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La Rose et al. v. Her Majesty the Queen

Federal Court File No. T-1750-19 (Statement of Claim), <https://david-suzuki.org/wp-content/uploads/2019/10/Statement-of-Claim-2019-10-25-FILED.pdf>.

IN 2019, fifteen young people filed a class action lawsuit that alleges the federal government’s perpetuation of and failure to alleviate climate change constitutes a violation of their Charter rights. The plaintiffs come from across Canada and each has personally felt the impact of climate change on their life. The following extract from the statement of claim filed in October 2019 details these impacts for the four plaintiffs from British Columbia. In October 2020, a federal court judge struck down the lawsuit. An appeal to the Federal Court of Appeal is currently under preparation.

CLAIM

1. The plaintiffs claim as follows: see relief sought at paragraph 222.

FACTS

A. Overview

2. Science is unequivocal that dangerous climate change is upon us and is occurring due to human activities. The threats posed by climate change to Canadians, and especially our children and youth, are existential. The release of anthropogenic greenhouse gases (“**GHGs**”) into the atmosphere is already triggering a host of adverse consequences including global warming. The combustion of fossil fuels is the main driver of GHG emissions.
3. Canada is one of ten highest GHG emitters in the world in terms of total national emissions. Despite knowing for decades that GHG emissions cause climate change and disproportionately harm children, the defendants continue to cause, contribute to and allow GHG emissions that are incompatible with a stable

- climate capable of sustaining human life and liberties (“**Stable Climate System**”). All human activity in Canada depends upon a Stable Climate System. It is foundational to human life. Without it, society as we know it would cease to exist.
4. Serious harms from climate change are already occurring across Canada and are disproportionately harming children and youth. These climate change harms, caused by the accumulation of GHGs (CO₂ and other greenhouse gas pollutants) in the atmosphere, include dangerously increasing temperatures, changing precipitation patterns, heatwaves, rising seas and storm-surge flooding, increasing droughts and violent storms, ocean acidification and warming, beach and farmland soil erosion, melting of permafrost, freshwater degradation, increased wildfires, resource and species extinctions, increases in human diseases and other adverse health risks, and other adverse impacts which threaten the habitability of Canada and cause serious and irreversible harm (collectively, “**Climate Change Impacts**”).
 5. Despite the gravity of these impacts, the remedial measures proposed and implemented by the defendants remain grossly insufficient. The defendants have and continue to:
 - a) cause, contribute to and allow a level of GHG emissions incompatible with a Stable Climate System;
 - b) adopt GHG emissions targets that are inconsistent with the best available science about what is necessary to avoid dangerous climate change and restore a Stable Climate System;
 - c) fail to meet their own GHG emissions targets; and
 - d) actively participate in and support the development, expansion and operation of industries and activities involving fossil fuels that emit a level of GHGs incompatible with a Stable Climate System (collectively, the “**Impugned Conduct**”).
 6. The plaintiffs to this proceeding are children and youth in Canada who have been and will continue to be exposed to Climate Change Impacts that interfere with their physical and psychological integrity and their ability to make fundamental life choices. Because of their vulnerability and their age, these individuals and the generations of children and youth to follow will continue to

bear a disproportionate share of the burden of climate change. The plaintiffs seek declarations that the defendants, by the Impugned Conduct, have unjustifiably infringed their rights, and the rights of all children and youth in Canada, present and future, as guaranteed under ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”).

7. As well, the plaintiffs say that the defendants have a common law and constitutional obligation to protect the integrity of common natural resources that are fundamental to sustaining human life and liberties. The plaintiffs seek a declaration that the defendants have failed to discharge their public trust obligations with respect to these resources.
8. There are a variety of feasible pathways to bring Canada’s emissions into line with what is required to restore a Stable Climate System. However, the defendants have not committed to reducing GHG emissions to a level consistent with what the best available science demonstrates is necessary to avoid catastrophic impacts. Indeed, the defendants have consistently failed to fulfill their own promised commitments to reduce GHG emissions. They have also aggravated the harms suffered by the plaintiffs by Impugned Conduct that causes, allows and contributes to dangerous levels of GHG emissions.
9. The plaintiffs thus seek an order from this Court that the defendants be required to develop and implement an enforceable plan that is consistent with Canada’s fair share of the global carbon budget necessary to achieve GHG emissions reductions consistent with the protection of public trust resources subject to federal jurisdiction and the plaintiffs’ constitutional rights (a “**Climate Recovery Plan**”).
10. The plaintiffs also ask this Court to retain jurisdiction to ensure that this Climate Recovery Plan is implemented.

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L. Climate Change Impacts on the Plaintiffs

ii. Sierra Raine Robinson (“Sierra”)

101. Sierra is 17 years old and resides in Westholme, British Columbia, on her family’s farm in the Cowichan Valley.

102. Sierra has Lyme disease, which she likely contracted on or around the age of 13. She was formally diagnosed with the disease in June 2017. Lyme disease is caused by a type of tick-borne bacteria called *Borrelia burgdorferi* and is transmitted through infected blacklegged ticks.
103. In Canada, rising temperatures have significantly increased the range of blacklegged ticks and their hosts (such as mice and deer), the population of blacklegged ticks, and the length of the season during which blacklegged ticks are active.
104. Lyme disease has had a debilitating impact on Sierra. Effects of Lyme disease on Sierra include fibromyalgia, joint pain, chronic fatigue, dizziness, headaches and migraines, fainting, weight loss, panic attacks and consequential mental health issues. At times, Sierra has been confined to bed rest and/or a wheelchair. These impacts have been more severe and prolonged during periods of higher temperatures and extreme weather events.
105. Sierra also has asthma. She experienced more severe asthmatic symptoms when she was younger, but she continues to experience symptoms periodically and particularly during periods of higher temperatures and the wildfire season. The poor air quality during the wildfire season irritates Sierra's respiratory system and increases her risk of an asthmatic episode.
106. Sierra's family grows a large proportion of the food they consume on their farm. Sierra has actively participated in planting, growing, and harvesting the food crops since she was seven years old. She practises, teaches and has a certificate in permaculture design.
107. Rising temperatures and declining rainfall have made it increasingly difficult for Sierra and her family to grow many of the crop varieties they previously grew. This has caused them to switch to planting more drought- and heat-resistant crop varieties, and from planting annuals to perennials.
108. Sierra's family also raises livestock, including chickens, ducks, and pigs, and has approximately 50 honeybee hives. Several of Sierra's chickens died from heatstroke during heatwaves in the summer of 2018. Sierra and her family used to have a larger farm, which included cows and approximately a dozen goats. Sierra was forced to sell her cows and goats because she could no longer care for them after contracting Lyme disease.

109. In the summer of 2016, Sierra's family farm experienced extremely low water pressure due to a drought. Sierra and her family had to ration their water use, both for farm and personal use. Their neighbours' well nearly ran dry during the same period. Sierra was helping on their neighbours' farm at the time and because of the scarcity of water they had to prioritize giving drinking water to livestock over watering crops, resulting in crop loss.
110. Lower rainfall and higher temperatures have led to increased wildfire risk to Sierra's home. In 2018, wildfires burned through areas of the Cowichan Valley and came within close proximity to Sierra's home (approximately six kilometres). Sierra's family had packed up their essential belongings and were prepared to flee their farm, until winds changed the trajectory of the fire and spared their home. Increased wildfire smoke exacerbates symptoms relating to Sierra's asthma and Lyme disease, making it difficult for her to go outdoors during periods of heavy smoke. In 2018, when traveling to Tofino on Vancouver Island, Sierra had to wear a N95 mask, which filters fine particulates, to prevent exacerbation of her Lyme disease and asthma.
111. Rising temperatures and lower rainfall are impacting Sierra's ability to enjoy the outdoors. The water level in the Cowichan River and Chemainus River is now too low for Sierra to access and swim in at certain points during the summer. Bacterial and algal outbreaks due to warming in nearby Fuller Lake have caused Sierra to avoid swimming in order to not come in contact with cercarial dermatitis-causing parasites. Also, western red cedar forests in which Sierra hikes are now experiencing die-back. Sierra is frightened for the future of these forests and concerned over the greater ecological impacts this die-back will likely have.
112. These impacts to her health and changes to her home and surrounding environment have had a serious emotional and psychological effect on Sierra. Sierra experiences anxiety and bouts of depression when thinking about the impacts climate change is having on her future and livelihood. During a depressive state, she feels alone and helpless, and she experiences loss of energy levels and self-esteem. Because of her knowledge of climate change and regenerative agriculture, Sierra worries about the ability of her family and community to grow certain foods for themselves as temperatures increase and rainfall and snowpack melt declines.

113. Sierra's anxiety and depressive symptoms have increased in correlation with the impacts she has experienced due to climate change.

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v. Montay Jesse Beaubien-Day (“Montay”)

141. Montay is 12 years old and resides in Smithers, British Columbia. His mother is Wet'suwet'en and his father is Tahltan.
142. Montay spends much of his time participating in traditional Wet'suwet'en and Tahltan cultural practices, such as drumming, fishing, traditional plant harvesting and basket making. Game meat, harvested fish and berries form a large proportion of his family's food supply. Montay's maternal grandfather hunts and provides meat for Montay's family, particularly elk, moose and bear.
143. Montay has been told by his maternal grandfather that hunting is becoming more difficult due to changes in the range and abundance of these animals. In or around October 2018, Montay saw his maternal grandfather return from a month-long hunting trip with no meat, which was unusual. In years when his maternal grandfather is less successful at hunting, Montay and his family must rely on pigs they raise or otherwise must purchase meat from the grocery store, which adversely impacts their food security, as well as their connection to their culture.
144. Montay and his family fish for sockeye salmon, pink or humpback salmon, and steelhead trout, which fishermen gather from the Bulkley River in the Witset (formerly Moricetown) Canyon near Smithers. In recent years, rising temperatures, reduced rainfall and snowpack, and consequential reduced river flow have caused sharp declines in fish numbers in the canyon. As a result, permitted fish catch quotas for Montay and his family have been reduced. 2019 was the first year since 2011 that Montay and his family were unable to get any fish.
145. Montay and his family also regularly forage for berries, including huckleberries, blueberries and saskatoon berries. Climate change, particularly changes to the length of the seasons in northern British Columbia, has resulted in decreased productivity and size of huckleberries around Smithers. Increased competition from plants that thrive in warmer territories and northward migrating

invasive species have also reduced the availability of berries. Montay and his family noticed that the quality of the huckleberries around Smithers was particularly poor in 2019. Montay and his family also harvest stinging nettle and devil's club for medicinal uses, harvest birch bark for basket making, and plan to use western red cedar bark for weaving traditional headwear. But the abundance of devil's club and western red cedar near Montay's home is being adversely affected by rising temperatures and changes to the length of the seasons.

146. Montay participates in local drumming gatherings of Wet'suwet'en and other First Nations one to two times per month, and in larger gatherings of different groups approximately five times per year. These larger gatherings involve singing, drumming, dancing, story-telling, eating traditional foods and participating in other cultural activities. Traditional Wet'suwet'en drums are made from deer hide, but decreasing deer populations near Smithers make it impractical to hunt for the hide needed to make drums. Instead, Montay and his family must purchase drum kits commercially in order to participate in traditional practices.
147. Changes to the environment and to the availability of plants and animals traditionally used in these ceremonies make it more difficult for Montay to learn about and practice his culture and for elders to pass on knowledge about these resources to him. Wet'suwet'en traditions have always involved large amounts of storytelling, but the disappearance or decreased abundance of plant and animal species like wild rice and deer mean that Montay is less familiar with what his elders describe to him, which threatens Montay's cultural well-being.
148. Montay also spends approximately two weeks per year at his family's other home in Telegraph Creek, located on the Stikine River within the boreal forests of northern British Columbia. The house is a very special place to Montay and his family, and has significant traditional cultural significance. Wildfires in Northern British Columbia are increasing in frequency, intensity and seasonal duration due to climate change. In early August 2018, a large wildfire broke out in Telegraph Creek, causing devastating structural damage to the First Nations community. The fire destroyed Montay's paternal grandfather's ranch house and the homes of many of Montay's Tahltan relatives.

149. The destruction of Montay's family home in Telegraph Creek had an adverse effect on Montay's emotional and psychological health and cultural well-being. Montay and his father visited his grandfather's ranch house in 2019 to take photos and videos of the damage. Visiting the destroyed ranch home was a very difficult and sad experience for Montay. His family were unable to visit other relatives in Telegraph Creek, because many are yet to return as many homes are still uninhabitable. Montay becomes sad when thinking about the many environmental and cultural changes occurring around him due to warmer temperatures and other climatic changes, and fears future wildfires will affect his home in Smithers.

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vii. Haana Edenshaw ("Haana")

157. Haana is 16 years old and resides in the village of Masset on Haida Gwaii, British Columbia. She is currently attending boarding school in Metchosin, British Columbia.
158. Haana is a member of the Tsitts Gitanee clan of the Haida Nation.
159. Haana and her family's home in Masset is located on an inlet on the coast of Haida Gwaii, adjacent to the community dock. Sea-level rise caused by climate change threatens Haana's home and traditional lands. Haana and her family are noticing increasing shoreline erosion, and Haana knows that sea level rise will damage their house, as their porch is already damaged by the tide. Haana's paternal grandfather's village of Skedans – an ancient Haida village that is part of the Gwaii Haanas National Park Reserve and Haida Heritage Site, and is a registered National Historic Site of Canada – is experiencing increasing damage as a result of rising sea levels, extreme weather and erosion. Burial sites are being disturbed and unearthed and totem poles have been damaged. These Climate Change Impacts jeopardize the continued existence of this culturally and personally significant site.
160. Haana is learning to speak the Haida language, which is endangered, and spends much of her time engaging in Haida cultural practices. Haana believes that her Haida language, culture and mythology is deeply interconnected with the animals, plants, waters, natural resources, climate and ecology of Haida Gwaii. As

- part of her cultural practices, Haana fishes and harvests berries, roots, cedar bark and other plants from her local environment.
161. Harvested and hunted foods, particularly fish, form a large and culturally-significant part of Haana's diet on Haida Gwaii. Haana and her family regularly fish for salmon. Warm river temperatures and low rainfall and river levels in recent years have led to low salmon numbers on Haida Gwaii. Haana's experiences deeply contrast with the stories she has heard from her elders of the rivers being full with salmon. During a fishing trip in 2019, Haana's family expected to catch 50 salmon to last them the winter but were only able to catch five. As a result, Haana and her family have had to supplement their traditional diet with more store bought food.
 162. In the spring, Haana and her family traditionally harvest large amounts of berries and seaweed. In recent years, drier temperatures and lower rainfall have affected the quality and quantity of the berries harvested. Haana's family noticed that salal bushes were particularly affected in 2019. The availability and quality of the edible seaweed (laver, Haida name "sgiw") that Haana's family harvests is also increasingly sparse and inconsistent.
 163. As her ancestors did before her, Haana and her family harvest cedar bark from yellow cedar (*Cupressus nootkatensis*). Higher temperatures and drier weather are contributing to die-off and range-shifts of this species. Yellow cedar, which Haida culture particularly values for its use in blanket weaving and other utilitarian and artistic uses, is becoming increasingly-scarce on Haida Gwaii. Haana feels that the decline in yellow cedar makes it more difficult for her to learn her culture, as less cedar bark availability means fewer people using the bark, and therefore fewer opportunities to pass on these cultural practices to the next generation.
 164. Haana feels a deep connection to and spends a lot of her spare time hiking and exploring the rainforests of Haida Gwaii. She fears the risk of future wildfires from the drier conditions in recent years, which have resulted in an increasing number of fire advisories and fire bans on Haida Gwaii.
 165. In 2019, Haana spent much of her summer vacation working at the Rediscovery culture camp located at T'aalan Stl'ang, a remote beach on the west coast of Haida Gwaii, where she increased her knowledge about the connection between forests, beaches and oceans and Haida culture, and participated in cultural learning

with her siblings. Haana sees her commitment to the resurgence in Haida culture as imperiled because the natural world on which Haida language and culture are based are disappearing because of climate change.

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ix. Zoe Grames-Webb (“Zoe”)

174. Zoe is 13 years old and resides in Vancouver, British Columbia.
175. Zoe and her family regularly spend time at their family cabin in Hopkins Landing, British Columbia, a small coastal community near the town of Gibsons. From the time she was an infant, Zoe has spent two months every summer in Hopkins Landing.
176. In recent years, historically unprecedented smoke from summer wildfires in British Columbia has affected Zoe’s ability to live healthfully in Vancouver and Hopkins Landing. She has felt the wildfire smoke irritate her lungs and cause her nasal congestion, throat and eye irritation, and headaches. Because of the wildfire smoke, she has felt fear and sadness about the destabilizing of local and global ecosystems. At times, the wildfire smoke has been so thick that Zoe and her family have been forced to stay inside and/or limit outdoor activities for days at a time, in compliance with advice of local health and government officials. Zoe understands that breathing in wildfire smoke is especially harmful to children’s developing lungs. Because of the wildfire smoke, Zoe has been unable to participate in a number of activities that are important for her health, well-being and lifestyle, including running, swimming, and enjoying outdoor games, events and activities. The wildfires have made her feel afraid for her own well-being and the well-being of her family members who live and keep animals in Kamloops, British Columbia, an area particularly vulnerable to wildfires.
177. Western red cedars are vital to the local ecology that Zoe has grown up with. In recent years, Zoe has witnessed large scale die-off, and subsequent removal, of hundreds of western red cedars within one kilometre of her home. She is witnessing firsthand the negative impacts this is having on her community and local ecology. Zoe is aware the trees are dying off because climate change is creating summer drought conditions. Witnessing these iconic trees, which have lived for centuries, die-off makes Zoe feel

sad and worried about the ecosystem around her because it shows the urgency and severity of the climate crisis.

178. Sea level rise, storm surges, and coastal erosion also affects Zoe's community in both Vancouver and Hopkins Landing. Her family home is within the area recognized by the City of Vancouver's official report on sea level rise as prone to flooding during this century. In Hopkins Landing, the community has suffered significant shoreline erosion, which threatens to destroy a 50-foot stretch of community property that links the community – the Hopkins Landing heritage path. This stretch of waterfront land is a site where many community events take place and is critical to the enjoyment and culture of Zoe's family and community in Hopkins Landing. Zoe is afraid that due to climate change the path will no longer exist, thereby breaking community bonds and irrevocably changing the character and identity of her community there.
179. Zoe has a deep and personal understanding of how climate change is affecting her life in Vancouver and Hopkins Landing. Seeing climate change impacts play out in real time is making her fearful and anxious about her future. Because she is unable to vote and participate in the political process, she has begun to participate in school strikes and other forms of protest.

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RELIEF SOUGHT

A. Orders Sought

222. The plaintiffs therefore claim as follows:
- a) an order declaring that the defendants have a common law and constitutional obligation to act in a manner compatible with maintaining a Stable Climate System, i.e. one that is capable of sustaining human life and liberties, and to refrain from acting in a manner that disrupts a Stable Climate System;
 - b) an order declaring that, as a result of their Impugned Conduct, the defendants have and continue to unjustifiably infringe the plaintiffs' rights under s. 7 of the *Charter* and puts at risk the s. 7 rights of all children and youth now and in the future;
 - c) an order declaring that, as a result of their Impugned Conduct,

- the defendants have and continue to unjustifiably infringe the plaintiffs' rights under s. 15 of the *Charter* and puts at risk the s. 15 rights of all children and youth now and in the future;
- d) an order declaring that, as a result of their Impugned Conduct, the defendants have breached and continue to be in breach of their obligation to protect and preserve the integrity of public trust resources and has violated the right of the plaintiffs and puts at risk the rights of all children and youth now and in the future to access, use and enjoy public trust resources including navigable waters, the foreshores and the territorial sea, the air including the atmosphere, and the permafrost (“**Public Trust Resources**”);
 - e) an order requiring the defendants to prepare an accurate and complete accounting of Canada's GHG emissions, including the GHG emissions released in Canada, the emissions caused by the consumption of fossil fuels extracted in Canada and consumed out of the country, and emissions embedded in the consumption of goods and services within Canada;
 - f) an order requiring the defendants to develop and implement an enforceable climate recovery plan that is consistent with Canada's fair share of the global carbon budget plan to achieve GHG emissions reductions compatible with the maintenance of a Stable Climate System, the protection of Public Trust Resources subject to federal jurisdiction and the plaintiffs' constitutional rights;
 - g) an order retaining jurisdiction over this action until the defendants have fully complied with the orders of this Court and there is reasonable assurance that the defendants will continue to comply in the future absent continuing jurisdiction;
 - h) costs, including special costs and applicable taxes on those costs; and
 - i) such further and other relief as this Honourable Court deems just.