

June 28, 2019. For Immediate Release

We should stop wasting time in the fight against extreme weather by debating federalism in Court Ontario Court agrees that a national price on pollution is constitutional

“There is no dispute that global climate change is taking place, and that human activities are the primary cause,” reports the Ontario Court of Appeal when judging that the Federal Pricing Pollution Act is constitutional in its entirety.

In the 4-1 decision, the majority of judges ruled that it is constitutional for the federal government to price pollution in order to “limi[t] access to a scarce resource: the atmosphere’s capacity to absorb Greenhouse Gases.” This ruling echoes a similar majority decision from the Saskatchewan Court of Appeal last May.

Failure to protect this scarce resource, the Ontario Court concludes, is causing numerous harms:

The uncontested evidence before this court shows that climate change is causing or exacerbating: increased frequency and severity of extreme weather events (including droughts, floods, wildfires, and heat waves); degradation of soil and water resources; thawing of permafrost; rising sea levels; ocean acidification; decreased agricultural productivity...; species loss and extinction; and expansion of the ranges of life-threatening vector-borne diseases, such as Lyme disease and West Nile virus (paragraph 11).

Recent impacts of climate change, the Judges add, include major wildfires in Alberta and BC, along with major floods in Ontario, Quebec, BC and New Brunswick.

“These judicial findings represent important victories for health and intergenerational justice,” explains Dr. Paul Kershaw, Founder of Generation Squeeze, and a policy professor in the School of Population Health.

Generation Squeeze led the Intergenerational Climate Coalition to intervene in the Ontario Court. Coalition partners include the Canadian Association of Physicians for the Environment, the Public Health Association of BC, the Saskatchewan Public Health Association, the Youth Climate Lab, and the Canadian Coalition for the Rights of Children.

“We are pleased that the Ontario Court invoked World Health Organization evidence that underscores how the extreme weather brought on by climate change is the greatest risk to human health in the 21st century,” observes Kershaw. “Younger Canadians and future generations are now disproportionately burdened with those health risks.”

“We are also pleased that the Ontario Court referred specifically to the evidence we submitted about the future costs that climate change will impose on today’s younger Canadians – a sum that the Finance Minister of Canada estimates will reach \$43 billion per year by 2040 if we don’t take actions now to mitigate the way our pollution is causing extreme weather.”

The majority decision of the Ontario Court shuts down debate about whether Canada’s constitutional commitments to federalism offer some premiers the opportunity to free-ride on other jurisdictions to do the heavy lifting when it comes to reducing greenhouse gas emissions.

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“Provinces and territories that have very low emissions, and are far removed geographically from the source of emissions,” the Court explains, “often experience impacts of climate change that are grossly disproportionate to their individual contributions to Canada’s total GHG emissions... There is nothing these provinces and territories can do to address the emission of GHGs by their geographic neighbours and constitutional partners. Without a collective national response, all they can do is prepare for the worst.”

To emphasize this point, the Ontario Court decision includes data showing that Alberta is responsible for 37% of Canada’s total emissions, when it is home to just 12% of the population. Saskatchewan is responsible for 11% of Canada’s emissions, while home to just 3% of the population.

Generation Squeeze is disappointed to learn the Ontario government will join Saskatchewan in appealing their Courts’ decisions to the Supreme Court, and that the Alberta government still intends to ask its provincial court to revisit the very question just answered in Ontario.

“We need to stop wasting time and public funds fighting in Court, because those funds can be better used to reduce the pollution that causes extreme weather before we cross dangerous climate change thresholds from which we can’t come back for millennia. Or we could use the same funds to reduce housing unaffordability, or invest in child care so that it doesn’t cost another rent-sized payment, as we try to manage the costs that come with fighting climate change. These problems all intersect amid intergenerational inequities facing younger Canadians” explains Kershaw.

Still, so long as Ontario and Saskatchewan are taking their case to the Supreme Court, Generation Squeeze will lead the Intergenerational Climate Coalition back into Court as well.

We’re excited that the lower court decisions mean we can now emphasize other parts of our legal arguments to the Supreme Court justices. Our initial interventions had to devote a lot of time helping the provincial Courts resist the argument that the federal price on pollution infringes provincial jurisdiction.

Now that two lower courts have rejected this argument, we can prepare our legal intervention to highlight why we have a constitution in the first place, especially amid a climate emergency. The very act of making a constitution presumes future generations: they must exist to inherit and maintain a way of life anchored by the values and principles adopted by their predecessors. Alas, climate change puts that future in jeopardy.

When working to unite Canada, our first Prime Minister, John A. Macdonald, encouraged citizens to “reject” Confederation “if you do not believe it to be for the present advantage and future prosperity of yourselves and your children.” We aim to help the Supreme Court rule that it would be perverse if our Constitution is now used 150 years later to defeat that deep, and founding, concern for future generations by frustrating efforts to combat climate change.

Partners



We are grateful for funding provided by West Coast Environmental Law.