

2-19-00631627-0000

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SOPHIA MATHUR, a minor by her litigation guardian CATHERINE ORLANDO,
ZOE KEARY-MATZNER, a minor by her litigation guardian ANNE KEARY,
SHAELYN HOFFMAN-MENARD, SHELBY GAGNON, ALEXANDRA
NEUFELDT, MADISON DYCK and LINSDAY GRAY**

Applicants

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

APPLICATION UNDER r. 14.05(3)(h) and (g.1) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for will come on for a hearing on a date and time to be fixed by the Registrar, at the City of Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance,



serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Nov 25, 2019

Issued By 
Local Registrar
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APPLICATION

OVERVIEW

1. 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 act now to 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, has violated Ontarians' constitutional rights protected under the *Canadian Charter of Rights and Freedoms* (the "*Charter*").
2. The public interest youth applicants Sophia Mathur, Zoe Keary-Matzner, Shaelyn Hoffman-Menard, Shelby Gagnon, Alexandra Neufeldt, Madison Dyck and Lindsay Gray (the "Applicants") are a part of a generation whose future faces an existential threat from the catastrophic impacts of climate change. They are alarmed that Canada is rapidly warming at twice the rate of the global average. They know that there is a scientific consensus that climate change is leading to more frequent and severe wildfires, more intense and numerous heatwaves and floods, an increased risk of dangerous and often fatal infectious disease, rapidly melting northern landscapes, and cascading environmental destruction. They understand the cost of these increasing impacts on the health and lives of Canadians. They understand that these impacts will soon reach calamitous levels if urgent corrective measures are not taken, and that the window of opportunity to correct course is quickly closing. They are angered by the fact that their governments have known about these risks for decades but have failed to take adequate action to remedy this threat.

3. They also know that there are viable solutions to this existential problem but what is lacking is the political will of governments to immediately take bold and decisive action. A global climate catastrophe can still be avoided if countries ensure rapid reductions in greenhouse gas (“GHG”) emissions before 2030 and reach net zero emissions by 2050. There is an international scientific consensus that global emissions of climate-warming GHGs must be reduced to “net zero” — or the point at which the “flow” of human caused GHG emissions (chiefly, carbon dioxide) into the atmosphere is balanced with human removals of GHGs — as soon as possible. The international scientific community also agrees that global warming must be held to below 1.5°C above pre-industrial temperature in order to avoid some of the worst impacts of climate change, and that the impacts of climate change become even more devastating if temperatures rise beyond 2°C.
4. In a global effort to curb this existential threat, 194 countries and the European Union have signed the Paris Agreement within the United Nations Framework Convention on Climate Change (the “Paris Agreement”). The Paris Agreement commits parties to holding the increase in global average temperature to “*well below* 2°C above pre-industrial levels” (emphasis added) and with best efforts made to limit the temperature increase to 1.5°C.
5. Owing in large part to Ontario’s dangerously inadequate GHG reduction target, Canada is not on track to meet the Paris Agreement temperature standard. Even on the most generous projection, Ontario’s emissions reduction target will lead to a dangerous level of climate change. As a result, 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. These impacts will be visited disproportionately on Ontario's youth and future generations, as well as vulnerable and marginalized communities.

6. The Applicants therefore bring this challenge in solidarity with millions of youth in Ontario and around the world who are aware of the short period left to fight for their futures and who recognize the scientific consensus that there are just over 11 years left to ensure that temperatures do not increase above unsafe levels.
7. The focus of this Application is the 2030 GHG reduction target set by Ontario under s. 3(1) of the *Cap and Trade Cancellation Act, 2018*, S.O. 2018, c. 13 ("*CTCA*"), and articulated in "Preserving and Protecting our Environment for Future Generations, A Made-in-Ontario Environmental Plan" (the "**Plan**"), which is to reduce GHG emissions by only 30% below 2005 levels by 2030 (the "**Target**"). The Target will lead to climate catastrophe and thus will violate the Applicants' rights under s. 7 of the *Charter*. Given the dire threats posed by climate change to the Applicants and other Ontarians and the role of the Ontario government in causing GHG emissions, only a target that avoids, rather than promotes, irreversible climate catastrophe can withstand constitutional scrutiny.

RELIEF SOUGHT

8. The Applicants seek the following relief on behalf of their generation and future generations of Ontarians:
 - a. A declaration, under s. 52(1) of the *Constitution Act, 1982*, that the Target violates the rights of Ontario youth and future generations under sections 7 and 15 of the *Charter* in a manner that cannot be saved under s. 1, and is therefore of no force and effect;
 - b. A declaration, under s. 52(1) of the *Constitution Act, 1982*, that the Target violates the unwritten constitutional 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;
 - c. A declaration that section 7 of the *Charter* includes the right to a stable climate system, capable of providing youth and future generations with a sustainable future;
 - d. A declaration, under s. 52(1) of the *Constitution Act, 1982*, that ss. 3(1) and/or 16 of the *CTCA*, which repealed the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, S.O. 2016, c. 7 ("*Climate Change Act*") and allowed for the imposition of more lenient targets without mandating that they be set with regard to the Paris Agreement temperature standard or any kind of science-based process, violates sections 7 and 15 of the *Charter*

in a manner that cannot be saved under s. 1, and is therefore of no force and effect;

- e. In the alternative, the same declaratory relief sought in the paragraphs above pursuant to s. 24(1) of the *Charter* and/or this Court's inherent jurisdiction;
- f. An order that Ontario forthwith set a science-based GHG reduction target under s. 3(1) of the *CTCA* 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, in the alternative, well below 2°C (*i.e.* the upper range of the Paris Agreement temperature standard);
- g. An order directing Ontario to revise its climate change plan under s. 4(1) of the *CTCA* once it has set a science-based GHG reduction target;
- h. Costs of this Application; and
- i. Such further and other relief as counsel may advise and this Honourable Court may deem just.

GROUNDINGS

The Applicants

9. The Applicants are Ontario residents with genuine interests in preventing catastrophic climate change that will pose pervasive and serious risks to the health and wellbeing of those in their generation and future generations of Ontarians. They range in age from 12 to 24 years old. Their generation has done the least to cause

climate change but will bear the burden of its worst impacts, including catastrophic impacts if emissions are not rapidly reduced.

10. The Applicants have demonstrated commitment to pushing for rapid and effective government action through individual and collective action. They have significant concerns over the risks that climate change poses to their health and wellbeing, their futures, their lives, their communities as well as the environment. They are worried that Ontario is not doing its part to prevent the catastrophic impacts of climate change.
11. Sophia, who is 12 years-old and lives in Sudbury, is the first youth outside of Europe to strike from school in solidarity with Greta Thunberg and has played an active role within the Fridays for Future movement in Ontario.
12. Zoe, who is 13 years-old and lives in Toronto, has also been actively involved in the Fridays for Future movement and has spoken at many climate change-related rallies, press conferences and other events within Ontario.
13. Shaelyn, who is 22 years-old and lives in Peterborough, works on the issues of climate change, biodiversity, Indigenous-led conservation, youth and community engagement on environmental issues and cultural and language revitalization.
14. Shelby, who is a 23 year-old artist and lives in Thunder Bay, works on Indigenous food sovereignty in northern Ontario communities and has taken local action to help her own community become more sustainable in response to climate change.

15. Alexandra, who is 23 years-old and lives in Ottawa, has been actively involved with Citizens Climate Lobby Canada through lobbying elected officials and doing public outreach to promote effective climate action.
16. Madison, who is 23 years-old and lives in Thunder Bay, has sailed throughout Lake Superior giving presentations on climate change impacts in surrounding communities and to youth.
17. Lindsay, who is 24 years-old and two-spirit, goes by the name Beze and lives in the Township of Tiny, is a community organizer focused on environmental, climate and Indigenous issues, including in their home community of Aamjiwnaang First Nation.
18. The Applicants have demonstrated a serious and genuine interest in the subject matter of this litigation. This Application is a reasonable and effective way to bring these issues to the court for reasons that include: (i) the claim at issue impacts all Ontario youth and future generations; (ii) the Applicants have the support of counsel with the expertise, resources and commitment to bring this Application forward; and (iii) the Applicants are well-placed to bring this Application and it is unreasonable to expect that other children (or future generations) will bring a similar application now.

The Respondent

19. Ontario has (at the very least) shared constitutional responsibility with Canada for controlling GHG emissions within the province.
20. Ontario exercises its authority over GHG emissions by setting the Target that will govern the amount of GHG emissions in the province, and by regulating the conduct

and consequences of emitters and emissions under a variety of statutory schemes, including but not limited to the *Environmental Protection Act*, *Electricity Act*, *Gasoline Tax Act*, *Fuel Tax Act*, *Oil, Gas and Salt Resources Act*, *Mining Act*, *Environmental Assessment Act* and the *Environmental Bill of Rights*. More generally, Ontario exercises regulatory authority over a broad range of sectors that contribute to GHG emissions, including the transportation, industrial, building, land use and forestry, electricity, energy and waste sectors.

21. Previously, Ontario legislated in areas relating to GHG emissions by instituting a cap-and-trade system under the *Climate Change Act* and through the incentives set out in the *Green Energy Act, 2009*. (Both of these statutory schemes have since been repealed.)
22. Ontario also impacts the extent of GHG emissions through subsidies, direct spending programs, investments, tax exemptions and other incentives provided to emitters in Ontario, including but not limited to in the natural gas, heavy industry, manufacturing, oil and gas and mining sectors.
23. Finally, Ontario itself contributes to GHG emissions through its own facilities and activities.

Climate Change: Caused by Human Life and Urgently Requires Human Intervention

24. "Climate change" describes the shift in worldwide weather phenomena and physical states of the Earth system (e.g. melting polar regions, rising oceans, etc.) associated with an increase in global average temperatures. It encompasses both global warming and the climatic changes caused by this increase in global temperature.

While the Earth's climate is always changing over geological time periods, "climate change" as used in this pleading refers to the human-caused climate change that has been evident since at least the 20th century and continues to accelerate in the 21st century.

25. The development of human life on Earth has depended upon the atmosphere functioning as a "greenhouse", in which a layer of gases in the lower atmosphere — including GHGs — trap heat from the sun as it is reflected back from the Earth into space, keeping our planet at a temperature that supports life for humans and other species. Human civilization and the elements on which it depends have developed over the last 10,000 years within a narrow set of climatic conditions that have been neither too hot nor too cold to support the flourishing of our species.
26. GHGs are present in the atmosphere due to a combination of human activities and naturally occurring processes. The GHGs emitted as a result of human activities include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O) and other gases. The most important GHG for climate change is CO₂ because of its prevalence and long residence time in the atmosphere. A molecule of CO₂ emitted into the atmosphere will exert a warming effect for centuries, on average. For this reason the cumulative "stock" of CO₂ in the atmosphere is the primary driver of long-term global warming.
27. Since the Industrial Revolution, and particularly since the 1980s, human activity has created an unprecedented and dangerous buildup of CO₂ and other GHGs in the atmosphere. About three quarters of this buildup has been due to the combustion of

fossil fuels, including coal, oil, and natural gas, with the remainder caused mostly by deforestation and other land-use activities. The total “stock”, or level of CO₂ in the atmosphere is rising and is now around 410 ppm — far above the approximately 280 ppm level that was present through the relatively stable climate of the last 10,000 years.

28. The buildup of CO₂ and other GHGs in the atmosphere has warmed the planet by approximately 1°C on average since the pre-industrial period (1850-1900), with global temperature now increasing at the rate of 0.2°C per decade. Human-caused GHG emissions — including those allowed under the Target — are responsible for virtually all of the observed increase in global temperatures since the late 19th century and will likely be the dominant cause of further warming over the coming century.
29. If all human-caused GHG emissions ceased immediately, the Earth’s climate would still heat up by several tenths of a degree Celsius because of the latency time between GHG accumulation in the atmosphere and warming in the Earth’s climate system. Continued GHG emissions will cause the Earth’s climate to heat up further.
30. The Earth’s climate will continue to heat up until the “flow” of human-caused GHG emissions (chiefly, CO₂) into the atmosphere is balanced with human removals of GHGs, a concept known as “net zero”. Maintaining net zero GHG emissions is expected to cap the “stock” of CO₂ in the atmosphere and stabilize global average temperature at some higher level. The extent of this new normal temperature will depend on how long it takes the world to reduce CO₂ emissions down to the point of

net zero. The new normal temperature will dictate the climatic extremes in which the future of human civilization will have to exist as it is expected to be effectively irreversible on human timescales — a millennium or more — absent highly uncertain and speculative future large-scale technological interventions to remove CO₂ from the atmosphere.

31. Simply put, the world that the Applicants' generation and future generations will inherit will be drastically different from the one their parents and grandparents experienced. Whether that world is liveable will depend largely on how effectively humanity chooses to address climate change in the coming decade.

The Target: A Significant Step in the Wrong Direction

32. The Target represents Ontario's allowable GHG emissions over the next 11 years across all sectors, actors and individuals in the province.
33. Pursuant to s. 3(1) of the *CTCA*, Ontario "shall establish targets for the reduction of greenhouse gas emissions in Ontario and may revise the targets from time to time". Ontario fulfilled this requirement by establishing the Target in the Plan.
34. The Target requires GHG reductions of 30% from 2005 levels by 2030.
35. This represents a significant *increase* in Ontario's Target for the allowable level of GHG emissions over the previous Ontario targets. In particular, the Target allows for 30 Megatonnes (MT) more in annual GHG pollution by 2030 than the 2030 target that was previously in place, or a total of 190 MT of GHGs into the atmosphere's CO₂ stock between 2018 and 2030 (assuming a linear annual decline from current annual emissions to the Target amount in 2030).

36. The Target's annual increase of 30 MT is equal to the annual emissions of more than 7 million passenger vehicles.
37. Prior to the coming into force of the *CTCA*, Ontario had three point-in-time targets for GHG reductions enshrined in legislation. Subsection 6(1) of the *Climate Change Act* set out targets for GHG emission reductions over time. Unlike the Target (which is set relative to Ontario's 2005 GHG emissions), the targets set out in the *Climate Change Act* were set relative to Ontario's GHG emissions in 1990, which were lower than 2005 levels, at 180 MT of CO₂ equivalent ("CO₂e") — a measure that includes both CO₂ and other GHGs.
38. The targets in the *Climate Change Act* called for:
- a. 15% reduction by 2020 (153 MT of CO₂e);
 - b. 37% reduction by 2030 (113 MT of CO₂e);
 - c. 80% reduction by 2050 (36 MT of CO₂e).
39. With the *CTCA*, Ontario has set a significantly weaker GHG reduction target for 2030 and failed to provide any GHG reduction target for 2050.
40. The *CTCA* is also a major step backwards in other ways. The *Climate Change Act* reflected the international environmental law principle of non-regression with respect to GHG reduction targets, which dictates that efforts to reduce GHG emissions must strengthen progressively over time — not weaken — given the urgency of stabilizing the Earth's climate by reaching net zero emissions (as discussed further below). Non-regression is a cornerstone principle of the international approach to combatting

climate change and is codified in the Paris Agreement. The *Climate Change Act* specifically incorporated this principle and required that the Lieutenant Governor in Council consider any temperature standards recognized under the Paris Agreement or any successor temperature standard in setting GHG reduction targets.

41. On November 14, 2018, the *CTCA* came into force and repealed the *Climate Change Act*, including the legislated targets for GHG reductions. The *CTCA* places a mandatory duty on Ontario to establish targets for the reduction of GHG emissions (s. 3(1)). However, the Act does not require that these targets be at least as strong as those previously in place. Nor does the Act require that Ontario have any regard to the Paris Agreement temperature standard, or any kind of science-based process, in setting GHG reduction targets.

Catastrophic Impacts of Climate Change in Ontario

42. Ontario has warmed about twice as fast as the global average since the pre-industrial period (1850-1900), at approximately 1.7°C. Ontario will continue to experience the impacts of global warming at an above-average rate.
43. The catastrophic impacts of global warming for Ontarians are not controversial. In the Plan and in its submissions before Ontario courts, Ontario concedes that:
- a. The climate is changing.
 - b. Human activities are a major cause of climate change.
 - c. Climate change is already having a disruptive effect across Canada and that, if left unchecked, its potential impact will be even more severe.

- d. Further climate change threatens Ontarians' natural resources, homes, communities, businesses, infrastructure, locally grown food and crops, food security and road access for remote First Nations, as well as the health of ecosystems across Ontario.
- e. Severe rain, ice and wind storms, prolonged heat waves and milder winters are much more common. Forests, waters and wildlife across the province are and will continue to be significantly impacted by these changes. People across the province – especially Northern communities – and all sectors of the economy are feeling the impacts of climate change and paying more and more for the costs associated with those impacts.
- f. Extreme weather events have flooded houses, buildings and roads, overwhelmed aging stormwater and wastewater systems, damaged crops, and brought heavy ice and wind storms that have knocked out power for hundreds of thousands of people, including those who are most vulnerable.
- g. Heat waves and recent drought conditions in some areas of the province, coupled with anticipated impacts of climate change and population growth, have intensified concerns related to water security for farmers, Indigenous communities, industry and municipalities.
- h. Proactive action to address climate change is required.

44. Governments and courts across Ontario and Canada have recognized the dire implications of climate change. On June 17, 2019, the federal government declared that Canada was in a national climate emergency. Municipal governments across the

country have similarly declared that there is a climate change emergency, including but not limited to those of Vancouver, Edmonton, Whitehorse, Halifax, St. John's Montreal approximately 400 other cities and towns in the province of Quebec, as well as the province of Quebec itself. In Ontario, many municipal governments have declared a climate emergency, including but not limited to Toronto, Kingston, Hamilton, Burlington, West Nipissing, London, Ottawa, St. Catharines, Greater Sudbury, Vaughan, Brampton, Sarnia, Mississauga, Kitchener, Oakville, Whitby, Windsor, Waterloo, Peterborough and Kenora. Climate emergency declarations have also been made by Indigenous governing bodies and organizations such as Grand Council Treaty #3 (Ontario) and the Assembly of First Nations.

45. Courts have reached the same conclusion. A majority of the Court of Appeal for Saskatchewan recently stated that: "Climate change is doubtless an emergency in the sense that it presents a genuine threat to Canada." A majority of the Court of Appeal for Ontario recently described the situation as follows:

The uncontested evidence before this court shows that climate change is causing or exacerbating: increased frequency and severity of extreme weather events (including droughts, floods, wildfires and heat waves); degradation of soil and water resources; thawing of permafrost; rising sea levels; ocean acidification; decreased agricultural productivity and famine; species loss and extinction; and expansion of the ranges of life-threatening vector-borne diseases, such as Lyme disease and West Nile virus... The recent major flooding in Ontario... in 2019 was likely also fueled by climate change.¹

46. There are myriad ways that climate change impacts the health, lives, liberty and livelihood of current and future generations of Ontarians. If global warming exceeds

¹ Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544 at para. 11.

1.5°C above pre-industrial temperatures, the impacts of climate change in Ontario will include (but will not be limited to):

- a. an increase in the frequency and intensity of acute extreme heat events (*e.g.* one-in-30 year extreme “heat waves”), with a resulting increase in fatalities (in the hundreds, if not thousands), serious illness and severe harm to human health;
- b. an increase in overall temperatures and heat waves (separate and apart from acute extreme heat events), with a resulting increase in fatalities, serious illness and severe harm to human health;
- c. an increase in the spread of infectious diseases such as Lyme disease and West Nile Virus (along with other diseases spread by ticks, mosquitos and other vectors, as well as food and waterborne diseases), with a resulting increase in fatalities, serious illness and severe harm to human health;
- d. an increase in the frequency and intensity of fire activity (including forest wildfires), with a resulting increase in fatalities, serious illness, displacement and severe harm to human health;
- e. an increase in the frequency and intensity of flooding and other extreme weather events, with a resulting increase in fatalities, serious illness, displacement, loss of livelihood and severe harm to human health;

- f. an increase in the spread of harmful algal blooms in water that Ontarians use for drinking and recreational purposes, with a resulting increase in serious illness, loss of livelihood and severe harm to human health;
- g. an increase in exposure to contaminants such as mercury through food webs, with a resulting increase in severe harm to human health and negative impact on food security and sovereignty of certain Ontario communities;
- h. an increase in harms to Indigenous peoples, including increased impacts on health, access to essential supplies, ability to carry out traditional activities, loss of livelihood and displacement; and
- i. an increase in serious psychological harms and mental distress arising from the impacts of climate change, including but not limited to, the impacts set out in the paragraphs above.

47. These devastating impacts of climate change will be felt in a particularly acute way by vulnerable populations and marginalized communities, including youth, the elderly, those with pre-existing health issues and Indigenous peoples. Youth and future generations, in particular, will bear the brunt of the impacts of climate change, given that these impacts will significantly increase in severity and intensity as the years progress, and that they are among the most vulnerable to these impacts, both physically and mentally.

48. All of these devastating impacts of climate change will become even more pronounced in Ontario as the Earth's climate warms to levels approaching and exceeding 2°C above pre-industrial levels.

49. The Intergovernmental Panel on Climate Change (“IPCC”) — a comprehensive and authoritative assessment of climate science research — has confirmed the devastating impacts of climate change in a world where global average temperatures rise to 1.5°C above pre-industrial levels, and has confirmed that these impacts would be significantly worse if temperatures rise to and exceed 2°C above pre-industrial levels.
50. Temperatures rising to, and beyond, 1.5°C also increases the risk that large-scale singular events and/or natural feedback loops (such as melting permafrost in northern regions that releases methane and CO₂, further heating the climate which leads to more permafrost to melt) are triggered, which could lead to runaway and irreversible climate change that can no longer be controlled by humans, bringing devastating impacts to the lives, health and livelihoods of current and future generations of Ontarians.

The International Imperative: Act Quickly To Reduce and Limit GHG Emissions

51. In 1992, Canada and 177 other countries signed the United Nations Framework Convention on Climate Change (“UNFCCC”). It was ratified by Canada on March 21, 1994. The UNFCCC had 197 parties as of December 2015.
52. Article 2 of the UNFCCC sets the international community’s “ultimate objective” with respect to climate change: to achieve the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

53. The UNFCCC recognizes that the largest share of historical GHGs that have accumulated in the atmosphere were emitted by developed countries like Canada, giving rise to “common but differentiated responsibilities” between developed and developing countries (whereby advanced countries that have already made significant contributions to total GHG emissions, and/or are in a better position to implement and bear the costs of GHG reductions, bear a greater share of GHG reductions moving forward).
54. Canada and almost every other country in the world has signed the Paris Agreement. The Paris Agreement’s core objective is the temperature standard whereby the international community commits to holding the increase in global average temperature to “*well below 2°C above pre-industrial levels*” (emphasis added) and pursues efforts to limit the temperature increase to 1.5 C (the “**Paris Agreement Temperature Standard**”). The Paris Agreement also recognizes that developed countries should take the lead in emissions reductions, consistent with the notion of common but differentiated responsibilities.
55. Scientists use the concept of a global “carbon budget” to define how much more CO₂ can be emitted into the atmosphere before certain levels of global temperature warming, e.g. 1.5°C or 2°C, will be locked in and irreversible. Once the carbon budget is used up or exceeded, global temperatures will stabilize at a new, dangerously high global temperature *even if* measures are later taken to reduce global emissions of CO₂ to net zero. To put it bluntly: once the carbon budget is used up, it will be too late to fix the problem.

56. The remaining global carbon budget available to have a “likely” chance (67% confidence or greater) of stabilizing global temperatures depends on the temperature goal, as follows:

- a. to stabilize at 1.5°C, the remaining global carbon budget is 420,000 MT of CO₂. At current global rates of CO₂ emissions, this budget would be exceeded in 10 years.
- b. to stabilize at 1.75°C, the remaining carbon budget is 800,000 MT of CO₂. At current global rates of CO₂ emissions, this budget would be exceeded in 19 years.
- c. to stabilize at 2°C, the remaining global carbon budget is 1,170,000 MT of CO₂. At current global rates of CO₂ emissions, this budget would be exceeded in 28 years.

57. These carbon budget figures reflect a number of conservative assumptions. For example, they assume significant reductions of other non-CO₂ GHG emissions, some of which are emitted from the same activities that cause CO₂ emissions. If non-CO₂ GHG emissions are not strictly reduced in tandem with CO₂, the remaining carbon budgets for stabilizing global average temperature at 1.5°C or 2°C would be even smaller.

58. To combat the existential threat, every jurisdiction around the world must significantly reduce GHG emissions rapidly because the climate will continue to warm at the global, national, and provincial scale until global emissions of CO₂ and other GHGs are reduced to net zero. The preamble to the Paris Agreement

recognizes “the importance of the engagement of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change.”

59. In this context, national and subnational governments must pursue GHG targets that reflect their obligation in terms of global GHG emissions, so that the catastrophic impacts of an increase in global temperatures beyond 1.5 C above pre-industrial levels are avoided.

The Target Falls Short of Meeting Ontario's Obligation

60. Regardless of how one approaches the question of calculating Ontario's fair share of the global GHG reductions required to avoid the catastrophic effects of climate change, the answer is the same: Ontario is not doing enough.
61. Canada's share of the remaining global carbon budget is (at most) 2,000 MT of CO₂, in order to likely avoid the catastrophic consequences of global temperatures rising beyond 1.5 C above pre-industrial levels.
62. This calculation provides Canada with a very generous allocation of the global carbon budget. It ignores any considerations of equity, any sense of historic responsibility, and any application of the “common but differentiated responsibilities” principle — all recognized principles under the UNFCCC. Incorporating any of these considerations would reduce Canada's share of the global carbon budget to a number close to, or equal to, net zero today.
63. Ontario's actual share of Canada's emissions has been in the range of between 23% (in 2017) and 30% (in 2005). Applying these figures to Canada's (generous) 2,000

MT carbon budget provides Ontario with a maximum carbon budget of between 460 MT (23%) and 670 MT (30%) of CO₂. Because these figures are based on Canada's 2,000 MT carbon budget, they do not account for any considerations of equity, historic responsibility, or common but differentiated responsibilities.

64. Under the Target, Ontario's total CO₂ emissions from now until 2030 will be 1,670 MT, or between 250-363% greater than Ontario's share of the global carbon budget, and almost *all* of Canada's budget. In fact, Ontario's total emissions beyond 2030 will exceed its share of the global carbon budget by an even greater amount, since Ontario has no longer term plans for further emissions reductions following 2030 and it is unrealistic to expect that Ontario will go from 142.8 MT in 2030 to net zero emissions following 2030. In other words, Ontario will almost certainly continue emitting CO₂ after 2030 — even after already surpassing its maximum carbon budget for CO₂ by between 250-363%.
65. If the carbon budgets described above are adjusted to avoid global temperatures rising beyond 2°C above pre-industrial levels (rather than 1.5°C), Ontario will still exceed — or, at best, barely meet — its maximum carbon budget by 2030. But even meeting (or being slightly less than) the maximum carbon budget represents a failure by Ontario to guard against catastrophic climate change, as Ontario will inevitably continue to emit CO₂ in the years following 2030, and thereby surpass its share of the global carbon budget.
66. If other jurisdictions followed Ontario's level of ambition with the Target and adopted GHG reduction targets that exceeded their carbon budgets and failed to

incorporate common but differentiated responsibilities, equity and historic responsibility, then this would result in catastrophic climate change of at least 3°C and potentially as much as 5°C over pre-industrial temperatures by 2100 — well above the Paris Agreement Temperature Standard, and squarely within a zone of devastating impacts on human civilization.

The Target is Unconstitutional

67. Ontario's repeal of the *Climate Change Act* and its Target pursuant to the *CTCA* violates the rights of Ontario's youth under s. 7 of the *Charter* by compromising their right to life, liberty and security of the person, in a serious and pervasive manner that does not accord with the principles of fundamental justice.
68. The Target is wholly inadequate to hold global average temperatures increases to 1.5°C above pre-industrial levels (or, for that matter, 2°C above pre-industrial levels) and thereby avoid catastrophic climate change impacts. Rather than maintain or increase the pre-existing commitment to GHG reductions, the Target will ensure a higher level of GHG emissions that will cause or contribute to death, serious illness and severe harm to human health of Ontario's youth and future generations, interfering with their right to life and security of the person.
69. The Target also violates the right to liberty of Ontario's youth and future generations because the impacts of climate change interfere with their ability to choose where to live, their right to personal autonomy, and their right to make other decisions of fundamental importance.

70. At the very least, the Target will materially increase the risk that Ontario's youth and future generations will suffer from the many harmful impacts of climate change.

This is sufficient to ground a s. 7 violation for breaching the life, liberty and security of the person rights, as outlined above.

71. Ontario's deprivation of the life, liberty and security of the person rights of Ontario's youth and future generations is not in accordance with the principles of fundamental justice. Indeed, there is no principle of fundamental justice that can justify the Target, given its attendant risks and consequences. Climate change presents an unprecedented and existential threat, unlike anything seen in human history. The reaction of national and subnational governments to this issue — in particular, over the next 11 years — will determine whether, and in what form, human civilization confronts that threat.

72. The Target is grossly disproportionate to Ontario's stated objective of taking proactive action to address climate change. Even if the Target's objective is characterized differently by the Respondent, it remains grossly disproportionate, given the severity and extent of the harm caused by such a high level of GHG emissions, as explained above.

73. The Target is also arbitrary. Ontario's objective in adopting the Target was to take proactive action to address climate change. The Target bears no relation to and is inconsistent with that objective, as explained above.

74. To the extent Ontario may rely on economic justifications, such justifications ring hollow. For example, the societal cost of an additional 190 MT of GHG emissions

between 2018 and 2030 is at least \$7.7 billion and likely much higher. More generally, Ontario has chosen economically inefficient means of reducing GHG emissions and inaction on climate change now will prove to be increasingly costly to Ontarians in the future, including to Ontario's youth and future generations.

75. The Target also violates the principle of fundamental justice that governments are prohibited from engaging in conduct that will contribute to, or reasonably could be expected to, lead to future harm, suffering or death of a significant number of its own citizens. This principle of "societal preservation" is a legal principle that enjoys significant social consensus (both domestically and internationally), is fundamental to the way in which the legal system ought to fairly operate, and is sufficiently precise to yield a manageable standard against which to measure s. 7 deprivations. The principle of societal preservation reflects and encapsulates many other legal and societal values recognized in Canadian jurisprudence, including human dignity, the sanctity of human life and the protection of the public. It is also an unwritten constitutional principle, which binds Ontario, and which Ontario has violated.

76. Section 7 of the *Charter* must also include the right to a stable climate system, capable of providing youth and future generations with a sustainable future, as this directly implicates their rights to life, liberty and security of the person, for all of the reasons explained above. The Target violates s. 7 for this reason as well.

77. The Target violates s. 15 of the *Charter* because Ontario's youth and future generations:

- a. are a uniquely vulnerable population by virtue of their age and, for some, their inability to influence political decisions at the ballot box;
- b. will be disproportionately impacted by the devastating impacts of climate change, which (if Ontario maintains its current trajectory) will significantly increase in severity and intensity as the years progress; and
- c. are among those who will suffer the most from the climate change impacts covered at paragraph 46, including (but not limited to) extreme heat events, warming temperatures and heat waves, infectious diseases, fires, flooding, algal blooms, toxic contamination and mental health challenges;
- d. will have their pre-existing vulnerability and disadvantage heightened as a result of these impacts.

78. In addition to quashing the Target, Ontario ought to be required to adopt a new science-based GHG reduction target that is consistent with Ontario's fair share of the minimum level of GHG reductions necessary to limit global warming to below 1.5°C above pre-industrial temperature (or, in the alternative, the Paris Agreement Temperature Standard), and Ontario ought to adopt a new environmental plan that incorporates this new target. The 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 once global average temperatures rise beyond 1.5°C above pre-industrial temperatures.

79. The *Charter* violations set out above cannot be justified pursuant to s. 1 of the *Charter*.

80. The Applicants rely on relief under s. 24 of the *Charter* or s. 52 of the *Constitution Act, 1982*. In the alternative, and in any event, this Court has the inherent jurisdiction to grant declaratory and other relief, to the extent such relief may be unavailable under s. 24 of the *Charter* or s. 52 of the *Constitution Act, 1982*.

STATUTORY INSTRUMENTS RELIED UPON

In addition to the various statutory instruments described in the preceding paragraphs, the Applicants rely on:

1. *Courts of Justice Act*, RSO 1990, c C.43.
2. *Rules of Civil Procedure*, RRO 1990, Reg 194 and, in particular, rules 2.03, 14.05, 38 and 39.
3. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

DOCUMENTARY EVIDENCE

1. The following documentary evidence will be used at the hearing of the application:
 - (a) The affidavit of Catherine Orlando, sworn November 23, 2019;
 - (b) The affidavit of Anne Burnett Keary, affirmed November 23, 2019;
 - (c) The affidavit of Sophia Mathur, to be sworn;

- (d) The affidavit of Zoe Keary-Matzner, to be sworn;
- (e) The affidavit of Shaelyn Hoffman-Menard, to be sworn;
- (f) The affidavit of Shelby Gagnon, to be sworn;
- (g) The affidavit of Alexandra Neufeldt, to be sworn;
- (h) The affidavit of Madison Dyck, to be sworn;
- (i) The affidavit of Lindsay Gray, to be sworn;
- (j) The affidavits of expert witnesses, to be determined;
- (k) Such other affidavit material and evidence as counsel may advise and this Honourable Court may deem proper.

Dated November 25, 2019

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CV-19 - 80 63/627 - 0000

SOPHIA MATHUR, et al

and HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO

Applicants

Respondent

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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