Mathur et. al. v. His Majesty the King in Right of Ontario
Media Backgrounder: Ontario Superior Court Decision

Summary of case timeline

In 2019, the Ontario government rolled back the province's relatively progressive climate targets, replacing them with a single target for 2030. The new, significantly weaker target, will allow more greenhouse gas emissions to be emitted, further contributing to dangerous climate change-related impacts such as heatwaves, infectious diseases, floods, and fires.

In November 2019, seven young climate leaders, backed by lawyers from Ecojustice and Stockwoods LLP, launched a legal challenge of the government's new target on the grounds that the government's actions will harm young Ontarians and future generations and has violated their Charter rights to life, equality, and security of person.

The government filed a motion to strike the case on April 15, 2020, arguing it should not proceed to a full hearing. The youth applicants countered this motion at a hearing in July 2020, leading to a historic win when the government's motion was dismissed in November 2020. For the first time in Canadian history, a court recognized that climate change has the potential to violate Charter rights and gave the youth the greenlight to move ahead to a full hearing.

Efforts by the Ontario government to overturn this ruling were dismissed by the Ontario Divisional Court in March 2021. After becoming the first case of its kind to clear key procedural hurdles, the case proceeded to a full hearing before the Ontario Superior Court on September 12-14, 2022.

On April 14, 2023, the Ontario Superior Court dismissed the case. The fight to hold the Ontario government accountable for its climate action is not over. The group of seven courageous young people will be appealing this decision and taking it to Ontario's Court of Appeal.

Key legal and factual takeaways from the Ontario Superior Court's decision

The recent court decision includes significant positive aspects that provide reason for optimism as this legal challenge continues through the courts, despite the result. While the application was dismissed, meaning Justice Vermette did not find that Ontario's target was unconstitutional and did not order the government to set a new science-based target, the decision cleared some major hurdles to set an important precedent for climate litigation in Canada.

Justice Vermette agreed with the applicants on several key points, including:

- **The constitutional challenge brought in this case is justiciable**. This means that Canadian courts can hear and decide Charter-based cases that challenge specific legislation or state action – such as climate targets and plans.
- **Ontario's target "falls severely short" of what the scientific consensus requires, and this increases the risk to Ontarians' life and health**. This deprives Ontarians of their section 7 rights to life and security of the person under the Charter.
- She **rejected Ontario's arguments that its emissions were globally insignificant**, recognizing that "every tonne of CO_2 emissions adds to global warming and lead to a quantifiable increase in global temperatures that is essentially irreversible on human timescales."

- The decision follows the trend of using the Supreme Court of Canada's decision in the carbon pricing reference case to summarize the facts on climate change. The judge gave a ringing **endorsement of the goal set out in the Paris Agreement to keep warming below 1.5 degrees Celsius**, and of the applicants' expert evidence on the impacts of climate change on Ontarians**.**
- The decision **broadly accepts the science set out in reports by the Intergovernmental Panel on Climate Change (IPCC)**, while delivering a **withering critique of Ontario's evidence**. In her decision, Justice Vermette stated: "I find that the IPCC reports are a reliable, comprehensive and authoritative synthesis of existing scientific knowledge about climate change and its impacts. I reject any suggestion to the contrary by Ontario's experts (Dr. van Wijngaarden in particular) whose credentials do not measure up to those of the IPCC."

Unfortunately, Justice Vermette found against the applicants on key legal points, including:

- **That Ontario's target is not contrary to the "principles of fundamental justice"**, meaning she did not find the target to be "arbitrary" or "grossly disproportionate" when compared to the underlying legal objectives. Without finding a violation of these principles of fundamental justice, Justice Vermette was not able to find a full Charter violation under section 7.
- Justice Vermette **did not agree that this case is a "negative rights" case**. Most Charter rights recognized by courts are negative rights, meaning rights protected against negative impacts caused by government actions. When a government's actions are found to violate a Charter right, the court can order them to stop a specific action.
- Instead, Justice Vermette **interpreted the case as asking for "positive rights"**, meaning she believes the court is being asked in this case to force Ontario to take new action to stop climate change. Positive rights require the government to improve social welfare proactively, rather than respond to government actions that harm social welfare.
- While Justice Vermette did not close the door on this case being a successful positive rights case, and in fact found that there was a **compelling case that the existential threat posed by climate change represents special circumstances** justifying this conclusion, a finding of negative rights infringements would have set a more dependable precedent for future cases.
- The case also challenged equality rights under section 15 of the Charter. Although Justice Vermette did agree that young people and Indigenous peoples are disproportionately impacted by the harms of climate change, she found that there is **no positive obligation for Ontario to address that inequality** through the target.