SCC denies leave to appeal in landmark case subjecting climate change regulation to Charter scrutiny

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On May 1, 2025, the Supreme Court of Canada decided that it would not hear an appeal of the Court of Appeal for Ontario's landmark decision in *Mathur v. Ontario*, 2024 ONCA 762. The Court of Appeal unanimously found that a *Charter* challenge to Ontario's greenhouse gas emission (GHG) target was not a "positive rights" claim imposing freestanding positive obligations on the provincial government - because Ontario voluntarily assumed a statutory obligation to combat climate change, it was bound to ensure its emissions target and plan were *Charter*-compliant. The matter will now return to the Superior Court to resolve based on the Court of Appeal's decision, which will stand as a leading authority on challenges to government action under ss. 7 and 15 of the *Charter*.

The *Charter* challenge

The challenge stemmed from Ontario's 2018 *Cap and Trade Cancellation Act, 2018* S.O. c. 13, which repealed previous legislated GHG emission reduction targets and required the government to set new ones. Ontario then released the *Preserving and Protecting our Environment for Future Generations - A Made-in-Ontario Environmental Plan* setting a new target which was lower than the repealed target and fell short of the scientific consensus as to what is required to combat climate change.

Seven young Ontarians, some of whom are Indigenous, brought an application for a declaration that the target violated ss. 7 and 15 of the *Charter* because it permitted a level of GHG emissions that would cause serious harm and disproportionately impact young people and future generations. They also sought a declaration requiring Ontario to set a science-based target in accordance with international standards.

Superior Court decision

The Superior Court dismissed the application (*Mathur v. Ontario*, 2023 ONSC 2316). The application judge held that the applicants were seeking to impose a "freestanding positive obligation" on the state to adopt a more restrictive GHG emission reduction

target. She found that even if such an obligation existed, the impacts of the target were not inconsistent with the principles of fundamental justice under s. 7 of the *Charter*. She further found that the target was not discriminatory under s. 15 because the impacts were caused by climate change, not the target. However, the application judge did find that the issues were justiciable, that the *Charter* applied, and that the target was sufficiently connected to the harm suffered by the applicants for the purposes of s. 7 by contributing to risks to life and health from climate change.

Ontario Court of Appeal decision

The Court of Appeal found that the application judge made an overarching error by treating the claim as a "positive rights" case. By enacting legislation, Ontario assumed a voluntary obligation to do something about climate change through a plan and GHG emission reduction target. Therefore, the plan and target must be constitutionally compliant. The claim did not seek to impose any new positive obligations on the government; it sought to ensure that the target the government did pass met *Charter* standards.

The Court of Appeal found that the application judge's analysis was coloured by her error in treating the claim as a positive rights case. Under s. 7, the question was not whether the target did not go far enough in the absence of any positive obligation to do anything, but whether given Ontario's positive statutory obligation to combat climate change, the target was compliant with the *Charter*. Under s. 15, the application judge should have considered whether, in setting a target that fell severely short of the scientific consensus of what was required, Ontario committed itself to a level of GHG emissions that would create or contribute to a disproportionate impact on a protected ground.

The Court of Appeal remitted the matter for a new hearing. The Court of Appeal commented that while the issue of remedy would be up to the application judge, it was open to order that Ontario produce a constitutionally compliant plan and target. As the Supreme Court of Canada denied leave to appeal on the legal issues, the matter will now proceed to another hearing in the Superior Court.

Takeaways

- *Mathur* is the first Canadian climate change claim under the *Charter* to have advanced to a hearing on the merits.
- The Court of Appeal focused on what the government had committed itself to do, rather than whether the claim imposes a positive constitutional obligation to act in the first place, and its decision clarifies that existing analytical frameworks under ss. 7 and 15 are already suited to these types of claims. This decision will be an important precedent for other cases involving government regulation such as health care, social services and environmental policy where positive rights arguments are often asserted to dismiss *Charter* claims.
- Where striking down the legislation would not address the *Charter* violation, an appropriate remedy may include ordering the government to act in a constitutionally compliant manner, without specifying the precise measures needed to do so.

Teagan Markin and Nadia Effendi of Borden Ladner Gervais LLP represented the B.C. Civil Liberties Association as an intervener before the Court of Appeal.

By

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