Court File No. T-211-20

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**

Respondents

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Applicant

REPRESENTATIVE PROCEEDING

RESPONDENTS' MOTION RECORD
(Rule 221 – Motion to Strike)

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WRITTEN REPRESENTATIONS OF THE RESPONDENTS

I. OVERVIEW

1. The Plaintiffs continue to challenge the constitutional compliance of the scheme Canada has voluntarily adopted to regulate the country's greenhouse gas emissions. This scheme, at core, is directed at discharging the voluntary commitments Canada made to limit and reduce greenhouse gas emissions pursuant to the Paris Agreement. These commitments have been incorporated into domestic law through ratification and reference.

2. Canada seeks, for the third time, to strike the Plaintiffs claim for an alleged failure to disclose a reasonable cause of action. Canada's complaint rests on two foundational allegations, namely that the Second Further Amended Statement of Claim (the "Second Further Amended Claim") - which was filed in response to this Court's ruling on its second attempt to strike – has not remedied: (a) "the excessive number of impugned provisions" at issue; and (b) "the failure to

plead material facts".[1] The Plaintiffs say that Canada's position mischaracterizes the nature of the claims advanced in the Second Further Amended Statement of Claim. It also fails to give effect to the context-driven analytical approach adopted by the Supreme Court of Canada when dealing with cases where the nature of the harm at issue is, as here, so extreme and irreversible that it is "disproportionate to any government interest" and shifts the analysis away from the delicate balancing that Canada suggests ought to guide the assessment of the claim.

3. Such an approach is an error and fails to give full effect to the jurisprudence regarding s, 7 and applications to strike, generally. In particular, when considered through the lens provided by the Supreme Court of Canada jurisprudence addressing extreme and irreversible harm under s. 7 of the Charter, the Second Further Amended Claim adequately addresses the concerns previously raised by this Court, and the Federal Court of Appeal, with its earlier pleadings. That strand of jurisprudence illuminates a path through the fog created by Canada's continuing efforts to obfuscate and mischaracterize the nature of the Plaintiffs' claims.

4. The Second Further Amended Claim pleads all of the necessary material facts to establish the elements of a s. 7 Chater claim. In other words, it pleads a reasonable, albeit somewhat novel, cause of action. While the Second Further Amended Claim remains complex, the law is clear that complexity is not a basis on which to strike a claim – constitutional or otherwise. The Plaintiffs' claims are justiciable and capable of constitutional adjudication. The within application should be dismissed.

II. RESPONDENT'S POSITION ON THE FACTS

5. The Plaintiffs generally accept the summary of the background facts described by Canada at paragraphs 6 to 12 of Canada's Written Representations;[2] however, as discussed below the Plaintiffs disagree with Canada's characterization of the findings of this Court regarding the Further Amended Claim which was at issue in Canada's last application to strike.

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[1] Written Representations of the Application ("**Canada's Representations**") dated February 20, 2026, Applicant's Motion Record ("**AMR**") , Tab 2 at para. 2.
[2] Canada's Representations, AMR, Tab 2.

6. With respect to the Second Further Amended Claim, the Plaintiffs disagree with Canada's characterization of the claims advanced and the nature and extent of the amendments made to the Further Amended Claim. All of the amendments made to the Original Claim – in the Amended Statement of Claim, the Further Amended Claim and the Second Further Amended Claim - are tracked in the Second Further Amended Claim as attached at Tab 6 of the Applicant's Motion book and speak for themselves in terms of their nature and extent.

A. Procedural Background

7. This is the third attempt by Canada to strike the Plaintiffs' claim.

8. The first attempt was successful at first instance but overturned – in part – by the Federal Court of Appeal. Significantly for present purposes, in deciding to strike the Plaintiffs' s. 7 claim with leave to amend, the Court of Appeal expressly found that the Plaintiffs s. 7 claims were justiciable. They were struck, "not because they are destined to fail in this context or have no reasonable prospect of success, but because the pleadings … as framed are incompatible with constitutional adjudication".[3] The Court went on to clarify that they were "incompatible" because they lacked the "focus necessary" to ground the constitutional analysis required under s. 7 and s. 1.[4]

9. The Plaintiffs took those comments to heart and reframed the claim in the manner set out in a Further Amended Statement of Claim (the "Further Amended Claim") that was the focus of Canada's second attempt to strike the Plaintiffs' claim. The Further Amended Claim tied the Plaintiffs' claims to a specific list of enactments and provisions which collectively embody the measures taken by Canada – both directly and indirectly – to implement the scheme it adopted to address GHG emissions and achieve its Nationally Determined Contribution and the Temperature Commitment.[5] The Further Amended Claim also added various material facts to support the

[3] *La Rose v Canada*, 2023 FCA 241 ["***La Rose***"] at para. 22.
[4] *La Rose* at para. 133.
[5] Nationally Determined Contribution and Temperature Commitment are defined at paragraphs 47 and 3, respectively, of the Second Further Amended Claim, AMR, Tab 6.

Plaintiffs' s. 7 claims. A copy of the Further Amended Claim is attached at Tab 5 to the Applicant's Motion Book.

10. Canada's second application to strike was heard in August 2025. On September 26, 2025, this Court granted Canada's application, striking the Further Amended Claim with leave to amend the Further Amended Claim on the following terms:[6]

> The Dini Ze' have not pleaded the goal or purpose of any of the laws or government actions forming the basis of their challenge. The brief comments on the effects of each piece of legislation in Schedule A are not sufficient to discharge this obligation, and the Court cannot infer a plaintiff's interpretation of the purpose of an impugned law.
>
> The particulars for the second element of the section 7 Charter claim (i.e., that the infringement of rights is not in accordance with the principles of fundamental justice) have not been pleaded. It is therefore plain and obvious that the Further Amended Claim discloses no reasonable cause of action.
>
> The Defendant should therefore succeed in its motion to strike the pleadings.
>
> ... The issues with the Further Amended Claim are pleading deficiencies which do not appear to be incurable by amendment. Therefore, the Dini Ze' should be given leave to amend. [emphasis added]

11. In response to this decision, the Plaintiffs amended the Further Amended Claim to plead further particulars of the allegation that the infringement was not in accordance with the principles of fundamental justice. The Second Further Amended Claim provides those particulars in several material ways, including:

(a) succinctly describing the inherent tension within the scheme adopted by Canada to regulate greenhouse gas ("GHG") emissions;[7]

(b) grouping and colour coding the statutes and other instruments listed in Schedule A to the Second Further Amended Claim, which comprise the measures taken by

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[6] *Lho'Imggin v. Canada*, 2025 FC 1586 ("*Lho'Imggin*") at paras. 105 - 107 and 110.
[7] Second Further Amended Claim, para. 5, AMR, Tab 6.

Canada under the scheme it voluntarily adopted to address GHG emissions, to indicate which measures:[8]

(i) support Canada's efforts to meet the Temperature Commitment (yellow entries);

(ii) undermine those efforts by promoting development, industry or initiatives which increase GHG emissions (grey entries); and

(iii) may support or undermine Canada's efforts depending on the terms and conditions imposed by any authorization issued under the indicated provisions (unshaded entries);

(c) clarifying and pleading further material facts addressing the manner in which the alleged harm is arbitrary and grossly disproportionate to any competing objective of Canada, i.e. the manner in which the alleged harm is contrary to the principles of fundamental justice;[9] and

(d) pleading the statutory object of the provisions and/or statutes listed in Schedule A.[10]

12. As discussed below, the Plaintiffs say these amendments adequately address the criticisms of the Further Amended Claim and, as such, the Second Further Claim pleads a reasonable cause of action and ought to be permitted to proceed.

13. In this application, much as it did in its second application to strike, Canada frames its position in terms of assessing the nature or extent of the amendments made to the Further Amended Claim and how responsive – in Canada's view - those amendments were to the comments made by this Court in respect of the Further Amended Claim and, to a lesser extent, the comments of the Federal Court of Appeal regarding the Original Claim. With respect, this is not the proper focus.

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[8] Second Further Amended Claim, paras. 62 – 63 and Schedule A, AMR, Tab 6.
[9] Second Further Amended Claim, paras. 94-95, AMR, Tab 6.
[10] Second Further Amended Claim, Schedule A, AMR, Tab 6.

14. This is an application to strike the Second Further Amended Claim. As discussed below, such an application raises a single issue, namely whether it is "plain and obvious" or "beyond a reasonable doubt" that the Further Amended Claim does not disclose a reasonable cause of action. It is not an exercise of comparing the current pleading to an earlier version of the pleading. Rather, the singular focus is on the claim as currently pleaded in the Second Further Amended Claim and whether that claim pleads the material facts necessary to make out a s. 7 claim.

15. For ease of reference and review, a clean copy of the Second Further Amended Claim is attached at Tab 3 to the Respondent's Motion Record.

III. ISSUES

16. Canada brings this motion pursuant to Rule 221(1)(a) alleging that the Second Further Amended Claim filed November 24, 2025 ought to be struck for failure to disclose a reasonable cause of action. On such an application there is only a single question to be answered: is it "plain and obvious" or "beyond a reasonable doubt" that the pleading discloses no reasonable cause of action?[11]

17. The Plaintiffs submit that this question must be answered in the negative and the application dismissed.

IV. SUBMISSIONS

18. Canada's motion to strike is focussed on the assertion that the Second Further Amended Claim fails to remedy two defects identified by this Court in the Further Amended Claim, namely:

(a) "the excessive number of impugned provisions", and

(b) "the failure to plead material facts".[12]

19. Canada elaborates on these allegations, asserting that:

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[11] See, for example, *Dumont v. Canada*, 2003 FCA 475 at para. 19 – 23, relying on *Hunt, supra*, at 979 – 980.
[12] Canada's Representations at para. 2, AMR, Tab 2.

(a) none of the provisions or actions listed in Schedule A to the Second Further Amended Claim explain the cause of the claimed infringement of the Plaintiffs' s. 7 rights;[13]

(b) the alleged failure to plead material facts means that the laws listed in the Second Further Amended Claim were not in accordance with the principles of fundamental justice;[14] and

(c) the effect of Canada's international commitments is improperly plead.[15]

20. The Plaintiffs disagree with this characterization of the Second Further Amended Claim and say that Canada's approach misconstrues the nature of its claim. The Plaintiffs say that the issues identified with the Further Amended Claim have either been addressed, or simply do not arise on a proper consideration of the Second Further Amended Claim.

21. As set out below, when the Second Further Amended Claim is considered in a manner consistent with the jurisprudence,

(a) on an application to strike, i.e. generously with a view to accommodating any "inadequacies", and

(b) dealing with cases where the s. 7 detriment – like the existential threat posed by climate change - is extreme and irreversible,

the Plaintiffs say that it clearly discloses a reasonable cause of action or, in the language of the jurisprudence, it is not "plain and obvious" that the Second Further Amended Claim fails to disclose a reasonable cause of action.

A. Principles to be Applied on an Application to Strike

22. On an application to strike such as this it is well established that this court is to be guided by several principles, including:

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[13] Canada's Representations at para. 28, AMR, Tab 2.
[14] Canada's Representations at para 22 and paras. 32 to 36, AMR, Tab 2.
[15] Canada's Representations at paras. 23 and 41 - 42, AMR, Tab 2.

(a) the facts as pleaded are assumed to be true unless manifestly incapable of proof;[16]

(b) the pleading is to be read "generously" to accommodate any "inadequacies" in the drafting;[17]

(c) novel, but arguable, claims must be allowed to proceed;[18]

(d) complexity is not an appropriate factor to consider when deciding whether to strike a claim and complex or intricate issues of fact and law should be dealt with at trial;[19]

(e) the defendant bears the onus of establishing that the pleading discloses no reasonable cause of action;[20] and

(f) a claim should only be struck where it is "plain and obvious" or "beyond a reasonable doubt" that it is certain to fail.[21]

23. As discussed below, when the claims advanced in the Second Further Amended Claim are considered in light of these well-established principles, and in their full and proper context, the Plaintiffs' claim should be permitted to proceed. It is not "plain and obvious" that the pleading discloses no reasonable cause of action or has no chance of success. On the contrary, the Plaintiffs have pleaded the material facts necessary to make out each of the requisite elements of their s. 7 claim. While the claim may be novel and, in some respects, complex, these are not factors that should prevent the Plaintiffs from proceeding. As found by the Federal Court of Appeal, the claim is justiciable.[22] It is not certain to fail because of some "radical defect". The motion should be dismissed.

B. The Nature of the Claim Advanced in the Second Further Amended Claim

24. The claim, as framed in the Second Further Amended Claim, continues to be grounded in the scheme adopted by Canada to address domestic greenhouse gas emissions and Canada's

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[16] *La Rose* at para. 19.
[17] *Mohr v. National Hockey League*, 2022 FCA 145 ["***Mohr***"] at para. 48.
[18] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 ["***Imperial Tobacco***"] at para. 21.
[19] *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 ["***Hunt***"] at 979 – 980.
[20] *Edell v. Canada*, 2010 FCA 26 at para. 5.
[21] *Hunt, supra,* at 979 - 980.
[22] *La Rose, supra*, at para 22.

commitment to curb or reduce the same under the Paris Agreement. Having voluntarily adopted the Temperature Commitment (as defined in para. 3 of the Second Further Amended Claim) and, relatedly, its Nationally Determined Contribution (as defined in para. 47 of the Second Further Amended Claim) as part of its domestic scheme to regulate GHG emissions through the enactment of the *Canadian Net-Zero Emissions Accountability Act*, Canada is obliged to implement measures under that scheme in a manner that is Charter compliant.[23] The constitutionality of those measures, as grouped and summarized in Schedule A to the Second Further Amended Claim, is the focus of the Plaintiffs' claim.

25. While the Plaintiffs acknowledge that the Second Further Amended Claim continues to challenge the breadth of measures adopted by Canada pursuant to the scheme it has implemented to regulate GHG emissions, that is not be a barrier to their claim. Contrary to Canada's submission, the claim will not result in a trial "unmanageable in length and complexity" for several reasons.

26. First, the impugned provisions at issue here are not disparate, at least not in any way that complicates the s. 7 analysis, because within the context of this claim these provisions all share a material and significant trait -- they each relate to the encouragement, permitting or regulation of GHG emissions. More importantly, the material facts underlying the Plaintiffs' claim require the Plaintiffs to include the totality of the measures comprising Canada's response to climate change, and not "zero in" on specific provision or provisions,[24] because it is the aggravative and accumulative emissions arising out of those measures that cause the Plaintiffs' s. 7 deprivation and resulting harm. Further, as discussed further below, the nature and extent of that harm provides the "necessary focus"[25] for the constitutional analysis as it mandates a different approach to consideration of the fundamental justice branch of the s. 7 analysis.

27. Finally, and in any event, as acknowledged by this Court in its assessment of Canada's second application to strike, there are several instances where the Courts have had to grapple with multiple provisions in the context of a s. 7 challenge.[26] Striking the Second Further Amended

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[23] See, for example, *Mathur v. Ontario*, 2024 ONCA 762 at para. 5.
[24] Canada's Representations at para. 11, AMR, Tab 2.
[25] *La Rose, supra*, at para. 131 and 133; *Lho'Imggin, supra* at para. 14.
[26] *Lho'Imggin, supra* at para. 92, citing *Canada (Attorney General) v. Bedford*, 2013 SCC 72 ['***Bedford***'] at para. 3 (3 provisions); *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 ["***FLSC***"] at

Claim because, on its face, it is more complex would be directly contrary to express direction of the Supreme Court of Canada in *Hunt, supra*, noted above, that complexity is not an appropriate consideration on an application to strike and such matters should be addressed at trial.

28. This admonition is particular applicable here where many of the provisions forming part of the "population" relied upon by Canada in its analysis of the "complexity" of this matter will likely not be genuinely at issue – in the same way that several of the provisions identified in *FLSC* were not at genuinely at issue - because they are positive in terms of their impacts on GHG emissions (i.e. yellow shaded entries in Schedule A to the Further Amended Statement of Claim). In other words, these measures to a large extent weigh in favour of constitutionality. These "positive" provisions account for 1,722 of the "1800 or more" provisions enumerated in Schedule 1 to Canada's Submissions.

29. There are two central tenets to the Plaintiffs' claim. First, that the positive measures (yellow shaded entries in Schedule A to the Second Further Amended Claim) implemented by Canada are so undermined by the other measures identified in Schedule A that (i) incentivize, promote or support GHG emissions (grey shaded entries in Schedule A to the Second Further Amended Claim) or (ii) permit authorizations without appropriate terms and conditions to limit GHG emissions in a manner consistent with the Temperature Commitment (unshaded entries in Schedule A to the Second Further Amended Claim), that the aggregative effect of the measures Canada has adopted causes the detriment and resulting harm flowing from these measures, i.e. climate change arising from Canada's failure to adopt measures sufficient to meet the Temperature Commitment, as reflected in Canada's ongoing failure to meet its Nationally Determined Contribution.[27] Second, that the steps taken under the positive measures are insufficient to ensure that that Canada will meet the Temperature Commitment.[28] It is the aggregative impact of these measures that causes the detriment and associated harm at issue here, i.e. the impacts of climate change on the "life, liberty and security of the person" of the Plaintiffs.

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paras. 21-22, 117 (31 provisions); *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 ["***Charkaoui***"] at paras, 4, 13 and Appendix (23 provisions); *R. v. Pontes*, [1995] 3 S.C.R. 44 at paras. 3-6 (2 provisions); and *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 at 170-171 (3 provisions).

[27] Second Further Amended Claim, para. 90(a) and (b), AMR, Tab 6.

[28] Second Further Amended Claim, para. 90(c), AMR, Tab 6.

30. As discussed below, the Plaintiffs have pleaded the material facts necessary to establish this element of the claim. Further, they have pleaded that these deprivations are not in accordance with the principles of fundamental justice. In the circumstances, the Plaintiffs say it is not "plain and obvious" that their claim discloses no reasonable cause of action or is otherwise bound to fail.

C. Material Facts

31. Before assessing the Plaintiffs' claims, as pleaded in the Second Further Amended Claim, it is useful to review what is required to properly plead a cause of action, including what is meant by "material facts" in a pleadings context.

32. As a starting point, it is important to be mindful of the fact that no pleading is a story. Pleadings frame the issues and guide the scope of discovery. Pleadings must be disciplined and concise. As stated by Justice Voith in *Mercantile*:[29]

> … Drafting a pleading is not a mathematical exercise. It involves the exercise of judgment and it requires some degree of flexibility. …
>
> Nevertheless, none of a notice of claim, a response to civil claim, and a counterclaim is a story. Each pleading contemplates and requires a reasonably disciplined exercise that is governed, in many instances in mandatory terms, by the Rules and the relevant authorities. Each requires the drafting party to "concisely" set out the "material facts" that give rise to the claim or that relate to the matters raised by the claim. None of these pleadings are permitted to contain evidence or argument. [emphasis added]

33. This description is consistent with the requirements of Rule 174 of the *Federal Courts Rules*, which reads:[30]

> Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

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[29] *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 ["***Mercantile***"] at para. 43-44.
[30] *Federal Courts Rules*, SOR/98-106), s. 174.

34. So, what then are the "material facts" that must be concisely set out. Material facts are the elements essential to formulate a claim (or a defence). Justice Binnie described them in the following manner in *Danuluk*:[31]

> A cause of action has traditionally been defined as comprising every fact which it would be necessary for the plaintiff to prove, if disputed, in order to support his or her right to the judgment of the court …. Establishing each such fact (sometimes referred to as material facts) constitutes a precondition to success. …

35. The BC Court of Appeal similarly described material facts, stating:[32]

> … A material fact is one that is essential to formulate a cause of action. If supporting material facts are omitted, a cause of action is not effectively pleaded ….

36. With these principles in mind, we turn to what are the essential facts required to make out a section 7 claim.

D. The Requirements for a Section 7 Claim

37. The jurisprudence is clear that a section 7 claim is comprised of two elements:

(a) An allegation that one or more impugned laws or state actions engage the security interest protected by s. 7. In other words, the first element of a s. 7 claim asks "whether the impugned laws negatively impact or limit the applicants' security of the person"?[33] In this regard, the claimant bears the burden of establishing a "sufficient causal connection between the state-caused [effect] and the prejudice suffered by the [claimant]", and this standard is "sensitive to the context" of each particular case;[34] and

(b) Once it is alleged that s. 7 is engaged, the next element that must be alleged is that the deprivation is not in accordance with the principles of fundamental justice. This

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[31] *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 54.
[32] *Muldoe v. Derzak*, 2021 BCCA 199 at para. 31. To similar effect, see: *Young v. Borzoni et al.*, 2007 BCCA 16 at para. 20; *Jones v. Donaghey*, 2011 BCCA 6 at para. 18; and *Mercantile, supra* at paras. 44 - 48.
[33] *Bedford*, at para. 58.
[34] *Bedford, supra*, at para. 75-76. See also: *Canadian Council for Refugees v. Canada (Citizenship and immigration)*, 2023 SCC 17 at para. 60.

> is a question of whether the evidence establishes that there is "no connection" between the effects of the impugned laws and their purpose, or whether the deprivation (i.e. the effect) is grossly disproportionate to the objective.[35]

38. In considering whether the Plaintiffs' s. 7 claim has been properly pleaded, the question is whether the Plaintiffs have pleaded sufficient material facts to make out each of these two elements.[36] Here, the Plaintiffs say they clearly have.

E. The Plaintiffs have pleaded that the impugned laws negatively impact or limit the applicants' security of the person.

39. Assuming all of the facts, as pleaded, are true the Plaintiffs' claim may be summarized as follows.

40. Canada has made a series of international commitments in respect of curbing or otherwise addressing greenhouse gas emissions. Specifically, as a signatory to the Paris Agreement, Canada (a) made the Temperature Commitment, and (b) committed to establish and follow its Nationally Determined Contribution, expressed as a specified reduction to Canada's annual greenhouse gas emissions by a specific date in order to achieve the Temperature Commitment.[37] Under the Paris Agreement, the signatories agreed that each country's Nationally Determined Contribution is to be undertaken with the view of equitably achieving the Temperature Commitment.[38] Canada's subsequent conduct and legislative acts, while not enshrining the entirety of the Paris Agreement, have incorporated these two interrelated commitments into domestic law.[39]

41. Having made these international commitments, Canada voluntarily adopted a scheme domestically to address and control its GHG emissions. The law is clear that "'where the government puts in place a scheme' where it undertakes legislated actions, 'that scheme must comply with the *Charter*.'"[40]

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[35] *Bedford, supra,* at paras. 93, 119 and 127.
[36] *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras. 16 – 19.
[37] See, for example, Second Further Amended Claim at paras. 47 – 48, AMR, Tab 6.
[38] *Paris Agreement, Articles 2.2, 3*, Respondents' Motion Record, Tab 5 at page 4.
[39] Second Further Amended Claim at paras. 49 - 52, AMR, Tab 6.
[40] *Mathur, supra* at para 40.

42. The legislative actions that Canada has undertaken pursuant to its scheme to combat GHG emissions are embodied in the statutes and regulations Canada has implemented, or pre-existing statutes that Canada has been continued since making the Temperature Commitment. These legislative actions address the GHG emissions that lie at the foundation of the Temperature Commitment and Canada's Nationally Determined Contribution. To the best of their knowledge, the Plaintiffs have set out in Schedule A to the Second Further Amended Claim the measures adopted by Canada as part of this scheme. The Plaintiffs are not aware whether Schedule A represents a complete list of the statutes and other sources of government action that Canada has implemented to address greenhouse gas emissions as such information is solely within the possession and control of Canada.[41]

43. The Plaintiffs' claim, at core, is that the legislative measures Canada has taken or continued in execution of the scheme it voluntarily adopted to address its domestic GHG emissions have deprived and continue to deprive the Plaintiffs of their right to life, liberty and security of person. The material facts necessary to establish this element of the claim are clearly pleaded.

44. For example, reading the facts pleaded in the Second Further Amended Claim "generously" to accommodate any "inadequacies" in drafting and assuming these facts are true:

(a) paragraphs 53 – 60 establish that the measures Canada has adopted are insufficient to meet the Temperature Commitment or Canada's National Determined Contribution;

(b) paragraphs 65 – 76 establish that Canada has approved several significant GHG emission projects, and implemented changes to the environmental assessment regime, that impair or undermine the measures undertaken by Canada to reduce GHG emissions to meet the Temperature Commitment or Canada's National Determined Contribution;

(c) paragraphs 35 – 39 establish the linkage between Canada's voluntary adoption of the Temperature Commitment through the related commitment to reduce GHG

[41] Second Further Amended Claim at paras. 60 - 64, AMR, Tab 6.

emissions to meet Canada's National Determined Contribution and existing and continuing climate change;

(d) paragraphs 77 – 86 establish that the existing and continuing climate change arising out of, among other things, Canada's failure to adopt measures sufficient to meet the Temperature Commitment and Canada's Nationally Determined Contribution, have and continue to adversely impact the Plaintiffs' security of the person;

(e) paragraph 90 expressly pleads:

> Canada, by its conduct and its failure to discharge its obligation to adequately meet its Temperature Commitment, has and continues to knowingly cause, contribute to and exacerbate the impacts of climate change, thereby depriving the plaintiffs, their members and their future members of their constitutionally guaranteed right to life, liberty and security of the person under s. 7 of the *Charter*.

This plea is then particularized with reference to the three categories of measure identified in Schedule A to the Second Further Amended Claim; and

(f) paragraph 91 succinctly pleads the linkage between the impugned laws and the deprivations caused by the resulting climate change.

45. These pleas are sufficient to establish the first element of the s. 7 claim, namely that one or more impugned laws or state actions, here the aggregate measures Canada has adopted to address GHG emissions, engage the security interest protected by s. 7.

46. As set out in the following sections, the second element of the Plaintiffs' s. 7 claim – i.e. that the deprivation caused by Canada's failure to execute the scheme it has adopted to address GHG emissions in a manner that delivers on the commitments it has made, as measured against the Temperature Commitment, is contrary to the principles of fundamental justice – is similarly established on the pleadings.

F. The Plaintiffs have pleaded that the Deprivation is contrary to the Principles of Fundamental Justice

47. The Plaintiffs claim that Canada's failure to execute the scheme it has adopted to address greenhouse gas emissions in a manner that delivers on the commitments it has made, as measured against the Temperature Commitment, is contrary to the principles of fundamental justice because the existential harm caused by Canada's failure to properly execute on the scheme it has adopted to combat climate change is arbitrary or grossly disproportionate to any objective of the impugned laws.[42]

48. In addition to the material facts pleaded at paragraphs 53 – 60, 77 – 86 and 90 – 91 of the Second Further Amended Claim, as summarized above, which establish the causal link between the impugned laws and the harm, the claim expressly pleads the following regarding the arbitrary and grossly disproportionate nature of the harm at issue:[43]

> These deprivations are not in accordance with the principles of fundamental justice. …
>
> When, as in this claim, the deprivation manifests as existential harm to the plaintiffs and globally, the harm is of a nature and magnitude that it is not necessary to further any relevant law's objectives. In particular, harm of this nature and magnitude is not necessary to further the objectives of the statutes and regulations identified in the grey shaded entries in Schedule A. Further, the deprivation is directly contrary to the objective of the statutes and regulations identified in the yellow shaded entries in Schedule A. Finally, the deprivation caused or contributed to by the failure of permits and authorizations issued under the statutes identified in the unshaded areas of Schedule A is not necessary to further the purpose of any of those statutes.
>
> Similarly, the deprivation is grossly disproportionate if it is so extreme to be disproportionate to any legitimate government interest. Again, laws that allow, facilitate or encourage GHG emissions exceeding the "well below 2°C rise" standard are so extreme as to be grossly disproportionate to any relevant law's objectives. The laws summarized in the grey shaded entries in Schedule A allow or encourage GHG emissions or GHG emitting projects resulting or contributing to Canada producing GHG emissions that exceed Canada's Temperature Commitment and, as such, cause or

[42] See, for example, Second Further Amended Claim at paras. 53 – 60, 77 – 86 and 89 – 96, AMR, Tab 6.
[43] Second Further Amended Claim, paras. 92, 94 and 95, AMR, Tab 6.

> contribute to the harm discussed at paragraphs 72- 81 and 86 above. This harm is grossly disproportionate to any of the objectives of those statutes.
> …

49. The material facts establishing the alleged harm, as noted earlier, are pleaded at paragraphs 77 – 86 and 90 – 91 of the Second Further Amended Claim.

50. The Plaintiffs say that this is sufficient to plead the necessary elements of the second branch of the Plaintiffs' s. 7 claim.

51. Viewed in the context of the foregoing, it seems clear that Canada's complaint is not that the Second Further Amended Claim fails to plead that the impugned laws have (a) resulted in a deprivation that (b) is contrary to the principles of fundamental justice. In other words, Canada does not argue that a s. 7 challenge in this context has no prospect of success,[44] only that the Plaintiffs have failed to (a) "zero in on the specific provision or provisions which constitute a deprivation"[45] and (b) "plead material facts that would allow for a comparison of any alleged deprivation with the principles of fundamental justice".[46]

52. With respect, that position is misplaced. The narrow focus advocated by Canada, and accepted by the Courts on the earlier applications, is not required under the jurisprudence. On the contrary, as noted above, the jurisprudence arising out of *Charter* challenges based on instances of extreme harm makes clear, the fundamental justice balancing exercise does not have to be delicate and focused as advocated by Canada in the present context where the harm at issue is existential in nature. As discussed below, when the Second Further Amended Claim is considered in the context of that jurisprudence and the general principles applicable to an application to strike a pleading, it is clear that Second Further Amended Claim pleads a reasonable cause of action, and the application should be dismissed.

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[44] Not surprising in light of the Federal Court of Appeal's finding that the Plaintiffs' section 7 claims are justiciable: *La Rose, supra*, at para. 22.
[45] Canada's Submissions, para. 26, adopting the comments made in *La Rose, supra* at para. 128, AMR, Tab2.
[46] Canada's Submission, para. 27, referencing *Lho'imggin, supra* at para. 102, AMR, Tab 2.

G. The Nature of the Harm Mandates a Different Approach to the Fundamental Justice Analysis

53. The Plaintiffs acknowledge that in many – if not most – section 7 cases that reach the fundamental justice stage of the analysis arise out of challenges to a single law or provisions, or at most involve consideration of one or more related provisions. In such cases, the Supreme Court of Canada has generally approached the analysis as a comparative or balancing exercise which it has described in various ways, depending on the context. See, for example: the "delicate balancing" in *Thomson Newspapers*,[47] "a balancing of the interest of the state and the individual" in *Rodriguez*,[48] the "reasonable balance" in procedure in *Chiarelli*,[49] "a balancing process" in *Kindler*,[50] "compare the rights infringement caused by the law with the objective of the law" in *Bedford*,[51] and "each of these potential vices involves comparison with the object of the law that is challenged" in *Carter*.[52]

54. The Plaintiffs do not and, contrary to the suggestion of the motions judge on the second application,[53] did not suggest that a comparison or balancing exercise is not engaged as part of the fundamental justice analysis.[54] Rather, the Plaintiffs argue that the balancing exercise is significantly recalibrated where (a) the deprivation results in harm of an extreme nature, and (b) where the source of the infringement is an aggregation of several statutes, provisions and government actions, both of which are present here.

55. The jurisprudence emphasises that the context of the comparison between the rights infringement and the object of the impugned law is an important factor in the balancing process:[55]

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[47] *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425 ("*Thomson Newspapers*") at 539.
[48] *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 ("*Rodriguez*") at 593 to 594.
[49] *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711 ("*Chiarelli"*) at 745.
[50] *Kindler v. Canada (Minister of Justice)*, [1991] 2 SCR 779 ("*Kindler*") at 833.
[51] *Bedford*, *supra* at 1151.
[52] *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 ("*Carter*") at 372.
[53] *Lho'imggin, supra* at para. 99.
[54] Written Representations of the Respondent at paras. 55-56 in *Respondents' Motion Record* dated February 28, 2025 at pages 17-18, a copy of which is enclosed at Tab 5 of this Motion Book.
[55] *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 ("*Edmonton Journal*") at 1355 to 1356 per Wilson J. concurring in the result but finding that *Charter* rights must be assessed in context, in this case applying the contextual approach to s. 1 balancing.

> The contextual approach attempts to bring into sharp relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of any values in competition with it. It seems to be more sensitive to the reality of the dilemma posed by the particular facts and therefore more conducive to finding a fair and just compromise between the two competing values under s. 1.
>
> It is my view that a right or freedom may have different meanings in different contexts. Security of the person, for example, might mean one thing when addressed to the issue of over-crowding in prisons and something quite different when addressed to the issue of noxious fumes from industrial smoke-stacks.

56. Similarly, in considering context in the s. 7 comparison:[56]

> It is also clear that the requirements of fundamental justice are not immutable; rather, they vary according to the context in which they are invoked. Thus, certain procedural protections might be constitutionally mandated in one context but not in another.

57. A review of the fundamental justice jurisprudence referenced at paragraph 53 reveals that the comparative or balancing analysis conducted when the Court compares an alleged detriment with a single or small number of impugned laws or legislative actions has the following salient features:

(a) each successful plaintiff claimed their detriment resulted from one or a few specific statutory provisions or state actions;

(b) governments may defend the purpose of each impugned statutory provision as enshrining a greater, broad state interest;

(c) the court conducts a "delicate balancing"[57] between the claimed constitutional values and the state interest values enshrined in the impugned statute; and

(d) it is possible to reverse the detriment within a relatively short period.

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[56] *Thomson Newspapers* at 540.
[57] *Thomson Newspapers* at 539.

58. This analytical framework does not fit well with the Plaintiffs' claim which has the following characteristics:

(a) the claimants say their detriment from global warming results from a state scheme involving many statutes and actions that encourage, permit and regulate GHG emissions;

(b) the purposes of the impugned statutory scheme enshrine relatively narrow commercial and industrial interests;

(c) there is "sharp relief"[58] between the severe detrimental harm claimed and the statutory purposes; and

(d) the claimed detriment is aggregative, cumulative and long-lasting and thus cannot be reversed within centuries but may be prevented from worsening.

59. Canada says that the complexity of the Plaintiffs' claim means that its claim must be struck unless it can be narrowed to one or a few statutes to be adjudicated. The Courts on each of the earlier applications to strike have in large part acceded to that suggestion, characterizing the Plaintiffs claims as "too diffuse and broad and lack[ing] the necessary focus to challenge a particular law".[59]

60. There are at least five difficulties with this approach.

61. First, as a practical matter, the Second Further Amended Claim includes additional particulars, focus and specificity that had been missing in the earlier iterations of the claim. Those amendments assist, at least in part, in distinguishing the current claim from those earlier characterizations.

62. Second, more fundamentally, as the alleged detriment is the aggregation and accumulation of all Canadian GHG emissions from all emitters, it would be impossible for anyone, even Canada,

[58] *Edmonton Journal* at 1355.
[59] See, for example, *La Rose, supra* at para. 131.

to determine which laws would have the most pronounced effect and to identify which of those laws were not in accordance with fundamental justice using the "delicate balancing" analysis.

63. The laws and state actions behind each of the myriad consumer and business decisions made every minute that combine to produce Canada's GHG emissions are opaque to decision-makers, government agencies and anyone else. This is particularly true when the statutes and discretionary actions governing Canada's response to GHG emissions change frequently[60] while emissions continue at a consistently high level.[61]

64. Third, by requiring the Plaintiffs to narrow their claim to identify certain laws as having "the most pronounced effect on their territory and way of life" would effectively contradict a core aspect of the claim which does not seek remedies requiring the government to amend specific statutory provisions to reduce GHG emissions. The Plaintiffs ask only that Canada's aggregate emissions be reduced consistent with Canada's Temperature Commitment. The Federal Court of Appeal endorsed this approach stating: "The claims do not seek to tell Canada how to fulfill its commitments. In this regard, the Federal Court mischaracterized the claims when it held the claims were challenges to policy."[62]

65. Fourth, as noted above, striking the claim because it impugns multiple state actions or instruments (the corollary of saying the Plaintiffs must narrow the focus of their claim) would allow complexity to overwhelm the assessment of the pleading and the core question of whether the material facts to establish the necessary elements of the cause of action have been pleaded. That approach was expressly rejected by the Supreme Court of Canada in *Hunt*, where Wilson J., writing for a unanimous court, reviewed the authorities from England, Ontario, BC and the

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[60] For example, in 2025 Canada made regulations that ceased the application of the federal fuel charge under the *Greenhouse Gas Pollution Pricing Act* (S.C. 2018, c. 12, s. 186), effective April 1, 2025, and at the same time removed the requirement for provinces and territories to have a consumer-facing carbon price in place: Canada Gazette, Part II, Volume 159, Extra Number 2, SOR/2025-107, March 15, 2025. In June, 2025, the *Building Canada Act,* (S.C. 2025, c. 2, s. 4) came into force, streamlining federal approvals and regulation of GHG-emitting energy projects among other things.

[61] Environment and Climate Change Canada. 2025, National Inventory Report 1990–2023: Greenhouse Gas Sources and Sinks in Canada at Figure ES-3, page 5 and Table ES-1, page 7. Available online at: canada.ca/ghg-inventory. For the last 30 years, Canada's GHG emissions have fluctuated between about 700 and 750 Mt CO_2 equivalent a year.

[62] *La Rose, supra* at para. 38.

Supreme Court of Canada on the test to strike out claims.[63] In England, Lord Denning had suggested that "the potential length and complexity of a trial should be taken into account when considering whether to strike out a statement of claim"[64] but this suggestion had been expressly rejected in England.[65] Justice Wilson noted that proposition had been similarly rejected in the Canadian jurisprudence and the confirmed that:[66]

> [n]either the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case.

66. Finally, while much of the s. 7 jurisprudence has involved challenges to one or a few statutory provisions or state actions, that is a function of those specific claims. It is a statistical observation[67] emerging from how those plaintiffs framed their s. 7 claim, not any judicial pronouncement or legal principle. Indeed, the fact that prior s. 7 claims focused on a single or few provisions does not establish a binding legal principle that all such claims much be framed in a similar manner. To hold otherwise would mean novel claims, such as those challenging multiple provisions, would not be permitted to proceed. As noted above, the proposition that novelty – like complexity – could form a valid ground on which to strike a claim has been rejected.

67. How then can the fundamental justice analysis be calibrated to apply in the context of the Plaintiffs claim? The answer can be found in some of the early *Charter* and earlier *Canadian Bill of Rights* jurisprudence. Where the harm at issue was extreme and irreversible, the Supreme Court of Canada concluded that such harm "shocks the conscience" and is not delicately balanced with the purpose of the impugned statute. Rather, in such circumstances, the harm becomes the controlling issue "and overwhelms the rest of the analysis."[68]

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[63] That test, as here, was whether it was "plain and obvious" or "beyond reasonable doubt" that the claim fails to disclose a reasonable claim.
[64] *Hunt, supra* at p. 973.
[65] *Hunt, supra* at p. 975.
[66] *Hunt, supra* at p. 980.
[67] See the Ontario Court of Appeal's use of the statistical frequency term "archetypal" in *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para. 22.
[68] *United States v. Burns,* [2001] 1 S.C.R. 283 ("*Burns*") at paras. 67 and 69.

68. The cases in this line of SCC decisions[69] considered rights under the pre-*Charter Canadian Bill of Rights* and sections 7 (life, liberty and security of the person) and 12 (cruel and unusual treatment or punishment) of the *Charter*. In these claims, the Court considered whether the effect of the law on the claimant was proportional to the law's objective in the context of capital punishment under the *Criminal Code*,[70] torture after deportation under the *Immigration Act*[71] or capital punishment after extradition without assurances under the *Extradition Act.*[72]

69. In each of these cases, the nature of the harm (i.e. the context of the alleged infringement) is analogous to the harm alleged in the Second Further Amended Claim as the harm resulting from the detriment is extreme, permanent and irreversible. Also similar to the Plaintiffs' case here, deportation and extradition statutes are subject to international agreements with Canada being implicated in a chain of causation leading to the alleged harm. The leading cases in this line of authority are *Burns* and *Suresh.*

70. In *Burns*, the two appeal respondents faced extradition to Washington State where they were each wanted for three counts of first-degree aggravated murder. If convicted, they faced the death penalty or life in prison, but the minister's extradition order did not require the available assurances from the extraditing jurisdiction that these penalties would not be sought. The Supreme Court applied the fundamental justice balancing process,[73] noting that in some cases the "shocks the conscience" language[74] may signal a treatment or punishment that so violates fundamental justice as to tilt the balance against extradition: "[t]he punishment is so extreme that it becomes the controlling issue in the extradition and overwhelms the rest of the analysis."[75] The "overwhelms" and "controlling issue" identifies a threat of extreme, irreversible[76] harm to an

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[69] *Miller and Cockriell v. The Queen,* [1977] 2 S.C.R. 680; *Canada v. Schmidt,* [1987] 1 S.C.R. 500 ("*Schmidt*"); *United States v. Allard,* [1987] 1 S.C.R. 564; *R. v. Smith (Edward Dewey)* [1987] 1 S.C.R. 1045; *Kindler, supra* ; *Burns; Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 ("*Suresh*").
[70] *Criminal Code*, R.S.C. 1970, c. C-34.
[71] *Immigration Act*, R.S.C. 1985, c. 1-2, ss. 19(1), 53(1)(b).
[72] *Extradition Act*, R.S.C. 1985, c. E-23, s. 25.
[73] *Burns, supra* at para. 63 citing *Kindler, supra* at 850.
[74] *Burns, supra* at para. 60 citing *Schmidt, supra* at 522.
[75] *Burns, supra* at para. 69.
[76] *Burns, supra* at para. 78.

individual's life and security of the person from execution analogous to the threat of extreme, irreversible harm to all human life from global warming.

71. In *Suresh*, a refugee said to belong to a terrorist group applied for a judicial review of a ministerial decision to deport him to where he would have been subject to torture. The Court concluded "that generally to deport a refugee, where there are grounds to believe that this would subject the refugee to a substantial risk of torture, would unconstitutionally violate the s. 7 guarantee of life, liberty and security of the person."[77] Suresh's case was remanded to the Minister for reconsideration.[78]

72. In coming to this conclusion, the Court had to balance Canada's interest in combatting terrorism with the refugee's interest in not being deported to torture: [79]

> The notion of proportionality is fundamental to our constitutional system. Thus we must ask whether the government's proposed response is reasonable in relation to the threat. In the past, we have held that some responses are so extreme that they are *per se* disproportionate to any legitimate government interest. We must ask whether deporting a refugee to torture would be such a response. [emphasis added]

73. In other words, when the harm is extreme, the detriment *per se* (or by itself)[80] outweighs any[81] government interest or purpose. By using the phrase "any legitimate government interest", the Court indicates that in some cases it is unnecessary to know the purpose or objective of each relevant statutory provision as all of them are outweighed. This is analogous to the Plaintiffs' claim: in the context of the extreme, irreversible harm posed by the existential threat of global warming, any government interest manifested in a statute or state action could not outweigh the s. 7 detriment of existential global harm.

74. The Court in *PHS* refined the proportionality terminology from *Suresh*, stating:[82]

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[77] *Suresh, supra* at para. 129.
[78] *Suresh, supra* at para. 130.
[79] *Suresh, supra* at para. 47.
[80] Black's Law Dictionary, 6th ed, ("Blacks"), sub verbo "per se".
[81] Blacks, sub verbo "any": May mean "all" or "every" as well as "some" or "one" depending on the context. In the context of the courts' fundamental justice analysis, the "all" or "every" reading is the most reasonable.
[82] *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134 ("*PHS*") at para. 133.

> Gross proportionality describes state actions or legislative responses to a problem that are so extreme as to be disproportionate to any legitimate government interest.

75. *PHS* involved a challenge to the federal minister's decision not to renew the exemption of Insite, a Vancouver safe injection site shown to save lives, from the drug possession and use prohibitions under the *Controlled Drugs and Substances Act*.[83] There, the effect of the detriment was to increase the risk of death and disease to street-drug users and the Court continued to use the "any legitimate government interest" as the comparator with the harm that would have resulted from the minister refusing to renew the site's exemption.

76. In *PHS*, the increased risk of death and disease was extreme but potentially reversible by the court ordering the minister to renew the safe-injection site's exemption from prosecution. Similarly, in *Bedford*, the increased risk of extreme harm to street sex-workers was potentially reversible by the court declaring unconstitutional those sections of the *Criminal Code* prohibiting them from working in so-called common bawdy-houses and from employing drivers and bodyguards.[84]

77. In *Carter*, the Court considered a challenge in the context of assisted suicide. Considering the fundamental justice test, it stated:[85]

> The inquiry into gross disproportionality compares the law's purpose "taken at face value", with its negative effects on the rights of the claimant, and asks if this impact is completely out of sync with the object of the law.

78. This line of cases establishes a precedent for the proposition that some harms are so extreme as to overwhelm by themselves any government interest captured in the relevant laws or state actions. However, the plaintiffs in each of those cases was challenging only one or a few provisions. How then can this analytical framework be applied with sufficient precision to assess the population of statutory provisions and state decisions that for the subject of the Plaintiffs' challenge? This answer is found in the nature of the harm at issue.

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[83] *PHS, supra* at para. 133.
[84] *Bedford, supra* at paras. 164 and 165.
[85] *Carter, supra* at para. 89.

H. Application to the Plaintiffs' Claim

79. The Plaintiffs' claim has been framed with sufficient precision to yield a standard of fundamental justice against which to measure their s. 7 deprivations. That precision is found in the nature of the detriment or harm suffered now and in the future, as pleaded, which is such that it is "*per se* disproportionate" to the legitimate government objectives of any statute that encourages, permits or regulates GHG emissions.

80. The harm at issue has been described by the Supreme Court as a "threat to human life in Canada and around the world".[86] Climate change has a "particularly serious effect" on indigenous peoples, with "heightened impacts" on their territories.[87] Notably, the Supreme Court described the harm in the following terms in the carbon pricing reference based, among other things, on Canada's submissions and evidence:[88]

> All parties to this proceeding agree that climate change is an existential challenge. It is a threat of the highest order to the country, and indeed to the world. This context, on its own, provides some assurance that in the case at bar, Canada is not seeking to invoke the national concern doctrine too lightly. The undisputed existence of a threat to the future of humanity cannot be ignored.
>
> …
>
> And it is well- established that climate change is causing significant environmental, economic and human harm nationally and internationally, with especially high impacts in the Canadian Arctic, in coastal regions and on Indigenous peoples. This includes increases in average temperatures and in the frequency and severity of heat waves, extreme weather events like floods and forest fires, significant reductions in sea ice and sea level rises, the spread of life- threatening diseases like Lyme disease and West Nile virus, and threats to the ability of Indigenous communities to sustain themselves and maintain their traditional ways of life.

81. This harm is the standard against which the objective of any law or government action that contributes to GHG emissions must be measured. The Plaintiffs plead that this harm is both

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[86] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (CanLII), [2021] 1 SCR 175 ["*Refs re GGPPA"*] at para. 171.
[87] *Refs re GGPPA, supra* at para. 11 - 12. See also, *Mathur, supra* at para. 13.
[88] *Refs re GGPPA, supra* at paras. 167 and 187.

arbitrary and grossly disproportionate to "any legitimate government interest", to borrow the language of *Suresh*.[89] The harm is *per se* contrary to the principles of fundamental justice.

82. This approach will not result in an unmanageable trial, nor does it put Canada in the untenable position of not knowing the case it has to meet. The Plaintiffs have pleaded what they understand to be the objectives of the impugned measures comprising Canada's scheme for addressing GHG emissions. Moreover, the Second Further Amended Claim expressly pleads that

(a) "the harm is of a nature and magnitude that it is not necessary to further any relevant law's objectives",[90] i.e. it is arbitrary; and

(b) the harm is "so extreme as to be grossly disproportionate to any relevant law's objectives".

83. Canada can respond to either proposition by the *reductio* method,[91] that is, by pleading contradictory facts and, at trial, proving those facts, which demonstrate that one or more provision within the impugned body of federal laws that encourage, permit or regulate Canada's GHG emissions has an objective that outweighs the "undisputed existence of a threat to the future of humanity".[92] That the Supreme Court found climate change to be "a threat of the highest order to the country" effectively precludes any higher government interest or statutory objective. The Plaintiffs have been unable to identify any statutory provision with such an objective.

84. Viewed in this context, there is no need to assess the Plaintiffs' claim within the "delicate balancing" framework that informs much of the s. 7 jurisprudence. Rather, given the extreme nature of the harm at issue, the lens provided by *Suresh* and *Burns* applies and, absent Canada identifying some higher government interest or statutory objective that informs any of the impugned laws as part of its defence, the harm becomes the "controlling issue" and "overwhelms the rest of the analysis".

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[89] Second Further Amended Claim, para. 94 – 95, AMR, Tab 6.
[90] Second Further Amended Claim, para. 94, AMR, Tab 6.
[91] Blacks, sub verbo "Reductio ad absurdum": In logic, the method of disproving an argument by showing it leads to an absurd consequence.
[92] *Refs re GGPPA, supra* at para. 167.

I. Role of International Law in Considering Fundamental Justice

85. At paragraphs 23, 41 and 42 of its submissions Canada misconstrues the Plaintiffs' position regarding Canada's international commitments. The Plaintiffs' position is two-fold.

86. First, as discussed at paragraphs 24 and 40 above and as pleaded in paragraphs 49 – 52 of the Second Further Amended Claim, Canada has incorporated Canada's Nationally Determined Contribution and, relatedly, the Temperature Commitment into domestic law.

87. Second, Canada's international commitments are part of the analytical framework that informs consideration of the principles of fundamental justice.

88. In *Burns*, the Supreme Court of Canada quoted an earlier fundamental justice case as follows:[93]

> [Principles of fundamental justice] represent principles which have been recognized by the common law, the international conventions and by the very fact of entrenchment in the ***Charter***, as essential elements of a system for the administration of justice which is founded upon the belief in the dignity and worth of the human person and the rule of law.

The Court continued, finding that an international trend existed that was "useful in testing our values against those of comparable jurisdictions" and that "perhaps corroborates the principles of fundamental justice that led to the rejection of the death penalty in Canada."[94]

89. To similar effect, the Supreme Court stated in *Suresh*:[95]

> International treaty norms are not, strictly speaking, binding in Canada unless they have been incorporated into Canadian law by enactment. However, in seeking the meaning of the Canadian Constitution, the courts may be informed by international law. Our concern is not with Canada's international obligations *qua* obligations; rather, our concern is with the principles of fundamental justice. We look to international law as evidence of these principles and not as controlling in itself. [emphasis added]

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[93] *Burns, supra* at para. 79, quoting *Re B.C. Motor Vehicle Act,* [1985] 2 S.C.R. 486 at 512.
[94] *Burns, supra* at para. 92.
[95] *Suresh, supra* at para.60.

90. The court concluded:[96]

> [T]he better view is that international law rejects deportation to torture, even where national security interests are at stake. This is the norm which best informs the content of the principles of fundamental justice under s. 7 of the *Charter*. [emphasis added]

91. This jurisprudence suggests that Canada's signing of the 2015 *Paris Agreement*, Parliament's 2016 ratification, Parliament's 2019 non-binding declaration of a climate emergency, its incorporation of the Temperature Commitment in the preambles of subsequent legislation,[97] and its incorporation of Canada's Nationally Determined Commitment on reduction of annual GHG emissions in both the preamble and body of a statute[98] means that that both the temperature standard embodied by the Temperature Commitment and the annual emissions standard in the Nationally Determined Commitment inform the content of the principles of fundamental justice in the s. 7 analysis in this case.

J. Conclusions regarding the Plaintiffs' Section 7 Claim

92. When the pleading is considered in light of the foregoing, it is not "plain and obvious" that the Second Further Amended Claim does not plead a reasonable cause of action. On the contrary, the Second Further Amended Claim pleads sufficient material facts to support each of the required elements of the s. 7 claim advanced by the Plaintiffs.

93. The criticisms advanced by Canada regarding the complexity of the Plaintiffs' claim are answered fully by the Supreme Court of Canada's confirmation that novelty and complexity are not valid grounds on which to strike a claim. More fundamentally, there is no requirement that a *Charter* challenge must be tied to a single provision or limited number of provisions. It is a contextual exercise. Where, as here, the harm at issue arises from the aggregative effects of a number of statutory instruments and, moreover, is harm of an extreme nature, the "delicate

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[96] *Suresh, supra* at para.75.
[97] *Greenhouse Gas Pollution Pricing Act,* S.C. 2018, c.12, s. 186; *Canadian Net-Zero Emissions Accountability Act,* S.C. 2021, c. 22.
[98] *Canadian Net-Zero Emissions Accountability Act,* S.C. 2021, c. 22, s. 7(1) and s. 7(2).

balancing" that arises in many Charter cases is inapplicable. The harm is such that it becomes the controlling issue and overwhelms the rest of the fundamental justice analysis.

94. The Second Further Amended Claim pleads a reasonable cause of action. It is not "plain and obvious" that it is bound to fail or otherwise suffers from any fatal flaw. Its inherent complexity and novelty is not a valid basis on which to strike the claim and, moreover, the claim can be adjudicated within the framework of existing *Charter* jurisprudence.

95. Canada's application should be dismissed.

V. ORDER SOUGHT

96. For the foregoing reasons, as may be supplemented at the oral hearing of this application, the Plaintiffs/respondents seek an order that:

(a) the Notice of Motion of the Defendant His Majesty the King in Right of Canada dated February 20, 2026 is dismissed; and

(b) the parties each bear their own costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Vancouver, in the Province of British Columbia, the 10th Day of April, 2026.

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VI. LIST OF AUTHORITIES

TAB

STATUTES AND REGULATIONS

1. The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982
2. *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s.186
3. *Canadian Net-Zero Emissions Accountability Act*, S.C. 2021, c. 22
4. *Federal Courts Rules*, SOR/98-106), s. 174
5. *Criminal Code*, R.S.C. 1970, c. C-34
6. *Immigration Act*, R.S.C. 1985, c. 1-2, ss. 19(1), 53(1)(b)
7. *Extradition Act*, R.S.C. 1985, c. E-23, s. 25

JURISPRUDENCE

8. *Canada v. Schmidt,* [1987] 1 S.C.R. 500
9. *Canada (Attorney General) v. Bedford*, 2013 SCC 72
10. *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7
11. *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134
12. *Canadian Council for Refugees v. Canada (Citizenship and immigration)*, 2023 SCC 17
13. *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331
14. *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9
15. *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711
16. *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44
17. *Dumont v. Canada*, 2003 FCA 475
18. *Edell v. Canada*, 2010 FCA 26
19. *Edmonton Journal v. Alta (A.G.)* [1989] 2 S.C.R. 1326
20. *Hunt v Carey Canada Inc*, [1990] 2 SCR 959
21. *Jones v. Donaghey*, 2011 BCCA 6

22. *Kindler v. Canada (Minister of Justice)*, [1991] 2 SCR 779

23. *La Rose v Canada*, 2023 FCA 241

24. *Lho'Imggin v. Canada*, 2025 FC 1586

25. *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227

26. *Mathur v. Ontario*, 2024 ONCA 762

27. *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362

28. *Miller and Cockriell v. The Queen,* [1977] 2 S.C.R. 680

29. *Mohr v. National Hockey League*, 2022 FCA 145

30. *Muldoe v. Derzak*, 2021 BCCA 199

31. *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42

32. *R. v. Pontes*, [1995] 3 S.C.R. 44

33. *R. v. Smith (Edward Dewey)* [1987] 1 S.C.R. 1045

34. *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154

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

36. *Re B.C. Motor Vehicle Act,* [1985] 2 S.C.R. 486

37. *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519

38. *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3

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

40. *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425

41. *United States v. Allard,* [1987] 1 S.C.R. 564

42. *United States v. Burns,* [2001] 1 S.C.R. 283

43. *Young v. Borzoni et al.*, 2007 BCCA 16

Court File No. T-211-20

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**

Respondents

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Applicant

REPRESENTATIVE PROCEEDING

DRAFT ORDER

WHEREAS the Applicant, His Majesty the King in Right of Canada, has filed a Motion to Strike seeking an Order pursuant to rule 221(1)(a) of the *Federal Courts Rules* striking out the Second Further Amended Statement of Claim, filed November 24, 2025;

AND UPON hearing from Adrienne Copithorne and Sancho McCann, counsel for the Applicant, and Mark S. Oulton, K.C. and Richard J. Overstall, counsel for the Respondents;

AND UPON reading the Notice of Motion, Written Representations and materials filed herein;

IT IS ORDERED that

(a) the Applicant's motion is denied; and

(b) each party will bear its own costs of this motion.

Dated at _____, this _____ day of _____, 2026.

_____
Judge of the Federal Court

Court File No. T-211-20

Leave to amend granted December 13, 2023 by
Judgment of the Federal Court of Appeal
in Docket A-289-20

Leave to further amend granted December 13, 2024,
by consent and Order of Case Management Judge Ring

Leave to further amend granted September 26, 2025 by
Judgment of the Honourable Madame Justice McVeigh

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

HIS MAJESTY THE KING IN RIGHT OF CANADA

DEFENDANT

REPRESENTATIVE PROCEEDING

SECOND FURTHER AMENDED 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 release and accumulation of greenhouse gases ("GHGs") in the atmosphere 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 the two 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 being built across 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 His Majesty the King in right of Canada ("Canada") has repeatedly failed, and continues to fail, to fulfil its constitutional duty to not infringe on the plaintiffs' constitutional rights and freedoms by, among other things, failing to (a) amend existing laws and (b) enact and implement the laws, policies and actions needed to meet the international commitment made by Canada in Paris in 2015 to keep mean global warming well below 2˚C above pre-industrial levels (the "Temperature Commitment"). These failures, including its ongoing failure to meet the Temperature Commitment, unjustifiably infringe and interfere with the plaintiffs' rights to life, liberty and security of the person under s. 7 of the *Charter* in a manner inconsistent with the principles of fundamental justice.

4. Since at least 1988, Canada has assured the plaintiffs and all Canadians that it would establish laws and policies to meet its international climate commitments, including the Temperature Commitment, to keep global warming to tolerable levels. It failed and continues to fail to do so. Such laws and policies were either not implemented or, where implemented, were not enforced or were overruled. The effect of these past and continuing failures has been an alarming rise in Canada's emissions of GHGs, causing and contributing to serious climate effects that have and continue to interfere with the life, liberty and security of the person of the plaintiffs.

5. Up to the date of this filing, Canada has chosen – either purposefully or inadvertently – to adopt an inconsistent approach to addressing GHG emissions. On the one hand, it has enacted legislation that codify into law its climate change policies aimed at reducing or limiting GHG emissions, including its international commitments like the Temperature Commitment. On the other, Canada has enacted or continued legislative initiatives that encourage investment in and/or the operation of GHG emitting projects. As discussed further below, these conflicting statutory instruments and the discretionary actions permitted under them represent the measures taken by Canada pursuant to the diffuse scheme it has adopted to regulate GHG gas emissions in Canada. The tension within this scheme has undermined any positive efforts that Canada has made to meet its Temperature Commitment and has resulted in Canada continuing to materially contribute to climate change in Canada, and beyond, through ongoing and increasing GHG emissions.

6. When the plaintiffs commenced this claim in February, 2020, the mean global surface temperature was approximately 1°C above pre-industrial levels. At the time of filing of this Second Further Amended Statement of Claim, the mean global temperature has risen to 1.45°C above pre-industrial levels. If the current trend continues, the mean global temperature will soon be more than 1.5°C above pre-industrial levels. In other words, the mean global temperature will soon approach the Temperature Commitment that Canada made at the Paris Conference and which has been subsequently adopted into domestic legislation. Between 2000 and 2025, Canada's annual GHG emissions have generally remained within the range of 700 to 750 megatons, except for two temporary dips following the 2008 financial crisis and the 2020 COVID epidemic. Based on current evidence, it appears unlikely Canada will achieve its 2030 Nationally Determined Contribution goal of reducing its GHG emissions by over 200 megatons.

7. 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. The consequences of the changing climate caused by Canada's ongoing and

increasing GHG emissions include forest insect infestations, wildfires, and a decline in forest food animals within the plaintiffs' territories.

8. In particular, the decline in the salmon fishery, a fishery that was the heart of the plaintiffs' food security resulting from the global warming caused by GHG emissions has meant that the plaintiffs have been unable to fish their preferred salmon species for over two decades. These harms are predicted to increase as the earth's climate continues to warm beyond the current 1.45˚C above pre-industrial levels.

9. The existential nature of the threat posed by continued GHG emissions imposes a constitutional duty on Canada under s. 7 of the *Charter* to (a) ensure that it meets its Temperature Commitment; and (b) 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 order to halt and prevent further deprivation of the plaintiffs life, liberty and security of the person.

10. To fulfill this duty, Canada must take positive steps to fulfill the Temperature Commitment including, among other things:

(a) amend its existing legislation to limit and reduce Canada's GHG emissions in a manner consistent with the Temperature Commitment, including to permit Canada to rescind or withdrawal approval of existing GHG emitting projects if Canada determines that:

(i) it is, or will be, unable to meet the Temperature Commitment without terminating such projects, or

(ii) global warming from GHG emissions constitutes a national emergency requiring the termination of such projects;

(b) enact new legislation to limit and reduce Canada's GHG emissions in a manner consistent with the Temperature Commitment; and

(c) establish an ongoing independent accounting of Canada's cumulative greenhouse gas emissions to inform the defendant whether it is meeting the Temperature Commitment.

B. The Parties

The Plaintiffs

11. 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 Misdzi 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

12. 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).

13. A person may also be adopted as a child or as an adult from one lineage into another lineage, usually of the same Clan.

14. 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 their two lineages, each from a different Clan.

15. A House is comprised of one or more lineages.

16. 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; and

(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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 host House provides 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.

23. 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.

24. 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.

25. 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

26. 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.

27. 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.

28. 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

29. 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.

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

31. The succession of Warner Naziel to the name of Smogilhgim, 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.

32. 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.

33. 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

34. The defendant, His Majesty the King 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

35. Global climate change is an urgent and imminent threat to humanity. GHGs discharged in the atmosphere by human activity, accumulate and enable global warming, causing climate change and creating national and international risks to human health and well-being.

36. Burning fossil fuels releases GHGs into the earth's atmosphere, where they accumulate, causing 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 (CO_2) is the most abundant GHG emitted by human activity. Atmospheric CO_2 levels are higher now than at any time in the last 14 million years – and are still climbing. GHG

emissions, and the global warming they cause, create a material and increasing risk to human health and the environment upon which life depends.

37. The climate effects of long-lived GHGs, such as CO_2, are proportional to the cumulative emissions of those gases. The long-term effects of CO_2 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.

38. A carbon budget defines the total CO_2 that can be emitted over all times in order to limit warming to a mean global temperature target, such as the Temperature Commitment. For a 50 percent likelihood of limiting global warming to less than 1.5 C above pre-industrial levels, total cumulative global CO_2 emissions need to remain below about 2,800 billion tonnes. As of 2020, approximately 2300 billion tonnes of CO_2 had been emitted globally during the industrial era and remain in the atmosphere.

39. 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

40. Parliament has the jurisdiction to regulate GHGs as part of its shared jurisdiction over the environment which derives from both its jurisdiction over certain subject matters, such as navigable waters, fisheries and criminal law and its residual power to legislate for the peace, order and good government of Canada under s. 91 of the *Constitution Act, 1867*. With respect to the latter, 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.

41. 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.

42. 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) investing in fossil fuel infrastructure.

43. In particular, Canada has had, and continues to have, the jurisdiction to regulate GHGs through the federal environmental assessment review and approval processes that many high GHG-emitting projects such as natural gas pipelines and liquefied natural gas (LNG) infrastructure are subject to under federal 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, currently permit the government executive to unilaterally withdraw or fundamentally alter its approval of a GHG emitting project in the face of a climate emergency, or to comply with other obligations such as the Temperature Commitment.

Canada has failed to meet its international commitments to reduce GHGs

44. Canada has made numerous international commitments to reduce or limit its GHG emissions, including commitments made at: (a) the 1988 International Conference on the Changing Atmosphere, (b) the 1992 United Nations Framework Convention on Climate Change, (c) the 1998 Kyoto Protocol, (d) the 2009 Copenhagen Accord, and (e) the 2010 Cancun Agreement.

45. None of the prior international commitments made by Canada, as listed above, even if satisfied, would have enabled or will enable Canada to make its

equitable contribution to reducing or limiting global warming to non-catastrophic levels.

46. In December, 2015, Canada and 194 other countries adopted the *Paris Agreement* in which the signatory nations 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."

47. The stated 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 signatory nation 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."

48. Each signatory nation made two material commitments in signing the *Paris Agreement*. The first is to take steps, individually and collectively, to hold global temperature increases to between 1.5˚C and 2˚C above pre-industrial levels. This is the Temperature Commitment. The second commitment made 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 its Temperature Commitment than the Cumulative Emissions Target or carbon budget described above in paragraphs 38 and 39. Notwithstanding this, Canada's Nationally Determined Contribution – its Annual Emissions Target – is the measure prescribed by the 1992 United Nations Framework Convention on Climate Change to assess whether it will meet its Temperature Commitment.

49. 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.

50. 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."

51. Canada's Temperature Commitment, as made in the Paris Agreement, was reaffirmed by Parliament in the preambles to the *Greenhouse Gas Pollution Pricing Act* (S.C. 2018, c. 12, s.186) and the *Canadian Net-Zero Emissions Accountability Act* (S.C. 2021, c. 22).

52. Canada has further incorporated its Nationally Determined Contribution into domestic law as, among other things, part of the *Canadian Net-Zero Emissions Accountability Act*, S.C. 2021, c. 22.

53. Canada's Nationally Determined Contribution will be insufficient to meet its Temperature Commitment. To achieve contribution to the Temperature Commitment, Canada would have to reduce its annual GHG emissions to about 300 million tonnes of CO_2 equivalent (Mt CO_2e) by 2030. Canada has not implemented measures to achieve this target. Instead, in 2021 Canada defined its Nationally Determined Contribution as 401 to 438 Mt CO_2e a year by 2030, representing a 74 to 111 Mt CO_2e a year deficit from what is required to meet the Temperature Commitment.

54. 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 in order to hold the increase in the global average temperature to less than 2˚C above pre-industrial levels.

55. In any event, Canada appears unlikely to meet its Nationally Determined Contribution. Canada's GHG emissions in 2005, the target's baseline, were 730 million tonnes of CO_2 equivalent (Mt CO_2e). The 2021 Nationally Determined Contribution target is 40 to 45 percent reduction of that baseline or 443 Mt CO_2e/year by 2030. Under Canada's current policies, including measures that may not yet be fully implemented, Canada projects that it's GHG emissions will decrease to 491 Mt CO_2e/year by 2030, representing a 34 percent reduction from the 2005 emissions baseline. None of these projections consider any positive or negative effects on climate change from land use and deforestation or reforestation.

56. Canada's 2024 National Inventory Report states that Canada's 2022 emissions, the most recent dataset publicly available, were 708 Mt CO_2e.

57. 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 estimated then that the annual GHG emissions reduction due to carbon-pricing throughout the country would be 50 to 60 Mt CO_2e a year by 2022.

58. 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 had mandatory, enforceable GHG targets or other mechanisms that could be used to demonstrate how they might collectively achieve the Nationally Determined Contribution.

59. The critical commitment made by Canada under the *Paris Agreement* is the Temperature Commitment. The best measure of compliance with this commitment is Canada's fair share of the remaining global carbon budget or global Cumulative Emissions. Canada and the other parties to the Agreement chose the less transparent

Annual Emissions as the target and reporting metric. On either measure, Canada is not on pace to meet and, in fact, is well short of the GHG emissions target required to meet its Temperature Commitment or its Nationally Determined Contribution.

60. There are no existing or planned legislative or policy initiatives, including carbon-pricing, which would enable Canada to achieve the GHG emission reductions required to meet its Temperature Commitment or its Nationally Determined Contribution by 2030.

61. Schedule A to this Second Further Amended Statement of Claim contains a summary of the existing federal statutes and regulations which either (a) support, either directly or indirectly, investment in activities or projects that produce GHG emissions; or (b) purport to regulate, either directly or indirectly, GHG emissions in Canada including through the imposition of standards, emission limits or economic disincentives (e.g. through taxation, among other things).

62. The statutory instruments listed in Schedule A are grouped by broad subject area and coded to identify which represent efforts taken by Canada which (a) support meeting the Temperature Commitment (Yellow shaded entries in Schedule A); (b) undermine its efforts to meet the Temperature Commitment by promoting development, industry or initiatives which increase GHG emissions (Grey shaded entries in Schedule A); or (c) may support or undermine Canada's efforts depending on the terms and conditions imposed by any authorization issued under the indicated provisions (unshaded entries in Schedule A).

63. Where applicable, Schedule A also identifies the impugned provisions at issue in this proceeding and the purpose of each of the impugned statutes.

64. The statutes and regulations summarized in Schedule A represent, collectively, the measures taken by Canada pursuant to the scheme it has adopted for the regulation of GHG emissions in Canada in order to meet its Temperature Commitment.

Environmental Assessment as a GHG reduction mechanism

65. Canada has jurisdiction to regulate and manage high GHG-emitting fossil fuel infrastructure developments through its environmental assessment legislation. The oil and gas sector accounts for 28 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. Management of projects in this sector presents a material and significant opportunity for managing GHG emissions in a manner that will achieve Canada's Temperature Commitment and its Nationally Determined Contribution.

66. Notwithstanding this, Canada has not used the discretionary decision-making power available to it under its environmental assessment legislation to withhold or to place conditions on approval of high GHG-emitting projects that would help bring Canada's GHG emissions in line with the Temperature Commitment or its Nationally Determined Contribution.

67. The defendant has directly or, in the alternative, indirectly fettered its discretionary authority under its environmental assessment by failing to enact provisions in its environmental assessment legislation that would allow the executive branch to cancel or amend its approval of a high GHG-emitting project in the event that Canada can demonstrably not meet its international global warming commitments, including the Temperature Commitment, or its constitutional obligations to the citizens of Canada, including the plaintiffs.

68. Liquefied natural gas export schemes are among the higher GHG-emitting oil and gas developments in Canada. One such LNG scheme is currently under development in areas within or overlapping with the Likhts'amisyu Houses' territories. This project is the LNG Canada Export Terminal Project. The facility is located in Kitimat, BC and is fed by the Coastal GasLink Pipeline Project. The project has undergone review and received approval under both federal and British Columbia environmental assessment legislation.

69. Canada approved the LNG Canada Export Terminal Project under s. 54 of *CEAA, 2012* through a June 17, 2015, Decision Statement following an environmental assessment completed by the British Columbia Environmental Assessment Office under a substitution agreement with Canada. The results of that assessment were reported in a May 6, 2015 Assessment Report which noted that the LNG Canada facility would produce 4 Mt CO_2e/year, which was a significant residual adverse effect in the context of existing global GHG emissions.

70. On May 27, 2016, LNG Canada received approval from the National Energy Board to extend the term of its LNG export licence from 25 to 40 years.

71. British Columbia approved the Coastal GasLink Pipeline Project in October 2014, after competing an environmental assessment under provincial legislation. Canada did not require the project to undergo a federal environmental assessment. The Office of the Wet'suwet'en actively participated in the British Columbia environmental assessment on behalf of all Wet'suwet'en House groups, including the Likhts'amisyu Houses.

72. The British Columbia assessment found that the pipeline project would produce about 3.5 Mt CO_2e/year, which would have a "significant residual adverse effect on GHG emissions." The approval acknowledged that the project would have significant adverse effects with respect to GHG emissions.

73. In January, 2016, Canada issued a policy document (the "Interim Approach") setting out its approach to the environmental assessment of major projects. It included five principles that it said would guide its discretionary environmental assessment decision-making. One of these principles required the assessment of GHG stating: "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.

74. To date, 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 anticipated GHG emissions would be 4.5 Mt CO_2e/year and that the associated upstream emissions, including pipeline operations, would be about 9 Mt CO_2e/year, for a total of 13.5 Mt CO_2e/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.

75. The need for a federal environmental assessment to consider sources of direct and upstream GHG emissions to a project was indirectly continued under the *Impact Assessment Act*, S.C. 2019, c. 28, s.1, which replaced *CEAA, 2012* in August, 2019.

76. 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." Canada's 2020 policy paper, *Strategic Assessment of Climate Change*, requires the assessment of upstream GHG emissions.

E. Global Warming Impacts on the Plaintiffs

77. Present mean global temperature has risen to about 1.4˚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.

78. 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.

79. The adverse impacts of climate change will become more serious as mean global temperature rises to 1.5˚C and 2˚C above pre-industrial levels. 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.

80. 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, temperature and nutrient regimes, and shifts in salmon distribution and productivity.

81. Already, the plaintiffs have experienced significant warming effects on their territories. These effects include pine bark beetle infestations, forest fires, and significant salmon population declines, all in part attributable to climate change.

82. The experienced and anticipated effects of global warming on the plaintiffs' yintah include further 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. These forest-cover reductions will, in turn, lead to lower populations of forest fur-bearing animals and forest food-animals, such as moose.

83. The experienced and anticipated effects of global warming on the plaintiff's salmon fisheries include further reduction of salmon run numbers, their predictability and fish size due to, among other things, 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 ongoing efforts to restore those stocks to their former abundance.

84. In addition to these adverse effects on Likhts'amisyu territories and on their salmon fisheries, global warming has and is anticipated to continue 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.

85. 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 carried out, or facilitated, by the defendant. This context makes the plaintiffs particularly vulnerable to further psychological and social trauma caused by global warming.

86. 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

87. The plaintiffs therefore claim as follows:

(a) a declaration that the defendant has a constitutional duty to act consistently with its Temperature Commitment;

(b) an order declaring that the defendant has breached and continues to breach its obligations under paragraph (a) by failing to act and take the necessary legislative steps required to manage Canada's greenhouse gas emissions in a manner that would meet the Temperature Commitment;

(c) a declaration that the defendant's failure to meet its obligations under paragraph (a) has unjustifiably infringed and continues to unjustifiably infringe on the plaintiffs' members' rights under s. 7 of the *Charter*, including the s. 7 rights of future members of the plaintiffs;

(d) an order requiring the defendant to develop and implement a climate action plan to manage Canada's greenhouse gas emissions in a manner that would meet the Temperature Commitment, including making amendments or such other changes, which may include repeal or replacement, as may be necessary to each of the statutes identified in Schedule A to this Second Further Amended Statement of Claim to make them consistent with its obligations under paragraph (a), including by amending, repealing or replacing each of its environmental assessment statutes that apply to extant high greenhouse gas emitting projects so as to give the Governor in Council the discretionary authority to cancel or vary the terms of Canada's approval, under any of those statutes, of the operation such projects in the event that the defendant is demonstrably not be able to, or does

not, meet the Temperature Commitment, or in the event that the defendant determines global warming to be a national emergency;

(e) an order requiring the defendant to cause to develop and provide a complete, independent and timely annual account of Canada's cumulative greenhouse gas emissions, including emissions produced within Canada and emissions produced outside of Canada but imported into Canada in the form of tangible goods, in a format that permits the plaintiffs to compare these cumulative GHG emissions with Canada's fair carbon budget to meet its Temperature Commitment;

(f) an order for this Court to retain jurisdiction of this proceeding until the defendant has fully complied with all the Court's orders;

(g) costs, including special costs on a full indemnity basis and any applicable taxes on those costs; and

(h) such further and other relief that this Court deems just.

G. Legal Basis

Canada has infringed the plaintiffs' rights under section 7 of the Charter

88. 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.

89. The defendant has deprived and continues to deprive the plaintiffs of their right to life, liberty and security of person by making and continuing laws that facilitate the development and operation of high GHG- emitting projects and permitting such projects to operate now and into the future in breach of the Temperature Commitment and Canada's fair contribution to keep global warming to non-catastrophic levels.

90. Canada, by its conduct and its failure to discharge its obligation to adequately meet its Temperature Commitment, has and continues to knowingly cause, contribute to and exacerbate the impacts of climate change, thereby depriving the plaintiffs, their members and their future members of their constitutionally guaranteed right to life, liberty and security of the person under s. 7 of the *Charter*. The impugned actions or omissions by Canada consist of the following:

(a) enacting or continuing the provisions identified in the grey shaded entries in Schedule A which have the effect, either directly or indirectly, of increasing GHG emissions in Canada, thereby undermining any positive efforts or initiatives by Canada to meet the Temperature Commitment;

(b) failing to include terms and conditions in any project approvals, authorizations or permits issued under the statutes identified in the non-shaded entries in Schedule A sufficient to ensure that Canada would meet its Temperature Commitment; and

(c) failure to ensure that sufficient, reasonable steps, consistent with the best available science, were taken in the measures implemented in the statutory instruments set out in the yellow shaded entries in Schedule A to ensure that Canada managed its greenhouse gas emissions in a manner that would meet the Temperature Commitment.

91. All current projections of global warming based on the defendant's current 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, which is

exacerbated by their inability to collectively leave their territories and villages and yet retain their integrity as kinship-based and place-dependant legal entities; and

(c) of their right to security of person by increasing the risk of injury, disease and mental health from global warming, including food security, air pollution, extreme weather events, vector-borne disease, and psychological and social trauma to an already vulnerable society and community.

92. These deprivations are not in accordance with the principles of fundamental justice.

93. The test for whether a law or state action accords with the principles of fundamental justice is to ask if the s. 7 deprivation is either arbitrary or grossly disproportionate. The deprivation is arbitrary if it is not necessary to further the law's objectives. This test, which focusses on consideration of the legislative objectives of the laws at issue is the barometer against which the measures implemented or continued by Canada in response to its Temperature Commitment, as summarized in Schedule A, must be assessed.

94. When, as in this claim, the deprivation manifests as existential harm to the plaintiffs and globally, the harm is of ~~this~~ a nature and magnitude that it is not necessary to further any relevant law's objectives. In particular, harm of this nature and magnitude is not necessary to further the objectives of the statutes and regulations identified in the grey shaded entries in Schedule A. Further, the deprivation is directly contrary to the objective of the statutes and regulations identified in the yellow shaded entries in Schedule A. Finally, the deprivation caused or contributed to by the failure of permits and authorizations issued under the statutes identified in the unshaded areas of Schedule A is not necessary to further the purpose of any of those statutes.

95. Similarly, the deprivation is grossly disproportionate if it is so extreme to be disproportionate to any legitimate government interest. Again, laws that allow,

facilitate or encourage GHG emissions exceeding the "well below 2°C rise" standard are so extreme as to be grossly disproportionate to any relevant law's objectives. The laws summarized in the grey shaded entries in Schedule A allow or encourage GHG emissions or GHG emitting projects resulting or contributing to Canada producing GHG emissions that exceed Canada's Temperature Commitment and, as such, cause or contribute to the harm discussed at paragraphs 72- 81 and 86 above. This harm is grossly disproportionate to any of the objectives of those statutes.

96. Finally, the defendant's conduct in implementing or continuing the statutory and regulatory instruments outlined in Schedule A is inconsistent with its international commitments, including its Temperature Commitment and its obligations under international law and agreements, including the *Paris Agreement* and the *United Nations Declaration on the Rights of Indigenous Peoples*. These international commitments by Canada inform consideration of the principles of fundamental justice engaged by the existential harm at issue in this proceeding, both to the extent they have been incorporated into domestic law and in interpreting the extent of protection offered by the Charter to prevent the deprivation caused by Canada's failure to meet the Temperature Commitment.

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

97. The Plaintiffs anticipate that Canada will assert as part of its defence that its failure to meet the Temperature Commitment is justified under s. 1 of the *Charter*. Without limiting their right of reply, the Plaintiffs plead the following.

98. 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.

99. The infringements of the plaintiffs' section 7 rights cannot be justified under section 1 of the *Charter*. The defendant has the burden of proof to show such justification. To show infringement, the government must show that the impugned law or any state action authorised by it has a pressing and substantial objective that

warrants overriding the claimed Charter right and that the means chosen are rationally connected, are minimally impaired by, and do not outweigh that objective. A threat of the highest order such as that manifest in the existential crisis represented by climate change is not rationally connected to, nor can it be outweighed by the objective of any of the statutory instruments identified in the grey shaded entries in Schedule A and is directly contrary to the objective of the yellow shaded entries in Schedule A.

Statutory provisions relied on by the plaintiffs

100. 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 24th day of November 2025.

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SCHEDULE A - Federal Statutes and Regulations impacting GHG Emissions

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
1. SUBSIDIES			
Income Tax Act, RSC 1985, c 1			To raise revenue for the federal government
	Canadian Exploration Expenses, *ITA* s. 66.1	Oil & gas explorers may deduct 100% of CEEs in the year they are incurred.	To encourage taxpayers to explore for oil and gas in Canada.
	Canadian Development Expenses, *ITA* s. 66.2(2)(c)	Oil & gas producers may deduct 30% of CDEs each year on a declining balance.	To encourage taxpayers to produce oil and gas in Canada
	Flow-Through Share Deductions, *ITA* ss. 66(12.6), 66(12.61), 66(12.62), 66(12.63)	Unused CDEs and CEEs may be passed on to company shareholders.	To encourage taxpayers to explore for, and produce, oil and gas in Canada
	Canadian Oil and Gas Property Expense, *ITA* s. 66.4	Taxpayers may deduct up to 10% of costs to acquire or preserve rights to oil and gas wells.	To encourage taxpayers to acquire and preserve oil and gas well rights in Canada

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
	Foreign Resource Expenses, *ITA* s. 66.21	Canadian taxpayers may deduct up to 30% of a declining balance of oil & gas exploration expenses incurred in a foreign country	To encourage taxpayers to explore for oil and gas outside of Canada
	Accelerated Capital Cost Allowances, Income Tax Regulations, CRC c 945	CCAs are deducted from income to allow for the depreciation of capital property. When accelerated, they benefit the taxpayer due to the "time value of money". For example: LNG capital costs incurred from 2015 to 2025 may be depreciated at 30% instead of the 8% base rate. Other oil & gas capital costs may be accelerated between 3% and 15% above the base rate.	To encourage taxpayers to invest in certain activities, including oil and gas production, refining and transport
2. PUBLIC FINANCING			
Export Development Act, RSC 1985, c E-20	*EDA*, ss. 10(1) and 10(1.1)	The Act facilitates business by providing direct financing, loan guarantees and investments (*EDA*,	To facilitate overseas trade by providing direct government financing, loan guarantees and

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
		ss. 10(1) and 10(1.1)). For example: it has financed the Trans Mountain Pipeline, Trans Mountain Expansion Pipeline Project, TransCanada Pipelines, and Enbridge.	investments to Canadian exporters, including of oil and gas.
3. GHG EMISSION LIMITS			
Canadian Environmental Protection Act, 1999, SC 1999, c 33			To contribute to sustainable development through pollution prevention
	Heavy-duty Vehicles and Engine Greenhouse Gas Emission Regulations, SOR/2013-24	Regulates GHG emission performance standards for heavy-duty vehicles and engines made or imported into Canada.	To reduce GHG emissions from heavy-duty vehicles and engines
	Marine Spark-Ignition Engine, Vessel and Off-Road Recreational Vehicle Emission Regulations, SOR/2011-10	Sets performance-based emission standards for small gasoline-fueled engines.	To reduce emissions of hydrocarbons, oxides of nitrogen and carbon monoxide from engines, vessels and vehicles

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
	Multi-Sector Air Pollutants Regulations, SOR/2016-151	Sets standards for nitrogen oxide emissions from a variety of gaseous fuel-fired industrial applications.	To protect the environment and human health from nitrogen oxide emissions
	Off-Road Compression-Ignition (Mobile and Staionary) and Large Spark-Ignition Engine Emission Regulations, SOR/2020-258	Sets performance-based emission standards for new off-road diesel and large spark-ignition engines.	To prevent air pollution
	Off-Road Small Spark-Ignition Engine Emission Regulations, SOR/2003-355	Sets performance-based emission standards for new small spark-ignition engines.	To reduce emissions of hydrocarbons, oxides of nitrogen and carbon monoxide from small engines
	On-Road Vehicle and Engine Emission Regulations, SOR/2003-2	Sets air pollution standards for cars, light trucks and heavy trucks beginning with 2004 model year.	To reduce emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, formaldehyde and particulate matter from on-road vehicles and engines
	Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations, SOR/2010-201	Sets GHG emission standards for cars and light trucks beginning with 2011 model year and, beginning in model year 2026, sets	To reduce GHG emissions from cars and light trucks

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
		standards that will result in all new vehicles being zero-emission by model year 2035.	
	Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations, SOR/2012-167	Sets a performance standard to reduce GHG emissions from coal-fired electricity generation.	To reduce carbon dioxide emissions from coal-fired electricity generation
	Regulations Limiting Carbon Dioxide Emissions from Natural Gas-fired Generation of Electricity, SOR/2018-261	Sets a performance standard to reduce GHG emissions from natural gas-fired electricity generation.	To reduce carbon dioxide emissions from natural gas-fired electricity generation
	Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector), SOR/2018-66	Sets standards for upstream oil and gas facilities to reduce fugitive or venting emissions of methane.	To protect the environment and to reduce immediate and long-term effects of methane and certain volatile organic compounds emissions
Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s 186		Incentivises GHG emission reductions by an emission-pricing regime throughout Canada with increasing stringency over time.	To reduce GHG emissions

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
Canada Emission Reduction Incentives Agency Act, SC 2005, c 30, s 87		The Agency is intended to acquire eligible credits from GHG emission reduction or removal and thus to provide incentives for the reduction or removal of GHGs. The agency has yet to become operational.	To reduce or remove GHG emissions necessary to fight climate change
Canada Shipping Act, SC 2001, c 26			To protect health, promote safety, protect marine environments, and encourage marine transportation and recreation
	Vessel Pollution and Dangerous Chemical Regulations, SOR/2012-69	Sets emission standards for nitrogen oxides and sulphur oxides from ships.	To prevent pollution from ships
Railway Safety Act, RSC 1985, c 32			To provide for railway safety and security
	Locomotive Emissions Regulations, SOR/2017-121	Sets emission standards for nitrogen oxides and other pollutants from railway locomotives.	To protect the environment by reducing hydrocarbon emissions from railway locomotives

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
4. GHG EMISSION PERMITS			
Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52	Repealed (Included for completeness due to transition provisions of the *IAA* as noted)	Comprehensive studies, environmental assessments and decision statements started under *CEAA 2012* when the *IAA* came into force are continued under the *IAA*: s. 179(2), s. 179(3), s. 181(1), s. 182 and s. 184.	To achieve sustainable development and considers environmental quality
Impact Assessment Act, SC 2019, c 28, s 1	s. 22(1)(i), s. 63(e), s. 95(2).	An impact assessment and subsequent determinations must take into account, among other things, the extent to which a project hinders or contributes to Canada's ability to meet its climate change commitments.	To prevent or mitigate significant adverse effects caused by carrying out designated projects.
Canada Energy Regulator Act, 2019, c. 28, s. 10	s. 183(2)(f), s. 262(2)(f), s. 298(3)(f),	In making a recommendation, issuing a certificate, or issuing an authorisation, the Commission must take into account, among other things, the extent to which a project hinders or contributes to	To ensure energy projects are built and operated so as to protect people, property and the environment.

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
		Canada's ability to meet its climate change commitments.	
Canada Oil and Gas Operations Act, RSC 1985, c O-7	Canada Oil and Gas Certificate of Fitness Regulations, SOR/96-114	A certificate of fitness may be issued if the installation may be operated safely "without polluting the environment" (s. 4(2))	To promote safety, environmental protection, oil and gas conservation and accountability in oil and gas exploration and exploitation
Canada Petroleum Resources Act, RSC 1985, c 36	s. 29, s. 37(1)	Allows leasing of federal oil and gas rights on "frontier lands", which effectively allows fossil fuel projects to proceed.	To issue tenures for petroleum development and extraction in frontier and other federal lands
5. GHG EMISSION STANDARDS			
Canadian Environmental Protection Act, 1999, SC 1999, c 33			To contribute to sustainable development through pollution prevention
	Sulphur in Diesel Fuel Regulations, SOR/2002-254	Sets limits for sulphur in diesel fuel.	To reduce air pollution, particularly sulphur dioxide aerosols, which affect atmospheric

Statute or Regulation	Impugned or Relevant Provision(s)	Summary of Provision(s)	Statutory Object
			energy balance and hence global warming
	Sulphur in Gasoline Regulations, SOR/99-236	Sets limits for sulphur in gasoline.	To reduce air pollution, particularly sulphur dioxide aerosols, which affect atmospheric energy balance and hence global warming
	Ozone-depleting Substances and Halocarbon Alternatives Regulation, SOR/2016-137	Sets out rules for ozone-depleting substances.	To control ozone-depleting substances and to restrict hydrofluorocarbons, which are powerful GHGs.
Alternative Fuels Act, SC 1995, c 20			To better control GHG emissions from vehicles operated by federal bodies and Crown corporations
Energy Efficiency Act, SC 1992, c 36			To prescribe minimum energy performance standards for certain products

Court File No. T-211-20

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

Respondents

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Applicant

REPRESENTATIVE PROCEEDING

WRITTEN REPRESENTATIONS OF THE RESPONDENTS

I. OVERVIEW

1. The Plaintiffs challenge the constitutional compliance of the scheme voluntarily adopted by Canada to discharge the commitments it made regarding greenhouse gas emissions pursuant to the Paris Agreement, commitments that have been incorporated into domestic law through ratification and reference. Canada seeks to strike the Plaintiffs claim in this regard for failure to disclose a reasonable cause of action. The Plaintiffs say the application is misguided and ought to be dismissed. It misconstrues the nature of the Plaintiffs claim, ignores critical context and fails to give full effect to the jurisprudence regarding s, 7 and applications to strike, generally.

2. This is the second attempt by Canada to strike the Plaintiffs claim. The first attempt was successful at first instance but overturned – in part – by the Federal Court of Appeal. Significantly, in deciding to strike the Plaintiffs' s. 7 claim with leave to amend, the Court of Appeal expressly found that the Plaintiffs s. 7 claims were justiciable. They were struck, "not because they are destined to fail in this

context or have no reasonable prospect of success, but because the pleadings … as framed are incompatible with constitutional adjudication".[1] The Court went on to clarify that they were "incompatible" because they lacked the "focus necessary" to ground the constitutional analysis required under s. 7 and s. 1.[2]

3. The Plaintiffs took those comments to heart and reframed the claim in the manner set out in the Further Amended Statement of Claim (the "Further Amended Claim") that is the focus of this application. The claim, as now framed, is grounded in the scheme adopted by Canada to address domestic greenhouse gas emissions and Canada's commitment to curb or reduce the same under the Paris Agreement. The "necessary focus" for the constitutional analysis is provided by (i) the statutory instruments and government actions comprising this scheme as summarized in Schedule "A" to the Further Amended Claim; and (ii) the contextual approach mandated by the jurisprudence when considering *Charter* claims such as that advanced by the Plaintiffs.

4. On an application to strike such as this it is well established that this court is to be guided by at several principles, including: (i) the facts as pleaded are assumed to be true unless manifestly incapable of proof;[3] (ii) the pleading is to be read "generously" to accommodate any "inadequacies" in the drafting;[4] (iii) novel, but arguable claims must be allowed to proceed;[5] (iv) complexity is not an appropriate factor to consider when deciding whether to strike a claim and complex or intricate issues of fact and law should be dealt with at trial;[6] (v) the defendant bears the onus of establishing that the pleading discloses no reasonable cause of action;[7] and (vi) a claim should only be struck where it is "plain and obvious" or "beyond a reasonable doubt" that it is certain to fail.[8]

5. As discussed below, when the claims advanced in the Further Amended Claim are considered in light of these well-established principles, and in their full and proper context, the Plaintiffs claim clearly should be permitted to proceed. It is not "plain and obvious" that the pleading discloses no reasonable cause of action or has no chance of success. On the contrary, the Plaintiffs have pleaded the material facts necessary to make out each of the requisite elements of their s. 7 claim. While the claim may be

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[1] *La Rose v Canada*, 2023 FCA 241 ["***La Rose***"] at para. 22.
[2] *La Rose* at para. 133.
[3] *La Rose* at para. 19.
[4] *Mohr v. National Hockey League*, 2022 FCA 145 ["***Mohr***"] at para. 48.
[5] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 ["***Imperial Tobacco***"] at para. 21.
[6] *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 ["***Hunt***"] at 979 – 980.
[7] *Edell v. Canada*, 2010 FCA 26 at para. 5.
[8] *Hunt, supra,* at 979 - 980.

novel and, in some respects, complex, these are not factors that should prevent the Plaintiffs from proceeding. The claim is justiciable. It is not certain to fail because of some "radical defect". The motion should be dismissed.

II. RESPONDENT'S POSITION ON THE FACTS

6. The Plaintiffs accept the summary of the background facts set out by Canada at paragraphs 5 to 10 of Canada's Written Representations,[9] although as discussed below the Plaintiffs say that Canada's discussion of the findings of the Federal Court of Appeal regarding the shortcomings of the Original Claim (as defined in paragraph 6 of Canada's Representations) is incomplete and pulls certain comments out of context.

7. With respect to the Further Amended Claim, the Plaintiffs disagree with Canada's characterization of the claims advanced in the Further Amended Claim and the nature and extent of the amendments made. The amendments made to the Original Claim – both in the Amended Statement of Claim and the Further Amended Claim - are tracked in the Further Amended Claim attached at Tab 4 of the Applicant's Motion book and speak for themselves in terms of their nature and extent.

8. More fundamentally, the Plaintiffs disagree with Canada's attempts in paragraphs 11 to 15 of its representations to frame this application as an assessment of the nature or extent of the amendments made and how responsive – in Canada's view - those amendments were to the comments made by the Federal Court of Appeal in respect of the Original Claim. This is an application to strike the Further Amended Claim. As noted below, such an application raises a single issue, namely whether it is "plain and obvious" or "beyond a reasonable doubt" that the Further Amended Claim does not disclose a reasonable cause of action. It is not an exercise of comparing the Further Amended Claim to the Original Claim, the focus is on the claim as currently pleaded in the Further Amended Claim.

9. For ease of reference and review, a clean copy of the Further Amended Claim is attached at Tab 3 to the Respondent's Motion Record.

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[9] *Written Representations of the Applicant ("Canada's Representations")*, Applicant's Motion Record, Tab 2.

III. ISSUES

10. Canada brings this motion pursuant to Rule 221(1)(a) alleging that the Further Amended Claim filed December 16, 2024 ought to be struck for failure to disclose a reasonable cause of action. On such an application there is only a single question to be answered: is it "plain and obvious" or "beyond a reasonable doubt" that the pleading discloses no reasonable cause of action?[10]

11. The Plaintiffs submit that this question must be answered in the negative and the application dismissed.

IV. SUBMISSIONS

12. Canada's motion to strike is fundamentally premised on the assertion that the Plaintiffs' claim fails to address the primary deficiency in the Original Claim that was identified by the Federal Court of Appeal, i.e. that "…the expansive and diffuse scope of the pleadings as framed are incompatible with constitutional adjudication."[11] The burden of Canada's submission in this regard is effectively that the claim is "too complicated" to proceed.[12] The Plaintiffs disagree and say that Canada's approach misconstrues the focus of this application.

13. An application under Rule 221 must – of necessity – focus on the Further Amended Claim, as pleaded and ask whether it is plain and obvious that it does not disclose a reasonable cause of Action. It is not a comparative exercise juxtaposing the amended pleading against the original. Proceeding in the manner taken by Canada mistakenly narrows the focus on specific provisions or word changes, rather than examining the claim as advanced as a whole and asking whether all the elements of the alleged cause of action have been pleaded. This risks, as Canada's submissions make clear, misconstruing the claim as advanced.

14. In any event, while the Plaintiffs acknowledge that the Court of Appeal described the Original Claim as "expansive and diffuse" in scope,[13] the issues raised by the Court – properly

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[10] See, for example, *Dumont v. Canada*, 2003 FCA 475 at para. 19 – 23, relying on *Hunt, supra*, at 979 – 980.
[11] Canada's Representations at para. 1.
[12] See, for examples, Canada's Representations at paras. 28, 34 and 35.
[13] *La Rose* at para. 22. The Plaintiffs also acknowledge that McVeigh J. similarly described the Original Claim as "too diffuse and broad" (*Misdzi Yikh v. Canada*, 2020 FC 1059 at para. 94), as noted by the Court of Appeal in *La Rose*, at para. 131.

understood – have been addressed by the Further Amended Claim. Canada incompletely describes the findings of the Federal Court of Appeal regarding the Original Claim and misconstrues the nature of the claim advanced in the Further Amended Claim, including in particular the nature and function of the Plaintiffs' reliance on the Temperature Commitment in the claim. Moreover, as discussed below, the Crown's position appears to be premised on a fundamental misunderstanding or, alternatively, an unduly narrow understanding of the law relating to applications to strike and the sufficiency of pleadings, both generally and with respect to s. 7 specifically.

15. As set out below, when the Further Amended Claim is reviewed in a manner consistent with the jurisprudence on an application to strike, i.e. generously with a view to accommodating any "inadequacies", the Plaintiffs say that it clearly discloses a reasonable cause of action or, in the language of the jurisprudence, it is not "plain and obvious" that the Further Amended Claim fails to disclose a reasonable cause of action.

A. The Findings of the Federal Court of Appeal

16. The Federal Court of Appeal's description of the Original Claim as "expansive and diffuse" can only be understood when read in its full context. The full text of the Court's comments in this regard was as follows:[14]

> The section 7 claims are justiciable, but nevertheless should be struck, albeit with leave to amend. The section 7 claims fail, not because they are destined to fail in this context or have no reasonable prospect of success, but because the expansive and diffuse scope of the pleadings as framed are incompatible with constitutional adjudication. [emphasis added]

17. Two things are evident from this passage. First, even in the Original Claim, the s. 7 claims were justiciable and were not destined to fail. In other words, "read generously" (i.e. with a view to how they might be amended), the Original Claim disclosed a reasonable cause of action that is entitled to proceed.

[14] *La Rose, supra*, at para 22.

18. Second, this passage makes clear that any assessment of whether the section 7 claims are properly pleaded is contextual in nature. In terms of how the Original Claim was framed, the Court of Appeal also said the following:[15]

> These pleadings fail on the basis that they lack the focus necessary for constitutional analysis. That is the substance of Canada's argument, which the Court accepts. [emphasis added]

19. It is in this context that the Further Amended Claim must be considered. As discussed below, the Plaintiffs say that, as amended, it is not "plain and obvious" that the Further Amended Claim must fail, and the application must therefore be dismissed.

B. The Requirements for a Section 7 Claim

20. A section 7 claim is comprised of the following three elements:

a. An allegation that one or more impugned laws or state actions engage the security interest protected by s. 7. In other words, the first element of a s. 7 claim asks "whether the impugned laws negatively impact or limit the applicants' security of the person"?[16] In this regard, the claimant bears the burden of establishing a "sufficient causal connection between the state-caused [effect] and the prejudice suffered by the [claimant]", and this standard is "sensitive to the context" of each particular case;[17]

b. Once it is alleged that s. 7 is engaged, the next element that must be alleged is that the deprivation is not in accordance with the principles of fundamental justice. This is a question of whether the evidence establishes that there is "no connection" between the effects of the impugned laws and their purpose, or whether the deprivation (i.e. the effect) is grossly disproportionate to the objective;[18] and

c. Once a breach of s. 7 is alleged in respect these first two elements. The final allegation relates to s. 1 and specifically that (i) the impugned laws do not have

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[15] *La Rose* at para. 133.
[16] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 ['***Bedford***'] at para. 58.
[17] *Bedford, supra*, at para. 75-76. See also: *Canadian Council for Refugees v. Canada (Citizenship and immigration)*, 2023 SCC 17 at para. 60.
[18] *Bedford, supra,* at paras. 93, 119 and 127.

> pressing and substantial objectives that warrant overriding the claimant's s. 7 rights and (ii) the means chosen are not rationally connected, minimally impaired by, and do not outweigh that objective.[19]

21. In considering whether a s. 7 claim has been properly pleaded, the question is whether the Plaintiffs have pleaded sufficient material facts to make out each of these three elements.[20] Here, the Plaintiffs say they have.

C. The Nature of the Plaintiffs' Section 7 Claim

22. Canada fundamentally misconstrues the nature of the Plaintiff's section 7 claim as pleaded in the Further Amended Claim. Accordingly, it is helpful to begin with a summary of the section 7 claim advanced in the Further Amended Claim. While some of the specific details are discussed in greater detail below in connection with the Plaintiffs' response to some of the specific alleged deficiencies advanced by Canada, assuming all the facts, as pleaded, are true the claim may be summarized as follows.

23. Canada has made a series of international commitments in respect of curbing or otherwise addressing greenhouse gas emissions. Specifically, as a signatory to the Paris Agreement, Canada made the Temperature Commitment and a commitment to establish and follow its Nationally Determined Contribution, expressed as a specified reduction to Canada's annual greenhouse gas emissions by a specific date.[21] Under the Paris Agreement, the signatories agreed that each country's Nationally Determined Contribution is to be undertaken with the view of equitably achieving the Temperature Commitment.[22] Canada's subsequent conduct and legislative acts, while not enshrining the entirety of the Paris Agreement, have incorporated these two interrelated commitments into domestic law.[23]

24. Having made these international commitments, Canada has voluntarily adopted a scheme domestically to address and control its greenhouse gas emissions. This scheme is comprised of

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[19] *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 ["***Oakes***"] at 69 and 70.
[20] *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras. 16 – 19.
[21] See, for example, Further Amended Claim at paras. 45 – 46.
[22] *Paris Agreement, Articles 2.2, 3*, Canada's Motion Record at page 66.
[23] Further Amended Claim at paras. 47 – 49.

the statutes and regulations Canada has continued or implemented in response to the Temperature Commitment and its Nationally Determined Contribution. The Plaintiffs have attempted to set out the statutes and regulations comprising this scheme in Schedule A to the Further Amended Claim. The Plaintiffs are not aware whether Schedule A represents a complete list of the statutes and other sources of government action that Canada has implemented to address greenhouse gas emissions as such information is solely within the possession and control of Canada.[24]

25. The Plaintiffs' claim, at core, is that Canada's execution of the scheme it voluntarily adopted to address its domestic greenhouse gas emissions has deprived and continues to deprive the Plaintiffs of their right to life, liberty and security of person. The law is clear that "'where the government puts in place a scheme' where it undertakes legislated actions, 'that scheme must comply with the *Charter*.'"[25] Canada's failure to execute the scheme it has adopted to address greenhouse gas emissions in a manner that delivers on the commitments it has made, as measured against the Temperature Commitment, is contrary to the principles of fundamental justice because the existential harm caused by Canada's failure to properly execute on the scheme it has adopted to combat climate change is arbitrary or grossly disproportionate to any relevant law's objective. [26]

26. The Plaintiffs further say that it is inconceivable that a threat of the highest order such as that manifest in the existential crisis represented by climate change, could be rationally connected to, or outweighed by any relevant law's objective. In other words, the impugned scheme cannot be saved under s. 1.[27]

27. When the pleading is considered in this light, the Plaintiffs say that it is not "plain and obvious" that they have not pleaded a reasonable cause of action. On the contrary, the Plaintiffs say they have pleaded sufficient material facts to support each of the three required elements of their s. 7 claim. As discussed further below, to find otherwise, would be contrary to the well-

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[24] Further Amended Claim at paras. 58 – 59.
[25] *Mathur v. Ontario*, 2024 ONCA 762 ["***Mathur***"] at para 40.
[26] Further Amended Claim at paras. 50 – 57, 72 – 81 and 84 – 90.
[27] Further Amended Claim at paras. 91 – 92.

established principles which govern applications to strike. It would also effectively allow Canada to avoid constitutional scrutiny simply by adopting a broad range of initiatives to address climate change, as opposed to a narrower response comprised of a single or few statutory instruments or provisions, which is an untenable result.

D. The Context for the Plaintiffs' Section 7 Claim

28. Context is a critical consideration in any Charter claim. For section 7 claims in particular, context informs consideration of both the application of the principles of fundamental justice under s. 7, and reasonable justification under s. 1. The Supreme Court of Canada has consistently stressed the importance of a contextual approach to *Charter* stating, among other things, that the proper approach to *Charter* claims "recognises that a particular right or freedom may have a different value depending on the context… the contextual approach attempts to bring into sharp relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of any values in competition with it."[28]

29. Here, there are at least three contextual elements to the Plaintiffs claim which must be considered when assessing the sufficiency of the Further Amended Claim, and which highlight the novel or usual nature of the claim.

30. First, the nature of the claimed deprivation. This must, of necessity, inform any consideration of the claim, as pleaded. The Supreme Court of Canada found that climate change is "a threat of the highest order to the country" and "an existential threat to human life in Canada and around the world." [29] Canada accepts the "threats posed by climate change and the pressing need to slow the effects of global warning."[30] The Further Amended Claim pleads those specific factual findings,[31] and sets out the particulars of the impact of climate change to date on the

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[28] *Edmonton Journal v. Alta (A.G.)*, [1989] 2 S.C.R. 1326 at 1355 to 1356, per Wilson J concurring in the result. See also: *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)* 1991 CanLII 57 (SCC), [1991] 2 S.C.R. 5 at 17; *R. v. Keegstra* 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697 at 737; *R. v. Laba* 1994 CanLII 41 (SCC), [1994] 3 S.C.R. 965 at 1000–1; and *Nova Scotia (Workers' Compensation Board) v. Martin* 2003 SCC 54 at para. 30.
[29] *References re: Greenhouse Gas Pollution Pricing Act,* 2021 SCC 11 at paras.167 and 171.
[30] Canada's Representations at para. 3.
[31] Further Amended Claim at paras. 1 and 33.

plaintiff House groups.[32] These are material facts relating to the first and second elements of the section 7 analysis.

31. The second contextual element flows from the first. In most *Charter* cases, the claimant is asserting protection of a private, minority value from the unjustified impacts of a statute or other state action that is asserting or advancing a public, majority value. In this case the nature of the claims is reversed.

32. Here, while the Plaintiffs assert rights within the context of their particular indigenous legal order and society, the harm they have suffered and continue to suffer affects, or potentially will affect over the long-term, all Canadians, all humanity and all life. On the other hand, the impugned scheme which Canada adopted to address climate change consists of a variety of statutes or state actions which are directed at benefiting a more restricted segment of the population over a shorter-term temporal focus.[33] This contextual factor informs consideration of the pleas relating to whether the alleged deprivation accords with the principles of fundamental justice (i.e. the second element of a s. 7 claim) and the justification analysis under s. 1.

33. The third contextual factor that must be considered is that the value sought to be protected is being impacted by the cumulative effect of the operation of a "expansive and diffuse"[34] legislative and regulatory scheme adopted by Canada consisting of many different laws and discretionary decisions addressing greenhouse gas emissions. It cannot be that Canada can immunize itself from constitutional scrutiny simply by choosing to adopt a broad range of measures under its scheme to address the existential threat posed by those emissions, rather than a single statute or regulatory provision.

34. The Federal Court of Appeal implicitly acknowledged the rarity of this type of challenge when it stated, that a "challenge to a particular law, an application of the law, or government

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[32] Further Amended Claim at paras. 2, 5, 6, and 72 to 81.
[33] See, for example, the provisions summarized in section 1 of Schedule A to the Further Amended Claim which provide subsidies to specific industries or in specific circumstances; and the Regulations summarized in sections 3 and 5 of Schedule A to the Further Amended Claim which set certain emissions standards for specific industry sectors, products and vehicles.
[34] *La Rose* at para. 22.

conduct is indeed an archetypal feature of Charter jurisprudence."[35] Archetypal means 'most typical'. It does not mean, essential or necessary. In using this language, the court is identifying the statistical infrequency of a s. 7 detriment being caused by a multitude of laws and actions, it is not saying that a s. 7 detriment cannot arise in this manner. As the choice of impugned laws/actions in s.7 claims is usually (unless proceeding by way of a reference) made by claimants rather than the court, this comment cannot be taken to go as far as Canada's position would suggest.

35. The fact that a challenge to a specific provision or provisions[36] may be "archetypal" does not mean that it is "plain and obvious" that a claim that impugns government action taken under a scheme comprised of a series of provisions, regulations or statutory instruments fails to disclose a reasonable cause of action. This is particularly so when the jurisprudence governing applications to strike is considered.

E. Complexity is Not a Basis to Strike an Otherwise Legally Cognizable Claim

36. As noted above, at various points in Canada's submission, it appears to suggest that the claim, as pleaded, is too complex to proceed. With respect, the law is clear that neither complexity nor novelty is a proper basis upon which to strike a claim.

37. The question of whether claims could be struck based on complexity was discussed and put to rest by the Supreme Court of Canada in *Hunt v. Carey Canada Inc.*[37], the leading authority on applications to strike.

38. In that case, the plaintiff – a retired electrician - alleged that 14 different companies conspired to withhold information about the dangers of asbestos. The conspiracy was said to have run from 1934 to 1967. One of the defendant companies applied to strike the claim.

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[35] *La Rose* at para. 126.
[36] See, for example, *Bedford, supra*, where three separate provisions of the *Criminal Code* were at issue.
[37] *Hunt, supra*.

39. Wilson J., writing for a unanimous court, reviewed the authorities from England, Ontario, BC and the Supreme Court of Canada on the test to strike out claims.[38] In England, Lord Denning had suggested that "the potential length and complexity of a trial should be taken into account when considering whether to strike out a statement of claim"[39] but this was expressly rejected in England,[40] a proposition that was similarly adopted in the Canadian jurisprudence and affirmed by the Court in *Hunt*, where Justice Wilson concluded that BC, Ontario, and Supreme Court of Canada authority confirmed that:[41]

> [n]either the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case.

40. Accordingly, the fact that the nature of the Plaintiffs' challenge to the constitutional compliance of the government measures taken under the scheme Canada adopted to address greenhouse gas emissions and its international commitments regarding the same may be novel or give rise to complexity in the *Charter* analysis is not a valid basis upon which to strike the Plaintiffs' claim.

41. The Plaintiffs acknowledge that the Federal Court of Appeal cited *Hunt* for the same proposition noted above.[42] Notwithstanding this, the Court went on to strike the claim, with leave to amend, on the basis that the "expansive and diffuse scope" of the Original Claim was too complex to be adjudicated. The Court's conclusion and the direction from the Supreme Court of Canada in *Hunt* can only be reconciled by considering the ratio for the Court's decision, which reads as follows:[43]

> [131] The statements of claim in these cases do not limit themselves to the requirement to plead material facts and not evidence, nor do they separate contextual facts from those related to the breach. ... Similarly, McVeigh J. concluded that while the Dini Ze' could have a Charter claim, it was not viable on the pleadings (*Misdzi Yikh Reasons* at paras. 58 and 102).

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[38] That test, as here, was whether it was "plain and obvious" or "beyond reasonable doubt" that the claim fails to disclose a reasonable claim.
[39] *Hunt, supra* at p. 973.
[40] *Hunt, supra* at p. 975.
[41] *Hunt, supra* at p. 980.
[42] *La Rose* at paras. 119 – 120.
[43] *La Rose* at paras. 131 - -134.

> McVeigh J. predicated her decision on the point that the claim was simply unmanageable, too diffuse and broad and lacked the necessary focus of challenge to a particular law with a nexus to a section 7 right. "This is not how Charter claims work", wrote McVeigh J. at paragraph 94 of the *Misdzi Yikh* reasons. I agree.
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> [132] The basic requirements of pleadings are not relaxed simply because a Charter claim is involved …. While the appellants cited specific decisions, conduct and legislative provisions, any potential for a manageable trial and informed Charter analysis is compromised by the unconstrained scope of the claim. It is not the role of the motions judge to separate the wheat from the chaff.
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> [133] These pleadings fail on the basis that they lack the focus necessary for constitutional analysis. That is the substance of Canada's argument, which the Court accepts. But, assuming that the pleadings are amended so as to address this lack of focus, can Canada, as defendant, rely on the opposite argument to shield itself from liability? As the scope of the impugned state action narrows, it might be argued that the asserted unconstitutional action cannot be considered in isolation; or, Canada might argue that, due to foreign sources of GHG emissions, the narrower Charter claims are destined to fail because the nexus or link between the harm and Canada's conduct cannot be established. Governments could effectively play a shell game, employing a "now you see me, now you don't" strategy and sheltering behind alternative objections that the claim raised is either too broad or too specific.
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> [134] There are several answers to this concern. As previously noted, the possibility that there are other causes or sources of the asserted infringement or harm does not constitute a barrier to a constitutional challenge ... To hold otherwise would effectively immunize legislation from constitutional scrutiny. In modern, complex societies, problems seldom, if ever, have a singular cause or simplicity of focus; rather, they arise from a host of social, economic, legal, and practical influences, some of which might be beyond the control of the particular level of government defending the claim. The second answer to this argument is that these considerations engage at the trial stage, when the court examines whether there is a sufficient constitutional nexus between the harm and the asserted state action as a factual matter. [emphasis added; citations omitted][44]

42. In other words, as noted above, it is not that the Plaintiffs did not have a legally justiciable s. 7 claim, rather it was that the Original Claim lacked the focus necessary to ground

[44] References to the decision of Manson J. in respect of the La Rose pleadings have been removed as they did not consider the Original Claim.

the constitutional analysis. The Plaintiffs say that the Further Amended Claim does not suffer from that same issue. The Further Amended Claim provides the necessary focus, and the claim ought to be permitted to proceed.

F. The Further Amended Claim Provides the Focus Necessary for Constitutional Analysis

43. The Plaintiffs say that the necessary focus referenced by the Federal Court of Appeal has been provided in at least two ways in the Further Amended Claim. First, by narrowing "the scope of the impugned state action"[45] and second, by reframing[46] the scope of the s. 7 fundamental justice and the s. 1 justification analyses to adopt a more purposive and contextual approach.

(i) The Further Amended Claim Narrows the Scope of the Impugned State Action in the Claim

44. The Further Amended Claim narrows the scope of the impugned state action by grounding the claim in the statutory and regulatory instruments summarized in Schedule A to the Further Amended Claim. Those instruments, as discussed above, represent the scheme that Canada has voluntarily adopted to address greenhouse gas emissions. The Plaintiffs' challenge is to the constitutional compliance of the government measures taken under that scheme.[47] The Further Amended Claim identifies the constituent elements of the claim and pleads the material facts to support the alleged deprivation. This should provide a sufficient nexus for the constitutional analysis at the pleadings stage.

45. In this regard, it is significant that the Federal Court of Appeal expressly noted that any narrowed scope of claim cannot be considered in isolation from other sources of the claimed infringement,[48] something acknowledged in the Further Amended Claim.[49] The Court went on to suggest that challenges arising out of any such narrowing approach would "engage at the trial

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[45] *La Rose* at para. 133.
[46] *La Rose* at para. 22.
[47] *Mathur* at paras. 40-41.
[48] *La Rose* at paras. 133 and 134.
[49] Further Amended Claim at paras. 51 - 59.

stage, when the court examines whether there is a sufficient constitutional nexus between the harm and the asserted state action as a factual matter."[50]

46. It follows from review of paragraphs 51 – 59 and Schedule A to the Further Amended Claim, that any consideration of the nexus between the plaintiffs' detriment and government laws and actions requires consideration of the cumulative emissions, some of which at a given moment may be authorised by a listed provision. It is the totality of the emissions that causes the detriment and is the metric by which Canada measures its success or failure in meeting its emission targets and commitments. At the trial of the substantive issue, identification of the specific statutes and provisions that contribute to Canada's GHG emissions may well emerge from the evidence. However, as a matter of pleading, the material facts necessary to frame the nexus have been pleaded.

(ii) A Contextual Approach Provides Focus

47. As noted above, context is of critical significance is determining the scope and nature of *Charter* claims.[51] Further, where a claim is novel, such as here, the law requires that the pleadings be assessed in a "generous" manner that allows arguable claims to proceed to trial.[52] Together, these principles operate to illustrate that the Further Amended Claim contains the necessary focus required for the pleading to withstand Canada's position on this application.

48. As raised before the Federal Court of Appeal, the Plaintiffs say that a contextual approach to the constitutional analysis required under the s. 7 (the fundamental justice requirement) and s. 1 (the justification requirement) "provides a sensible pathway for development of the law, based on reason and doctrine."[53] That pathway is illuminated by considering the constitutional questions from the perspective of both (a) the nature of the claim; and (b) the nature of the alleged deprivation. The claim, as noted, is a challenge to the constitutional compliance of the measures taken by Canada under the diverse scheme that Canada has adopted to combat greenhouse gas emissions and not a challenge to a specific

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[50] *La Rose* at para.134.
[51] See authorities cited at paragraph 28, supra.
[52] See, for example, *Mohr, supra* at para. 48; and *Imperial Tobacco, supra*, at para. 21.
[53] *La Rose* at para. 121.

provision or provisions in isolation. The harm, or the alleged deprivation, as noted by the Supreme Court of Canada is an existential threat.

49. As noted above, the nature of the harm alleged, and the nature of the claim are two of the contextual factors that make the Plaintiffs' claim unusual or novel. Where, as here, the alleged deprivation derives from the cumulative impact of measures taken under a scheme comprised of many statutes and/or government actions, it makes sense to approach the analysis of whether s. 7 rights are engaged by examining the measures under the scheme and their effects in the aggregate rather than on a granular, particularized basis.

50. Moreover, where the deprivation results in existential harm to the Plaintiffs – and potentially globally - it is inconceivable that such harm would be necessary to further any relevant law's objectives. Put another way, there is no connection between the harm and the objectives of the measures taken under the scheme adopted by Canada to address greenhouse gases. In the language of the s. 7 jurisprudence, the effect of the impugned scheme is arbitrary.[54]

51. Similarly, the pleaded facts that the scheme adopted by Canada is insufficient to meet either its Nationally Determined Contribution or the Temperature Commitment,[55] place the focus of the s. 7 and s. 1 analysis on the harm or deprivation advanced. The existential nature of this harm is so extreme as to be grossly disproportionate to any relevant law's objectives.[56]

52. A focus on the harm similarly narrows the focus under s. 1. As set out at paragraph 92 of the Further Amended Claim, "It is inconceivable that a threat of the highest order such as that manifest in the existential crisis represented by climate change, could be rationally connected to, or outweighed by, any relevant law's objective."[57]

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[54] Further Amended Claim at para. 88. For discussion of the meaning of arbitrary in this context, see *Bedford, supra*, at paras. 98 – 102 and 111.
[55] Further Amended Claim at paras. 51 – 59.
[56] Further Amended Claim at para. 89. For discussion of the meaning of "grossly disproportionate" in this context, see *Bedford, supra*, at paras. 103 – 104 and 120 - 122.
[57] Further Amended Claim at para. 91.

53. All these propositions are expressly pleaded in the Further Amended Claim, together with the associated material facts to support the nature and scope of the alleged deprivation.[58] It is the nature of this harm that provides the necessary focus for the analysis.

54. In this regard, it is noteworthy that while the Federal Court of Appeal discussed at some length the need for specific laws or actions be targeted in constitutional litigation,[59] the Court did not discuss the purpose or role of such specificity in either the fundamental justice analysis under s. 7 or the justification analysis under s.1. Nor did the Court indicate that such specificity was needed to make out a viable cause of action. With respect, that is because there is no requirement in the jurisprudence for restricting *Charter* claims in this manner. Indeed, several *Charter* challenges target more than one provision, entire statutes or the interplay between various provisions.[60]

55. In a s. 7 claim where a plaintiff has identified a specific law or state action as causing them detriment, the judge must weigh the claimed Charter values against the objective of the impugned law or action. In many such cases, each of those competing values will have to be finely balanced, requiring careful characterisation of each. On the other hand, as in this case, where several laws or actions contribute to the detriment but where the claimed detriment is of such an impact and scale that no statutory provision could reasonably be said to come close to outweighing it, the resulting balancing does not have to be so carefully characterised and finely weighed. The list of potential contributing laws in Schedule A and the thumbnail objectives of each shown in the third column of the schedule provide a factual check on their nature and thus on their relative insignificance when compared to the deprivation at issue - existential impact to life on earth.

56. That is not to say, as Canada seems to suggest, that the Plaintiffs are asking the court to conduct the constitutional analysis on a "wholesale basis".[61] Rather, the Further Amended

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[58] Further Amended Claim at paras. 88 – 91.
[59] *La Rose* at paras. 126 to 134.
[60] See, for example, *Bedford, supra*; *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9; *R. v. Pontes*, [1995] 3 S.C.R. 44; and *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154.
[61] Canada's Representations at para. 35.

Claim challenges the measures taken under the scheme adopted by Canada to address greenhouse gas emissions, the collective effect of which caused the cumulative harm that comprises the deprivation. The task of the court at trial will be to determine whether or not there is an overarching constitutional obligation of the type alleged. If that obligation is found, it would then be tested under both s. 7 and s. 1 by weighing the effect of the scheme (the deprivation) against the objective of each of the pieces of legislation comprising that scheme (i.e. the measures taken under the scheme). The point made by the Plaintiffs at paragraphs 88 - 92 of the Further Amended Claim is that the existential nature of the harm is such that there can be no objective that can justify or outweigh that harm, a point which will – of course – be tested at trial.

57. The contextual approach outlined above demonstrates that the claim advanced in the Further Amended Claim is compatible with constitutional adjudication. It "provides a sensible pathway for development of the law, based on reason and doctrine" which the Federal Court of Appeal concluded was missing in the Original Claim.[62] The context provided by the claimed deprivation being a threat of the highest order to the country, the long-term and global extent of that threat, and the overwhelming weight of these factors compared with any other "collective goals of fundamental importance"[63] provides focus to the analysis and, while this will be an issue for trial, in the Plaintiffs' submission easily tip the balance in both s. 7 and s. 1 Charter analyses. As a practical matter, this analysis could be easily refuted by Canada at trial by citing any legislation or government action subsidising, financing, permitting or regulating GHGs, and asserting that its objective was more crucial than "a threat of the highest order to the country" or "an existential threat to human life in Canada and around the world."

58. Here, the Plaintiffs have pleaded all the requisite elements of a s. 7 claim, including material facts alleging a deprivation that engages the Plaintiffs' s. 7 rights,[64] that the deprivation

[62] *La Rose* at para. 121.
[63] *Oakes* at para. 65.
[64] See, for example, Further Amended Claim at paras. 51 – 59 and 72 – 81.

is not in accordance with the principles of fundamental justice,[65] and that it cannot be justified under s. 1.[66]

59. The principal complaint advanced by Canada is that the pleading remains too complex for adjudication. With respect, that does not provide a basis on which to strike the Further Amended Claim, which now specifies 33 statutory or regulatory instruments comprising the impugned scheme whose cumulative effect is the existential harm at issue. Whether the claim attacks a single legislative provision or more, the question is whether the pleading discloses a legally viable cause of action. Complexity does not answer that question and has been long established as not being a basis on which to prevent a plaintiff from having the claim adjudicated. Indeed, the Federal Court of Appeal acknowledged that it "may be essential that a novel, but as yet unprecedented argument proceed to an in-depth analysis. It is only in this way that the common law can evolve to respond to the challenges of modern society."[67] That is the opportunity the Plaintiffs seek here.

G. Canada's Criticisms of the pleadings relating to the Temperature Commitment Lack Foundation

(i) The Temperature Commitment Pleas are not Inconsistent

60. As a starting point, at paragraph 38, Canada lists several pleaded facts relating to the Temperature Commitment from the Further Amended Claim and asserts these are internally inconsistent. It is unclear from Canada's written submissions precisely how these pleas are inconsistent. For example, describing the Temperature Commitment as both a "constitutional duty" and an "obligation" is not inconsistent, as a duty is a form of obligation.

61. In any event, it is well established that pleadings on applications to strike are to be "read generously" with a view to accommodating any "inadequacies".[68] To the extent that any of the pleas identified in paragraph 38 of Canada's submission are seen as truly "inconsistent", this at

[65] See, for example, Further Amended Claim at paras. 1, 7, 88 and 89.
[66] Further Amended Claim at paras. 91 – 92.
[67] *Hunt, supra* at 960; *La Rose* at para. 120.
[68] *Mohr, supra,* at para. 48.

most amounts to a drafting deficiency of the type that ought not to result in the underlying claim being struck.[69]

(ii) Canada misconstrues the nature and import of the pleas regarding the Temperature Commitment

62. At paragraph 39 of Canada's Representations, Canada asserts that the Temperature Commitment cannot be both an "aim" of the Paris Agreement, i.e. an aspirational "target", and a binding commitment to address climate change through the regulation of greenhouse gas emissions. With respect, this misconstrues the role and function of the Temperature Commitment within the context of the Plaintiffs' claim.

63. The signatories to the Paris Agreement, including Canada, committed to two ways of measuring their efforts to combat and reduce global warming. The first is the commitment by each signatory to take steps consistent with holding mean global temperature increases to "well below 2°C above pre-industrial levels." The second is the commitment by each signatory to limit the totality of its carbon emissions over a given period.[70]

64. The former is the commitment that Canada describes as the non-binding, "aspirational" or "aim" of the Paris Agreement.[71] The latter is the metric by which Canada measures and reports its efforts to reduce the country's emissions of greenhouse gases to Canadians and to the United Nations under the Paris Agreement. This is termed each signatory's "Nationally Determined Contribution". Both are pleaded in the Further Amended Claim.[72]

65. On the facts, as pleaded, the Plaintiffs say that Canada's Nationally Determined Contribution has failed and will continue to fail to meet its Temperature Commitment.[73] In this regard, the Plaintiffs characterise the "Temperature Commitment" as the standard for Canada to

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[69] *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 451.
[70] *Paris Agreement, Articles 2.2, 3*, Canada's Motion Record, Tab 5 at page 66.
[71] *Canada's Representations* at para. 38.b, Further Amended Claim at para. 89. Contrary to Canada's assertion (e.g. *Canada's Representations* at para. 31) that the Temperature Commitment standard is defined by the plaintiffs, it is defined by Canada through the Paris Agreement and only given the "Temperature Commitment" term by the plaintiffs.
[72] See, for example, Further Amended Claim at para. 45 - 46.
[73] Further Amended Claim at para. 50.

meet its s. 7 constitutional duty to them. Put another way, the Plaintiffs adopt the Temperature Commitment as "shorthand" in the pleadings to describe the measuring stick against which the efficacy of Canada's execution of the scheme it adopted to address greenhouse gas emissions is to be assessed.

(iii) The Commitments Made in the Paris Agreement Have been Sufficiently Incorporated into Domestic Law to make them Enforceable

66. At paragraph 40, Canada asserts that no federal legislation commits Canada to achieving the Temperature Commitment. The Plaintiffs disagree.

67. While the Plaintiffs acknowledge that the Paris Agreement has not been adopted in its entirety into domestic law, sufficient steps have been taken by the federal government to make its core commitments, including the Temperature Commitment, enforceable.

68. In particular, Canada has taken the following steps that made the Temperature Commitment binding and capable of supporting the plaintiffs' s. 7 claims:[74]

a. ratification of the Paris Agreement;

b. adoption of a (non-binding) declaration in 2019 that Canada commit to meeting its Nationally Determined Contribution target and meeting the Temperature Commitment;

c. inclusion of the Temperature Commitment in the preambles to the *Greenhouse Gas Pollution Pricing Act* (S.C. 2018, c. 12, s.186) and the *Canadian Net-Zero Emissions Accountability Act* (S.C. 2021, c. 22); and

d. expressly referring to the Paris Agreement Nationally Determined Contribution targets in para. 7(3) of the *Canadian Net-Zero Emissions Accountability Act*.

69. While Canada may disagree with the Plaintiffs' position that these steps were sufficient to incorporate Canada's commitments under the Paris Agreement into domestic law, it is

[74] Further Amended Claim, at paras. 47 – 49.

certainly not "plain and obvious" or "beyond a reasonable doubt" that these steps were insufficient to do so.

70. In this regard, it is significant that the authorities relied upon by Canada to support its assertions at paragraphs 47 and 48 are either distinguishable or do not stand for the propositions for which they are cited.

71. Canada relies on *Kazemi Estate*[75] to assert that international treaty commitments cannot give rise to a *Charter* claim. With respect, this misconstrues the nature of the Court's discussion in that case. The cited passage (para. 149) addresses whether an article from an international treaty automatically becomes a principle of fundamental justice against which a deprivation of a *Charter* right is to be assessed. That is a different issue than that raised by the Plaintiffs in this case.

72. The Plaintiffs do not assert that Canada's international commitments regarding climate charge give rise to a principle of fundamental justice against which the deprivation alleged to be caused by the impugned scheme is to be assessed. On the contrary, the Plaintiffs challenge the constitutional compliance of the measures taken by Canada under the scheme it adopted to address its climate change commitments, measures which are summarized in Schedule A to the Further Amended Claim. More specifically, the Plaintiffs say that the deprivation caused by the measures taken is arbitrary or grossly disproportionate as the harm occasioned by those measures is not connected to the purpose of any of the elements of the impugned scheme or is grossly disproportionate to their objectives. *Kazemi Estate* is not relevant in this context.

73. Canada similarly relies on *Canadian Foundation* to similar effect t paragraph 48 of its representations. Again, the Plaintiffs are not alleging a freestanding principle of fundamental justice arising out of Canada's international commitments. As such, *Canadian Foundation* has no application.

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[75] *Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62.

(iv) It is not Plain and Obvious that the Plaintiffs Interpretation of the Paris Agreement is Incorrect

74. At paragraphs 42 – 46, Canada asserts that the Further Amended Claim is inconsistent with the language of the Paris Agreement. This discussion focusses on whether the Paris Agreement imposes an obligation on Canada to meet the Temperature Commitment or establish and follow its Nationally Determined Contribution. As discussed above, the Plaintiffs say this submission is premised on a misunderstanding of the role and import of these commitments in the Plaintiffs claim.

75. More fundamentally, it is not "plain and obvious" that the Plaintiffs interpretation of the Paris Agreement, as set out in the Further Amended Claim, will not prevail.

V. ORDER SOUGHT

76. For the foregoing reasons, as may be supplemented at the oral hearing of this application, the Plaintiffs/respondents seek an order that:

(a) the Notice of Motion of the Defendant His Majesty the King in Right of Canada dated January 24, 2025 is dismissed; and

(b) the parties each bear their own costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Vancouver, in the Province of British Columbia, the 28th Day of February, 2025.

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VI. LIST OF AUTHORITIES

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STATUTES AND REGULATIONS

JURISPRUDENCE

22. *R. v. Laba* 1994 CanLII 41 (SCC), [1994] 3 S.C.R. 965

23. *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103

24. *R. v. Pontes*, [1995] 3 S.C.R. 44

25. *R. v. Tobacco Canada Ltd.*, 2011 SCC 42

26. *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154

THE PARIS AGREEMENT

United Nations
Framework Convention on
Climate Change

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INTRODUCTION

The Conference of the Parties, at its 21st session, adopted the Paris Agreement on 12 December 2015. The Paris Agreement stipulates that it shall enter into force thirty days after the date on which at least 55 Parties to the United Nations Framework Convention on Climate Change (UNFCCC) accounting in total for at least an estimated 55 % of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession with the Depositary, the Secretary-General of the United Nations.

The agreement was opened for signature on 22 April 2016 in New York. On 5 October 2016, the threshold for entry into force was achieved and the Paris Agreement entered into force on 4 November 2016.

This booklet of the Paris Agreement has been published by the UNFCCC secretariat for ease of reference and as a 'souvenir' edition to commemorate its early entry into force. For ease of reference, the publication also contains the decision 1/CP.21, which adopts the Paris Agreement.

Certified true copies of the Paris Agreement can be obtained from the Treaty Section of the Office of Legal Affairs, United Nations Headquarters, New York. This can also be done on-line at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en

THE PARIS AGREEMENT

The Parties to this Agreement,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",

Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session,

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,

Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,

Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology,

Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,

Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,

Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,

Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective

obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Recognizing the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,

Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change,

Affirming the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,

Recognizing the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,

Also recognizing that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change,

Have agreed as follows:

Article 1

For the purpose of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

a. "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;

b. "Conference of the Parties" means the Conference of the Parties to the Convention;

c. "Party" means a Party to this Agreement.

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

a. 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, recognizing that this would significantly reduce the risks and impacts of climate change;

b. Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

c. Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.

5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.

6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.

7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.

8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.

9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.

10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session.

11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.

13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.

15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.

16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.

18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.

19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 5

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, *paragraph* 1(d), of the Convention, including forests.

2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

Article 6

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.

2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.

4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:

a. To promote the mitigation of greenhouse gas emissions while fostering sustainable development;

b. To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;

c. To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and

d. To deliver an overall mitigation in global emissions.

5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.

6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.

8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:

a. Promote mitigation and adaptation ambition;

b. Enhance public and private sector participation in the implementation of nationally determined contributions; and

c. Enable opportunities for coordination across instruments and relevant institutional arrangements.

9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.

2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.

3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session.

4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.

5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

a. Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;

b. Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;

c. Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;

d. Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and

e. Improving the effectiveness and durability of adaptation actions.

8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.

9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

a. The implementation of adaptation actions, undertakings and/or efforts;

b. The process to formulate and implement national adaptation plans;

c. The assessment of climate change impacts and vulnerability, with a view to formulating

nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;

d. Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and

e. Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.

10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.

11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.

12. The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.

13. Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.

14. The global stocktake referred to in Article 14 shall, inter alia:

a. Recognize adaptation efforts of developing country Parties;

b. Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article;

c. Review the adequacy and effectiveness of adaptation and support provided for adaptation; and

d. Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article.

Article 8

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.

2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.

4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:

a. Early warning systems;

b. Emergency preparedness;

c. Slow onset events;

d. Events that may involve irreversible and permanent loss and damage;

e. Comprehensive risk assessment and management;

f. Risk insurance facilities, climate risk pooling and other insurance solutions;

g. Non-economic losses; and

h. Resilience of communities, livelihoods and ecosystems.

5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

Article 9

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

2. Other Parties are encouraged to provide or continue to provide such support voluntarily.

3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.

4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.

5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.

6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.

7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.

8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.

9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

Article 10

1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.

2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.

3. The Technology Mechanism established under the Convention shall serve this Agreement.

4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.

5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.

6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.

Article 11

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.

2. Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.

3. All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.

4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.

5. Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building.

Article 12

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

Article 13

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.

2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.

3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.

4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article.

5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.

6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14.

7. Each Party shall regularly provide the following information:

   a. A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and

b. Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.

8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.

9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.

10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.

11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.

12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.

13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.

14. Support shall be provided to developing countries for the implementation of this Article.

15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.

Article 14

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.

2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

Article 15

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.

2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.

3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Article 16

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.

3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:

a. Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and

b. Exercise such other functions as may be required for the implementation of this Agreement.

5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article.

Article 17

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Article 18

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bodies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

Article 19

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.

2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

Article 20

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 21

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.

2. Solely for the limited purpose of paragraph 1 of this Article, "total global greenhouse gas emissions" means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

Article 22

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

Article 23

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement.

2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

Article 24

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

Article 25

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 26

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

Article 27

No reservations may be made to this Agreement.

Article 28

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

Article 29

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Paris this twelfth day of December two thousand and fifteen.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

Decision 1/CP.21
ADOPTION OF THE PARIS AGREEMENT

The Conference of the Parties,

Recalling decision 1/CP.17 on the establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action,

Also recalling Articles 2, 3 and 4 of the Convention,

Further recalling relevant decisions of the Conference of the Parties, including decisions 1/CP.16, 2/CP.18, 1/CP.19 and 1/CP.20,

Welcoming the adoption of United Nations General Assembly resolution A/RES/70/1, "Transforming our world: the 2030 Agenda for Sustainable Development", in particular its goal 13, and the adoption of the Addis Ababa Action Agenda of the third International Conference on Financing for Development and the adoption of the Sendai Framework for Disaster Risk Reduction,

Recognizing 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 greenhouse gas emissions,

Also recognizing that deep reductions in global emissions will be required in order to achieve the ultimate objective of the Convention and *emphasizing* the need for urgency in addressing climate change,

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Also acknowledging the specific needs and concerns of developing country Parties arising from the impact of the implementation of response measures and, in this regard, decisions 5/CP.7, 1/CP.10, 1/CP.16 and 8/CP.17,

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with 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,

Also emphasizing that enhanced pre-2020 ambition can lay a solid foundation for enhanced post-2020 ambition,

Stressing the urgency of accelerating the implementation of the Convention and its Kyoto Protocol in order to enhance pre-2020 ambition,

Recognizing the urgent need to enhance the provision of finance, technology and capacity-building support by developed country Parties, in a predictable manner, to enable enhanced pre-2020 action by developing country Parties,

Emphasizing the enduring benefits of ambitious and early action, including major reductions in the cost of future mitigation and adaptation efforts,

Acknowledging the need to promote universal access to sustainable energy in developing countries, in particular in Africa, through the enhanced deployment of renewable energy,

Agreeing to uphold and promote regional and international cooperation in order to mobilize stronger and more ambitious climate action by all Parties and non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples,

I. ADOPTION

1. *Decides* to adopt the Paris Agreement under the United Nations Framework Convention on Climate Change (hereinafter referred to as "the Agreement") as contained in the annex;

2. *Requests* the Secretary-General of the United Nations to be the Depositary of the Agreement and to have it open for signature in New York, United States of America, from 22 April 2016 to 21 April 2017;

3. *Invites* the Secretary-General to convene a high-level signature ceremony for the Agreement on 22 April 2016;

4. *Also invites* all Parties to the Convention to sign the Agreement at the ceremony to be convened by the Secretary-General, or at their earliest opportunity, and to deposit their respective instruments of ratification, acceptance, approval or accession, where appropriate, as soon as possible;

5. *Recognizes* that Parties to the Convention may provisionally apply all of the provisions of the Agreement pending its entry into force, and *requests* Parties to provide notification of any such provisional application to the Depositary;

6. *Notes* that the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, in accordance with decision 1/CP.17, paragraph 4, has been completed;

7. *Decides* to establish the Ad Hoc Working Group on the Paris Agreement under the same arrangement, mutatis mutandis, as those concerning the election of officers to the Bureau of the Ad Hoc Working Group on the Durban Platform for Enhanced Action;[1]

8. *Also decides* that the Ad Hoc Working Group on the Paris Agreement shall prepare for the entry into force of the Agreement and for the convening of the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

9. *Further decides* to oversee the implementation of the work programme resulting from the relevant requests contained in this decision;

10. *Requests* the Ad Hoc Working Group on the Paris Agreement to report regularly to the Conference of the Parties on the progress of its work and to complete its work by the first

1 Endorsed by decision 2/CP.18, paragraph 2.

session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

11. *Decides* that the Ad Hoc Working Group on the Paris Agreement shall hold its sessions starting in 2016 in conjunction with the sessions of the Convention subsidiary bodies and shall prepare draft decisions to be recommended through the Conference of the Parties to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

II. INTENDED NATIONALLY DETERMINED CONTRIBUTIONS

12. *Welcomes* the intended nationally determined contributions that have been communicated by Parties in accordance with decision 1/CP.19, paragraph 2(b);

13. *Reiterates* its invitation to all Parties that have not yet done so to communicate to the secretariat their intended nationally determined contributions towards achieving the objective of the Convention as set out in its Article 2 as soon as possible and well in advance of the twenty-second session of the Conference of the Parties (November 2016) and in a manner that facilitates the clarity, transparency and understanding of the intended nationally determined contributions;

14. *Requests* the secretariat to continue to publish the intended nationally determined contributions communicated by Parties on the UNFCCC website;

15. *Reiterates* its call to developed country Parties, the operating entities of the Financial Mechanism and any other organizations in a position to do so to provide support for the preparation and communication of the intended nationally determined contributions of Parties that may need such support;

16. *Takes note* of the synthesis report on the aggregate effect of intended nationally determined contributions communicated by Parties by 1 October 2015, contained in document FCCC/CP/2015/7;

17. *Notes with concern* that the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the intended nationally determined contributions do not fall within least-cost 2 °C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and *also notes* 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 below 2 °C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5 °C above pre-industrial levels by reducing to a level to be identified in the special report referred to in paragraph 21 below;

18. *Further notes, in this context,* the adaptation needs expressed by many developing country Parties in their intended nationally determined contributions;

19. *Requests* the secretariat to update the synthesis report referred to in paragraph 16 above so as to cover all the information in the intended nationally determined contributions communicated by Parties pursuant to decision 1/CP.20 by 4 April 2016 and to make it available by 2 May 2016;

20. *Decides* to convene a facilitative dialogue among Parties in 2018 to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to in Article 4, paragraph 1, of the Agreement and to inform the preparation of nationally determined contributions pursuant to Article 4, paragraph 8, of the Agreement;

21. *Invites* the Intergovernmental Panel on Climate Change to provide a special report in 2018 on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways;

III. DECISIONS TO GIVE EFFECT TO THE AGREEMENT

Mitigation

22. *Also invites* Parties to communicate their first nationally determined contribution no later than when the Party submits its respective instrument of ratification, acceptance, approval or accession of the Paris Agreement; if a Party has communicated an intended nationally determined contribution prior to joining the Agreement, that Party shall be considered to have satisfied this provision unless that Party decides otherwise;

23. *Requests* those Parties whose intended nationally determined contribution pursuant to decision 1/CP.20 contains a time frame up to 2025 to communicate by 2020 a new nationally determined contribution and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement;

24. *Also requests* those Parties whose intended nationally determined contribution pursuant to decision 1/CP.20 contains a time frame up to 2030 to communicate or update by 2020 these contributions and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement;

25. *Decides* that Parties shall submit to the secretariat their nationally determined contributions referred to in Article 4 of the Agreement at least 9 to 12 months in advance of the relevant session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement with a view to facilitating the clarity, transparency and understanding of these contributions, including through a synthesis report prepared by the secretariat;

26. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop further guidance on features of the nationally determined contributions for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

27. *Agrees* that the information to be provided by Parties communicating their nationally determined contributions, in order to facilitate clarity, transparency and understanding, may include, as appropriate, inter alia, quantifiable information on the reference point (including, as appropriate, a base year), time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas

emissions and, as appropriate, removals, and how the Party considers that its nationally determined contribution is fair and ambitious, in the light of its national circumstances, and how it contributes towards achieving the objective of the Convention as set out in its Article 2;

28. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop further guidance for the information to be provided by Parties in order to facilitate clarity, transparency and understanding of nationally determined contributions for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

29. *Also requests* the Subsidiary Body for Implementation to develop modalities and procedures for the operation and use of the public registry referred to in Article 4, paragraph 12, of the Agreement, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

30. *Further requests* the secretariat to make available an interim public registry in the first half of 2016 for the recording of nationally determined contributions submitted in accordance with Article 4 of the Agreement, pending the adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement of the modalities and procedures referred to in paragraph 29 above;

31. *Requests* the Ad Hoc Working Group on the Paris Agreement to elaborate, drawing from approaches established under the Convention and its related legal instruments as appropriate, guidance for accounting for Parties' nationally determined contributions, as referred to in Article 4, paragraph 13, of the Agreement, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, which ensures that:

a. Parties account for anthropogenic emissions and removals in accordance with methodologies and common metrics assessed by the Intergovernmental Panel on Climate Change and adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

b. Parties ensure methodological consistency, including on baselines, between the communication and implementation of nationally determined contributions;

c. Parties strive to include all categories of anthropogenic emissions or removals in their nationally determined contributions and, once a source, sink or activity is included, continue to include it;

d. Parties shall provide an explanation of why any categories of anthropogenic emissions or removals are excluded;

32. *Decides* that Parties shall apply the guidance referred to in paragraph 31 above to the second and subsequent nationally determined contributions and that Parties may elect to apply such guidance to their first nationally determined contribution;

33. *Also decides* that the forum on the impact of the implementation of response measures, under the subsidiary bodies, shall continue, and shall serve the Agreement;

34. *Further decides* that the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation shall recommend, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, the modalities, work programme and functions of the forum on the impact of the implementation of response measures to address the effects of the implementation of response measures under the Agreement by enhancing cooperation amongst Parties on understanding the impacts of mitigation actions under the Agreement and the exchange of information, experiences, and best practices amongst Parties to raise their resilience to these impacts;

35. *Invites* Parties to communicate, by 2020, to the secretariat mid-century, long-term low greenhouse gas emission development strategies in accordance with Article 4, paragraph 19, of the Agreement, and *requests* the secretariat to publish on the UNFCCC website Parties' low greenhouse gas emission development strategies as communicated;

36. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop and recommend the guidance referred to under Article 6, paragraph 2, of the Agreement for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, including guidance to ensure that double counting is avoided on the basis of a corresponding adjustment by Parties for both anthropogenic emissions by sources and removals by sinks covered by their nationally determined contributions under the Agreement;

37. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement adopt rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Agreement on the basis of:

a. Voluntary participation authorized by each Party involved;

b. Real, measurable, and long-term benefits related to the mitigation of climate change;

c. Specific scopes of activities;

d. Reductions in emissions that are additional to any that would otherwise occur;

e. Verification and certification of emission reductions resulting from mitigation activities by designated operational entities;

f. Experience gained with and lessons learned from existing mechanisms and approaches adopted under the Convention and its related legal instruments;

38. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop and recommend rules, modalities and procedures for the mechanism referred to in paragraph 37 above for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

39. *Also requests* the Subsidiary Body for Scientific and Technological Advice to undertake a work programme under the framework for non-market approaches to sustainable development referred to in Article 6, paragraph 8, of the Agreement, with the objective of considering how to enhance linkages and create synergy between, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, and how to facilitate the implementation and coordination of non-market approaches;

40. *Further requests* the Subsidiary Body for Scientific and Technological Advice to recommend a draft decision on the work programme referred to in paragraph 39 above, taking into account the views of Parties, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

Adaptation

41. *Requests* the Adaptation Committee and the Least Developed Countries Expert Group to jointly develop modalities to recognize the adaptation efforts of developing country Parties, as referred to in Article 7, paragraph 3, of the Agreement, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

42. *Also requests* the Adaptation Committee, taking into account its mandate and its second three-year workplan, and with a view to preparing recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session:

a. To review, in 2017, the work of adaptation-related institutional arrangements under the Convention, with a view to identifying ways to enhance the coherence of their work, as appropriate, in order to respond adequately to the needs of Parties;

b. To consider methodologies for assessing adaptation needs with a view to assisting developing country Parties, without placing an undue burden on them;

43. *Invites* all relevant United Nations agencies and international, regional and national financial institutions to provide information to Parties through the secretariat on how their development assistance and climate finance programmes incorporate climate-proofing and climate resilience measures;

44. *Requests* Parties to strengthen regional cooperation on adaptation where appropriate and, where necessary, establish regional centres and networks, in particular in developing countries, taking into account decision 1/CP.16, paragraph 30;

45. *Also requests* the Adaptation Committee and the Least Developed Countries Expert Group, in collaboration with the Standing Committee on Finance and other relevant institutions, to develop methodologies, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session on:

a. Taking the necessary steps to facilitate the mobilization of support for adaptation in developing countries in the context of the limit to global average temperature increase referred to in Article 2 of the Agreement;

b. Reviewing the adequacy and effectiveness of adaptation and support referred to in Article 7, paragraph 14(c), of the Agreement;

46. *Further requests* the Green Climate Fund to expedite support for the least developed countries and other developing country Parties for the formulation of national adaptation plans, consistent with decisions 1/CP.16 and 5/CP.17, and for the subsequent implementation of policies, projects and programmes identified by them;

Loss and damage

47. *Decides* on the continuation of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, following the review in 2016;

48. *Requests* the Executive Committee of the Warsaw International Mechanism to establish a clearing house for risk transfer that serves as a repository for information on insurance and risk transfer, in order to facilitate the efforts of Parties to develop and implement comprehensive risk management strategies;

49. *Also requests* the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change;

50. *Further requests* the Executive Committee of the Warsaw International Mechanism to initiate its work, at its next meeting, to operationalize the provisions referred to in paragraphs 48 and 49 above, and to report on progress thereon in its annual report;

51. *Agrees* that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation;

Finance

52. *Decides* that, in the implementation of the Agreement, financial resources provided to developing country Parties should enhance the implementation of their policies, strategies, regulations and action plans and their climate change actions with respect to both mitigation and adaptation to contribute to the achievement of the purpose of the Agreement as defined in its Article 2;

53. *Also decides* that, in accordance with Article 9, paragraph 3, of the Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries;

54. *Recognizes* the importance of adequate and predictable financial resources, including for results-based payments, as appropriate, for the implementation of policy approaches and positive incentives for reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest

carbon stocks; as well as alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests; while reaffirming the importance of non-carbon benefits associated with such approaches; encouraging the coordination of support from, inter alia, public and private, bilateral and multilateral sources, such as the Green Climate Fund, and alternative sources in accordance with relevant decisions by the Conference of the Parties;

55. *Decides* to initiate, at its twenty-second session, a process to identify the information to be provided by Parties, in accordance with Article 9, paragraph 5, of the Agreement with a view to providing a recommendation for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

56. *Also decides* to ensure that the provision of information in accordance with Article 9, paragraph 7, of the Agreement shall be undertaken in accordance with the modalities, procedures and guidelines referred to in paragraph 91 below;

57. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop modalities for the accounting of financial resources provided and mobilized through public interventions in accordance with Article 9, paragraph 7, of the Agreement for consideration by the Conference of the Parties at its twenty-fourth session (November 2018), with a view to making a recommendation for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

58. *Decides* that the Green Climate Fund and the Global Environment Facility, the entities entrusted with the operation of the Financial Mechanism of the Convention, as well as the Least Developed Countries Fund and the Special Climate Change Fund, administered by the Global Environment Facility, shall serve the Agreement;

59. *Recognizes* that the Adaptation Fund may serve the Agreement, subject to relevant decisions by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

60. *Invites* the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to consider the issue referred to in paragraph 59 above and make a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

61. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall provide guidance to the entities entrusted with the operation of the Financial Mechanism of the Convention on the policies, programme priorities and eligibility criteria related to the Agreement for transmission by the Conference of the Parties;

62. *Decides* that the guidance to the entities entrusted with the operations of the Financial Mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before adoption of the Agreement, shall apply mutatis mutandis to the Agreement;

63. *Also decides* that the Standing Committee on Finance shall serve the Agreement in line with its functions and responsibilities established under the Conference of the Parties;

64. *Urges* the institutions serving the Agreement to enhance the coordination and delivery of resources to support country-driven strategies through simplified and efficient application and approval procedures, and through continued readiness support to developing country Parties, including the least developed countries and small island developing States, as appropriate;

Technology development and transfer

65. *Takes note of* the interim report of the Technology Executive Committee on guidance on enhanced implementation of the results of technology needs assessments as contained in document FCCC/SB/2015/INF.3;

66. *Decides* to strengthen the Technology Mechanism and *requests* the Technology Executive Committee and the Climate Technology Centre and Network, in supporting the implementation of the Agreement, to undertake further work relating to, inter alia:

a. Technology research, development and demonstration;

b. The development and enhancement of endogenous capacities and technologies;

67. *Requests* the Subsidiary Body for Scientific and Technological Advice to initiate, at its forty-fourth session (May 2016), the elaboration of the technology framework established under Article 10, paragraph 4, of the Agreement and to report on its findings to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation on the framework to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session, taking into consideration that the framework should facilitate, inter alia:

a. The undertaking and updating of technology needs assessments, as well as the enhanced implementation of their results, particularly technology action plans and project ideas, through the preparation of bankable projects;

b. The provision of enhanced financial and technical support for the implementation of the results of the technology needs assessments;

c. The assessment of technologies that are ready for transfer;

d. The enhancement of enabling environments for and the addressing of barriers to the development and transfer of socially and environmentally sound technologies;

68. *Decides* that the Technology Executive Committee and the Climate Technology Centre and Network shall report to the *Conference of the Parties serving as the meeting of the Parties to the Paris Agreement,* through the subsidiary bodies, on their activities to support the implementation of the Agreement;

69. *Also decides* to undertake a periodic assessment of the effectiveness and adequacy of the support provided to the Technology Mechanism in supporting the implementation of the Agreement on matters relating to technology development and transfer;

70. *Requests* the *Sub*sidiary Body for Implementation to initiate, at its forty-fourth session, the elaboration of the scope of and modalities for the periodic assessment referred to in paragraph 69 above, taking into account the review of the Climate Technology Centre and Network as referred to in decision 2/CP.17, annex VII, paragraph 20, and the modalities for the global stocktake referred to in Article 14 of the Agreement, for consideration and adoption by the Conference of the Parties at its twenty-fifth session (November 2019);

Capacity-building

71. *Decides* to establish the Paris Committee on Capacity-building whose aim will be to address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhancing capacity-building efforts, including with regard to coherence and coordination in capacity-building activities under the Convention;

72. *Also decides* that the Paris Committee on Capacity-building will manage and oversee the workplan referred to in paragraph 73 below;

73. *Further decides* to launch a workplan for the period 2016–2020 with the following activities:

a. Assessing how to increase synergies through cooperation and avoid duplication among existing bodies established under the Convention that implement capacity-building activities, including through collaborating with institutions under and outside the Convention;

b. Identifying capacity gaps and needs and recommending ways to address them;

c. Promoting the development and dissemination of tools and methodologies for the implementation of capacity-building;

d. Fostering global, regional, national and subnational cooperation;

e. Identifying and collecting good practices, challenges, experiences and lessons learned from work on capacity-building by bodies established under the Convention;

f. Exploring how developing country Parties can take ownership of building and *maintaining capacity over time and space;*

g. Identifying opportunities to strengthen capacity at the national, regional and subnational level;

h. Fostering dialogue, coordination, collaboration and coherence among relevant processes and initiatives under the Convention, including through exchanging information on capacity-building activities and strategies of bodies established under the Convention;

i. Providing guidance to the secretariat on the maintenance and further development of the web-based capacity-building portal;

74. *Decides* that the Paris Committee on Capacity-building will annually focus on an area or theme related to enhanced technical exchange on capacity-building, with the purpose of maintaining up-to-date knowledge on the successes and challenges in building capacity effectively in a particular area;

75. *Requests* the Subsidiary Body for Implementation to organize annual in-session meetings of the Paris Committee on Capacity-building;

76. *Also requests* the Subsidiary Body for Implementation to develop the terms of reference for the Paris Committee on Capacity-building, in the context of the third comprehensive review of the implementation of the capacity-building framework, also taking into account paragraphs 71–75 above and paragraphs 79 and 80 below, with a view to recommending a draft decision on this matter for consideration and adoption by the Conference of the Parties at its twenty-second session;

77. *Invites* Parties to submit their views on the membership of the Paris Committee on Capacity-building by 9 March 2016;[2]

2 Parties should submit their views via the submissions portal at <http://www.unfccc.int/5900>.

78. *Requests* the secretariat to compile the submissions referred to in paragraph 77 above into a miscellaneous document for consideration by the Subsidiary Body for Implementation at its forty-fourth session;

79. *Decides* that the inputs to the Paris Committee on Capacity-building will include, inter alia, submissions, the outcome of the third comprehensive review of the implementation of the capacity-building framework, the secretariat's annual synthesis report on the implementation of the framework for capacity-building in developing countries, the secretariat's compilation and synthesis report on capacity-building work of bodies established under the Convention and its Kyoto Protocol, and reports on the Durban Forum and the capacity-building portal;

80. *Requests* the Paris Committee on Capacity-building to prepare annual technical progress reports on its work, and to make these reports available at the sessions of the Subsidiary Body for Implementation coinciding with the sessions of the Conference of the Parties;

81. *Decides*, at its twenty-fifth session, to review the progress, need for extension, the effectiveness and enhancement of the Paris Committee on Capacity-building and to take any action it considers appropriate, with a view to making recommendations to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session on enhancing institutional arrangements for capacity-building consistent with Article 11, paragraph 5, of the Agreement;

82. *Calls upon* all Parties to ensure that education, training and public awareness, as reflected in Article 6 of the Convention and in Article 12 of the Agreement, are adequately considered in their contribution to capacity-building;

83. *Invites* the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, at its first session, to explore ways of enhancing the implementation of training, public awareness, public participation and public access to information so as to enhance actions under the Agreement;

Transparency of action and support

84. *Decides* to establish a Capacity-building Initiative for Transparency in order to build institutional and technical capacity, both pre- and post-2020; this initiative will support developing country Parties, upon request, in meeting enhanced transparency requirements as defined in Article 13 of the Agreement in a timely manner;

85. *Also decides* that the Capacity-building Initiative for Transparency will aim:

a. To strengthen national institutions for transparency-related activities in line with national priorities;

b. To provide relevant tools, training and assistance for meeting the provisions stipulated in Article 13 of the Agreement;

c. To assist in the improvement of transparency over time;

86. *Urges and requests* the Global Environment Facility to make arrangements to support the establishment and operation of the Capacity-building Initiative for Transparency as a priority reporting-related need, including through voluntary contributions to support developing country Parties in the sixth replenishment of the Global Environment Facility and future replenishment cycles, to complement existing support under the Global Environment Facility;

87. *Decides* to assess the implementation of the Capacity-building Initiative for Transparency in the context of the seventh review of the Financial Mechanism;

88. *Requests* that the Global Environment Facility, as an operating entity of the Financial Mechanism, include in its annual report to the Conference of the Parties the progress of work in the design, development and implementation of the Capacity-building Initiative for Transparency referred to in paragraph 84 above starting in 2016;

89. *Decides* that, in accordance with Article 13, paragraph 2, of the Agreement, developing country Parties shall be provided flexibility in the implementation of the provisions of that Article, including in the scope, frequency and level of detail of reporting, and in the scope of review, and that the scope of review could provide for in-country reviews to be optional, while such flexibilities shall be reflected in the development of modalities, procedures and guidelines referred to in paragraph 91 below;

90. *Also decides* that all Parties, except for the least developed country Parties and small island developing States, shall submit the information referred to in Article 13, paragraphs 7, 8, 9 and 10, of the Agreement, as appropriate, no less frequently than on a biennial basis, and that the least developed country Parties and small island developing States may submit this information at their discretion;

91. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop recommendations for modalities, procedures and guidelines in accordance with Article 13, paragraph 13, of the Agreement, and to define the year of their first and subsequent review and update, as

appropriate, at regular intervals, for consideration by the Conference of the Parties, at its twenty-fourth session, with a view to forwarding them to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

92. *Also requests* the Ad Hoc Working Group on the Paris Agreement, in developing the recommendations for the modalities, procedures and guidelines referred to in paragraph 91 above, to take into account, inter alia:

a. The importance of facilitating improved reporting and transparency over time;

b. The need to provide flexibility to those developing country Parties that need it in the light of their capacities;

c. The need to promote transparency, accuracy, completeness, consistency and comparability;

d. The need to avoid duplication as well as undue burden on Parties and the secretariat;

e. The need to ensure that Parties maintain at least the frequency and quality of reporting in accordance with their respective obligations under the Convention;

f. The need to ensure that double counting is avoided;

g. The need to ensure environmental integrity;

93. *Further requests* the Ad Hoc Working Group on the Paris Agreement, in developing the modalities, procedures and guidelines referred to in paragraph 91 above, to draw on the experiences from and take into account other ongoing relevant processes under the Convention;

94. *Requests* the Ad Hoc Working Group on the Paris Agreement, in developing the modalities, procedures and guidelines referred to in paragraph 91 above, to consider, inter alia:

a. The types of flexibility available to those developing country Parties that need it on the basis of their capacities;

b. The consistency between the methodology communicated in the nationally determined contribution and the methodology for reporting on progress made towards achieving individual Parties' respective nationally determined contribution;

c. That Parties report information on adaptation action and planning including, if appropriate, their national adaptation plans, with a view to collectively exchanging information and sharing lessons learned;

d. Support provided, enhancing delivery of support for both adaptation and mitigation through, inter alia, the common tabular formats for reporting support, and taking into account issues considered by the Subsidiary Body for Scientific and Technological Advice on methodologies for reporting on financial information, and enhancing the reporting by developing country Parties on support received, including the use, impact and estimated results thereof;

e. Information in the biennial assessments and other reports of the *Standing Committee on Finance* and other relevant bodies under the Convention;

f. Information on the social and economic impact of response measures;

95. *Also requests* the Ad Hoc Working Group on the Paris Agreement, in developing recommendations for the modalities, procedures and guidelines referred to in paragraph 91 above, to enhance the transparency of support provided in accordance with Article 9 of the Agreement;

96. *Further requests* the Ad Hoc Working Group on the Paris Agreement to report on the progress of work on the modalities, procedures and guidelines referred to in paragraph 91 above to future sessions of the Conference of the Parties, and that this work be concluded no later than 2018;

97. *Decides* that the modalities, procedures and guidelines developed under paragraph 91 above shall be applied upon the entry into force of the Paris Agreement;

98. *Also decides* that the modalities, procedures and guidelines of this transparency framework shall build upon and eventually supersede the measurement, reporting and verification system established by decision 1/CP.16, paragraphs 40–47 and 60–64, and decision 2/CP.17, paragraphs 12–62, immediately following the submission of the final biennial reports and biennial update reports;

Global stocktake

99. *Requests* the Ad Hoc Working Group on the Paris Agreement to identify the sources of input for the global stocktake referred to in Article 14 of the Agreement and to report

to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session, including, but not limited to:

a. Information on:

(i) The overall effect of the nationally determined contributions communicated by Parties;

(ii) The state of adaptation efforts, support, experiences and priorities from the communications referred to in Article 7, paragraphs 10 and 11, of the Agreement, and reports referred to in Article 13, paragraph 8, of the Agreement;

(iii) The mobilization and provision of support;

b. The latest reports of the Intergovernmental Panel on Climate Change;

c. Reports of the subsidiary bodies;

100. *Also requests* the Subsidiary Body for Scientific and Technological Advice to provide advice on how the assessments of the Intergovernmental Panel on Climate Change can inform the global stocktake of the implementation of the Agreement pursuant to its Article 14 and to report on this matter to the Ad Hoc Working Group on the Paris Agreement at its second session;

101. *Further requests* the Ad Hoc Working Group on the Paris Agreement to develop modalities for the global stocktake referred to in Article 14 of the Agreement and to report to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

Facilitating implementation and compliance

102. *Decides* that the committee referred to in Article 15, paragraph 2, of the Agreement shall consist of 12 members with recognized competence in relevant scientific, technical, socioeconomic or legal fields, to be elected by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing States and the least developed countries, while taking into account the goal of gender balance;

103. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop the modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Agreement, with a view to the Ad Hoc Working Group on the Paris Agreement completing its work on such modalities and procedures for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

Final clauses

104. *Also requests* the secretariat, solely for the purposes of Article 21 of the Agreement, to make available on its website on the date of adoption of the Agreement as well as in the report of the Conference of the Parties on its twenty-first session, information on the most up-to-date total and per cent of greenhouse gas emissions communicated by Parties to the Convention in their national communications, greenhouse gas inventory reports, biennial reports or biennial update reports;

IV. ENHANCED ACTION PRIOR TO 2020

105. *Resolves* to ensure the highest possible mitigation efforts in the pre-2020 period, including by:

a. Urging all Parties to the Kyoto Protocol that have not already done so to ratify and implement the Doha Amendment to the Kyoto Protocol;

b. Urging all Parties that have not already done so to make and implement a mitigation pledge under the Cancun Agreements;

c. Reiterating its resolve, as set out in decision 1/CP.19, paragraphs 3 and 4, to accelerate the full implementation of the decisions constituting the agreed outcome pursuant to decision 1/CP.13 and enhance ambition in the pre-2020 period in order to ensure the highest possible mitigation efforts under the Convention by all Parties;

d. Inviting developing country Parties that have not submitted their first biennial update reports to do so as soon as possible;

e. Urging all Parties to participate in the existing measurement, reporting and verification processes under the Cancun Agreements, in a timely manner, with a view to demonstrating progress made in the implementation of their mitigation pledges;

106. *Encourages* Parties to promote the voluntary cancellation by Party and non-Party stakeholders, without double counting, of units issued under the Kyoto Protocol, including certified emission reductions that are valid for the second commitment period;

107. *Urges* host and purchasing Parties to report transparently on internationally transferred mitigation outcomes, including outcomes used to meet international pledges, and emission units issued under the Kyoto Protocol with a view to promoting environmental integrity and avoiding double counting;

108. *Recognizes* the social, economic and environmental value of voluntary mitigation actions and their co-benefits for adaptation, health and sustainable development;

109. *Resolves* to strengthen, in the period 2016–2020, the existing technical examination process on mitigation as defined in decision 1/CP.19, paragraph 5(a), and decision 1/CP.20, paragraph 19, taking into account the latest scientific knowledge, including by:

a. Encouraging Parties, Convention bodies and international organizations to engage in this process, including, as appropriate, in cooperation with relevant non-Party stakeholders, to share their experiences and suggestions, including from regional events, and to cooperate in facilitating the implementation of policies, practices and actions identified during this process in accordance with national sustainable development priorities;

b. Striving to improve, in consultation with Parties, access to and participation in this process by developing country Party and non-Party experts;

c. Requesting the Technology Executive Committee and the Climate Technology Centre and Network in accordance with their respective mandates:

(i) To engage in the technical expert meetings and enhance their efforts to facilitate and support Parties in scaling up the implementation of policies, practices and actions identified during this process;

(ii) To provide regular updates during the technical expert meetings on the progress made in facilitating the implementation of policies, practices and actions previously identified during this process;

(iii) To include information on their activities under this process in their joint annual report to the Conference of the Parties;

d. Encouraging Parties to make effective use of the Climate Technology Centre and Network to obtain assistance to develop economically, environmentally and socially viable project proposals in the high mitigation potential areas identified in this process;

110. *Encourages* the operating entities of the Financial Mechanism of the Convention to engage in the technical expert meetings and to inform participants of their contribution to facilitating progress in the implementation of policies, practices and actions identified during the technical examination process;

111. *Requests* the secretariat to organize the process referred to in paragraph 109 above and disseminate its results, including by:

a. Organizing, in consultation with the Technology Executive Committee and relevant expert organizations, regular technical expert meetings focusing on specific policies, practices and actions representing best practices and with the potential to be scalable and replicable;

b. Updating, on an annual basis, following the meetings referred to in paragraph 111(a) above and in time to serve as input to the summary for policymakers referred to in paragraph 111(c) below, a technical paper on the mitigation benefits and co-benefits of policies, practices and actions for enhancing mitigation ambition, as well as on options for supporting their implementation, information on which should be made available in a user-friendly online format;

c. Preparing, in consultation with the champions referred to in paragraph 121 below, a summary for policymakers, with information on specific policies, practices and actions representing best practices and with the potential to be scalable and replicable, and on options to support their implementation, as well as on relevant collaborative initiatives, and publishing the summary at least two months in advance of each session of the Conference of the Parties as input for the high-level event referred to in paragraph 120 below;

112. *Decides* that the process referred to in paragraph 109 above should be organized jointly by the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice and should take place on an ongoing basis until 2020;

113. *Also decides* to conduct in 2017 an assessment of the process referred to in paragraph 109 above so as to improve its effectiveness;

114. *Resolves* to enhance the provision of urgent and adequate finance, technology and capacity-building support by developed country Parties in order to enhance the level of ambition of pre-2020 action by Parties, and in this regard *strongly urges* developed country Parties to scale up their level of financial support, with a concrete road map to achieve the goal of jointly providing USD 100 billion annually by 2020 for mitigation and adaptation while significantly increasing adaptation finance from current levels and to further provide appropriate technology and capacity-building support;

115. *Decides* to conduct a facilitative dialogue in conjunction with the twenty-second session of the Conference of the Parties to assess the progress in implementing decision 1/CP.19, paragraphs 3 and 4, and identify relevant opportunities to enhance the provision of financial resources, including for technology development and transfer, and capacity-building support, with a view to identifying ways to enhance the ambition of mitigation efforts by all Parties, including identifying relevant opportunities to enhance the provision and mobilization of support and enabling environments;

116. *Acknowledges* with appreciation the results of the Lima-Paris Action Agenda, which build on the climate summit convened on 23 September 2014 by the Secretary-General of the United Nations;

117. *Welcomes* the efforts of non-Party stakeholders to scale up their climate actions, and *encourages* the registration of those actions in the Non-State Actor Zone for Climate Action platform;[3]

118. *Encourages* Parties to work closely with non-Party stakeholders to catalyse efforts to strengthen mitigation and adaptation action;

119. *Also encourages* non-Party stakeholders to increase their engagement in the processes referred to in paragraph 109 above and paragraph 124 below;

120. *Agrees* to convene, pursuant to decision 1/CP.20, paragraph 21, building on the Lima-Paris Action Agenda and in conjunction with each session of the Conference of the Parties during the period 2016–2020, a high-level event that:

a. Further strengthens high-level engagement on the implementation of policy options and actions arising from the processes referred to in paragraph 109 above and paragraph 124 below, drawing on the summary for policymakers referred to in paragraph 111(c) above;

b. Provides an opportunity for announcing new or strengthened voluntary efforts, initiatives and coalitions, including the implementation of policies, practices and actions arising from the processes referred to in paragraph 109 above and paragraph 124 below and presented in the summary for policymakers referred to in paragraph 111(c) above;

c. Takes stock of related progress and recognizes new or strengthened voluntary efforts, initiatives and coalitions;

d. Provides meaningful and regular opportunities for the effective high-level engagement of dignitaries of Parties, international organizations, international cooperative initiatives and non-Party stakeholders;

121. *Decides* that two high-level champions shall be appointed to act on behalf of the President of the Conference of the Parties to facilitate through strengthened high-level engagement in the period 2016–2020 the successful execution of existing efforts and the scaling-up and introduction of new or strengthened voluntary efforts, initiatives and coalitions, including by:

a. Working with the Executive Secretary and the current and incoming Presidents of the Conference of the Parties to coordinate the annual high-level event referred to in paragraph 120 above;

3 <http://climateaction.unfccc.int/>.

b. Engaging with interested Parties and non-Party stakeholders, including to further the voluntary initiatives of the Lima-Paris Action Agenda;

c. Providing guidance to the secretariat on the organization of technical expert meetings referred to in paragraph 111(a) above and paragraph 129(a) below;

122. *Also decides* that the high-level champions referred to in paragraph 121 above should normally serve for a term of two years, with their terms overlapping for a full year to ensure continuity, such that:

a. The President of the twenty-first session of the Conference of the Parties should appoint one champion, who should serve for one year from the date of the appointment until the last day of the twenty-second session of the Conference of the Parties;

b. The President of the twenty-second session of the Conference of the Parties should appoint one champion who should serve for two years from the date of the appointment until the last day of the twenty-third session of the Conference of the Parties (November 2017);

c. Thereafter, each subsequent President of the Conference of the Parties should appoint one champion who should serve for two years and succeed the previously appointed champion whose term has ended;

123. *Invites* all interested Parties and relevant organizations to provide support for the work of the champions referred to in paragraph 121 above;

124. *Decides* to launch, in the period 2016–2020, a technical examination process on adaptation;

125. *Also decides* that the process referred to in paragraph 124 above will endeavour to identify concrete opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions;

126. *Further decides* that the process referred to in paragraph 124 above should be organized jointly by the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice, and conducted by the Adaptation Committee;

127. *Decides* that the process referred to in paragraph 124 above will be pursued by:

a. Facilitating the sharing of good practices, experiences and lessons learned;

b. Identifying actions that could significantly enhance the implementation of adaptation actions, including actions that could enhance economic diversification and have mitigation co-benefits;

c. Promoting cooperative action on adaptation;

d. Identifying opportunities to strengthen enabling environments and enhance the provision of support for adaptation in the context of specific policies, practices and actions;

128. *Also decides* that the technical examination process on adaptation referred to in paragraph 124 above will take into account the process, modalities, outputs, outcomes and lessons learned from the technical examination process on mitigation referred to in paragraph 109 above;

129. *Requests* the secretariat to support the process referred to in paragraph 124 above by:

a. Organizing regular technical expert meetings focusing on specific policies, strategies and actions;

b. Preparing annually, on the basis of the meetings referred to in paragraph 129(a) above and in time to serve as an input to the summary for policymakers referred to in paragraph 111(c) above, a technical paper on opportunities to enhance adaptation action, as well as options to support their implementation, information on which should be made available in a user-friendly online format;

130. *Decides* that in conducting the process referred to in paragraph 124 above, the Adaptation Committee will engage with and explore ways to take into account, synergize with and build on the existing arrangements for adaptation-related work programmes, bodies and institutions under the Convention so as to ensure coherence and maximum value;

131. *Also decides* to conduct, in conjunction with the assessment referred to in paragraph 113 above, an assessment of the process referred to in paragraph 124 above, so as to improve its effectiveness;

132. *Invites* Parties and observer organizations to submit information on the opportunities referred to in paragraph 125 above by 3 February 2016;

V. NON-PARTY STAKEHOLDERS

133. *Welcomes* the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;

134. *Invites* the non-Party stakeholders referred to in paragraph 133 above to scale up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform[4] referred to in paragraph 117 above;

135. *Recognizes* the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and *establishes* a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner;

136. *Also recognizes* the important role of providing incentives for emission reduction activities, including tools such as domestic policies and carbon pricing;

4 <http://climateaction.unfccc.int/>.

VII. ADMINISTRATIVE AND BUDGETARY MATTERS

137. *Takes note* of the estimated budgetary implications of the activities to be undertaken by the secretariat referred to in this decision and *requests* that the actions of the secretariat called for in this decision be undertaken subject to the availability of financial resources;

138. *Emphasizes* the urgency of making additional resources available for the implementation of the relevant actions, including actions referred to in this decision, and the implementation of the work programme referred to in paragraph 9 above;

139. *Urges* Parties to make voluntary contributions for the timely implementation of this decision.

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Framework Convention on
Climate Change