

COURT OF APPEAL FOR ONTARIO

BETWEEN:

SOPHIA MATHUR, a minor by her litigation guardian CATHERINE ORLANDO,
ZOE KEARY-MATZNER, a minor by her litigation guardian ANNE KEARY,
SHAELYN HOFFMAN-MENARD, SHELBY GAGNON, ALEXANDRA
NEUFELDT, MADISON DYCK and LINDSAY GRAY

Appellants
(Applicants)

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Respondent
(Respondent)

**FACTUM OF THE INTERVENERS ENVIRONMENTAL DEFENCE CANADA,
INC. AND WEST COAST ENVIRONMENTAL LAW ASSOCIATION**

November 6, 2023

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PART I – OVERVIEW

1. Deprivations of the right to life, liberty and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms* (the “Charter”) can only occur in accordance with the principles of fundamental justice (“PFJ”). In this way, the PFJ act as a limit or constraint on the degree to which the Crown can infringe section 7 rights. Where government action infringes section 7 not in accordance with the PFJ, the government has an obligation to bring its actions into accordance with the PFJ. In the case of deprivations of rights due to the cumulative effects of multiple state actions, governments may need to establish a mechanism to manage those cumulative effects to ensure that they are brought into accordance with the PFJ.¹ This is not a positive freestanding right, but simply a duty to not act inconsistently with the PFJ.

2. As the primary regulator of greenhouse gas (“GHG”)-emitting activities in the province, Ontario is depriving the Appellants of their section 7 rights in a manner that is not in accordance with the PFJ. The GHG target set under section 3(1) of the *Cap and Trade Cancellation Act*, 2018, SO 2018, c 13 (the “Target”) and climate change plan prepared under section 4(1) of that Act (the “Plan”) are Ontario’s mechanism for limiting the deprivations, but they fall short of what is necessary to accord with the PFJ. In this case, the PFJ is a duty of care owed by the Government of Ontario (“Ontario”) to limit the GHG that it causes or permits to be emitted to an amount that scientific consensus says states must achieve to minimize or avoid the most catastrophic impacts of climate change.

PART II – FACTS

3. The Interveners accept the facts set out in the Appellants’ factum.

¹ *Yahey v. British Columbia*, [2021 BCSC 1287](#) at para 1888(4).

PART III – ARGUMENT

4. The Application Judge correctly found that as a result of climate change, the Applicants are “experiencing an increased risk of death and increased risk of security of the person.”² As found by the Supreme Court of Canada, each province’s GHG cause a measurable harm.³

5. As the primary regulator of GHG-emitting activities in Ontario, the Government of Ontario is causing and permitting a large majority of the GHG that originate in the province.⁴ These emissions are contributing to an existential threat to humanity,⁵ depriving the Appellants of their section 7 rights. At issue in this case is whether Ontario is required to constrain the GHG it causes or permits to levels that accord with the PFJ, and if so, whether the Target and Plan are consistent with that level. The Interveners submit that the answer to the first question is yes, and the answer to the second is no.

A. Section 7 Requires Ontario to Limit its GHG

6. As the Application Judge found, Ontario’s actions that cause or permit GHG are directed and guided by the Target and Plan, and those actions are contributing to the climate emergency that imposes an increased risk of harm and death.⁶ Nonetheless, Justice Vermette held that by arguing that Ontario is causing, permitting or facilitating GHG, the Appellants were attempting “to bring through the back door unspecified state actions, programs and policies that have not been challenged in this Application.”⁷ With respect, this reasoning is contradictory and puts the Appellants in an untenable position: if they were to challenge the network of government actions

² *Mathur v. His Majesty the King in Right of Ontario*, [2023 ONSC 2316](#) at para 120 [*Mathur*].

³ *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#) at para 188 [*References re GGPPA*]; see also *Mathur*, *ibid* at paras 148-49.

⁴ Factum of the Appellants at para 21; Affidavit of Charlotte Ireland affirmed July 2, 2021 (“July 2 Ireland Affidavit”), Exhibit Book Vol 5 Tab 27 at paras 8-29, 33-35, 38-60, 62-75, 78-80, 83, and 87-95 and the exhibits referred to therein.

⁵ *Mathur*, *supra* note 2 at paras 17 and 138; *References re GGPPA*, *supra* note 3 at paras 2, 7-13, 24, 167, 171, 187-190 and 206.

⁶ *Mathur*, *ibid* at paras 123, 148-49.

⁷ *Ibid* at para 135.

that give rise to GHG, their challenge risks being held to be non-justiciable.⁸ Challenges to the GHG emitted pursuant to individual statutes or government actions are likely to be dismissed as individually insignificant, and the question of what GHG reductions are required for each individual activity or sector would be difficult, if not impossible, to determine. The Appellants rightly challenge the constitutional adequacy of the measures Ontario has established to set and guide the reduction of GHG it causes or permits to be emitted in the province.

7. While most section 7 jurisprudence deals with cases in which a *single* government decision, process or statute gives rise to the alleged violation, the courts are no stranger to a series of government actions *collectively* resulting in a violation of a Charter right. There are many examples of multiple government actions in concert resulting in unacceptable delays in a criminal process, or collectively depriving a defendant of the right to a fair hearing, where individually the actions would not amount to a violation.⁹

8. Courts have also found that the cumulative effects of government action have unlawfully infringed other constitutional rights and that governments must assess and address the impacts of their actions. In *Held v. State of Montana*, the Montana First Judicial District Court held that “[t]here is a fairly traceable connection” between the State of Montana’s allowing GHG and the injuries suffered by the youth plaintiffs, and that a provision in the *Monana Environmental Policy Act* prohibiting decision makers from considering GHG when authorizing activities violates the plaintiffs right to a clean and healthful environment under Montana’s constitution.¹⁰

⁸ *La Rose v. Canada*, [2020 FC 1008](#) at paras 44, 46 and 61; and *Mathur*, *ibid*.

⁹ See, e.g., *R. v. Rahey*, [1987 CanLII 52 \(SCC\)](#), [\[1987\] 1 SCR 588](#), in which the Supreme Court of Canada held that delays caused by 19 adjournments cumulatively resulted in an infringement of the accused’s right to be tried within a reasonable time; and *Beford v. Canada*, [\[2013\] 3 S.C.R. 1101](#), in which the Supreme Court of Canada found that the cumulative effects of prohibitions relating to prostitution deprived sex workers of their section 7 rights (at paras 58-72). See also K. Abrams and B. Garrett, “Cumulative Constitutional Rights” [\(2017\) 97 Boston University Law Review 1309](#) at pp 1316-23.

¹⁰ *Held v. Montana*, No. CDV-2020-307 ([1st Dist. Ct. Mont. 2023](#)) at pp 86-87 paras 4-12 and p 99 para 55.

9. In *Yahey v. British Columbia*, the British Columbia Supreme Court found that by allowing industrial development in Treaty 8 territory “at an extensive scale” and over many years, British Columbia had deprived the Blueberry River First Nation (“BRFN”) – a party to Treaty 8 – of its ability to meaningfully exercise its treaty rights to hunt, trap and fish in a manner consistent with its way of life, and therefore that the Province had breached the Treaty.¹¹ The Court found that “[t]he lack of effective provincial regimes or processes for assessing, taking into account, and managing the cumulative effect of development on Blueberry’s exercise of its treaty rights breaches the Province’s obligations under the Treaty”¹² and declared that BRFN and the Province must negotiate the establishment of “timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on [BRFN]’s treaty rights, and to ensure these constitutional rights are respected.”¹³

10. While *Yahey* involved treaty rights protected under section 35 of *The Constitution Act, 1982*, the Interveners submit that the issues and deprivations in that case are analogous to those before this Honourable Court. Both involve constitutional rights that have been infringed through the cumulative effect of government-authorized activities, and in both cases, governments have established mechanisms for managing those effects. While British Columbia had implemented some mechanisms to regulate industrial activities and their effects in Treaty 8 territory, those mechanisms failed to constrain cumulative effects to a degree such that they would not violate BRFN’s treaty rights.¹⁴ The Interveners submit that this is directly analogous to Ontario establishing the Target and Plan to manage GHG in the province, which, as we argue below, are not in accordance with the PFJ because they fail to limit GHG to levels that scientific consensus

¹¹ *Yahey*, *supra* note 1 at paras 3 and 1884.

¹² *Ibid* at para 1881.

¹³ *Ibid* at para 1888(4).

¹⁴ *Ibid* at paras 1759-60, 1768, 1774-81.

says are necessary in order to avoid the most catastrophic effects of climate change. The Interveners submit that, just as the British Columbia Supreme Court did, this Honourable Court should find that because Ontario's actions cause or permit GHG at levels that deprive the Appellants of their section 7 rights, Ontario must establish a mechanism for ensuring that those GHG are limited to an amount that is in accordance with the PFJ.

11. The Interveners respectfully disagree with the Application Judge that requiring Ontario to limit its GHG further would “place a freestanding positive obligation on the state.”¹⁵ Under section 7, rights holders have the right not to be deprived of their rights to life, liberty and security of the person except in accordance with the PFJ. In other words, the PFJ act as a constitutional limit on the ability of governments to lawfully deprive rights holders of those rights. Once it is established that the Crown's actions are depriving the Appellants of their section 7 rights, requiring Ontario to constrain those actions so they are in accordance with the PFJ would not be a positive obligation, but simply a requirement to refrain from exceeding the limits of the PFJ. The Target and Plan are the mechanism Ontario has established to limit the deprivations caused by GHG it causes or permits to be emitted in the province.

12. At issue is not whether Ontario owes the Appellants a freestanding positive obligation, but whether the limit it has chosen – the Target and Plan – is adequate. This case is clearly distinguishable from *Gosselin v. Quebec (Attorney General)*, which involved a claim by younger recipients for equal benefits to older recipients.¹⁶ The Appellants are not seeking a benefit; they are seeking for Ontario to establish a Target and Plan that guide and direct emissions to a level that only deprives them of their section 7 rights in a manner that is in accordance with the PFJ.

¹⁵ *Mathur*, *supra* note 2 at para 132.

¹⁶ [2002 SCC 84, \[2002\] 4 SCR 429](#).

B. The Target and Plan Do Not Accord with the PFJ

13. The Interveners submit that the duty of care should be recognized as a PFJ in cases involving cumulative effects that deprive parties of their section 7 rights. PFJ are found in the basic tenets of our legal system.¹⁷ To be a PFJ, a rule or principle must be “a legal principle about which there is significant societal consensus that it is fundamental to the way in which the legal system ought fairly to operate, and it must be identified with sufficient precision to yield a manageable standard against which to measure deprivations” of section 7 rights.¹⁸

14. The duty of care meets this test. In Canada, the duty of care is a basic tenet of tort law and can be owed by public bodies.¹⁹ A government body owes a duty of care when: 1) it has a sufficiently close relationship with another party that it would be reasonable for the state to expect that its carelessness might cause damage to the other party (in other words, where there is reasonable foreseeability of harm and a sufficient degree of proximity between the parties); and 2) there are no considerations that should negative or limit the scope of the duty or the class of persons to whom it is owed.²⁰

15. The duty of care owed by a government in relation to GHG emissions and their impacts on human rights was also recognized in the Urgenda case. The Supreme Court of the Netherlands upheld findings of The Hague Court of Appeal that the Government of the Netherlands owes a duty of care to take concrete actions to prevent future violations of citizens’ right to life and right

¹⁷ *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at para 31.

¹⁸ *R. v. Marmo-Levine*; *R. v. Caine*, 2003 SCC 74, [2003] 3 SCR 571 at para 113.

¹⁹ See, e.g., *O’Rourke v. Schacht*, [1976] 1 SCR 53; *Kamloops (City of) v. Nielsen*, [1984] 2 SCR 2; *Just v. British Columbia*, [1989] 2 SCR 1228; *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 SCR 263; *Fullowka v. Pinkerton’s of Canada Ltd*, 2010 SCC 5, [2010] 1 SCR 132.

²⁰ *Kamloops (City of) v. Nielsen*, *ibid* at p 9.

to respect for private and family life under the European Convention on Human Rights, and that this duty includes a duty to reduce GHG emissions by 25-45% below 1990 levels by 2020.²¹

16. Because the Interveners assert a duty to care in the context of section 7 rights rather than under tort law, it may not be necessary to satisfy the common law test for a public duty of care. Regardless, it is possible to do so. There is a sufficiently close relationship between Ontario and its citizens, including the Appellants, that it is reasonable for the state to expect that its carelessness might cause damage to the Appellants. There is no question that state action causes life-threatening climate change,²² a fact that Ontario does not contest.²³ Both the United Nations Framework Convention on Climate Change and the Paris Agreement recognize the need for parties (including Canada) to lower GHG for the wellbeing of their citizens as well as other countries, and the rights enshrined in the *Universal Declaration of Human Rights*,²⁴ including the right to life, liberty and security of the person, has been recognized as imposing a duty on states to limit GHG, “including through regulatory measures, in order to prevent to the greatest extent possible the current and future negative human rights impacts of climate change.”²⁵

17. A close relationship has been found in similar cases. A user of a highway maintained by the Province of British Columbia was in sufficient proximity to the province to come within a duty of care because “it would be eminently reasonable for the... user... to expect that it would be reasonably maintained” and for the province it “would be a readily foreseeable risk that harm

²¹ *State of the Netherlands (Ministry of Infrastructure and the Environment) v. Urgenda Foundation*, [ECLI:NL:GHDHA:2018:2610](#) at paras 41, 48-49; aff'd *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda*, [ECLI:NL:HR:2019:2007](#).

²² *Mathur*, *supra* note 2 at para 120.

²³ *Ibid* at para 4.

²⁴ *Universal Declaration of Human Rights*, [GA Res. 217\(III\), UN GAOR, 3d Sess., Supp. No. 13, UN Doc A/810 \(1948\) 71](#) at Art 3.

²⁵ Office of the High Commissioner for Human Rights, “Understanding Human Rights and Climate Change: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change” at 2: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

might befall users of a highway if it were not reasonably maintained.”²⁶ It is similarly reasonable for the Appellants, citizens of Ontario, to expect that their government will ensure that GHG it causes and permits in the province will be confined to limits that scientific consensus says are necessary to avoid catastrophic climate change. Likewise, the impacts of climate change are not only foreseeable, but are the direct result of GHG emissions, as is admitted by Ontario.

18. As a core component of tort law, the duty of care is fundamental to the way in which the legal system ought to fairly operate. It can be identified with sufficient precision to yield a manageable standard because a) there is a precise test for when a government body owes a duty of care; and b) the duty of care in this case – to limit GHG according to what scientific consensus says must be done in order to avoid the most catastrophic impacts of climate change – is a measurable standard identified by the Intergovernmental Panel on Climate Change (“IPCC”).

C. The Standard of Care Is What Scientific Consensus Says Must Be Done to Avoid the Most Catastrophic Effects of Climate Change

19. The case law is clear that the standard of care is to take reasonable care.²⁷ The Interveners submit that “reasonable” in this context is a duty to limit Ontario’s GHG to levels that scientific consensus says is necessary in order to avoid the most catastrophic impacts of climate change: a 45% reduction below 2010 levels by 2030. This standard is a precise, manageable standard against which to measure deprivations of section 7 rights.

20. It is well-accepted in the case law that courts should look to Canada’s international obligations and relevant principles of international law when interpreting the nature and scope of

²⁶ *Just v. British Columbia*, *supra* note 19 at p 1236.

²⁷ *Odhavji Estate v. Woodhouse*, *supra* note 19 at paras 46-50.

the section 7 right, including the PFJ.²⁸ In this case, those international obligations and principles of international law include the Paris Agreement and the precautionary principle. The Paris Agreement, a legally-binding international treaty, commits parties, including Canada, to pursuing efforts towards keeping global temperature rise to 1.5°C,²⁹ and relies on the IPCC for scientific consensus on what jurisdictions must do in order to achieve that goal.³⁰ The precautionary principle, as affirmed by the Supreme Court of Canada, requires states to establish measures to anticipate, prevent and attack the causes of environmental degradation, and posits that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.³¹

21. Interpreting the nature and scope of the duty of care through the lens of the Paris Agreement and precautionary principle indicates that in cases involving cumulative effects of GHG that result in deprivations of section 7 rights, the limit imposed by the PFJ – in other words, the reasonable care that Ontario must take to limit the deprivation – is a Target and Plan that would avoid serious or irreversible harm, even where there is lack of full scientific certainty. In this case, there is such certainty. The scientific consensus of the IPCC is that states must reduce their emissions by 45% below 2010 levels by 2030 in order to limit global temperature rise to 1.5°C and avoid the most catastrophic impacts of climate change.³² As the Application

²⁸ *Reference re Public Service Employee Relations Act (Alta.)*, [1987 CanLII 88 \(SCC\)](#) at para 59; *R v. Hape*, [2007 SCC 26](#), [\[2007\] 2 SCR 292](#) at paras 53, 56, 68; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001 SCC 40 \(CanLII\)](#), [\[2001\] 2 SCR 241](#) [*Spraytech*] at p 266.

²⁹ *Paris Agreement to the United Nations Framework Convention on Climate Change*, 12 December 2015, [UN Doc FCCC/CP/2015/10/Add.1, 55 ILM 740](#) (entered into force 4 November 2016), Art 2.

³⁰ *Mathur*, *supra* note 2 at paras 18-19.

³¹ *Spraytech*, *supra* note 28 at p 266-67.

³² Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*, Ex “E” to the Affidavit of Dr. Robert McLeman, sworn February 5, 2021, Appeal Book and Compendium Vol 2, Tab 10 at 5688; *Mathur*, *supra* note 2 at para 144.

Judge rightly found, the Target and Plan fall severely short of this standard.³³ As a result, they fail to meet the duty of care and accordingly are not in accordance with the PFJ.

D. Alternatively, There Is no PFJ With Which the Deprivations Accord

22. In the alternative, if this Honourable Court finds that none of the rules and principles proposed by the Appellants and Interveners are PFJ for the purposes of this Appeal, the Interveners argue that there is *no* PFJ that the Target and Plan *is* in accordance with. The existential threat posed by climate change if states – including Ontario – do not limit their GHG by at least 45% by 2030 is a deprivation of section 7 rights of a magnitude arguably never before contemplated. The PFJ should not be interpreted in such a manner as to render section 7 “sorely emaciated,”³⁴ and to put the onus on the Appellants to first identify PFJ and then prove that the deprivations are *not* in accordance with those PFJ turns the analysis on its head. Worse, to find that the parties have failed to show that the deprivations are not in accordance with any PFJ would effectively shield these catastrophic deprivations from Charter review and thus render the guarantees of section 7 meaningless against this grave threat.³⁵

PART IV – ORDER SOUGHT

23. The Interveners respectfully request that this Appeal be allowed and that this Court make an order granting the relief sought in the Notice of Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of November, 2023.



Anna Johnston



Andrew Gage

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³³ *Mathur, ibid* at paras 144, 147.

³⁴ *Re B.C. Motor Vehicle Act, supra* note 17 at p 501.

³⁵ *References re GGPPA, supra* note 3 at para 2.

SCHEDULE “A” – LIST OF AUTHORITIES CITED

CANADIAN CASES

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2. *Beford v. Canada*, [2013 SCC 72](#), [2013] 3 S.C.R. 1101
3. *Fallowka v. Pinkerton's of Canada Ltd*, [2010 SCC 5](#), [2010] 1 SCR 132
4. *Gosselin v. Quebec (Attorney General)*, [2002 SCC 84](#), [2002] 4 SCR 429
5. *Just v. British Columbia*, [\[1989\] 2 SCR 1228](#)
6. *Kamloops (City of) v. Nielsen*, [\[1984\] 2 SCR 2](#)
7. *La Rose v. Canada*, [2020 FC 1008](#)
8. *Mathur v. His Majesty the King in Right of Ontario*, [2023 ONSC 2316](#)
9. *Odhavji Estate v. Woodhouse*, [2003 SCC 69](#), [2003] 3 SCR 263
10. *O'Rourke v. Schacht*, [\[1976\] 1 SCR 53](#)
11. *Re B.C. Motor Vehicle Act*, [\[1985\] 2 SCR 486](#)
12. *Reference re Public Service Employee Relations Act (Alta.)*, [1987 CanLII 88 \(SCC\)](#)
13. *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#)
14. *R v. Hape*, [2007 SCC 26](#), [2007] 2 SCR 292
15. *R. v. Malmö-Levine; R. v. Caine*, [2003 SCC 74](#), [2003] 3 SCR 571
16. *R. v. Rahey*, [1987 CanLII 52 \(SCC\)](#), [1987] 1 SCR 588
17. *Yahey v. British Columbia*, [2021 BCSC 1287](#)

INTERNATIONAL CASES

18. *Held v. Montana*, No. CDV-2020-307 ([1st Dist. Ct. Mont. 2023](#))
19. *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v. Stichting Urgenda*, [ECLI:NL:HR:2019:2007](#)
20. *State of the Netherlands (Ministry of Infrastructure and the Environment), v. Urgenda Foundation*, [ECLI:NL:GHDHA:2018:2610](#)

SECONDARY SOURCES

21. K. Abrams and B. Garrett, “Cumulative Constitutional Rights” ([2017](#)) *97 Boston University Law Review* 1309

22. Office of the High Commissioner for Human Rights, “Understanding Human Rights and Climate Change: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change”:

<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>

SCHEDULE “B” – TEXT OF STATUTES, REGULATIONS & BY-LAWS

CANADIAN LEGISLATION

Canadian Charter of Rights and Freedoms

Life, liberty and security of person

7 Everyone 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.

Cap and Trade Cancellation Act

2018, SO 2018, c 13

Targets

3 (1) The Government shall establish targets for the reduction of greenhouse gas emissions in Ontario and may revise the targets from time to time.

Climate change plan

4 (1) The Minister, with the approval of the Lieutenant Governor in Council, shall prepare a climate change plan and may revise the plan from time to time. 2018, c. 13, s. 4 (1).

INTERNATIONAL LAW

Paris Agreement to the United Nations Framework Convention on Climate Change
[UN Doc FCCC/CP/2015/10/Add.1, 55 ILM 740](https://unfccc.int/essential/information_material/paris_agreement/items/9493.php) (entered into force 4 November 2016)

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
 - (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
 - (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
 - (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

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

Universal Declaration of Human Rights

[GA Res. 217\(III\), UN GAOR, 3d Sess., Supp. No. 13, UN Doc A/810 \(1948\) 71](#)

Article 3 Everyone has the right to life, liberty and the security of person.

SOPHIA MATHUR, et al

and HIS MAJESTY THE KING IN
RIGHT OF ONTARIO

Court of Appeal File No.: COA-23-CV-0547

Appellants

Respondent

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

**FACTUM OF ENVIRONMENTAL DEFENCE
CANADA, INC. AND WEST COAST
ENVIRONMENTAL LAW ASSOCIATION**

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