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BC Climate Accountability Law is Justiciable (But Weak Climate Plan is Reasonable)

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Case Commented On: *Sierra Club of British Columbia Foundation v British Columbia (Minister of Environment and Climate Change Strategy)*, [2023 BCSC 74](#)

In a judgement released last week, the Supreme Court of British Columbia (BCSC) ruled that requirements to report on progress toward climate change targets under the *Climate Change Accountability Act*, [SBC 2007, c 42](#) (CCAA) are justiciable. This short post provides context for the decision in *Sierra Club of British Columbia Foundation v British Columbia (Minister of Environment and Climate Change Strategy)*, [2023 BCSC 74](#) (*Sierra Club*), summarizes key points, and reflects on potential implications. Overall, this BCSC judgement is a welcome development in the climate change litigation context where justiciability is typically a live and uncertain issue.

Context

In 2018, the British Columbia (BC) Legislature amended its then flagship climate change statute, the *Greenhouse Gas Reduction Targets Act*, [SBC 2007, c 42](#), renaming it the CCAA and introducing a number of new requirements to create a stronger transparency and accountability regime. The amended act's purpose is to establish a “comprehensive climate actions accountability framework” for BC (*Sierra Club* at para 19), and the Act includes explicitly legislated GHG emission reduction targets, as well as detailed and frequent accountability and reporting requirements (at s 2).

BC is not alone in legislating a transparency and accountability framework to drive GHG emission reductions. Many jurisdictions around the world are taking such steps (see commentary and examples [here](#)), and, closer to home, the province of Manitoba passed a similar law in 2018, as did the federal government. In 2021, the federal government passed the *Canadian Net-Zero Emissions Accountability Act*, [SC 2021, c 22](#) (CNZEEA) with the purposes of requiring the setting of targets, including net-zero emissions by 2050, and promoting transparency and accountability in relation to achieving those targets. Notably, that Act does not include any explicit provisions providing for judicial oversight, nor has it yet been tested in court, and so the matter of justiciability of its statutory requirements remains an open question. As such, this BCSC decision is of interest to those watching the federal and Manitoba contexts and beyond.

The BCSC Decision

At issue in this case was whether the Minister breached their statutory obligations in preparing the 2021 Climate Change Accountability Report and supporting documents “by not including plans to

continue progress towards meeting the province-wide targets set for 2025, 2040, 2050 and the Oil and Gas sector target set for 2030” (at para 2). Petitioner Sierra Club asserted that the matter was justiciable and that the Minister’s report and materials did not meet the requirements of the Act (at paras 2 – 3). The Minister countered in two ways, first asserting that the CCAA is not justiciable so the Court should decline to review the mater, or, in the alternative, asserting that the Minister’s reporting was a reasonable exercise of the discretion granted under the relevant provisions of the CCAA (at para 4). As discussed further below, Justice Jasvinder S. Basran found the statutory requirements to be justiciable, though he then went on to find the Minister’s reporting to be reasonable in light of the specific statutory provisions and discretion granted under the Act.

Justiciability

Justiciability has been a particularly challenging issue in Canadian climate change litigation, and it was a central issue in this case, with the court asking whether the “nature and extent of BC’s reporting on progress toward the climate change targets” is justiciable (at paras 5). Basran J. summarized the concept succinctly, stating that “[j]usticiability refers to whether a subject matter is ‘appropriate for a court to decide’” (at para 35 and then going on to recite the following from *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525 at 545, [1991 CanLII 74](#):

In exercising its discretion whether to determine a matter that is alleged to be non-justiciable, the Court’s primary concern is to retain its proper role within the constitutional framework of our democratic form of government. [Citations omitted.] In considering its appropriate role the Court must determine whether the question is purely political in nature and should, therefore, be determined in another forum or whether it has a sufficient legal component to warrant the intervention of the judicial branch. (*Sierra Club* at para 39)

In climate change cases, there is a tendency for courts to rule that matters are non-justiciable given the multi-faceted nature of responses to climate change and the need to balance many social, economic, and environmental factors. Deep discussion is beyond the scope of this short post, but [this recent journal article](#) provides helpful, accessible commentary. In the realm of climate change accountability laws in particular, justiciability remains an area of uncertainty because case law is scant. One case, however, provides some insight. In *Friends of the Earth v Canada*, [2008 FC 1183 \(CanLII\)](#); (appeal dismissed, [2009 FCA 297 \(CanLII\)](#)), the Federal Court ruled the statutory provisions of the since-repealed *Kyoto Protocol Implementation Act*, [SC 2007, c 30 \(KPIA\)](#) to be non-justiciable, stating that requirements pertaining to the content of that Minister’s climate change plan were “policy-laden considerations which are not the proper subject matter for judicial review” (at para 33). Some provisions of *KPIA* were particularly amorphous, and, by contrast, the provisions of the *CCAA* (and the federal *NZEAA* mentioned above) differ from *KPIA* by being more specific and mandatory in nature. In this way, the *CCAA* applies lessons from *Friends of the Earth* by including more explicit, clear requirements against which a court could assess government action. And so the BCSC did.

In finding *CCAA* statutory requirements justiciable, Basran J. explained that the Act “has a sufficient legal component because it can be assessed by an objective legal standard considering whether the minister met the specific, mandatory reporting requirements of the aforementioned section of the *CCAA*” (at para 45, citing *CCAA* s 4.3(1)(h)(i)). He concluded that, notwithstanding the Minister’s argument that the Act was premised on accountability to the Legislative Assembly,

not the courts, “the Legislature intended for these reporting obligations to be enforceable by the courts” and that “[t]here is nothing of an inherently political nature in the extent of information statutorily required in s. 4.3 of the CCAA” (at para 46). Justice Basran then concluded succinctly that “the question of whether a plan complies with statutory requirements is a matter of law and is therefore justiciable” (at para 48).

Reasonableness of Reports

The decision then goes on to set out the standard of review as reasonableness “because the alleged omissions are errors of law relating to the Minister’s interpretation of its home statute, the CCAA: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para. 25” (at para 49).

While a ruling that the matter is justiciable may seem like a victory for those pushing for emission reductions, the remainder of the decision will probably come as a disappointment. Basran J. goes on to find that, on a reasonableness review, the Minister did indeed comply with the reporting requirements (at para 81). More specifically, Justice Basran explained that in light of the specific language of the statutory requirements, Sierra Club was seeking a level of detailed information that was not statutorily required, in particular with respect to targets set for 2025, 2040, 2050, and the Oil and Gas sector (at para 68). It was only detailed information in respect of the 2030 target that was necessary, and the Minister had indeed reasonably satisfied that requirement (at para 68). In response to the assertion that more information ought to have been included in the Minister’s report and associated documents, Basran J. acknowledged that such “information that would enable it and the public to review the form, content, and expected results of BC’s climate change initiatives” but then found that “[w]hile this may be laudable, it is not statutorily required under the CCAA” (at para 75). He went on to succinctly conclude that “the Minister has reasonably complied with the statutory reporting requirements in s. 4.3(1)(h)(i) of the *Act*” (at para 81).

Implications

Contours are faint in the landscape of climate change accountability laws in Canada. This is due to there being relatively few court decisions in this specific area, and the fact that these statutes in do not include explicit provisions providing for or barring judicial oversight. In this landscape, *Sierra Club* is a helpful development with informative judicial interpretation and commentary.

The most significant implication of the ruling is that requirements of this climate change accountability law are justiciable. Basran J.’s reasoning indicates statutory silence regarding judicial oversight is not necessarily a barrier to judicial review, so long as the act’s provisions are sufficiently clear, specific, and mandatory for a court to engage with the matter. This is in sharp contrast to *Friends of the Earth*, where the federal court found at least some of the statutory requirements to be “well outside the proper realm of judicial review” (at para 33; and it is interesting to note in the present political context that one of those problematic provisions required that the federal climate change plan provide for a “just transition” for workers affected by emission reduction measures (*KPIA*, s 5(1)(a)(iii.1))). As such, despite this being a BC lower court decision, it is reasonable to conclude that the justiciability barrier to litigation is surmountable in the climate change accountability laws context (though there may yet be requirements under the Act that another court finds non-justiciable, but such analysis is for another day).

To the extent that requirements of the federal *NZEAA* resemble those of the *CCAA* in terms of being mandatory and specific, and indeed many do, one could now expect a future court to find those federal requirements to be justiciable notwithstanding that statute's lack of any explicit judicial review provision. For any other jurisdictions in Canada that may be contemplating such legislation, *Sierra Club* underscores the importance of getting the text of each provision as clear, specific, and mandatory as possible, assuming that there is an intention to have at some degree of judicial oversight.

However, quite predictably, *Sierra Club* illustrates that courts are going to be deferential to the Minister under a reasonableness review. If something is not required explicitly, it will not be read to be required by a court. Put another way, in *Sierra Club* the court has sent a signal that it is not tenable to argue that a government should somehow go above and beyond, or provide information for “enhanced clarity and accountability” (at para 68).

As climate change litigation and legislative responses continue to proliferate across Canada and the world, *Sierra Club* is an instructive development, even if disappointing for those wanting more climate action more quickly.

This post may be cited as: David V. Wright, “BC Climate Accountability Law is Justiciable (But Weak Climate Plan is Reasonable)” (January 27, 2023), online: ABlawg, http://ablawg.ca/wp-content/uploads/2023/01/Blog_DW_Sierra_Club.pdf

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