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# CLIMATE CHANGE AND THE RIGHT TO A HEALTHY ENVIRONMENT: INTERNATIONAL AND CANADIAN DEVELOPMENTS

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Robert Mason

Research and Education

## AUTHORSHIP

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*Climate Change and the Right to a Healthy Environment:  
International and Canadian Developments*  
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## EXECUTIVE SUMMARY

A healthy environment is essential to human life, health and well-being. Climate change is increasingly impacting the environment in ways that harm people. Climate change affects the air we breathe, the availability of food and water, and the rate and intensity of extreme weather events, such as floods, droughts and storms that have great potential to cause harm to human populations.

There is a growing international consensus that efforts to mitigate and adapt to climate change are ultimately necessary to protect and advance basic human rights, including the right to life. The right to a clean, healthy and sustainable environment has emerged as another way of recognizing that humans require a healthy environment for their survival and for the realization of all other human rights.

In 2022, the right to a healthy environment was recognized by the United Nations General Assembly, with 161 countries – including Canada – voting in favour of recognizing this right. Moreover, the right to a healthy environment has been added to the constitutions of more than 100 countries, while many others have recognized it through ordinary laws.

Canada recognized the right to a healthy environment for the first time at the federal level in 2023 through amendments to the *Canadian Environmental Protection Act, 1999*. The right is also recognized in different forms in Ontario, Quebec, Yukon, the Northwest Territories and Nunavut.

As a result of these federal amendments, the government must develop an implementation framework by June 2025 which will set out more details about the scope and meaning, at the federal level, of the right to a healthy environment.

Several factors that could also influence further development of the right to a healthy environment in Canada include advisory opinions at the international level, legal cases in other countries and litigation in Canada. In Canada, several climate-related cases have already been brought against different levels of government based on related rights, like equality rights and the right to life. These developments could significantly influence the future development of Canadian laws and policies relating to climate change, as well as other environmental issues.

# CLIMATE CHANGE AND THE RIGHT TO A HEALTHY ENVIRONMENT: INTERNATIONAL AND CANADIAN DEVELOPMENTS

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## 1 INTRODUCTION

The environment is essential to human life and well-being. Accordingly, the human right to a clean, healthy and sustainable environment has been recognized at the international level and in the legal systems of more than 150 countries.<sup>1</sup>

In July 2022, 161 states – including Canada – supported a resolution of the United Nations (UN) General Assembly that recognizes the right to a clean, healthy and sustainable environment; it notes that this right is linked to other existing international human rights and legal principles, and calls on states and other stakeholders to scale up efforts to protect the environment.<sup>2</sup>

In 2023, Canada recognized the right to a healthy environment for the first time at the federal level by amending the *Canadian Environmental Protection Act, 1999* (CEPA).<sup>3</sup> An implementation framework which elaborates on the principles and mechanisms that support this newly recognized right is due by June 2025.<sup>4</sup>

The right to a healthy environment is threatened by the interrelated challenges of pollution, climate change and biodiversity loss, constituting “the greatest human rights challenge of our era” according to the UN High Commissioner for Human Rights in 2022.<sup>5</sup> In particular, climate change has already caused widespread and rapid changes in the atmosphere, oceans, cryosphere and biosphere. These changes have resulted in higher mortality rates from extreme heat events and disasters, like floods, droughts and storms.<sup>6</sup> As climate change intensifies, it will have further adverse impacts that will disrupt the full realization of a wide range of human rights, including impacts on water availability, food production and human health.<sup>7</sup>

Adverse climate impacts affect everyone, but not equally. Countries and regions that have historically contributed the least to climate change are expected to be among the most negatively affected, including small island developing states and least developed countries.<sup>8</sup> Moreover, within countries, groups that are particularly vulnerable to climate change-related risks include Indigenous people, children, women, people living in poverty and people with disabilities.<sup>9</sup>

Legal recognition of the right to a healthy environment has contributed to a wave of litigation by citizens seeking to force governments and corporations to reduce environmental harms related to climate change. As outlined in this paper, many such cases have been led by Indigenous peoples, children and youth, and others with

distinct vulnerabilities. As climate change intensifies and further jurisprudence is developed, the right to a healthy environment may have significant implications for global efforts to mitigate and adapt to climate change.

## 2 INTERNATIONAL DEVELOPMENTS

### 2.1 INTERNATIONAL DEVELOPMENT OF THE RIGHT TO A HEALTHY ENVIRONMENT

In 1972, the UN Conference on the Human Environment culminated in the *Stockholm Declaration*, which highlighted that humanity has the “power to transform our environment,” and that doing so “wrongly or heedlessly” would jeopardize our basic human rights, including the right to life.<sup>10</sup> It also recognized – for the first time at the international level – a right to exist “in an environment of a quality that permits a life of dignity and well-being.”<sup>11</sup>

The right to a healthy environment rapidly gained legal recognition over the 50 years that followed. Portugal adopted the constitutional right to a “healthy and ecologically balanced human environment” in 1976,<sup>12</sup> which was followed by similar constitutional provisions in more than 100 countries, along with broader recognition through ordinary legislation.<sup>13</sup> Regional human rights agreements also adopted similar language, including the *African Charter on Human and Peoples’ Rights*, and the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* known as the *Protocol of San Salvador*.<sup>14</sup>

In 2012, the UN Human Rights Council appointed an independent expert on the issue of human rights obligations as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>15</sup> Consequently, the first UN Special Rapporteur on human rights and the environment, John H. Knox (in consultation with his successor, David R. Boyd) argued in 2018 that it was time for the UN to formally recognize the human right to a healthy environment. His report argued that doing so would deliver tangible benefits and be consistent with national laws in most of the world. In particular, it noted that at least 80 countries had enacted stronger environmental laws in direct response to their constitutional recognition of the right to a healthy environment, while in several other countries, the right to a healthy environment resulted in new legislation or regulations to address issues, such as air pollution and forest conservation.<sup>16</sup>

In October 2021, the UN Human Rights Council adopted a resolution recognizing the right to a clean, healthy and sustainable environment, noting that the right is linked to other existing human rights under international law and affirming that it requires the full implementation of international environmental agreements.<sup>17</sup> This was followed by a similar resolution adopted by the UN General Assembly in July 2022, which was passed with 161 votes in favour, eight abstentions and no opposing votes.<sup>18</sup>

While such resolutions are not legally binding, they can inform and encourage the development of legal norms in both domestic and international law. Moreover, as indicated by the resolutions, other binding and related human rights, such as the right to life, may indirectly result in protections for the environment in some circumstances.

Moreover, the 2015 *Paris Agreement*, which Canada has ratified, calls on all countries to “respect, promote and consider” human rights obligations when addressing climate change.<sup>19</sup> In addition, various UN human rights treaty bodies have noted that “[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.”<sup>20</sup>

The right to a healthy environment is generally understood to include both substantive rights (such as a safe climate system, clean air and non-toxic environments) and procedural rights (such as access to information and access to justice).<sup>21</sup> However, the extent to which state obligations may arise from this right – particularly in the context of climate change – remains uncertain and is the subject of global litigation. For this reason, the UN General Assembly adopted a resolution in March 2023 requesting an advisory opinion from the International Court of Justice on state obligations under international law to protect the climate system.<sup>22</sup> Similar requests have been made to the International Tribunal for the Law of the Sea (by a coalition of small island states) and to the Inter-American Court of Human Rights (by Colombia and Chile).<sup>23</sup> These advisory opinions may provide persuasive guidance to domestic and regional courts on the scope and limits of the right to a healthy environment and other human rights in the context of climate change.

In parallel to the forthcoming advisory opinions, domestic courts are increasingly dealing with human rights-based complaints that invoke the right to a healthy environment and other human rights in the context of climate change.

## 2.2 INTERNATIONAL CASE LAW

Human rights-based litigation aimed at combating climate change is a recent and rapidly developing phenomenon. The first landmark case occurred in *Urgenda Foundation v. State of the Netherlands (Urgenda)*,<sup>24</sup> in which the Dutch government was ordered in 2015 to reduce, by the end of 2020, greenhouse gas (GHG) emissions by at least 25% below 1990 levels. In 2019, the Dutch Supreme Court confirmed the decision as the minimum action required, based on international scientific consensus, fundamental human rights – including the right to life – and specific Dutch constitutional and civil law principles.<sup>25</sup>



The success of *Urgenda* launched a global wave of rights-based climate litigation. Since then, more than 130 cases brought against governments have relied in whole or in part on human rights arguments, including at least 36 that cited the right to a healthy environment.<sup>26</sup>

Comparing these cases is challenging due to the complexity of the different legal systems in which they have been brought, the novel nature of many of the claims and the varying content and status of the right to a healthy environment across jurisdictions. Nevertheless, scholars have pointed to some early trends in rights-based climate litigation, noting that the most common types of cases so far have been brought by individuals or civil society organizations seeking preventive or remedial measures from governments for climate change mitigation. While many have complex outcomes, an analysis of the first 57 decided rights-based climate cases categorized 44% as successful and 56% as unsuccessful.<sup>27</sup>

The following cases illustrate some of the potential applications of the right to a healthy environment in the context of climate change. Together they suggest that recognizing this right often strengthens requirements for governments to consider the climate effects of certain decisions, including decisions relating to fossil fuels. At the same time, these cases highlight the reluctance of courts to impose specific outcomes on complex policy issues relating to climate change.

2.2.1 *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others* (South Africa)

In *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*,<sup>28</sup> a non-governmental organization (NGO) challenged a South African government decision to authorize the construction of a coal-fired power station, arguing that the climate impacts had not been appropriately considered. The organization argued that the legislative requirement for an impact assessment should have been interpreted in light of various other laws and international legal obligations, including section 24 of South Africa's Bill of Rights which recognizes the right to an environment that is "not harmful to ... health or well-being" and that is protected "for the benefit of present and future generations, through reasonable legislative and other measures."<sup>29</sup>

In its 2017 decision, the High Court of South Africa agreed that a climate change impact assessment is required before new coal-fired power stations can be authorized, and remitted the decision back to the minister, who was directed to consider a climate change impact assessment report.<sup>30</sup> Authorizations for the power plant were ultimately set aside.<sup>31</sup>



### 2.2.2 *Greenpeace Nordic and Others v. Norway* (Norway)

In *Greenpeace Nordic and Others v. Norway*,<sup>32</sup> NGOs challenged Norway's grant of certain production licences for oil and gas in the Barents Sea, based in part on article 112 of Norway's Constitution, which states:

Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

...

The authorities of the state shall take measures for the implementation of these principles.<sup>33</sup>

In its 2020 decision, the Supreme Court of Norway found that this provision is important for interpreting statutes and evaluating administrative decisions, including in the context of climate change. However, it concluded that democracy considerations suggest that courts should be hesitant to overturn parliamentary decisions that involve environmental issues requiring the balancing of interests and priorities. Such decisions should only be overturned if the duties under article 112 are “grossly neglected.”<sup>34</sup>

The Court found that, while the proposed exploration stage would not have significant global environmental effects, if it became clear that the oil and gas extraction would be incompatible with article 112, the authorities would have “both a right and a duty not to approve the project.”<sup>35</sup>

In June 2021, the plaintiffs referred the case to the European Court of Human Rights, focusing their appeal on provisions of the *European Convention on Human Rights* (the Convention), including the right to life, as the Convention does not explicitly include the right to a healthy environment. At the time of writing the case was pending.

### 2.2.3 *Rikki Held et al. v. State of Montana et al.* (Montana)

In its August 2023 decision in *Rikki Held et al. v. State of Montana et al.*, a Montana district court struck down a section of the *Montana Environmental Policy Act* as unconstitutional, based on plaintiffs' right to a healthy environment under Montana's Constitution.

Specifically, the provision at issue prohibited Montana agencies from considering any actual or potential impacts of climate change or GHG emissions when conducting environmental reviews. As a result, between 2011 and 2023, fossil fuel activities in Montana were authorized “without considering how the additional GHG emissions

w[ould] contribute to climate change or be consistent with the standards the Montana Constitution imposes on the State to protect people’s rights.”<sup>36</sup>

Specifically, the Montana Constitution states that “[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations,” and that the legislature “shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.”<sup>37</sup>

The court found that the prohibition on considering climate impacts violated this section of the Constitution, as it resulted in actions that “exacerbate anthropogenic climate change and cause further harms to Montana’s environment and its citizens, especially its youth.”<sup>38</sup>

### 3 CANADIAN DEVELOPMENTS

In November 2020 following a country visit, Baskut Tuncak, the UN Special Rapporteur on toxins and human rights, found that marginalized groups in Canada – particularly Indigenous peoples – are exposed to levels of toxins that would not be considered acceptable for other groups in Canada and that this situation constitutes discrimination. To address these and other issues identified in his report, he recommended that Canada recognize the right to a healthy environment in legislation, and eventually, through a constitutional amendment.<sup>39</sup> This recommendation echoed previous calls to recognize the right to a healthy environment in Canada, including from David R. Boyd prior to his appointment as UN Special Rapporteur on Human Rights and the Environment.<sup>40</sup>

While Ontario, Quebec and the three territories have legislation recognizing the right to a healthy environment in various forms,<sup>41</sup> it was first recognized in federal legislation with amendments to CEPA in 2023.

#### 3.1 CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

CEPA is the primary legislation that enables the federal government to regulate and manage pollution and toxic substances for the protection of the environment and human health. Environmental issues are a matter of shared jurisdiction between federal and provincial governments, and the Supreme Court of Canada has found CEPA to be valid legislation based on the federal criminal law power.<sup>42</sup>

Under CEPA, the federal government can require any entity to implement a pollution prevention plan<sup>43</sup> with respect to a substance that appears in the list of toxic substances set out in Schedule 1 of CEPA. This legislation also contains broad

powers to make regulations with respect to these substances, including on the manner and degree to which a substance can be released into the environment, imported, exported, manufactured, used or processed.<sup>44</sup> CEPA also provides broad regulatory powers relating to fuels.<sup>45</sup> In 2005, the most significant GHGs were added to Schedule 1, including carbon dioxide, methane and nitrous oxide.<sup>46</sup> Many regulations made under CEPA are relevant to climate change and GHG reduction.<sup>47</sup>

The amendments made to CEPA in 2023 recognize the right to a healthy environment at the federal level for the first time.<sup>48</sup> The preamble to CEPA now states “that every individual in Canada has a right to a healthy environment as provided under [CEPA].”<sup>49</sup> Section 5.1 of CEPA requires that the Minister of the Environment and the Minister of Health develop an implementation framework within two years that sets out “how the right to a healthy environment will be considered in the administration of [CEPA].”<sup>50</sup> This framework must cover several components, including how the principles of environmental justice, non-regression and intergenerational equity will be considered in the administration of CEPA, as well as the reasonable limits to which the right will be subject and the relevant factors to be taken into account, for example, social, health, scientific and economic factors.<sup>51</sup> The implementation framework must also describe the research, monitoring activities and mechanisms that will be used to support the protection of the right to a healthy environment.<sup>52</sup>

In short, the full scope and impact of CEPA’s recognition of the right to a healthy environment remains to be determined. In his testimony before the House of Commons Standing Committee on Environment and Sustainable Development, the Minister of Environment and Climate Change described the right to a healthy environment as a lens that will “support and encourage strong environmental and health standards now and going into the future, robust engagement with Canadians and new thinking about how to protect populations that are particularly vulnerable to environmental and health risks.”<sup>53</sup>

In testimony to the same committee, David R. Boyd underscored his support for recognition in CEPA of the right to a healthy environment, while noting its limitations. For example, the fact that the right applies only “as provided under this Act” suggests that there is no right to a healthy environment as it relates to other federal environmental legislation. Moreover, he noted the lack of mechanisms to enforce the right to a healthy environment under CEPA.<sup>54</sup> These limitations further highlight the importance of the forthcoming implementation framework in setting out and understanding the scope and impact of the right to a healthy environment in Canada.

## 3.2 THE CANADIAN CONSTITUTIONAL FRAMEWORK

While Canada's constitution does not explicitly include the right to a healthy environment, some existing constitutional rights<sup>55</sup> are expected to be adversely impacted by climate change and could, as such, be strengthened by recognizing the right to a healthy environment. These constitutional rights include the rights to life and security of the person, equality rights, and the rights of Indigenous Peoples.

### 3.2.1 Right to Life and Security of the Person

The rights to life and security of the person are recognized in international law and section 7 of the *Canadian Charter of Rights and Freedoms*.<sup>56</sup> Climate change poses a threat to the realization of these rights, including through increased extreme weather events, food scarcity and air quality degradation.

In Canada, courts have not found that the rights to life and security of the person require the government to pursue particular climate change targets or policies. Rather, section 7 of the Charter has, in other contexts, been interpreted as protecting people from government actions, rather than creating positive obligations.<sup>57</sup>

However, some legal scholars have argued that this interpretation could evolve in the context of climate change.<sup>58</sup> Although this would be a significant shift in Charter interpretation, courts have maintained that section 7 is not frozen in time, and the Federal Court of Appeal has specifically stated that the right to life and security of the person could someday evolve to include climate rights.<sup>59</sup>

This possibility is further supported by the Supreme Court of Canada's recognition in *References re Greenhouse Gas Pollution Pricing Act* that climate change is "an existential threat to human life in Canada and around the world."<sup>60</sup>

### 3.2.2 Equality Rights and Children's Rights

Section 15 of the Charter protects the right to substantive legal equality without discrimination. Equality rights are potentially relevant to climate change due to the unequal vulnerabilities of different groups, such as people with disabilities and people living in poverty. In particular, many international climate cases have argued that policies that delay mitigation and adaptation to climate change implicitly impose costs on children and future generations, and that such policies are therefore discriminatory.

Although future generations are not generally recognized in Canadian law,<sup>61</sup> children benefit from equality rights and a range of additional protections, including the legal principle that laws and decisions concerning them must have their best interests as a primary consideration.<sup>62</sup>

In a 2023 general comment, the UN Committee on the Rights of the Child provided guidance on how children’s rights – including their right to a healthy environment – can be understood in the context of climate change, emphasizing the urgent need and “obligation to effectively prevent, protect against and provide remedies for both direct and indirect environmental discrimination.”<sup>63</sup> The Committee noted that the rights of children to a healthy environment include substantive rights to clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and non-toxic environments. According to the Committee, protecting children’s rights in the context of climate change requires a number of immediate actions, including “equitably phas[ing] out the use of coal, oil and natural gas, ensur[ing] a fair and just transition of energy sources and invest[ing] in renewable energy, energy storage and energy efficiency.”<sup>64</sup>

Canada has ratified the *Convention on the Rights of the Child* which, like other international treaties, is used by courts to interpret federal, provincial and territorial legislation.<sup>65</sup> However, the courts have not yet found that the convention or equality rights under section 15 of the Charter could require the government to pursue particular climate change targets or policies.<sup>66</sup> Some legal scholars see scope for an expanded interpretation of section 15, arguing that equality rights extend broadly to government inaction, meaning that the government is legally responsible not only for gaps in legislation that have discriminatory effects, but also for the absence of legislation or programs, if the effect is discriminatory.<sup>67</sup>

### 3.2.3 Rights of Indigenous Peoples

The federal government has committed to implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) through the *United Nations Declaration on the Rights of Indigenous Peoples Act* and its associated action plan.<sup>68</sup> Article 29 of the UNDRIP recognizes that “Indigenous peoples have the right to the conservation and protection of the environment.”<sup>69</sup> The federal government’s action plan explains that several goals stem from article 29, including supporting self-determined climate action, and ensuring that “Indigenous peoples enjoy the right to a healthy natural environment with Indigenous ways of knowing incorporated into the protection and stewardship of lands, waters, plants and animals.”<sup>70</sup>

Among other measures to support these goals, the action plan commits to

ensuring that First Nations, Inuit, and Métis peoples have stable, long-term financing to implement their climate actions, make climate related-decisions with the Government of Canada, and that systemic barriers to Indigenous climate leadership are addressed.<sup>71</sup>

In addition to this recognition of the right to a healthy natural environment through the UNDRIP action plan, the right to a healthy environment may have further

implications in the context of Aboriginal and treaty rights, which are recognized in section 35 of the *Constitution Act, 1982*.<sup>72</sup> While the nature and scope of Aboriginal and treaty rights vary, in general, climate change has detrimental impacts on the realization of these rights, particularly rights grounded in traditional land use practices. Courts have long recognized that Indigenous peoples have a right to be free from government actions that would substantially deprive them of the land or resources that sustain traditional practices, customs or traditions.<sup>73</sup> Moreover, the Supreme Court of Canada has recognized that climate change has “had a particularly serious effect on Indigenous peoples, threatening the ability of Indigenous communities in Canada to sustain themselves and maintain their traditional ways of life.”<sup>74</sup>

These impacts have several implications for Canada. For example, the Crown has a fiduciary duty to Indigenous peoples which includes a duty to consult them about conduct that might adversely affect their rights or title and, depending on the circumstances, to accommodate their interests.<sup>75</sup> As the Supreme Court of Canada has noted, “the level of consultation and accommodation required is proportionate ... to the seriousness of the adverse impact the contemplated governmental action would have.”<sup>76</sup> Government actions that have an impact on climate may therefore require greater consultation and accommodation, as those effects become more significant over time.

### 3.3 CANADIAN CASE LAW

Several NGOs and groups of young people have recently sought judicial recognition that existing rights under the Charter include the right to a healthy environment. Common preliminary issues in these cases are standing (who is entitled to bring a case to court) and justiciability (whether the remedy can appropriately be granted by a court).

#### 3.3.1 *Environnement Jeunesse c. Procureur général du Canada*

In 2018, Environnement Jeunesse sought to initiate a class action claim against the Government of Canada on behalf of all Quebec residents aged 35 or younger. They sought a declaration that the government failed to put in place the policies necessary to limit climate change, and that this violated their rights to life and security of the person under section 7 of the Charter. The Superior Court of Québec, in its 2019 decision in *Environnement Jeunesse c. Procureur général du Canada*, found that the proposed class could not be certified because the age group was arbitrary.<sup>77</sup> However, it also found that such a claim could be justiciable.

In 2021, the Court of Appeal of Quebec confirmed in its decision that the proposed class was arbitrary. However, it also concluded that the claim was not justiciable,

since it was focused on the inaction of government and would have essentially required the court to dictate legislative solutions.<sup>78</sup>

Leave to appeal to the Supreme Court of Canada was denied in July 2022.<sup>79</sup>

### 3.3.2 *La Rose v. Canada and Dini Ze' Lho'Imggin et al. v. Canada*

Two related, ongoing cases are testing the boundaries of constitutional rights in the context of climate change.

In *La Rose v. Canada (La Rose)*, a group of 15 children and youth from across Canada argued that they were particularly vulnerable to climate change because of their age, and that the Government of Canada had violated their rights under sections 7 and 15 of the Charter, due to a range of actions and inactions, including adopting insufficient GHG emission targets, failing to meet those targets and “participating in and supporting the development, expansion and operation of industries and activities involving fossil fuels that emit a level of GHGs incompatible with a Stable Climate System.”<sup>80</sup> Among other remedies, they sought a declaration that the government has a constitutional obligation to maintain a stable climate system capable of sustaining human life and liberties.

In its 2020 decision, the Federal Court found that the claims under sections 7 and 15 of the Charter were not justiciable because a remedy would essentially require “judicial involvement in Canada’s overall policy response to climate change,” which would be beyond the court’s institutional legitimacy or capacity.<sup>81</sup>

Similarly, in *Dini Ze' Lho'Imggin et al. v. Canada*,<sup>82</sup> members of the Wet’suwet’en First Nation argued that Canada’s GHG emissions targets are insufficient and violate their rights under sections 7 and 15 of the Charter. They also argued that Canada has a duty to adhere to international environmental agreements.<sup>83</sup>

In its 2020 decision, the Federal Court found that the claim was too broad to be justiciable, particularly because no specific law or action was being challenged.<sup>84</sup>

The Federal Court of Appeal heard the two appeals together, and in December 2023, found that amended claims which focused on section 7 of the Charter could proceed to trial. Specifically, the court characterized the argument whereby section 7 includes the right to a healthy and liveable environment as “novel,” but “not doomed to fail.”<sup>85</sup>

### 3.3.3 *Mathur v. Ontario*

In *Mathur v. Ontario (Mathur)*,<sup>86</sup> seven young people challenged the Ontario government’s decision to repeal the *Climate Change Mitigation and Low-carbon Economy Act, 2016*<sup>87</sup> and set a GHG emissions target that they argued was insufficient. They claimed that these actions violated their rights under sections 7



and 15 of the Charter. Among other remedies, they sought a declaration that section 7 of the Charter “includes the right to a stable climate system capable of providing youth and future generations with a sustainable future.”<sup>88</sup>

In its 2020 decision about whether the case should be dismissed, the Ontario Superior Court of Justice found that the claim was justiciable. The Court made a distinction between *Mathur* and *La Rose*, because *Mathur* challenges specific governmental actions, which are reviewable for compliance with the Charter.<sup>89</sup>

In April 2023, the Ontario Superior Court of Justice released its decision in *Mathur v. Ontario*. It found no violation of sections 7 or 15 of the Charter based on the facts of the case, but it concluded that section 7 rights were engaged and suggested that the existential threat of climate change constitutes special circumstances that could result in positive obligations being imposed under section 7 of the Charter in future cases.<sup>90</sup> At the time of writing the decision was being appealed.

#### 4 CONCLUSION

The right to a healthy environment has gained widespread international recognition, and is increasingly invoked in litigation, both internationally and in various national jurisdictions. While this right has a range of possible applications involving pollution, biodiversity loss and other environmental issues, its rapid acceptance on the international stage has coincided with increasing concerns about climate change, and some of the most significant litigation has sought to apply the right to a healthy environment in that context.

Recognition of the right to a healthy environment appears to have resulted in seemingly stronger environmental laws in some countries, as well as greater scrutiny from courts in decisions that have climate impacts.

The right to a healthy environment is a rapidly developing area of international and Canadian law. Its recent inclusion in CEPA is part of an ongoing process to define the scope and limits of this right in Canada, including in the context of climate change.

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#### NOTES

1. Ilze Brands Kehris, Assistant Secretary-General for Human Rights, United Nations (UN), Office of the High Commissioner for Human Rights, [Right to healthy environment](#), Speech delivered at expert seminar, 12 April 2022.
2. UN General Assembly, [The human right to a clean, healthy and sustainable environment](#), 28 July 2022.

3. The right to a healthy environment is recognized in the preamble to the *Canadian Environmental Protection Act, 1999*. Section 3(1) defines a healthy environment as one “that is clean, healthy and sustainable.” This is consistent with the UN General Assembly’s framing of the right. See [Canadian Environmental Protection Act, 1999](#) (CEPA), S.C. 1999, c. 33.
4. *Ibid.*, s. 5.1.; and Government of Canada, “Next steps,” [A Right to a Health Environment under the Canadian Environmental Protection Act, 1999](#).
5. Michelle Bachelet, UN High Commissioner for Human Rights, [Moment for Nature](#), 19 July 2022.
6. Intergovernmental Panel on Climate Change, [Climate Change 2023: Synthesis Report – Summary for Policymakers](#), 2023.
7. *Ibid.*
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