

Mathur et. al. v. Her Majesty in Right of Ontario

Overview of Notice of Application

Today, seven young Ontarians launched a lawsuit against the Government of Ontario for its failure to take meaningful steps to address climate change. The Applicants are “part of a generation whose future faces an existential threat from the catastrophic impacts of climate change” (para. 2). The Application alleges that Ontario’s failure to act to reduce greenhouse gas (“GHG”) emissions violates their rights under sections 7 and 15 of the Canadian Charter of Rights and Freedoms. They claim that these targets are inadequate to avoid climate catastrophe and therefore violate all Ontarians’ constitutional rights. The Applicants are asking the court to order Ontario to set a science-based GHG reduction target that will limit global warming to below 1.5°C above pre-industrial temperatures.

The Notice of Application states:

Climate change is an existential threat to all people living in all nations. There is a scientific consensus that failure to take urgent steps over the next 11 years will lead to catastrophic consequences. Governments must do their part to help all of us avoid disaster. Ontario has not met this challenge. To the contrary, it has abdicated a responsibility that it owes to all Ontarians, and in so doing, violated Ontarians’ constitutional rights protected under the Canadian Charter of Rights and Freedoms. (para. 1)

The Application challenges the 2030 GHG reduction target set by Ontario under s. 3(1) of the Cap and Trade Cancellation Act and Ontario’s Made-in-Ontario Environmental Plan (the “Target”). The Target impacts all the various ways that Ontario contributes to, controls, and even encourages GHG emissions — including its regulation and subsidization of sectors that emit massive amounts of GHGs, such as transportation, energy and mining.

The Target only commits Ontario to reducing GHG emissions by 30% below 2005 levels by 2030. This Target is “dangerously inadequate” and “[e]ven on the most generous projection, Ontario’s emissions reduction target will lead to a dangerous level of climate change” (para. 5). The Target does not come close to meeting Ontario’s fair share of the global GHG emission reductions required to avert climate catastrophe, exceeding that share by at least 250%.

Section 7 of the Charter protects the right to life, liberty, and security of the person. The inadequacy of the Target puts the life, liberty, and personal security of Ontario’s youth and future generations in jeopardy. As a result of Ontario’s refusal to take adequate steps to reduce GHG emissions:

Ontarians will face a range of devastating consequences to their lives, health, livelihood and ability to make fundamental life choices, including (but not limited to) increased death and illness from extreme heat events and overall warming temperatures; the spread of infectious diseases spread through ticks, mosquitos and other vectors; more frequent and intense forest fires; more frequent and intense flooding events; the spread of harmful algal blooms in waterways; an increase in toxic contamination; and an increase in mental health impacts. (para. 5)

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The threats to life, liberty, and personal security caused by the Target cannot possibly be justified by the government. While Ontario has a stated objective of taking proactive action to address climate change, the Target does not actually do anything to accomplish this goal; in fact, it will make the situation worse. The harms that young people will experience as a result of Ontario's inaction are "grossly disproportionate" to any benefits that the government could possibly point to. In addition, the Target violates a fundamental legal principle that "governments are prohibited from engaging in conduct that will, or reasonably could be expected to, result in the future harm, suffering or death of a significant number of its own citizens" (para. 75).

The devastating effects of climate change will not be felt by all Ontarians in the same way. Specifically, Ontario's youth and future generations will bear the brunt of climate change's catastrophic impacts. For that reason, the applicants also claim that the Target discriminates on the basis of age and violates the Charter's equal rights protection in s. 15.

Since the Target violates their constitutional rights, the Applicants are asking the court to declare the Target "of no force and effect", pursuant to s. 52(1) of the Constitution Act, 1982. This is because any law that is unconstitutional cannot stand and must be struck down.

The applicants are also asking the Court to order Ontario to mitigate the disasters that climate change is causing. As such, they have asked for an order that Ontario "forthwith set a science-based GHG reduction target ... that is consistent with Ontario's share of the minimum level of GHG reductions necessary to limit global warming to below 1.5°C above pre-industrial temperatures" or, at least, "well below 2°C" (the upper range of the temperature standard set by the Paris Agreement). They also want an order directing Ontario to revise its climate change plan to follow through with this new standard. The Notice of Application states that "[t]he dangers of climate change are extraordinary and existential, and require an equally extraordinary remedy in order to effectively prevent the devastating consequences that Ontario's youth and future generations will face" (para. 77).