Court file No.: A-308-20
(T-211-20)

FEDERAL COURT OF APPEAL

BETWEEN:

DINI ZE' LHO'IMGGIN also known as ALPHONSE GAGNON,
on his own behalf and on behalf of all the members of MISDZI YIKH and
DINI ZE' SMOGILHGIM, also known as WARNER NAZIEL,
on his own behalf and on behalf of all the members of SA YIKH

Appellants

- and –

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

Respondents

REPRESENTATIVE PROCEEDING

MEMORANDUM OF FACT AND LAW OF THE ATTORNEY GENERAL OF CANADA

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OVERVIEW

1. Global climate change is real, measureable, and documented. It is not a distant problem, but one that is happening now and that is having very real consequences on people's lives. To the greatest extent possible, present generations must take responsibility for reducing the repercussions of climate change for the benefit of all future generations. Canada strongly encourages the engagement of all segments of society towards achieving this goal.

2. This appeal concerns a challenge to Canada's approach to addressing climate change and the ongoing policy objectives to reduce greenhouse gas ("GHG") emissions by the year 2030. Canada agrees with Dini Ze' that climate change is a real and increasing threat to our environment and our society. However, the Motions Judge correctly struck the statement of claim (the "Claim") because it is not justiciable, discloses no reasonable cause of action, and the remedies sought are not legally obtainable. This legal proceeding does not constitute an appropriate or functional vehicle for these issues to be addressed by this Court.

3. The orders sought fail to respect Canada's constitutional arrangement separating the judiciary from the legislative and the executive branches of government. As such, the Motions Judge correctly held that the broad and diffuse nature of Dini Ze's challenge to Canada's policies on climate change lacked a sufficient legal component for adjudication by the court and that the orders sought fall outside the Court's proper function.

PART I - STATEMENT OF FACTS

4. The Claim is brought as a representative proceeding under rule 114 of the *Federal Courts Rules* that names Dini Ze' (head chief) Lho'imggin, (also known as Alphonse Gagnon) and Dini Ze' Smogilhgim (also known as Warner Naziel) as bringing this Claim on behalf of two Wet'suwet'en House groups of

the Likhts'amisyu (Fireweed) Clan: the Misdzi Yikh (Owl House) and Sa Yikh (Sun House).[1]

5. The original Claim alleges that Canada has breached its constitutional duty under s. 91 of the *Constitution Act, 1867* by failing to establish legislation and/or use existing environmental assessment legislation to reduce GHG emissions to levels Dini Ze' say would be consistent with Canada's international obligations under the Paris Agreement.[2] The Amended Claim alleges that Canada has "exceeded and continues to exceed its powers to make laws for the 'peace, order, and good government of Canada'".[3]

6. The Claim also alleges that Canada has unjustifiably infringed Dini Ze's individual rights under ss. 7 and 15(1) of the *Charter* on the basis that existing laws allow high GHG emitting natural resource projects to operate now and into the future. The allegations rely, in part, on the purported common law principles of "public trust" and "equitable waste," and what Dini Ze' refer to as the "constitutional principle of intergenerational equity." The Claim says that the infringements of ss. 7 and 15(1) cannot be justified under s. 1 of the *Charter*.[4]

7. As a result of these allegations, the Claim seeks broad declarations that Canada has:

   a. a common law and constitutional duty to act consistently with keeping mean global warming to between 1.5°C and 2°C above pre-industrial levels;
   b. a constitutional duty to maintain, or to not exceed, the peace, order and good government powers of Canada under s. 91 of the *Constitution Act, 1867* by

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[1] Claim at paras 9-10, 27, 29, AB, Tab 4, pp 80, 84, cited in Canada's Written Representations, July 28, 2020 at para 6, AB, Tab 4, p 49.
[2] Claim at paras 82-85, AB, Tab 4, pp 99-100.
[3] Amended Statement of Claim [Amended Claim] at para 83, AB, Tab 5, p 158.
[4] Claim at paras 86-96, AB, Tab 4, pp 100-103.

acting to keep Canada's GHG emissions consistent within a mean global warming of between 1.5˚C and 2˚C above pre-industrial levels;

c. a constitutional duty not to infringe Dini Ze' members' individual rights under s. 7 of the *Charter*, including the s. 7 rights of future members, by failing to act to keep Canada's GHG emissions consistent with a mean global warming of between 1.5°C and 2°C above pre-industrial levels; and
d. a constitutional duty not to infringe on Dini Ze' members' individual rights under s. 15(1) of the *Charter*, including the s. 15(1) rights of future members, by failing to act to keep Canada's GHG emissions consistent with a mean global warming of between 1.5°C and 2°C above pre-industrial levels.[5]

8. Dini Ze' also seek mandatory orders requiring:

a. Canada to amend all federal environmental assessment legislation that applies to extant high GHG emitting projects so as to allow the Governor in Council ("GIC") to cancel Canada's approval, under any of those statutes, of the operation of such a project in the event that Canada will demonstrably not be able to, or does not, meet its Paris Agreement commitment, or in the event that Canada considers global warming to be a national emergency;
b. Canada to prepare an annual account of Canada's cumulative GHG emissions in a format that allows a comparison to be made with Canada's fair carbon budget to meet a mean global temperature rise well below 2°C above pre-industrial levels, including emissions produced within Canada and emissions produced outside of Canada but imported into Canada in the form of tangible goods; and
c. that this Court retain jurisdiction until Canada has complied with its orders.[6]

[5] Claim at para 81(a)-(d), AB, Tab 4, p 98.
[6] Claim at para 81(e)-(g), AB, Tab 4, pp 98-99.

9. Dini Ze' allege broadly that Canada's actions and inactions in respect of climate change generally – and GHG emissions in particular – have been, and are failing to keep Canada's GHG emissions consistent with a mean global warming of between 1.5°C and 2°C above pre-industrial levels. As a result of these actions and inactions, Dini Ze' claim that Canada has unjustifiably limited their constitutional rights.

10. The Claim does not impugn or seek relief in respect of any specific federal law. With no specific law pleaded, Dini Ze' take issue with a broad and diffuse list of government actions that include:

    a. an un-enumerated list of Canada's publicly declared statements to comply with its international agreements on climate change;[7]
    b. a select list of oil and gas projects that may have gone through federal and/or provincial environmental assessments;[8]
    c. three pieces of federal environmental assessment legislation,[9] two of which have been repealed;[10]
    d. a policy paper titled *Strategic Assessment of Climate Change*; and[11]
    e. a select list of Canada's international and national commitments relating to GHG emissions.[12]

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[7] Claim at para 89(c), AB, Tab 4, p 102. - The defendant's publicly declared objectives to comply with its international agreements on global warming.

[8] Claim at paras 59-70, AB, Tab 4, pp 91-94. – A list of oil and gas projects: LNG Canada Export Terminal Project, Coastal GasLink Pipeline Project, Kitimat LNG Terminal Project, a proposed expansion of the Kitimat LNG project, Pacific Trail Pipeline Project, Pacific NorthWest LNG Project.

[9] Claim at para 41, AB, Tab 4, p 87. - *Canadian Environmental Assessment Act,* SC 1992, c 37; *Canadian Environmental Assessment Act, 2012,* SC 2012, c 19, s 52; *Impact Assessment Act,* SC 2019, c 28, s 1.

[10] Claim at paras 41, 71, AB, Tab 4, pp 87, 94-95.

[11] Claim at para 71, AB, Tab 4, pp 94-95. - A policy paper titled *Strategic Assessment of Climate Change.*

[12] Claim at paras 42, 44, 47, 53, 55, AB, Tab 4, pp 87-88, 90. - 1988 International Conference on the Changing Atmosphere, the 1992 United Nation's Framework Convention on Climate Change, the 1998 Kyoto Protocol, the 2009 Copenhagen

The Motion Judge's Reasons

11. On July 28, 2020, Canada brought a motion in writing to strike the Claim without leave to amend on the basis it was not justiciable and it discloses no reasonable cause of action.[13]

12. On November 16, 2020, Justice McVeigh (the "Motions Judge") allowed the motion to strike and dismissed the Claim, refusing leave to amend.

13. In doing so, the Motions Judge held that in considering Canada's motion, it was necessary to read the pleadings as generously as possible to accommodate any inadequacies in the form of the allegations.[14]

14. With respect to the s. 91 – "peace, order and good government" ("POGG") claim the Motions Judge held that s. 91 of the *Constitution Act, 1867* empowers the federal Parliament to enact laws in particular situations where there is an apparent overlap or gap between federal and provincial jurisdiction.[15] The POGG power of the federal government is a tool to facilitate federalism in Canada.[16] She held that there is nothing to suggest it imposes a duty or a limit on the government, nor does it compel Parliament to enact, change or repeal specific laws as suggested by Dini Ze'.[17] The Motions Judge considered the proposed Amended Claim and refused leave to amend, on the basis that the proposed changes would not alter the substance of the arguments to render them justiciable or the causes of action reasonable.[18]

Accord, the 2010 Cancun Agreement, the Paris Agreement, Canada's Nationally Determined Contribution, Canada's 2019 National Inventory Report, and the Pan-Canadian Framework on Clean Growth and Climate Change.

[13] Notice of Motion, AB, Tab 4.

[14] Order and Reasons of McVeigh J, 2020 FC 1059 [Decision] at paras 80-81, AB, Tab 2, p 31.

[15] Decision at para 36, AB, Tab 2, p 18.

[16] Decision at para 33, AB, Tab 2, p 17.

[17] Decision at paras 36, AB, Tab 2, p 18.

[18] Decision at paras 42-46, AB, Tab 2, pp 20-21.

15. With respect to justiciability of Dini Ze's *Charter* claims the Motions Judge held that these were not justiciable because, *inter alia,* there were no specific laws or state action pleaded as breaching their s.7 and s.15 rights and it would be impossible for the Court to carry out the necessary s.1 analysis.[19] The Motions Judge explained this difficulty by highlighting two factors:

    a. The Claim requires the court to consider and adjudicate the broad and diffuse claims that span across various governments, involves matters of economics and foreign policy, trade and a host of other issues, and accordingly the court must leave these policy decisions in the hands of others;[20] and

    b. The remedies sought in the Claim attempt to simplify a complex situation in a way that would be ineffective at actually addressing climate change and are more akin to a change in policy than a change in law.[21]

PART II – POINTS AT ISSUE

16. Canada submits the following:

    a. The applicable appellate standard of review is correctness;

    b. The Motions Judge correctly concluded that the Claim is non-justiciable; and

    c. The Motions Judge correctly concluded that the Claim does not disclose reasonable causes of action.

PART III – SUBMISSIONS

A. <u>The appellate standard of review is correctness</u>

[19] Decision at para 50, AB, Tab 2, p 22.
[20] Decision at para 56, AB, Tab 2, p 24.
[21] Decision at paras 57, 71, AB, Tab 2, pp 24, 29.

17. The applicable appellate standard of review is correctness. Dini Ze' have made no submissions on the appellate standard of review.

18. The Motions Judge's decision to strike the claim raises questions of law regarding justiciability and the sufficiency of the constitutional claims. Based on the application of principles from *Housen v Nikolaisen,* the appeal of this decision is reviewable on the correctness standard. In this case, the Motions Judge adopted the correct legal test and correctly applied it to dismiss the Claim.[22]

B. The Motions Judge correctly concluded that the Claim is non-justiciable

(a) The doctrine of justiciability

19. The parties do not dispute the importance of the central issue raised by the Claim – addressing global climate change. Global climate change is real, and everyone should work towards reducing overall GHG emissions and curbing the harmful effects of global climate change. However, this is fundamentally a question of policy rather than law. The court cannot circumvent its constitutional boundaries on the sole basis that the issue in question is one of societal importance.[23]

20. A challenge to the laws enacting a government's climate change policies may well be justiciable provided there is a sufficient legal component for the court to adjudicate. For example, in *Mathur v Ontario,* seven young people commenced an application alleging that Ontario had unjustifiably limited their ss. 7 and 15 rights with specific reference to Ontario's repeal of the *Climate Change Act* through the *Cancellation Act* and by setting a target for the

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[22] *Housen v Nikolaisen*, 2002 SCC 33 at paras 8-9; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 72; *Canada (Public Safety and Emergency Preparedness v Gregory*, 2021 FCA 33 at para 7.

[23] *La Rose v Canada*, 2020 FC 1008 at para 48.

reduction of GHG emissions that was insufficiently ambitious.[24] The court dismissed a motion to strike brought by Ontario and held that the Charter claims were justiciable and had a reasonable prospect of success because they related to specific laws and to specific government conduct relating to those laws.[25]

21. By contrast, in this case, and in *La Rose,* the Federal Court allowed motions to strike primarily on the basis that the claims did not have a sufficient legal component and instead broadly challenged Canada's various climate change policies.

22. As the Motions Judge correctly identified, the doctrine of justiciability asks if a proceeding involves a subject matter that is appropriate for a court to decide.[26] Matters of public policy are within the exclusive domain of the executive and legislative branches of government and are, on their own, "demonstrably unsuitable for adjudication."[27] For such matters to be justiciable, they must first be translated into law or state action.[28] When confronted with a case that engages only the underlying policy, a court may properly strike a pleading as not justiciable.[29]

23. There is no single set of rules that defines when a case is or is not justiciable.[30] Where asked to consider the appropriateness of judicial involvement in matters of public policy, Canadian courts have generally considered whether there is a

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[24] *Mathur v Ontario,* 2020 ONSC 6918.
[25] *Mathur v Her Majesty the Queen in Right of Ontario,* 2021 ONSC 1624.
[26] Decision at para 22, AB, Tab 2, pp 13-14.
[27] *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 [*Tanudjaja*] at paras 33-36; *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 SCR 791 [*Chaoulli*] at paras 183-185.
[28] Decision at para 21, AB, Tab 2, p 13; *Canada (AG) v PHS Community Services Society,* 2011 SCC 44, [2011] 3 SCR 134 [*PHS*] at para 105.
[29] Lorne M. Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed. (Toronto: Carswell, 2012), pp 267-270.
[30] *Highwood Congregation of Jehovah's Witness (Judicial Committee) v Wall,* 2018 SCC 26, [2018] 1 SCR 750 at para 34.

sufficient legal component that can be resolved by application of a legal standard;[31] whether the court is being asked to express an opinion on the wisdom of a government decision;[32] whether there are moral or political dimensions to the case that are inappropriate for the court to decide;[33] whether the relief sought impinges on the policy-making responsibilities of the other branches of government;[34] and, whether the relief sought will have any practical legal effect.[35]

24. The fundamental problem with the Claim is that it fails to observe a basic rule of pleading. To engage the Court's adjudicative function, a *Charter* claimant must at a minimum plead that an existing law or instance of governmental conduct is unconstitutional. It is not sufficient to plead the absence of a law or conduct believed to be appropriate to achieve policy outcomes. As the Court of Appeal for Ontario held in *Tanudjaja*, "[a] challenge to a particular law or particular application of such a law is an archetypal feature of *Charter* challenges under s. 7 and s. 15."[36] Considering an impugned law's objective and whether it forms a justifiable limit on *Charter* rights is also a cornerstone of the s. 1 analysis.[37]

25. The Motions Judge correctly concluded that Dini Ze's claims exceed the institutional competencies of the Court because:[38]

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[31] *Tanudjaja* at para 33.
[32] *Tanudjaja* at para 33; *Operation Dismantle v The Queen*, [1985] 1 SCR 441, p 472 [*Operation Dismantle*]; and *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525, pp 545-546.
[33] *Operation Dismantle*, p 465; see also Canada *(Auditor General) v Canada (Minister of Energy, Mines and Resources)*, [1989] 2 SCR 49, p 90.
[34] *Tanudjaja* at paras 33-34; *Native Women's Association of Canada v Canada (Attorney General*), [1994] 3 SCR 627, p 668.
[35] *Borowski v Canada (Attorney General)* [1989] 1 SCR 342, p 353; *Tanudjaja* at para 34.
[36] *Tanudjaja* at para 22.
[37] *R v Oakes*, [1986] 1 SCR 103 [*Oakes*], pp 138-139.
[38] Decision at para 47, AB, Tab 2, p 21.

a. The remedies sought by Dini Ze' amount to asking the Court to tell Parliament to amend or enact particular laws. This is not the role of the Court and the Claim is thus not justiciable; [39]

b. With respect to Dini Ze's *Charter* claims, no specific laws or state actions were pleaded as breaching their ss. 7 and 15(1) rights and the broad claims that were made lack a sufficient legal element for them to be justiciable;[40] and

c. The Court does not have the institutional capacity to adjudicate this matter, and the requested set of declarations and orders would not be an economical and efficient investment of judicial resources that would have a real effect on climate change.[41]

26. Dini Ze' argue that the Motions Judge erred in finding the *Charter* claims non-justiciable because she determined GHG emissions to be policy matters properly left to the legislative and executive branches of government.[42] In support of this argument, Dini Ze' rely on *PHS Community Services Society ("PHS")* to argue that the review of policy decisions falls within the realm of the court. The Motions Judge rejected this argument on the basis that this argument mischaracterizes *PHS.*[43] As the Supreme Court instructed in *PHS,* it is the role of governments to set policy – such policies become subject to *Charter* scrutiny where they are "translated into law or state action."[44]

27. The challenge in *PHS* focused on the tension between ss. 4(1) and 5(1) of the *Controlled Drugs and Substances Act* (the "*CDSA"*) that prohibited possession and trafficking of illegal substances and ss. 55 and 56 which allowed the

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[39] Decision at para 47, AB, Tab 2, p 21.
[40] Decision at paras 50, 55, AB, Tab 2, pp 22, 24.
[41] Decision at para 74, AB, Tab 2, p 30.
[42] Dini Ze's MOFL at paras 10, 57.
[43] Decision at para 21, AB, Tab 2, p 13.
[44] *PHS* at para 105.

Minister to provide exemptions.[45] By contrast, the Motions Judge correctly held that the Claim did not identify any specific laws or state actions that were alleged to breach the *Charter* rights of Dini Ze'.[46]

28. Dini Ze' argue that the Motions Judge erred in finding the Claim non-justiciable because it is "based on many laws and state actions."[47] This mischaracterizes the Motions Judge's finding that Dini Ze' made "broad and diffuse claims" that encompass environmental assessment legislation, the approvals of natural resource projects that were subjected to federal and/or provincial review, and international agreements and domestic policy relating to climate change.[48] It was the absence in the Claim of any challenge to a specific law or state action, coupled with these broad claims, that was the basis of the Motions Judge's finding that there was not a sufficient legal element in the *Charter* claims to render them justiciable.[49]

29. Dini Ze's case is more similar to the facts of *Tanudjaja* where the claimants argued that the failure of the government to put into place an adequate strategy to address homelessness limited their *Charter* rights. In agreeing that such a case was non-justiciable, the Court of Appeal for Ontario affirmed that a challenge to a particular law or particular application of such a law is an "archetypal feature" of *Charter* challenges under s. 7 and s. 15.[50] Likewise, considering an impugned law's objective and whether it forms a justifiable limit on *Charter* rights is a cornerstone of the s. 1 analysis.[51]

30. Dini Ze' describe the majority decision in *Tanudjaja* as "unfair" in not recognizing a broad-brush attack on a network of government laws, programs

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[45] *PHS* at paras 38, 39, 105.
[46] Decision at para 50, AB, Tab 2, p 22.
[47] Dini Ze's MOFL at para 68.
[48] Decision at para 54, AB, Tab 2, pp 23-24.
[49] Decision at paras 72, AB, Tab 2, p 29.
[50] Decision at para 52, AB, Tab 2, p 23.
[51] *Oakes*, pp 138-139.

and policies as justiciable under the *Charter*.[52] They argue that it is arbitrary to allow a challenge based on a single law but not one that is based on many.[53] It is undoubtedly the case that a court should look through the form of particular actions or laws in order to discern their substance when assessing whether a *Charter* right has been breached. That said, in this case the Claim lacks such focus and, would require the court to assess a potentially unlimited scope of governmental actions and policies, against the specific criteria to establish an infringement of ss. 7 and 15. The Motions Judge was correct in finding that "[t]his is not how *Charter* claims work."[54]

31. Dini Ze' rely improperly upon *Reference re. Agricultural Products Marketing Act,* a 1978 case that pre-dates the Charter, to argue that the Motions Judge erred in failing to look at the many broad and diffuse federal and provincial laws, international agreements and domestic policy together to determine whether there has been a breach of *Charter* rights.[55] *Reference re. Agricultural Products Marketing Act* does not assist the appellants. It is a reference case about the intersection of federal and provincial constitutional powers to regulate eggs. The Supreme Court in that case found that s. 2(2) of the federal *Agricultural Products Marketing Act* was invalid as it improperly granted a provincial board the authority to impose and use levies or charges, when the province already had this power to issue levies.[56] This pre-*Charter* case does not undermine *Tanudjaja,* nor does it require courts to look through a number of broad, ill-defined pleadings to determine if *Charter* rights are infringed.

32. As the Motions Judge commented, "[w]hile it hypothetically might be true that there is legislation causing *Charter* breaching harm to Dini Ze', on the facts of

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[52] Dini Ze's MOFL at para 69.
[53] Dini Ze's MOFL at para 68.
[54] Decision at para 94, AB, Tab 2, p 35.
[55] Dini Ze's MOFL at paras 67-68.
[56] *Reference re Agricultural Products Marketing Act*, [1978] 2 SCR 1198, pp 1291, 1292.

this case the relationship to any breach is "manifestly incapable of being proven"".[57] The Motions Judge did not dismiss the Claim because of any unwillingness to scrutinize Canada's laws regarding climate change or out of reluctance to contemplate that there may be harm caused to Dini Ze' as a result of climate change. The Claim was dismissed because it does not present functional legal arguments for a court to adjudicate.

(b) The Motions Judge correctly concluded that the remedies sought are not legal remedies

33. The Motions Judge did not err in concluding that the remedies sought in the Claim infringe upon the exclusive policy-making responsibilities of the legislative and executive branches of government.[58] The Motions Judge reviewed all of these remedies and concluded that "cumulatively all of the issues regarding the remedies sought add to this not being justiciable."[59]

34. As noted by the Motions Judge, of the seven declaratory and supervisory orders Dini Ze' seek, none related to the constitutional validity of a particular law.[60] The various orders sought in the Claim "attempt to simplify a complex situation in a way that would be ineffective at actually addressing climate change given the polycentric and international nature of the problem. The changes being asked for are more akin to a change in policy than a change in law."[61]

35. Dini Ze' seek declarations from the Court that Canada has common law and constitutional duties generally, and under s. 91 of the *Constitution Act, 1867* and ss. 7 and 15(1) of the *Charter* specifically, to act to keep Canada's GHG

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[57] Decision at para 95, AB, Tab 2, p 35.
[58] *Doucet-Boudreau v Nova Scotia (Minister of Education),* 2003 SCC 62, [2003] 3 SCR 3 at para 56; *Canada (Prime Minister) v Khadr,* 2010 SCC 3, [2010] 1 SCR 44 at paras 33, 37.
[59] Decision at para 71, AB, Tab 2, p 29.
[60] Decision at paras 15, 55-57, AB, Tab 2, pp 10-11, 24; Claim at para 81, AB, Tab 4 pp 98-99.
[61] Decision at para 57, AB, Tab 2, p 24.

emissions "consistent with a mean global warming of between 1.5˚C and 2˚C above industrial levels".[62] However, Dini Ze' fail to explain how such consistency could be identified or verified by the Court.

36. Ultimately, Dini Ze' seek remedies which a court cannot grant. They want the Court to make a declaration that the federal government must legislate to achieve a particular policy goal in relation to global warming.

37. The remedies sought in this case are contrary to the fundamental principle that the court's role is to evaluate the constitutionality of existing laws and government action – and not to act as a policy-maker. Given the breadth and complexity of addressing global climate change as a matter of policy, the Claim essentially asks the Court to make decisions based upon its own ideological and political views.[63] The remedies sought by Dini Ze' would require the Court to review and pass judgment on whether Parliament is giving adequate priority and funding towards reducing GHG emissions compared with other policy priorities and objectives. Given the long-lasting nature of global climate change, these powers would be vested with the Court indefinitely. [64]

38. The Motions Judge correctly identified that such remedies would have the Court "venture into the realm of the executive."[65] She further cautioned that the Court "does not have the statutory jurisdiction to mandate any such co-operation between the different levels of government meaning that any remedies would be quite possibly be ineffective."[66]

(c) **Dini Ze' no longer rely on international law**

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[62] Claim at para 81(a)-(d), AB, Tab 4, p 98.
[63] *Friends of the Earth v Canada,* 2008 FC 1183, [2009] 3 FCR 201 [*Friend of the Earth*] at para 33. See also *Juliana v United States,* 947 F.3d 1159 (9th Ci. 2020) (17 January 2020) [*Juliana*], pp 8-9.
[64] *Juliana*, p 10.
[65] Decision at para 66, AB, Tab 2, p 27.
[66] Decision at para 63, AB, Tab 2, p 26.

39. Dini Ze' clarify that their Claim is not based on the erroneous premise that Canada's international agreements give rise to legally enforceable obligations in Canadian domestic law.[67] However, Dini Ze' maintain that Canada's international commitment under the Paris Agreement obliges Canada to legislate in the manner they prefer. They describe this international commitment as "a scientifically, internationally and parliamentary accepted standard."[68] This is not a legal obligation. Dini Ze's approach confuses policy goals with legal obligations. There is no basis for asserting that Canada's laws can be examined by a court for compliance with a policy. That approach was expressly rejected by the Motions Judge, relying on *Friends of the Earth* and *Tanudjaja.* [69]

C. The Motions Judge correctly concluded that the Claim does not disclose reasonable causes of action

(a) The POGG Claim discloses no reasonable cause of action

40. In the recent *References re Greenhouse Gas Pollution Pricing Act*, the Supreme Court instructed that "[f]ederalism is a foundational principle of the Canadian Constitution…Sections 91 and 92 of the Constitution give expression to the principle of federalism and divide legislative powers between Parliament and the provincial legislatures".[70]

41. Section 91 of the Constitution sets out the powers of the federal government to make legislation falling within certain enumerated "classes of subject" which were considered appropriate to be determined at the federal level. The section has also been read as containing a general, residual power to make laws for the

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[67] Dini ZE' MOFL at para 22
[68] Dini Ze's MOFL at para 22.
[69] Decision at paras 17-24, 76, AB, Tab 2, pp 11-15, 30, citing *Friends of the Earth* at paras 43; *Tanudjaja* at paras 20-22, 33.
[70] *References re Greenhouse Gas Pollution Pricing Act,* 2021 SCC 11 [*re GGPPA*] at paras 48, 49.

"Peace, Order and good Government of Canada", provided it is not exercised in relation to any of the classes of subjects reserved for the provincial legislatures under s.92.

42. POGG empowers the federal parliament to enact laws in situations which otherwise may be regarded as falling within provincial legislative authority.[71] It does not – and has never been held to – compel Parliament to enact laws in any particular manner.

43. The situations in which the POGG power can be exercised are highly restricted, and fall into three categories or "branches": (1) the "gap" branch, (2) the "national concern" branch and (3) the "emergency' branch. It is only when one or more of these unusual situations arise that the federal government may rely on the POGG power to legislate outside of the classes of subjects identified in s.91. Environmental issues such as global warming cannot always be properly assigned to any of the classes of subjects identified in s. 91 or 92. In the *Reference Re Greenhouse Gas Pollution Pricing Act*, Canada relied on the national concern branch of the POGG power in passing legislation "…establishing minimum national standards of GHG price stringency to reduce GHG emissions."[72]

44. Dini Ze' purport to make arguments based on the POGG power but their arguments do not accord with the recognized doctrine. Although they refer to the "POGG power" throughout their pleadings and in the Claim assert that the cumulative effect of GHG emissions is a matter of "national concern", this is a red herring.[73] Dini Ze' instead argue that the phrase, "peace, order and good government" constitutes criteria limiting Canada's authority to make laws that Dini Ze' view as "permitting and encouraging [GHG] emissions".[74] By

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[71] Decision at paras 33-36, AB, Tab 2, pp 17-18.
[72] *re GGPPA* para 80.
[73] See Claim at paras 38, 83-85, AB, Tab 4, p 86, 99-100; Amended Claim at paras 83-85, AB, Tab 5, p. 158; Dini Ze's MOFL at para 20.
[74] Dini Ze's MOFL at paras 24, 37.

allegedly encouraging GHG emissions and permitting high GHG-emitting projects, Dini Ze' claim that Canada is legislating outside of its "constitutional authority" by not promoting "peace, order and good government".[75]

45. Dini Ze' argue that the Motions Judge misconstrued their draft Amended Statement of Claim as continuing to plead that s. 91 gives rise to a positive duty to legislate.[76] This is not the case. The Motions Judge properly addressed Dini Ze's argument that POGG operates as a limit on Canada's constitutional authority to legislate as well as their earlier argument that the reference to POGG in s.91 imposes a duty to legislate.[77] The Motions Judge agreed with Canada that despite the draft amendments "…this is a semantical change, and the substance of the argument is that they are asking for section 91 to dictate that the government enact specific laws".[78]

46. As the Motions Judge observed, POGG operates as a "tool to facilitate federalism in Canada".[79] The Motions Judge reviewed s. 91 and correctly held that "the permissive nature of the wording shows that the [C]onstitution allows for the construction of laws, and that it does not demand that particular laws be enacted for particular ends, nor has it ever been interpreted to mean such."[80] Dini Ze's argument amounts to a proposition that s. 91 dictates that the federal government enact specific laws. As the Motions Judge recognized, "[t]he POGG power has never been used in such a way, and the language of the statute provides that even this novel attempt must fail."[81]

47. In their memorandum, Dini Ze' do not engage with the reasons given by the Motions Judge. They continue to rely on two decisions from the United

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[75] Dini Ze's MOFL at paras 33, 35.
[76] Dini Ze's MOFL at paras 23, 24.
[77] Decision at paras 32, 41-43, AB, Tab 2, p 17, 19-20. See also Claim at paras 82, 85, AB, Tab 4, p 99, 100.
[78] Decision at para 46, AB, Tab 2, p 21.
[79] Decision at para 33, AB, Tab 2, p 17.
[80] Decision at para 27, AB, Tab 2, pp 15-16.
[81] Decision at para 46, AB, Tab 2, p 21.

Kingdom, *Bancoult* (no. 1) and *Bancoult* (no. 2) (the "*Bancoult* decisions"), both of which were considered and rejected by the Motions Judge.[82] The *Bancoult* decisions considered whether statutory authority for an executive order to exile an Indigenous group from their British Indian Overseas Territory ("BIOT") could be found in the general powers of "peace, order and good government" in their colonial constitution.[83] Dini Ze' assert that only "the evidence and full argument presented at trial" will determine whether the *Bancoult* decisions are binding on the Federal Court.[84]

48. Dini Ze's arguments in respect of the *Bancoult* decisions mischaracterize how decisions of foreign courts are to be applied and interpreted in Canada, particularly in the context of constitutional law. As the Supreme Court recently instructed in *Quebec (Attorney General) v 9147-0732 Québec inc.,*[85] constitutional analysis must principally be informed by domestic constitutional principles and draw upon international and comparative law only where appropriate. The majority emphasized the need for particular caution when referring to decisions of foreign courts because measures adopted in other countries may have little relevance in the Canadian constitutional context.[86]

49. Dini Ze' acknowledge that both British and Commonwealth jurisprudence has generally held that the phrase "peace, order and good government' refers solely to a plenary, i.e. unqualified, grant of legislative power and does not constitute subjective criteria limiting that power.[87] Dini Ze' attempt to rely on the

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[82] Decision at para 40, AB, Tab 2, p 19; *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs*, [2001] QB 1067 (*Bancoult* no. 1); *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs*, 2008 UKHL 61, (2009) 1 AC (*Bancoult* no. 2).

[83] *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs*, [2001] QB 1067 at paras 2-3.

[84] Dini Ze's MOFL at para 21.

[85] *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at paras 43-47 [*9147-0732 Québec inc.*]; See also *Frank v Canada (Attorney General),* 2019 SCC 1 at para 62.

[86] *9147-0732 Québec inc.* at para 43.

[87] Dini Ze's MOFL at para 26.

Bancoult decisions as lending support for their POGG argument, however, they ignore the majority reasons of Lord Hoffmann in *Bancoult* no. 2, who held:

> "My second reason for rejecting Sir Sydney's argument is that the words "peace, order and good government" have never been construed as words limiting the power of a legislature. Subject to the principle of territoriality implied in the words "of the Territory", they have always been treated as apt to confer plenary law-making authority. For this proposition there is ample authority in the Privy Council [*citations omitted*]. The courts will not inquire into whether legislation within the territorial scope of the power was in fact for the "peace, order and good government" or otherwise for the benefit of the inhabitants of the Territory. So far as *Bancoult (No 1)* departs from this principle, I think that it was wrongly decided."[88]

50. A proper examination of the *Bancoult* decisions shows that they undermine rather than offer persuasive weight to Dini Ze's arguments. Dini Ze' are unable to identify any jurisprudence that supports their POGG argument.

(b) The s.7 Charter claim discloses no reasonable cause of action

51. The Motions Judge correctly held that as the Claim does not target any specific law or government action it does not disclose a reasonable cause of action under s.7 of the Charter.[89]

52. To establish a limitation of s. 7, a claimant must demonstrate that: (a) the state has deprived them of their life, liberty or security of the person; and (b) the deprivation is not in accordance with the principles of fundamental justice.[90] While the challenged law or governmental act need not be the sole or dominant

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[88] *Bancoult* no. 2 at para 50.
[89] Decision at para 91, AB, Tab 2, p 34.
[90] *Carter v Canada (Attorney General),* 2015 SCC 5, [2015] 1 SCR 331 at para 55.

cause of the alleged deprivation, there must be a real, as opposed to speculative link.[91]

53. Section 7 does not confer a freestanding right to any particular legislative regime that maximizes life, liberty, or security of the person. Rather, s. 7 protects against deprivations of these protected interests.[92] As this Court affirmed in *Kreishan v Canada (AG),* "[t]here is no constitutional requirement for the government to act affirmatively to ensure that each person enjoys a minimum of life, liberty and security of the person. Section 7, as the jurisprudence currently stands, requires a deprivation for these interests in order to be engaged".[93]

54. Canadian courts have dismissed s. 7 claims involving positive rights in a vast array of contexts, including claims relating to social assistance benefits,[94] health care,[95] adoption,[96] autism programming,[97] out-of-province medical benefits,[98] public utilities,[99] housing,[100] witness protection,[101] unlawful detention,[102] refugee

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[91] *Canada (Attorney General), v Bedford,* 2013 SCC 72, [2013] 3 SCR 1101 [*Bedford*] at para 76.
[92] *Gosselin v Quebec (Attorney General),* 2002 SCC 84, [2002] 4 SCR 429 [*Gosselin*] at para 81.
[93] *Kreishan v Canada*, 2019 FCA 223 [*Kreishan*] at para 136, application for leave dismissed SCC No. 38864, March 5, 2020.
[94] *Masse v Ontario* (1996), 134 DLR (4th) 20, 1996 CanLII 12491 at paras 73, 172; *McMeekin v Northwest Territories*, 2010 NWTSC 27 at paras 27-31; *Lacey v British Columbia*, 1999 CanLII 7023 (BC SC) at paras 4-6.
[95] *Chaoulli* at para 104; *Toussaint v Canada*, 2011 FCA 213 at para 77.
[96] *Pratten v British Columbia*, 2011 BCSC 656 at paras 290-291, aff'd by 2012 BCCA 480 at paras 44-62.
[97] *Sagharian v Ontario*, 2008 ONCA 411 at paras 52, 57; *Wynberg v Ontario* (2006), 82 OR (3d) 561, 2006 CanLII 22919 at paras 219-220.
[98] *Flora v Ontario*, 2008 ONCA 538 at para 108.
[99] *Clark v Peterborough Utilities Commission* (1995), 24 OR (3d) 7, appeal dismissed as moot (1998), 40 OR (3d) 409.
[100] *Tanudjaja v Canada*, 2013 ONSC 5410 [*Tanudjaja ONSC*]; upheld on different grounds by *Tanudjaja ONCA.*
[101] *John Doe v Ontario*, [2007] OJ No 3889 at para 113, upheld at 2009 ONCA 132.
[102] *Good v Toronto Police Services Board*, 2013 ONSC 3026 at para 143.

asylum,[103] veterans' benefits,[104] firearms regulation,[105] medicinal marijuana[106] and climate change.[107]

55. In this sense, Dini Ze's s. 7 claims are not novel, nor do they present special circumstances.[108] Rather, they fall into the same category of claims that have been considered and consistently rejected by courts across the country. The present state of the law with respect to this issue is settled; s. 7 does not provide a guarantee of positive rights. [109]

56. Dini Ze' pleading that Canada's failure to enact sufficiently strict legislation limiting GHG emissions will deprive future members of their s.7 right is inherently speculative and incapable of proof.[110] While Canada does not deny that the climate change will have future repercussions, a court cannot determine with sufficient precision whether and how such effects will affect the future members of the Misdzi Yikh and the Sa Yikh such that it would amount to a limitation of their s. 7 rights. As the Supreme Court cautioned in *Operation Dismantle v the Queen,* matters that "are not capable of prediction, on the basis of evidence, to any degree of certainty approaching probability" can lead only to speculation on the part of the court.[111]

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[103] *Kreishan* at paras 135-141.
[104] *Scott v Canada*, 2017 BCCA 422 at para 88.
[105] *Barbra Schlifer Commemorative Clinic v Canada,* 2014 ONSC 5140 [*Schlifer*] at para 32-33, 79.
[106] *Yascheshen v Saskatchewan*, 2020 SKQB 4 at paras 70-73.
[107] *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50 at para 68.
[108] In *Gosselin*, the Supreme Court left open the door to a recognition of positive rights in a case raising "special circumstances", but did not define those circumstances: see para 83.
[109] Note that in *Holland v Saskatchewan*, 2008 SCC 42, [2008] 2 SCR 551 at para 9, McLachlin CJC upheld a decision striking a Statement of Claim on the basis that the law "to date" had not recognized an action for negligent breach of statutory duty.
[110] Claim at para 81(c), AB, Tab 4, p 98.
[111] *Operation Dismantle*, pp 442-443, 452.

57. To engage the protections of s. 7, a claimant must, at minimum, plead a deprivation caused by state action, either because the impugned law directly deprives them of a protected interest or prevents them from taking steps to protect themselves from non-state harm.[112] In either case, a claimant must allege more than the mere existence of public harm that could be alleviated by governmental regulations.[113]

58. The Motions Judge correctly identified and applied these principles, citing this Court's recent guidance in *Brown v Canada (Minister of Citizenship and Immigration)* that "[a]ll *Charter* analysis begins with an informed understanding of the legislation in question."[114] The Motions Judge held that without specific legislation or government action identified by Dini Ze' that has infringed their *Charter* rights, "it is an impossible task to evaluate an alleged breach of the *Charter*."[115] While Dini Ze' have listed some environmental assessment laws that they say "encourage or permit emissions," they have not referred to specific statutory provisions or explanation as to their role in causing the specific alleged s*Charter* breaches. The Motions Judge found as follows:

> … this is akin to asserting that Canada's legislation governing crime and punishment, such as (but not limited to) the *Criminal Code*, the *Canada Evidence Act*, and the *Firearms Act*, and arguing that it violates a client's *Charter* rights, and that the courts must order the federal government to fix the problem. This is not how *Charter* claims work.[116]

59. Citing *Atlantic Lottery*, the Motions Judge acknowledged that while it may be hypothetically possible there is legislation causing harm to Dini Ze', she found that "…on the facts of this case the relationship to any breach is manifestly incapable of being proven."[117]

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[112] *Bedford* at paras 58-60; *PHS* at paras 92-93.
[113] *Schlifer* at paras 25-33.
[114] Decision at para 92, AB, Tab 2, p 34.
[115] Decision at para 93, AB, Tab 2, p 34.
[116] Decision at para 94, AB, Tab 2, p 35.
[117] Decision at para 95, AB, Tab 2, p 35.

60. Dini Ze' argue that the Motions Judge erred in her application of the *Bedford* "sufficient causal connection" test when determining whether their s. 7 rights are engaged.[118] The Motions Judge rejected Dini Ze's assertion that the *Bedford* test would be met on these pleadings.[119] She considered and rejected Dini Ze's novel argument that the "material contribution to risk" test in tort law should apply in this *Charter* analysis.[120] The Motions Judge acknowledged the test as described in *Clements v Clements* but correctly found that the test is only applied in exceptional circumstances in tort, and has never been applied in *Charter* claims.[121] She concluded that while Dini Ze' could potentially have a *Charter* claim, "this is not possible on the facts and pleadings of this case."[122]

61. Dini Ze' plead that Canada's failure to enact sufficiently strict legislation limiting GHG emissions is allowing many actors, non-governmental and governmental, to produce GHG emissions resulting in climate change that is affecting their s.7 rights. This is a situation far removed from the laws regulating prostitution which were challenged by the plaintiffs in *Bedford*, each of whom engaged in sex work. The steps in the proposed causal chain between government inaction on GHG legislation and alleged harm to Dini Ze' s. 7 rights cannot be proven sufficiently on the facts as put forward by Dini Ze' to discharge the "sufficient causal connection" test. As held by the Motions Judge, "…proving a causal link between specific Canadian laws and the effects felt because of climate change would be near impossible given the specific laws are not pled."[123]

62. Dini Ze' rely on comments made by the SCC in the *Reference re GGPPA* in support of their argument that the link between Canada's legislation and the

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[118] Dini Ze's MOFL at paras 44-49.
[119] Decision at paras 96, 102, AB, Tab 2, pp 35, 37; *Bedford* at para 76.
[120] Decision at paras 97-102, AB, Tab 2, pp 36-37.
[121] Decision at paras 97-98, AB, Tab 2, p 36, citing *Clements v Clements*, [2012] 2 SCR 181 at para 46.
[122] Decision at para 102, AB, Tab 2, p 37.
[123] Decision at para 89, AB Tab 2, p 33.

alleged harm is real and not speculative.[124] The remarks made by Chief Justice Wagner are in relation to the impact of GHG emissions generally rather than the causal impact of legislation on such emissions and as such, are of no assistance to Dini Ze'.[125]

(c) The s. 15(1) *Charter* claim discloses no reasonable cause of action

63. To establish a limitation of their s. 15(1) rights, a claimant must demonstrate: (a) that the impugned law or state action, on its face or in its impact, creates a distinction between the claimant and others based on an enumerated or analogous ground; and (b) the distinction discriminates.[126] Section 15(1) protects substantive equality before and under the law. This right obliges governments to ensure that any legal benefit or burden, once given, is provided without discrimination on the basis of a protected ground.[127]

64. Where allegations of unequal treatment do not arise from the operation of a particular law, however, there is no basis upon which to engage s. 15(1) protections.[128] It is a long-settled principle in s. 15 jurisprudence – most recently affirmed by the Supreme Court in *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux et al.* – that the s. 15 guarantee of equality does not impose positive obligations on the state to enact legislation to redress pre-existing social inequities.[129] Legislative and policy choices about whether to grant or withhold

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[124] Dini Ze's MOFL at para 45.
[125] *Re GGPPA* at para 188.
[126] *Fraser v Canada (Attorney General),* 2020 SCC 28 at para 27; *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, [2018] 1 SCR 464 [*Alliance*] at para 25.
[127] *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at paras 72-73.
[128] *Auton (Guardian ad litem et) v British Columbia (Attorney General)*, 2004 SCC 78, [2004] 3 SCR 657 [*Auton*] at para 28.
[129] *Alliance* at para 42.

legal benefits do not in and of themselves engage s. 15(1) so long as the benefits provided by the law are conferred without discrimination.[130]

65. The Motions Judge correctly held that it is plain and obvious that there is no cause of action with regards to the alleged s. 15 *Charter* breach.[131]

66. Dini Ze' claim protection on the basis of age alleging that climate change will have a greater impact on their future generations.[132] Like with their s. 7 claim, Dini Ze' again fail to identify what specific law or state action they say infringes their s. 15 *Charter* rights.[133] The Motions Judge acknowledged that while Dini Ze' list some legislation, this was without reference to specific sections and their role in causing the alleged breach. She correctly found that their pleadings are too hypothetical and are "manifestly incapable of being proven." [134]

67. Nor does the claim identify a distinction in treatment by Canada of their younger and future members. Instead, Dini Ze' assume one and ask the Court to do the same.[135] This is not an acceptable approach when advancing an equality rights claim as it is not possible to know whether younger and future members will be detrimentally affected by climate change more than other young people and future generations in Canada. While the evidentiary burden is

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[130] *Auton* at para 41.
[131] Decision at para 104, AB, Tab 2, p 37.
[132] Dini Ze's MOFL at para 87.
[133] Decision at para 93, AB, Tab 2, p 34.
[134] Decision at paras 94, 95, AB, Tab 2, p 35.
[135] See *Symes v Canada,* [1993] 4 SCR 695, pp 764-765 where the Court stated: "If the adverse effects analysis is to be coherent, it must not assume that a statutory provision has an effect which is not proved. We must take care to distinguish between effects which are wholly caused, or contributed to, by an impugned provision, and those social circumstances which exist independently of such a provision."

not onerous, s. 15(1) *Charter* claims must be based on more than just a "web of instinct."[136]

68. For this reason, Dini Ze's equality claims cannot succeed. The substance of Dini Ze's complaint is not that any law operates to grant benefits or impose burdens in a manner that substantively discriminates against the Appellants. Rather, Dini Ze's claim is that climate change itself imposes unequal burdens, and federal climate policies do not go far enough to proactively redress this inequality. Whether or not the present suite of federal climate policies are adequate as a matter of policy, the Claim does not allege that the burdens and benefits imposed or granted by any specific law are distributed unequally on the basis of a prohibited ground.[137]

(d) Section 1 of the Charter

69. The Motions Judge correctly concluded that a s. 1 analysis cannot be carried out because the pleadings fail to identify any law or state action that would allow the necessary weighing of factors in the *R v Oakes* test.[138] Dini Ze's answer to this is to invoke again "…the cumulative effect of numerous federal laws and the means chosen to implement them."[139] As identified by the Motions Judge, this approach to pleadings does not enable a court to conduct a Charter analysis.

PART IV – ORDER SOUGHT

For all of these reasons, Canada seeks an order dismissing this appeal.

All of which is respectfully submitted.

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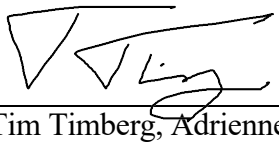
[136] *Kahkewistahaw First Nation v Taypotat,* 2015 SCC 30 (CanLII), [2015] 2 SCR 548 at paras 33-34.
[137] Claim at para 91, AB, Tab 4, p 102.
[138] Decision at para 55, AB, Tab 2, p 24.
[139] Dini Ze's MOFL at para 91.

Signed in Vancouver, this 28th day of June 2021.



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PART V– LIST OF AUTHORITIES

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4. *Canada (AG) v PHS Community Services Society,* 2011 SCC 44, [2011] 3 SCR 134
5. *Canada (Attorney General), v Bedford,* 2013 SCC 72, [2013] 3 SCR 1101
6. *Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources)*, [1989] 2 SCR 49
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8. *Canada (Public Safety and Emergency Preparedness v Gregory*, 2021 FCA 33
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20. *Gosselin v Quebec (Attorney General),* 2002 SCC 84, [2002] 4 SCR 429

21. *Highwood Congregation of Jehovah's Witness (Judicial Committee) v Wall,* 2018 SCC 26, [2018] 1 SCR 750

22. *Holland v Saskatchewan*, 2008 SCC 42, [2008] 2 SCR 551

23. *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215

24. *Housen v Nikolaisen*, 2002 SCC 33

25. *John Doe v Ontario*, [2007] OJ No 3889, upheld at 2009 ONCA 132

26. *Juliana v United States,* 947 F.3d 1159 (9th Ci. 2020) (17 January 2020)

27. *Kahkewistahaw First Nation v Taypotat,* 2015 SCC 30 (CanLII), [2015] 2 SCR 548

28. *Kreishan v Canada*, 2019 FCA 223

29. *Lacey v British Columbia*, 1999 CanLII 7023 (BC SC)

30. *La Rose v Canada*, 2020 FC 1008

31. *Masse v Ontario* (1996), 134 DLR (4th) 20, 1996 CanLII 12491

32. *Mathur v. Ontario,* 2020 ONSC 6918 add

33. *Mathur v. Her Majesty the Queen in Right of Ontario,* 2021 ONSC 1624 add

34. *McMeekin v Northwest Territories*, 2010 NWTSC 27

35. *Native Women's Association of Canada v Canada (Attorney General*), [1994] 3 SCR 627

36. *Operation Dismantle v The Queen*, [1985] 1 SCR 441

37. *Pratten v British Columbia*, 2011 BCSC 656, aff'd by 2012 BCCA 480

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45. *References re Greenhouse Gas Pollution Pricing Act,* 2021 SCC 11

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48. *Symes v Canada,* [1993] 4 SCR 695

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50. *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852

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52. *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 50

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58. *Canadian Environmental Assessment Act,* SC 1992, c 37

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60. *The Constitution Act, 1867*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, s 91