

FEDERAL COURT

BETWEEN:

CECILIA LA ROSE, by her guardian ad litem Andrea Luciuk, SIERRA RAINE ROBINSON, by her guardian ad litem Kim Robinson, SOPHIA SIDAROUS, IRA JAMES REINHART-SMITH, by his guardian ad litem Lindsey Ann Reinhart, MONTAY JESSE BEAUBIEN-DAY, by his guardian ad litem Sarah Dawn Beaubien, SADIE AVA VIPOND, by her guardian ad litem Joseph Conrad Vipond, HAANA EDENSHAW, by her guardian ad litem Jaalen Edenshaw, LUCAS BLAKE PRUD'HOMME, by his guardian ad litem Hugo Prud'homme, ZOE GRAMES-WEBB, by her guardian ad litem Annabel Webb, LAUREN WRIGHT, by her guardian ad litem Heather Wright, SÁJ MILAN GRAY STARCEVICH, by her guardian ad litem Shawna Lynn Gray, MIKAEEL MAHMOOD, by his guardian ad litem Asiya Atcha, ALBERT JÉRÔME LALONDE, by his guardian ad litem Philippe Lalonde, MADELINE LAURENDEAU, by her guardian ad litem Heather Dawn Plett and DANIEL MASUZUMI

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

STATEMENT OF DEFENCE

A. Admissions/Denials/No Knowledge

1. The defendants have no knowledge of the allegations contained in paragraphs 11-25 and 94-221 of the statement of claim.
2. Except where expressly admitted herein, the defendants deny the remaining allegations in the statement of claim. The defendants specifically deny that the plaintiffs are entitled to any of the relief sought at paragraph 222 of the statement of claim.

B. Overview

3. 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. Its impacts will get more significant over time.
4. Canada recognizes that, 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 citizens, including youth, towards addressing this issue.
5. Addressing climate change is the shared responsibility of a multitude of different actors, including both governmental and non-governmental institutions at all levels of jurisdiction – international, national, provincial, territorial, and local. While aspects of the fight against climate change involve legislating by the Parliament of Canada and regulating by the federal government, addressing climate change also necessarily includes negotiations with foreign governments, extensive engagement between the federal governments and the provinces and territories, and funding allocations within the Parliamentary budgeting process.
6. In this way, Canada's efforts to combat climate change are not, on their own, sufficient to address global climate change. Rather, the full efficacy of any response to climate change is dependent on coordination and actions on a global scale. The nature of global climate change is such that its future impacts cannot be predicted with precision.
7. The Plaintiffs' claims fall well outside the realm of permissible review by the courts. The claim does not target any particular law or its application. Rather, in essence, the claim

asks the courts to decide whether the executive is governing well and to mandate that Parliament exercise its jurisdiction in a particular manner. Ultimately, these matters are not justiciable, nor do they give rise to any valid causes of action either under the Constitution or pursuant to common law.

C. Climate Change and its Impacts

8. The combustion of fossil fuels emits greenhouse gases (“GHGs”) into the atmosphere, which drives global climate change. The scientific properties of GHGs, of which carbon dioxide (“CO₂”) is the most prevalent, and the role they play in global climate change are well established. Simply stated, GHGs trap some of the outgoing heat the Earth emits after being warmed by the sun, instead of letting it escape directly to outer space. This makes the surface of the Earth and the lower atmosphere warmer than they would otherwise be. Human activities have led to a build up of GHGs in the atmosphere and this has strengthened the heat-trapping properties of the atmosphere and driven climate warming and other changes in climate.
9. Given their role in global climate change, GHG emissions create a risk of harm to both human health and the environment upon which life depends. The impacts are global, and throughout Canada, and are not correlated to the location of the GHG emission source. GHG emissions circulate in the atmosphere, so emissions anywhere raise atmospheric concentration everywhere.
10. Atmospheric concentrations of CO₂ are fairly uniform around the globe. The National Aeronautics and Space Administration (“NASA”) tracks atmospheric concentrations of CO₂. NASA has noted that current concentrations have reached 400 ppm, and are still

climbing. Concentrations of CO₂ (and other key GHGs) now substantially exceed the highest concentrations recorded in ice cores during the past 800,000 years. In particular, anthropogenic GHG emissions since the pre-industrial era have driven the large increases in the atmospheric concentrations of CO₂, methane (CH₄), and nitrous oxide (N₂O). Emissions of CO₂ from fossil fuel combustion and industrial processes contributed about 78% of the total anthropogenic GHG emissions from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010.

11. Globally, economic and population growth are the most important drivers of increases in CO₂ emissions from fossil fuel combustion. The contribution of population growth between 2000 and 2010 remained roughly identical to the previous three decades, while the contribution of economic growth has risen sharply. Further, increased global use of coal has reversed the long-standing trend of gradual decarbonization of the world's energy supply.
12. The World Meteorological Organization ("WMO") publishes an annual Statement on the State of the Global Climate. The WMO is a specialized agency of the United Nations with 193 member states and territories whose mandate covers weather, climate, and water resources. Many international organizations and national institutions contribute to the WMO's annual statements, including Environment and Climate Change Canada ("ECCC"). WMO annual statements have been used to inform the Government of Canada's policy decisions.
13. The WMO Statement on the State of the Global Climate in 2017 included an analysis of paleo and current atmospheric concentrations of CO₂ showing that atmospheric

concentrations of CO₂ are higher than they have been at any time in the past million years.

14. These rising atmospheric concentrations of CO₂ have been the main driver of rising global temperatures. With respect to the Earth's atmosphere:
 - a. 2018 was the 42nd consecutive year with global temperatures at least marginally above the 1950-1980 average temperatures.
 - b. Eighteen of the nineteen warmest years on record have all occurred since 2001, with the 19th being in 1998.
 - c. The past five years of 2014-2018 are the hottest five years on record, with 2016 being the hottest.
15. In addition, the ocean's temperature is at a record high and global mean sea levels continue to rise. 2018 set new records for ocean heat content, exceeding previous records set in 2017, and the global mean sea-level was higher than in 2017 and the highest on record.
16. Climate change is a significant and dynamic international problem. As previously stated, GHG emissions circulate throughout the world's atmosphere. The impacts of climate change, therefore, are fundamentally global, and are not correlated to the location of the GHG emission or source. This means that Canada's climate is impacted not only by its own GHG emissions, but by the total volume of GHG emissions occurring around the world.
17. These global impacts and anticipated impacts of climate change have been extensively studied and documented over time. The Intergovernmental Panel on Climate Change ("IPCC") is an international body responsible for assessing climate change science, impacts, adaptation and vulnerability, and mitigation. The IPCC has produced

comprehensive assessment reports on a regular basis since 1990 and these reports are recognized as authoritative sources of scientific understanding of climate change.

18. As a result of this extensive research and assessment, there is a scientific consensus regarding human-induced global warming and its worsening with further emissions of GHGs. For example, the introduction to the *United Nations Framework on Climate Change* (“UNFCCC”) secretariat’s 2007 publication *Climate Change: Impacts, Vulnerabilities, and Adaptation in Developing Countries* states that over the next decades, “it is predicted that billions of people, particularly those in developing countries, face shortages of water and food and greater risks to health and life as a result of climate change.”
19. Notwithstanding its global nature, climate change is having a particularly significant impact in Canada. Canada is overall warming at twice the global rate, while northern Canada is warming at three times the global rate. The effects of widespread warming are evident in many parts of Canada and are projected to intensify in the future with additional warming. These effects include more extreme heat, less extreme cold, longer growing seasons, shorter snow and ice seasons, thinning glaciers, thawing permafrost, warmer oceans and rising sea level. Increases in the severity of heatwaves will contribute to increased drought and wildfire risks. More intense rainfalls in the future will increase urban flood risks. Coastal flooding is expected to increase in many areas of Canada due to local sea level rise. Changes in climate are increasingly affecting Canada’s natural environment, economic sectors and the health of Canadians, and climate change is increasingly exacerbating the impact of other stressors on natural ecosystems in Canada and on the well-being of Canadians.

20. Canada's annual average temperature will continue to warm at a faster rate than the world as a whole, with the strongest warming projected for winter months and for northerly latitudes. Precipitation levels are also projected to rise, with strong regional and seasonal variability.
21. Related existing and anticipated impacts to this warming in Canada include, among other things:
 - a. Changes in extreme weather events;
 - b. Degradation of soil and water resources;
 - c. Increased frequency and severity of heat waves, which may lead to increased illness and death;
 - d. Expansion of vector-borne diseases, such as Lyme disease and West Nile virus; and
 - e. Degradation of permafrost in the North.

D. Canada's Ongoing Commitments/Response to Climate Change

1. Climate Change is of Central Importance to the Government of Canada

22. Addressing the causes, impacts, and anticipated impacts of climate change is of central importance to the Canadian government. While climate change is a global phenomenon, it has significant and particular impacts on Canada and Canadians. The impacts and anticipated impacts of climate change are multifaceted.
23. The most recent and comprehensive scientific assessment of how and why Canada's climate is changing, and what changes are projected for the future is provided in *Canada's Changing Climate Report*, released on April 2, 2019 ("the Report"). The Report, led by

ECCC, documents climatic and environmental changes across Canada in temperature, precipitation, snow, ice, permafrost, and freshwater availability, as well as changes in Canada's three oceans. Among other things, it concludes that past and future warming in Canada is and will continue to be, on average, double the magnitude of global warming.

24. The Report also provides modeling projections of future temperature and precipitation in Canada based on low and high emissions scenarios, including warning of:
 - a. Increased acidity and decreased oxygenation of the three oceans surrounding Canada;
 - b. Changes in precipitation patterns;
 - c. Increased incidences of extreme weather, the impacts of which include inland flooding, drought and wildfire, coastal flooding, and extensive ice-free periods in the Arctic; and
 - d. Increases in daily hot extremes and heavy rainfall events, as well as declines in snow and ice cover.
25. Canada's coastline, which is the longest in the world, will also be significantly impacted by climate change, including changes in relative sea level, rising water temperatures, increased ocean acidity, and loss of sea ice and permafrost.
26. The impact of climate change is not uniform or consistent across Canada. This is particularly so given the size and topographical diversity of Canada's land mass. This inconsistency and variance of impact on a national level is reflected in a number of ways, including in extreme weather events.
27. For example, extreme weather events are expected to become increasingly frequent, such

as:

- a. Changes in temperature and precipitation patterns have made the wildfire season longer; and
 - b. Heavy-rainfall induced flooding events.
28. Also, and for example, Indigenous Peoples are vulnerable to climate change and they experience unique challenges. Indigenous Peoples have a strong cultural connection to the land, water, and air. They also contribute vital knowledge, experience, and leadership to adaptation efforts across Canada.
29. Climate change also poses risks to the general health and well-being of Canadians, including:
 - a. More frequent and severe extreme weather events increase the risk of physical injury, illness, and death;
 - b. Heat waves and higher temperatures can cause heat-related illness and death, as well as exacerbate existing health conditions. Higher temperatures also contribute to increased air pollution and pollen production, worsening allergies and asthma;
 - c. Smoke from wild fires impacts air quality; and
 - d. Other potential impacts on Canadians' health and well-being result from risks to food security and water safety, and the likely increasing prevalence and spread of potentially life-threatening diseases.
30. Canada will also be impacted by increased global unrest caused by climate change. For example, sea level rise will lead to the flooding of coasts worldwide, with some small island States possibly becoming completely immersed. The impacts of flooding in low elevation countries as well as drought, desertification, and food shortages in other places, may lead

to increasing regional tensions that are likely to trigger increased migration pressures on countries like Canada.

2. Addressing Climate Change Requires a Global Response

31. In addition to scientific and environmental considerations identified above, addressing climate change requires an international effort engaging a multitude of complex policy and legislative considerations. These include matters as diverse as geopolitical relations, intergovernmental affairs, energy, land use planning, urban infrastructure, transportation and the general state of the economy.
32. Because the impact of greenhouse gases in the atmosphere is the same regardless of where they are emitted, addressing climate change is a global responsibility. In the last decade, the international community has recognized that tackling climate change has become an increasingly urgent priority.
33. The United Nations has identified climate change as an international concern that cannot be contained within geographic boundaries and which therefore requires international cooperation to address. This international focus on the global risks and responsibilities of climate change led to the UN's adoption of the *UNFCCC* in 1992. There have been subsequent international agreements and actions under the *UNFCCC*.
34. The *UNFCCC* acknowledges that climate change and its adverse effects are a common concern of humankind. Its ultimate objective is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." The preamble to the *UNFCCC* provides that "the global nature of climate change calls for the widest possible cooperation by all countries

and their participation in an effective and appropriate international response”.

35. The *UNFCCC*'s mandate and related work are informed by the IPCC, an intergovernmental body of the UN whose aim is to provide objective, scientific information relevant to understanding the scientific basis of the risk of anthropogenic climate change, as well as its various impacts and risks and possible response options. It is the undisputed leading global authority in this regard.
36. The Government of Canada is committed to fighting climate change both through action to reduce domestic emissions and through multilateral efforts to support effective international action. Dangerous levels of GHGs in the atmosphere is a global issue requiring action by all emitters and international co-operation.
37. To enable and support effective action, the *UNFCCC* established the “Conference of the Parties” (“COP”). All states that are Parties to the *UNFCCC* are represented at the COP.
38. The COP reviews implementation of the *UNFCCC* and makes decisions necessary to achieve the objectives of the Convention. The *Kyoto Protocol*, the *Copenhagen Accord*, and the *Paris Agreement* are each outcomes from key COP meetings:
 - a. In December 1997, the COP adopted the *Kyoto Protocol*, which established specific reduction commitments.
 - i. Canada ratified the *Kyoto Protocol* in December 2002 and committed to reducing its GHG emissions for 2008-2012 to 6% below 1990 levels.
 - ii. However, Canada submitted notification of its withdrawal from the *Kyoto*

Protocol in December 2011.

- b. In December 2009, the COP took note of the *Copenhagen Accord*, in which the endorsing Parties underlined that “climate change is one of the greatest challenges of our time.” The *Copenhagen Accord* recognized the scientific view that the increase in global temperature should be below 2 degrees Celsius to achieve the ultimate objective of the *UNFCCC*.
 - i. Canada joined the *Copenhagen Accord* in 2009 and pledged to reduce its GHG emissions by 17% from its 2005 levels by 2020.
 - ii. Canada is not currently on track to meet this target. However, 2020 emissions levels will not be determinable until 2022 at the earliest.
 - c. The international community has continued to recognize that combatting climate change is an increasingly urgent priority. Canada has continued to commit to this international fight. In December 2015, Canada and 194 other countries committed to strengthen the global response to climate change through adoption and implementation of the *Paris Agreement*.
39. In adopting the *Paris Agreement*, the signatories formally recognized “that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global emissions.”
40. The signatories agreed to accelerate and intensify the actions and investments needed for a

sustainable low-carbon future. The *Paris Agreement* “aims to strengthen the global response to the threat of climate change” by “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.

41. Canada ratified the *Paris Agreement* on October 5, 2016, which entered into force in November 2016.
42. Under the *Paris Agreement*, all signatories must report and account for their progress made towards achieving their nationally determined contributions. Canada first communicated its intended Nationally Determined Contribution (“iNDC”) on May 15, 2015, including a target to reduce its emissions by 30% below 2005 levels by 2030. When Canada became a party to the *Paris Agreement*, it reconfirmed this target and formalized its iNDC as its Nationally Determined Contribution (“NDC”) to the *Paris Agreement*.
43. Canada continues to engage actively in the *UNFCCC* and other international fora to protect the integrity of the *Paris Agreement* and ensure that effective mechanisms are in place to support its implementation. At *UNFCCC COP24* in Katowice, Poland (December 2018), the Parties adopted a detailed package of technical guidelines (also known as the “Paris Rulebook”) which describe how Parties are to implement their respective obligations under the Agreement in a robust and transparent manner.
44. At the same time, Canada promotes climate action in its broader international engagement and contributes both financial and in-kind resources to international climate change efforts. This includes: action on emissions from global shipping and aviation under the International Maritime Organization and International Civil Aviation Organization,

respectively; cooperation under the Montreal Protocol to phase out powerful greenhouse gases known as hydrofluorocarbons (“HFCs”); and Canada’s contribution of \$2.65 billion in climate finance to support developing countries’ transition to low carbon economies and efforts to adapt to the impacts of climate change.

3. The Future Impacts of Climate Change Are Not Certain and Are Dependent on Numerous Factors

45. Canada’s efforts to combat climate change are not, on their own, sufficient to address global climate change. Rather, the efficacy of any response to climate change is dependent on coordination and actions on a global scale. Nonetheless, Canada’s participation in this global initiative is essential and encourages actions by major, larger emitters.
46. As defined by Article 2 of the *UNFCCC*, its objective is “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. Scientific assessment reports by the IPCC have made clear that adverse impacts have already been observed at current levels of global warming, impacts of climate change increase with the magnitude of global warming, and that the risk of abrupt and irreversible changes increase as the magnitude of warming increases. Accordingly, the Paris Agreement articulated a goal of holding the increase in global average temperature to well below 2°C above preindustrial levels and pursuing efforts to limit the increase to 1.5°C, recognizing that this would significantly reduce the risks and impacts of climate change.
47. In addition, stabilization of global average surface temperature does not imply stabilization for all aspects of the climate system. Shifting biomes, re-equilibrating soil carbon, ice sheets, ocean temperatures and associated sea level rise all have their own intrinsic long

time-scales that will result in ongoing changes for hundreds to thousands of years after global surface temperature has been stabilized.

48. While the science can provide projections related to the progress and impacts of climate change based on scenarios of possible future emissions of GHGs, there is an inherent level of uncertainty regarding any forecast of future GHG emissions. This is largely contingent on key uncertainties in any analysis: economic growth, the pace of technological change and world energy prices.
49. The Government of Canada reports its projected future GHG emissions through two scenarios: the Reference Case and the Additional Measures Case. In accordance with *UNFCCC* guidelines, when reporting to the *UNFCCC*, the Reference Case is referred to as the ‘with measures’ scenario, and the Additional Measures case is referred to as the ‘with additional measures’ scenario. Canada’s emissions projections now also include a Technology Case, which is an exploratory scenario that includes more optimistic assumptions about clean technology adoption in a number of sectors.
50. Projections in the 2019 ‘Reference Case’ are based on federal, provincial and territorial policies and measures in place as of September 2019. This projection assumes governments take no further climate action from September 2019 onward. In this scenario, emissions are projected to be 673 Mt in 2030, or 28 Mt below last year’s reference case forecast of 701 Mt presented in Canada’s Greenhouse Gas and Air Pollutant Emissions Projections (2018). This progress is primarily driven by measures implemented in 2019, like pricing carbon pollution, the CleanBC plan, and projects developed with provinces and territories under the Low Carbon Economy Challenge Fund.

51. Projections in the 2019 ‘Additional Measures Case’ include federal, provincial and territorial policies and measures from the ‘Reference Case’ as well as those that have been announced, but not yet fully implemented as of September 2019. An example of such a measure would be the Clean Fuel Standard, which is being developed but is not yet implemented. Under the Additional Measures Case, emissions are projected to be 603 million tonnes by 2030. As mentioned above, the projections also include a Technology Case; under this scenario, emissions would be 13 million tonnes lower in 2030 than in the Additional Measures Case.
52. The contribution from Land Use, Land-Use Change and Forestry (“LULUCF”) is projected to reduce Canada’s emissions by a further 15 million tonnes in 2030, bringing the total to 588 million tonnes. This is 227 million tonnes below projections published in 2015, prior to the adoption and implementation of the *Pan-Canadian Framework* discussed below.
53. Current estimates do not yet fully account for future reductions from green infrastructure, clean technology and innovation. In addition, new commitments, as indicated in the December 2019 Minister’s mandate letters, are not yet included in the 2019 projections. These include efforts to increase clean electricity, greener buildings and communities, electrification of transportation, and nature-based climate solutions. As policies to meet these commitments are elaborated and these initiatives are implemented, they will be included in Canada’s annual emissions modelling reporting.

4. Domestic Initiatives

54. Notwithstanding that climate change is fundamentally a problem of global creation requiring a response founded on international co-operation, Canada’s share of world

cumulative emissions since 1990 has been below 2% and is expected to continue to decline, based on the mitigation measures that Canada has implemented and its declining emissions intensity per unit of GDP and per capita. In addition, emissions continue to grow in emerging markets and developing countries. For example, in 2014, China overtook the U.S. as the world's largest GHG emitter and in 2014 accounted for 26% of total global emissions.

55. At a domestic level, each level of government has powers to protect the environment. For instance, with respect to issues relating to air, the provinces have jurisdiction over most types of industries, including mining and manufacturing, and therefore they also have jurisdiction to regulate emissions from these industries. The Parliament of Canada, in turn, may also regulate air emissions from multiple sources pursuant to its own powers over matters such as criminal law or federal property.
56. This shared nature of environmental jurisdiction makes close co-operation among the federal, provincial, territorial, and Aboriginal governments important to Canada's environmental well-being and to effective domestic action.
57. The Government of Canada provides regular reporting on both federal-only and on all national climate change related measures and outcomes. These include:
 - a. Biennial Reports on Climate Change (provided every 2 years to the *UNFCCC*);
 - b. An Annual Synthesis Report on implementation of the Pan Canadian Framework;
and,
 - c. National Communications to the *UNFCCC* (provided every 4 years).

58. The *UNFCCC* requires annual reports on national GHG inventories from its member states – including Canada – defining GHGs as “those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.” National reporting is therefore required for seven GHGs: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).
59. Canada’s national GHG inventory reports are an authoritative source of information on GHG emissions in Canada, prepared in accordance with the *UNFCCC* Reporting Guidelines.
60. Canada submitted its most recent National Inventory Report (“NIR”) to the *UNFCCC* on April 15, 2019, reporting emissions estimates between 1990 and 2017. These estimates show that, since 2005:
 - a. Annual emissions fluctuated between 2005 and 2008, dropped in 2009, then gradually increased until 2014.
 - b. Emissions dropped slightly in 2015 and again in 2016 before slightly increasing in 2017.
 - c. Canada’s emissions in 2005 were 730 megatonnes of carbon dioxide equivalent (Mt CO₂e). Canada’s 2017 emissions were 716 Mt CO₂e. This is a net decrease of 15 Mt or 2%, from 2005 emissions.
 - d. Canada’s economy has grown more rapidly than its GHG emissions: the emissions intensity for the entire economy (GHG per Gross Domestic Product

[GDP]) has declined by 20% since 2005. Since 1990, emissions intensity has declined by 36%.

61. Canada's 2020 target under the *Copenhagen Accord* is 606 Mt CO₂e and Canada's 2030 target under the *Paris Agreement* is 511 Mt CO₂e.
62. GHG emissions and related trends vary within Canada and from province to province. For example:
 - a. Since 2005, GHG emissions:
 - i. Have increased in Newfoundland and Labrador, Manitoba, Saskatchewan, Alberta, and Nunavut.
 - ii. Have decreased in Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, British Columbia, Northwest Territories, and Yukon.
 - b. Ontario's emissions reductions are primarily due to the closure of coal-fired electricity generation plants, coupled with additional complementary measures.
 - c. In British Columbia, 5 to 15% of the emissions reductions have been attributed to carbon pricing.
 - d. The top five emitters in 2017 were Alberta, Ontario, Quebec, Saskatchewan, and British Columbia.
63. As a result of the variance in emissions and related trends across the country, and prior to ratifying the international *Paris Agreement* in October 2016, the Prime Minister met with

all provincial and territorial premiers (collectively, the “First Ministers”) to discuss the economy and action required across the country to address climate change. At that meeting, in Vancouver in March of 2016, the First Ministers collectively committed to implement GHG mitigation policies in support of meeting or exceeding Canada’s *Paris Agreement* target (30% below 2005 levels by 2030) and agreed to work together to develop a pan-Canadian framework on clean growth and climate change.

64. The *Vancouver Declaration* led to the establishment of four Federal-Provincial-Territorial working groups on four areas:

- a. Carbon Pricing Mechanisms (“Carbon Pricing Working Group”): The Carbon Pricing Working Group’s mandate was to “provide a report with options on the role of carbon pricing mechanisms in meeting Canada’s emission reduction targets, including different design options taking into consideration existing and planned provincial and territorial systems”;
- b. Specific Mitigation Opportunities (“Mitigation Working Group”): The Mitigation Working Group’s mandate was to “provide a report with options on how to promote clean growth and achieve a range of ambitious reductions in key sectors, including large industrial emitters, transportation, electricity generation and transmission, built environment, agriculture and forestry, and government operations as well as individual energy conservation actions”;
- c. Adaptation and Climate Resilience (“Adaptation Working Group”): The Adaptation Working Group’s mandate was to “to provide a report with options on a comprehensive approach to adapt to climate change impacts, support affected

communities—including Indigenous communities—and build greater resilience to these impacts”; and

d. Clean Technology, Innovation and Jobs (“Clean Technology Working Group”):

The Clean Technology Working Group’s mandate was to “develop options on how to stimulate economic growth, create jobs and drive innovation across all sectors to transition to a low-carbon economy, leveraging regional strengths”.

65. The working groups considered input from all Canadians. They met with Indigenous peoples and key stakeholders. They also reviewed the ideas and comments Canadians submitted online. Options presented in the working group reports were discussed at meetings of Ministers of the Environment and Ministers of Innovation and Economic Development held in October and November 2016. On the basis of these reports, the Ministers proposed the basis for a Pan-Canadian Framework on Clean Growth and Climate Change.
66. On December 9, 2016, the *Pan-Canadian Framework on Clean Growth and Climate Change* (“*Pan-Canadian Framework*”) was adopted by Canada’s First Ministers. The *Pan-Canadian Framework* is a national climate change plan. It includes commitments by federal, provincial, and territorial governments. It is the country’s overarching framework to reduce GHG emissions across all sectors of the economy, stimulate clean economic growth, and build resilience to the impacts of climate change.
67. The *Pan-Canadian Framework* recognizes that addressing climate change necessitates a collaborative approach among provincial, territorial, and federal governments. It further recognizes the importance of Indigenous Peoples as partners in the implementation of this

framework.

68. The *Pan-Canadian Framework* aims to achieve the behavioural and structural changes needed to transition to a low-carbon economy. It builds on the diverse array of policies and measures already in place across Canada to reduce GHG emissions. This multi-faceted approach is consistent with the approach recommended by international organizations and reflects the polycentric policy concerns related to climate change.
69. In particular, the *Pan-Canadian Framework* includes over fifty concrete measures under four key pillars aligned with the working groups established through the *Vancouver Declaration*:
 - a. pricing carbon pollution;
 - b. complementary actions to further reduce emissions across the economy;
 - c. measures to adapt to the impacts of climate change and build resilience; and
 - d. actions to accelerate innovation, support clean technology, and create jobs.
70. Central to the *Pan-Canadian Framework* is pricing carbon pollution, which recognizes the broad international consensus among scientists, economists, and other experts that carbon pricing is one of the most effective and efficient policy approaches to reduce GHG emissions. As stated by the World Bank Report of the High Level Commission on Carbon Prices, “A well-designed carbon price is an indispensable part of a strategy for reducing emissions in an efficient way.”
71. In 2016, the Government of Canada announced the Pan-Canadian Approach to Pricing Carbon Pollution, which aims to ensure that carbon pricing applies to a broad range of

industries and emissions sources across Canada, with increasing stringency over time (the “Pan-Canadian Approach”). The Pan-Canadian Approach gives provinces and territories the flexibility to implement their own carbon pricing systems, as long as they meet minimum federal stringency requirements. The federal government has also developed a federal carbon pricing system that applies in any jurisdiction that requests it or that does not implement its own systems that meets federal stringency requirements. Under the *Greenhouse Gas Pollution Pricing Act*, which received Royal Assent on June 21, 2018, the federal carbon pollution pricing system has two parts: a regulatory charge on fuel (Part 1) and a regulatory trading system for industry, known as the Output-Based Pricing System (“OBPS”, Part 2).

72. Carbon pricing is essential for Canada to meet its *Paris Agreement* targets. The most recent estimate is that carbon pricing across Canada could reduce GHG emissions between 61-85 Mt by 2030. Further, the carbon pollution price started at \$20/tonne in 2019 and rises \$10 per year to reach \$50/tonne in 2022. The price after 2022 has not yet been determined. If the price continues to rise, there would likely be greater reduction by 2030.
73. At the same time, relying on a carbon price alone to achieve Canada's international target would require a very high price. Accordingly, the *Pan-Canadian Framework* also outlines extensive complementary actions, including regulations on specific sources and investments to enable adoption of energy efficiency and low carbon measures, and to support clean technology research and innovation. For example, the Government of Canada’s Low Carbon Economy Fund supports the *Pan-Canadian Framework* by investing in projects that will generate clean growth, reduce GHG emissions, and help Canada meet its *Paris Agreement* commitments.

74. Complementary federal regulatory measures include:
 - a. Regulations that phase-out coal-fired electricity generation by 2030 and that set GHG emissions limits for natural gas-fired electricity generation;
 - b. Regulatory requirements to reduce methane emissions from the oil and gas sector by 40-45%;
 - c. Emissions standards for light and heavy-duty vehicles; and
 - d. Regulations to reduce emissions of HFCs.

75. Work is also underway to develop a Clean Fuel Standard that will help reduce emissions by promoting clean technology and lower carbon fuel use across the economy for homes, buildings and industry.

76. In 2018 and 2019, federal, provincial, and territorial governments continued the acceleration of major infrastructure projects including renewable energy projects, studies to identify promising electricity transmission-line interconnections between provinces, construction of zero emission vehicles, charging networks, and public transit initiatives.

77. The Government of Canada has committed more than \$3 billion to support clean technology in Canada and the growth of Canadian firms and exports. This includes:
 - a. \$1.4 billion through the Business Development Bank of Canada (“BDC”) and Export Development Canada (“EDC”) to support clean technology producers and “first of its kind commercial scale” clean technology projects;
 - b. Impact Canada’s Clean Technology stream, which has launched six clean

technology prize challenges which aim to unlock breakthrough solutions to the complex problems of decarbonizing aviation, modernizing power grids, designing better batteries, reducing energy use in mining, increasing the participation of women in the clean technology sector, and reducing reliance on diesel among northern and remote communities.

- c. \$400 million to recapitalize Sustainable Development Technology Canada's ("SDTC") Sustainable Development Tech Fund, which supports projects designed to develop and demonstrate new clean technologies that promote sustainable development; and,
 - d. Continued investment in research and development through the Energy Innovation Program, to promote clean technology and clean energy adoption in buildings, industry, electricity and transportation.
78. Additionally, the \$2 billion Low Carbon Economy Fund was established to support projects that reduce emissions and generate clean growth. In particular:
- a. In June 2017, the Government of Canada launched the Low Carbon Economy Leadership fund, which provides up to \$1.4 billion to provinces and territories that have adopted the *Pan-Canadian Framework*. This funding recognizes the key role provinces and territories play in implementing the *Pan-Canadian Framework* and addressing climate change. Provinces and territories were each eligible to receive \$30 million plus funding based on population. To date, ECCC has approved 48 active projects and funding of approximately \$1 billion. Some of the Leadership

Fund projects are provincial and territorial programs that further redistribute funding to a large number of projects.

- b. In March 2018, the Government of Canada launched the Low Carbon Economy Fund Challenge, which provides over \$500 million to leverage Canadian ingenuity to reduce GHGs and generate clean growth in support of the *Pan-Canadian Framework*. While funding decisions continue to be made, funded projects are supporting provinces and territories, municipalities, Indigenous communities and organizations, business, and not-for-profit organizations. To date, ECCC has approved 96 active projects and funding over \$414 million.
79. The Green Infrastructure-Climate Change Mitigation stream of the Investing in Canada Infrastructure Program is investing at least \$3.8 billion of its \$9.2 billion funding envelope in projects that increase generation of clean energy, increase capacity to manage more renewable energy, improve the energy efficiency of eligible buildings, and increase access to clean energy transportation and reduce reliance on diesel in rural and remote communities. Projects related to building resilience and adapting to the impacts of climate change are also supported under Green Infrastructure.
80. Adapting to current and future impacts of climate change is another central priority for Canada's climate action under the Pan-Canadian Framework. Adaptation measures can help protect Canadians from the risks associated with climate change, and build resilience to help ensure that society thrives in a changing climate. Taking action is a shared responsibility, requiring a collaborative approach, across sectors and jurisdictions, to reduce vulnerability and manage risks.

81. Under the *Pan-Canadian Framework*, governments have committed to take adaptation action through five priority areas: translating science and traditional knowledge into action, building resilient infrastructure, addressing the health impacts of climate change, supporting particularly vulnerable regions, and reducing climate-related hazards and disaster risks.

82. Some of the specific actions underway to address the health impacts of climate change include:

- a. Collaborative work with health regions to advance evidence-based adaptation measures to protect Canadians from extreme heat;
- b. Supporting HealthADAPT, a climate change and health adaptation capacity building program that will support health authorities in delivering projects that will help prepare for and respond to the impacts of climate change;
- c. The Federal Government's Infectious Disease and Climate Change Program, which among its total of 21 projects supports the Federal Framework on Lyme disease and its associated Action Plan;
- d. Support for First Nations and Inuit to undertake community-led adaptation projects through the Climate Change and Health Adaptation Program, addressing a wide range of health and climate change concerns including food security, vulnerability assessments, access to land and medicines, and mental wellness. In addition, the Canada-Métis Nation Accord, signed on April 13, 2017, includes provisions for the development of approaches to respond to specific health needs and priorities,

opportunities for the Métis Nation to engage with the federal government in health and wellness policy, program development and delivery, and more.

83. Some additional actions to support adaptation and resilience include:

- a. Launching the Disaster Mitigation and Adaptation Fund, a national merit-based program that will invest \$2 billion to support large-scale infrastructure projects to help communities better manage the risks of disasters triggered by natural hazards;
- b. Establishing the Canadian Centre for Climate Services to provide climate information products, tools and services to support adaptation decision making across the country, including a new climate data portal launched in 2019 (climatedata.ca);
- c. The First Nations Adapt Program, which supports projects to reduce disaster risk and enhance adaptation in Indigenous communities; and,
- d. The Climate Change Preparedness in the North Program, which works with Indigenous and northern communities, territorial and regional governments to fund climate change adaptation projects in Yukon, Northwest Territories, Nunavut, Nunavik and Nunatsiavut.

84. The Government of Canada has also established a Climate Lens as a requirement for projects seeking funding through Green Infrastructure, the Disaster Mitigation and Adaptation Fund and other funding envelopes. The Climate Lens encourages consideration of climate impacts and low-carbon options in the planning of infrastructure projects. It has two specific components: the GHG mitigation assessment, which measures the anticipated

GHG emissions impact of an infrastructure project; and, the climate change resilience assessment, which employs a risk management approach to anticipate, prevent, withstand, respond to, and recover and adapt from climate change related disruptions or impacts.

85. Short-lived climate pollutants (“SLCPs”), including black carbon, methane, ground-level ozone and hydrofluorocarbons, are air pollutants and greenhouse gases that have a near-term climate warming impact and can impact air quality. Recent studies indicate that action on SLCPs in conjunction with reductions of longer-lived GHGs such as CO₂ is needed to meet the temperature goals in the *Paris Agreement*.
86. Canada has taken steps to reduce emissions of SLCPs, including black carbon, and is continuing to work to achieve further reductions of air pollutants and SLCPs to address near-term warming and improve air quality. In July 2017, ECCC published the *Strategy on Short-Lived Climate Pollutants* as part of a holistic approach for meeting climate and air quality objectives.
87. The Arctic Council is an intergovernmental forum of Arctic States, Arctic Indigenous communities and other Arctic inhabitants created to promote cooperation, coordination and interaction on common Arctic issues, including short-lived climate pollutants such as black carbon, methane, tropospheric ozone and hydrofluorocarbons.
88. The Arctic Council’s *Framework for Action on Enhanced Black Carbon and Methane Emissions Reductions* was adopted by Canada and other Arctic States in 2015. An Expert Group on Black Carbon and Methane (“EGBCM”) was established the same year to advance pan-Arctic work in support of the Framework. In May 2017, Arctic States accepted a recommendation of the EBGCM to set a collective, aspirational goal to further

reduce emissions of black carbon from Arctic States by 25-33% below 2013 levels by 2025.

5. Future Plans for Climate Action

89. The Government of Canada has recently confirmed its commitment to enhance its efforts to reduce domestic GHG emissions. As set out in Minister of Environment and Climate Change Mandate Letter (2019), Canada has affirmed its commitment to implement the *Pan-Canadian Framework*, while strengthening existing and introducing new greenhouse gas reducing measures to exceed Canada's 2030 emissions reduction goal and beginning work so that Canada can achieve net-zero emissions by 2050. Adopting measures to combat climate change is also a central component of the mandate of the Deputy Prime Minister and several other Ministers.
90. As well, the Minister of Environment and Climate Change Canada will lead government-wide efforts to develop a plan to set Canada on a path to achieve a prosperous net-zero emissions future by 2050. This includes:
- a. Setting legally-binding, five-year emissions-reduction milestones based on the advice of experts and consultations with Canadians;
 - b. Working with the Minister of Innovation, Science and Industry and the Minister of Natural Resources to position Canada as a global leader in clean technology;
 - c. Working with the Minister of Natural Resources and provinces and territories to complete flood maps in Canada; and
 - d. Supporting the Minister of Natural Resources to operationalize the plan to plant two billion incremental trees over the next ten years, as part of a broader

commitment to nature-based climate solutions that also encompasses wetlands and urban forests.

91. Further, as announced through the 2019 Speech from the Throne and 2019 Ministerial Mandate Letters, and confirmed in the latest Biennial Report on Climate Change in January 2020, Canada will continue to take concrete action to reduce emissions and protect the environment, and will do so in a way that grows the economy and makes life more affordable. Among other things, this will include:
- a. significant investments in public transit;
 - b. using nature-based solutions, including planting two billion new trees to clean the air and make communities greener;
 - c. advancing legislation to support the future livelihood of workers and their communities in the transition to a low-carbon global economy; and
 - d. preserving Canada's natural legacy by protecting 25% of Canada's lands and 25% of Canada's oceans by 2025 and continuing efforts to reduce plastic pollution.
92. As further confirmed in the Biennial Report, Canada is determined to meet and exceed its *Paris Agreement* targets.

6. Youth Engagement

93. Youth engagement is an important aspect of Canada's strategy for climate action.
94. In May 2019, and following the Canada Youth Summit, the Prime Minister announced Canada's Youth Policy (the "Youth Policy"), which formally established the Government

of Canada's commitment to create meaningful opportunities for youth voices to be heard and respected in government decision-making, and that the Government of Canada provide accessible supports to meet the needs of youth.

95. The Youth Policy identifies six youth-identified priorities, one of which is "Environment and Climate Action". Under this priority, the Government of Canada recognizes that youth want to see further immediate action to protect the environment so that they, and future generations of Canadians, can inherit a healthy world. The Youth Policy recognizes that youth want Canada to protect its natural environment and address climate change in a process that emphasizes reconciliation with Indigenous Peoples. Finally, it states that young Canadians are motivated to find innovative solutions to environmental challenges, promote sustainable practices and lifestyles, and move towards a green economy in ways that respect the rights and values of Indigenous Peoples in Canada.
96. Further, in June 2019, Canada signed the international Lisboa+21 Declaration on Youth Policies and Programmes, which acknowledges the importance of meaningful youth participation, engagement and empowerment in policy-making and decision-making processes. The declaration commits Ministers Responsible for Youth to promote environmental policies and initiatives aimed at building the capacity of youth as a driving force for action required to address the challenges posed by climate change. Among other things, this includes promoting the meaningful participation and engagement of youth in climate action in order to mitigate climate-related disasters, and ensure a holistic approach to environmental, economic, and social sustainability for future generations.
97. The Prime Minister's Youth Council remains active and continues to identify environment

and climate action as a key priority for the council. In addition, ECCC continues to advance efforts to support youth engagement including in relation to climate change.

98. In particular, ECCC has undertaken the following in relation to youth:

a. In relation to the *UNFCCC*:

- i. Since 2015, ECCC has sent youth delegates to the UNFCCC COP21 Paris, COP22 Marrakech, and COP23 Bonn;
- ii. For COP24 (December 2018), held in Katowice, Poland, ECCC worked with Climate Action Network Canada to nominate Canadian youth on Canada's delegation. ECCC provided financial support to four Canadian youths to attend COP24 as delegates, including two members of the Prime Minister's Youth Council;
- iii. For COP25 (Madrid), ECCC provided financial support for four youth to participate in Canada's delegation – two each from the Climate Action Network Canada and the United Nations Association in Canada;
- iv. At both COP24 and COP25, Canada's youth delegates had the opportunity to meet with the Minister to provide their positions and priorities during negotiations.

b. In November 2016, ECCC hosted a Youth Summit on Climate Change in Ottawa.

The summit had youth meet in small groups with a program expert to discuss issues

linked to climate change, including sustainable food systems, transportation, clean energy, and communicating climate science. Over 100 youth attended the summit.

- c. In April 2019, ECCC convened the Young Champions for Nature Summit in Montreal – on the margins of the Nature Champions Summit. The summit engaged 50 Canadian youth on issues relating to terrestrial and marine conservation.
- d. In May 2019, the Prime Minister hosted 300 Canadian youth in Ottawa for the Canada Youth Summit. Conversations at the Youth Summit engaged environment and climate change including recycling, carbon tax revenues, reduction of single-use plastic, leadership and employment opportunities within the environmental field, and community energy systems for northern communities.
- e. At the 2018 G7 Environment Ministers Meeting in Halifax, Youth ClimateLab presented to G7 Environment Ministers and Outreach Community Ministers on the pivotal role youth can play in advancing climate action and the necessity to integrate these viewpoints.
- f. The *Pan-Canadian Framework* Implementation Office engages Canadian youth on climate change policy through responses to public inquiries and correspondence. Youth were also consulted through online services in the development of the *Pan-Canadian Framework*.
- g. The Zero-Emission Vehicle Youth consultation group provided experience and insight on the *Pan-Canadian Framework* goal of expanding the number of zero-emission vehicles on Canadian roads.

99. There are also a number of program and funding opportunities for youth made available through ECCC:
- a. The Government of Canada's Youth Employment and Skills Strategy ("YESS") aims to assist youth to develop skills and experiences to successfully transition into the labour market and is delivered by 11 departments and agencies, including ECCC. In Budget 2017, the Government of Canada renewed its commitment to youth employment by announcing \$395.5 million over three years to further expand the program, and continue to deliver 15,000 new green jobs.
 - b. The Science Horizons Youth Internship Program is part of YESS, which provides wage subsidies to eligible employers across Canada to hire recent post-secondary graduates for internships for up to 12 months in the environmental and STEM fields. Up to \$15,000 in funding is available to employers per internship. The program has been in place for more than 20 years and has delivered over 3,000 internship opportunities in Canada. In 2019-2020, the program received funding to support up to 900 internships.
 - c. The Climate Action Fund provides up to \$3 million to support projects delivered by students, youth, Indigenous Peoples and organizations, not-for-profit organizations, small and medium-sized businesses, and research and educational institutions. The objectives of projects funded under the program is to raise awareness of climate change and to build capacity in order to increase climate actions that contribute to Canada's clean growth and climate change plan outlined

in the *Pan-Canadian Framework*. From the 2019-2020 fund, 19 projects will receive funding.

- d. The EcoAction Community Funding Program is a national program that funds local action-based projects that produce measurable, positive effects on the environment. The 2019-2020 call for proposals funded 34 new projects that engaged Canadians and clearly demonstrated measurable, positive results related to the key environmental priority of fresh water.
 - e. Through the Canada Service Corps, the Government of Canada supports not-for-profit organizations across Canada to offer service projects in different communities based on different themes including climate and environment. The Canada Service Corps also provides micro grants for \$250, \$750, or \$1500 to help youth build and develop life skills and by giving back to their communities.
 - f. ClimateKids.ca is a website developed by ECCC in 2016 to empower kids and youth 8-to-15 years old to take action on climate change. The site introduces topics such as mitigation and adaptation, Canada's role in reducing climate change and renewable energy sources, and promotes knowledge, discovery, information sharing, and interaction among users.
100. Further, ECCC has adopted a number of measures to engage specifically with youth:
- a. In 2017, ECCC approved its External Youth Engagement Framework. The Framework was developed by youth at ECCC following broad consultations both

in ECCC and with external organizations. The Framework features six mechanisms including:

- i. Meaningfully engaging youth in the development of the Department's work;
 - ii. Working with policies and programs to create opportunities for youth;
 - iii. Developing a database of youth organizations across Canada;
 - iv. Creating space for youth engagement in Ministerial and Departmental events;
 - v. Developing online platforms for youth engagement; and,
 - vi. Creating a centre of expertise for ECCC on youth.
- b. The National Youth Network (the "NYN") supports students and young employees at ECCC. The NYN hosts regular events for employees across the Department including keynote speakers, career development workshops, networking opportunities, policy jams and appreciation events. It has over 700 members.
- c. The Innovation and Youth Engagement Division is the center of expertise on youth engagement for ECCC and facilitates internal and external engagement with Canadian youth, including through the NYN.

E. Legal Bases for Defence

1. The Plaintiffs do not have public interest standing

101. The Plaintiffs do not meet the criteria for public interest standing. In particular, the

statement of claim does not present a serious justiciable issue that is appropriate for judicial determination, as set out below.

2. The Plaintiffs' claims are not justiciable

102. Canada recognizes that 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 citizens towards this end. At the same time, the separation of powers within our system of democracy does not allow this Court to craft policy with respect to climate change in the manner proposed by the Plaintiffs in their claim.
103. The Plaintiffs do not challenge any particular law or the application of any legislation as violating their constitutional rights. Rather, they challenge the wisdom of the federal government's overall response to climate change and seek, by way of this claim, to order it to do something more to achieve a "stable climate system". In other words, the claim asks the courts to decide whether the executive is governing well and to require Parliament to further exercise its jurisdiction to regulate GHG emissions. These are matters that fall well outside the realm of permissible review by the courts and for this reason, are not justiciable.
104. Addressing climate change is the shared responsibility of a multitude of different actors, including both governmental and non-governmental institutions at all levels of jurisdiction – international, national, provincial, territorial, and local. As described above, while aspects of the fight against climate change involve legislating and regulating by the federal government, addressing climate change also necessarily includes negotiations with foreign governments, negotiations between the federal governments and the provinces and

territories, and funding allocations within the Parliamentary budgeting process.

105. Only the executive and legislative branches of government may make policy, pass laws and authorize the allocation of public funds. Nevertheless, the Plaintiffs ask the Court to step outside its judicial function and to involve the Court in crafting a policy response to global climate change. This falls outside the role of the courts.
106. Further, the relief sought in the claim is fundamentally vague and unmanageable. There is no legal standard for assessing whether Canada's response to climate change is constitutionally adequate and/or consistent with the achievement of a "stable climate system". Moreover, the relief sought is dependent on a multitude of extra-judicial factors, such as international negotiations and the acts or omissions of other countries and non-governmental actors. Given the nature of global climate change, the relief sought would require the court to supervise and direct the government's development, implementation and compliance with a climate change plan for several decades if not longer.

3. The Government of Canada does not have legal obligations towards particular resources as alleged by the Plaintiffs

a. Common law

i. Public trust doctrine

107. The public trust doctrine, as articulated by the Plaintiffs, is not a part of the Canadian common law. Alternatively, if there is such a doctrine, it does not apply in the manner proposed by the Plaintiffs. The claim is overbroad and includes land and resources not fully owned or controlled by the Government of Canada.

ii. Unwritten constitutional principles

108. The preservation of particular environmental resources is not one of the few unwritten constitutional principles recognized in Canadian law. In the alternative, if the preservation of environmental resources is an unwritten constitutional principle, such a principle is not an independent basis to invalidate legislation or government policy.

iii. Parens patriae or other fiduciary duties

109. The Crown's *parens patriae* jurisdiction does not include the duties outlined by the Plaintiffs. There is no recognized relationship giving rise to fiduciary duties in this case, and the test to establish an *ad hoc* fiduciary duty cannot be met.

4. There is no breach of the Plaintiffs' section 7 or 15 rights

a. Neither section 7 or 15 create positive obligations

110. The Plaintiffs' allegations do not give rise to valid claims under sections 7 or 15 of the *Charter* because these sections of the *Charter* do not impose positive obligations to legislate or mobilize public resources in any particular way.

111. The Plaintiffs' claims do not challenge any specific law or government action with respect to addressing climate change. Rather, the claims are grounded in broad allegations that the federal government has generally failed to take sufficient action to address climate change. This type of claim does not fall within the parameters of protection under either section 7 or 15 of the *Charter*.

i. Section 7 is not engaged where the impugned conduct is speculative/involves other parties

112. Further, with respect to section 7, the Plaintiffs' claims do not engage section 7 because they are inherently speculative and fail to demonstrate any deprivation of the rights to life,

liberty or security of the person that can be attributed to the federal government.

113. The Plaintiffs' claims necessarily engage the actions of foreign governments and other actors besides the federal government. Even if governments in Canada were to adopt measures that would reduce their share of GHG emissions needed to limit global warming to 1.5 degrees Celsius, this would not, on its own, be sufficient to ensure a reduction of global warming. This is because the rate of warming is dependent on a myriad of external factors, which include the actions of foreign states and other actors involved in the global fight against climate change.

114. Achieving the federal government's international objectives depends on the occurrence of future and uncertain events. Among other things, these include technological advances and innovation and the projected increase in stored carbon (carbon sequestration) in forests, soils and wetlands.

ii. The alleged conduct does not engage section 15 of the *Charter*

115. Section 15 of the *Charter* is engaged only where a law or government action creates a distinction based on an enumerated or analogous ground that is discriminatory in that the distinction perpetuates arbitrary disadvantage on the claimants.

116. The Plaintiffs' claims do not engage the protection of section 15 as this section cannot be invoked with respect to government inaction. The Plaintiffs' claims under section 15 are based on alleged insufficiency or inaction on the part of Canada with respect to its response to climate change. As with the Plaintiffs' section 7 claim, this claim is inherently speculative. The Plaintiffs' claim does not allege that any specific law, measure or government action has denied them equal protection or benefit of the law as compared to

others.

117. Further, the government's alleged inaction does not create a distinction, burden or disadvantage between the Plaintiffs and others based on a prohibited ground of discrimination. The true nature of the Plaintiffs' claim is that younger generations will be more affected by climate change. The appellant alleges a generational distinction (being born and living at some point in time) rather than an age-based distinction. Generational distinctions are not based an immutable characteristic of personal identity and cannot be characterized as an analogous ground under section 15 of the *Charter*.
118. For these reasons, the Defendants request that the Claim be dismissed.

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