Climate related disasters, claims and human rights

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Around the globe, the concept of climate related disasters has become synonymous with extreme weather events such as draughts, heat waves, flooding, hailstorms, hurricanes, tornados and wildfires. The expansion of environmental justice-oriented claims is a reaction to the unprecedented increase in frequency and severity of these climate related disasters. Wildfires in Portugal six years ago served as the catalyst for a recent trial before the European Court of Human Rights brought by six young Portuguese nationals against thirty-two European countries alleging those countries' failure to tackle the climate-crisis (discussed below).

What you need to know

- On Sept. 27, 2023, the European Court of Human Rights heard the long-awaited trial of *Duarte Agostinho et al. v Portugal and 32 others*.
- Generally, the *Duarte Agostinho* decision may have broad implications on how global organizations and governments respond to international climate change obligations.
- Courts and adjudicators will likely continue to address an increasing number of environmental justice-oriented claims.
- From a legal perspective, the increasing frequency and severity of climate related disasters will likely have broad implications on several legal areas, including land use planning and valuation, construction and infrastructure, business and corporate governance, property liability, and others.

Increasing severity and frequency of climate related events and claims

Over the last decade, several countries have addressed an increasing number of environmental justice-oriented claims related to climate disasters and extreme weather events. The Intergovernmental Panel on Climate Change predicts a continuing trend of more frequent and severe extreme weather events around the world. Consequently, the countries that endure such events are at higher risk of suffering economic losses resulting from damage to infrastructure, economic disruptions, and potential litigation arising from alleged failures to address the adverse effects of climate change.

The following provides examples of environmental justice-oriented claims instigated by different extreme weather-related disasters.

Beyond North America

In Europe, economic losses from climate related and extreme weather events have reached record breaking figures at approximately EUR 560 billion between 1980 and 2021. The extreme weather events experienced by European countries predominantly consists of hydrological events (floods) at 45 per cent, followed by meteorological events (lightening and hailstorms) at approximately 33 per cent of all weather events.

On Sept. 27, 2023, the Grand Chamber of the European Court of Human Rights heard the much-awaited case of *Duarte Agostinho et al. v Portugal and 32 others*. The claim was commenced by six Portuguese youths ranging between 11 and 24 years of age against the Member States of the Council of Europe and six other countries on Sept. 2, 2020. The claimants alleged that the respondents had failed to implement adequate climate change related policies contrary to its commitments under the *Paris Agreement*. The claimants relied on Articles 2, 8, and 14 of the *European Convention on Human Rights*, which aim to protect the rights to life, the right to respect private and family life, and the prohibition of discrimination. The specific grievances alleged by the claimants include adverse impacts to sleep, concentration and enjoyment of the outdoors because of poor air quality and high temperatures during more frequently occurring heatwaves.

The landmark claim has broad implications on European countries, and perhaps other continents, as it expands on the European Court of Human Rights previous rulings that found countries may be responsible for the human rights of peoples beyond its borders under exceptional cases. A decision in favour of the claimants would signal the urgency for some countries to invoke climate related policies to reduce emissions and meet international obligations under instruments such as the *Paris Agreement* and others.

Similar claims have been brought before the European Court of Human Rights against other European countries. For ease of reference, the following table provides a brief synopsis of such claims.

European Court of Human Rights – Climate Related Cases	
Case	**Overview**
Careme v France (no. 7189/21)	In January 2019, a private citizen commenced an application against France relating to an alleged violation of the right to life and right to respect private and family life contrary to the *European Human Rights Convention*, Articles 2 and 8. On June 7, 2022, the Chamber of the European Court of Human Rights relinquished jurisdiction in favour of the Grand Chamber, where it awaits a decision to be made by seventeen judges.
Verein KlimaSeniorinnen Schweiz and Others v Switzerland (no. 53600/20)	In November 2020, a Swiss association and its members consisting of over 650 elderly people

	commenced an application against Switzerland relating to the adverse effects of global warming. The claimants submit that the respondent failed to fulfil its positive obligations under Articles 2 and 8 of the *European Human Rights Convention*. As a result, the claimants allege to have suffered several health problems and diminished living conditions because of worsening heatwaves. In December 2022, several parties submitted third party intervention applications. The applications await a decision by the Grand Chamber.
Uricchiov v Italy and 31 Other States (no. 14615/21) and *De Conto v Italy and 32 Other States* (no. 14620/21)	In March 2021, two private citizens commenced an application against Italy and other countries relating to violations of the right to life, right to respect for private and family life, right to an effective remedy, and prohibition of discrimination contrary to the *European Human Rights Convention*, Articles 2, 8, 13, and 14. On Sept. 2, 2023, the hearing to address the application was adjourned and awaits the decision of other climate-related applications before determination by the Grand Chamber.
Mullner v Austria (no. 18859/21)	In March 2021, a private citizen commenced an application against Austria relating to violations to the right to life, right to a fair trial, right to respect private and family life, and right to an effective strategy contrary to the *Human Rights Convention*, Articles 2, 6, 8, and 13.
Greenpeace Nordic and Others v Norway (no. 34068/21)	In June 2021, two non-governmental organizations and six affiliated individuals commenced an application against Norway relating to violations of the right to life, right to respect for private and family life, right to effective remedy, and prohibition of discrimination under the *European Human Rights Convention*, Articles 2, 8, 13, and 14. Like *Mullner v Austria*, on Sept. 2, 2023, the hearing to address the application was adjourned and awaits the decision of other climate-related applications before determination by the Grand Chamber.
Engels v Germany (no. 46906/22)	In September 2022, nine teenagers and young adults commenced an application against Germany relating to violation of the right to life and right to respect for private and family life contrary

	to the *European Human Rights Convention*, Articles 2 and 8. Like two preceding applications, on September 2, 2023, the hearing to address the application was adjourned and awaits the decision of other climate-related applications before determination by the Grand Chamber.

North America

Here in Canada, the frequency and severity of climate or extreme weather events has increased significantly in recent years from coast to coast. Take for example, in British Columbia, the province endured record high summer temperatures, and precipitation and flooding in the fall of the same year. Or more recently, the persisting wildfires which resulted in approximately $770 million in costs for British Columbia this year. In Ontario, a hailstorm damaged nearly 125 homes in Barrhaven near Ottawa on July 13, 2023. Less than a month later, a tornado touched down in a rural community also near Ottawa on Aug. 3, 2023. On the east coast, Nova Scotia recently endured similar wildfires and floods over the course of the last three months. The wildfires resulted in nearly 250 kilometres of scorched land followed by 250 millimetres of rain a mere two months from each event.

On April 14, 2023, the Ontario Superior Court of Justice released its decision on *Mathur v His Majesty the King in Right of Ontario*. The Court dismissed an application commenced by seven youth challenging the constitutionality of Ontario's greenhouse gas (GHG) emission targets. The applicants challenged Ontario's decision to repeal its *Climate Change Mitigation and Low-Carbon Economy Act, 2016* and establish reduction targets pursuant to the *Cap and Trade Cancellation Act, 2018* (CTCA). In effect, the CTCA established a GHG reduction target of 30 per cent below 2005 levels by 2030 under the CTCA in lieu of the former target of 37 per cent below 1990 levels by the end of 2030 under the repealed act. Despite the finding of justiciability, the Court held that there was no violation of either section 7 or 15 of the *Charter*.

Earlier in the year, the British Columbia Supreme Court released its decision on *Sierra Club of British Columbia v British Columbia (Minister of the Environment and Climate Change Strategy)* on Jan. 18, 2023. The Court addressed whether the reporting requirements found in British Columbia's *Climate Change Accountability Act* are enforceable by the courts, and if so, whether the Minister of Environment and Climate Change Strategy had failed to meet the statutory conditions under the Act. The petitioner sought declarations that the Minister breached its statutory obligations in preparing the 2021 Climate Change Accountability Report and supporting documents by failing to include successive plans regarding GHG emission targets for 2025, 2040, 2050, as well as specific targets for the oil and gas sector for 2030.

Similarly, in the United States alone, there have been twenty-three confirmed weather/climate disaster events recorded in 2023 alone (as of Sept. 11, 2023). This figure is stark in contrast to the annual average of 8.1 weather/climate disaster events from 1980-2022 period. The same organization posits that the resulting damage from such events already exceeds $1 billion (USD) in the United States in 2023.

In *Juliana v United States*, the Ninth Circuit Court of Appeals addressed an action commenced by several children and one environmental organization. The applicants argued that the nation violated the *public trust* doctrine contrary to the *United Stations Constitution, Amendments*. The applicants argued that the right to a "climate system capable of sustaining human life" falls within the gambit of the Due Process Clause of the *Fifth Amendment*. In a split decision, the Ninth Circuit Court of Appeals reversed the lower court's decision and held that the Court did not have jurisdiction to grant an effective remedy.

More recently, the Judicial District Court of Montana heard the nation's first youth climate change trial. The applicants argued that the *Montana Environmental Policy Act* violated their rights to a healthy environment, life, dignity and freedom contrary to the *Montana Constitution* which guarantees "a clean and healthful environment in Montana for present and future generations." The Court held that provisions of the state policy used to evaluate requests for fossil fuel permits was unconstitutional because such provisions failed to consider the effects of GHG emissions.

Based on the foregoing cases from North America and beyond, we would expect to see more of these types of claims moving forward.

Legislative developments

Historically, the intersection between environmental and human rights laws has been less clear at both international and domestic levels. The notion of "greening" human rights has received recognition by way of international instruments such as the United Nations General Assembly's acknowledgement of the right to a clean, healthy, and sustainable environment. As a result, member states such as Canada have responded to the call to action by ratifying the contents of international instruments in domestic statutes. We anticipate that environmental human rights will continue to develop as climate related claims become more common.

International treaties and agreements

On July 28, 2022, the United Nations General Assembly adopted resolution A/76/L/75 acknowledging the right to a clean, healthy, and sustainable environment. Notably, the resolution garnered the support of 161 Member States in favour, zero against and eight abstentions. The resolution recognizes the direct and indirect implications of climate change on the enjoyment of human rights.

Domestic legislation

On June 13, 2023, Bill S-5 received Royal Assent and modernized the *Canadian Environmental Protection Act*, 1999 to include recognition of the right to a healthy environment. Note, Bill S-5 was covered in another article which can be found here.

Implications and next steps

An increasing frequency and severity of climate related disasters has broad implications, including for land value, property and other insurance claims, urban

planning, new construction and infrastructure, business interruption, public health and access to food and services, requiring due diligence in contract review, drafting and the provision of services will continue to evolve.

With reference to *Duarte Agostinho et al. v Portugal and 32 others,* the Grand Chamber's decision may have broad implications on government and other organizations across the globe as they adapt to meet international climate change obligations.

How BLG can help

If you have any questions as to how your business can assess its existing commitments and minimize its climate related risks, please reach out to the authors or key contacts listed below.

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Expertise

Environmental, Climate Change

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