. Craik's report need not be addressed here.

V. Conclusion

[24] Having regard to all of the considerations enumerated in Rule 52.4(2), together with the additional considerations identified in the jurisprudence, the Plaintiffs' motion to call more than five expert witnesses at trial is granted.

[25] In light of this conclusion, it is unnecessary to determine the Defendants' objection to the affidavit of Kim Woytowich included in the Motion Record of the Plaintiffs in Reply.

[26] The Plaintiffs do not seek costs, and accordingly none are awarded.

ORDER

THIS COURT ORDERS that the Plaintiffs' motion to call eight expert witnesses at trial is granted without costs.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1750-19

STYLE OF CAUSE: CECILIA LA ROSE SIERRA RAINE ROBINSON,
SOPHIA SIDAROUS, MONTAY JESSE BEAUBIEN-
DAY, BY HIS GUARDIAN AD LITEM SARAH DAWN
BEAUBIEN, SADIE AVA VIPOND, HAANA
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CANADA

**MOTION IN WRITING PURSUANT TO RULE 52.4 OF THE *FEDERAL COURTS*
*RULES***

REASONS AND ORDER: FOTHERGILL J.

DATED: JUNE 17, 2026

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