



PRACTICE

PLEADINGS

Motion to Strike

Motion to strike plaintiffs' statement of claim without leave to amend brought by defendants on basis that statement of claim disclosing no reasonable cause of action, pursuant to *Federal Courts Rules*, SOR/98-106, r. 221 — Plaintiffs, fifteen children, youth from across Canada — Statement of claim describing each of plaintiffs' specific experiences with climate change — While their locations, particular circumstances vary, plaintiffs collectively describing that climate change negatively impacted their physical, mental, social health, well-being; alleging it has further threatened their homes, cultural heritage, hopes, aspirations for future — As children, youth, plaintiffs claiming particular vulnerability to climate change, owed to their stage of development, increased exposure risk, overall susceptibility — Plaintiffs' statement of claim particularly focused on contribution of greenhouse gases (GHGs) to climate change; discussing link between cumulative impacts of GHGs, changes occurring in environment; challenging entirety of defendants' alleged conduct that plaintiffs associate with GHG emissions — At issue was justiciability of claim, whether plaintiffs raising valid causes of action under *Canadian Charter of Rights and Freedoms*, ss. 7, 15 — Parties also disagreeing on whether "public trust doctrine" could be relied upon, argued at trial, based on common law or as unwritten constitutional principle — Plaintiffs alleging that various conduct on part of defendants continuing to cause, contribute to, allow GHG emissions that are incompatible with "Stable Climate System"; alleging that impugned conduct unjustifiably infringing their rights (including rights of all children, youth in Canada) under Charter, ss. 7, 15 — Further alleging that defendants failing to discharge their public trust obligations with respect to identified public resources, arguing breach of obligations they claim falling under "public trust doctrine" — Plaintiffs claiming various forms of relief including order declaring that defendants having common law, constitutional obligation to act in manner compatible with maintaining Stable Climate System — Whether plain, obvious that pleadings disclosing no reasonable cause of action or that claim having no reasonable prospect of success — Inquiry involving four sub-issues: whether claims justiciable; whether Charter, s. 7 claim disclosing reasonable cause of action; whether Charter, s. 15 claim disclosing reasonable cause of action; whether claim pursuant to "public trust doctrine" disclosing reasonable cause of action — Both Charter claims under ss. 7, 15 not justiciable but question relating to public trust doctrine justiciable — Justiciability concerned with Court's proper role within Canada's constitutional framework, "time-honoured" demarcation of powers between Courts, other branches of government; relating to subject matter of dispute, whether issue appropriate for Court to decide — Plaintiffs arguing that their claim, while systemic, complex in nature, should not be rendered non-justiciable; that asking Court to declare defendants' conduct unconstitutional is justiciable, well within institutional legitimacy, capacity of Courts but argument rejected — Plaintiffs' position failing on basis some questions so political that Courts are incapable or unsuited to deal with them, including questions of public policy approaches or approaches to issues of significant societal concern — To be reviewable under Charter, policy responses must be translated into law or state action — While government policy or network of government programs can be subject to Charter review, plaintiffs' approach of alleging overly broad, unquantifiable number of actions, inactions on part of defendants not meeting threshold requirement; effectively attempting to subject holistic policy response to climate change to Charter review — Finding on justiciability supported both by undue breadth, diffuse nature of impugned conduct, inappropriate remedies sought by plaintiffs — Diffuse nature of impugned conduct, as described by plaintiffs, effectively putting entirety of Canada's policy response

to climate change in issue — Plaintiffs' position undermining function of Charter review, which is to ensure constitutionality of laws, state action, if assessments of Charter infringement cannot be connected to specific laws or state action — Moreover, diffuse nature of claim that targets all conduct leading to GHG emissions cannot be characterized in way other than to suggest plaintiffs seeking judicial involvement in Canada's overall policy response to climate change — When policy choices are translated into law or state action, that resulting law or state action must not infringe plaintiffs' constitutional rights — As such, it is specific law or state action – or possibly a network thereof – that is subject to Charter review, that forms basis upon which rest of Charter analysis can occur — While Charter remedies having air of *prima facie* legal remedies, plaintiffs failing to consider that overall context of relief sought, in relation to undue breadth of claim, pushing Court into role outside confines imposed by justiciability — While availability of Charter remedies broad, proposed remedies here not legitimate within framework of Canada's constitutional democracy — Declaratory relief relating to finding that plaintiffs' Charter, ss. 7, 15 rights have been unjustifiably infringed, that defendants in breach of public trust doctrine, not addressing underlying harms created by law or state action — Breadth of impugned conduct subject to review effectively asking Court to take on public inquiry role, whereby it determines whether defendants' overall approach to climate change effective — Appropriate, just remedy in context of Charter claim must employ means that are legitimate within framework of our constitutional democracy — Even though novel, creative remedies may be warranted in order to be responsive to needs of given case, matter herein not such case — Statement of claim not disclosing reasonable cause of action — On basis of pleadings, both Charter, ss. 7, 15 claims, claim in relation to public trust doctrine, having no reasonable prospect of success — Specifically, undue breadth, diffuse nature of impugned conduct cannot sustain Charter, s. 7 analysis — Plaintiffs failing to disclose distinction on basis of state action or law, required for purposes of Charter, s. 15 analysis — Moreover, existence of public trust doctrine, as pleaded by plaintiffs, not supported in Canadian law — Plain, obvious that claims relating to public trust doctrine failing to disclose reasonable cause of action — Motion granted.

LA ROSE V. CANADA (T-1750-19, 2020 FC 1008, Manson J., reasons for judgment dated October 27, 2020, 38 pp.)