

The ICJ's Advisory Opinion on Climate Reaches Canada: The Federal Court Opens Door to New Climate Claims

By: Kaitlin Schaaf

Case Commented On: *Lho'Imggin v Canada*, [2025 FC 1586 \(CanLII\)](#)

In July 2025, the International Court of Justice (ICJ) released an Advisory Opinion (AO) on the Obligations of States in respect of Climate Change, [\[2025\] ICJ Rep 456](#). As Professor Majekolagbe pointed out in [their analysis](#), the AO affirmed that international climate change treaties create binding obligations on states and under customary international law, states have a duty to prevent significant harm to the climate system.

In September, Justice Glennys McVeigh of the Federal Court released a judgement on a motion to strike application that provides meaningful clarification on the application of the AO and other international law to domestic climate change litigation. That judgement is significant because it is one of the first instances where a domestic court has directly engaged with the AO. It also reiterates how Canada's domestic courts are unable to directly enforce international commitments, such as those made under the [Paris Agreement](#) and the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#). Nonetheless, it leaves the door open for a novel common law tort claim against Canada for violation of customary international law and provides guidance on how such a claim could be structured.

The *Lho'Imggin* case began in 2020 when the Dini ze' (Head Chiefs) of two Wet'suwet'en House groups filed a claim alleging that the federal approach to climate change violated their rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and section 91 of the *Constitution Act, 1867*. The claim was struck without leave to amend on the basis it disclosed no reasonable cause of action and was non-justiciable (*Misdzi Yikh v Canada*, [2020 FC 1059 \(CanLII\)](#) at paras 71, 72, 85, 104, 115).

That decision was appealed alongside youth plaintiffs in *La Rose v Canada*, [2023 FCA 241 \(CanLII\)](#). Justice Donald Rennie upheld the dismissal but found the section 7 claim justiciable, though too broadly pleaded (*La Rose* at para 22). The appellants were granted leave to amend and re-frame their section 7 claims accordingly. A discussion of Justice Rennie's reasoning on the section 7, 15, and 91 claims can be found in [another blog](#) by Nigel Bankes et al. In December 2024, the Dini Ze' filed an amended claim focusing on the cumulative effects of multiple federal statutory instruments (at paras 28–29) and asserting a common law tort action against Canada for breach of customary duties under international law (at para 56). These novel pleadings led to Justice McVeigh's decision in *Lho'Imggin* and prompted the discussion of the AO and international law in the Canadian context.

The Advisory Opinion

Justice McVeigh held that although the AO does not impose any legal obligations directly on states, it “has substantial persuasive legal authority” (at para 42), and it establishes principles that “can influence how courts interpret domestic laws” (at para 44). At a minimum, the AO may be used by Canadian courts to shape the standards against which domestic law is measured, and it outlines international legal principles that may be legitimately used in the domestic climate litigation context (at para 63). Particularly in the context of section 7 *Charter* rights and environmental harms, “the Court may use the ICJ’s reasoning to inform its interpretation of the extent of climate protection guaranteed by the *Charter*” (at para 64).

The Federal Court’s engagement with the AO is significant not only because it is one of the first domestic courts to do so, but also because it did so even though the AO was only “alluded to” by the Dini Ze’s counsel during oral submissions (at para 40). This suggests the Court may have a strong willingness to engage with plaintiffs who use the AO to strengthen their claims in future cases. Furthermore, the explicit reference to section 7 rights obligates Canadian courts to meaningfully consider the principles underscored by the AO in future *Charter*-based cases.

Enforceability of Canada’s International Commitments

Justice McVeigh reiterated the dualist approach to international law and the distinction between domestic and international obligations. She noted that Canada’s international commitments are not directly enforceable unless they have been incorporated through domestic implementing statutes, and that “only the Acts themselves” can be adjudicated on by Canadian courts (at paras 46 and 50) (emphasis added). A violation of international obligations, such as those made under the *Paris Agreement* or *UNDRIP*, may constitute an “internationally wrongful act,” but Canadian courts lack the jurisdiction to adjudicate on the violations directly (at para 51).

Thus, if a claimant wishes to argue that Canada is in violation of its international commitments they can only do so by issuing a challenge against the statutory instrument that provides the basis for domestic reception of the commitment. This analysis is informative and provides useful guidance on the framing of constitutional and human rights claims in the context of environmental harms and Canada’s international agreements.

Tort Claims for Violations of Customary International Law

Customary international law, unlike the international obligations discussed above, does not require implementing legislation to become part of Canadian common law if it fulfills the basic criteria of state practice and *opinion juris* (at paras 57-58). Although the AO connects state obligations to customary duties (at para 61), the argument that it establishes a reasonable cause of action for the breach of customary international law is not “sufficiently developed” (at para 65). Despite this, Justice McVeigh does not shut the door on a future common law claim based on the AO. Justice McVeigh held that in principle, the AO could create a new customary norm if

evidence of general state practice and *opinion juris* can be shown (at para 62). Notably, if the Dini Ze' wish to proceed with the tort claim, they were granted leave to amend their pleadings to reflect the required evidence (at paras 62, 113).

In conclusion, *Lho'Imggin* marks a turning point in the realm of Canadian climate litigation. It was a small success in that the Dini Ze' were granted leave to amend their novel common law tort claim against Canada (at para 113) and were once again granted leave to amend their section 7 pleadings to align better with international and domestic law (at para 115). Justice McVeigh's reasoning signals a growing judicial openness to engaging with international commitments in the domestic context. Furthermore, recognition of the AO's persuasive authority paves the way for novel legal arguments grounded in customary international law which may potentially expand the legal avenues available for holding governments accountable for climate inaction.

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