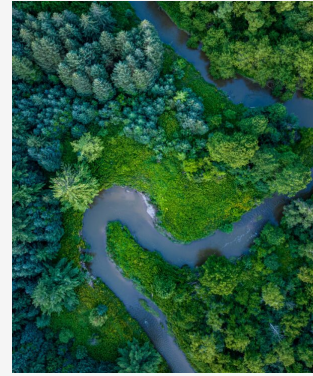


New hearing ordered for historic youth-led Charter challenge to Ontario's Cap and Trade Cancellation Act

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Authors: [Richard J. King](#), [Jennifer Fairfax](#), [Ankita Gupta](#), [Shelby Empey](#)

In *Mathur v. Ontario*, 2024 ONCA 762 (Mathur), the Court of Appeal for Ontario (ONCA) revived a claim by youth activists who argue that the greenhouse gas (GHG) emissions target set under Ontario's *Cap and Trade Cancellation Act* (CTCA) violates their section 7 and 15 rights under the *Canadian Charter of Rights and Freedoms* (the Charter).

As we discussed in an Update entitled: "[First justiciable climate claim in Ontario – Mathur v. Ontario](#)", the Ontario Superior Court of Justice (ONSC) found that the plaintiffs' claim was justiciable, but dismissed the claim on its merits, finding that any deprivation of the right to life or security of the person was not contrary to the principles of fundamental justice under s. 7 of the Charter and that s. 15 did not impose a positive obligation on the provincial government to take any specific steps to combat climate change.

On October 17, 2024, the ONCA unanimously found that by enacting the CTCA, the Ontario government voluntarily assumed a positive statutory obligation to combat climate change in a Charter-compliant way. The ONCA allowed the appeal, but declined to decide the application, remitting the case back to the application judge to be re-heard on its merits.

Background

In 2016, the Ontario government enacted the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (Climate Change Act), which established a cap-and-trade system of carbon pricing and set a target of reducing GHG emissions by 37% from 2005 levels by 2030. In 2018, the *Climate Change Act* was repealed by the CTCA, which requires the Minister of the Environment to set emissions reduction targets. The Minister's target, set out in the 2018 *Environment Plan* [PDF], is less onerous than the *Climate Change Act*, aiming to reduce GHG emissions by 30% from 2005 levels by 2030.

The applicants are seven Ontario youth who argue that the target is too lenient to prevent the adverse environmental and health consequences of climate change, violating their rights to life, liberty, and security of the person under s. 7 of the Charter. They also argue that the disproportionate impact of climate change on young people is discriminatory, violating their equality rights under s. 15 of the Charter.

In November 2020, the plaintiffs survived a motion to strike their claim on the basis that their

claim was not justiciable. The ONSC held that it was not plain and obvious that the CTCA and repeal of the *Climate Change Act* would be unreviewable by the Court, and the action proceeded to be heard on its merits.

In April 2023, the ONSC confirmed that the Charter issues raised by the applicants were generally justiciable because the issues concerned specific state action and legislation but dismissed the plaintiffs' Charter claims. The application judge found the applicants were trying to establish a positive right and held that the Charter could not impose a freestanding obligation on the government to mitigate climate change. The plaintiffs appealed.

The ONCA's decision

The ONCA disagreed and found the applicants were not seeking an order that Ontario take specific measures to combat climate change. Rather, the applicants argued only that the target set by the Minister under the CTCA "commits Ontario to levels of greenhouse gas emissions that violate their Charter rights". In the ONCA's view, the application judge could have considered whether, given the positive statutory obligation to combat climate change that Ontario had voluntarily assumed, the emissions target was Charter-compliant. The ONCA further rejected Ontario's argument that courts could not supervise government action regarding climate change, holding that there are "clear international standards based on accepted scientific consensus that can inform what a constitutionally compliant" emissions target should be.

Given the absence of a complete evidentiary record and the emergence of new legal issues, including whether Ontario's climate policy violated Aboriginal rights under section 35 of the *Constitution Act, 1982*, the ONCA declined to determine whether the appellants' Charter rights were unjustifiably infringed. Instead, the ONCA remitted the application for further consideration by the ONSC.

Takeaways

Mathur represents a significant development in Canadian climate litigation, as it leaves open the possibility that a court may see itself as having the power to order a government to set emissions targets which conform with international or other standards established by experts. Parallel litigation claiming that the federal government's climate policy violates the Charter also continues to move through the courts after the Federal Court of Appeal dismissed the government's motion to strike the case in *La Rose v. Canada*, 2023 FCA 241. Osler will keep a close eye on the *Mathur* case as it moves forward.