Federal Court  Cour fédérale

Date: 20250926

Docket: T-211-20

Citation: 2025 FC 1586

Ottawa, Ontario, September 26, 2025

PRESENT: The Honourable Madam Justice McVeigh

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

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a motion to strike the Plaintiffs' Further Amended Statement of Claim, filed on December 16, 2024 [the Further Amended Claim] without leave to amend on the basis that it discloses no reasonable cause of action, pursuant to paragraph 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [*FC Rules*].

II. Facts

A. *Background*

[2] The Plaintiffs are Dini Ze' (or Head Chiefs) of the Misdzi Yikh (Owl House) and Sa Yikh (Sun House), which together comprise the Likhts'amisyu *didikhni* (Fireweed Clan). The Likht'samisyu is one of five hereditary Clans constituting the Wet'suwet'en.

[3] Under Wet'suwet'en law, the Head Chief of a House is obligated to protect the Wet'suwet'en, other peoples, and the spirit in the land, or *yintah* (Further Amended Claim at paras 2 and 9). The Dini Ze' asserted this and other Wet'suwet'en legal principles, rooted relational stewardship and ancestral responsibility, in a constitutional challenge to Canada's laws, policies, and conduct as it relates to greenhouse gas [GHG] emissions and international commitments to reduce them under the *Paris Agreement*, 12 December 2015, UNTS 3156 [the *Paris Agreement*].

B. *Procedural History*

(1) The Original Statement of Claim

[4] The underlying action was commenced as a representative proceeding under rule 114 of the *FC Rules* by a statement of claim filed on February 11, 2020 [the Original Claim].

[5] The Dini Ze' alleged that the Defendant breached its duty to make laws for the peace, order and good government of Canada in response to GHG emissions contributing to the effects

of climate change under section 91 of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

[6] The Dini Ze' further argued that Canada's failure to discharge the above duty amounted to breaches of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*], and that such breaches cannot be justified under section 1 of the *Charter*.

[7] Canada was successful in bringing a motion to strike the Original Claim without leave to amend. This Court found that the Original Claim failed to disclose a reasonable cause of action and that the matters within were non-justiciable (*Misdzi Yikh v Canada*, 2020 FC 1059 at paras 71, 72, 85, 104, and 115 [*Misdzi Yikh*]).

[8] The Dini Ze' appealed the decision to the Federal Court of Appeal (*La Rose v Canada*, 2023 FCA 241 [*La Rose* Appeal]).

(a) *The* La Rose *Action (Federal Court)*

[9] The appeal of *Misdzi Yikh* was heard concurrently with an appeal from Justice Michael Manson's decision to grant a motion striking the plaintiffs' statement of claim without leave to amend in another constitutional challenge relating to climate change (*La Rose v Canada*, 2020 FC 1008 [*La Rose* Action]).

[10] In the *La Rose* Action, 15 youth plaintiffs from seven provinces and one territory alleged that Canada's conduct caused, contributed to, and allowed GHG emissions at a level incompatible with a stable climate system capable of sustaining human life and liberties.

[11] The *La Rose* Action plaintiffs argued that Canada's impugned conduct unjustifiably infringed the rights of all children and youth in Canada under sections 7 and 15 of the *Charter*, among other things. Justice Manson struck the plaintiffs' statement of claim without leave to amend, finding that it failed to disclose a reasonable cause of action, and that the *Charter* claims within were non-justiciable (*La Rose* Action at para 101).

(b) *The* La Rose & Misdzi Yikh *Appeal* [*La Rose* Appeal]

[12] The Federal Court of Appeal upheld the decision to strike in both actions, with the exception of finding that the section 7 *Charter* claims were justiciable but properly struck in both cases because "the expansive and diffuse scope of the pleadings as framed [were] incompatible with constitutional adjudication" (*La Rose* Appeal at para 22). Leave was granted to the appellants in both cases to amend their pleadings accordingly.

[13] Justice Rennie, writing for the Court of Appeal, found that the pleadings in both cases were overly broad and failed to identify specific legislative provisions that infringed section 7 *Charter* rights, highlighting the presence of "occasional glimmers of an asserted nexus and deprivation [which] are obscured by the fog of the pleadings" (*La Rose* Appeal at para 128). The Court emphasized that *Charter* claimants "must plead an existing law or government conduct that is unconstitutional" (*La Rose* Appeal at para 126).

[14] In both cases, the appellants argued that the cumulative effects of the laws gave rise to the breach. The Court of Appeal found that this approach would require a *Charter* analysis of "each and every law, regulation and Order in Council which results in GHG emissions" (*La Rose* Appeal at para 129). Such claims "fall short of meeting the threshold standard in constitutional litigation that specific laws or actions be targeted" (*La Rose* Appeal at para 130, emphasis added). It endorsed this Court's finding that Original Claim in *Misdzi Yikh* "lacked the necessary focus of challenge to a particular law with a nexus to a section 7 right" (*La Rose* Appeal at paras 131, 133).

[15] The appellants voiced the strategic concern that a narrowing the claim would make it easier for Canada to avoid accountability. To answer this, the Court of Appeal observed that the problems facing "modern, complex societies […] seldom, if ever, have a singular cause or simplicity of focus" (*La Rose* Appeal at para 134).

[16] Section 7 *Charter* rights are engaged where a "sufficient causal connection" exists, and this "does not require that the impugned government action or law be the only or the dominant cause of the prejudice suffered by the claimant, and is satisfied by a reasonable inference, drawn on a balance of probabilities" (*Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 76 [*Bedford*]).

[17] Additionally, the Court of Appeal noted that rather than at the pleadings stage, such "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" (*La Rose* Appeal at para 134).

[18] Both sets of appellants in the *La Rose* Appeal amended their statements of claim.

(2) The *La Rose* Action after the *La Rose* Appeal

[19] A motion to strike the post-*La Rose* Appeal amended pleadings in the *La Rose* Action was scheduled for hearing on February 6, 2025. On December 19, 2024, the parties reached an agreement that the plaintiffs would file a Further Amended Statement of Claim, Canada would file an Amended Statement of Defence, and the action would proceed to trial. The parties completed these steps. On April 24, 2025, they filed a proportionality agreement setting out the documents Canada will produce for litigation.

[20] The framing of the new Further Amended Statement of Claim in the *La Rose* Action departs from the Amended Claim in this proceeding. The *La Rose* Action plaintiffs now claim that the *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 [CNZEAA] is the source of their section 7 deprivations.

[21] Specifically, they now plead that the targets and plans established in the CNZEAA are inconsistent with a safe climate system. Like the plaintiffs in *Mathur v His Majesty the King in Right of Ontario*, 2023 ONSC 2316 [*Mathur*], the plaintiffs in the *La Rose* Action now attack the constitutionality of the government's climate target itself rather than the government's legislative response to its voluntary commitments.

(3) The Further Amended Claim

[22] An Amended Claim was filed by the Plaintiffs on August 26, 2024, and a Further Amended Claim was filed on December 16, 2024. The Further Amended Claim describes the traditional governance structures of the Wet'suwet'en, the science and impacts of climate change, and Canada's jurisdiction to regulate GHG emissions. It includes an updated account of Canada's alleged failure to keep pace with its 2030 Temperature Commitment and Nationally Determined Contribution under the multi-national *Paris Agreement*.

[23] The Further Amended Claim alleges that the Likhtsy'amisyu have already begun to experience detrimental effects of climate change on their territories. The Dini Ze' plead that the Likhtsy'amisyu anticipate being increasingly impacted by the consequences of climate change. They identify expected adverse health effects to the members of their Houses, from decreased food security to increased exposure to air pollution and extreme weather events.

[24] The term "Temperature Commitment" is defined in the Further Amended Claim as "the international commitment made by Canada in Paris in 2015 to keep mean global warming well below 2°C above pre-industrial levels." Canada's "Nationally Determined Contribution" is defined as its obligation under the *Paris Agreement* to "report and account for its progress towards achieving a nationally determined contribution to reduce its annual GHG emissions by 2030" reflecting "its highest possible ambition."

[25] The central allegation is that there are no existing or planned legislative or policy initiatives enabling Canada to achieve the GHG emission reductions required to meet its Temperature Commitment or its Nationally Determined Contribution by 2030.

[26] The Dini Ze' purport that Canada's conduct provides the legal basis for the infringement of section 7 *Charter* rights, namely its facilitation of the development and operation of high GHG-emitting projects.

[27] Schedule A of the Further Amended Claim is a table of federal statutes and regulations that the Dini Ze' assert as representative of Canada's measures undertaken to regulate GHG emissions for the purpose of fulfilling the Temperature Commitment. It consists of federal statutes and regulations organized into five categories: (1) Subsidies; (2) Public Financing; (3) GHG Emission Limits; (4) GHG Emission Permits; and (5) GHG Emission Standards.

[28] In total, Schedule A lists 17 statutes and 20 regulations, some of which have been repealed. The parties agree that it includes approximately 1,900 provisions or more. In the third column of the table, there is a brief explanation of how each statute, provision, or regulation supports or regulates GHG emissions or GHG-emitting activities.

[29] The Dini Ze' assert that the instruments listed in Schedule A are inconsistent with Canada's international commitments, including both the *Paris Agreement* and the United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2007) [UNDRIP].

[30] The Dini Ze' allege that Canada breached their section 7 *Charter* rights through both its actions and omissions. They argue that the harms alleged above deprive them of their rights to life, liberty and security of the person in the following ways:

> (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.

[31] The Dini Ze' say these deprivations are not in accordance with the principle of fundamental justice because they will result in global existential harms. Further, they allege that it is "inconceivable that such harm would be necessary to further any relevant law's objectives." They plead that the deprivation is grossly disproportionate because "laws that allow or encourage GHG emissions exceeding" the Temperature Commitment "are so extreme as to be grossly disproportionate to any relevant law's objectives."

[32] Finally, with respect to Canada's potential justification under section 1 of the *Charter*, the Further Amended Claim states that it is "inconceivable" that the threats posed by climate change could be outweighed by any relevant law's objectives.

[33] The Dini Ze' seek a number of complex remedies including declarations, orders and costs. The detailed remedies are included as Annex A.

III. Issues

[34] The issue to determine on this motion is whether it is plain and obvious that no reasonable cause of action is disclosed within the Further Amended Claim. If so, the motion must be allowed.

[35] If the motion is allowed, I must decide whether to dismiss the claim or grant the Dini Ze' leave to amend.

IV. Analysis

A. *The Law on Motions to Strike*

[36] Rule 221(1)(a) of the *FC Rules* permits the Court to make an order striking a pleading with or without leave to amend on the ground that it discloses no reasonable cause of action. The legal test is whether it is plain and obvious, assuming the facts as pleaded to be true, that the pleading discloses no reasonable cause of action (*R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17 [*Imperial Tobacco*]). The claim must have no reasonable prospect of success (*La Rose* Appeal at para 18). The onus is on the applicant to establish that there is no genuine issue of material fact requiring trial (*Edell v Canada*, 2010 FCA 26 at para 5).

[37] As noted by the Court of Appeal in the *La Rose* Appeal, novel but arguable claims must be allowed to proceed to trial (*La Rose* Appeal at para 19, citing *Imperial Tobacco* at para 21; *Mohr v National Hockey League*, 2022 FCA 145 at para 48). This enables the law to address new and emerging situations.

[38] Justice Cecily Strickland recently explained the principles governing the interpretation of pleadings:

> The statement of claim must be read as generously as possible, with a view to accommodating any inadequacies in the form of the allegations (*Condon* at para 21 citing *Biladeau v Ontario (Attorney General)*, 2014 ONCA 848 at para 15; see also *Mohr v National Hockey League*, 2022 FCA 145 at para 48 [*Mohr*]). That said, a plaintiff must lead the material facts in sufficient detail to support the claim and relief sought, including the constituent elements of each cause of action or legal ground raised (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16, 19–20 [*Mancuso*]).
>
> (*Dunn v Canada (Attorney General)*, 2025 FC 652 at para 42, emphasis added.)

[39] To strike a pleading without leave to amend, any defect in the pleading must be one that cannot be cured by amendment (*Simon v Canada*, 2011 FCA 6 at para 8 [*Simon*]).

B. *The Relevance of International Law for this Action*

[40] Some two years after the Federal Court of Appeal decided the *La Rose* Appeal, the International Court of Justice [ICJ] issued an Advisory Opinion addressing the legal obligations of states to mitigate and adapt to climate change (Obligations of States in respect of Climate

Change (Advisory Opinion), [2025] ICJ Rep 456 [the ICJ Opinion, or the Opinion]). The significance of the Opinion was alluded to by counsel for the Dini Ze' in oral submissions.

[41] The ICJ affirmed that states bear a general duty under international law to protect the climate system for the benefit of present and future generations. This duty is rooted in both international agreements and human rights law. The ICJ noted that climate change poses significant risks to human well-being, ecosystems, and sustainable development, and it underscored the necessity for states to take immediate and substantive action in line with their international obligations.

[42] The ICJ Opinion is advisory and does not directly impose legal obligations on states. However, the Opinion outlines key principles that may affect state conduct and has substantial persuasive legal authority since it emanates from the principal legal organ of the United Nations.

[43] The ICJ specifically found, among other things, that:

> 1. Climate change treaties, including the *Paris Agreement*, impose binding obligations on States parties to ensure the protection of the environment and climate system from anthropogenic GHG emissions;
>
> 2. Customary international law imposes obligations on States to protect the environment and climate system from anthropogenic GHG emissions; and
>
> 3. International human rights law imposes obligation on States "to respect and ensure the effective enjoyment of human rights" by taking measures necessary to protect the environment and climate system.
>
> (ICJ Opinion at para 457.)

[44] While the ICJ Opinion is not binding in Canadian courts, these pronouncements may have significant legal implications in the Canadian context. The principles outlined in the Opinion can influence how courts interpret domestic laws, particularly in relation to constitutional rights and international obligations.

[45] At first glance, the ICJ Opinion appears to have some direct bearing on the parties' dispute respecting whether the *Paris Agreement* imposes an enforceable legal obligation on States actors.

[46] Canada's legal framework takes a dualist approach to international law, meaning that international legal instruments are not enforceable unless directly incorporated into domestic law by statute (*Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62 at paras 149–150 [*Kazemi Estate*]). This means that Canadian courts cannot directly enforce Canada's international obligations, including those arising from international climate treaties such as the *Paris Agreement*, unless those obligations are specifically incorporated into Canadian domestic law through enabling legislation.

[47] Additionally, the mere existence of an international obligation is insufficient to establish a principle of fundamental justice for the purpose of a section 7 *Charter* claim (*Kazemi Estate* at paras 150–151; *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at paras 7–12 [*Canadian Foundation*]).

[48] The Dini Ze' assert that *Kazemi Estate* and *Canadian Foundation* do not apply to this case. They argue that they do not allege that a freestanding principle of fundamental justice arises from Canada's international commitments, but rather that the measures taken by Canada vis-à-vis its international obligations are not constitutionally compliant.

[49] The Temperature Commitment is one of the animating concepts that differentiates the Further Amended Claim from the Original Claim. As the Dini Ze' rightly note, the Temperature Commitment is at least partially incorporated, or "reaffirmed" in Canadian domestic law through the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186 [GGPPA] and CNZEAA.

[50] It is true that statements in the preambles of the GGPPA and CNZEAA reflect Canada's commitment to reducing GHG emissions under the *Paris Agreement*. Certain subsections of the CNZEAA directly refer to the *Paris Agreement* and Canada's Nationally Determined Contribution communicated under it (CNZEAA, ss 7(2), 7(3), and 7(5)). Only the Acts themselves, however, are open to constitutional challenge in Canadian courts.

[51] This Court lacks the jurisdiction it would require to directly adjudicate on an infringement of Canada's obligations under the *Paris Agreement* itself. International obligations are owed by states to other states, or to the international community (International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, UNGAOR, 56th Sess, Supp No 10, UN Doc A/56/10 (2001) ch IV.E.1 at art 33(1) [*ILC Draft Articles*]). A violation of an international obligation that is attributable to the actions or omissions of a state may constitute an "internationally wrongful act" (*ILC Draft Articles* at art 2).

[52] The Dini Ze' raise UNDRIP as a separate basis for holding Canada liable for its alleged violation of international law by failing to act in a manner that would be consistent with meeting the Temperature Commitment. Canada argues that the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [UNDRIPA] provides a framework for the implementation of UNDRIP but does not incorporate it directly into domestic law.

[53] Contrary to Canada's submission, the Supreme Court recently held that UNDRIPA has the effect of incorporating UNDRIP "into the country's domestic positive law" (*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 15).

[54] However, the same considerations apply to the UNDRIPA as the GGPPA and CNZEAA. If proven, Canada's alleged violation of UNDRIP would constitute an internationally wrongful act that would not be justiciable by this Court. Should the Dini Ze' wish to challenge Canada's domestic reception of UNDRIP, they must proceed by issuing a challenge to UNDRIPA as the statutory instrument that gives effect to the international agreement.

[55] The legal consequences of a state's commission of an internationally wrongful act are discussed within Part Two of the *ILC Draft Articles*. Canada's domestic legislation would be irrelevant if used to justify the alleged commission of an internationally wrongful act (*ILC Draft Articles* at art 32). The ICJ Opinion is clear in its assertion that "each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment" (ICJ

Opinion at para 431). The Federal Court is not the place for adjudication of allegations that Canada is in violation of its commitments under the *Paris Agreement* or UNDRIP.

[56] The Dini Ze argued that customary international law provides the basis of a novel but arguable claim. They submitted that the Dini Ze' pleadings assert a common law action against the Crown based on a breach of customary international law.

[57] Customary law is a distinct category of international law which may become part of Canadian common law, unless it conflicts with a valid domestic statute (*Nevsun Resources Ltd v Araya*, 2020 SCC 5 at paras 74, 82, 85–95, 132 [*Nevsun*]; *R v Hape*, 2007 SCC 26 at paras 53–54 [*Hape*]).

[58] In *Nevsun*, the Supreme Court acknowledged that customary international law is automatically incorporated into domestic law even in the absence of legislation (*Nevsun* at paras 85–95). Accordingly, it found that "established norms of customary international law are law, to be judicially noticed" (*Nevsun* at para 97). To be recognized as having the force of customary international law, the norm in question must fulfil the two basic criteria of customary law: (1) it must reflect state practice; and (2) it must reflect *opinio juris*, or the opinions of the most highly qualified international legal scholars (*Nevsun* at paras 77–78, 94).

[59] The majority in *Nevsun* found that it was not "plain and obvious" that the plaintiffs in that case could not bring forward a tort based on breaches of customary international law against a Canadian mining company operating in Eritrea (*Nevsun* at para 132). Canadian courts therefore

have not only the capacity but are bound to give effect to customary international legal norms where they are sufficiently definite and widely accepted. Read generously, the Dini Ze' pleadings are similarly asserting a common law action against the Crown based on a breach of customary international law.

[60] The Federal Court of Appeal advised that "a motions judge must err on the side of permitting novel but arguable claims to proceed to trial" (*La Rose* Appeal at para 19). Withholding any consideration of such a claim's merits, it is not plain and obvious that customary international law does not provide a novel independent cause of action that could be properly pleaded in this case.

[61] While the ICJ Opinion does not establish a new customary norm *per se*, it connects the climate change obligations of states to a customary duty to prevent significant harm to the environment, a customary duty to cooperate for protection of the environment, and to human rights recognized under customary international law (ICJ Opinion at paras 132, 140, and 145).

[62] The existence of the ICJ's advisory opinion does not relieve the Dini Ze' of providing evidence of general state practice and *opinio juris* that establishes that there is an enforceable customary international law at issue. If this is indeed how the Dini Ze' wish to proceed, the pleadings are deficient and must be amended to make clear to Canada the claim that it must meet and defend itself against.

[63] At a minimum, Canadian courts may consider the ICJ Opinion in this and other cases by interpreting the alignment of domestic law with international legal instruments and customary international legal principles (*Hape* at para 53; *R v Appulonappa*, 2015 SCC 59 at para 40). This is especially true in cases where environmental protection intersects with constitutional rights. International legal principles may legitimately be invoked in domestic litigation when claimants are affected by actions that contravene customary norms or international treaty obligations.

[64] In a section 7 *Charter* challenge where it is argued that environmental harms arising from Canada's actions and omissions amount to an infringement of the right to life, liberty, and security of the person, the Court may use the ICJ's reasoning to inform its interpretation of the extent of climate protection guaranteed by the *Charter*. The principles of fundamental justice at issue must be considered in light of the international norms which they reflect (*Kazemi Estate* at paras 147, 150–151; *Canadian Foundation* at paras 9–11).

[65] Given the Federal Court of Appeal's finding in the *La Rose* Appeal that only the section 7 *Charter* claim was justiciable, whether the Opinion establishes a ground for a common law tort action against the Crown is much more questionable. At this point, that line of argument is not sufficiently developed to say it establishes a reasonable cause of action.

C. *Section 7 of the* Charter

[66] As discussed above, the Federal Court of Appeal found that a section 7 *Charter* claim was justiciable in the Original Claim. The twin case of *La Rose* is proceeding to trial after

amendments. A review of the amended statement of claim in that case and this one, reveals very different approaches and pleadings.

[67] There are no separate rules for pleadings in *Charter* cases (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 21 [*Mancuso*]). In considering whether a section 7 *Charter* claim has been properly pleaded, the question is whether the pleading discloses sufficient material facts to make out each element of the test. The statement of claim "must tell the defendant who, when, where, how and what gave rise to its liability" (*Mancuso* at para 19).

(1) Analytical Framework for Pleading a Section 7 *Charter* Claim

[68] Section 7 of the *Charter* provides that "[e]veryone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[69] As the first step, a section 7 *Charter* claimant must identify how the impugned laws deprive them of life, liberty, or security of the person (*Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para 56 [*Canadian Council for Refugees*]). There must be a sufficient causal connection between the state-caused effect and the prejudice suffered by the claimant (*Bedford* at para 75). This causal nexus may be "sensitive to the context of the particular case" but requires "a real, as opposed to speculative, link" (*Bedford* at para 76).

[70] Second, a section 7 *Charter* claimant must show that the alleged deprivation is not in accordance with the principles of fundamental justice. The claimant must show that "the means

by which the state seeks to attain its objective is fundamentally flawed, in the sense of being arbitrary, overbroad, or having effects that are grossly disproportionate to the legislative goal" (*Bedford* at para 105).

[71] Once a breach of section 7 is established, the government bears the burden of showing that the infringement of rights is justified under section 1 of the *Charter* (*Bedford* at para 126).

(2) Section 7 Pleadings in the Further Amended Claim

[72] The Dini Ze' assert that a section 7 *Charter* claim is determined by making out three elements: (1) the engagement of section 7 *Charter* rights; (2) a deprivation of those rights that is not in accordance with the principles of fundamental justice; and (3) a lack of justification under section 1 of the *Charter*.

[73] However, the material facts assessment does not engage section 1 at the pleadings stage. Section 1 is not part of the cause of action. It is effectively a defence for which Canada will have the burden of pleading and establishing at trial. In other words, an argument in a statement of claim relating to section 1 of the *Charter* is not likely to be relevant unless it indirectly shows a fatal defect in the cause of action.

[74] The Further Amended Claim says that the measures taken by Canada, as summarized in Schedule A, deprive the Dini Ze' of their section 7 *Charter* rights by facilitating "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." The deprivations to

life, liberty, and security of the person pleaded are increased risk of death, decreased autonomy, and increased risk of injury, respectively.

[75] The Dini Ze' plead that these deprivations are not in accordance with the principles of fundamental justice because the legislative objectives of the laws, as summarized in Schedule A, are arbitrary and grossly disproportionate. The Further Amended Claim states that the laws are arbitrary because "it is inconceivable" that existential harm to the Dini Ze' and others around the world is necessary to further the objectives of the statutes and regulations in Schedule A. Further, they argue that laws allowing GHG emissions that undermine Canada's ability to meet the Temperature Commitment "so extreme as to be grossly disproportionate to any relevant law's objectives."

[76] As the Federal Court of Appeal found that the Original Claim was justiciable, the same must be said of the Further Amended Claim. The question still at issue is whether the Further Amended Claim now has the requisite focus for constitutional analysis. Canada maintains that the argument in the Further Amended Claim is an obscure attack which fails to disclose a discrete law, state action, or network thereof as the foundation for a section 7 *Charter* analysis.

[77] I find that the Further Amended Claim shows that the Dini Ze' now challenge Canada's response to climate change as enshrined in legislation or deriving therefrom.

[78] In the *La Rose* Appeal, the Court of Appeal emphasized that Canada's climate change policies have, in fact, been translated into law (*La Rose* Appeal at paras 32–38, 45). The

determinative issue was that the legislative anchors in the Original Claim were "obscured by an effusive and broad pleading" (*La Rose* Appeal at para 118).

[79] The scope of the *Charter* challenge now brought by the Dini Ze' has been narrowed to challenging the laws and associated discretionary actions contained in Schedule A. But I find that the legislative anchors are still obscured by an effusive and broad pleading by virtue of the sheer scope of the laws included in Schedule A (see para 28, above).

D. *Schedule A Laws and their Alleged Deprivation of Section 7* Charter *Rights*

[80] The Further Amended Claim still does not narrowly identify a specific law or set of provisions for constitutional review. Instead, it impugns the catalogue of laws in Schedule A. In determining this motion, the question to answer is whether it is "manifestly incapable of being proven" that the laws in Schedule A interferes with the Plaintiffs' life, liberty, or security of the person (*Imperial Tobacco* at para 22).

[81] Paragraphs 49–50 of the Further Amended Claim read as follows:

> 49. 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).
>
> 50. 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.

[82] Read generously, these paragraphs (and the surrounding passages in the Further Amended Claim) suggest that the claimed breach is Canada's failure to meet the Temperature Commitment, which is allegedly enshrined in the GGPPA and the CNZEAA. A similar pleading was accepted by the Ontario Court of Appeal in *Mathur v Ontario*, 2024 ONCA 762 at para 41 [*Mathur* Appeal]:

> We do not agree with Ontario that the appellants effectively argue that the Target does not go far enough. The Appellants are not challenging the inadequacy of the Target or Ontario's inaction, but rather argue that the Target itself, which Ontario is statutorily obligated to make, commits Ontario to levels of greenhouse gas emissions that violate their *Charter* rights. We see the same distinction as the Supreme Court observed in *Chaouilli*, that is not the constitutional compliance of the scheme that is challenged by the appellants, but the constitutional compliance of the government measures taken under the scheme that are in issue.

[83] However, there is a clear distinction between the Further Amended Claim and the GHG emissions reduction claim in the *Mathur* Appeal. In the *Mathur* Appeal, the alleged government breach was precise: the plaintiffs challenged the constitutionality of sections 3 and 16 of the *Cap and Trade Cancellation Act, 2018*, SO 2018, c. 13 [CTCA], which had the effects of repealing existing GHG reduction targets and replacing them with a much smaller reduction target (*Mathur* Appeal at para 2; see also *Mathur v Ontario*, 2020 ONSC 6918 at para 132).

[84] In contrast, the Dini Ze' say that Canada's response to the alleged target (i.e., the Temperature Commitment), as described by Schedule A, falls short of that commitment. The constitutional challenge in the Further Amended Claim implicates a broad set of statutes,

regulations, and measures. It is plain and obvious that at least some of these laws could engage the section 7 *Charter* rights of the Dini Ze' as alleged.

[85] While the pleadings remain broad, the Dini Ze' have now produced numerous laws and regulations that they identify as breaching Canada's international commitments, which are in turn enshrined in domestic legislation. Ignoring the complexity of adjudicating a scheme involving over 30 laws, the amendments to the Original Claim have resulted in a list of many but specific laws and government actions. This is at least partially responsive to the Federal Court of Appeal's guidance in the *La Rose* Appeal.

[86] The Court of Appeal held that the error in *Misdzi Yikh* arose because the decision to dismiss was based on a pre-emptive determination of fact. The Court of Appeal explained that a flexible standard of "sufficient causal connection" for linking the impugned law to a claimed harm applies at the pleadings stage (*La Rose* Appeal at paras 90–91, citing *Bedford* at para 76). The Further Amended Claim, on its face, establishes a sufficient causal link between the legislative scheme in Schedule A and the deprivations of each section 7 interest.

[87] At the second stage of the section 7 analysis, the reasoning of the Dini Ze' is more difficult to follow.

[88] The Dini Ze' continue to argue that the alleged section 7 deprivations emerge from the cumulative impact of measures taken under the legislative scheme identified in Schedule A.

[89] They argue that Canada should not be able to "immunize itself from constitutional scrutiny" by adopting a broad set of laws relating to GHG emissions rather than a single comprehensive statute.

[90] However, the Court of Appeal directly addressed this strategic concern by noting there must only be a relatively weak causal connection shown to exist between the impugned law and claimed harm at the pleadings stage (*La Rose* Appeal at paras 90–91, citing *Bedford* at para 76).

[91] The Dini Ze' argue that more than one statutory provision was analysed in several other cases (*Bedford*; *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Canada v FLSC*]; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui*]; *R v Pontes*, [1995] 3 SCR 44, 1995 CanLII 61 (SCC) [*Pontes*]; and *R v Wholesale Travel Group Inc*, [1991] 3 SCR 154, 1991 CanLII 39 (SCC) [*Wholesale Travel Group*]).

[92] Yet in none of these cases does the volume of provisions under judicial examination come anywhere close to the estimation of 1,900 reviewable provisions in the proposed action:

> 1. *Bedford* was a challenge to three provisions of the *Criminal Code*, RSC 1985, c. C-46 which prohibited common bawdy-houses, living on avails of prostitution, and communicating in public for purposes of prostitution (*Bedford* at para 3);
>
> 2. *Canada v FLSC* raised 19 provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c. 17 and 12 provisions of the associated *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, amounting to a total of 31 reviewable provisions. Out of the 31 provisions, only 11 were identified as genuine issues (*Canada v FLSC* at paras 21–22, 117);
>
> 3. *Charkaoui* was a challenge to approximately 23 provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 relating to certificates of inadmissibility and detention of foreign nationals made pursuant to those certificates (*Charkaoui* at paras 4, 13, and Appendix);

4. *Pontes* was a challenge to the combined effect of two provisions of British Columbia's *Motor Vehicle Act*, RSBC 1979, c. 288 (*Pontes* at paras 3–6); and

5. *Wholesale Travel Group* was a challenge to three provisions of the *Competition Act*, RSC 1970, c. C-23 (*Wholesale Travel Group* at 170–171).

[93] The contention that the proposed action, requiring the evaluation of over 1,900 provisions, should be allowed to proceed by analogy to the foregoing cases is unsound. Even the relatively voluminous number of provisions considered in *Canada v FLSC* and *Charkaoui* do not come anywhere near the number of provisions included in Schedule A.

[94] Further, the Dini Ze' contend that where government action infringes section 7 *Charter* rights in connection with the existential harms of climate change, it is "inconceivable" that it could be justified under section 1 of the *Charter*.

[95] Canada argues that this approach "sidesteps the required analysis" by assuming the conclusion. I agree. Conceivability is not a relevant subject of discussion.

[96] It is impugned law that grounds the fundamental justice analysis. The basic exercise is to compare the impact of the breach against the objectives of the law. By its very nature, this requires an identification of the objectives of the particular impugned laws to properly assess the means by which the state seeks to attain its objective (*Bedford* at para 105).

[97] The Dini Ze' seek to justify their scattershot approach by arguing that a granular approach is not warranted in this case, as the alleged detriment would easily outweigh the objectives of any piece of legislation.

[98] According to the Dini Ze', the third column of Schedule A provides "thumbnail objectives" of each of the impugned statutory instruments. But that column generally enumerates effects of the laws (e.g., rules and emission standards or powers to issue certificates) rather than identifying their objectives.

[99] There is no legal principle to support the position that, where several laws are alleged to contribute to a severe section 7 deprivation, the objectives of those laws do not need to be compared against the deprivation. Describing this as a "contextual approach" as the Dini Ze' did in their written and oral submissions does little to overcome the lack of facts and arguments necessary to conduct a proper legal analysis.

[100] The Dini Ze' argue that the objectives of the laws may be examined at trial. I cannot accept that argument. The purpose of a statement of claim is to put the defendant on notice of the alleged facts for which they must respond to (*Mancuso* at para 17). Plaintiffs must detail the particulars of a defendant's alleged misconduct (*Mancuso* at para 19).

[101] In oral submissions, counsel for Canada drew attention to the Supreme Court's insistence on the importance of identifying the purpose of impugned laws in a section 7 *Charter* challenge, as expressed in *R v Sharma*, 2022 SCC 39 at para 87:

> As the law's purpose is the principal reference point, its proper identification is crucial to the s. 7 analysis (*R. v. Safarzadeh-Markhali*, 2016 SCC 14, [2016] 1 S.C.R. 180, at para. 24; *R. v. Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485, at para. 24). Indeed, identifying a law's purpose may be determinative of its constitutionality (R. J. Sharpe and K. Roach, *The Charter of Rights and Freedoms* (7th ed. 2021), at p. 279). It is important to characterize the purpose of a law at the appropriate level of

> generality (*Safarzadeh-Markhali*, at para. 27; *Moriarity*, at para. 28). At one end of the spectrum lies an abstract purpose akin to the animating social value. At the other extreme is a "virtual repetition of the challenged provision, divorced from its context" (*Safarzadeh-Markhali*, at para. 27). A proper framing of purpose lies somewhere between these two poles, and is precise and succinct (*Moriarity*, at para. 29).

[102] The Dini Ze' have not disclosed material facts supporting the elements necessary to prove their claim that the alleged deprivation caused by Schedule A is not in accordance with the principles of fundamental justice. The Further Amended Claim pleads conclusions on this point but fails to disclose any specifics. This feature renders it nearly impossible for Canada to substantively respond to the position that the plethora of laws in Schedule A are "fundamentally flawed" (*Bedford* at para 105). As argued in oral submissions, Canada cannot simply guess which laws the Dini Ze' will wish to argue have had the most pronounced effect on their territory and way of life.

[103] While the Dini Ze' argue that their position could be refuted by Canada citing any legislation or government action that outweighs the alleged harm, this also misses the mark.

[104] Pleadings define the issues. They represent the allegations that parties intend to prove at trial (*Lax Kw'alaams Indian Band v Canada (Attorney General)*, 2011 SCC 56 at para 41). At trial, the issues can be circumscribed but they cannot be expanded. Here, the Dini Ze' will not be able to prove that certain laws are not in accordance with the principles of fundamental justice without first settling the parameters for that factual determination through their pleadings.

[105] 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.

[106] 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.

[107] The Defendant should therefore succeed in its motion to strike the pleadings.

E. *Leave to Amend*

[108] The Original Claim was deficient in that it did not focus on specific legislation or governmental action. The Further Amended Claim is different. While it is still a broad constitutional challenge to Canada's environmental policy, it now collects specific laws and regulations under Schedule A. The Dini Ze' now allege that the legislative scheme constituted by Schedule A cumulative breached their section 7 *Charter* rights, based on Canada's domestically enshrined undertaking to meet the Temperature Commitment in the *Paris Agreement*.

[109] The harm asserted is assessed against the Temperature Commitment. That is to say, the Dini Ze' seek to ask the Court whether Schedule A is constitutionally compliant, given that it falls short of the international obligation that it is intended to address. If properly pleaded, the

principles of fundamental justice analysis would then consider whether each of the statutory instruments' objectives justify their deficient contributions to GHG emission reduction.

[110] The Dini Ze' have pleaded a potentially novel cause of action based on customary international law, in addition to a reasonably arguable but insufficiently narrow section 7 *Charter* claim. 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 (*Simon* at para 8).

V. Conclusions

[111] In oral submissions, counsel for the Dini Ze' suggested that the Court consider providing Orders for particulars if leave to amend is granted. But the Federal Court of Appeal was resoundingly clear in its instruction: "[i]t is not the role of the motions judge to separate the wheat from the chaff" (*La Rose* Appeal at para 132). The task of refining and properly formulating the Plaintiffs' claim is counsel's responsibility.

[112] A section 7 *Charter* challenge based on the cumulative effects of multiple statutory instruments remains conceptually possible, but the Plaintiffs must clearly plead which measures contribute to the deprivation of their protected rights and how those measures cause the alleged deprivation.

[113] As discussed above, it is not plain and obvious that a common law tort against Canada based on a violation of customary international law should not be permitted to proceed. However, that has not been properly pleaded here.

[114] In its present form, and with a view to the section 7 *Charter* claim, it is plain and obvious the Further Amended Claim does not disclose a reasonable cause of action, and the motion to strike the Further Amended Claim is therefore allowed.

[115] As the Federal Court of Appeal has already ruled that excessively broad pleadings relating to the underlying section 7 *Charter* claim may be cured by amendment, leave to amend is allowed.

[116] As no orders for costs were sought, none should be awarded.

JUDGMENT in T-211-20

THIS COURT'S JUDGMENT is that:

1. The Further Amended Statement of Claim is struck.

2. The Plaintiffs are granted leave to amend their Further Amended Statement of Claim within 60 days of the date of this Judgment, unless otherwise extended by the Court.

3. No costs are awarded.

"Glennys L. McVeigh"
Judge

ANNEX A

The remedies sought by the Plaintiffs are:

(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);

(c) a declaration that the defendant 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, 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;

(d) an order requiring the defendant to develop and implement amendments to each of the statutes identified in Schedule A to this Amended Statement of Claim to make them consistent with its obligations under paragraph (a), including by amending 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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-211-20
STYLE OF CAUSE:	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 v HIS MAJESTY THE KING IN RIGHT OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	AUGUST 21, 2025
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	SEPTEMBER 26, 2025

APPEARANCES:

Mark S. Oulton, K.C.	CO-COUNSEL FOR THE PLAINTIFFS
Richard J. Overstall	CO-COUNSEL FOR THE PLAINTIFFS
Adrienne Copithorne Sancho McCann	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Nathanson Schachter & Thompson LLP Vancouver, British Columbia	CO-COUNSEL FOR THE PLAINTIFFS
Richard J. Overstall Law Office Penticton, British Columbia	CO-COUNSEL FOR THE PLAINTIFFS
Attorney General of Canada Vancouver, British Columbia	FOR THE DEFENDANT