

Mathur et. al. v. His Majesty the King in Right of Ontario

Summary of Appellant's Factum – September 2023

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 rights to life, security of person under s. 7 and equality under s.15 of the Charter.

After several years of successfully overcoming procedural challenges, the Ontario Superior Court dismissed the youths' case on April 14, 2023. For more information about the Ontario Superior Court's decision, and for more background on the case, please see "[Media Backgrounder: Ontario Superior Court Decision](#)" on the Ecojustice website.

This group of seven courageous young people decided to appeal the decision, pushing for stronger climate action in Ontario. Their argument was filed on July 31, 2023, and appeals several aspects of the Ontario Superior Court Decision.

Key legal arguments from the Appeal argument

- Part of the reason that Justice Vermette dismissed the youth's s.7 argument was because she considered that the case sought to protect "**positive rights.**" Positive rights require the government to take positive action to improve social welfare. Most Charter rights recognized by the courts are "negative rights," which are rights protected against negative impacts caused by government actions.
 - The appeal argues that **this is a negative rights case.** Rather than asking the Ontario government to protect them from harms not caused by the state, the Application is trying to prevent Ontario from taking the unsafe action of allowing for high levels of greenhouse gas emissions. The Application challenges Ontario's new unconstitutional target for emissions reduction and ask that it be struck down and replaced with a science-based target.
 - They also argue that even **if this is a positive rights case,** the facts of climate change pose such an unprecedented risk to all fundamental freedoms protected by the Charter it is exactly the type of special circumstance where **the court should require the Ontario government to take positive action.**
- In order to violate s.7 of the Charter, government action must not only cause harm to life or security of the person, its actions must also be contrary to the principles of fundamental justice. Justice Vermette found that **Ontario's actions were not contrary to the "principles of fundamental justice,"** because they were not "arbitrary" nor "grossly disproportionate."

- The appeal argues that **Ontario’s target, when properly compared to its objective and effect, which is for Ontario to do its “share to address climate change and protect our environment.” is both arbitrary and grossly disproportionate.**
- The target is thus arbitrary because rather than address the climate crisis, the target commits to, guides, and directs a dangerously high amount of greenhouse gas emissions. This falls severely short of the Intergovernmental Panel on Climate Change’s recommendations to limit global warming to 1.5 degrees Celsius.
- The target is also grossly disproportionate because it will perpetuate devastating and the life-threatening harms of climate change. This is completely out of sync with the objective of fighting climate change.
- Justice Vermette did agree that young people and Indigenous peoples are disproportionately impacted by the harms of climate change. However, she found that Ontario had **no positive obligation under section 15 of the Charter to address that inequality** through the target. Section 15 enshrines a right to equality by protecting against discrimination, including protecting against state action that disproportionately discriminates against a specific group of individuals.
 - The appeal argues that **the impact of Ontario’s inadequate target contributes to a disproportionate impact on young people** and, particularly on Indigenous young people. As the impacts of climate change worsen, youth and future generations will bear the brunt of the catastrophic impacts of climate change as they live longer into the future.
 - Ontario is making fundamental decisions about the world that young persons and future generations will be forced to inhabit, condemning them to the irreversible harms of climate change, without taking their interests into account. This widens the gap between young persons and the rest of society, who will not live through the same quality and quantity of climate change harms. This is discrimination.
 - This argument is not imposing a general positive obligation on Ontario, but rather asks the court to hold Ontario accountable for committing to a level of greenhouse gas emissions that will create or contribute to a disproportionate impact on youth and future generations due to their age.