

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

STATEMENT OF DEFENCE

A. Overview

1. Canada acknowledges that Dini Ze' Lho'imggin (also known as Alphonse Gagnon) and Dini Ze' Smogilhgim (also known as Warner Naziel) (the "Dini Ze'") are deeply concerned about the impact of global climate change. Canada agrees that global climate change is real, measured and documented. It is not a distant problem, but rather one that is having real consequences. Immediate global action is required to limit warming to 1.5°C to 2°C above pre-industrial levels in order to avoid the worst potential consequences of a changing climate.

2. The Indigenous peoples of Canada are particularly vulnerable to the impact of climate change given the remote location of many of their communities and a greater reliance on wild food sources. Canada acknowledges that Indigenous peoples are active

drivers for positive change in reducing greenhouse gas (“GHG”) emissions, through their traditional knowledge and climate leadership.

3. Canada is committed to fighting global climate change. Canada works at the international and domestic level in the drive to reduce GHG emissions and ensure a sustainable future for our planet. Addressing climate change is the shared responsibility of a multitude of different actors, including governmental and non-governmental institutions at all levels of jurisdiction – international, national, provincial, territorial and local. In this way, 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.

4. Canada is strongly committed to participating and taking a leadership role in international processes under the auspices of the *United Nations Framework Convention on Climate Change* (“UNFCCC”), to promote international cooperation in the fight against climate change. Canada is working to implement its commitments under the *Paris Agreement*, including by adopting an ambitious Nationally Determined Contribution (“NDC”), representing Canada’s contribution to global efforts to reduce GHG emissions. Canada’s NDC will become increasingly stringent over time, in line with the ambitions of the *Paris Agreement*.

5. In addition, Canada follows internationally agreed upon methodologies for measuring our GHG emissions. This enables Canada to collaborate with the other parties to the *Paris Agreement* to measure global emissions in a consistent manner.

6. Consistent with Canada’s obligations under the *Paris Agreement*, in 2016 the Prime Minister and all provincial and territorial premiers (“First Ministers”) adopted the *Pan-Canadian Framework on Clean Growth and Climate Change* (“*Pan-Canadian Framework*”). The *Pan-Canadian Framework* has four main pillars: pricing carbon pollution; complementary measures to further reduce emissions across the economy; measures to adapt to the impacts of climate change and build resilience; and actions to accelerate innovation, support clean technology, and create jobs. Together, these interrelated pillars form a comprehensive plan that applies to all sectors of the Canadian

economy as reductions in a single sector would not be sufficient to meet Canada's emissions reduction goal. Many of these initiatives, in particular adaptation and climate resilience, specifically address Indigenous peoples and their communities.

7. Canada recognizes the concerns which underpin the Dini Ze's Statement of Claim (the "Claim"). However, as set out in this Statement of Defence, the arguments raised in the Claim fall outside of the Court's jurisdiction. For these reasons, Canada asks that the Claim be dismissed.

B. Canada's Response to the Statement of Claim

8. In response to paragraph 1 of the Claim, Canada recognizes the ecological impacts of climate change on this country as well as the larger worldwide threat of global warming. Canada admits that global warming is generally caused by the cumulative release of GHG's produced by human activity and that the effects include extreme weather and climate change such as droughts, wildfires, floods and rising sea levels.

9. In response to paragraph 2 of the Claim, at this time Canada has limited knowledge of the Likhts'amisyu Clan governance structure as a whole or the responsibilities of a House group to the Wet'suwet'en and others. Further, Canada has limited knowledge of the specific experience of global warming by the Dini Ze' and the asserted threats to its identity, culture, relationship with the land and food security.

10. In response to paragraph 3 of the Claim, Canada denies that it has failed to establish and/or implement domestic laws, policies, and actions to meet its international objective of keeping global warming well below 2°C above pre-industrial levels. Canada further denies it has breached the constitutional, including *Charter*, rights of the Dini Ze' in relation to its international commitments in the *Paris Agreement*.

11. In response to paragraph 4 of the Claim, Canada denies that it has failed to establish any law and policies to address Canada's emissions of GHGs. Canada has taken numerous steps to address climate change through legislation, policies and actions, as set out more fully below.

12. In response to paragraph 5 of the Claim, Canada admits that the Dini Ze' identity, culture, and sustenance, is closely bound to their land and fishing territories. At this time, Canada has no knowledge about the authority of the leadership of the Misdzi Yikh or the Sa Yikh houses to bring this action, and whether the internal protocols for doing so were followed. Further, Canada has limited knowledge of the Dini Ze' observations about climate changes or the impacts of climate change on the Dini Ze' resources and territories or their speculations on future harms.

13. In response to paragraph 6 of the Claim, Canada agrees that it can meet, through several ways, as discussed further below, its international commitments under the *Paris Agreement* to mitigate its GHG emissions as part of an international commitment to keep global temperature rise below 2°C of pre-industrial levels. Canada denies that it has taken insufficient action on climate change.

14. In response to paragraphs 7 and 8 of the Claim, Canada is of the view that these paragraphs regarding the relief sought contain an inseparable mix of facts and legal argument. Canada responds more fully to these paragraphs below in Part D – Legal Bases for Defence.

a. Canada's Response to the Representative Proceeding

15. In response to paragraphs 2 and 9 to 31, and in response to the Claim as a whole, Canada's position is that this is not a suitable claim to be brought as a representative proceeding. The three remedies sought are not available in a representative proceeding because ss. 7 and 15 of the *Charter* provide for individual rights, and s. 91 of the *Constitution Act, 1867* does not bestow rights – only legislative authority to the federal government.

16. In further response to paragraphs 2 and 9 to 31 of the Claim, at this time, Canada has no knowledge of whether Dini Ze' Lho'Imggin and Dini Ze' Smogilhgim are authorized to bring this action as a representative proceeding under rule 114 of the *Federal Courts Rules* ("Rules").

17. In response to paragraph 32 of the Claim, Canada admits that Her Majesty the Queen in Right of Canada is properly named pursuant to s. 48(1) of the *Federal Courts Act*.

b. Canada's Response to the Dini Ze's Facts Relating to Global Warming

18. In response to paragraph 33 of the Claim, Canada agrees that global climate change is a critically important issue that must be addressed urgently by all governments and all societies.

19. In response to paragraph 34 of the Claim, Canada admits that the burning of fossil fuels is the major source of GHG emissions such as carbon dioxide ("CO₂") emissions. Canada further admits that GHGs are gasses that trap radiant heat emitted from the earth, which heats the lower atmosphere. However, GHGs do not significantly absorb and radiate solar energy. The greenhouse effect is due mainly to trapping of outgoing radiant heat. Canada agrees with the Dini Ze' that atmospheric levels of CO₂ have increased but clarifies that these levels are higher now than at any time in the last 800,000 years.

20. In response to paragraph 35 of the Claim, Canada admits that the effects of CO₂ emissions on the climate depends on the cumulative amount of those emissions.

21. In response to paragraph 36 of the Claim, Canada agrees that a carbon emissions budget may be defined as the total quantity of CO₂ emissions that can be emitted over a defined period in order to limit warming to a mean global temperature target. Canada also admits that very large amounts of CO₂ have been emitted globally during the industrial era and remain in the atmosphere and that this cumulative total needs to be limited in order to keep global warming well below 2°C. However, the exact figures are difficult to calculate and vary according to methodology.

22. In response to paragraph 37 of the Claim, Canada denies that the Dini Ze's methods of allocating the global carbon budget and Canada's share of it as pleaded in the Claim are appropriate. In further response, Canada says that there is no internationally agreed upon way of allocating a global carbon budget, given the

different equity and values based contexts in which a global carbon budget can be calculated.

c. Canada's Response to the Dini Ze's Facts Relating to GHG Emissions

23. Paragraphs 38 to 41 of the Claim regarding Canada's jurisdiction contain an inseparable mix of facts and legal argument. Canada responds to these paragraphs in Part D – Legal Bases for Defence.

24. In response to paragraph 42 of the Claim, Canada admits to having participated in the international conferences as set out by the Dini Ze', however denies the assertion that Canada has failed to effectively implement any of its international commitments to reduce or limit its GHG emissions.

25. In response to paragraph 43 of the Claim, Canada has no knowledge relating to the speculative and hypothetical allegations involving Canada's international commitments over the last 30 years and its contribution to reducing global warming.

26. In response to paragraphs 44 and 45 of the Claim, Canada admits that in December 2015, 197 parties, including Canada, adopted the *Paris Agreement*. Canada further admits that 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 to pursue efforts to limit temperature increase to 1.5°C above pre-industrial levels. Canada admits that the *Paris Agreement* contains a process by which each party, including Canada, is expected to report regularly on its progress in addressing GHG emissions towards achieving its NDC. In further response, Canada says that its current GHG targets under the *Paris Agreement* are ambitious. Canada is committed to implement the *Paris Agreement* process including continuing to enhance ambition to reduce GHG targets over time and will present revised GHG targets according to that process.

27. In response to paragraph 46 of the Claim, Canada denies that the *Paris Agreement* creates the commitments as described. Paragraph 46 contains an

inseparable mix of facts and legal argument regarding the interpretation of the *Paris Agreement*. Canada responds to these paragraphs in Part D – Legal Bases for Defence.

28. In further response to paragraph 46 of the Claim, Canada denies that the *Paris Agreement* creates domestic commitments for each signatory, as characterized throughout the Claim. The *Paris Agreement* commits signatories to international aims of limiting global temperature increase and of establishing each signatory’s NDC otherwise known as an Annual Emissions Target.

29. In further response to paragraph 46 of the Claim, Canada says that “single-year emissions targets” (“annual emissions targets”) and “cumulative emissions budgets” are both internationally agreed methods of tracking a party’s progress in mitigating climate change within the *UNFCCC* and the *Paris Agreement*. Canada denies that the use of a “cumulative emissions target”, also known as a “carbon budget” is a more accurate and fair measure of a party’s contribution to meet the objective of the *Paris Agreement*.

30. In response to paragraph 47 of the Claim, Canada admits that Parliament ratified the *Paris Agreement* on October 5, 2016 and Canada confirmed its NDC is to reduce its annual GHG emissions by 30 percent below 2005 levels by 2030.

31. In response to paragraph 48 of the Claim, Canada admits that on June 17, 2019, Parliament passed a non-binding declaration of a national climate emergency. Canada is committed to meeting its NDC under the *Paris Agreement*.

32. In response to paragraphs 49 through 58 of the Claim, Canada denies the speculative allegation that Canada’s NDC will be insufficient to meet the aims of the *Paris Agreement*. Further, paragraphs 49 through 58 regarding Canada’s NDC contain an inseparable mix of speculative facts and legal argument. The aims of the *Paris Agreement* is for countries to enhance their GHG goals over time, with increasingly stringent NDCs set at 5 year intervals.

33. In response to paragraph 53 of the Claim, the calculation of national GHG emissions is complex and evolving as new data becomes available. Canada admits that

the 2019 National Inventory Report (“NIR”) stated that 2015 emissions were 704 million tonnes of CO₂ equivalent (“Mt CO₂e”). Canada also admits that in 2017, according to the 2019 NIR, Canada’s emissions were 714 Mt CO₂e. Subsequent NIRs have adjusted these figures slightly.

34. In response to paragraphs 54 and 55 of the Claim, Canada admits that the federal government’s carbon pricing initiative is a foundational part of the approach to address climate change. By 2022, Canada anticipates that carbon pricing will help reduce annual GHG emissions by 50 to 60 Mt CO₂e per year.

35. In further response to paragraph 55, Canada admits that in addition to carbon pricing, Canada proposes further steps that will aid in meeting its NDC, including the phase-out of coal-fired electrical generation; promoting energy-efficient buildings and industrial processes; the regulation of vehicle emission standards; and the reduction of methane emissions. Canada says that implementation of these initiatives work collectively to achieve Canada’s NDC. As set out more fully below, Canada provides regular reports on all national climate change related measures and outcomes.

36. In response to paragraph 56 of the Claim, Canada denies that Canada and other parties to the *Paris Agreement* have chosen a less transparent manner of reporting on annual GHG emissions. Emissions accounting and inventories are subject to international standards to ensure transparency. As party to the *UNFCCC* and the *Paris Agreement*, Canada is obliged to follow these international standards and cannot independently choose a different measure for its commitment, as alleged.

37. In response to paragraph 57 of the Claim, Canada denies that its GHG emissions reporting masks the importance of reducing methane emissions. Canada and other developed nations follow the *UNFCCC* guidelines for reporting GHG emissions in inventory reports.

38. In response to paragraph 58, Canada denies that there are no existing or planned legislative or policy initiatives to address climate change. Canada has made substantial progress toward its NDC and plans for additional GHG reductions from increased clean

electricity, greener buildings and communities, electrification of transportation, nature-based climate solutions, and continued clean technology development. Canada's steps are set out more fully below in the "Additional Facts" section.

d. Canada's Response to the Dini Ze's Facts Relating to Environmental and Impact Assessment

39. Paragraphs 59 to 61 of the Claim contain an inseparable mix of facts and legal argument regarding Canada's decision and law-making powers. Canada responds to these paragraphs in Part D – Legal Bases for Defence.

40. At paragraphs 62-71 of the Claim, the Dini Ze' refer to five liquefied natural gas ("LNG") projects. The relevance of these five LNG projects to the Claim is unclear. This is not a judicial review of the environmental or impact assessment decisions. Further particulars will be required before Canada can respond fully to paragraphs 62-71 of the Claim.

41. In further response to paragraphs 62 to 71 of the Claim, not all of the LNG projects, as set out in further detail below, went ahead or triggered a federal environmental or impact assessment. Further, Canada says that for the projects that were subject to environmental or impact assessments, federal legislation includes consideration of GHG emissions.

42. In further response to paragraph 62 of the Claim, there are currently no meaningful emissions resulting from LNG projects, as no large capacity LNG facility is fully operational in Canada. By 2030, Environment and Climate Change Canada's ("ECCC") most recent projections suggest that the LNG sector would emit 2.4 Mt of CO₂eq per year, roughly 1% of total emissions within the Canadian oil & gas sector.

1. LNG Canada Export Terminal Project ("LNG Canada")

43. In further response to paragraph 62 of the Claim, Canada admits that LNG Canada is a natural gas liquefaction facility and marine terminal for the export of LNG. However, Canada denies that LNG Canada is proposed to be located within the

Litkhts'amisyu Houses' territories as it will be located wholly within the District of Kitimat, British Columbia.

44. In response to paragraph 63 of the Claim, Canada admits that an environmental assessment of LNG Canada was conducted by the British Columbia Environmental Assessment Office under a substitution agreement with Canada and that an assessment report was issued on May 6, 2015. On June 17, 2015, the Governor in Council decided that the significant adverse environmental effects were justified in the circumstances pursuant to s. 53(4) of *Canadian Environmental Assessment Act, 2012* (“CEAA 2012”). Canada admits that the Decision Statement informed LNG Canada of that decision. Canada denies that insufficient reasons were provided in the Decision Statement.

45. In response to paragraph 64 of the Claim, Canada admits that LNG Canada applied for a license authorizing the export of LNG in 2012 for a term of 25 years. At that time, this was the maximum amount of time that the NEB could issue a natural gas export licence. In 2015, the legislation was amended to provide the issuance of natural gas export licenses for a term not exceeding 40 years. Canada admits that on May 27, 2016, the former National Energy Board (“NEB”) granted a licence under s. 117 of the *National Energy Board Act* that authorized LNG Canada to export LNG for a period of up to 40 years.

2. Coastal GasLink Pipeline Project (“CGL”)

46. In further response to paragraph 62, between December 2012 and October 2013, Canada completed a Preliminary Breadth of Consultation Approach (PBOCA) for the CGL. The PBOCA identified the Wet'suwet'en as potentially being affected by CGL and consultation occurred with the Wet'suwet'en Hereditary Chiefs.

47. In response to paragraph 65 of the Claim, on December 31, 2012, Canada commenced an environmental assessment of CGL under *CEAA 2012*. The federal assessment was terminated, however, given changes to the *Regulations Designating Physical Activities* that came into force on October 24, 2013.

48. In further response to paragraphs 65 of the Claim, CGL underwent an environmental assessment under British Columbia's *Environmental Assessment Act* through its Environmental Assessment Office and was approved in 2014. Canada has limited knowledge of the participation of the Wet'suwet'en in the provincial CGL environmental assessment.

3. Kitimat LNG Terminal Project ("KLNG Project")

49. In further response to paragraph 62 of the Claim, Canada admits that the KLNG Project is located south of the town of Kitimat, British Columbia, on Haisla Nation reserve land. The comprehensive study of the original Kitimat LNG Project was completed in 2006 under the former *Canadian Environmental Assessment Act, 1992* and the Project was also assessed under BC's *Environmental Assessment Act*.

50. In further response to paragraphs 62 of the Claim, Canada admits that KLNG Operating General Partnership is proposing amendments that would expand the KLNG Project. These amendments propose changes to its approved facility design that includes changes that the proponent asserts would achieve the lowest emission intensity of any large-scale LNG facility in the world.

51. In response to paragraph 66 of the Claim, the content of this paragraph is not accurate.

- a. Canada admits that on August 1, 2006, Canada's Minister of the Environment issued a federal environmental assessment decision in which she determined that the KLNG Project was not likely to cause significant adverse environmental effects. She referred the project back to the responsible authorities for appropriate actions including recommending that they ensure the implementation of the mitigation measures described in the comprehensive study report.
- b. Canada is aware that in November, 2008 the proponent of the KLNG Project filed an application to amend the provincial Environment

Assessment (EA) Certificate. Canada is aware that in January 2009, the provincial Environmental Assessment Officer amended the EA Certificate to include the project changes;

- c. Canada denies that in 2013 it approved a doubling of production capacity of the KLNG Project. The adjustments to the KLNG Project were not physical activities prescribed under the *Regulations Designating Physical Activities* and so were not subject to *CEAA 2012*. Hence, no federal environmental assessment was conducted and no federal decision “approval” was made by Canada under *CEAA 2012*;
- d. Canada admits that in 2019 the KLNG Project proponent informed the Canadian Environmental Assessment Agency that it was proposing changes to its project to allow for the expansion of production. As new designated physical activities under the *Regulations Designating Physical Activities*, these changes were subject to the *CEAA 2012*. On August 20, 2019, the Agency gave notice that an environmental assessment would be required and that the Minister of Environment and Climate Change had agreed to substitute British Columbia’s Environmental Assessment Office for the conduct of that assessment.

52. In response to paragraph 67 of the Claim, Canada admits that on April 1, 2019, the KLNG Project applied to the NEB to extend the term of its export licence from 25 to 40 years. This application is in process.

4. Pacific Trail Pipeline Project (“Pacific Trail Project”)

53. In further response to paragraphs 62 and 68 of the Claim, Canada admits that the Pacific Trail Project is a natural gas pipeline that proposes to deliver natural gas to the KLNG Project where it will be converted to LNG. In 2006, the Pacific Trail Project was subject to a federal environmental assessment led by Fisheries and Oceans Canada and Transport Canada. The Pacific Trail Project also underwent an environmental

assessment by the British Columbia Oil and Gas Commission with an Environmental Assessment Certificate issued in June 2008.

5. Pacific North West LNG Project (“PNW LNG Project”)

54. In response to paragraph 70 of the Claim, Canada agrees that the proponent of the PNW LNG Project chose not to proceed with the project.

6. Interim Approach

55. In response to paragraph 69 of the Claim, Canada admits that in January 2016, Canada issued a policy document entitled the “Interim Approach” that included five principles and plans for major projects in Canada that were part of the broader strategy to review and restore confidence in Canada’s environmental assessment processes. Canada further admits that one of the principles provided that direct and upstream GHG emissions associated with a project under review would be assessed.

7. *Impact Assessment Act*

56. In response to paragraph 71 of the Claim, Canada admits that the *Impact Assessment Act*, SC 2019, c 28, s. 1 (“IAA”) replaced *CEAA 2012* in August 2019. Canada agrees that the *IAA* requires the consideration of the effects of a project under review that could hinder or contribute to Canada’s ability to meet its environmental obligations and commitments with respect to climate change. Further, Canada has recently developed the strategic assessment of climate change, to provide guidance on how federal impact assessment will consider a project’s GHG emissions and its resilience to climate change impacts.

e. Canada’s Response to the Facts Relating to the Impact of Global Warming on the Dini Ze’

57. In response to paragraphs 72 to 74 of the Claim, Canada in general admits present mean global temperature has risen about 1°C above pre-industrial levels. Canada provides a further description of global warming in the “Additional Facts” section below.

58. In response to paragraph 75 of the Claim, Canada has limited knowledge of what specific impacts the Dini Ze' have experienced on their territories as a result of climate change.

59. In response to paragraphs 76, 77, 79 and 80 of the Claim, the anticipated effects of global warming on the Likhts'amisyu Houses' territories is outside of Canada's knowledge.

C. Canada's Additional Facts Relating to Climate Change

a. Mechanics of Climate Change

60. The combustion of fossil fuels emits GHGs into the atmosphere, which drives global climate change. The scientific properties of GHGs, of which 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 buildup 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.

61. 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 impact is global, and throughout Canada, and is not correlated to the location of the GHG emission source. GHG emissions circulate in the atmosphere, so emissions anywhere raise atmospheric concentration everywhere.

62. Atmospheric GHG 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.

63. 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 GHG emissions from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010.

64. 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 use of coal has reversed the long-standing trend of gradual de-carbonization of the world's energy supply.

b. Increasing CO₂ raises Global Temperatures

65. 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; and
- c. The past five years of 2014-2018 are the hottest five years on record, with 2016 being the hottest.

66. In addition, the temperature of the oceans 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.

c. Global Impact of Climate Change

67. Climate change is a significant and dynamic international problem. As previously stated, GHG emissions circulate throughout the world's atmosphere. The impact of climate change, therefore, is fundamentally global, and is not correlated to the location of the GHG emission or source. This means that Canada's climate is affected not only by its own GHG emissions, but by the total volume of GHG emissions occurring around the world.

68. The anticipated global impact 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. As a result of this extensive research and assessment, there is a scientific consensus regarding human-made global warming and its worsening trajectory. For example, the introduction to the 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.

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

69. Addressing the causes, effects, and anticipated effects of climate change is of central importance to the Canadian government. While climate change is a global phenomenon, it has a significant and particular impact on Canada and Canadians.

70. The most recent and comprehensive scientific assessment of the current and likely future impact of climate change in Canada is provided in ECCC's *Canada's Changing Climate Report*, released on April 2, 2019 ("the Report"). The Report, led by ECCC, documents climactic and environmental changes across Canada in temperature, precipitation, snow, ice, permafrost, and freshwater availability, as well as changes in the three oceans surrounding Canada. 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.

71. The Report also provides modeling predictions 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 impact of which includes 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.

72. However, the report also indicates that there are uncertainties, such as how warmer temperatures and smaller snow packs will combine to affect the frequency and magnitude of snow-melt related flooding in the future. There has been an observed shift in the seasonality of stream flow with earlier peak streamflow, higher winter and spring flows and reduced summer flows. These trends are projected to continue.

73. Canada's coastline, which is the longest in the world, will also be significantly affected by climate change, including changes in relative sea level, rising water temperatures, increased ocean acidity, and loss of sea ice and permafrost.

74. 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.

75. 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.

76. 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 affects air quality; and
- d. Other potential effects 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.

77. Canada will also be affected 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.

e. Addressing Climate Change Requires a Global Response

78. 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.

79. Because the impact of GHGs 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.

80. The United Nations has identified climate change as an international concern that cannot be contained within geographic boundaries and which therefore requires international co-operation 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*.

81. The *UNFCCC* acknowledges that climate change and its adverse effects are a common concern of humankind. Its ultimate objective is the stabilization of GHG 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.

82. 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 varied impact, risks and possible response options. It is the undisputed leading global authority in this regard.

83. 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.

84. 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.

85. 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; and
 - 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°C 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; and
 - 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, 197 parties, including Canada, committed to strengthen the global response to climate change through adoption and implementation of the *Paris Agreement*.

1. The *Paris Agreement*

86. 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.

87. 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. Canada ratified the *Paris Agreement* on October 5, 2016, which entered into force in November 2016.

88. 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*. Further, emissions accounting and inventories are subject to international standards for transparency. As a party to the *UNFCCC* and the *Paris Agreement*, Canada is obliged to follow these standards.

2. Nationally Determined Contributions - Overview

89. Article 4, paragraph 2, of the *Paris Agreement*, requires each party to prepare, communicate and maintain successive NDCs that it intends to achieve. Starting in 2023 and then every five years, governments will take stock of the implementation of the *Paris Agreement* to assess the collective progress towards achieving its purpose and its long-term goals. The outcome of this “global stock take” will inform the preparation of subsequent NDCs, in order to allow for increased ambition and climate action to achieve the long-term goals of the *Paris Agreement*. As the current NDCs are only the first step of many, it would be premature to draw conclusions on the first step of the process, considering that the subsequent steps will see an increase in ambition.

3. Canada’s NDCs

90. Canada is committed to the *Paris Agreement* process for continuing to enhance ambition over time, and will present a new NDC in due course in accordance with our international obligations as a party to the *UNFCCC*. When Canada publishes its next NDC, it will listen to scientific advice and establish an ambitious and effective aim that is achievable by Canada.

91. The Government of Canada announced additional commitments in 2019 to implement a number of new measures to help reach its NDC. This includes a commitment to plant 2 billion trees to help sequester carbon emissions; retrofitting 1.5 million homes to improve energy efficiency and save Canadians money on their monthly energy bills; making it easier for Canadians to purchase and drive zero-emission vehicles; and supporting northern, remote, and Indigenous communities as they transition from diesel to renewable energy systems.

92. Canada’s most recent GHG emissions projections (published in Canada’s Fourth Biennial Report to the *UNFCCC*) estimate that Canada’s GHG emissions in 2030 will be 227 million tonnes lower than projects prior to the *Pan-Canadian Framework* or 19% below 2005 levels. This improvement, equivalent to approximately a third of Canada’s emissions in 2005, is widespread across all economic sectors, reflecting the breadth and depth of the *Pan-Canadian Framework*.

4. Domestic Initiatives

93. 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 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.

a) Emissions Reporting

94. 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*); and in the interim years, Canada's GHG emissions projections reports;
- b. Annual Synthesis Report on implementation of the *Pan-Canadian Framework*;
- c. National Communications to the *UNFCCC* (provided every 4 years); and
- d. ECCC's Departmental Results Report (provided annually).

95. 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: CO₂, methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

96. 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. Many of Canada's mitigation measures have specific GHG accounting projections; these are provided in Table 3 of Canada's Fourth Biennial Report, published in February 2020. It is important to note that because of anticipated interactive effects between policies, when modelling the impact of mitigation, Canada focuses on economy-wide modelling rather than measure by measure.

97. Canada submitted its most recent NIR to the *UNFCCC* on April 15, 2020, reporting emissions estimates between 1990 and 2017. These estimates show that, since 2005:

- a. Annual emissions fluctuated between 2005 and 2008, dropped in 2009 due to the global financial crisis, then gradually increased until 2014;
- b. Emissions dropped slightly in 2015 and again in 2016 before slightly increasing in 2017; and
- c. Canada's emissions in 2005 were 730 Mt CO₂e. Canada's 2018 emissions were 729 Mt CO₂e.

b) Regional Variations in GHG Emissions

98. 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; and
 - 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, 5-15% 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.

c) *Pan-Canadian Framework on Clean Growth and Climate Change*

99. As a result of the variation in emissions and related trends across the country, and prior to ratifying the international *Paris Agreement* in October 2016, the First Ministers met to discuss the economy and action required across the country to address climate change. At that meeting, in Vancouver in March 2016, the First Ministers collectively committed to implement GHG mitigation policies in support of meeting or exceeding Canada's *Paris Agreement* target of GHG emissions reductions by 30% below 2005 levels by 2030 and agreed to work together to develop a *Pan-Canadian Framework* on clean growth and climate change.

100. Accordingly, in October 2016, the First Ministers finalized the *Vancouver Declaration* to implement a *Pan-Canadian Framework* on clean growth and climate change, which will act as Canada's plan to meet its international climate commitments, including its 2030 target.

101. 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 – 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 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.

102. 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

103. On December 9, 2016, the *Pan-Canadian Framework* was adopted by Canada’s First Ministers, with the exception of Saskatchewan and Manitoba. Later, Manitoba adopted the *Framework*. 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 impact of climate change.

104. 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.

105. Also on December 9, 2016, Canada committed to strengthening its collaboration with Indigenous peoples as partners in developing real and meaningful outcomes that position them as drivers of climate action in the implementation of the *Pan-Canadian Framework*. The federal government continues to engage Indigenous peoples to find solutions that address their unique circumstances regarding climate change, including the high costs of living and of energy, challenges with food security, and emerging economies.

106. Following the joint commitments made by the Prime Minister and the National Leaders of the Assembly of First Nations (AFN), Inuit Tapiriit Kanatami (ITK) and the Métis National Council (MNC), the federal government established three distinctions-based senior bilateral tables in 2017. These tables are based on the recognition of rights, co-operation, and partnership, have helped foster a collaborative approach to ongoing engagement with Indigenous peoples on various common priorities, including the environment and climate change. In addition to these three tables, the federal government continues to work to better support Indigenous peoples as leaders to advance their self-determined priorities and plans within the context of national and global efforts to address the impacts of climate change, reduce the carbon footprint, and move towards energy sustainability. This also includes funding initiatives in the *Pan-Canadian Framework* to support Indigenous peoples in undertaking climate change adaptation and mitigation projects.

107. 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.

108. In particular, the *Pan-Canadian Framework* includes over fifty concrete measures under four key pillars:

- 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.

d) Carbon-Pricing

109. 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. The World Bank Report of the High Level Commission on Carbon Prices explains that a well-designed carbon price is an indispensable part of a strategy for reducing emissions in an efficient way.

110. In 2016, the Government of Canada announced the Pan-Canadian Approach to Pricing Carbon Pollution (the “Pan-Canadian Approach”), 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 gives provinces and territories the flexibility to implement their own carbon pricing systems, as long as they meet minimum federal stringency requirements.

111. 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 meet 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).

112. 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 per tonne in 2019 and rises \$10 per year to reach \$50 per 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.

e) Other Measures to Reduce GHG Emissions

113. 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.

f) Working with First Nations

114. In fall 2017, Canada and the AFN jointly established the First Nations-Canada Joint-Committee on Climate Action (“JCCA”) as a part of Canada's commitment to ongoing engagement with Indigenous Peoples in the implementation of the *Pan-Canadian Framework*. The JCCA is a senior bilateral table for discussing the implementation of the *Pan-Canadian Framework* and broader First Nations-led climate priorities. The JCCA has met quarterly and has held numerous additional working group sessions on joint priorities.

115. In 2019, the JCCA focused its efforts on building the relationship between partners by incorporating an Ethical Space lens to reflect various cultural perspectives in its work. The JCCA continues to explore opportunities for First Nations to meaningfully participate in the transition to a clean growth economy as climate leaders. The JCCA has made important progress on identifying barriers that prevent First Nations from fully participating in clean growth and climate change activities. Issues raised at these meetings are being addressed through the following actions:

- a. Federal departments are working towards a “no wrong door approach”, to improve access to renewable energy programs and adaptation programs within the *Pan-Canadian Framework*;
- b. The implementation of external Indigenous Expert Panels to provide select *Pan-Canadian Framework* programs with advice and recommend project proposals; and
- c. A commitment to jointly develop approaches to funding clean growth and climate change priorities for Indigenous peoples.

g) Environmental & Impact Assessment

116. The *CEAA 2012* and the *IAA* set out rules for assessing the impact of individual projects for the purpose of decision-making. Environmental and Impact assessments are a planning tool, comprising information gathering and legislative requirements allowing the decision maker to determine whether a proposed development should proceed and under what conditions.

117. The decision-making process under the *IAA* is premised on determining whether the adverse effects within federal jurisdiction and the adverse direct and incidental effects likely to be caused by the designated project are in the public interest. These effects include GHG emissions and the decision maker must consider the extent to which they may hinder or contribute to Canada’s environmental obligations and commitments in respect of climate change.

118. The Canadian government supports domestic industries, including those employing fossil fuels, which are subject to robust and stringent regulatory and environmental regimes. No single industry bears responsibility for the totality of emissions. All sectors of the economy, such as buildings, transportation, energy production, jointly contribute to GHG emissions reductions and should play a role in the transition to a low carbon economy. Canada's national climate plan under the *Pan-Canadian Framework* takes into account the whole of the economy in order to provide a balanced approach to combatting climate change.

5. Future Plans for Climate Action

119. The Government of Canada has recently confirmed its commitment to enhance its efforts to reduce domestic GHG emissions. As set out in the Minister of Environment and Climate Change's 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.

120. 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 five-year emissions-reduction milestones based on the advice of experts and consultations with Canadians; and
- 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.

121. Further, as announced through the 2019 Speech from the Throne and 2019 Ministerial Mandate Letter, and as confirmed in the latest Biennial Report on Climate Change in January 2020, Canada will continue to take concrete action to 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. use nature-based solutions, including planting two billion 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.

122. As further confirmed in the Biennial Report, Canada is determined to meet and exceed its 2030 *Paris Agreement* targets. Canada is still 10 years away from official accounting of our emissions relative to the *Paris Agreement* target, with many external variables that could affect Canada's GHG emissions.

6. Youth Engagement

123. The Dini Ze' refer in their claim to the likely impact of climate change on their younger and future members. Engagement with young people is of central importance to Canada's strategy for climate action.

124. 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.

125. 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 young people 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.

126. Since 2018, the Climate Action Fund has awarded \$3 million per year to support innovative ideas. The objective 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. Of the projects funded so far, a number are directed specifically at Indigenous youth:

- a. Climate Change - Education and Awareness for Youth, Students and the Public in Kitsumkalum Traditional Territory: This project aimed to support Indigenous students and youth in conveying the impacts that climate change will have on the Kitsumkalum for food security, flooding, access to harvest areas, and impacts on infrastructure;
- b. Tipi Teachings 2nd Annual Youth Gathering - STEM and Climate Change: This project aimed to educate and engage 150 youth in seven Dakota Ojibway Tribal Council (DOTC) communities on climate change by hosting two youth gatherings which utilize an Indigenous approach that links the seven traditional teachings; Love, Respect, Courage, Honesty, Wisdom, Humility and Truth. The project worked to ensure traditional knowledge and climate change information is transmitted to the youth with culturally practiced methodologies. The program outline includes: "What is Climate Change?", "Why Does Climate Change Happen?", "How Recycling Can Address Climate Change", "The Indigenous Connection to Climate Change", "Water Teachings", "Knowledge-Keepers", "Waste

Management in First Nation Communities”, and the leadership and knowledge status of the Indigenous youth in DOTC;

- c. Climate Action School: Climate Action School aimed to develop and implement climate-focused curriculum and hands-on workshops for students in Nova Scotia that draws upon traditional Mi'kmaq and scientific knowledge to increase awareness and stewardship and build skills;
- d. Inspiring Indigenous Students to Climate Action – School and Public Outreach in First Nation Communities: Science North aimed to engage over 4,400 Indigenous students across Northern Ontario in hands-on school outreach programs and summer camp experiences in First Nation communities and at “Climate Connections” events in North Bay and Thunder Bay. Students gain greater awareness of climate change and the knowledge they need to take personal action to reduce the impacts and adapt to changes. Programs in Indigenous communities were designed to communicate climate science through an Indigenous cultural lens and include a “Commit to Action” system. “Climate Connections” events aimed to directly connect 2,450 students and 1,150 others with climate change scientists, inspiring discussions and motivating students to become future leaders in climate action; and
- e. Climate Action Lab – Translating Knowledge into Youth-led Action: The Youth Climate Lab, in partnership with the Gwich'in Tribal Council, Gwich'in Regional Youth Council, Vuntut Gwitchin First Nation, and Gwich'in Council International, designed an innovative program to equip 16 “Community Activators” – 8 Gwich'in youth and 8 youth from Southern Canada, to directly engage over 280 people and reach 150,000+ people in climate awareness and capacity-building activities. Through the 8-month lab, Community Activators learn about climate change through the lenses of traditional knowledge and climate policy, convene to build community

and hone skills to take action through digital outreach, community workshops and participation at international conference.

D. Legal Bases for Defence

a. Canada's Position on Representative Proceeding

127. It is Canada's position that the Claim is not brought as a suitable representative proceeding as it does not meet the requirements prescribed by rule 114(1) of the *Rules*. In particular, ss. 7 and 15 of the *Charter* provide for individual rights and s. 91 of the *Constitution Act, 1867* only provides legislative authority to Parliament. Accordingly, the Claim does not relate to a collective interest shared by the Dini Ze' and the persons whom they purport to represent.

128. Canada has no direct knowledge of whether Dini Ze' have the requisite authority to bring an action on behalf of the members of the Misdzi Yikh and the Sa Yikh Houses.

b. The Claim is Not Justiciable

129. Canada recognizes that to the 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 in the Claim.

130. The Claim attempts to impugn Canada's policy approach to combat climate change. No specific legislative act or action by the government is identified as violating their *Charter* rights. Rather the Dini Ze' base their tenuous allegations on Canada's past and current legislative regime relating to environmental and impact assessments, policy decisions, and what the Dini Ze' view as Canada's inaction.

131. Canada's constitutional framework has long recognized the prescribed different roles for the executive, legislative and judicial branches that has been shaped by history

and the evolution of Canada's constitutional order. Each role plays a critical part and are complementary in Canada's constitutional democracy. It is well settled that these separate but complementary roles provides that the legislative branch makes policy, adopts laws and controls spending; the executive branch implements and administers policies and laws; and the judiciary maintains the rule of law by interpreting and applying the laws while protecting the fundamental rights and freedoms under the *Charter*.

132. The Dini Ze' ask this Court to step outside its judicial function and to become active participants in the crafting of a policy response to global climate change, contrary to Canada's constitutional order and the proper role of the court.

133. Further, the relief sought in the Claim is fundamentally vague and unmanageable. The Dini Ze' seek declaratory orders from this Court that would order Canada to create new laws under s. 91 of the *Constitution Act, 1867*, to amend existing environmental assessment statutes, and to provide a novel GHG reporting system in the preferred format of the Dini Ze' without regard for the reporting commitments Canada has already agreed to in various international agreements on climate change.

134. There is no legal standard in Canada's domestic law for assessing whether Canada's response to climate change is constitutionally adequate and/or consistent with the aims of the *Paris Agreement*. 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, this relief would require this Court to supervise and direct the government's development, implementation and compliance with a climate change plan for several decades, if not longer.

c. The Government of Canada Does Not Have Legal Obligations as Alleged by the Dini Ze'

1. Peace, Order, and Good Government (POGG)

135. Section 91 of the *Constitution Act* gives Parliament the power to legislate for the ‘peace, order and good government’ of Canada. It does not include the duties, or obligations, as outlined in the Claim.

2. The Paris Agreement

136. The reliance of the Dini Ze’ on the *Paris Agreement* is based upon an incorrect legal presumption that the *Agreement* creates binding duties in the domestic sphere. International treaties do not on their own create entitlements under domestic law.

137. The *Paris Agreement* has been ratified by Canada but the obligations therein do not have any binding force in domestic law. The *Paris Agreement* does not confer any rights for the Dini Ze’ to rely upon nor compel this Court to order Canada to take any action it is not already taking.

d. Sections 7 and 15 of the Charter

138. The claims of the Dini Ze’ 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 s. 7 or 15 of the *Charter*.

1. Section 7 is Not Engaged Where the Impugned Conduct is Speculative

139. The claims of the Dini Ze’ do not engage s. 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.

140. The Dini Ze’ rely upon doctrines of public trust and equitable waste, yet neither are principles of fundamental justice against which a deprivation of rights under the *Charter* can be measured. Even if these doctrines could be relied upon in the *Charter* context, they would not assist the Dini Ze’ as the claim includes land and resources not owned or controlled by the Government of Canada.

2. The Alleged Conduct Does Not Engage S. 15 of the *Charter*

141. 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, i.e., the distinction perpetuates arbitrary disadvantage on the claimants.

142. The claims of the Dini Ze' do not engage the protection of s. 15 as this section does not impose a positive obligation on the part of the government to legislate in a particular manner. The claims are based on alleged insufficiency or inaction on the part of Canada with respect to its response to climate change. As with the s. 7 claim, this claim is inherently speculative. The claim does not allege that any specific law, measure or government action has denied equal protection or benefit of the law to the Dini Ze' as compared to others.

143. Further, the government's alleged inaction does not create a distinction, burden or disadvantage between the Dini Ze' and others based on a prohibited ground of discrimination. The true nature of the 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.

144. Generational distinctions, unlike those based on age, are not based on immutable characteristic of personal identity and cannot be characterized as an analogous ground under s. 15 of the *Charter*.

145. The principle of intergenerational equity is not recognized as an unwritten constitutional principle. In the alternative, if the preservation of intergenerational equity is an unwritten constitutional principle, such a principle is not an independent basis to establish a s. 15 claim.

e. The Remedies Sought by the Dini Ze' are Not Available

146. The Dini Ze' seek a number of mandatory and declaratory orders in this claim. None of these orders are justiciable and so cannot be granted.

147. The Dini Ze' seek declarations as to Canada's alleged common law and constitutional duties to "act consistently" with the *Paris Agreement* aim of limiting global warming to below 2°C above pre-industrial levels. No such duties can be found in Canadian law, nor could such a subjective assessment form the basis of a judicial order.

148. The Dini Ze' claims under ss. 7 and 15 of the *Charter* are based on speculation regarding future harms that are alleged will arise as a result of Canada's climate policies. Declaratory relief is a discretionary remedy that will not be granted where the dispute is theoretical in nature – where the link between the action and the alleged harm is merely speculative and cannot be proven.

149. The Dini Ze' seek mandatory relief in the form of orders directing Canada to amend environmental assessment legislation and to produce accounts of Canada's GHG emissions in a particular format. Under Canada's system of government, the Court does not have the power to direct the executive and legislature to create legislation. Canada already reports its GHG emissions in a variety of ways which are transparent and prepared in accordance with international guidelines. The Court cannot mandate a specific format as put forward by the Dini Ze'.

E. Conclusion

150. For these reasons, the Defendant requests that the Statement of Claim be dismissed.

July 28, 2020



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