

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

**SABRINA DYKSTRA, a minor by her litigation guardian CLAIRE
DYKSTRA, JILL FORRESTER, RYAN HEISE, KAYLA HOPKINS,
LYNN OLIPHANT, HAROLD PEXA, AMY SNIDER, and
CLIMATE JUSTICE SASKATOON ORGANIZATION INC.**

APPELLANTS
(APPLICANTS)

- and -

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

RESPONDENTS
(RESPONDENTS)

**FACTUM OF THE RESPONDENTS (RESPONDENTS), SASKATCHEWAN
POWER CORPORATION and CROWN INVESTMENTS CORPORATION OF
SASKATCHEWAN**

Solicitors for the Respondent:

McKercher LLP
500 – 211 19th Street East South
Saskatoon, SK S7K 5R6

Lawyer in Charge: Collin K. Hirschfeld, K.C.
Caroline C. Seshadri

Telephone: (306) 653-2000
Facsimile: (306) 653-2669
Email address: c.hirschfeld@mckercher.ca
c.seshadri@mckercher.ca

Solicitors for the Appellants:

Procido LLP
200 – 165 Third Avenue South
Saskatoon, SK S7K 1L8

Lawyer in Charge: Glenn A. Wright

Telephone: (306) 380-2583
Facsimile: (306) 664-1616
Email address: glenn.wright@procido.com

INDEX

I.	INTRODUCTION	RF1
II.	JURISDICTION AND STANDARD OF REVIEW	RF2
III.	SUMMARY OF FACTS	RF4
IV.	POINTS IN ISSUE	RF6
V.	ARGUMENT	RF7
A.	The Chambers Judge made no errors relating to the proposed amendments and hearing of argument.....	RF7
B.	The Claim articulates no justiciable cause of action.....	RF9
(i)	The Court’s Role.....	RF10
(ii)	Separation of Powers	RF10
(iii)	State Action.....	RF11
(iv)	Climate Change Jurisprudence and International Law	RF14
(v)	The pleadings disclose no reasonable cause of action against SaskPower and CIC 18	
(vi)	Conclusion on Justiciability.....	RF19
C.	The Chambers Judge did not err in refusing to grant leave for further amendments.....	RF19
VI.	RELIEF	RF21
VII.	TABLE OF AUTHORITIES	RF23

**FACTUM OF THE RESPONDENTS (RESPONDENTS), SASKATCHEWAN
POWER CORPORATION and CROWN INVESTMENTS CORPORATION OF
SASKATCHEWAN**

I. INTRODUCTION

1. Proper pleadings are a critical component of our judicial system. The gravity of the *lis* involved does not lower the standards of proper pleading. Rather, it demands adherence to proper pleading. It is only with properly framed pleadings that the Court can enter into a proper and full consideration of the *lis*. As the Chambers Judge found here, the Appellants' pleadings did not raise a justiciable claim, nor did they raise a reasonable cause of action, against any of the Respondents.

2. The decision below nor this this appeal amount to a debate about climate change, its seriousness and impact, or appropriate mitigating measures. The Appellants have all raised concerns about the Government of Saskatchewan's (the "**Saskatchewan Government**") response to climate change, and actions taken by Respondents, Saskatchewan Power Corporation ("**SaskPower**"), Crown Investments Corporation of Saskatchewan ("**CIC**") to provide electricity in Saskatchewan. The Appellants are entitled to disagree with and raise concerns about these matters. However, if they choose to do so before the Courts, as they have here, they must do so in the proper manner and with proper pleadings. Evidence and arguments about the realities of climate change and the ways the Appellants believe it can and should be addressed had no place in the Court below or on this appeal.

3. The Appellants have filed an appeal of the decision of Justice Kuski Bassett, dated October 10, 2025, (the "**Decision**") striking their Originating Application against the SaskPower, CIC, and the Saskatchewan Government. The Originating Application and the subsequent amendments will be referred to collectively as the "**Claim**".

4. The Claim relates to the Appellants concerns about greenhouse gas emissions ("**GHGs**") in Saskatchewan, as well as SaskPower and CIC's electricity

generation. The Appellants believe the Respondents are not responding appropriately to the threat of climate change, and continue to exacerbate the harms, while not aligning with international treaties and instruments to which Canada is a signatory.

5. SaskPower and CIC brought an application to strike the Claim (the “**Strike Application**”) on several bases. The claims against SaskPower and CIC were not justiciable. The particulars concern matters of public policy and asked the court to make decisions that are the purview of the legislative branch of government. Additionally, or alternatively, the Claim disclosed no reasonable cause of action against SaskPower and CIC.

6. The Strike Application was heard alongside an Application to Strike brought by the Saskatchewan Government, and an application to amend the Originating Application by the Appellants for a second time. The Chambers Judge permitted the amendments to the Claim in part, and disallowed others as they did not form proper pleadings. She then considered the amended Claim in the context of the Strike Application and struck the claim against all Respondents.

7. For the reasons that follow, this appeal must be dismissed as against SaskPower and CIC. This factum is filed on behalf of, and addresses the arguments relevant to, SaskPower and CIC.

II. JURISDICTION AND STANDARD OF REVIEW

8. This Honourable Court has jurisdiction to consider the appeal under *The Court of Appeal Act*.¹

9. The well-established appellate standards of review apply to this matter:

- (a) On matters of law the standard is correctness;²
- (b) On matters of fact the standard is “palpable and overriding error”. A palpable error is one that can be “plainly seen”.³ An overriding error is described as

¹ *The Court of Appeal Act, 2000*, [SS 2000, c C-42.1](#), s 7(2).

² *Housen v Nikolaisen*, [2002 SCC 33](#), at para 8, [2002] 2 SCR 262 [*Housen*].

one that “must play an essential part not just in the narrative of the judgment but “in the reasoning process resulting in a conviction”.⁴ The error must be so material as to be determinative of the outcome of the case.⁵ This standard is “highly deferential”; that a Court of Appeal might take a different view of the evidence is insufficient to find the trial judge made a palpable and overriding error, and appellate courts must be cautious to avoid retrying the case.⁶

- (c) On matters of mixed fact and law, the standard is correctness only where the issue is an extricable point of law.⁷

10. Whether a Chambers Judge erred by striking a claim on the basis that it disclosed no reasonable cause of action is a question of law, and therefore, reviewable on the correctness standard.⁸ Additionally, whether a Chambers Judge erred in deciding to refuse to allow amendments to the pleadings is also reviewable on a correctness standard where the question is whether or not it was plain and obvious the proposed amendments reveal no reasonable cause of action.⁹ This test remains the same “regardless of whether the Chambers Judge refused to allow the amendments or allowed the amendments and then struck them.”¹⁰

11. However, the interpretation of a pleading is not a question of law, and is therefore, subject to the palpable and overriding error standard of review.¹¹ Therefore,

³ *Ibid* at para 6.

⁴ *R v Lohrer*, [2004 SCC 80](#) at para 2, 249 DLR (4th) 1, quoting *R v Morrissey*, [1995] O.J. No. 639 (QL), [22 OR \(3d\) 514](#), at para 93.

⁵ *Salomon v Matte-Thompson*, [2019 SCC 14](#) at para 33, 432 DLR (4th) 1.

⁶ *Housen*, *supra* note 2 at paras 3, 4, and 14; *J.N.C. v R*, [2013 NBCA 59](#) at para 15.

⁷ *Housen*, *supra* note 2 at para 27.

⁸ *JV&M Civil Constructors Inc. v Farnham*, [2025 SKCA 72](#) at para 16 [*JV&M*]; *Sawatzky v Prince Albert Golf and Curling Club Inc.*, [2025 SKCA 16](#) at para 23, [2025] 7 WWR 360; *Merchant Law Group LLP v Slusar*, [2022 SKCA 75](#) at para 24; *Harpold v Saskatchewan (Corrections and Policing)*, [2020 SKCA 98](#) at para 21 [*Harpold*]; *Filson v Canada (Attorney General)*, [2015 SKCA 80](#) at para 22, 388 DLR (4th) 66.

⁹ *JV&M*, *supra* note 8 at para 18. See also *Wilson v Saskatchewan Water Security Agency*, [2023 SKCA 16](#) at para 21, 478 DLR (4th) 170.

¹⁰ *JV&M*, *supra* note 8 at para 18.

¹¹ *Pfeifer Holdings Ltd. v North Battleford (City)*, [2025 SKCA 4](#) at para 32. See also *Kelly Panteluk Construction Ltd. v Lloyd’s Underwriters*, [2024 SKCA 42](#) at para 28, 41 CCLI (6th) 238; *Sattva Capital Corp. v Creston Moly Corp.*, [2014 SCC 53](#), [2014] 2 SCR 633 [*Sattva*]; *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, [2021 SKCA 36](#), [2021] 9 WWR 1.

this standard applies to the Chambers Judge’s review of whether the proposed amendments represented proper pleadings.

III. SUMMARY OF FACTS

12. In the “Summary of the Facts” portion of their factum, the Appellants include several paragraphs that, with respect, are not facts, consist of argument, that were not before the Chambers Judge, and that are not relevant to the issues before this Court.¹²

13. The facts at issue in this appeal are relatively straightforward.

14. On March 31, 2023, the Appellants filed the Originating Application.

15. On July 14, 2023, the Appellants amended the Originating Application to refer to one of the applicants as being represented by her litigation guardian.¹³

16. On September 13, 2023, SaskPower and CIC filed the Strike Application¹⁴ and on September 14, 2023, the Saskatchewan Government filed an Application to Strike.¹⁵

17. On February 5, 2024, SaskPower and CIC and the Saskatchewan Government served their briefs of law in support of their respective applications.

18. The Strike Application was scheduled to be heard concurrently with the Saskatchewan Government’s Application to Strike on April 5, 2024.

19. On February 14, 2024, SaskPower and CIC were served with a Notice of Application by the Saskatchewan Environmental Society (“SES”) seeking to be added as an intervenor to the proceedings (the “**Intervention Application**”). SES sought to participate in both the Strike Application and in hearing the Claim. In light of the

¹² See, for example, Factum of the Appellants dated January 15, 2026, at paras 16 (last sentence), 17 (last sentence), 23-26, 30-32, 74, 88-92 [Appellant Factum].

¹³ Appeal Book, filed January 15, 2026, at A0001 [Appeal Book].

¹⁴ *Ibid* at A0028.

¹⁵ *Ibid* at A0032.

Intervention Application, and SES's desire to participate in the proceedings, the April 5, 2024, was used to hear the Intervention Application.

20. SES filed a Brief of Law in support of the Intervention Application on March 22, 2024. Briefs of Law were filed on behalf of the Applicants and the Saskatchewan Government on April 1, 2024. A Brief of Law on behalf of SaskPower and CIC was filed on April 2, 2024.

21. The Intervention Application proceeded before Justice Chow on April 5, 2024. The Strike Application was adjourned pending a determination on the Intervention Application.

22. On May 31, 2024, the Appellants served and filed an Amended Originating Application.¹⁶

23. On June 27, 2024, the Appellants filed a request for case management, which was denied by Chief Justice Popescul on August 29, 2024.

24. On August 6, 2024, Justice Chow released his decision on the Intervention Application, and dismissed SES's application to intervene in the Strike Application. SES's application to intervene in the Claim was adjourned *sine die*, pending the adjudication of the Strike Application.

25. The Appellants served a Brief of Law in response to the Strike Application on August 28, 2024.

26. On September 5, 2024, the Appellants served a Notice of Application seeking leave to amend the Originating Application. The Appellants also served an Application without Notice seeking an order allowing for short service of the Notice of Application and directing it be heard on September 17, 2024.

¹⁶ *Ibid* at A0037.

27. On September 10, 2024, Justice Tomka issued a fiat denying the Appellants' request for short service and directing the application to proceed with notice in the normal course.

28. On September 14, 2024, the Appellants served and filed a Notice of Application to further amend the Amended Originating Application.¹⁷

29. All parties agreed to hear the Application to amend the Amended Originating Application and the two Applications to Strike together.¹⁸ This hearing proceeded on October 4, 2024.

30. The Chambers Judge issued her decision on October 10, 2025, with a corrigendum issued October 27, 2025.¹⁹

IV. POINTS IN ISSUE

31. The Appellants cite numerous grounds of appeal including:

- (a) Incorrectly qualifying the Claim and proposed amendments;
- (b) Misinterpreting and misapplying jurisprudence;
- (c) Mischaracterizing the impugned actions as pure policy;
- (d) Striking the Claim based on Remedies;
- (e) Overlooking international law arguments;
- (f) Mischaracterizing *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations*;²⁰
- (g) Prohibiting further amendments to the Claim; and

¹⁷ *Ibid* at A0070

¹⁸ This Chambers date was postponed to October 2024, despite being initially scheduled for April 2024, to allow for the hearing of an Application to Intervene, which was dismissed.

¹⁹ Appeal Book, *supra* note 13 at A0072.

²⁰ *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations*, [RRS c M-2.01 Reg 1](#) [*MRGHG Regulations*].

(h) Mischaracterizing the claim “without hearing argument.”

32. The Respondents, SaskPower and CIC, submit the appeal can be simplified into the following issues, and should be dismissed against them in its entirety:

- (a) The Chambers Judge made no errors relating to the proposed amendments and hearing of argument;
- (b) The pleadings articulate no justiciable cause of action;
 - (i) The pleadings disclose no reasonable cause of action against SaskPower and CIC;
- (c) The Chambers Judge did not err in refusing to grant leave to further amend the pleadings.

V. ARGUMENT

A. The Chambers Judge made no errors relating to the proposed amendments and hearing of argument

33. The Appellants alleged the Chambers Judge mischaracterized their proposed amendments as pleading evidence, not material fact. As discussed, the findings of the Chambers Judge on these points are to be assessed on the palpable and overriding error standard of review as it concerns interpretation of the pleadings.

34. The Chambers Judge made no palpable and overriding error in coming to this conclusion. The Appellants state at paragraph 98 of their factum that the “amended pleadings merely direct the reader to the evidence.” However, referring the reader to evidence, which included affidavit evidence and academic articles, asks the reader to consider that evidence as part of the pleadings. As noted by the Chambers Judge, a pleading “...should not be prolix, garrulous, argumentative or replete with opinions, speculation or descriptions of evidence.”²¹

²¹ Appeal Book, *supra* note 13 at A0072 - Decision of Justice Kuski Bassett issued, October 10, 2025 (corrigendum issued October 27, 2025) [Decision] at para 21, citing *Mallard v Killoran*, [2005 SKQB 203](#) at para 26.

35. The proposed amendments explicitly describe contents of the affidavit evidence. The following is a non-exhaustive list of examples:

- (a) *Paragraph 27*: “The affidavit of expert witness, Dr. James Hansen, outlines the evidence of fossil fuel emissions driving concentrations of GHG to unprecedented levels.”
- (b) *Paragraph 32*: “Not only is Net Zero needed, but it is achievable, as described in the affidavit of expert witness, David Maenz.”
- (c) *Paragraph 37*: “The affidavits of the Personal Applicants demonstrate that dangerous climate change has already directly impacted their lives...”
- (d) *Paragraph 53*: “Dr. Amber Fletcher outlines several disproportionate impacts climate change has on various distinct groups, including gender (women in particular). ... which Dr. Katherine Arbuthnott focused on in her affidavit. Dr. Lindsay Galway in her affidavit discusses how the rights of young people are affected by the growing impact of climate change.”

36. The Claim also contained argument, citing academic articles and case law, including, but not limited to, the following:

- (a) *Paragraph 65*: “...Evidence shows that provinces can undermine each other in their climate mitigation efforts, thereby holding Canada back in achieving its Net Zero obligations...”
- (b) *Paragraph 79*: “James Smith Cree Nation has proposed to build a large hydroelectric facility on their reserve for the past 15 years. The local company SaskWind shut down after spending almost 5 years trying to promote wind energy in Saskatchewan. 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.” The citations are omitted from this reproduction but direct the reader to news articles about the above claims.

37. The Chambers Judge made no reviewable error in determining these amendments, among others noted at paragraph 22-23 of the Decision, amounted to impermissibly pleading evidence or argument. The above demonstrate clear support for the findings of the Chambers Judge and were appropriately disallowed.

38. The Appellants also argue the Chambers Judge “erred by making a factual determination based on a misinterpretation of the pleadings without hearing argument as a basis for striking the Application.”²² As noted above, the Chambers Judge did not misinterpret the pleadings. Clear examples of argument and evidence were outlined above.

39. What the Appellants mean by misinterpreting the pleadings “without hearing argument” is unclear. A strike application does not consider the merits of a claim. Therefore, no argument on the merits is appropriate. That being said, extensive argument was heard on the positions relevant to the Strike Application, and proposed amendments. A lengthy hearing took place in Chambers on October 4, 2024. The standard time limits were waived, and the Appellants made lengthy and substantial submissions to the Chambers Judge, in addition to filing written submissions. The Appellants were given every opportunity to make any submissions they wished to make on the issues relevant for the applications.

B. The Claim articulates no justiciable cause of action

40. Justiciability relates to the subject matter of a claim, assessing whether the issue in question is appropriate for the court to decide.²³ To be justiciable, a court must have both the institutional capacity and legitimacy to decide the claims.²⁴ The Chambers Judge correctly identified that justiciability is appropriately determined on an application

²² Appellant Factum, *supra* note 12 at para 34(c).

²³ *La Rose v Canada*, [2020 FC 1008](#) at para 27, 477 CRR (2d) 239 [*La Rose Trial Decision*]; *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, [2018 SCC 26](#) at paras 32-35, [2018] 1 SCR 750 [*Highwood*]; *Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, [2015 FCA 4](#) at para 62, 379 DLR (4th) 737 [*Hupacasath*]; *Misdzi Yikh v Canada*, [2020 FC 1059](#) at para 17, 474 CRR (2d) 53 [*Misdzi Yikh Trial Decision*].

²⁴ *La Rose Trial Decision*, *supra* note 23 at para 31.

to strike. She further correctly identified the law as it relates to justiciability, including the three considerations to determine whether a claim is justiciable.²⁵

41. The Chamber's Judge's decision on this point is subject to the correctness standard of review.

(i) The Court's Role

42. The Chambers Judge correctly noted that courts must act within their capacity and legitimacy. To be justiciable, an issue must be one that is appropriate for a court to decide.²⁶ Decisions on combatting climate change, including implementing legislation to meet targets, is a matter for elected officials, not for the courts.

(ii) Separation of Powers

43. Climate change is an inherently complex, controversial and political issue that requires the cooperation of all levels of government and the international community. The Chambers Judge correctly noted that policy and political questions do not always preclude judicial involvement. However, jurisprudence is clear that some questions are "so political that courts are incapable or unsuited to deal with them, or should not deal with them in light of the time-honoured demarcation of powers between the courts and other branches of government."²⁷

44. Granting the Appellants' desired relief would amount to the Chambers Judge assuming the policy making function held by the executive and legislative branches of government contrary to the separation of powers.

45. The court's role is "not to second guess policy decisions."²⁸ When making policy decisions, the legislative and executive branches are often balancing a variety of social, political, and economic factors, among others. They must be given "reasonable

²⁵ See Decision, *supra* note 21 at paras 52-78.

²⁶ Decision, *supra* note 21 at para 62, citing *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, [2018 SCC 26](#) at paras 32, 34, [2018] 1 SCR 750.

²⁷ *Hupacasath*, *supra* note 23 at para 62; see also *La Rose Trial Decision*, *supra* note 23 at para 33.

²⁸ *Andrews v Law Society of British Columbia*, [\[1989\] 1 SCR 143](#) at 194, 56 DLR (4th) 1.

room to manoeuvre.”²⁹ They cannot do so if courts direct that specific actions are undertaken.

46. The Appellants have argued the Chambers Judge erred in focusing on the remedies sought to dismiss the Claim without leave to amend. However, the remedies sought are central to determining justiciability. The Chambers Judge had to assess the remedies to determine whether the Appellants were asking the court to overstep the time-honoured separation of powers. She concluded they were. Therefore, the Claim was not justiciable.

47. A justiciability analysis must consider the entire Claim. Not only did the Appellants not impugn specific legislation or a specific state action to create a sufficient legal anchor to the Claim, as discussed more below, the remedies asked the Chambers Judge to act outside of the Court’s constitutional role. No error was made in her analysis.

(iii) State Action

48. The Appellants allege violations of their rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*.³⁰ *Charter* issues have long been recognized as justiciable, as long as policy choices have been translated into a law or state action that can be subject to scrutiny.³¹ In this case, the Chambers Judge correctly concluded that no law or state action has been alleged such that the Appellants’ *Charter* claims are justiciable.

49. A claim is not justiciable merely because a violation of *Charter* rights is alleged. A justiciable *Charter* claim must challenge a particular law or particular application of a law; it must not focus on a political question.³² As stated in *Tanudjaja*, challenging a particular law or application to a law, is an “archetypal feature” of *Charter* claims.³³

²⁹ Decision, *supra* note 21 at para 69.

³⁰ *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), [1982, c 11](#) [*Charter*].

³¹ *La Rose Trial Decision*, *supra* note 23 at paras 36-38; *Misdzi Yikh Trial Decision*, *supra* note 23 at paras 22, 55; *Tanudjaja v Canada (Attorney General)*, [2014 ONCA 852](#) at para 22, 379 DLR (4th) 467.

³² *Tanudjaja*, *supra* note 31 at para 22.

³³ *Ibid.*

50. The Climate Applicants have not challenged a particular law or application of a law under which SaskPower and CIC are operating or developing the Great Plains and Wolverine power plants. Rather, the Claim appears to be based merely on the fact that SaskPower and CIC are Crown corporations, deriving authority from statute, and are involved in power plant operations, in addition to being bound by the *MRGHG Regulations* emissions targets. This cannot sustain a *Charter* claim.

51. The fact that addressing climate change may have a legal component generally does not automatically create the necessary legal component in the Claim. SaskPower/CIC's development of UFFGA's are neither a law nor application of a law, despite the Appellants arguing the Chamber's Judge mischaracterized these actions as "policy decisions."³⁴

52. The decision to develop and construct UFFGA's are complex, multifactorial business decisions. The fact that these decisions were made pursuant to SaskPower's legislated ability to generate power in Saskatchewan when doing so does not establish a sufficient legal component to ground a *Charter* claim.

53. As noted by the Chambers Judge, the Ontario Court of Appeal ("ONCA") in *Tanudjaja* found the claimants did not advance a question of law but instead asked the court to step outside its role.³⁵ At issue in *Tanudjaja* was the overall approach to homelessness, with the claimants asking the court to implement and supervise an alternate policy. The ONCA declined:

[33] Finally, there is no judicially discoverable and manageable standard for assessing in general whether housing policy is adequate or whether insufficient priority has been given in general to the needs of the homeless. This is not a question that can be resolved by application of law, but rather it engages the accountability of the legislatures. Issues of broad economic policy and priorities are unsuited to judicial review. Here, the court is not asked to engage in a "court-like" function, but rather to embark on a course more resembling a public inquiry into the adequacy of housing policy.

[34] Were the court to confine its remedy to a bare declaration

³⁴ Appellant Factum, *supra* note 12 at para 33(c).

³⁵ Decision, *supra* note 21 at para 77; *Tanudjaja*, *supra* note 31 at paras 33-34.

that a government was required to develop a housing policy, that would be so devoid of content as to be effectively meaningless. To embark, as asked, on judicial supervision of the adequacy of housing policy developed by Canada and Ontario takes the court well beyond the limits of its institutional capacity. All agree that housing policy is enormously complex. It is influenced by matters as diverse as zoning by-laws, interest rates, procedures governing landlord and tenant matters, income tax treatment of rental housing, not to mention the involvement of the private sector and the state of the economy generally. Nor can housing policy be treated monolithically. The needs of aboriginal communities, northern regions and urban centres are all different, across the country.³⁶

54. This is directly analogous to what is being sought here. The Appellants are asking the courts to require the Respondents implement what the Appellants deem to be a better response to climate change, including ordering all Respondents to take certain actions.³⁷ This includes the following:

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.³⁸

55. The Appellants also requested, among other things, orders directing the Saskatchewan Government to:

- (a) Prepare a “generation and asset management plan that will provide and deliver Net Zero electricity” by 2035, or 2040;³⁹ and
- (b) Set emissions reduction targets for SaskPower “consistent with Saskatchewan’s share of the minimum level of GHG reductions necessary to limit global warming...”⁴⁰

³⁶ *Tanudjaja*, *supra* note 31 at 33-34.

³⁷ See Appeal Book at A0037 - Amended Originating Application at paras 15-16.

³⁸ *Ibid* at para 16(c).

³⁹ *Ibid* at para 15(b).

⁴⁰ *Ibid* at para 15(c)

56. The Appellants asked the Chambers Judge to direct all Respondents to take specific actions ordered by the Court that the Appellants have devised. This is well beyond the Court's constitutional role. This would have required the Chamber's Judge to conduct an inquiry into the sufficiency of the Respondent's approach to climate change and whether actions like UFFGA asset development were, or were not, consistent with the approach.

57. The Appellants were unable to impugn a law or specific state action attributable to SaskPower and CIC. There was no sufficient legal component to anchor the Claim.

(iv) Climate Change Jurisprudence and International Law

58. The Appellants seem to rely on the fact that other climate change-related claims, some of which are reviewed above, have been found to be justiciable. They argue the Chambers Judge misinterpreted and misapplied jurisprudence on the justiciability of *Charter* claims.

59. The Claim is not justiciable simply because the general subject matter has been found to be one that may be appropriately decided by the courts when pled correctly. Justiciability is also governed by the pleadings within which the subject matter is being raised.

60. The Appellants have not pled a justiciable cause of action, even with the amendments permitted by the Chambers Judge. Instead, they have pled concerns with general actions which are highly political, influenced by several factors, with no legal component or legal anchor, and are seeking judicial orders to direct the Saskatchewan Government and, by extension SaskPower and CIC, to carry out specific actions to address climate change. This is similar to *Jeunesse* where the action demanded "the Court require the legislature to act, which is not the court's role."⁴¹

⁴¹ Decision, *supra* note 21 at para 84. See *Environnement Jeunesse c Procureur général du Canada*, [2021 QCCA 1871](#) at para 32 [*Jeunesse*].

61. That the Appellants are relying on climate change jurisprudence to support the justiciability of their Claim, despite the pleadings, is seen at paragraph 44 of their factum:

[44] As noted by environmental scholar Nathalie Chalifour in her recent book, *Climate Change and the Canadian Constitution* (2025), this case is **rooted in the same fundamental claim** as other *Charter*-based climate litigation like *Mathur* and *La Rose*...The sub-set of cases like *Mathur* in which “a government sets a target [and] claimants point to the target and argue it is insufficient relative to what the science says is required to limit harm” have been justiciable.

[Emphasis added]

62. The Claim is not justiciable merely because it is “rooted in the same fundamental claim” as other justiciable cases. Justiciability is determined based on the pleadings filed. If the pleadings do not support a justiciable claim, the Appellants do not get to rely on properly pled claims in other jurisdictions to justify their own.

63. The Appellants’ Claim can be distinguished from climate change claims found to be justiciable. *La Rose v Canada*⁴² and the *Misdzi Yikh Trial Decision*⁴³ were individually heard by the Federal Court in 2020. Both were subsequently appealed and addressed together in the *La Rose Appeal*.⁴⁴

64. The *La Rose Trial Decision* involved claims brought by youths who alleged Canada’s response to climate change unjustifiably infringed their ss. 7 and 15 *Charter* rights.⁴⁵ At the trial level, these *Charter* arguments were found not to be justiciable, because the issues were too political and “effectively attempt[ed] to subject a holistic policy response to climate change to *Charter* review.”⁴⁶

65. In the *Misdzi Yikh Trial Decision* it was alleged that the claimants’ ss. 7 and 15 *Charter* rights were violated by Canada’s response to climate change.⁴⁷ Similarly,

⁴² *La Rose Trial Decision*, *supra* note 23.

⁴³ *Misdzi Yikh Trial Decision*, *supra* note 23.

⁴⁴ *La Rose Appeal*, *supra* note 23.

⁴⁵ *La Rose Trial Decision*, *supra* note 23 at para 7.

⁴⁶ *La Rose Trial Decision*, *supra* note 23 at para 40.

⁴⁷ *Misdzi Yikh Trial Decision*, *supra* note 23 at para 4.

the *Charter* claims were not justiciable as no specific laws or state actions that breached their rights were being plead.⁴⁸ In doing so, the Federal Court affirmed that “[a] challenge to a *particular law or particular application of such a law* is an archetypal feature of *Charter* challenges under s. 7 and s. 15.”⁴⁹ (emphasis added)

66. On appeal the Federal Court of Appeal found that the *Charter* claims by both groups in the *La Rose Appeal* were justiciable. However, this was based on the fact that those claimants based their claim on Canada’s failure to meet its commitments in the Paris Agreement, which was subsequently ratified by Parliament, creating defined, objective standards to assess the *Charter* claim.⁵⁰

67. Similarly, in *Mathur v His Majesty the King in Right of Ontario*, the claimants’ *Charter* claims were found to be justiciable as they were based on ss. 3(1) and 16 of Ontario’s *Cap and Trade Cancellation Act, 2018*.⁵¹ As this was a question of whether Ontario’s actions taken pursuant to the legislation constituted a *Charter* infringement, there was a sufficient legal component to warrant judicial intervention.⁵²

68. The Claim is not “indistinguishable” from *Mathur*. There is no objective legal standard to assess *Charter* claims as against SaskPower and CIC. These claims are based on SaskPower’s involvement in the Great Plains and Wolverine power plants, the operation of which allegedly infringed Climate Applicants’ *Charter* rights. Again, the fact that SaskPower and CIC are Crown corporations acting with authority granted by legislation does not automatically mean that, without more, any and all actions taken by those entities constitute a sufficient legal component for the purposes of a justiciability or *Charter* analysis. The Chambers Judge correctly concluded there was no objective legal standard with which to adjudicate the Claim.

⁴⁸ *Misdzi Yikh Trial Decision*, *supra* note 23 at para 50.

⁴⁹ *Misdzi Yikh Trial Decision*, *supra* note 23 at para 52 citing *Tanudjaja v Canada (Attorney General)*, [2014 ONSC 852](#) at para 22, 379 DLR (4th) 467 (emphasis added).

⁵⁰ *La Rose Trial Decision*, *supra* note 23 at para s36- 38.

⁵¹ *Mathur v His Majesty the King in Right of Ontario*, [2023 ONSC 2316](#) at para 106, 480 DLR (4th) 444 [*Mathur*].

⁵² *Ibid* at para 107.

69. The Appellants also argue the Chambers Judge failed to consider relevant guidance from case law cited in the Decision.⁵³ Simply because the Chambers Judge did not reference particular paragraphs from a decision the Appellants deem noteworthy does not mean the case as a whole was not considered. Reviewing the cases cited by the Chambers Judge reveals no error in interpreting or applying existing law.

70. For example, the Appellants further describe applicability of *Jeunesse* in critiquing the Chambers Judge's analysis:

The reasoning in *Jeunesse* clarifies that the issue was not that the plaintiffs failed to impugn a law, but that their action lacked any "legal component" and made open-ended demands for positive state action...The *Jeunesse* claim was overly broad, seeking to compel unspecified legislative action in the absence of any law or impugned government action.⁵⁴

71. This statement describes the Claim. It is overly broad and makes open ended demands to require the Respondents to act.

72. The Appellants also argue the Chambers Judge erred by failing to engage with international law in assessing justiciability. SaskPower and CIC do not dispute there is international law dealing with climate change, how it can be managed, and setting targets for governments worldwide to strive to meet. However, none of this guidance, for example the ICCPR or the Paris Agreement, were binding on the Chambers Judge such that she was required to assist in crafting a Saskatchewan response to climate change that aligned with international instruments.

73. Further, SaskPower and CIC are not signatories to any international law instruments that bind them to, for example, move away from UFFGA's. SaskPower and CIC operate within the bounds of their governing legislation, specifically to generate and provide electricity in Saskatchewan, and any other legislation which may apply indirectly to them, such as the *MRGHG Regulations*. The extent to which this legislation may be influenced by international law and agreements is not within SaskPower or CIC's

⁵³ See for example, Appellant Factum, *supra* note 12 at para 55, where the Appellants list paragraphs from *Jeunesse*, *supra* note 41, that they state were not considered by the Chambers Judge.

⁵⁴ Appellant Factum, *supra* note 12 at para 56.

decision-making capacity or control. As noted above, the fact that SaskPower and CIC are operating in accordance with legislation is not sufficient to establish the required legal component to grounds the Appellants' claim.

(v) The pleadings disclose no reasonable cause of action against SaskPower and CIC

74. In addition to failing to raise a justiciable claim, the Appellants failed to raise a reasonable cause of action against the Respondents SaskPower and CIC respecting alleged *Charter* violations. This analysis is evident throughout the Chambers Judge's reasoning respecting justiciability, particularly when discussing the need for state action to be impugned to create a sufficient legal component.

75. Not only does the Claim not advance a reasonable cause of action regarding alleged infringements of the Appellants' *Charter* rights, SaskPower and CIC's activities do not constitute a breach of the Appellants ss. 7 and 15 *Charter* rights.⁵⁵

76. The purpose of *Charter* review is to ensure a law or state action is constitutional, so the Claim must be connected to specific laws or application of a law.⁵⁶ Challenging a law or application of a law is an "archetypal feature" of *Charter* review under s. 7 and s.15.⁵⁷ In performing the justiciability analysis, the Chambers Judge correctly identified no state action, law, or application of a law is present in the Claim. As this element is lacking, the Claim does not have a sufficient legal component or anchor to be justiciable and further cannot support a *Charter* analysis against the actions of SaskPower or CIC.

77. Just because SaskPower and CIC are Crown corporations, does not mean that all their actions, without more, can be subject to *Charter* review. The Appellants

⁵⁵ It is understood that the Appellants are not appealing the Chambers Judge's Decision that no statutory or common law duty of care is owed to the Appellants.

⁵⁶ *La Rose Trial Decision*, *supra* note 23 at para 43.

⁵⁷ *Tanudjaja*, *supra* note 31 at para 22.

needed to point to a particular piece of legislation, or its application, to allow the court to assess whether it infringes on their *Charter* rights.⁵⁸ They did not do so.

(vi) Conclusion on Justiciability

78. The Chambers Judge correctly determined the Claim was not justiciable. The Appellants asked the court to overstep its role and require the legislative and executive branches of government to act. Further, there was no specific state action or law impugned that was sufficient to provide a legal anchor to the Claim. The Claims against SaskPower and CIC are not justiciable and raise no reasonable cause of action. The Decision is correct and therefore ought not to be disturbed on appeal.

C. The Chambers Judge did not err in refusing to grant leave for further amendments.

79. The Chambers judge considered the Appellants' proposed amendments to the Claim before considering the Strike Application, correctly identifying and applying the law when doing so. Some amendments were allowed. As described above, others were dismissed as they did not constitute proper pleadings, for example, descriptions of affidavit evidence or argument were not properly included in the Claim.⁵⁹

80. The Chambers Judge then correctly went on to deny leave to further amend the pleadings. As noted in the Decision "[t]he proposed amendments were crafted by the [Appellants] after they were served with the Respondents' written submissions (Briefs of Law) in relation to the application to strike. For this reason, I infer they were well-informed of the legal and factual reasons why the Respondents assert the Claim does not advance a justiciable claim nor a reasonable cause of action."⁶⁰

81. Not only did the Appellants have the benefit of knowing the Respondents sought to strike the Claim for deficient pleadings, but they had received written submissions detailing the deficiencies. The Appellants attempted to address these

⁵⁸ *Tanudjaja*, *supra* note 31 at para 22; *Misdzi Yikh Trial Decision*, *supra* note 23 at para 52.

⁵⁹ Decision, *supra* note 21 at paras 22-23.

⁶⁰ Decision, *supra* note 21 at para 13.

deficiencies through amendments, some of which were permitted by the Chambers Judge while others were struck for containing evidence and argument.

82. Litigants must put their best foot forward. Amendments *may* be permitted; however, claimants cannot continually revise their claim when deficiencies are brought to their attention. The judicial process is not meant to assist claimants in crafting a proper claim. To do so would be an inefficient use of scarce and valuable court time and resources.

83. Further, if claimants were permitted to revise their pleadings after an application to strike on the basis that the pleadings disclosed no reasonable cause of action, there would be no reason for this process to exist. The purpose of a strike application is to “weed[] out the hopeless claims,”⁶¹ to ensure claims that have no chance of success do not continue to use court resources unnecessarily. Claimants do not get the benefit of comments from opposing parties and the courts when drafting their claim. The Appellants should, and presumably, have put their best foot forward. Despite this, the Claim discloses no reasonable chance of success. Therefore, the Chambers Judge did not err in denying leave for further amendments.

84. Additionally, it is trite law that respondents/defendants are entitled to know the case they have to meet. If amendments in response to identified deficiencies are permitted at every stage, the case to meet is a constantly moving target. This is unfair to defending parties, not in the interests of justice, not consistent with the purposes of the rules nor a valuable use of resources. It is not the responding parties’ responsibility to point out flaws for the purpose of allowing a claimant to amend their claim.

85. The Chambers Judge was correct in denying leave to amend the Claim further and there is no reviewable error.

⁶¹ *R v Imperial Tobacco Canada Ltd.*, [2011 SCC 42](#) at para 20, [2011] 3 SCR 45.

VI. RELIEF

86. The Chambers Judge made no palpable and overriding error in striking some of the proposed amendments as evidence and argument, which are improper in pleadings.


87. The Chambers Judge further did not err in determining the Claim was not justiciable and therefore disclosed no reasonable cause of action against SaskPower and CIC. SaskPower and CIC's involvement in the operation of power plants is not based on an objective legal standard or application of a law. The Claim is essentially the Appellants' view that SaskPower and CIC, along with everyone in the province can, and should, do better to address climate change, and that operation and development of these power plants is negatively impacting climate change. That, however, does not translate into an objective legal standard, nor does it have to do with the application of any law.

88. The Chambers Judge further did not err in refusing to grant leave to file further amendments to the pleadings. The Appellants proposed amendments to their pleadings after receiving the strike applications and the Respondents written submissions in support thereof. The amendments reasonably represented the Appellants' best foot forward but were not sufficient. The Appellants do not get multiple changes to craft their claim based on deficiencies found by the courts and opposing parties.

89. For the foregoing reasons, the Respondents SaskPower and CIC ask the appeal against them be dismissed in its entirety.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this
13 day of February, A.D. 2026.

McKERCHER LLP

Per: 
Solicitors for the Respondents (Respondents),
Saskatchewan Power Corporation and
Crown Investments Corporation

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm: McKERCHER LLP
Name of lawyer in charge of file: Collin K. Hirschfeld K.C. | Caroline C. Seshadri
Address of legal firm: 500-211 19th Street East
Saskatoon, SK S7K 5R6
Telephone number: (306) 653-2000
Fax number: (306) 653-2669
E-mail address: c.hirschfeld@mkercher.ca | c.seshadri@mkercher.ca
File number: 21570.92

VII. TABLE OF AUTHORITIES

Cases

<i>Andrews v Law Society of British Columbia</i> , [1989] 1 SCR 143	RF10
<i>Environnement Jeunesse c Procureur général du Canada</i> , 2021 QCCA 1871	RF14
<i>Filson v Canada (Attorney General)</i> , 2015 SKCA 80.....	RF3
<i>Harpold v Saskatchewan (Corrections and Policing)</i> , 2020 SKCA 98 at para 21	RF3
<i>Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall</i> , 2018 SCC 26, [2018] 1 SCR 750	RF9
<i>Housen v Nikolaisen</i> , 2002 SCC 33	RF2
<i>Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)</i> , 2015 FCA 4, 379 DLR (4th) 737	RF9
<i>J.N.C. v R</i> , 2013 NBCA 59	RF3
<i>JV&M Civil Constructors Inc. v Farnham</i> , 2025 SKCA 72.....	RF3
<i>La Rose v Canada</i> , 2020 FC 1008	RF9
<i>Mathur v His Majesty the King in Right of Ontario</i> , 2023 ONSC 2316, 480 DLR (4th) 444.....	RF16
<i>Merchant Law Group LLP v Slusar</i> , 2022 SKCA 75	RF3
<i>Misdzi Yikh v Canada</i> , 2020 FC 1059	RF9
<i>R v Imperial Tobacco Canada Ltd.</i> , 2011 SCC 42	RF20
<i>R v Lohrer</i> , 2004 SCC 80, [2004] 3 S.C.R. 732	RF3
<i>R v Morrissey</i> , [1995] O.J. No. 639 (QL), 22 OR (3d) 514.....	RF3
<i>Salomon v Matte-Thompson</i> , 2019 SCC 14.....	RF3
<i>Sawatzky v Prince Albert Golf and Curling Club Inc.</i> , 2025 SKCA 16	RF3
<i>Tanudjaja v Canada (Attorney General)</i> , 2014 ONCA 852.....	RF11
<i>Tanudjaja v Canada (Attorney General)</i> , 2014 ONSC 852, 379 DLR (4th) 467.....	RF16
<i>Wilson v Saskatchewan Water Security Agency</i> , 2023 SKCA 16.....	RF3

Statutes

<i>The Constitution Act</i> , 1982, Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 11 ...	RF11
<i>The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations</i> , RRS c M-2.01 Reg 1	RF6