

FEDERAL COURT

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

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

DEFENDANT

REPRESENTATIVE PROCEEDING

STATEMENT OF CLAIM

FACTS

A. Overview

1. Global warming is an existential threat to all human societies and to many other life forms worldwide. It is caused by the cumulative release of greenhouse gases by human activity in the industrial era, principally from the burning of fossil fuels. The effects of global warming are not merely hotter lands and seas but include a host of extreme weather and climate effects ranging from droughts and wildfires to floods and rising sea levels.
2. The plaintiffs are Wet'suwet'en House groups of the Likhts'amisyu Clan governing themselves and their *yintah* or land territories under their own indigenous laws. The plaintiffs experience global warming in two ways – as a

threat and as a responsibility. It is a threat to their identity, to their culture, to their relationship with the land and the life on it, and to their food security. It is a responsibility because large fossil-fuel infrastructure projects are proposed to cross their territories. Under the Wet'suwet'en legal order, a House group is responsible to other Wet'suwet'en, to other peoples and to the spirit in the land for all acts on its territories.

3. The defendant Crown in the right of Canada has repeatedly failed, and continues to fail, to fulfil its constitutional duty to not infringe on the plaintiffs' constitutional rights and freedoms due to its unwillingness to establish and to implement the laws, policies and actions needed to ensure that Canada meets its international commitment made in Paris in 2015 to keep mean global warming well below 2 °C above pre-industrial levels.
4. Since at least 1988, the defendant has assured the plaintiffs and all Canadians that it would establish laws and policies to meet its international climate commitments to keep global warming to tolerable levels. Such laws and policies were either not implemented, were not enforced, or were overruled causing Canada's emissions of greenhouse gases to rise alarmingly. The level of accumulated gases in the earth's atmosphere is now so high that only drastic emission reductions can keep the warming below catastrophic levels.
5. Like many indigenous peoples in Canada and across the globe, the Likhts'amisyu Houses' identity, culture, legal order and sustenance is bound up with their land and fishing territories. They cannot be who they are at some other place. Already, as the result of changing climate they have seen forest insect infestations, wildfires, and a decline in forest food animals on their territories. They have seen a decline in their salmon fishery that was the heart of their food security such that they have not been able to fish their preferred salmon species for nearly two decades. These harms are predicted to increase as the earth's climate continues to warm beyond the current 1 °C above pre-

industrial levels.

6. The defendant can meet its *Paris Agreement* commitment to keep Canada's fair share of greenhouse gas emissions within levels that contribute to the global temperature rise of well below 2°C above pre-industrial levels in several ways. Because of the defendant's inaction on climate change over the last three decades, these options are now difficult and are made even more difficult with the defendant's approval of high-emission fossil-fuel export projects such as those proposed for the plaintiffs' territories. These projects and their related infrastructure are not only allowed to emit copious amounts of greenhouse gases, the permits and approvals given to them by the defendant will allow them to continue emitting for at least 40 years, thus blasting their way past Canada's critical reduction target in 2030 and its net zero emission target in 2050.
7. The plaintiffs therefore seek a court order declaring as unconstitutional those statutory provisions that permit such projects to continue their high greenhouse gas emissions with no provision for rescission in the face of escalating global warming. In particular, the plaintiffs ask the Court to declare that if the defendant is unable to meet its international global warming obligations and, in particular, its *Paris Agreement* commitment to keep Canada's greenhouse gas emissions consistent with a mean global warming of well below 2°C above pre-industrial levels, or in the event that the defendant considers global warming to be a national emergency, the defendant may withdraw its approval for the continued operation of such projects.
8. The plaintiffs also seek an order requiring the defendant to establish an ongoing independent accounting of Canada's cumulative greenhouse gas emissions to inform the defendant whether it is meeting its *Paris Agreement* commitments.

B. The Parties

9. The plaintiffs, Misdi Yikh and Sa Yikh, are each a *yikh* or House group under Wet'suwet'en indigenous law. The two Houses comprise the Wet'suwet'en Likhts'amisyu *didikhni* or Fireweed Clan. The plaintiff Lho'imggin is the *dini ze'* or Head Chief of Misdi Yikh. The plaintiff Smogilhgim is the *dini ze'* or Head Chief of Sa Yikh. Each *dini ze'* speaks for his House and is responsible for the welfare of his House members and for the protection of his House's possessions, including its territories. The membership of a Wet'suwet'en House and the responsibilities of its Chief and members arise out of the interaction of kinship and contractual relationships.

Kinship

10. Every Wet'suwet'en person is born into his or her mother's lineage, which will belong to one of five Clans: C'ilhts'ekhyu (Big Frog); Likhsilyu (Small Frog); Gidimt'en (Wolf/Bear); Likhts'amisyu (Fireweed); and Tsayu (Beaver).
11. A person may also be adopted as a child or as an adult from one lineage into another lineage, usually of the same Clan.
12. A person may not marry a member of his or her own Clan. Marriage is thus a contractual relationship that is not only an alliance between two individuals, but is also an alliance between two lineages, each from a different Clan.
13. A House is comprised of one or more lineages.
14. The House has a unique set of possessions under Wet'suwet'en law, which it manages for the benefit of the House as a whole. These possessions and attendant responsibilities include:
- a. exclusive land and riverine fishing territories;

- b. a set of *cin k'ikh* or oral histories, which record the House's identity, its relationships with other Wet'suwet'en and foreign groups, and how it acquired its other possessions, including its territories;
 - c. a set of *nitsiy* or crests, which are images depicted on poles, on worn regalia, and on other articles, and which encapsulate events recorded in the oral histories;
 - d. a set of feast names, which the House may bestow on qualified members and will announce at an appropriate feast hosted by the House and the Clan to be witnessed and validated by the guests from Houses of the other Clans.
15. Each Wet'suwet'en House is also responsible for any harm that may come to others because of the actions of House members or of third parties on its territories.
16. Each Wet'suwet'en House group has a *dini ze'* or Head Chief who has a duty, among other things:
- a. to protect the welfare and health of House members;
 - b. to protect the House's possessions, including its territories;
 - c. to speak for the House to other Wet'suwet'en Houses, to other indigenous groups, and to non-indigenous entities;
 - d. to ensure that the House meets its legal obligations; and

- e. to enhance the House's standing among the Wet'suwet'en and other peoples.
17. A Head Chief does not have a power of command over the members of his or her House. He or she leads by example, showing generosity, restraint and good judgement. For major decisions, a Head Chief may embark on a consensus-building process within the House, including consulting with other Chiefs within the House, known as Wing-chiefs. The Head Chief cannot, however, breach his or her duty to protect House members and House possessions.
 18. If a Head Chief speaks or acts on matters contrary to the House interests, he or she will lose support of the House's members at the feast and the House will lose standing within the Wet'suwet'en. For repeated disregard of the House interests or for breach of the duty to protect the House members and territories, a House may remove a holder from the Head Chief position.
 19. There is no overarching authority in Wet'suwet'en law above that of the House through its Head Chief and other Chiefs of the House. Where a House's actions effect its whole Clan or Wet'suwet'en Houses of other Clans, they will be consulted. There are no Clan Chiefs and there is no Chief or council governing the Wet'suwet'en as a people.
 20. A House's consensus decision may be validated by the Wet'suwet'en Houses as a whole at a *balhats* or feast. A feast is a publicly-announced gathering to which the members and, particularly, the Head Chiefs of other Houses are specifically invited. The feast itself is a public event usually hosted by a particular House, supported by the other Houses in its Clan. The hosts provide food and gifts to the members of the guest Houses from the other Clans. The host House announces the particular decision it has made. The guest Houses, through their Head Chiefs or speakers, will then formally speak to validate the host's legal ability to make and act on its announced decision. Those guests

who do not speak validate the host House's decision by accepting the food and gifts offered by the hosts.

21. In practice, before any feast, there are a many informal and semi-formal meetings at which ideas are introduced, discussed and a consensus built within the host House and among the other Wet'suwet'en Houses.
22. The most common feast currently held among the Wet'suwet'en is the announcement of a House's decision to appoint a successor to its Head Chief name after the death of the previous holder of the name. For the succession to a Head Chief's name, a series of public feasts may be held, beginning with the funeral feast of the deceased name-holder and culminating with the new Head Chief assuming his or her full range of duties.
23. Once a House's decision has been validated by the Houses of the other Clans, it cannot be revisited except at a subsequent feast.

Alliances

24. One form of contractual alliance between lineages and between Houses is marriage that, as noted above, is properly between members of different Clans, thus cross-cutting matrilineal descent lines.
25. A practical result of the marriage alliance is that each child of the marriage is born into the lineage, House and Clan of their mother. The father's lineage, House and Clan contribute to that person's status, education, and assist the person's House and Clan at the feasts on the person's death.
26. In addition, both the spouses and the children of a House member may be granted use rights on the House's territories and fishing sites.

The Likhts'amisyu Houses

27. The succession of Alphonse Gagnon to the name of Lho'imggin, Head Chief of Misdzi Yikh (Owl House) of the Likhts'amisyu Clan was validated by the Houses of the other Wet'suwet'en Clans at a feast in Witset (formerly Moricetown) on October 5, 1998.

28. Misdzi Yikh has one land territory, Tselh Tse K'iz, located on the south side of the western end of Francois Lake.

29. The succession of Warner Naziel to the name of Smogilhgin, Head Chief of Sa Yikh (Sun House) of the Likhts'amisyu Clan was validated by the Houses of the other Wet'suwet'en Clans at a feast in Witset on October 15, 2016.

30. Sa Yikh has five land territories:
 - a. Cas Nghen, located in the Suskwa River watershed;

 - b. Ggusgi Be Wini, located north of Houston;

 - c. C'idi To Stan, located in the lower Morice River watershed;

 - d. Lho Kwah, located in the upper Clore River watershed; and

 - e. Misdzi Kwah, located on the north side of the western end of Francois Lake.

31. In addition to river and lake fishing sites on its land territories, each Likhts'amisyu House holds discrete fishing sites on the main stem Bulkley-Morice river, especially at the canyon at Witset. Here, the river's narrowing causes migrating salmon to swim near the canyon walls and thus be susceptible to shore-based fishing methods. All salmon species are caught here, but the

Wet'suwet'en have preferred sockeye due to their nutritious oil content and their superior flavour.

The defendant

32. The defendant, Her Majesty the Queen in the Right of Canada, is named as prescribed by s. 48(1) of the *Federal Courts Act* and its Schedule. The defendant is referred to as Canada in this Statement of Claim, which may refer to Parliament or the executive depending on the context.

C. Global Warming

33. Global climate change is an urgent threat to humanity. Greenhouse gases (“GHGs”) in the atmosphere enable global warming, causing climate change and creating national and international risks to human health and well-being.
34. Burning fossil fuels releases GHGs into the earth’s atmosphere, which cause global climate change. GHGs trap solar energy in the earth’s atmosphere. Higher levels of GHGs trap more energy, increasing air and water temperatures, which are significantly affecting global climate. Carbon dioxide (CO₂) is the most abundant GHG emitted by human activity. Atmospheric CO₂ levels are higher now than at any time in the last 400,000 years – and are still climbing. GHG emissions create a risk to human health and the environment upon which life depends.
35. The climate effects of long-lived GHGs, such as CO₂, are proportional to the cumulative emissions of those gases. The long-term effects of CO₂ emissions therefore depend only on the cumulative amount of those emissions and not on the rate or the intensity of the emissions at any particular time or in any particular period.
36. A carbon budget defines the total CO₂ that can be emitted over all times in order to limit warming to a mean global temperature target. To limit global

warming to below 2°C, total cumulative CO₂ emissions need to remain below about 2,800 billion tonnes. About 2000 billion tonnes of CO₂ have already been emitted globally during the industrial era and remain in the atmosphere.

37. Canada's share of the remaining global carbon budget may be allocated on the basis of Canada's share of current global emissions (called an emissions-based carbon budget) or, more equitably, allocated on the basis of Canada's share of the world's population (called an equity-based carbon budget). Canada's allocation of the global carbon budget – its Cumulative Emissions Target – is the most accurate measure of the country's contribution to limiting global warming.

D. Canada allows GHG emissions that cause global warming

Canada has jurisdiction to regulate GHGs

38. Parliament has the jurisdiction to legislate for the peace, order and good government of Canada under s. 91 of the *Constitution Act, 1867*. The cumulative effect of GHG emissions is a matter of national concern under s. 91 because, regardless of their origin, GHG emissions have Canada-wide and global impacts.
39. Canada has direct jurisdiction to regulate GHG emissions from road vehicles, fossil-fueled electrical generation, and fossil fuel developments offshore, in the Arctic and in the Northwest Territories.
40. Canada has indirect jurisdiction to regulate GHG emissions by:
 - a. subsidising or taxing fossil fuel production and fossil fuel use;

- b. approving the construction and operation of oil and gas processing facilities and pipelines that fall under federal jurisdiction; and
 - c. purchasing fossil fuel infrastructure.
41. In particular, Canada has had, and continues to have, the jurisdiction to approve many high GHG-emitting projects such as natural gas pipelines and liquefied natural gas (LNG) infrastructure through its environmental assessment legislation, including the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 (“*CEAA, 2012*”), and the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 (“*IAA*”). None of these statutes, however, enable the government executive to unilaterally withdraw or fundamentally alter its approval of a project in the face of a climate emergency.

Canada has failed to meet its international commitments to reduce GHGs

42. Canada has repeatedly failed to effectively implement its international commitments to reduce or limit its GHG emissions, including those made at the 1988 International Conference on the Changing Atmosphere, the 1992 United Nations Framework Convention on Climate Change, the 1998 Kyoto Protocol, the 2009 Copenhagen Accord, and the 2010 Cancun Agreement.
43. None of Canada’s international commitments listed above, even if met, would have or will enable it to make its equitable contribution to reducing global warming to non-catastrophic levels.
44. In December, 2015, Canada and 194 other countries adopted the *Paris Agreement* in which they committed to strengthen the global response to the threat of climate change. The parties formally recognised “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.”

45. The central aim of the *Paris Agreement* is to hold “the increase in global average temperatures to well below 2 °C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.” Each party must report and account for its progress towards achieving a nationally determined contribution to reduce its annual GHG emissions by 2030 (“Nationally Determined Contribution”). The *Paris Agreement* requires each party’s Nationally Determined Contribution to “reflect its highest possible ambition.”
46. The *Paris Agreement* thus establishes two main commitments for each signatory. The first is to hold global temperature increases to between 1.5 °C and 2 °C – what might be called a Temperature Target. The second commitment is for each signatory to establish and follow its Nationally Determined Contribution – what might be called an Annual Emissions Target. The use of an Annual Emissions Target is a less accurate and less fair measure of a country’s contribution to meeting the Temperature Target than the Cumulative Emissions Target or carbon budget described above in paragraphs 36 and 37.
47. On October 5, 2016, Parliament ratified the *Paris Agreement*. Canada confirmed that its Nationally Determined Contribution is to reduce its annual GHG emissions by 30 percent below 2005 levels by 2030.
48. On June 17, 2019, Parliament passed a non-binding declaration that “Canada is in a national climate emergency which requires, as a response, that Canada commit to meeting its national emissions target under the Paris Agreement and to making deeper reductions in line with the Agreement's objective of holding global warming below two degrees Celsius and pursuing efforts to keep global

warming below 1.5 degrees Celsius.”

49. Canada’s Nationally Determined Contribution will be insufficient to meet its 1.5°C to 2°C Paris commitment. To fairly contribute to its temperature-based Paris commitment, Canada would have to reduce its GHG emissions to 327 million tonnes of CO₂ equivalent (Mt CO_{2e}) a year by 2030. Instead, Canada decided that its Nationally Determined Contribution will be to reduce emissions to only 513 Mt CO_{2e} a year, leaving a 186 Mt CO_{2e} a year deficit.
50. The Paris Conference noted in 2015 that the participants’ collective nationally determined contributions were insufficient and that much greater emission reduction efforts will be required than those associated with the intended nationally determined contributions in order to hold the increase in the global average temperature to less than 2°C above pre-industrial levels.
51. If proportionally followed by other countries, Canada’s Nationally Determined Contribution would result in cumulative GHG emissions sufficient to cause a 2°C to 3°C warming above pre-industrial levels.
52. Canada also appears unlikely to meet its Nationally Determined Contribution commitment under the *Paris Agreement*. Canada’s GHG emissions in 2005, the target’s baseline, were 732 million tonnes of CO₂ equivalent (Mt CO_{2e}). The Nationally Determined Contribution target is 513 Mt CO_{2e}/year by 2030. Under current policies and measures that may not yet be fully implemented, Canada projects that the country’s GHG emissions will decrease to 616 Mt CO_{2e}/year by 2030. Projections in 2018 by an independent NGO were that Canada’s 2030 emissions will be in the 630 to 763 Mt CO_{2e}/year range. Both of these projections do not include any positive or negative effects from land use and forests.

53. Canada's 2019 National Inventory Report states that Canada's 2016 emissions were 704 Mt CO₂e and that its 2017 emissions, the most recent dataset publicly available, were 716 Mt CO₂e.
54. In October, 2016, the federal government presented a pan-Canadian benchmark for carbon-pricing, which it said was a foundational element of Canada's approach to fighting climate change. Canada has estimated that the annual GHG emissions reduction due to carbon-pricing throughout the country will be 50 to 60 Mt CO₂e a year by 2022.
55. Carbon-pricing is insufficient for Canada to meet its Nationally Determined Contribution. Complementary GHG emission reduction measures are outlined in the *Pan-Canadian Framework on Clean Growth and Climate Change* agreed among federal, provincial and territorial governments in December, 2016. Proposed reduction measures include: phase-out of coal-fired electrical generation; energy-efficient buildings and industrial processes; vehicle emission standards; and fugitive methane reduction. None of these measures have mandatory targets or detailed GHG accounting to show how they might collectively achieve the Nationally Determined Contribution.
56. The critical commitment made by Canada under the *Paris Agreement* is to help limit global warming to well below 2 °C above pre-industrial levels. The best measure of this commitment is Canada's fair share of the remaining global carbon budget or global Cumulative Emissions. Instead, Canada and the other parties to the Agreement chose the less transparent Annual Emissions as the target and reporting metric.
57. Further, the use of the carbon dioxide equivalent metric for GHG emissions masks the short-term importance of methane. Methane is the most common GHG after carbon dioxide and is some 86 times more potent than CO₂ as a source of atmospheric warming. On the other hand, it has about a 20-year

lifespan as opposed to centuries for carbon dioxide. Reducing methane emissions is therefore a highly effective way to slow near-term global warming. The short-term benefits of methane reduction are not reflected in the CO₂e metric, which is based on a 100-year time horizon.

58. In summary: halfway through the 2005 to 2030 GHG emission reduction period contemplated in Canada's Nationally Determined Contribution, the 2017 reduction is 16 Mt CO₂e/year or less than a tenth of the way towards the target. Further, there are no existing or planned legislative or policy initiatives, including carbon-pricing, would enable the remaining nine tenths of the required annual GHG emission reduction to be achieved by 2030.

Environmental Assessment as a GHG reduction mechanism

59. Canada has jurisdiction to manage high GHG-emitting fossil fuel infrastructure developments through its environmental assessment legislation. The oil and gas sector accounts for 27 percent of Canada's current territorial GHG emissions and Canada projects that the sector's emissions under current policies will increase from the 2005 Nationally Determined Contribution baseline by 37 Mt CO₂e a year by 2030. Much of the oil and gas sector emissions will be of fugitive methane from fracked natural gas production. Its management therefore presents a powerful lever in meeting Canada's Paris commitment to bring its cumulative GHG emissions in line with a mean global 1.5°C to 2°C temperature rise.
60. The defendant has not used its discretionary decision-making power under its environmental assessment legislation to withhold approval of high GHG-emitting projects that would help bring Canada's GHG emissions in line with a mean global 1.5°C to 2°C temperature rise.
61. The defendant has fettered its law-making power to meet its Paris temperature commitment by failing to pass environmental assessment legislation that would

allow the executive branch to cancel or significantly amend its approval of a high GHG-emitting project in the event that Canada can demonstrably not meet its international global warming commitments or its obligations to the citizens of Canada.

62. Liquefied natural gas export schemes are among the higher GHG-emitting oil and gas developments in Canada. Elements of two such extant LNG schemes are currently proposed for the Likhts'amisyu Houses' territories. They have undergone environmental assessments under both British Columbian and Canadian legislation. They are the LNG Canada Export Terminal Project located at Kitimat and fed by the Coastal GasLink Pipeline Project, and the Kitimat LNG Terminal Project similarly located at Kitimat and fed by the Pacific Trail Pipeline Project. A proposed expansion of the Kitimat LNG project is currently being assessed by British Columbia and Canada through the provincial environmental assessment process.
63. Canada's Governor in Council approved the LNG Canada Export Terminal Project under s. 54 of *CEAA, 2012* through a June 17, 2015, Decision Statement. The environmental assessment was carried out by the British Columbia Environmental Assessment Office under a substitution agreement with Canada and reported in a May 6, 2015 Assessment Report. The Assessment Report found that the LNG Canada facility would produce 4 Mt CO₂e/year, which it considered to be a significant residual adverse effect in the context of existing global GHG emissions. Canada's Decision Statement found that the significant adverse environmental effects were "justified in the circumstances," without identifying those circumstances or providing reasons.
64. On May 27, 2016, LNG Canada received under s. 117 of the *National Energy Board Act* a National Energy Board order to extend the term of its export licence from 25 to 40 years.

65. Canada did not require the Coastal GasLink Pipeline Project to undergo a federal environmental assessment. The Office of the Wet'suwet'en actively participated in the British Columbia review on behalf of all Wet'suwet'en House groups. A British Columbia assessment report found that the pipeline project would produce about 3.5 Mt CO₂e/year, which it considered to be a "significant residual adverse effect on GHG emissions." On October 23, 2014, British Columbia approved the pipeline project, acknowledging that significant adverse effects in respect to GHG emissions would occur.
66. The Kitimat LNG Terminal Project was originally assessed in 2005-2006 as an LNG import facility. Canada's Minister of Environment approved the project on August 1, 2006. In 2008, the proponent requested an amendment to its B.C. environmental assessment certificate to include the use of liquefaction facilities; that is, to allow the construction and operation of an LNG export facility with a 5 million tonnes a year (MTPA) LNG capacity. Because the export facility would use electrically-driven rather than natural gas-driven liquefaction compressors, the facility GHG emissions were projected to be 0.11 Mt CO₂e/year. The defendant decided this change did not require a further environmental assessment. In 2013, Canada approved a doubling of production capacity to 10 MTPA. In July, 2019, the proponent requested its certificate be further amended to expand its LNG production capacity to 18 MTPA. British Columbia is currently conducting an environmental assessment of the Kitimat LNG Expansion Project on behalf of both British Columbia and Canada under a substitution agreement.
67. On April 1, 2019, Kitimat LNG applied for a National Energy Board order to extend the term of its export licence from 25 to 40 years for the expanded facility. A decision on this application is pending.
68. The Pacific Trail Pipeline Project was assessed by British Columbia. The Office of the Wet'suwet'en actively participated in the British Columbia review

on behalf of all Wet'suwet'en House groups. Neither the proponent's application nor the May 12, 2008 British Columbia assessment report reported the amount of GHG emissions likely to be released from pipeline operations. British Columbia appeared to accept the proponent's assessment of GHG emissions using the criterion of whether the project's emissions would have a global climate effect that could be measured on a local or regional scale. The assessment report found that the pipeline would not result in significant adverse effects on the atmospheric environment.

69. In January, 2016, Canada issued a policy document (the "Interim Approach") to its environmental assessment of major projects. It included five principles that it said would guide its discretionary environmental assessment decision-making. One of these principles states that, "Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed." In the case of LNG liquefaction facilities, upstream GHG emissions would include those from natural gas extraction and collection, gas-fuelled pipeline compression stations, and fugitive methane emissions from all these operations.
70. Canada has applied its Interim Approach to one west coast LNG proposal – the now abandoned Pacific NorthWest LNG Project. Canada's September, 2016 environmental assessment report found that the project's GHG emissions to be 4.5 Mt CO₂e/year and that the associated upstream emissions, including pipeline operations, to be about 9 Mt CO₂e/year, for a total of 13.5 Mt CO₂e/year. The assessment report concluded that the Pacific NorthWest LNG Project would likely cause significant adverse environmental effects as a result of GHG emissions. In September, 2016, Canada approved the project, stating that the significant adverse environmental effects were "justified in the circumstances" without identifying those circumstances or providing reasons.
71. The need for a federal environmental assessment to consider sources of direct and upstream GHG emissions to a project may continue under the *Impact*

Assessment Act, S.C. 2019, c. 28, s.1, which replaced *CEAA, 2012* in August, 2019. The *IAA* requires that a review consider, “the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change.” A 2018 draft of Canada’s policy paper, *Strategic Assessment of Climate Change*, does prescribe the assessment of upstream GHG emissions. The final version of this policy document is due to be released in early 2020.

E. Global Warming Impacts on the Plaintiffs

72. Present mean global temperature has risen about 1 °C above pre-industrial levels. Global warming impacts in Canada, however, are already significant. While climate change encapsulates far more than warming temperatures, it is predicted that Canada’s temperatures will continue to rise at a faster rate than the world as a whole.
73. Existing and anticipated impacts of climate change in Canada include:
- a. changes in extreme weather events such as droughts, floods, longer wildfire seasons, and increased frequency and severity of heat waves;
 - b. degradation of soil and water resources; and
 - c. expansion of the ranges of vector-borne diseases.
74. Adverse impacts will become more serious as mean global temperature rises to 1.5 °C and 2 °C. It is projected there will be a global increased risk to unique and threatened ecosystems, of extreme weather events, of distribution of impacts, and of large-scale, singular events. Observed and projected mean temperature increases in Canada are about twice the global mean. Even greater increases are projected for northern Canada in winter, resulting in more

frequent floods, reduced snowpack, less predictable stream flows, stream temperature regimes, and stream nutrient regimes, and shifts in salmon distribution and productivity.

75. Already, the plaintiffs have experienced significant warming effects on their territories. These effects include pine bark beetle infestations, forest fires, and salmon population declines, in part attributable to climate change.
76. The anticipated effects of global warming on the plaintiffs' yintah include reduction of their forest cover due to increased wildfire and insect infestations. These climate effects will be exacerbated by past and current clearcut logging practices and land-clearing. The forest-cover reductions will, in turn, lead to lower populations of forest fur-bearing animals and forest food-animals, such as moose.
77. The anticipated effects of global warming on the plaintiff's salmon fisheries will reduce the run numbers, their predictability and fish size due to sea temperature rise, ocean acidification, long-term shifts in the marine distribution of salmon prey and predators, freshwater temperature rise, and more frequent and more intense precipitation events. These climate effects will be exacerbated by the high by-catch of Bulkley-Morice sockeye in the marine commercial fishery that targets enhanced Babine Lake sockeye stocks. Since 2001, the plaintiffs and the other Wet'suwet'en Houses have voluntarily not fished for Bulkley-Morice sockeye for food as part of their effort to restore those stocks to their former abundance.
78. In addition to adverse effects on Likhts'amisyu territories and on their salmon fisheries, global warming is anticipated to cause illness and premature death to the plaintiff's members. These adverse health effects include:

- a. increased exposure to air pollution from wildfires damaging the heart, lungs, and other organs;
 - b. increased frequency and severity of extreme weather events;
 - c. increased heatwaves, floods and droughts;
 - d. decreased food security, particularly of forest food animals and salmon stocks.
79. The links between climate change and mental health are highly socially and culturally mediated. For the plaintiffs, as for other indigenous peoples in Canada, their social and cultural context is the aftermath of the imposition of the *Indian Act* reserve system, of the banning of the potlatch, of land-speculator theft of their farmland and destruction of their farm homes, of the removal of children from their families into residential schools, of the removal of children from their families into non-indigenous foster homes (known as the Sixties Scoop), and ongoing racial discrimination. This previous conduct was in part by, or facilitated by, the defendant. It makes the plaintiffs particularly vulnerable to further psychological and social trauma caused by global warming.
80. Global warming, including further losses of the Wet'suwet'en salmon fishery, changes to land and aquatic ecosystems, destructive alteration of land territories by wildfire, forest insect infestations and floods, and effects on individuals' physical health will exacerbate the erosion of the plaintiffs' individual and social sense of identity, cohesion and well-being.

F. Relief Sought

81. The plaintiffs therefore claim as follows:

- a. a declaration that the defendant has 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 declaration that the defendant has a constitutional duty to maintain the peace, order and good government of Canada under s. 91 of the *Canadian Constitution* by acting to keep Canada's greenhouse gas emissions consistent with a mean global warming of between 1.5° C and 2° C above pre-industrial levels;
- c. a declaration that the defendant has a constitutional duty to not infringe on the plaintiffs' members' rights under s. 7 of the *Charter*, including the s. 7 rights of future members, by failing to act to keep Canada's greenhouse gas emissions consistent with a mean global warming of between 1.5° C and 2° C above pre-industrial levels;
- d. a declaration that the defendant has a constitutional duty to not infringe on the plaintiffs' members' rights under s. 15 of the *Charter*, including the s. 15 rights of future members, by failing to act to keep Canada's greenhouse gas emissions consistent with a mean global warming of between 1.5° C and 2° C above pre-industrial levels;
- e. an order requiring the defendant to amend each of its environmental assessment statutes that apply to extant high greenhouse gas emitting projects so as to allow the Governor in Council to cancel Canada's approval, under any of those statutes, of the operation such a project in the event that the defendant will demonstrably not be able to, or does not, meet its *Paris Agreement* commitment to keep Canada's greenhouse gas

emissions consistent with a mean global warming of between 1.5°C and 2°C above pre-industrial levels, or in the event that the defendant considers global warming to be a national emergency;

- f. an order requiring the defendant to cause to be prepared a complete, independent and timely annual account of Canada's cumulative greenhouse gas 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;
- g. an order for this Court to retain jurisdiction until the defendant has complied with all the Court's orders;
- h. costs, including special costs;
- i. such further and other relief that this Court deems just.

G. Legal Basis

The defendant has breached its duty under section 91 of the Canadian Constitution

82. Section 91 of the *Constitution Act, 1867* states:

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated: that is to say, –
...

83. The defendant has breached its duty to make laws for the peace, order and good government of Canada by making laws that allow it to approve the construction

and operation of high GHG- emitting projects and that allow such projects to continue operating through future decades with the result that Canada will be unable to comply with its constitutional duty to protect the plaintiffs and all Canadian citizens from the effects of global warming and will be unable to meet its international commitments to keep global warming to non-catastrophic levels.

84. The law-making powers under the peace, order and good government provisions of section 91 have generally been interpreted as the residual jurisdiction to the federal Parliament for the areas of law not otherwise set out in sections 91 and 92. While this residual jurisdiction is broad, it is not unlimited. Because of the defendant's and other countries' unwillingness to enact laws and implement policies to lower GHG emissions, global warming is now harming the plaintiffs and their territories, as well as posing an imminent existential risk to all human and other life on earth. Such an existential threat cannot be for the peace, order and good government of Canada.
85. The peace, order and good government power imposes a positive obligation on the defendant to pass laws that ensure that Canada's GHG emissions are now, and will be into the foreseeable future, consistent with its constitutional duty to the plaintiffs and with its international commitments to keep global warming to well below 2°C.

The defendant has infringed the plaintiffs' rights under section 7 of the Charter

86. Section 7 of the *Charter* states:

Everyone has the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

87. The defendant has deprived the plaintiffs of their right to life, liberty and security of person by making laws that allow high GHG- emitting projects to operate now and into the future in breach of Canada's fair contribution to keep

global warming to non-catastrophic levels.

88. All current projections of global warming based on the defendant's laws and policies deprive the plaintiffs;
 - a. of their right to life by increasing the risk of premature death from global warming, including air pollution, extreme weather events, and vector-borne disease;
 - b. of their right to liberty by increasing the risk to their individual and collective autonomy, including their freedom to choose where to move and live on their territories and in their communities; and
 - c. of their right to security of person by increasing the risk of injury, disease and mental health from global warming, including air pollution, extreme weather events, vector-borne disease, and psychological and social trauma to already vulnerable societies and communities.

89. These impugned laws are contrary to the principles of fundamental justice because they do not accord with the existential effects of global warming on the plaintiffs' members, their autonomy as groups under their indigenous laws, and the integrity of their territories and their salmon-fishery. In particular, the defendant's laws and policies are contrary to its obligations under:
 - a. the common law principles of public trust and equitable waste;
 - b. international agreements and the laws governing them; and

- c. the defendant's publicly declared objectives to comply with its international agreements on global warming.

The defendant has infringed the plaintiffs' rights under sub-section 15(1) of the Charter

90. Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

91. The defendant has deprived the plaintiffs of their right to equal protection and equal benefit of the law based on the age of the plaintiffs' younger members and future generations by making laws that allow high GHG- emitting projects to operate now and into the future in breach of Canada's fair contribution to keep global warming to non-catastrophic levels.
92. All current projections of global warming based on the defendant's laws and policies disproportionately deprive the plaintiffs of the right of their child members, youth members, and future generations to good health, to knowledge of their territories, fisheries, social relations and laws, to fully participate in their society's institutions and decision-making, and to develop their full potential as heirs to their millennia-old culture and society;
93. Such disproportionate deprivations will perpetuate the trauma caused by existing and historical attempts by the defendant to subjugate the plaintiffs' identity, culture, laws and practices. These attempts were and are intended to assimilate the plaintiffs' members as individuals into the Canadian mainstream.
94. The equality provisions pleaded by the plaintiffs for their children and youth under sub-section 15(1) of the Charter are consistent with the common law and constitutional principle of intergenerational equity.

The defendant's conduct cannot be justified under section 1 of the Charter

95. Section 1 of the *Charter* states:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be justified in a free and democratic society.

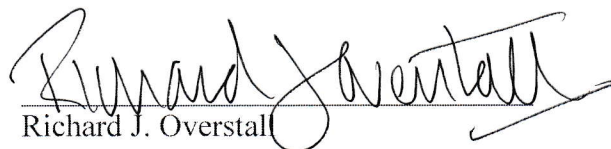
96. The infringements of the plaintiffs' section 7 and sub-section 15(1) rights cannot be justified under section 1 of the *Charter*. The defendant has the burden of proof to show such justification.

Statutory provisions relied on by the plaintiffs

97. The plaintiffs rely on sections 24 and 32 of the *Charter of Rights and Freedoms*, section 52 of the *Constitution Act, 1982*, sections 17 and 48 of the *Federal Courts Act*, and other statutory provisions such as Counsel shall advise and this Honourable Court shall permit.

The plaintiffs propose that this action be tried in Vancouver, British Columbia.

Dated the 10th day of February, 2020


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