

COURT FILE NUMBER KB No. 10848 of 2023

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

APPLICANTS SABRINA DYKSTRA, JILL FORRESTER, RYAN HEISE, KAYLA HOPKINS, LYNN OLIPHANT, HAROLD PEXA, AMY SNIDER, and CLIMATE JUSTICE SASKATOON ORGANIZATION INC.

RESPONDENTS SASKATCHEWAN POWER CORPORATION, CROWN INVESTMENTS CORPORATION OF SASKATCHEWAN, and THE GOVERNMENT OF SASKATCHEWAN

ORIGINATING APPLICATION

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where Court of K.B. Regina – Chambers (Civil)
2425 Victoria Avenue
Regina, SK S4P 4W6

Date Thursday, May 4, 2023

Time 10 A.M.

Go to the end of this document to see what you can do and when you must do it.

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PARTICULARS OF APPLICATION

Introduction

1. We are in a time of dangerous climate change, primarily caused by the burning of fossil fuels. The Applicants submitting this application live in or have strong ties to Saskatchewan and are impacted by the effects of the growing climate crisis.
2. The Applicants' constitutional rights protected under the *Canadian Charter of Rights and Freedoms*¹ (hereinafter the "*Charter*") are violated by government action that causes and continues to exacerbate the harm and intensity of climate change.
3. All levels of government have the duty to reduce the greenhouse gas (GHG) emissions causing dangerous climate change. A stable climate requires that we quickly and dramatically reduce emissions from human activity to achieve Net Zero. Net Zero means that GHG emissions produced by human activity are reduced sharply and that any remaining GHG emissions that cannot be eliminated are negated completely by implementing methods of absorbing carbon dioxide from the atmosphere to offset remaining GHG emissions. Climate science tells us that the sooner we achieve Net Zero, the sooner our climate will stabilize, potentially allowing humanity a chance to adapt and avoid dangerous climate change.
4. To achieve Net Zero, the most credible and impactful path is to stop burning fossil fuels by replacing fossil energy, largely with electricity, and decarbonizing our electrical supply. Therefore, decarbonization of the electricity supply needs to be one of the highest priorities on the path to achieving Net Zero.
5. The SASKATCHEWAN POWER CORPORATION (hereinafter "SaskPower") continues to invest in developing unabated fossil fuel-based generation assets.² New

¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982 c 11 [*Charter*].

² "unabated" throughout this application refers to power generation not equipped with Carbon Capture and Sequestration technology (CCS) that would otherwise reduce or abate the pollution intensity associated with fossil-fuelled electrical generation.

unabated fossil-fuel based generation built today will produce GHG emissions for several decades and ongoing construction of new unabated fossil fuel generation undermines Canada's national efforts to achieve Net Zero emissions as per the Paris Agreement.³ Although Saskatchewan intends to reduce its emissions associated with the provincial electrical grid by up to 50% below 2005 levels by 2030, this is largely being accomplished through a transition from coal to fossil-gas plus wind generation. SaskPower currently has no firm commitment to achieve Net Zero emissions.

6. The Government of Saskatchewan, as owner of SaskPower, is exacerbating dangerous climate change by constructing new unabated fossil fuel-based generation assets.
7. Through this application, the Applicants are asking the Court to consider their *Charter* rights and whether those rights are breached by the actions of the Saskatchewan government and the provincial Crown corporations responsible for providing and delivering electricity to Saskatchewan residents and businesses as it relates to approving new electrical generation assets. The Applicants ask that the Court direct the Respondents to prepare formal plans to decarbonize the provincial electrical grid. If this Court finds that the Applicants *Charter* rights are being breached by the ongoing development of new unabated fossil-fuel-based generation, the Applicants respectfully ask this Court to grant remedies that would mitigate or eliminate the harms caused by the Respondents.

THE PARTIES

8. The respondent, SaskPower, is a body corporate, duly incorporated pursuant to the laws of Saskatchewan. SaskPower is governed by *The Power Corporations Act*⁴ and

³ United Nations Framework Convention on Climate Change, *Paris Agreement*, Adopted at the United Nations Climate Change Conference (COP21) in Paris, France, on 12 December, 2015. Canada is a signatory to the international treaty and ratified the Paris Agreement on October 5, 2016. The Paris Agreement entered into force on November 4, 2016, online: https://unfccc.int/sites/default/files/english_paris_agreement.pdf (3 March 2023).

⁴ *The Power Corporations Act*, R.S.S. 1978, c. P-19.

subject to the provisions of *The Crown Corporations Act*⁵ of Saskatchewan.

SaskPower is an agent of the provincial Crown and is charged with providing and delivering electricity to Saskatchewan residents and businesses.

9. The respondent, CROWN INVESTMENTS CORPORATION OF SASKATCHEWAN (hereinafter “CIC”) is duly incorporated pursuant to the laws of Saskatchewan. The CIC is the holding company for Saskatchewan’s commercial Crown Corporations, including SaskPower. The CIC has broad authority pursuant to *The Crown Corporations Act* to direct SaskPower and provide oversight of SaskPower’s operations.

10. The respondent, THE GOVERNMENT OF SASKATCHEWAN, is the Crown in Right of Saskatchewan as designated in *The Proceedings Against the Crown Act, 2019*.⁶

11. The applicants SABRINA DYKSTRA, JILL FORRESTER, RYAN HEISE, KAYLA HOPKINS, LYNN OLIPHANT, HAROLD PEXA, and AMY SNIDER are natural persons and residents of Saskatchewan ranging in age from 14 to 80 years old (the “Personal Applicants”). The Personal Applicants share common interests in that they are affected by dangerous climate change, they all rely on electricity as provided by the respondent SaskPower, and they all rely on emissions reductions by SaskPower to mitigate the severity of anthropogenic climate change caused by burning of fossil fuels.

12. The public interest applicant Climate Justice Saskatoon Organization Inc. is a civil society organization based in Saskatoon, Saskatchewan that advocates for sustainable development, mitigation of dangerous climate change, and accelerating a just transition to a clean economy (applicant “CJS”).

⁵ *The Crown Corporations Act, 1993*, SS 1993, c. C-50.101.

⁶ *The Proceedings Against the Crown Act, 2019*, SS 2019, c. P-27.01.

13. The Applicants have demonstrated commitment to pushing for rapid and effective government action through individual and collective action. They have significant concerns over the risks that climate change poses to their health and wellbeing, their futures, their lives, their communities as well as the environment. Many of the applicants are already experiencing harms of anxiety and depression caused by the impacts of dangerous climate change they already experience coupled with sensations of helplessness as our provincial government continues to finance, encourage, and approve expanding infrastructure that increases the GHG emissions, exacerbating dangerous climate change.
14. The Applicants have demonstrated a serious and genuine interest in the subject matter of Originating Application. This Application is a reasonable and effective way to bring these issues to the Court for reasons that include: (i) the claim at issue impacts all Saskatchewan residents and future generations; (ii) the Applicants have the support of counsel with the expertise, resources and commitment to bring this Application forward; and (iii) the Applicants are well-placed to bring this Application and it is unreasonable to expect that others (or future generations) will bring a similar application now.

RELIEF SOUGHT

15. The Applicants seek the following remedies pursuant to s.52(1) of the *Constitution Act, 1982*:
- a. An order declaring that specific provisions of *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations* (the “MRGHG Regulations”) that allow cumulative emissions from SaskPower of 77,000,000 tonnes in the 2020-2024 compliance period and 64,500,000 tonnes in the 2025-2029 compliance period to be in breach of the Applicants’ s.7 and s.15 *Charter* rights;
 - b. An order directing the Respondent government of Saskatchewan to prepare a generation and asset management plan that will provide and deliver Net Zero

electricity to the residents and businesses of Saskatchewan in aggregate by the end of year 2035 or in the alternative by end of year 2040 at the latest (“SK NZ Electricity Plan”);

- c. An order directing the Respondent Saskatchewan government to set emissions reduction targets in the *MRGHG Regulations* for SaskPower that are consistent with Saskatchewan’s share of the minimum level of GHG reductions necessary to limit global warming to well below 2°C (*i.e.* the upper range of the Paris Agreement temperature standard) thereby reasonably protecting the environment and *Charter* rights of the Applicants and the public; and
- d. In the alternative, the same declaratory relief sought above in this paragraph pursuant to s.24(1) of the *Charter* or this Court’s inherent jurisdiction.

16. The Applicants seek the following remedies pursuant to s.24(1) of the *Charter*:

- a. An order declaring that the Respondents’ ongoing development and expansion of unabated fossil-fuel based generation at the Great Plains power plant (currently under construction) and at the proposed Wolverine power plant (near Lanigan) violates the rights of the Personal Applicants, all Saskatchewan residents, and future generations under s.7 of the *Charter* in a manner that cannot be saved under s.1 of the *Charter*;
- b. An order declaring that the Respondents’ ongoing development and expansion of unabated fossil-fuel based generation at the Great Plains power plant and at the proposed Wolverine power plant violates the rights of the Personal Applicants and future generations under s.15 of the *Charter* in a manner that cannot be saved under s.1 of the *Charter*;
- c. An order directing that the Respondents cease and discontinue the development, construction, planning, and investment in any unabated fossil

fuel generation unless the Respondents can demonstrate how any new unabated fossil fuel-based generation can be incorporated within the SK NZ Electricity Plan or the revised *MRGHG Regulations* as requested in the paragraph above;

- d. Additionally, or in the alternative, an order declaring that ongoing development and expansion of unabated fossil fuel based electrical generation constitutes a breach of the statutory duty of care of the CIC directors and the SaskPower directors as prescribed by s.46 of *The Crown Corporations Act, 1993*, s.117 of *The Business Corporations Act*⁷, and the common law fiduciary duty of the directors of SaskPower and the CIC to all residents of Saskatchewan and that such ongoing action is not in good faith with a view to the best interests of the CIC or SaskPower as per s.48(1)(a) of *The Crown Corporations Act*; and
- e. Additionally, or in the alternative, an order directing the Respondent government of Saskatchewan to ensure the directors of CIC and SaskPower deliver on their statutory and common law fiduciary duties to set interim targets for emissions reduction related to electricity generation beginning in the year 2027, and periodic targets thereafter, that demonstrate a credible path to achieving the SK NZ Electricity Plan or the revised *MRGHG Regulations* emissions limits requested above; and
- f. In the further alternative, an order directing the Respondent government of Saskatchewan to compel the CIC and SaskPower directors to prepare a SK NZ Electricity Plan to justify and rationalize any ongoing expansion of unabated fossil fuel-based generation within the context of Net Zero emissions goals.

17. The Applicants seek no costs and ask that no costs be awarded against them as this action serves an important public interest to:

⁷ *The Business Corporations Act*, RSS 1978, c. B-10.

- a. determine whether ongoing action of the state in the approval and development of new GHG emitting electrical generation from unabated fossil fuel generation assets violates *Charter* rights of Canadians, and;
- b. to determine if the Principles of Fundamental Justice associated with Canadians' *Charter* rights ascribe legal obligations upon the Respondents with respect to decarbonizing our electricity supply.

18. Such further and other relief as counsel may advise and this Honourable Court may allow.

GROUND FOR MAKING THIS APPLICATION

19. This application is validly brought before this Court pursuant to Rule 3-49(1)(h)⁸ as the Applicants seek relief pursuant to s.24(1) of the *Charter* to address state action that infringes their *Charter* rights as described herein this application and relief pursuant to s.52(1) of the *Constitution Act, 1982* to declare sections of the *MRGHG Regulations*, to the extent of its inconsistencies with the Constitution, of no force or effect.

20. As per Rule 3-49(1)(i),⁹ it is unlikely there will be any material facts in dispute as it relates to dangerous climate change, the causes thereof, or the fact that humanity must achieve Net Zero to mitigate dangerous climate change in order to have a reasonable chance to adapt to the atmospheric and climatic changes already caused by human activity.

21. SaskPower operates primarily under the mandate and authority of *The Power Corporation Act*. Section 8 of *The Power Corporation Act* bestows broad authority on SaskPower with respect to electrical generation, transmission, distribution, and

⁸ Saskatchewan, *The Queen's Bench Rules*, r 3-49(1)(h).

⁹ *Ibid* at r 3-49(1)(i).

“efficient operation of the corporation=s [sic] business for the public good.”¹⁰

22. Section 38 of *The Power Corporation Act* grants SaskPower the exclusive right to supply, transmit, distribute, and sell electrical energy within Saskatchewan apart from a portion of the cities of Saskatoon and Swift Current. SaskPower’s vision, mission and values flow from *The Power Corporation Act* and SaskPower’s relationship with its parent company, the CIC.
23. By virtue of *The Crown Corporations Act, 1993*, SaskPower has been designated a subsidiary of the CIC. SaskPower follows the direction provided by CIC.
24. Section 46 of *The Crown Corporations Act, 1993*, imposes a duty of care upon every officer and director of a Crown corporation to “act honestly and in good faith with a view to the best interests of the Crown corporation,” and to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”¹¹ The Applicants submit that reasonable and prudent directors would recognize and acknowledge that CIC and SaskPower have an obligation to commit to Net Zero emissions by 2035 or 2040 at the latest.
25. In addition to the statutory duty of care described in the preceding paragraph, the Respondent government of Saskatchewan must ensure the directors of CIC and SaskPower conform to the common law fiduciary duty to act for the benefit of the residents of Saskatchewan. As fiduciaries, the CIC and SaskPower directors owe a duty of good faith, due care, loyalty, and disclosure in relation to their conduct in relation to setting policy and direction for the corporations. The directors must balance the objectives of reliable, cost-effective, and sustainable power generation for Saskatchewan customers and communities the Crown corporations serve. Informed by recently released climate science reports, international agreements and pledges, rising pollution prices, and the increasing severity of extreme weather events induced by dangerous climate change, reasonably prudent people exercising care and

¹⁰ *The Power Corporation Act*, *supra* note 2 at s. 8(1)(j).

¹¹ *The Crown Corporations Act, 1993*, *supra* note 3 at s. 46.

diligence as directors would not expand unabated fossil fuel generation and would create a Net Zero plan to decarbonize the provincial electrical grid.

26. The Respondent government of Saskatchewan is obligated to ensure the directors of the CIC and SaskPower are fulfilling their statutory duty of care and common law fiduciary duty that is owed to all residents of Saskatchewan.

Government produced GHG Emissions

27. The Applicants submit that the actions of CIC and SaskPower, as authorized by statute, evidence an intention to continue to build, develop, or promote expansion of Crown and third-party electrical generation assets that exacerbate the causes of dangerous climate change.

28. Fossil fuel-based generation assets typically operate for 50 years or longer. Administrative decisions to build new unabated fossil fuel generation assets today commit the province to ongoing emissions on a long-term basis, exacerbating the climate crisis, and risk significant costs to the residents and businesses of Saskatchewan either due to rising pollution prices, more stringent output-based performance standards for electricity generation, or premature obsolescence should high emissions generation assets be shuttered prematurely.

29. The Intergovernmental Panel on Climate Change (hereinafter the "IPCC") — a comprehensive and authoritative assessment of climate science research — has confirmed the devastating impacts of climate change in a world where global average temperatures rise to 1.5°C above pre-industrial levels and has confirmed that these impacts would be significantly worse if temperatures rise to and exceed 2°C above pre-industrial levels.

30. The Sixth Assessment Reports from the IPCC were released in August 2021 (working group one – *Climate Change 2021: The Physical Science Basis*), February 2022 (working group two - *Climate Change 2022: Impacts, Adaptation and Vulnerability*), and April 2022 (working group three – *Climate Change 2022: Mitigation of climate change*). These reports clearly articulate the urgent need for immediate action and

greater ambition to decarbonize at all levels of government. The findings of the Sixth Assessment Reports of the IPCC are much clearer and unequivocal than the findings of the Fifth Assessment Reports dating back to 2013/2014. The converging science on dangerous climate change, the impacts, and causes thereof must inform the Court's consideration of whether state action to build new unabated fossil-fuel electrical generation is consistent with the Applicants' *Charter* rights.

31. The Applicants are asking for the Court to find that the Respondents have an obligation to set a Net Zero target for the Crown electrical system and demonstrate that any new fossil fuel-based generation assets are compatible with that target. Alternatively, the Applicants ask this Court to direct the Respondents to set emissions reduction targets in the *MRGHG Regulations* that serve to reduce absolute emissions related to electricity generation within the province. Given the evolution of climate science and the certainty of the causes and impacts of dangerous climate change, the government's expansion of unabated GHG emitting infrastructure infringes the Applicants' *Charter* rights.
32. The Applicants state that ongoing development of new unabated fossil-fuel based generation exacerbates dangerous climate change which infringes their *Charter* rights. The Applicants ask the court to put a moratorium on new unabated fossil-fuel generation assets unless it can be shown that new unabated assets meet the broader Net Zero target. Alternatively, the Applicants ask the court to put a moratorium on new unabated fossil-fuel generation assets unless it can be shown that such new assets would align with revised *MRGHG Regulation* targets that deliver absolute emissions reductions.
33. Should this Court decide not to order the Respondents CIC and SaskPower to prepare a Net Zero target with a deadline, in the alternative, the Applicants suggest that these Respondents have statutory and common law duties of care and the Applicants ask this Court to find that the CIC and SaskPower do not have discretion to engage in building of new unabated polluting electrical generation because that is contrary to their statutory and common law duties of care. Given the findings of the most recent

IPCC Sixth Assessment Reports, any new fossil fuel generation assets proposed should only be built with pollution abatement technology (such as Carbon Capture and Sequestration) to manage the GHG emissions causing dangerous climate change.

Charter rights

34. Pursuant to s. 7 of the *Charter*: “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.”
35. Dangerous climate change caused by anthropogenic GHG emissions poses immediate and growing threats to the Applicants’ *Charter* rights. The Supreme Court of Canada (the “SCC”) has stated:

*Climate change is real. It is caused by greenhouse gas emissions resulting from human activities, and it poses a grave threat to humanity’s future. The only way to address the threat of climate change is to reduce greenhouse gas emissions.*¹²

36. There are myriad ways that climate change impacts the health, lives, liberty, and livelihood of current and future generations of Saskatchewan residents. If global warming exceeds 1.5°C above pre-industrial temperatures, the impacts of climate change in Saskatchewan will include (but will not be limited to):
- a. an increase in the frequency and intensity of acute extreme heat events (e.g. one-in-30 year extreme "heat waves"), with a resulting increase in fatalities, serious illness and severe harm to human health;
 - b. an increase in overall temperatures and heat waves (separate and apart from acute extreme heat events), with a resulting increase in fatalities, serious illness and severe harm to human health;
 - c. an increase in the spread of infectious diseases such as Lyme disease and West Nile Virus (along with other diseases spread by ticks, mosquitos and

¹² *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 2.

other vectors, as well as food and waterborne diseases), with a resulting increase in fatalities, serious illness and severe harm to human health;

- d. an increase in the frequency and intensity of fire activity (including forest wildfires), with a resulting increase in fatalities, serious illness, displacement and severe harm to human health;
- e. an increase in the frequency and intensity of flooding, droughts, and other extreme weather events, with a resulting increase in fatalities, serious illness, displacement, loss of livelihood, loss of water security and severe harm to livestock, crops, and human health;
- f. an increase in the spread of harmful algal blooms in water that Saskatchewan residents use for drinking, watering livestock, and recreational purposes, with a resulting increase in serious illness, loss of livelihoods, and severe harm to human health;
- g. impact on food security and food sovereignty within certain Saskatchewan communities;
- h. an increase in harms to Indigenous peoples, including increased impacts on health, access to essential supplies, ability to carry out traditional activities, loss of livelihoods, and displacement; and
- i. an increase in serious psychological harms and mental distress arising from the impacts of climate change, including but not limited to, the impacts set out in the paragraphs above.

37. These devastating impacts of climate change will be felt in a particularly acute way by vulnerable populations and marginalized communities including youth, women, farmers, the elderly, those with pre-existing health issues and Indigenous peoples. Youth and future generations, in particular, will bear the brunt of the impacts of climate change, given that these impacts will significantly increase in severity and intensity as the years progress, and that they are among the most vulnerable to these

- impacts, both physically and mentally.
38. All of these devastating impacts of climate change will become even more pronounced in Saskatchewan as the Earth's climate warms to levels approaching and exceeding 2°C above pre-industrial levels.
39. The Applicants submit that current state sanctioned GHG emissions are serving to exacerbate dangerous climate change. Therefore, when the Respondents unreasonably take actions to build new unabated fossil fuel-based generation assets, that these actions are inconsistent with the *Charter* because it infringes upon the Applicants' s. 7 right to life and security of the person. The Respondents must refrain from ongoing development and construction of unabated fossil fuel generation assets because such actions interfere with the fundamental rights guaranteed by the *Charter*.
40. In addition, the Applicants submit that s. 7 of the *Charter* consists of an obligation on governments to act in mitigating climate change. This obligation arises from international norms, international treaties to which Canada is a signatory, and the jurisprudential requirement that Canadians be protected by the *Charter* in accordance with treaties to which Canada is a signatory.
41. Although Canada does not have entrenchment of international treaties as part of its Constitution, the SCC has affirmed Chief Justice Dickson's enunciation in numerous cases, that "the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified."¹³
42. Canada is a signatory to the *International Covenant on Civil and Political Rights* ("ICCPR"), which includes a healthy environment as part of the right to life.¹⁴ The

¹³ *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia*, 2007 SCC 27 at para 70.

¹⁴ United Nations International Covenant on Civil and Political Rights, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Human Rights Committee OR, 124th Sess, CCPR/C/GC/36 (2018) at 26 and 62, online: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-36-article-6-right-life> (26 March 2023).

SCC in *Divito v Canada (Public Safety and Emergency Preparedness)*, held that the rights protected by the ICCPR, which is binding on Canada, provide a minimum level of protection in interpreting *Charter* rights.¹⁵

43. The Respondent Government of Saskatchewan has obligations under *The Management and Reduction of Greenhouse Gases Act* (the “MRGHG Act”) to establish a GHG reduction target for Saskatchewan. The *MRGHG Act* compels prescribed regulated emitters to reduce GHG emissions as prescribed by *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations* (the “MRGHG Regulations”). SaskPower is a “prescribed regulated emitter” and s. 16 of the *MRGHG Regulations* limits SaskPower to 77,000,000 tonnes of cumulative emissions for the 2020-2024 compliance period and 64,500,000 tonnes for the 2025-2029 compliance period.
44. The Applicants submit that the “Emission Reduction Obligations” prescribed in the *MRGHG Regulations* are not, in fact, targets to reduce emissions with respect to the 2020-2024 compliance period. The average annual emissions of SaskPower, as disclosed in its annual reports over the past three years (2019-2021) are 14.5 MT/yr. The *MRGHG Regulations* target of limiting cumulative emissions for SaskPower from 2020-2024 equate to an average annual emission of 15.4 MT/yr. Therefore, the effect of the *MRGHG Regulations* is to allow SaskPower to *increase* emissions in the short term.
45. The Applicants seek an order for the Respondents CIC and SaskPower to prepare a SK NZ Electricity Plan by 2035 or 2040 at the latest. The Applicants submit that given the urgency of the climate crisis and the pressing need for transformative action within the next 7 years, such an order is warranted.
46. The *Charter* also enshrines a guarantee of substantive equality in s. 15. Temperatures in Canada have risen by nearly 2 degrees Celsius in the past 80 years, roughly double the global average rate of increase, and are expected to continue to rise faster than

¹⁵ *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para 25.

- that rate. In the Canadian Arctic and northern Saskatchewan, the average temperature has increased at a rate of nearly three times the global average, and that increase is causing significant ecosystem impacts already.
47. Due to the varying local impacts of dangerous climate change, it can be argued that no amount of global warming is consistent with achieving substantive equality. The impacts of climate change are already proving to have disproportionate impacts on the most vulnerable groups across Canada and the same holds true across the province of Saskatchewan. Similarly, there is a time lag between cause and effect in our climate, and the ecological and socio-economic systems that depend on it. Younger residents of Saskatchewan are certain to be disproportionately impacted by dangerous climate change as they are anticipated to live longer and therefore feel the full effect of present emissions and the maximum temperature response they elicit.
48. Many vulnerable groups are also disproportionately impacted by dangerous climate change. Citizens with personal characteristics that are immutable as enumerated in s.15 of the *Charter* such as Indigenous people, women, and those living with mental and physical disabilities all experience greater impacts from the effects of climate change.
49. Finally, there are a growing number of people experiencing ecoanxiety as represented by the Personal Applicants supporting this application suffering from ecoanxiety. Ecoanxiety is caused by experiencing the effects of climate change first hand, by worrying about the effects of climate change, feeling constant concern of inadequate government action to reverse the effects of climate change, and being subjected to oppressive state action that serves to increase cumulative GHG emissions.
50. Ongoing action by the Respondents to continue to finance, develop, and approve unabated fossil fuel electrical generation infrastructure serves to increase the GHG emissions that are causing dangerous climate change and exacerbates the mental condition of ecoanxiety. The anthropogenic existential threat caused primarily by GHG emissions has created a serious health impact, particularly on youth, which has been identified as ecoanxiety by medical practitioners and therefore violates the s.7

Charter rights of all citizens and young people in particular. The public comments of the Honourable Scott Moe, Premier of Saskatchewan, regarding the fact that Saskatchewan’s GHG emissions are the highest per capita in Canada as reported in the media that he “doesn’t care” did nothing except aggravate many of the Applicants’ medical conditions.¹⁶

51. All citizens’ s.7 *Charter* rights to life and security of person are infringed by government action that increases GHG emissions via unabated fossil-fuel electrical generation.
52. However, many citizens also face adverse impact discrimination because climate change disproportionately affects those with personal characteristics protected in s.15 of the *Charter* such as race, sex, age, physical or mental disability, or analogous grounds such as occupation. Those with multiple enumerated or analogous characteristics face amplified harms from increased GHG emissions. Those living with ecoanxiety face additional violations of human dignity that exacerbates their harm. The Applicants submit that state action to increase GHG emissions has the effect of imposing disadvantage on those with the enumerated and analogous grounds listed above and submit that this ongoing action is inconsistent with substantive equality enshrined by the *Charter* at s.15 over and above the s.7 infringements impacting all citizens.
53. The Respondents must meaningfully address GHG emissions in keeping with substantive equality because it will result in better outcomes for those disproportionately impacted by climate change including the youth, women, Indigenous peoples, farmers, and those suffering from ecoanxiety, and reduce the unequal impacts experienced across the varied geography and ecosystems of Saskatchewan and Canada as a whole.

¹⁶ David Shield, “Premier Moe defends ‘I don’t care’ comments on per capita carbon emissions in Sask.,” (2022) CBC, online: <https://www.cbc.ca/news/canada/saskatoon/premier-moe-care-comments-carbon-emissions-1.6416828> (3 March 2023).

Indigenous Rights and Rights of Farmers

54. The SCC has stated: “Climate change has also 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.”¹⁷
55. The traditional rights of the Indigenous people depend crucially on practices tuned to a cyclical natural environment: for example, hunting caribou by tracking their migrations, gathering food and medicinal plants in season, and trapping and fishing in times of low or high waters. The development of new fossil fuel-based generation assets destabilizes these cycles, causing dangerous climate change.
56. The effect of the Respondents’ actions to build new unabated fossil fuel-based generation causes adverse discriminatory climate change impacts on Indigenous people and their individual rights enshrined by s.7 and s.15 of the *Charter*. Indigenous peoples’ race and religion are enumerated grounds in s.15 of the *Charter* that are engaged because dangerous climate change has impacts that disproportionately affect Indigenous traditional and cultural practices in a “particularly serious” way that serves to exacerbate the historical and sociological disadvantages already facing Indigenous peoples in Saskatchewan.
57. Primary producers in Saskatchewan also rely on a predictable and cyclical natural environment: seeding, calving, harvest, pasturing livestock, and putting up hay all depend greatly on water security and a stable climate. The Applicants submit that farmers will experience the impacts of climate change more than most other occupations in Canada due to a heavy reliance on the environment, their remote rural locations, and their economic situations. The applicants take the position that a farmer’s occupation is an analogous ground because it is constructively immutable.¹⁸ The effect of the Respondents actions to exacerbate dangerous climate change causes disproportionate harm and adverse impact discrimination upon Saskatchewan

¹⁷ *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 11.

¹⁸ *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 (CanLII), [2001] 3 SCR 1016 at paras 166-170, and *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, at para 319.

farmers.

58. In the context of considering adverse impact discrimination, the SCC has stated: “discrimination is “frequently a product of continuing to do things ‘the way they have always been done’”, and that governments must be “particularly vigilant about the effects of their own policies” on members of disadvantaged groups.”¹⁹
59. Farmers have historically been hit the hardest from environmental and ecological disasters. The widespread drought of 2021 reduced farm yields by over 40% across much of Saskatchewan.²⁰ Farmers also faced widespread flooding in 2014-2015.²¹ In addition, over 10,000 farm families walked away from their farms in the Palliser Triangle and trekked to the north during the prolonged drought, ecological crisis of blowing soil and erosion, and the economic collapse of the 1930s.²² The historical record demonstrates that farmers are among the most impacted by natural disasters associated with extreme weather events. Dangerous climate change caused by the Respondents actions is increasing extreme weather events and amounts to adverse impact discrimination upon farmers of Saskatchewan.
60. The Applicants point out that farmers and Indigenous peoples are more acutely impacted by state action to increase GHG emissions and submit that this ongoing action is inconsistent with substantive equality enshrined by the *Charter* at s.15, as they are disproportionately impacted and submit that ongoing emissions of GHGs and the ongoing approval of new unabated fossil fuel generation constitutes discriminatory action against the Indigenous peoples and farmers of Saskatchewan.

SUMMARY OF THE MATERIAL FACTS

61. Human activity, primarily the burning of fossil fuels, is the main cause of dangerous

¹⁹ *Fraser v. Canada (Attorney General)*, 2020 SCC 28 (CanLII), at para 31.

²⁰ Statistics Canada, “Drought drags down Saskatchewan economy in 2021,” (2022) Ottawa, ON: Government of Canada, online: <https://www.statcan.gc.ca/o1/en/plus/1852-drought-drags-down-saskatchewan-economy-2021> (26 March 2023).

²¹ CBC News, “Up to 3 million Saskatchewan acres flooded,” (10 July 2014), online: <https://www.cbc.ca/news/canada/saskatchewan/up-to-3-million-saskatchewan-farm-acres-flooded-1.2703137> (26 March 2023).

²² Gray, J., *Men Against the Desert* (Calgary: Fifth House Ltd., 1967) at 4.

- climate change. GHG emissions from human activities have already heated the earth more than 1.1 degrees Celsius above pre-industrial levels. Ongoing and increasing GHG emissions serve to accelerate dangerous climate change that will impact all species on the planet and damage the environment.
62. There is a relationship between cumulative anthropogenic CO₂ emissions and the global warming they cause. Every additional molecule of GHG emitted by human activity exacerbates the magnitude of these impacts and risks pushing the Earth system into abrupt and irreversible climate changes known as ‘large-scale discontinuities’ or ‘tipping points.’ Tipping points have high impacts and are interconnected across different biophysical systems that can lead to cascading effects and positive feedback. Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets, and global sea level.
63. In December 2015, the parties to the United Nations Framework Convention on Climate Change adopted the Paris Agreement. The parties committed to holding global warming to “well below” 2 degrees Celsius above pre-industrial levels and to making efforts to limit it to 1.5 degrees Celsius above pre-industrial levels. Canada ratified the Paris Agreement on October 5, 2016.
64. In 2018, Parliament enacted the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186 (“GGPPA”). The GGPPA imposes a minimum national standard pollution price that is scheduled to increase periodically arriving at \$170/ton of CO₂e emitted by 2030. If SaskPower continues to rely on fossil fuel-based generation, rising pollution prices will undermine the ability of the CIC to control electricity rates for Saskatchewan residents and businesses as per the powers bestowed to the CIC under *The Crown Corporations Act, 1993*.
65. The Federal government enacted the *Canadian Net-Zero Emissions Accountability Act* on June 29, 2021. This legislation enshrines in legislation the Government of Canada’s commitment to achieve net-zero greenhouse gas emissions by 2050. In March 2022, the Government of Canada introduced *Canada’s 2030 Emissions*

Reduction Plan, which commits to achieve 40-45% emissions reductions below 2005 levels by 2030. Evidence shows that provinces can undermine each other in their climate mitigation efforts, thereby holding Canada back in achieving its Net Zero obligations: “Illustrative of the collective action problem of climate change, between 2005 and 2016, the decreases in GHG emissions in Ontario, Canada’s second largest GHG emitting province, were mostly offset by increases in emissions in two of Canada’s five largest emitting provinces, Alberta and Saskatchewan”.²³

66. As outlined in the SaskPower 2021 - 2022 Annual Report, gross electricity supplied during the reporting period was 25,644 GWh provided by fossil gas (42%), coal (37%), hydroelectricity (11%), wind (6%), imports (3%), and other sources (1%).
67. Renewable energy from solar and wind is proven and ready to deploy at scale now. Numerous methods of electrical storage exist and could be implemented in Saskatchewan to support intermittent generation from renewables like solar and wind. In addition to energy storage, many jurisdictions have successfully deployed demand response and overcapacity strategies leading to grid penetration of non-synchronous renewables with respect to total demand exceeding 20% in Denmark, Ireland, Spain, and Great Britain as of 2020, for example. The ceiling of what is possible with renewable solar and wind energy is constantly rising and SaskPower is presently far below the ceiling of the possible.
68. Furthermore, the Respondents could commit to building gas-fired generation equipped with Carbon Capture and Storage to mitigate the harmful pollution with the best available technology.
69. Put plainly, the Respondents have numerous options for electricity generation and energy storage, and they are not limited to the planned transition from coal to unabated gas-fired generation.
70. SaskPower has historically obstructed efforts of others to pursue renewable energy projects. James Smith Cree Nation has proposed to build a large hydroelectric facility

²³ *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 24.

on their reserve for the past 15 years.²⁴ The local company SaskWind shut down after spending almost 5 years trying to promote wind energy in Saskatchewan.²⁵ The reason Saskatchewan does not yet have a Net Zero plan for our electrical grid is not because it is impossible - it was simply a choice not to bother.

71. A decarbonized electrical grid is the prerequisite for a Net Zero society. There are enough renewable energy resources to meet Saskatchewan's energy demands. By electrifying sectors that were previously not electrified, it becomes easier to balance the grid.
72. The asset management firm Lazard, which tracks levelized costs of energy per kWh, has data showing the cost effectiveness of renewable energy compared to fossil fuel generation. Clean electricity generation is already cost competitive with conventional unabated fossil fuel generation. At the end of 2021, renewable energy accounted for 38% of global installed capacity and renewables contributed to an unprecedented 81% of global power additions that year. Clearly most electric utilities are building renewable energy, not unabated gas-fired generation.
73. The Respondents have continued to expand and construct new unabated electrical generation assets that burn fossil fuels:
 - a. The 353MW Chinook Power Station near Swift Current, SK was commissioned in November 2019;
 - b. The 377MW Great Plains Power Station near Moose Jaw, SK is expected to be commissioned in 2024;
 - c. SaskPower selected the site for potential new gas-fired power stations at NW-36-33-24 W2M, near its Wolverine Switching Station, in the Lanigan area.

²⁴ Thomas Piller, "First Nation planning hydro-electric facility on Saskatchewan river," (25 July 2019) Global News, online: <https://globalnews.ca/news/5686553/first-nation-hydro-electric-facility-saskatchewan-river/> (26 March 2023).

²⁵ Erin Petrow, "Saskwind calls it quits after frustrations about new Chinook power station," (2016) Saskatoon StarPhoenix, online: <https://thestarphoenix.com/business/energy/saskwind-calls-it-quits-after-frustrations-about-new-chinook-power-station> (3 March 2023).

SaskPower plans to build a 370MW combined cycle gas-fired power station at this site. SaskPower forecasts that the 260MW combustion turbine, for simple cycle dispatch, would be in service by 2027 and the remainder of the plant would be operational by 2028;²⁶

- d. SaskPower continues to evaluate sites for new natural gas power stations because natural gas “produces half the emissions of conventional coal.”²⁷

74. To achieve a Net Zero electrical grid, utilities must rely on negative emissions technologies or offsets to provide a balance of emissions that equates to zero (Net Zero). More emissions from fossil fuel generation plants (particularly unabated power plants) will require more negative emissions technologies or offsets to achieve zero emissions by the deadline. This is termed a “total system equivalency” of Net Zero. Reasonable management and planning of SaskPower’s generation future that is consistent with *Charter* rights should include a commitment to decarbonizing SaskPower’s generation and a plan to achieve a total system equivalency of Net Zero.

²⁶ See Correspondence from SaskPower dated 12 July 2022 at Tab N of this Application.

²⁷ SaskPower, “Natural Gas,” (2023) Our Power Future Campaign, online: <https://www.saskpower.com/our-power-future/our-electricity/electrical-system/balancing-supply-options/natural-gas> (3 March 2023).

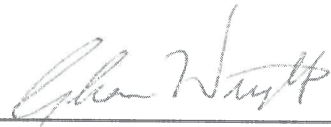
THE APPLICANTS' SUPPORTING MATERIAL

75. The Applicants rely upon the following materials and the exhibits contained therein:

- a. The affidavit of applicant Sabrina Dykstra, commissioned remotely via electronic means on March 19, 2023;
- b. The affidavit of applicant Jill Forrester, commissioned remotely via electronic means on March 22, 2023;
- c. The affidavit of applicant Ryan Heise, commissioned in person on March 17, 2023;
- d. The affidavit of applicant Kayla Hopkins, commissioned remotely via electronic means on March 21, 2023;
- e. The affidavit of applicant Lynn Oliphant, commissioned in person on March 17, 2023;
- f. The affidavit of applicant Harold Pexa, commissioned in person on March 20, 2023;
- g. The affidavit of applicant Amy Snider, commissioned remotely via electronic means on March 21, 2023;
- h. The affidavit of expert witness, Katherine Arbuthnott, Ph.D., commissioned remotely via electronic means on March 22, 2023;
- i. The affidavit of expert witness, Amber Fletcher, Ph.D., commissioned remotely via electronic means on March 22, 2023;
- j. The affidavit of expert witness, Lindsay Galway, Ph.D., commissioned remotely via electronic means on March 19, 2023;
- k. The affidavit of expert witness, James Hansen, Ph.D., commissioned remotely via electronic means on March 17, 2023;

- l. The affidavit of expert witness, David Maenz, Ph.D., commissioned remotely via electronic means on March 20, 2023;
- m. The affidavit of Mark Bigland-Pritchard on behalf of public interest applicant, Climate Justice Saskatoon Organization Inc., commissioned remotely via electronic means on March 21, 2023;
- n. The letter from SaskPower to William and Florence Wardell, dated 12 July 2022.
- o. Such other affidavit material and evidence as Counsel may advise and this Court may deem proper.

DATED at the City of Saskatoon, Saskatchewan, this 29th day of March, 2023.



Glenn Wright, solicitor for the Applicants

This notice is issued at the above-noted judicial centre on the 31 day of March, 2023.



R. HEISLER
DY. LOCAL REGISTRAR

D. Local Registrar

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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