

UNOFFICIAL TRANSLATION

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
No.: 500-06-

**(Class Action)
SUPERIOR COURT**

ENvironnement JEUnesse, legal person whose head office is at 50, Sainte-Catherine Street West, office 340, district of Montreal, province of Quebec, H2X 3V4

Petitioner

c.

ATTORNEY GENERAL OF CANADA, with an office at Quebec Regional Office Department of Justice Canada, Guy-Favreau Complex, East Tower, 9th Floor, 200 René-Lévesque Boulevard West, district of Montreal, province of Quebec, H2Z 1X4

Respondent

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND OBTAIN THE STATUT OF REPRESENTATIVE
(Art. 574 C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
RESPECTFULLY ALLEGES THE FOLLOWING :**

Introduction

What is the purpose of a government if not to protect the lives and safety of its citizens?

The science is undisputable: climate change is real and represents a potentially irreversible hazard. It poses major risks to life, security and inviolability of the person, including the environment and the preservation of biodiversity, especially for younger generations. It is one of the most important threats humanity has ever faced.

The facts outlined in this proceeding reflect an intentional fault on the part of the Canadian government for more than 25 years regarding climate change and the impact of this fault on the lives of young Quebeckers. The Government of Canada has behaved irresponsibly and has failed to take action to prevent the serious threat posed to its people by climate change. These failures constitute an infringement of its citizens' fundamental rights, especially the right to life and security of the youngest generations.

While recognizing the urgency to act and the serious dangers posed by climate change, the Canadian government has done virtually nothing. Canada's targets for reducing greenhouse gases ("**GHGs**") are inadequate to the point of constituting an intentional fault, and the measures put in place offer no hope of achieving them.

The present proceedings are not intended to obtain compensatory damages for the prejudice resulting from the infringement by the Government of the class members' constitutional rights, since no monetary compensation can replace the loss of those rights in this case.

Class members are rather seeking to prevent that climate change becomes irreversible and that the life, security, quality of life and health of the present young generations and generations to come be irreparably compromised.

The present proceeding thus seeks to obtain a declaration that the Government has failed in its obligations under the *Canadian Charter of Rights and Freedoms* ("*Canadian Charter*") and the *Charter of Human Rights and Freedoms* ("*Quebec Charter*") ("*the Charters*"), to protect the fundamental rights of its citizens.

In order to deter the perpetuation of a conduct that violates the constitutional rights of members, Environnement JEUnesse also seeks punitive damages.

1. The petitioner wishes to institute a class action on behalf of natural persons forming part of the class hereinafter described and of which she is also a member, namely :

1.1 All Quebec residents aged 35 and under on November 26, 2018.

2. The facts that give rise to an individual action on behalf of the designated member against the Respondent, are as follows :

A. The Petitioner

2.1 Created in 1979, ENvironnement JEUnesse ("**ENJEU**") is a non-profit organization dedicated to environmental education. It is mainly constituted

and animated by young people. Its mission is to raise the awareness of Quebec youth to environmental education through educational projects that encourage young people to act in their community.

2.2 ENJEU is a network that values the development of critical thinking and gives young people the opportunity to voice their concerns, positions and solutions regarding current environmental challenges.

2.3 ENJEU has been working on climate change for almost 30 years. It has developed a wide variety of information and action tools on the subject. Since the Rio Earth Summit in 1992, it has regularly carried the voice of Quebec youth at United Nations conferences.

B. The Designated Member

2.4 Committed to environmental and social issues since she was a teenager, Catherine Gauthier has an extraordinary track record.

2.5 In 2005, at age 16, she addresses the 10,000 or so delegates of the Conference of the Parties to the United Nations Framework Convention on Climate Change ("**UNFCCC**"), as a member of the Canadian Government delegation. Invited to speak at the UN General Assembly two years later, she will then attend several major international conferences on climate change that will take her to Bali (2007), Copenhagen (2009), Cancun (2010), Durban (2011), Doha (2012), Lima (2014), Paris (2015) and Marrakech (2016). From December 3 to 14, 2018, she will be at the 24th Conference of the Parties to the UNFCCC in Katowice, Poland.

2.6 Holding a Master's degree in International Law and International Policy, Catherine has been Executive Director of ENJEU since 2016. The interest of the designated member is genuine. She is an activist in the cause of climate change and has been passionate about it for many years.

2.7 The protection of the environment is a responsibility entrusted to all citizens. The interest of ENJEU and of the designated member is manifest and guided by the sole desire to halt the infringement of the class members' protected rights under the Charters.

C. The Respondent

2.8 The Attorney General of Canada is being sued as representative of the Government of Canada.

D. There is an international scientific and political consensus that action is urgently needed to prevent global warming from having irreversible and dangerous effects

i. Global warming is attributable to human activity

2.9 As early as 1992, Canada ratified the UNFCCC to consider what could be done to limit global warming and cope with the inevitable rise in temperatures. More than 195 countries are currently party to the UNFCCC, making it one of the most ratified treaties in the world.

2.10 Article 2 of the UNFCCC states that its goal is to prevent "dangerous" warming attributable to human activity :

"The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." [our emphasis]

as appears from the UNFCCC, Exhibit **P-1**.

2.11 The Intergovernmental Panel on Climate Change ("**IPCC**") is the international body responsible for assessing climate change. It was established in 1988 by the United Nations Environment Program and the World Meteorological Organization to present to the world the current state of scientific knowledge on climate change and the potential impact of climate change on the environment and the socio-economic sphere.

2.12 The IPCC is an intergovernmental body with 195 member countries, including Canada. Government representatives participate in defining the outline of reports, the choice of authors and the review process. They accept, adopt and approve reports during plenary sessions.

2.13 The IPCC is a scientific body, which has no political character. Its mission is to review and evaluate the most recent scientific, technical and socio-economic literature published around the world and useful for understanding climate change.

2.14 Because of its scientific and intergovernmental nature, the IPCC is ideally placed to provide decision-makers with rigorous, balanced and impartial scientific information.

2.15 In subscribing to IPCC reports, the Government of Canada expressly recognizes the validity of their scientific content. Canada acknowledges that the IPCC provides the "most comprehensive and reliable scientific assessment to date on climate change," as appears from *Canada's Compendium of Commitments to International Agreements on Climate Change* regarding the IPCC, Exhibit **P-2**.

2.16 In 2014, the IPCC published its fifth assessment report. The synthesis report concludes that it is highly likely that most of the rise in global average temperature since the middle of the last century is attributable to human activities, such as the burning of fossil fuels :

"Human influence has been detected in warming of the atmosphere and the ocean, in changes in the global water cycle, in reductions in snow and ice, in global mean sea level rise, and in changes in some climate extremes (see Figure SPM.6 and Table SPM.1). This evidence for human influence has grown since AR4. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century."

as appears from the *Working Group I Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Exhibit **P-3**, p.17.

2.17 On its website, the Canadian government itself recognizes that: "[t]he build-up of greenhouse gases in the atmosphere has led to an enhancement of the natural greenhouse effect. It is this human-induced enhancement of the greenhouse effect that is of concern because ongoing emissions of greenhouse gases have the potential to warm the planet to levels that have never been experienced in the history of human civilization. Such climate change could have far-reaching and/or unpredictable environmental, social, and economic consequences." as appears from the webpage entitled "Causes of Climate Change", Exhibit **P-4**.

ii. Significant climatic impacts are already occurring at the current level of global warming. Any additional increase aggravates these impacts and increases the risk of serious and irreversible additional impacts.

2.18 The IPCC summarized as follows the main risks related to the rise of the Earth's temperature :

a. Risk of death, injury, ill-health, or disrupted livelihoods in low-lying coastal zones and small island developing states and other small islands, due to storm surges, coastal flooding, and sea level rise.

- b. Risk of severe ill-health and disrupted livelihoods for large urban populations due to inland flooding in some regions.
- c. Systemic risks due to extreme weather events leading to breakdown of infrastructure networks and critical services such as electricity, water supply, and health and emergency services.
- d. Risk of mortality and morbidity during periods of extreme heat, particularly for vulnerable urban populations and those working outdoors in urban or rural areas.
- e. Risk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes, particularly for poorer populations in urban and rural settings.
- f. Risk of loss of rural livelihoods and income due to insufficient access to drinking and irrigation water and reduced agricultural productivity, particularly for farmers and pastoralists with minimal capital in semi-arid regions.
- g. Risk of loss of marine and coastal ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for coastal livelihoods, especially for fishing communities in the tropics and the Arctic.
- h. Risk of loss of terrestrial and inland water ecosystems, biodiversity, and the ecosystem goods, functions, and services they provide for livelihoods.

as appears from the *Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Exhibit **P-5**, p.13.

2.19 The Canadian Government itself believes that climate change is already impacting the health of Canadians.

2.20 Indeed, Health Canada states that "[i]t is now well established that climate change poses significant risks to the health of Canadians and people around the world", as appears from a report entitled *Adapting to Extreme Heat Events: Guidelines for Assessing Health Vulnerability*, Exhibit **P-6**, p.2.

2.21 On the "Climate Change and Health: Health Effects" web page, Exhibit **P-7**, Health Canada lists the effects that climate change can have on the health and well-being of Canadians :

- a. Temperature-related morbidity and mortality : illness related to extreme cold and heat events, respiratory and cardiovascular illnesses, increased occupational health risks.
- b. Weather-related natural hazards : damaged public health infrastructure, injuries and illnesses, social and mental stress, increased occupational health hazards, population displacement.
- c. Air quality : increased exposure to outdoor and indoor air pollutants and allergens, respiratory diseases heart attacks, strokes and other cardiovascular diseases, cancer
- d. Water- and food-borne contamination : intestinal disorders and illnesses caused by chemical and biological contaminants
- e. Health effects of exposure to ultraviolet rays: skin damage and skin cancer, cataracts, disturbed immune function
- f. Vector-borne and zoonotic diseases: changed patterns of diseases caused by bacteria, viruses and other pathogens carried by mosquitoes, ticks, and animals.

2.22 In addition to increasing the frequency and intensity of natural disasters that have hit Canada in recent years, global warming has also led to an increase in extreme heat waves. In Quebec, these heat waves are already causing increases in ambulance transports, hospitalizations and deaths. For the only period of intense heat from June 30 to July 8, 2018, the Montreal Regional Department of Public Health has identified in its territory "53 deaths as probably related to heat", as appears from its preliminary report dated July 18, 2018, Exhibit **P-8**.

iii. To avoid dangerous warming, the increase in temperature must be limited to a threshold well below 2°C.

2.23 In 2009 in Copenhagen and in 2010 in Cancún, the parties to the UNFCCC clarified, on the basis of the IPCC scientific conclusions in its fourth assessment report of 2007, the need to limit the warming to less than 2°C above the pre-industrial level.

2.24 Contracting Parties, including Canada, have therefore *agreed* that a warming of 2°C above the pre-industrial level constitutes a dangerous climate change, as appears from the *Report of the fifteenth session of the Conference of the Parties in Copenhagen from December 7 to 19, 2009*, Exhibit **P-9** and

the *Report of the Conference of the Parties on its sixteenth session, held in Cancún from November 29 to December 10*, Exhibit **P-10**.

2.25 In 2010, at the Cancún Conference, the contracting parties also agreed on the need to re-evaluate the goal of limiting global warming to 2°C. The parties then put in place a process to assess the difference between the impacts resulting from an increase of 1.5°C or 2°C from the pre-industrial level. The final report, published in 2015, concludes that a warming of 2°C above the pre-industrial level is dangerous, that it must be treated as a limit that should not be exceeded, and that efforts should rather be aimed at limiting global warming to 1.5°C, as appears from the final *Report on the Structured Expert Dialogue on the 2013-2015 Review*, Exhibit **P-11**.

2.26 In November 2015, Prime Minister Justin Trudeau signed the Paris Agreement, Exhibit **P-12**, on behalf of Canada. The agreement was signed by all governments present and ratified by 170 states under the auspices of the UNFCCC. It came into force on November 4, 2016.

2.27 The Parties specifically recognized the inadequacy of the target of a maximum temperature rise of 2°C in the light of scientific developments. They committed themselves, in Article 2, paragraph 1(a), to strengthen the global response to the threat of climate change, including by:

"Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change".

2.28 The Canadian government itself has even played an important role in convincing the international community that a goal more ambitious than 2°C is both necessary and achievable.

2.29 The Paris Agreement is supported by an accompanying decision which explains the context of the preamble :

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions, [...]

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right

to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity, [...]

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels, [...]

Emphasizing the enduring benefits of ambitious and early action, including major reductions in the cost of future mitigation and adaptation efforts, [...].

- 2.30 The parties have recognized that a warming of 1.5°C and "well below" 2°C is the threshold beyond which scientific evidence establishes that the risk of exceeding critical points in the climate system becomes unacceptably high, potentially leading to runaway climate change.
- 2.31 Keeping in mind that the IPCC is not a political body, its role is limited to evaluating the most recent scientific, technical and socio-economic data published around the world in order to identify the risks associated with the various targets to limit global warming. Although IPCC reports do not establish that a specific warming threshold is "safe", States, in subscribing to IPCC reports, recognize the legitimacy of their scientific content.
- 2.32 On October 6, 2018, the IPCC again alerted States to the severe consequences of temperature increases exceeding 1.5°C above the pre-industrial level, as appears from the *IPCC Special Report on the impacts of global warming of 1.5°C*, Exhibit **P-13**, endorsed by member countries, including Canada.
- 2.33 The P-13 report shows that human activities have already caused a global warming of $1 \pm 0.2^\circ\text{C}$ above pre-industrial levels. The average temperature is currently increasing by $0.2 \pm 0.1^\circ\text{C}$ per decade due to past and current emissions. At this rate, warming will exceed 1.5°C between 2030 and 2052.
- 2.34 Canada has warmed by 1.7°C between 1948 and 2016, as reported in the *Annual 2016 Climate Trends and Variations Bulletin*, Exhibit **P-14**. Some of the deeper impacts of climate change are already being felt in Canada, particularly in the Arctic.

2.35 According to current forecasts based on the targets established by the Paris Agreement, the planet is on a trajectory of average temperature rise of more than 3°C by the end of the century. This is double the target of 1.5°C target that already involves significant consequences.

2.36 In other words, even full compliance with the Paris Agreement is insufficient to prevent the increase in global temperature from reaching dangerous levels for human civilization.

iv. To avoid dangerous warming, the atmospheric concentration of CO₂ must remain well below 450 ppm.

2.37 In the Cancun Agreements, the parties recognized that a sharp reduction in global GHG emissions was required to keep warming below 2°C (Exhibit P-10) :

"Further recognizes that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2°C above preindustrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity".

2.38 Based on the data collected by the IPCC, the scientific consensus to which Canada adhered in Cancún states that to prevent an increase of more than 2°C, the concentration of GHGs in the atmosphere should not exceed the equivalent of 450 parts per million ("ppm") of CO₂ in 2100 :

"Emissions scenarios leading to CO₂-equivalent concentrations in 2100 of about 450 ppm or lower are likely to maintain warming below 2°C over the 21st century relative to pre-industrial levels"

as appears from the *Synthesis Report, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the IPCC*, Exhibit **P-15**, p.20

2.39 The CO₂-equivalent level in the atmosphere has already exceeded 400 ppm, as shown in the most recent bulletin of the World Meteorological Organization, Exhibit **P-16**. The IPCC estimates that without additional efforts to reduce emissions, we will have reached the 450 ppm threshold in 2030 (Exhibit P-15, p.90).

2.40 This target is in itself an extreme limit because, according to the IPCC in 2018, limiting an increase in temperatures to 1.5°C requires a 45% reduction

of GHG emissions by 2030 (compared to 2010 levels) and the achievement of a "carbon neutrality" in 2050 (Exhibit P-13, p.14). To this end, the IPCC states that it "would require rapid, far-reaching and unprecedented changes in all aspects of society," as appears from the press release accompanying the publication of the latest report, Exhibit **P-17**.

E. Ignoring the scientific consensus, Canada has set inadequate GHG reduction goals that it has never met.

2.41 It is clearly irresponsible to hand over to young people and future generations the problem, which continues to worsen and which could be irreversible after crossing a point of no return. Therefore, the only sensible and rational approach is to determine what is needed to maintain global warming under 1.5°C and certainly well below 2°C and to act accordingly.

2.42 In this context, setting a national goal is essential. In fact, all countries contribute to the problem. Each country therefore has obligations and the possible failure of one to respect them does not exonerate the others.

2.43 The determination of a national emission reduction target is an overall quite simple exercise that depends on only three parameters, namely :

- a) the overall temperature limit target.
- b) the total global emissions consistent with the maintenance of that limit; and
- c) the fair share of each country in this total.

2.44 It should be remembered that Canada has exerted its influence in the work leading up to the Paris Agreement to make the goal more ambitious than 2°C. Recall also the recent scientific consensus contained in the IPCC 2018 Special Report (P-13) to which Canada has accepted, that a warming above 1.5°C would be dangerous.

2.45 With respect to the overall carbon budgets that must be met in order to achieve this limit, Canada has endorsed the IPCC conclusions that the atmospheric concentration of CO₂ should not exceed 450 ppm in 2100.

2.46 This concentration was established in relation to a maximum target of 2°C. Consequently, the target must be less than 450 ppm to hope to limit the rise to 1.5°C. Yet, as mentioned above, the IPCC estimates that without additional efforts, we will have reached the threshold of 450 ppm in 2030.

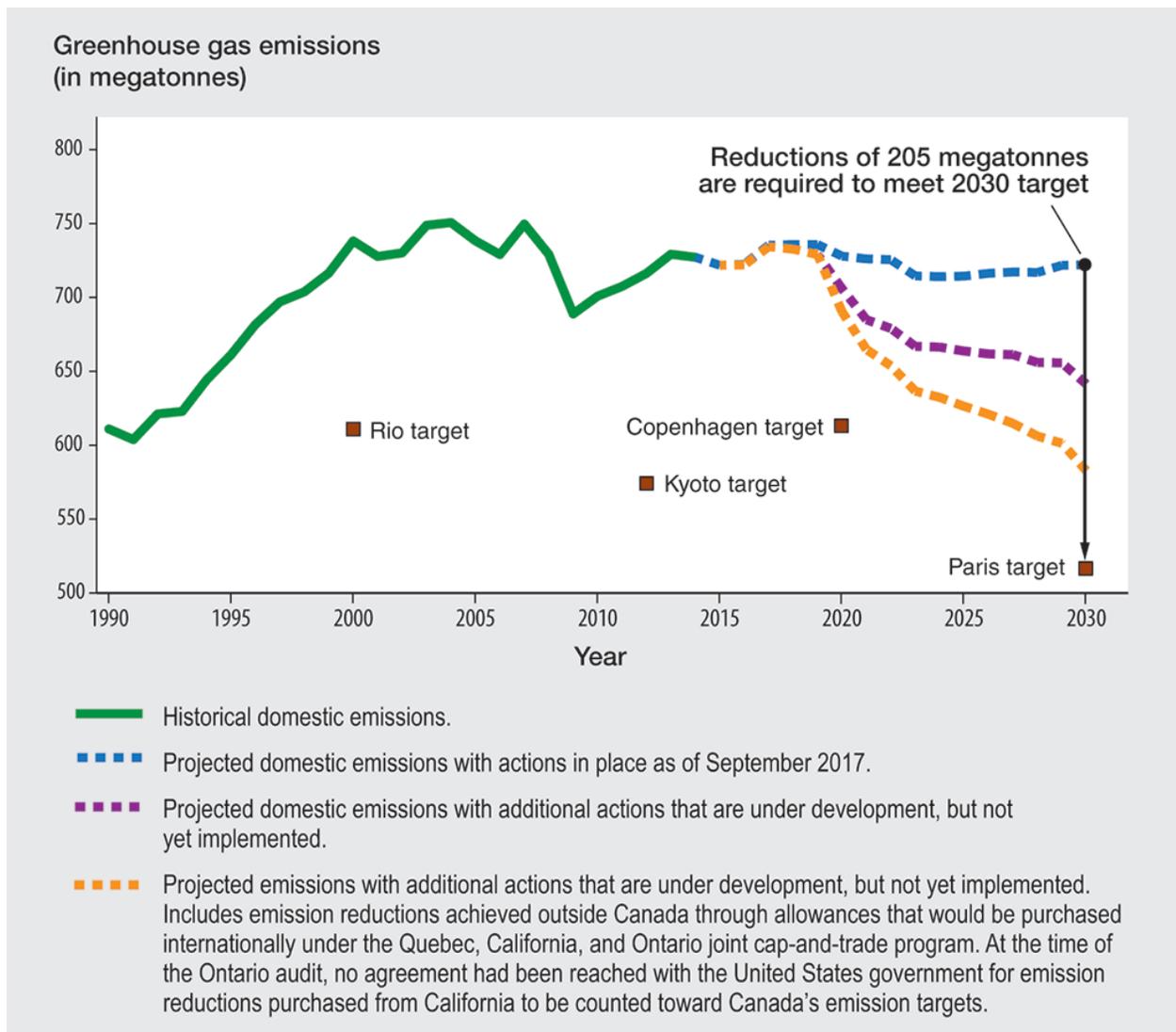
- 2.47 With respect to Canada's fair share in the overall budget, Canada has repeatedly recognized, including by signing the Paris Agreement, that when establishing its reduction target, it must be taken into account that as a developed country, it has contributed disproportionately to GHGs that are already in the atmosphere and will continue to have effects for decades to come.
- 2.48 Thus, Canada has been responsible for 2% of the GHGs generated worldwide since 1850, four times more than its current demographic weight, as appears from an article published by the World Resources Institute on November 25, 2014 entitled "6 Graphs Explain the World's Top 10 Emitters", Exhibit **P-18**, p.7.
- 2.49 Canada has for many years been one of the largest GHG emitters per capita in the world. While Canada accounts for approximately 0.5% of the world's population, it generates approximately 1.6% of total GHGs annually, as appears in a document entitled *Introducing Canada's INDC to the UNFCCC*, Exhibit **P-19**, more than three times the world average per capita.
- 2.50 In absolute terms, and despite its low population, Canada is the ninth largest GHG emitter in the world, as shown in the May 2017 document entitled *Canadian Environmental Sustainability Indicators: Global Greenhouse Gas Emissions*, Exhibit **P-20**, p.2.
- 2.51 Besides, each megaton of GHGs emitted reduces the room for maneuver of future generations by the same amount. Indeed, the important parameter is not the rate of emissions per year, but the total level of emissions in the atmosphere.
- 2.52 The longer emissions take to be phased out, the more the decline will have to be steep to reach the target, as it will be necessary to compensate for the excess GHGs generated. Thus, any delay in reducing emissions not only increases the risk of climate disruption, but also of economic and social dislocation for future generations.
- 2.53 In the face of these irrefutable findings, Canada had to determine its maximum contribution in order to meet its obligations towards its citizens and to those around the world. Canada has never set GHG reduction targets that meet its obligations.
- 2.54 In fact, over the past 25 years, Canada has made four commitments to reduce GHG emissions through international agreements. None of these commitments has been met.

- 2.55 On the contrary, every new commitment made by the Canadian government has had the effect of delaying the achievement of the reduction target towards an ever more distant future.
- 2.56 First, by subscribing to the UNFCCC in 1992, Canada committed to reduce its GHG emissions to the 1990 level by the year 2000.
- 2.57 In 2000, Canada was very far from achieving this target as GHG emissions increased by 20% from the 1990 level, as shown in an April 2018 document entitled *Canadian Indicators of Environmental Sustainability: Greenhouse Gas Emissions*, Exhibit **P-21**.
- 2.58 Then, in 1997, under the Kyoto Protocol, many countries, including Canada, accepted individual targets that were legally binding under international law. Canada's goal was to reduce its emissions to 6% below the 1990 level during the 2008 to 2012 commitment period. The Protocol came into effect in 2005.
- 2.59 In December 2011, while the government had done virtually nothing to meet its obligations, Canada severely tarnished its international reputation by informing the UNFCCC that it would withdraw from the Kyoto Protocol. It was and remains the only country to have done it.
- 2.60 Without surprise, Canada's GHG emissions were 17% higher in 2012 than in 1990 (Exhibit P-21). This difference alone represents a surplus of more than 100 megatons per year, the equivalent of GHGs produced annually by Chile, twice the GHGs produced by Switzerland, four times the GHG produced by Cambodia or ten times the GHG produced by Haiti.
- 2.61 Thirdly, at the UNFCCC Conference of the Parties held in 2009 in Copenhagen, Canada pledged to reduce by 17% its GHG emissions by 2020 compared to the 2005 level, as appears from *Canada's submission to the Copenhagen Accord*, Exhibit **P-22**. This reduction target was inherently inadequate and faulty, because it is an increase from 1990 levels.
- 2.62 Thus, while Canada had accepted the scientific consensus that a reduction of at least 25% from the 1990 base year was necessary to avoid a disaster, it nonetheless targeted a level that was up from its 1990 emissions. Even the least prudent person knows that such behavior is irresponsible.
- 2.63 Moreover, although thirteen months remain before 2020, it is already clear that Canada will not achieve its Copenhagen goal. Indeed, in its March 2018 report, the Office of the Auditor General of Canada states that:

"Canada has missed two separate emission reduction targets (the 1992 Rio target and the 2005 Kyoto target) and is likely to miss the 2020 Copenhagen target as well. In fact, emissions in 2020 are expected to be nearly 20 percent above the target"

as appears from the March 2018 *Collaborative Report from Auditors General* of the Office of the Auditor General of Canada, Exhibit **P-23**.

2.64 The following table published by the Auditor General of Canada in 2017 shows that Canada's total GHG emissions between 1990 and 2015 have never reached federal reduction targets and that Canada's projected emissions are far from on track to reach the target set for 2020.



- 2.65 The above table also shows Canada's fourth and final international commitment established in the wake of the Paris Agreement. .
- 2.66 Before dealing with it, let us recall that in 2014, the 5th IPCC Report indicated that to reach a concentration level between 430 and 480 ppm in 2100, OECD member countries in 1990, like Canada, must by 2030 reduce their emissions by half compared to the 2010 level, as shown in *Chapter 6 of the Report of Working Group II to the 5th Assessment Report of the IPCC*, Exhibit **P-24**, p. 459.
- 2.67 The industrialized countries included in Annex I of the UNFCCC, including Canada, will have to achieve a reduction target that takes into account, as mentioned, their significant contribution to historical emissions and their greater wealth. Thus, in developed countries, a reduction of 25-40% of GHG emissions in 2020 and 80-95% in 2050 are necessary compared to the reference year 1990.
- 2.68 It is in this context that the fourth and final Canadian international commitment must be considered. For example, under the Stephen Harper government, in preparation for COP21 in Paris in May 2015, Canada indicated its intention to reduce its GHG emissions by 30% by 2030 compared to the 2005 level. This target is grossly inadequate on its face.
- 2.69 The federal Liberal Party had criticized this target during the 2015 election campaign as "inadequate and worthless", as appears from *Canada's New Environment and Economic Plan*, Exhibit **P-25**.
- 2.70 This inadequate and worthless target remains that of the current government.
- 2.71 If it is necessary in order to avoid a disaster, that Canada reduce its emissions to a maximum of 362 to 452 Mt in 2020 (60-75% of its 1990 emissions), or 347 Mt in 2030 (50% of its 2010 emissions), it becomes apparent that the government is acting in bad faith when setting a target of 512 Mt of GHG emissions to be achieved in 2030.
- 2.72 Besides, the above table demonstrates that even the most optimistic scenario, which relies on measures "under development", misses the target by a huge margin. Thus, there was *no scenario* in 2017 in which this target was even attainable.
- 2.73 Yet, the federal Minister of Environment and Climate Change, Catherine McKenna said, "We are the first generation to feel the impacts of climate change and the last to be able to stop them. The actions to be taken go

beyond partisanship.", as appears from an October 8, 2018 article entitled "Le Canada salue le rapport du GIEC, Greenpeace dit : 'Au travail!'", Exhibit **P-26**.

2.74 The Minister then reaffirmed that Canada is "determined" to achieve the objectives of the Paris Agreement, i.e. to try to limit warming to 1.5°C, as appears from an article dated October 13, 2018 entitled "L'art de manquer le bateau...et de faire naufrage", Exhibit **P-27**.

2.75 It is clear that gestures do not follow words.

2.76 Thus, while recognizing the urgency of the situation and its clear duty to act, Canada persists in its failure to reduce or even control its GHG emissions.

2.77 Worse, Canada has adopted reduction targets that, even if implemented, will contribute to the increase of GHGs beyond levels that the government itself has identified as critical to the protection of life and security of future generations. Such behavior constitutes an intentional fault committed in bad faith.

F. Canada violates the class members' rights

2.78 Canada has recognized that the danger posed by global warming is unprecedented and that it must develop national GHG reduction targets to protect the rights to life, inviolability and security of its citizens. What is the purpose of a government if not to protect the lives and safety of its citizens?

2.79 The international community has repeatedly stated that climate change is a serious threat to human rights. In the Cancún Agreements adopted by the parties to the CNUCCC, including Canada, the governments notably *agreed* that:

"the adverse effects of climate change have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and the obligations in relation to human rights".

2.80 Canada has knowingly and miserably failed in its obligations by not imposing reduction targets that it knows to be necessary for the respect of these rights. Such behavior is irresponsible, indefensible and undermines the rights of all Canadians, but especially those of young people, who will have to live and survive with the consequences of the previous generations' neglect.

2.81 The violations of rights protected by the charters constitute so many faults which are, moreover, committed intentionally.

i. The right to life, inviolability and security of the person

2.82 The protection of human beings is inseparable from the protection of the environment. The Canadian government's adoption of GHG emission targets that it knows are harmful to human life and health violates the right of class members to life, inviolability and security protected by section 7 of the *Canadian Charter* and section 1 of the *Quebec Charter*.

2.83 This violation is arbitrary and disproportionate, and is therefore contrary to the principles of fundamental justice.

2.84 First, the adoption of insufficient targets and the inaction of the Government of Canada to prevent dangerous climate change is arbitrary, in that there is a complete lack of a rational connection between this inaction and the objective pursued.

2.85 It is in fact well known that the costs of adapting to climate change are out of proportion to the cost of immediate action to slow global warming, as reflected in an article entitled *Large potential reduction in economic under mitigation targets*, Exhibit **P-28**. Thus, by its inaction, the government is undermining its long-term goal rather than contributing to it.

2.86 Secondly, government inaction has a totally disproportionate effect to its objective. To limit in the very short term any economic loss is totally disproportionate in comparison to the gravity of the physical, moral and material harm that affects and will affect all members of the class in the short, medium and long term.

2.87 Canada's international obligations mentioned above corroborate the validity of these principles in the context of the fight against climate change and confirm that the targets adopted by the Canadian government are contrary to them.

ii. The right to live in a healthful environment in which biodiversity is preserved

2.88 The protection of the environment is a fundamental value of our society. Our common future depends on a healthful environment. By adopting inadequate targets and failing to put in place the necessary measures to achieve these targets, the government is violating the class members' right to live in a healthful environment in which biodiversity is preserved, protected by the *Quebec Charter*.

2.89 Although the wording of section 46.1 of the *Quebec Charter* specifies that this right is protected "to the extent and according to the standards provided by law", the conduct of the Canadian government is, as alleged in detail in these proceedings, severely wrong. The protection provided by article 46.1 is therefore clearly engaged.

2.90 Besides, the government is in flagrant contravention of its obligations under the *Canadian Environmental Protection Act*, including its obligations to:

- A) Take preventive and remedial measures to protect, enhance and restore the environment.
- B) Exercise its powers in a manner that protects the environment and human health.
- C) Endeavour to act with regard to the intent of intergovernmental agreements and arrangements entered into for the purpose of achieving the highest level of environmental quality throughout Canada.

iii. The right to equality

2.91 The government violates class members' right to equality.

2.92 By failing to take today the necessary measures to prevent dangerous global warming, the Canadian government is placing on Quebec's younger generations, the class members, a much higher burden than on the generations that precede them.

2.93 Because of the threats to health and safety posed by climate change, it is clear that the rights to life, inviolability and security of the class members will be disproportionately infringed as compared to the rights of older people.

2.94 Young people will systematically assume higher economic and social costs than their elders as a result of the Canadian government's actions, which sole purpose is to promote in the short term the economic interests of people from previous generations.

2.95 The Government of Canada, therefore, adopts an attitude that does not take into account the particular interests of the class members, who will almost certainly live a significant portion of their lives in a dangerous climate, if it pursues the same path. In this, his behaviour discriminates against the class members.

2.96 By setting climate-threatening targets and acting in such a way that these insufficient targets are never achieved, the Government of Canada cowardly and disproportionately shifts the burden of its negligence on the class members.

iv. The unlawful and intentional interference with the class members' rights

2.97 By adopting dangerous targets, by failing to put in place measures to reduce per capita GHG emissions, and by knowingly adopting measures that contribute to aggravate the problem, the Government of Canada decided to promote financial and commercial interests to the detriment of the environment and the health of Canadians, particularly that of class members.

2.98 The actions of the Government of Canada intentionally allow the emission of pollutants that are incompatible with respect for the right to life of class members and the maintenance of their right to a healthful environment.

2.99 The ratification by the Government of Canada of the various international instruments indicating the urgency of action and its stubborn refusal to implement what it recognizes as necessary for the preservation of human life and the environment attests to unlawful and intentional interference with the class members' rights protected by the Charters. Indeed, it is clear that the government acts with full knowledge of the immediate and natural or at least extremely probable consequences that this conduct will engender.

v. Conclusion on violations of the class members' rights

2.100 Members have the right to claim an appropriate remedy under sections 24(1) of the *Canadian Charter* and 49 of the *Quebec Charter*.

2.101 Class members are entitled to request the cessation of the interference with their rights protected by the Charters and to a punitive damage award for the intentional violation of these rights, as well as any other measure that the Court will deem appropriate.

3. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, in that :

3.1 The actions of the Canadian government affect millions of members.

3.2 According to Statistics Canada, in 2017, the population aged 35 and under in Quebec was 3,471,903, including residents and citizens.

3.3 Moreover, it is clear that class members cannot individually bear the costs of such a lawsuit. A class action is undoubtedly the only way for class members to go to court and obtain the cessation of the interference with their rights protected by the Charters.

4. The identical or related questions of fact and law that the Petitioner seeks to have decided in the class action are :

4.1 Does the Canadian government have an obligation to implement measures to prevent dangerous global warming and thereby safeguard the constitutional rights of class members under sections 7 and 15 of the *Canadian Charter* and 1, 10 and 46.1 of the *Quebec Charter*?

4.2 Has the Canadian government failed to meet this obligation, notably by adopting GHG reduction targets that it knows to be dangerous?

4.3 Has the Canadian government failed to meet this obligation by not putting in place the necessary measures to limit global warming to 1.5°C?

4.4 Does the adoption by the Government of Canada of GHG reduction targets that it knows to be harmful violate the right of class members to an equal exercise of their constitutional rights?

4.5 In the case of affirmative answers to any of the above-mentioned questions, has the Canadian government, through its agents, been guilty of a civil fault under Quebec' *jus commune*? If so, is this fault intentional?

4.6 What are the appropriate remedies that the Court should order under section 24(1) of the *Canadian Charter* and section 49 of the *Quebec Charter*?

5. The nature of the action the Petitioner intends to exercise on behalf of the class members is :

5.1 A class action in declaratory judgment and punitive damages.

6. The conclusions sought by the Petitioner are :

GRANT the Petitioner's action.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, violates the right of class members to life, inviolability and security, contrary to the *Canadian Charter* and the *Quebec Charter*.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, violates the right of class members to live in a healthful environment in which biodiversity is preserved, contrary to the *Quebec Charter*.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, discriminates against the class members, thus violating their right to an equal exercise of their constitutional rights, contrary to the *Canadian Charter* and the *Quebec Charter*.

DECLARE that the failure of the Government of Canada to adopt measures to achieve the greenhouse gas reduction target that it has recognized as necessary to ensure that class members do not live in a dangerous climate violates the fundamental rights of these people.

ORDER the cessation of those interferences.

CONDEMN the Government of Canada to pay each member an amount of \$100.

DECLARE that the distribution of the sums would be impracticable or too costly and, consequently, **ORDER** the implementation of a remedial measure that will help curb global warming.

ORDER any other remedy that the Court deems appropriate to impose on the Government to ensure the respect of the constitutional rights of the class members.

THE WHOLE with legal fees, including expert fees and notice fees.

7. The Petitioner is able to ensure adequate representation of the class members it seeks to represent for the following reasons:

7.1 One of ENJEU's missions is to give a voice to young people so that they can raise their concerns about the current environmental challenges.

7.2 ENJEU has been active for several years on the climate change front. The organization has been actively involved in many international climate negotiations over the years, including those in Copenhagen and Paris.

7.3 ENJEU is well established in the networks of childcare centres, primary and secondary schools and in CEGEPs, which allows it to reach a large number of class members.

7.4 ENJEU is represented by experienced lawyers in the fields of class action and environmental law.

7.5 ENJEU is ready to deploy all the energies required to carry out this action and to keep members informed of its progress.

8. The Petitioner proposes that the class action be brought before the Superior Court sitting in the district of Montreal for the following reasons:

8.1 A majority of the class members reside there.

8.2 Both the Government of Canada and ENJEU have an establishment there.

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT the Petitioner's motion.

AUTHORIZE the following class action :

- Class action in declaratory judgment and punitive damages.

APPOINT ENJEU as representative of the class hereby described :

All Quebec residents aged 35 and under on November 26, 2018.

IDENTIFY as follows the main issues of fact and law to be dealt with collectively :

Does the Canadian government have an obligation to implement measures to prevent dangerous global warming and thereby safeguard the constitutional rights of class members under sections 7 and 15 of the Canadian Charter and 1, 10 and 46.1 of the Quebec Charter?

Has the Canadian government failed to meet this obligation, notably by adopting GHG reduction targets that it knows to be dangerous?

Has the Canadian government failed to meet this obligation by not putting in place the necessary measures to limit global warming to 1.5°C?

Does the adoption by the Government of Canada of GHG reduction targets that it knows to be harmful violate the right of class members to an equal exercise of their constitutional rights?

In the case of affirmative answers to any of the above-mentioned questions, has the Canadian government, through its agents, been guilty of a civil fault under Quebec' jus commune? If so, is this fault intentional?

What are the appropriate remedies that the Court should order under section 24(1) of the Canadian Charter and section 49 of the Quebec Charter?

IDENTIFY as follows, the conclusions sought in relation to those issues :

GRANT the Petitioner's action.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, violates the right of class members to life, inviolability and security, contrary to the *Canadian Charter* and the *Quebec Charter*.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, violates the right of class members to live in a healthful environment in which biodiversity is preserved, contrary to the *Quebec Charter*.

DECLARE that the Government of Canada, by adopting dangerous greenhouse gas reduction targets and by failing to put in place the necessary measures to limit global warming to 1.5°C, discriminates against the class members, thus violating their right to an equal exercise of their constitutional rights, contrary to the *Canadian Charter* and the *Quebec Charter*.

DECLARE that the failure of the Government of Canada to adopt measures to achieve the greenhouse gas reduction target that it has recognized as necessary to ensure that class members do not live in a dangerous climate violates the fundamental rights of these people.

ORDER the cessation of those interferences.

CONDEMN the Government of Canada to pay each member an amount of \$100.

DECLARE that the distribution of the sums would be impracticable or too costly and, consequently, **ORDER** the implementation of a remedial measure to help curb global warming.

ORDER any other remedy that the Court deems appropriate to impose on the Government to ensure the respect of the constitutional rights of the class members.

THE WHOLE with legal fees, including expert fees and notice fees.

DECLARE that unless a person has opted out of the class, all class members will be bound by any judgment on the representative plaintiff's application in the manner provided for by law.

SET the time limit to opt out to sixty (60) days after the date of the notice to members, after which class members who have not opted out will be bound by any judgment in the class action.

ORDER the publication of a notice to members in the terms and by the method of publication to be determined by the court.

DETERMINE that the action will take place in the district of Montreal.

THE WHOLE with legal fees including notice fees.

MONTREAL, November 26, 2018

TRUDEL JOHNSTON & LESPÉRANCE
Counsel for the Petitioner