**Court of Appeal for Saskatchewan**
**Docket: CACV4674**

**Citation:** ***Dykstra v Saskatchewan Power Corporation*, 2026 SKCA 99**
**Date: 2026-09-10**

Between:

**Sabrina Dykstra, a minor by her litigation guardian Claire Dykstra, Jill Forrester, Ryan Heise, Kayla Hopkins, Lynn Oliphant, Harold Pexa, Amy Snider, and Climate Justice Saskatoon Organization Inc.**

*Appellants*
*(Applicants)*

And

**Saskatchewan Power Corporation, Crown Investments Corporation of Saskatchewan, and The Government of Saskatchewan**

*Respondents*
*(Respondents)*

| | |
|---|---|
| Before: | Caldwell, Tholl and Drennan JJ.A. |
| Disposition: | Appeal dismissed |
| Written reasons by: | The Honourable Justice Jerome A. Tholl |
| In concurrence: | The Honourable Justice Neal W. Caldwell |
| Dissenting in part: | The Honourable Justice Jillyne M. Drennan |
| On appeal from: | 2025 SKKB 175, Regina |
| Appeal heard: | April 17, 2026 |
| Counsel: | Glenn Wright, Larry Kowalchuk and Kaitlyn Harvey for the Appellants<br>Collin Hirschfeld, K.C., and Caroline Seshadri for Saskatchewan Power Corporation and Crown Investments Corporation of Saskatchewan<br>C. Elaine Thompson, K.C., and Katherine Roy for The Government of Saskatchewan |

## Tholl J.A.

## I. INTRODUCTION

[1] The appellants are individuals and an organization who advocate on issues related to climate change. They filed an originating application with the Court of King's Bench, asserting that their rights under s. 7 and s. 15 rights of the *Canadian Charter of Rights and Freedoms* had been violated by the conduct of the respondents. In general, the impugned actions relate to the construction of two electrical generation plants and to provincial regulations which specify targets for greenhouse gas [GHG] emissions.

[2] The respondents successfully applied to strike the originating application on the basis that it did not raise a reasonable claim because it was not justiciable: *Dykstra v Saskatchewan Power Corporation*, 2025 SKKB 175 [*Chambers Decision*]. On appeal, the appellants assert that the Chambers judge erred in that determination in a number of ways related to proposed amendments and regarding the justiciability of the claim.

[3] This appeal is not the adjudication of a debate about climate change. The parties do not contest its existence. This judgment is a determination of whether the originating application filed by the appellants was correctly struck because it did not raise a reasonable claim and was not justiciable.

[4] For the reasons that follow, the appeal should be dismissed.

## II. BACKGROUND

[5] The individual appellants are residents of Saskatchewan ranging in age from 14 to 80 years old. They all rely on electricity provided by Saskatchewan Power Corporation [SaskPower], claim to be affected by climate change, and are concerned about GHG emissions and their reduction in order to mitigate the severity of anthropogenic climate change caused by the burning of fossil fuels. Climate Justice Saskatoon Organization Inc. is an organization that advocates for sustainable development, mitigation of dangerous climate change, and accelerating a just transition to a clean economy.

[6] SaskPower is a Saskatchewan Crown corporation. Under the provisions of *The Power Corporation Act*, RSS 1978, c P-19, it has the "exclusive right to supply, transmit, distribute, and sell" electricity within Saskatchewan, with some exceptions that are not relevant to this appeal (at s. 38). Crown Investments Corporation of Saskatchewan [CIC] is, among other things, a holding company for Crown corporations in Saskatchewan, including SaskPower: *The Crown Corporations Act, 1993*, SS 1993, c C-50.101. SaskPower and CIC are agents of the Government of Saskatchewan.

[7] The appellants have significant concerns over the risks that climate change poses to their health and well-being, their futures, their lives, their communities, and the environment. They assert that they have suffered anxiety and depression caused by the impacts of climate change, coupled with sensations of helplessness as a result of the Government of Saskatchewan continuing to finance, encourage, and approve infrastructure that increases GHG emissions from the province and exacerbates climate change. Other negative effects of climate change are detailed in their pleadings.

[8] On March 31, 2023, the appellants filed an originating application with the Court of King's Bench asserting violations of their s. 7 and s. 15(1) *Charter* rights, among other claims, and seeking remedies under s. 24(1) and s. 52 of the *Charter* [Claim]. Those *Charter* sections are as follows:

> **Legal Rights**
> **Life, liberty and security of person**
> **7** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> …
>
> **Equality Rights**
> **Equality before and under law and equal protection and benefit of law**
> **15(1)** Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> …
>
> **Enforcement**
> **Enforcement of guaranteed rights and freedoms**
> **24(1)** Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

…

**General**
**Primacy of Constitution of Canada**

> **52(1)** The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

[9] The Claim (including proposed amendments) is 97 paragraphs long. This background section is merely meant to provide context and has not attempted to summarize the Claim in a comprehensive manner.

[10] The appellants say that the respondents are worsening the climate crisis by constructing "new unabated fossil fuel-based electrical generation assets" [UFFGAs], namely the Great Plains Power Station in Moose Jaw, Saskatchewan, and the Aspen Power Station near Lanigan, Saskatchewan, which are natural gas-fired plants. They further allege that the GHG emission limits set out in *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations*, RRS c M-2.01 Reg 1 [*Regulations*], are not targets to reduce emissions because their effect is to permit an increase in emissions in the short term. While the Claim also contains many generalized statements about alleged failings of the respondents in relation to GHG emissions, it is these two specific areas that the appellants identify as constituting the state action in which they ground their action. As set out in the Claim, these two sets of conduct are said to increase GHG emissions and exacerbate climate change in a manner that violates their s. 7 and s. 15 *Charter* rights.

[11] For s. 7 of the *Charter*, the appellants list numerous ways that climate change has an impact on the health, lives, liberty, and livelihood of Saskatchewan residents and plead that "[a]ll citizens' s. 7 *Charter* rights to life and security of person are infringed by government action that increases GHG emissions via unabated fossil-fuel electrical generation". They state that the respondents "must refrain from ongoing development and construction of unabated fossil fuel generation assets because such actions interfere with the fundamental rights guaranteed by the *Charter*". The Claim asserts that s. 7 of the *Charter* requires the respondents to adhere to international treaties, covenants, and norms regarding climate change mitigation.

[12] Regarding s. 15(1) of the *Charter*, the appellants plead that "[c]itizens with personal characteristics that are immutable as enumerated in s. 15 of the *Charter* such as Indigenous people, women, and those living with mental and physical disabilities all experience greater impacts from the effects of climate change". The pleadings include youth, the elderly, women, Indigenous peoples, persons with health conditions, persons experiencing "ecoanxiety", and farmers as the groups whose s. 15 *Charter* rights are asserted to have been violated.

[13] While the appellants' requests for various orders and declarations are peppered throughout the Claim, they have sought the following specific remedies (if the proposed amendments are incorporated):

> **RELIEF SOUGHT**
> 15. The Applicants seek the following remedies pursuant to s. 52(1) of the *Constitution Act, 1982*:
>
> > a. An order declaring that specific provisions of *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations* (the "*MRGHG Regulations*") that allow cumulative emissions from SaskPower of 77,000,000 tonnes in the 2020-2024 compliance period and 64,500,000 tonnes in the 2025-2029 compliance period to be in breach of the Applicants' s. 7 and s. 15 *Charter* rights;
> >
> > b. An order directing the Respondent government of Saskatchewan to prepare a generation and asset management plan that will provide and deliver Net Zero electricity to the residents and businesses of Saskatchewan in aggregate by the end of year 2035 or in the alternative by end of year 2040 at the latest ("SK NZ Electricity Plan");
> >
> > c. An order directing the Respondent Saskatchewan government to set emissions reduction targets in the *MRGHG Regulations* for SaskPower that are consistent with Saskatchewan's share of the minimum level of GHG reductions necessary to limit global warming to well below 2°C (i.e. the upper range of the *Paris Agreement* temperature standard) thereby reasonably protecting the environment and the *Charter* rights of the Applicants and the public; and
> >
> > d. In the alternative, the same declaratory relief sought above in this paragraph pursuant to s. 24(1) of the *Charter* or this Court's inherent jurisdiction.
>
> 16. The Applicants seek the following remedies pursuant to s. 24(1) of the *Charter*:
>
> > a. An order declaring that the Respondents' ongoing development and expansion of unabated fossil-fuel based generation at the Great Plains power plant (currently under construction) and at the proposed Aspen power plant (near Lanigan) violates the rights of the Personal Applicants, all Saskatchewan residents, and future generations under s. 7 of the *Charter* in a manner that cannot be saved under s. 1 of the *Charter*;

> b. An order declaring that the Respondents' ongoing development and expansion of unabated fossil-fuel based generation at the Great Plains power plant and at the proposed Aspen power plant violates the rights of the Personal Applicants and future generations under s. 15 of the *Charter* in a manner that cannot be saved under s. 1 of the *Charter*;
>
> c. An order directing that the Respondents cease and discontinue the development, construction, planning, and investment in any unabated fossil fuel generation unless the Respondents can demonstrate how any new unabated fossil fuel-based generation can be incorporated within the SK NZ Electricity Plan or the revised *MRGHG Regulations* as requested in the paragraph above;
>
> …
>
> f. In the further alternative, an order directing the Respondent government of Saskatchewan to compel the CIC and SaskPower directors to prepare a SK NZ Electricity Plan to justify and rationalize any ongoing expansion of unabated fossil fuel-based generation within the context of Net Zero emissions goals.
>
> (Amendment emphasis omitted, footnotes omitted)

[14] The Claim defines *Net Zero* or *NZ* as meaning that "GHG emissions produced by human activity are reduced sharply and that any remaining GHG emissions that cannot be eliminated are negated completely by implementing methods of absorbing carbon dioxide from the atmosphere to offset remaining GHG emissions". The word *unabated* "refers to power generation not equipped with Carbon Capture and Sequestration technology (CCS) that would otherwise reduce or abate the pollution intensity associated with fossil-fuelled electrical generation". The *Paris Agreement* is the "United Nations Framework Convention on Climate Change, *Paris Agreement*, Adopted at the United Nations Climate Change Conference (COP21) in Paris, France, on 12 December 2015".

[15] Each of the respondents applied to strike the Claim pursuant to Rule 7-9(2)(a) of *The King's Bench Rules*. The relevant portions of Rule 7-9 are as follows:

> **Striking out a pleading or other document, etc. in certain circumstances**
>
> **7-9**(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:
>
> (a) that all or any part of a pleading or other document be struck out … .
>
> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim … .
>
> (3) No evidence is admissible on an application pursuant to clause (2)(a).

[16] In addition to opposing the respondents' applications, the appellants filed an application to further amend their Claim. The Claim had previously been amended to address the issue of a litigation guardian for one of the appellants who is a minor.

## III. *CHAMBERS DECISION*

[17] The Chambers judge introduced the matter by noting that the issues before her were whether the Claim could be amended in the proposed manner and whether it should be struck. After setting out the background, the Chambers judge turned first to an examination of the appellants' proposed amendments in order to be able to read the pleadings in the manner most favourable to the appellants for the purpose of the strike applications.

[18] Regarding the amendments, the Chambers judge noted that the application to amend was made after the appellants had been served with the respondents' briefs of law on the applications to strike. She also observed the discretionary nature of an application to amend pleadings under Rule 3-72 of *The King's Bench Rules* and further referenced *Cupola Investments Inc. v Zakreski*, 2021 SKCA 86, *Kashuba v Wilton (Rural Municipality)*, 2022 SKCA 37 [*Kashuba*], Rules 7-9(2)(c) and 13-8(1)(c), *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 [*Harpold*], and *Mallard v Killoran*, 2005 SKQB 203. Applying the principles from these authorities, the Chambers judge permitted some amendments. Others were denied on the basis that they sought to plead evidence as opposed to material facts or because they set out legal argument instead of facts.

[19] Turning to the test for striking pleadings, the Chambers judge set out the applicable portions of Rule 7-9 and referenced the well-known principles and cases that govern an application to strike a claim as disclosing no reasonable cause of action. She rejected the appellants' assertion that the 13 affidavits referred to in the originating application could be considered as documents referred to in the pleadings based on *Lackmanec v Hoffman and Wall*, 1982 CanLII 2585, 133 DLR (3d) 502 (SKCA).

[20] The Chambers judge further noted the principle from *Operation Dismantle v Canada*, 1985 CanLII 74, [1985] 1 SCR 441 (CanLII) (SCC) [*Operation Dismantle*], which held that pleadings "based upon assumption and speculation" are not to be taken as true in a strike application (at para 27). However, she observed that the "pleadings must be read as generously as possible", with the court "erring on the side of permitting a novel but arguable claim to proceed to trial" (*Chambers Decision* at para 34). Lastly on this issue, she stated that "the correct approach is to consider whether the pleadings, as they stand or may reasonably be amended, disclose a question that is not doomed to fail" (at para 35).

[21] Looking at whether the further amended originating application raised a justiciable claim, the Chambers judge stated she must determine whether "even if everything pleaded in the Claim is taken to be true, there is no reasonable cause of action because the issues raised are not justiciable" (at para 38). After summarizing the parties' positions, she conducted a lengthy analysis and found that the *Charter* claims were not justiciable. The main cases she referred to in her final analysis were as follows: *La Rose v Canada*, 2023 FCA 241 [*La Rose FCA*]; *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410 [*Tanudjaja Trial*], aff'd 2014 ONCA 852 [*Tanudjaja CA*], leave to appeal to SCC refused 2015 CanLII 36780; *Environnement Jeunesse c Procureur général du Canada*, 2021 QCCA 1871 (English translation by SOQUIJ), leave to appeal to SCC refused 2022 CanLII 67615 [*Jeunesse CA*]; and *Mathur v Ontario*, 2024 ONCA 762, leave to appeal to SCC refused 2025 CanLII 38373 [*Mathur CA*] (with an application to reopen the appeal for reconsideration dismissed, 2026 ONCA 561).

[22] The Chambers judge summarized the two governmental actions that formed the basis for the *Charter* claims as follows (*Chambers Decision*):

> [98] First, the Applicants assert the Respondents' actions – which entail obtaining approvals and constructing two new UFFGAs in Saskatchewan – violate their sections 7 and 15 *Charter* rights. They claim the generation of electricity in this manner produces GHGs, and GHGs contribute to the dangerous effects of climate change which violates their right to life, liberty and security of the person, and their right to equality.
>
> [99] Second, the Applicants assert the *MRGHG Regulations* violate these same *Charter* rights because they permitted SaskPower to increase its GHG emissions in the 2020 to 2024 period and otherwise do not commit SaskPower to "Net Zero" emissions nor a decarbonized electrical supply.

[23] The following excerpts from the *Chambers Decision* provide the bottom-line reasons for the Chambers judge's conclusion that the Claim as it related to the UFFGAs did not raise a justiciable issue:

> [106] First, the Applicants object to the approval, development, and construction of the two UFFGAs for electricity generation because they emit GHGs into the atmosphere, GHGs cause climate change, with the result their *Charter* rights are breached. However, like *Jeunesse* [*CA*] and *Tanudjaja* [*Trial*], their pleading does not impugn any statute or other law pursuant to which these decisions were made. Similar to *Tanudjaja* [*Trial*], the UFFGAs do not raise a question that can be resolved by application of law nor a claim that is otherwise tethered to a legally defined, objective standard.

> [107] Second, the Applicants do not assert the UFFGAs will result in SaskPower failing to comply with the GHG Caps set out in the *MRGHG Regulations* or other provincial laws, and/or any emissions standards mandated by Canada, and/or any other statutory requirement regarding the parameters within which SaskPower may generate electricity. Unlike *La Rose FCA*, there is no assertion the Respondents are failing to meet the GHG Caps as a result of the UFFGAs or for any reason at all. In other words, the legal anchor in *La Rose FCA* is not present in this case.
>
> [108] Third, the Claim relating to UFFGAs is distinguishable from the claims advanced in *La Rose FCA* and *Mathur CA*. In *La Rose FCA*, the claimants asserted that Canada failed to meet its own emissions standards set out in the *Canadian Net-Zero Emissions Accountability Act* which resulted in a breach of their *Charter* rights. That was the legal anchor for the action, as there was a legally defined standard to assess the *Charter* claims. As described above, similar circumstances do not exist in this case. In contrast to *Mathur CA*, the Applicants do not allege that the Respondents, in approving and constructing the UFFGAs, have failed to comply with any statutory obligation that could ground their claims of *Charter* violations. In other words, the nature of the impugned approval and construction of the UFFGAs is not grounded in any alleged breach of any statutory obligation or law such that, unlike *La Rose FCA* and *Mathur CA*, there is no sufficient legal component to permit constitutional adjudication.
>
> [109] Fourth, like *Tanudjaja* [*Trial*], the Applicants seek relief in relation to the UFFGAs that does not engage the Court in a "court-like" function. Rather, they call upon the Court to embark on a course that more closely resembles a public inquiry into the appropriateness of the UFFGAs in the context of global warming. Notwithstanding the apparent competing economic, social, budgetary, and political factors that are engaged in the context of any response to climate change, the Applicants seek to have this Court conduct the required contextualized analysis of information and dictate specific measures to be taken by the executive and legislative branches regarding electricity generation in the context of climate change. For example, as indicated above, they ask the Court to step into the shoes of the legislative branch and require the Respondents to develop a Net Zero Plan relating to SaskPower's GHG emissions by the end of 2035 or 2040 at the latest, and to direct UFFGAs are only permissible if they demonstrate how they are utilized in the context of the Net Zero Plan. Similar to *Jeunesse* [*CA*], the Claim is grounded in requests for relief that would require the Court to disregard the time-honoured separation of powers and its proper role within Canada's constitutional framework so as to encroach on the roles of the legislative and executive branches by forcing the Respondents to make specific decisions for the power supply in this province. This is beyond the capacities and legitimacy of the judicial process.
>
> [110] Overall, the pleading regarding the two new UFFGAs lacks a sufficient legal component or legal anchor for the *Charter* claims to permit the Court to adjudicate this matter against an objective legal standard. It raises questions for which deference is owed to the Respondents who are better placed to weigh the various considerations relating to the use of UFFGAs for the generation of electricity in Saskatchewan. Defining, imposing, and monitoring the solutions to be adopted by the Respondents are matters that exceed the capacities and legitimacy of the judicial process, and these policy decisions are appropriately made by the democratically elected branches of government in accordance with the separation of powers in our constitutional democracy.

[24] The Chambers judge then turned to the *Regulations* and found that there was no justiciable issue in that regard either (*Chambers Decision*):

[112] First, similar to my reasons relating to the lack of justiciability for the two new UFFGAs, this aspect of the Claim is also distinguishable from *La Rose FCA* and *Mathur CA*. The Claim does not assert the Respondents have failed to comply with a statutory obligation to address climate change or have otherwise breached any statutory or legal standards, such as the GHG Caps, in violation of their *Charter* rights. In specific contrast to *Mathur CA*, the Applicants here *do* request an order for specific GHG emissions limits and *are* challenging the inadequacy of the GHG Caps in the *MRGHG Regulations*.

[113] Second, the portion of the Claim that pleads the *MRGHG Regulations* permitted SaskPower to increase GHG emissions in the five-year (2020-2024) compliance period, rather than decrease them, is inaccurate. This is apparent on a plain reading of the *MRGHG Regulations*.

…

[116] Based on the flawed factual foundation pleaded for this aspect of the *Charter* claim, I consider it to be manifestly incapable of being proven and do not accept it as true that the *MRGHG Regulations* allowed SaskPower to increase, instead of decrease, its GHG emissions in 2020-2024.

[117] Third, in the Claim, the Applicants question the wisdom of the Government's approach to climate change because they have not legislated a commitment to combat climate change to achieve Net-Zero emissions by any date nor legislated the emissions standards set out in the *Paris Agreement*. Similar to *Jeunesse* [*CA*], they seek to invoke the authority of the Court to direct the legislature to act. For example, and as indicated above, they ask the Court to step into the shoes of the legislative branch and force it to legislate requirements on the Respondents to deliver Net Zero electricity by the end of 2035 or 2040 at the latest. Moreover, they seek an order directing the Government to set the GHG Caps in the *MRGHG Regulations* for SaskPower to be consistent with our province's share of the minimum level of GHG reductions necessary to limit global warming to well below 2 degrees Celsius (which they plead is the upper range contemplated in the *Paris Agreement*). Like the circumstances in *Jeunesse* [*CA*], there is no Saskatchewan legislation adopting the *Paris Agreement* standards in our province in order to ground this aspect of the Claim.

[118] In the circumstances, I agree with the submissions made by the Respondents. The issues in the Claim are not properly advanced for constitutional adjudication. Through the remedies sought, the Applicants ask the Court to direct the enactment of new laws and engage in ongoing policy oversight, which is in essence court-directed legislative reform. The Applicants are dissatisfied with what they regard as the Respondents' completely inadequate, irresponsible, and harmful response to climate change, and they ask the Court to direct the legislative branch and control Government choices around electricity delivery in the province for years to come. In my view, to do so would require the Court to disregard the time-honoured separation of powers in our constitutional democracy in a manner that exceeds its institutional capacity and legitimacy.

[119] For the foregoing reasons, I conclude that even upon a generous reading of the Claim, it is plain and obvious it does not advance a justiciable claim and therefore, it has no reasonable cause of action and no reasonable chance of success. Taking all of the statements in the pleading to be true, there is no judicially discoverable and manageable standard, sufficient legal component, or legal anchor for assessing the *Charter* claims that centre on the approval of UFFGAs and the allegedly insufficient *MRGHG Regulations*. In all of the circumstances, I am satisfied this is one of the very rare cases where the questions

> raised in the Claim and the related relief sought from the Court are not resolved by the application of law or other objective standard, but rather by democratic accountability.
>
> (Italic emphasis in original)

[25] The Chambers judge declined to permit the appellants a further opportunity to amend their pleadings, concluding as follows:

> [121] My determination on the lack of justiciability of the *Charter* claims advanced in the Claim is a full adjudication of the merits of the applications to strike (*La Rose FCA* at para 20). The Applicants have already amended their pleading to avoid having the Claim struck. Given the wholesale transformation that would be required for the pleading to advance a justiciable claim, I see no tenable basis to grant leave to further amend in the circumstances.

[26] Lastly, the Chambers judge considered other claims put forth by the appellants regarding the duties of the directors of SaskPower and CIC and found that a reasonable cause of action was not disclosed by those portions of the originating application. The appellants do not challenge that aspect of the *Chambers Decision* on appeal.

[27] The Chambers judge struck the originating application in its entirety, without costs.

## IV. ISSUES

[28] In their factum, the appellants provide a list of points in issue, but their submissions do not fully track those topics. As a result, I would state the issues as follows in order to align with the written and oral arguments that the appellants presented:

(a) Did the Chambers judge err in disallowing certain proposed amendments to the Claim by mischaracterizing them as pleading evidence as opposed to material facts?

(b) Did the Chambers judge err in relying on the remedies pleaded by the appellants in the Claim as a basis to dismiss their *Charter* claims?

(c) Did the Chambers judge err in striking the portions of the Claim regarding the UFFGAs on the basis that the issue was not justiciable because the Claim did not impugn any statute or law when it did impugn government action in the form of the approval, construction, and operation of the new UFFGAs?

(d) Did the Chambers judge err by mischaracterizing the *Regulations* portion of the Claim and striking that part of the Claim?

(e) Did the Chambers judge err by failing to engage with the international law arguments and pleadings presented by the appellants?

(f) Did the Chambers judge err in determining that no further amendments should be allowed to address the alleged deficiencies in the Claim?

[29] There is considerable overlap among some of these issues: others are more of a stand-alone nature. As a result, I will address some on an individual basis, with the others being examined collectively by analyzing whether the claims regarding the UFFGAs or the *Regulations* are justiciable.

## V. ANALYSIS

### A. Amendments to the Claim

[30] After receiving the respondents' briefs of law for the strike applications in the Court of King's Bench, the appellants filed an application seeking to amend the Claim. The Chambers judge first addressed the proposed amendments in order to be able to place the Claim on its best footing for her consideration of the strike applications. As mentioned above, she accepted many of the proposed amendments but refused leave to amend the Claim for two categories:

(a) amendments that pleaded evidence as opposed to material facts; and

(b) amendments that pleaded argument rather than material facts.

The appellants challenge the Chambers judge's findings for only the former of these two categories.

[31] As set out in paragraph 22 of the *Chambers Decision*, the proposed amendments in question consisted of desired changes to 6 paragraphs, all of which contained phrases referring to affidavits such as "as outlined in the affidavits of the Personal Applicants" or "as described in the affidavit of the expert witness, David Maenz".

[32] The appellants argue that the Chambers judge mischaracterized the proposed amendments as pleading evidence, not material facts. They say that referring to the affidavits merely directs the reader to the evidence, clearly defines the questions in issue, and gives notice to the respondents of the case asserted against them. They argue that this is the purpose of pleadings. SaskPower and CIC assert that referring to affidavits in the proposed amendments impermissibly directs the reader to consider this evidence as part of the pleadings. The Government of Saskatchewan takes the same position.

[33] Permitting amendments to pleadings of the type under consideration here is a discretionary decision subject to a deferential standard of review: *Aecon Mining Construction Services v K+S Potash Canada GP*, 2024 SKCA 48 at para 16.

[34] As found by the Chambers judge, each of the disallowed amendments sought to plead evidence in the form of the incorporation of affidavits. There is no other way to characterize the impugned portions of the proposed amendments. Affidavits are evidence. This is a contravention of the plain wording of Rule 13-8(1)(c) of *The King's Bench Rules*, which requires that "every pleading must … contain only a statement in summary form of the material facts on which the party pleading relies for the party's claim … *but not the evidence by which the facts are to be proved*". Amendments that do not comply with this fundamental requirement for pleadings should not be allowed: *Kashuba* at paras 27, 52-53. The disallowed amendments did not pass this baseline test. As noted in *La Rose FCA*, "the basic requirements of pleadings are not relaxed simply because a *Charter* claim is involved" (at para 132). There is no scope to find that the Chambers judge erred in not permitting the amendments.

## B. Test for striking a claim for not being justiciable

[35] The respondents applied to strike the Claim under Rule 7-9(2)(a) on the basis that it did not contain a reasonable claim because the issues were not justiciable. If a claim is not justiciable, it must be struck: *La Rose FCA* at paras 18-20.

### 1. An overview of justiciability

[36] Justiciability refers to the "subject matter jurisdiction (*ratione materiae*) of a court" and "is concerned with the propriety of the courts adjudicating a particular claim": L. Sossin &

G. Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Thomson Reuters, 2024) at s 1:2. The flexible principle of "justiciability limits the extent to which courts may engage with decisions", with the question being, "Is the issue one that is appropriate for a court to decide?" (*Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 32 [*Highwood*]). The concept was expressed in *Boundaries of Judicial Review* (at s 1:2) as

> a set of largely judge-made rules, norms and principles delineating the scope of judicial intervention in social, political and economic life. In short, if a subject-matter is held to be suitable for judicial determination, it is said to be justiciable; if a subject-matter is held not to be suitable for judicial determination, it is said to be non-justiciable. … [V]ast swaths of human interaction are, quite prudently, beyond the purview of the courts.

[37] In *Highwood*, the Supreme Court observed that justiciability is to be examined by reference to institutional capacity and legitimacy to decide a claim:

> [34] There is no single set of rules delineating the scope of justiciability. Indeed, justiciability depends to some degree on context, and the proper approach to determining justiciability must be flexible. The court should ask whether it has the institutional capacity and legitimacy to adjudicate the matter: see Sossin [*Boundaries of Judicial Review*, 2nd ed], at p. 294. In determining this, courts should consider "that the matter before the court would be an economical and efficient investment of judicial resources to resolve, that there is a sufficient factual and evidentiary basis for the claim, that there would be an adequate adversarial presentation of the parties' positions and that no other administrative or political body has been given prior jurisdiction of the matter by statute" ([Sossin at p 1]).

[38] There are numerous instances where courts have found issues not to be justiciable. The following list provides some examples:

| **Case** | **Subject Matter** |
|---|---|
| *Highwood* at paras 36-39<br>*Syndicat Northcrest c Amselem*, 2004 SCC 47 at para 50<br>*Demiris v Hellenic Community of Vancouver*, 2000 BCSC 733 at para 33 | membership in religious organizations, theological disputes, or religious dogma disagreements |
| *Tanudjaja Trial* at paras 19-22<br>*Tanudjaja CA* at para 19 | sufficiency of the priority given by the government to the problems faced by homeless and underhoused persons |
| *Ontario Federation of Anglers & Hunters v Ontario (Ministry of Natural Resources)*, 2002 CanLII 41606, 211 DLR (4th) 741 at para 51 (ONCA) | challenge to a government regulation that cancelled the spring black bear hunt |

| Case | Subject Matter |
|---|---|
| *Highwood* at para 35 | hypothetically determining who is the greatest hockey player of all time, arbitrating whether a bridge player was properly left out of their weekly card game, or deciding whether a cousin should have been invited to a wedding |

[39] Certain disputes are simply not within the judicial domain to determine.

[40] Justiciability in the realm of governmental decisions was discussed in *Hupacasath First Nation v Canada (Minister of Foreign Affairs)*, 2015 FCA 4 [*Hupacasath*], as follows:

> [62] Justiciability, sometimes called the "political questions objection", concerns the appropriateness and ability of a court to deal with an issue before it. Some questions are so political that courts are incapable or unsuited to deal with them, or should not deal with them in light of the time-honoured demarcation of powers between the courts and the other branches of government.

See also Wilson J.'s concurring opinion in *Operation Dismantle* at paras 99-104.

[41] In *La Rose FCA*, in its examination of the criteria for assessing justiciability, the Federal Court of Appeal opined on the courts' role in the Canadian democratic system, noting that it is not their role to evaluate the wisdom of the choices of the people's elected representatives:

> [26] The constitutional consideration is the court's respect for its role in a Westminster parliamentary democracy. The wisdom of political and policy choices made by Parliament in response to social, economic and environmental problems is separate and apart from their constitutionality. Courts do not second-guess the wisdom of Parliament's choice; rather, they assess the validity of the resulting law and its application and must be mindful of the boundaries between the two. The justiciability inquiry involves a weighing of the appropriateness, as a matter of constitutional judicial policy, of the courts deciding a given issue or instead deferring to the other branches of government ([references omitted]).
>
> …
>
> [28] No firm criteria for assessing justiciability exist, and the boundaries between justiciable and non-justiciable matters are not always clear. The issue often distills to a single question as to whether the claim has a sufficient legal component upon which a court can adjudicate. Here too, the answer to that question may be obscured by the moral, social or political dimensions of the case that make it inappropriate for a court to decide ([references omitted]).

[42] However, simply because a particular impugned action has a political dimension does not mean that the matter is non-justiciable: see *La Rose FCA* at paras 31-35 and *Reference re Secession of Québec*, 1998 CanLII 793 at paras 24-31, [1998] 2 SCR 217. Policy decisions that have been implemented through legislation or state action may be subject to *Charter* scrutiny in court

proceedings: *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 105 [*PHS*]. But there must be a sufficient legal component to a claim and a manageable legal standard upon which the claim could be adjudicated in order for a court to engage in a court-like function, as opposed to a process akin to a public inquiry: *Tanudjaja CA* at para 33 and *K.O. v British Columbia (Ministry of Health)*, 2023 BCCA 289 at paras 56-59.

[43] A claim should not be struck for being non-justiciable simply because it is novel, controversial, "complex, contentious or laden with social values" (*Chaoulli v Québec (Attorney General)*, 2005 SCC 35 at para 107): see also *La Rose FCA* at paras 29-30, and *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 21. Conversely, a claim is not automatically justiciable simply because the broad subject area has been found to be justiciable in other cases.

[44] There is a boundary between that which is justiciable and that which is not, but the delineation is not always clear. Based on the above sources, and as summarized in the overview found in *Boundaries of Judicial Review*, there are three main factors to consider when determining whether a particular claim is justiciable:

(a) the capacities and legitimacy of the judicial process;

(b) the constitutional separation of powers as between the legislative and executive branches and the judicial branch; and

(c) the nature of the dispute before the court, including the sufficiency of the legal component and a manageable legal standard.

### 2. Striking a claim under Rule 7-9(2)(a)

[45] Turning to the general principles regarding whether a claim should be struck in a Rule 7-9(2)(a) application, the following approach, as stated in *Collins v McMahon*, 2002 SKQB 201 at para 11, and as reiterated in *Harpold*, should be applied (*Harpold* at para 25):

> (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success … ;
>
> (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt … ;

> (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case … ;
>
> (iv) The court can strike all, or a portion of the claim … ;
>
> (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action … .

[46] As expressed in paragraph 21 of *Harpold*, this Court reviews a finding that a pleading should be struck under Rule 7-9(2)(a) on the standard of correctness.

[47] In light of certain submissions by the appellants, I find it necessary to comment more specifically on two aspects of the factual basis for a Rule 7-9(2)(a) application. First, the appellants attempted to direct the Court to sources of information and evidence in their written and oral arguments by referencing various studies or websites: see, for example, footnotes 27, 29, 42, and 43 in the appellants' factum. Under Rule 7-9(3), a court is not permitted to consider any evidence, let alone peruse such external sources, to find facts. The facts that could be examined in the applications at hand were confined to those pleaded in the Claim, including the amendments allowed thereto. A person whose claim is sought to be struck for not disclosing a reasonable claim is not entitled to supplement their pleadings with additional facts in the manner that the submissions of the appellants attempt to do.

[48] Second, in their oral submissions, the appellants heavily criticized the respondents for not filing affidavit evidence for use in their applications in the Court of King's Bench and for objecting to the appellants' affidavits. This criticism is off base and completely unwarranted because Rule 7-9(3) prohibited the parties from filing any evidence on the applications. On a Rule 7-9(2)(a) application, claimants receive the benefit of the facts as pleaded, with their pleadings being taken at their highest by the court and, unless those pleaded facts are manifestly incapable of being proven or fall into the category of assumptions or speculation, they are presumed to be true. While some of the pleaded facts in the Claim might have been contested, if the matter had progressed to trial, they had to be taken as true in the Rule 7-9(2)(a) application, unless they fell into the exceptions noted. In other words, the appellants were largely free to state what the relevant facts were for the purposes of the strike applications without the respondents being able to challenge those assertions. As such, the appellants' concerns about being prejudiced due to the lack of evidence from the respondents and the respondents' objections to the appellants' affidavits are misplaced and untethered to the principles of law involved in an application under Rule 7-9(2)(a).

### 3. The consideration of remedies when evaluating justiciability

[49] The appellants argue that the Chambers judge erred by considering the remedies sought when determining whether the Claim was justiciable. They point to the following portion of the *Chambers Decision* as illustrating this error: "Through the remedies sought, the Applicants ask the Court to direct the enactment of new laws and engage in ongoing policy oversight, which is in essence court-directed legislative reform" (at para 118).

[50] I do not agree that this was an error. Although the remedies requested by a claimant are not determinative of justiciability (see *La Rose FCA* at paras 47-51), the Claim must be read as a whole, which includes a consideration of the remedies sought. Such an examination helps to inform the analysis of the causes of action and the justiciability question because scrutiny of the remedies assists a judge in understanding what a claimant seeks to have as a court order on the basis of their pleadings. The fact that, through the remedies they requested, the appellants sought to have the court mandate the respondents to act in a manner that, in the appellants' view, is a better approach to addressing GHG emissions, was informative of the justiciability of the Claim.

[51] However, I would agree with the appellants that failing to plead a proper remedy is not fatal if a valid cause of action is otherwise pleaded: see *La Rose FCA* at para 51. In such a case, it is more likely that leave would be given for further amendments in order to plead an appropriate remedy. But, in my view, this does not change the ability of a court to look at the remedies in a claim when determining whether the claim as a whole is justiciable.

## C. The claims based on the two new UFFGAs

### 1. The new UFFGAs as state action

[52] The appellants agree that the Chambers judge correctly identified one of the actions challenged by the Claim as being "obtaining approvals and constructing two new UFFGAs in Saskatchewan" (*Chambers Decision* at para 98). These concerns also include the operation of those facilities. The appellants assert that the Chambers judge erred by determining that the related portion of the Claim should be struck on the basis that "their pleading [did] not impugn any statute or other law pursuant to which these decisions were made" (at para 106). They argue that they were not limited to only challenging a statute or other law because s*pecific state actions* can also be the target of *Charter* claims. The appellants submit that the approval, construction, and operation of the two UFFGAs are specific state actions that they assert violate their *Charter* rights.

[53] SaskPower and CIC contend that the Chambers judge was correct in her determination that no state action had been alleged that would raise a justiciable claim. They say that the mere allegation of an infringement of a *Charter* right does not make a claim justiciable and note that a justiciable claim must challenge a law or an application of a law, not merely focus on a political or policy question.

[54] The Government of Saskatchewan submits that this aspect of the Claim does not articulate elements upon which an adjudication could be undertaken. It argues that the Claim does not assert that a specific state action under a specific law violates the appellants' s. 7 *Charter* rights or, for the purposes of s. 15 of the *Charter*, that a specific state action under a specific law affects certain groups disproportionately from other persons. It further asserts that the Claim challenges the wisdom of the respondents' actions, which is not a valid ground upon which to base a claim. In its view, decisions on long-term electricity generation policy are not specific state actions in the sense that is required to ground a *Charter* claim.

[55] For the purposes of determining justiciability, a key part of the analysis regarding the new UFFGAs is whether their approval, construction, and operation could constitute state action within the meaning of the jurisprudence. For a government policy to be subject to scrutiny under the *Charter*, such policy choices must be translated into law or state action: *PHS* at para 105. In that regard, I note that the Claim does not challenge any specific law or application of a law regarding the new UFFGAs. The appellants do not plead or point to any *applicable* law that requires the respondents to use carbon storage and sequestration facilities when approving, constructing, and operating a natural gas-fired electricity generating facility, and they could identify none when asked in oral argument.

[56] In the absence of a challenge based on a legislative enactment – as is the case for the portions of the Claim related to the UFFGAs – specific state action is needed to ground a justiciable claim: *Tanudjaja CA* at paras 24-27. But it is not simply any conduct on the part of a government or its agents that satisfies this requirement. Something more is required. Otherwise, virtually any time a government engaged in any action or, arguably, in any inaction as a result of choosing a different set of priorities than those desired by an aggrieved person, the conduct could ground a claim. That would be no standard at all. There must be an allegation that is sufficiently specific

that a court can adjudicate upon it. While the state action consisting of the approval, construction, and operation of the UFFGAs is facially narrow, the nature of the governmental decisions regarding the approval, construction, and operation of natural gas-fired electrical generation facilities, as opposed to other means of generating or obtaining electricity, is more akin to a broad public policy decision, which is generally not amenable to *Charter* scrutiny: *Operation Dismantle* at paras 103-104.

### 2. A standard on which to evaluate the new UFFGAs

[57] There is no specific legislative enactment that requires the respondents to build or not build UFFGAs or other types of electrical generation facilities or that places constraints on such activities. The Claim, at paragraph 21, points to two subsections of *The Power Corporation Act* by referencing electrical "generation, transmission, distribution" (at s. 8(1)(a)) and the "efficient operation of the corporation's business for the public good" (at s. 8(1)(j)). Section 8(1)(a) sets one of the powers and purposes of SaskPower as the generation of "electrical energy", but that provision does not put any restrictions on the types of power generation facilities that respondents can approve, construct, and operate.

[58] Turning to s. 8(1)(j), a reading of the full text of that section shows that it simply enables the executive branch to make regulations adding additional powers for SaskPower:

> **Purposes and powers**
> **8**(1) The purposes and powers of the corporation shall be:
>
> …
>
> (j) to exercise any other powers that may be designated and prescribed by the Lieutenant Governor in Council and that the Lieutenant Governor in Council considers are necessary or desirable for the efficient operation of the corporation's business for the public good.

The appellants have not pointed to any such additional purposes or powers that have been prescribed. Taking the phrase "efficient operation of the corporation's business for the public good" out of its context does not assist the appellants.

[59] The appellants do not rely on any other specific enactments regarding the UFFGAs. This distinguishes *La Rose FCA* and *Mathur CA*, where claims were found to be justiciable.

[60] The decision in *La Rose FCA* addressed the appeals from two Federal Court decisions that had struck claims against the federal government regarding climate change: *La Rose v Canada*, 2020 FC 1008, and *Misdzi Yikh v Canada*, 2020 FC 1059. The Federal Court of Appeal upheld the striking of the claims but gave leave to amend the s. 7 *Charter* claims only. A critical part of the decision to do so was based on the fact that the appellants in those matters had grounded their claims of s. 7 infringement on the federal government's alleged failure to meet its commitments in the *Paris Agreement*, 12 December 2015, 3156 UNTS 54113, which had been ratified by Canada and enacted in the *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 [*Net Zero Act*]. The following excerpts from *La Rose FCA* illustrate this key part of the decision:

> [38] … the appellants link the section 7 deprivation to the failure of Canada to meet its commitments in the *Paris Agreement* (Nationally Determined Contributions), commitments ratified by Parliament, and hence legally defined, objective standards against which the *Charter* claims can be assessed. The claims do not seek to tell Canada how to fulfill its commitments. In this regard, the Federal Court mischaracterized the claims when it held the claims were challenges to policy.
>
> …
>
> [45] Here, the appellants have pled, in the legislation and Orders in Council, an objective legal basis or standard against which section 7 rights can be assessed. There is, therefore, a sufficient legal component to their claims, and the claims satisfy the legitimacy portion of a justiciability analysis.

[61] Likewise, in *Mathur CA* there was a legally defined objective standard against which the alleged *Charter* breaches could be assessed. In that case, a group of young Ontarians brought a claim asserting that their s. 7 and s. 15 *Charter* rights had been violated by Ontario's alleged failures regarding GHG emission reduction targets. The Ontario Court of Appeal found that the case was not one where the claimants were attempting to impose positive obligations but, instead, involved "the requirement that the execution of the government's voluntarily imposed statutory obligations be constitutionally compliant where it has chosen to enact a specific scheme" (at para 38). Ontario had passed the *Cap and Trade Cancellation Act, 2018*, SO 2018, c 13 [*CTCA*], which repealed legislation that had set GHG reduction targets. The *CTCA* also required Ontario to set new targets, which it then did in the form of mandating a 30% reduction of GHG emissions by 2030. In upholding the right for the claimants to bring their *Charter* claim, the court noted the following about the nature of that claim (*Mathur CA*):

> [37] … Given the application judge's findings … that Ontario enacted the Plan and the Target further to the mandate in the *CTCA* and that they are not meant to be meaningless, there can be no question that Ontario has assumed a statutory obligation to do something about climate change and to enact a Target and formulate a Plan that would do something about climate change. The question should have been whether the execution of that voluntarily imposed statutory obligation was *Charter* compliant.
>
> …
>
> [41] We do not agree with Ontario that the appellants effectively argue that the Target does not go far enough. The appellants are not challenging the inadequacy of the Target or Ontario's inaction, but rather argue the Target itself, which Ontario is statutorily obligated to make, commits Ontario to levels of greenhouse gas emissions that violate their *Charter* rights. We see the same distinction as the Supreme Court observed in *Chaoulli*, that it is not the constitutional compliance of the scheme that is challenged by the appellants, but the constitutional compliance of the government measures taken under the scheme that are in issue.

[62] The decisions in *La Rose FCA* and *Mathur CA* permitted the *Charter* claims regarding climate change to proceed. However, the key part of each of those decisions is that there were legislated standards or targets that had been adopted by the governments, which would permit the courts to examine the claims based on a legally defined objective standard. Here, for the portions of the Claim regarding the approval, construction, and operation of the UFFGA's, there is no legally defined objective standard to be used in assessing whether this state action was *Charter* compliant. On what standard would the court determine whether the respondents' choice for new power generating facilities infringes on the appellants' s. 7 or s. 15 rights? On what standard would the court evaluate other types of electricity generation or other types of governmental action regarding the provision of electricity to the appellants and other residents of Saskatchewan? None is set out in the Claim or is otherwise apparent, even after a consideration of the application of international law, a matter to which I turn next.

### 3. The role of international law

[63] The appellants rely on two main sources of international law in an attempt to bolster their position that there are measurable standards and requirements imposed on the respondents. First, they point to the *Paris Agreement*. Second, they rely on the advisory opinion issued by the International Court of Justice, entitled *Obligation of States in Respect of Climate Change* (Advisory Opinion) [23 July 2025] ICJ Rep No 2025/36 [Advisory Opinion]. However, neither of these are binding in Saskatchewan, and the Chambers judge was not required to take them into account at the stage of conducting a justiciability analysis. None of the respondents have bound themselves to any international agreements that govern the subject matter of the Claim.

[64] Turning first to the *Paris Agreement*, I note that the respondents are not signatories to it. Canada is a federated state. Under the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (UK), reprinted in RSC 1985, Appendix II, No 5, the various heads of power or spheres of responsibility are divided between the federal and provincial or territorial governments. Section 92A(1)(c) provides the Government of Saskatchewan with authority over the generation of electricity. The fact that Canada has entered into the *Paris Agreement* does not bind the respondents because the Government of Saskatchewan has not passed its own legislation adopting it: *Nevsun Resources Ltd. v Araya*, 2020 SCC 5 at para 85.

[65] Looking at the Advisory Opinion, while guidance might be taken from it in appropriate circumstances – such as when an otherwise justiciable claim is being adjudicated – it has no precedential value and is not binding on Saskatchewan courts. In this regard, see the discussion in *Lho'Imggin v Canada*, 2025 FC 1586 at paras 40-65. A court might examine decisions such as the Advisory Opinion and even find them persuasive when interpreting a question before it, but the courts in Saskatchewan are no more bound by such decisions than they would be by decisions, for example, of the Supreme Court of the United States, the Supreme Court of the United Kingdom, or the High Court of Australia.

[66] The *Paris Agreement* and the Advisory Opinion have no binding effect in Saskatchewan and, therefore, have no relevance to the justiciability of the Claim. Had the Claim been found to be justiciable, international law arguably might have had some influence on the result at a later stage. But international law, as relied upon in this matter, has no effect on the justiciability question.

[67] This brings me to a further discussion of the separation of powers and issues of policy.

### 4. Separation of powers and the role of policy

[68] There is a necessary line between the judicial branch of government and the legislative and executive branches. The legislative branch debates the myriad legislative objectives of the government and passes laws. The executive branch governs, sets public policies, and implements legislation and the policies of government. The operation of these two branches involves taking into account innumerable factors and competing priorities. The judicial branch can then review those actions, where a justiciable issue is brought before the courts. Many such decisions and

actions can be challenged in a court to ensure that they are *Charter* compliant or were made in a procedurally fair manner. But a court's role is not to second-guess legislative and policy decisions: *Andrews v Law Society of British Columbia*, 1989 CanLII 2, [1989] 1 SCR 143 at para 73 (WestLaw) (SCC). It is not the function of a court to step in and legislate or set policy as it sees fit. This is well illustrated by the reasoning in *Jeunesse CA.*

[69] In *Environnement Jeunesse c Procureur général du Canada*, 2019 QCCS 2885, aff'd *Jeunesse CA*, the plaintiff commenced an action against Canada with the goal of having it certified as a class action with all residents of Québec under the age of 35 as class members. In referencing *Jeunesse CA*, I shall refer to the version translated into English by SOQUIJ, which was filed by the Government of Saskatchewan.

[70] The claim asserted gross negligence on the part of Canada "in response to the serious dangers posed by climate change" (*Jeunesse CA* at para 5). The plaintiff alleged that Canada had "committed to limit its GHG emissions four times without ever reaching the set target" (at para 5). Overall, the plaintiff claimed that Canada was "failing to adopt adequate targets for GHG reduction" and failed to establish "GHG reduction targets consistent with its international commitments" (at paras 5, 7). The claim sought a declaration that Canada had failed to fulfill its obligation under the *Charter* and the *Québec Charter of Human Rights and Freedoms* to protect the fundamental rights of its citizens along with an order that Canada cease the infringements of the class members' "right to life" and "their right to a healthy environment respectful of biodiversity" (at para 9). In addition, $100 in punitive damages was sought for each class member with the aggregate amount of those damages to be used for "a remedial measure to curb global warming" (at para 10). The Superior Court of Québec denied certification, but the certification judge found that the issues were justiciable.

[71] On appeal, the Québec Court of Appeal determined that the claim was not justiciable: see paragraph 40 of *Jeunesse CA*. In its analysis, the court discussed the separation of powers, the problematic nature of a review by the courts of government inaction, the need to contest specific statutory provisions, the role of the legislative branch, the denotation of policy decisions, and the effect of international agreements. While this case was grounded in alleged government inaction, I find the following portions of the decision to be particularly relevant to the matter at hand:

> [32] … The conclusions sought by the appellant, however, essentially ask the courts to find that the government has failed to act and to order it to legislate in order to implement measures likely to lead to a reduction of GHG emissions, thereby giving effect to Canada's international commitments. That is tantamount to asking the courts to dictate to the legislative branch the solutions to propose. That is not their role.
>
> [33] Beyond the mere question of the division of powers, the justiciability of the action also requires an inquiry into the appropriateness "as a matter of constitutional judicial policy of the courts deciding a given issue or, instead, deferring to other decision-making institutions of the polity". In this case, deference is required, and it must be concluded that the legislative branch is better placed to weigh the countless issues of global warming.
>
> …
>
> [35] The reality is that in matters of global warming, what the appellant wants cannot be decided in the abstract. Regard must be had to the role that provinces with constitutionally concurrent jurisdiction, particularly in environmental matters, could be called upon to play. Collaboration between government agencies often involves delicate negotiations. Beyond these political obstacles, finding a solution requires assessing scientific factors, weighing impacts on health, transport, economic and regional development, employment, etc. It is not up to the courts to engage in such an analysis. Even if that were the case, the proposed measures must translate into budgetary priorities since their implementation would necessarily require financial investments and mobilization of state resources. Again, it does not fall to the courts to make such choices by prioritizing resources to address climate change over other government spending.
>
> …
>
> [42] In this case, the declaratory conclusions sought clearly show an attempt to have the courts interfere in the legislative sphere and in complex decisions regarding social and economic policy.
>
> (Footnotes omitted)

[72] The choice of what new facilities should be built to generate the electricity required by the appellants and all residents of Saskatchewan engages the same types of considerations as described in this excerpt from *Jeunesse CA*. The courts are ill-equipped to grapple with and decide such questions. The oral submission of the appellants, in which they stated they have turned to the courts because the current provincial government and the official opposition both support the expansion of fossil fuel electricity generation, is revealing of the political and policy nature of the issues that they are attempting to bring before the courts. As was observed in *Hupacasath*, "[s]ome questions are so political that courts are incapable or unsuited to deal with them" (at para 62). That comment is applicable to governmental decisions regarding UFFGAs.

### 5. Conclusion on the portion of the Claim regarding UFFGAs

[73] For the reasons noted above, none of the appellants' claims about the UFFGAs raise justiciable issues. The appellants are free to vehemently disagree with the respondents regarding their choice of policy and engage in whatever lawful means they wish to attempt to change the decision-makers' minds about the types of facilities built in Saskatchewan. But, as determined by the Chambers judge, the Claim is not justiciable. The necessary legal anchor and a manageable legal standard are absent. There is not a sufficient nexus between a specific state action under a law and the individual rights of the appellants. A judicial process addressing UFFGAs in the manner asserted in the Claim would not be legitimate. The courts have no role to play in the issues raised by the Claim in relation to UFFGAs. It is a matter for the legislative and executive branches.

[74] I cannot summarize the key conclusions in this case any better than did the Chambers judge (*Chambers Decision*):

> [106] … [the Applicants'] pleading does not impugn any statute or other law pursuant to which these decisions were made. … [T]he UFFGAs do not raise a question that can be resolved by application of law nor a claim that is otherwise tethered to a legally defined, objective standard.
>
> [107] Second, the Applicants do not assert the UFFGAs will result in SaskPower failing to comply with the GHG Caps set out in the *MRGHG Regulations* or other provincial laws, and/or any emissions standards mandated by Canada, and/or any other statutory requirement regarding the parameters within which SaskPower may generate electricity. …
>
> [108] … the nature of the impugned approval and construction of the UFFGAs is not grounded in any alleged breach of any statutory obligation or law such that … there is no sufficient legal component to permit constitutional adjudication.
>
> [109] … the Applicants seek relief in relation to the UFFGAs that does not engage the Court in a "court-like" function. Rather, they call upon the Court to embark on a course that more closely resembles a public inquiry into the appropriateness of the UFFGAs in the context of global warming. Notwithstanding the apparent competing economic, social, budgetary, and political factors that are engaged in the context of any response to climate change, the Applicants seek to have this Court conduct the required contextualized analysis of information and dictate specific measures to be taken by the executive and legislative branches regarding electricity generation in the context of climate change. … [T]he Claim is grounded in requests for relief that would require the Court to disregard the time-honoured separation of powers and its proper role within Canada's constitutional framework so as to encroach on the roles of the legislative and executive branches by forcing the Respondents to make specific decisions for the power supply in this province. This is beyond the capacities and legitimacy of the judicial process.

[75] The Chambers judge did not err in determining that the aspects of the Claim related to the approval, construction, and operation of the new UFFGAs were not justiciable.

### D. The Claim as it relates to the *Regulations*

[76] The Claim further raises issues with the *Regulations* and asserts that they violate the appellants' *Charter* rights. Section 16 of the *Regulations* establishes GHG emissions limits for electricity generation facilities in Saskatchewan. The appellants are not alleging that the *Regulations* are not being adhered to. Instead, they argue that the *Regulations* do not effect a *reduction* in emissions within the first two compliance periods. They say that emissions could actually be increased within the first two compliance periods because the cap is greater than the historic emissions reported by SaskPower.

[77] The appellants assert that the Chambers judge erred in her understanding of the Claim when she stated the following (*Chambers Decision*):

> [113] Second, the portion of the Claim that pleads the *MRGHG Regulations* permitted SaskPower to increase GHG emissions in the five-year (2020–2024) compliance period, rather than decrease them, is inaccurate. This is apparent on a plain reading of the *MRGHG Regulations*.
>
> [114] SaskPower is required to reduce its GHG emissions from all facilities within specified compliance periods in accordance with the GHG Caps set out in Column 3 of Table 1 in Part 4 of the *MRGHG Regulations*, which is set out below:

**PART 4**
**Emission Reduction Obligations**
**TABLE 1**
**[Subsection 16(2)]**

| Column 1<br>**Compliance Period** | Column 2<br>**Compliance Period – Years** | Column 3<br>**CO2e Cumulative Emissions Cap for All Facilities in Saskatchewan** |
|---|---|---|
| 1 | 2018–2019 | 33 500 000 tonnes |
| 2 | 2020–2024 | 77 000 000 tonnes |
| 3 | 2025–2026 | 29 400 000 tonnes |
| 4 | 2027–2029 | 35 000 000 tonnes |

> [115] The Applicants impugn the above-noted GHG Caps in the Claim on the basis they permitted SaskPower to increase its emissions in 2020–2024 compared to prior years. On this basis, they plead the GHG Caps are not targets to reduce GHG emissions, contrary to the objective of the *MRGHG Act* to reduce GHG emissions. However, Table 1 in Part 4 of the *MRGHG Regulations* shows this is a flawed factual statement in the pleading because:

> a) The GHG Cap for the two-year period 2018–2019 was 33,500,000 tonnes, which averages to 16,750,000 tonnes per year for each of 2018 and 2019.
>
> b) The GHG Cap for the five-year period 2020–2024 was 77,000,000 tonnes, which averages to 15,400,000 tonnes per year for each of these five years, and represents an average annual reduction following 2019 of 1,350,000 tonnes;
>
> c) The GHG Cap for the two-year period 2025–2026 is 29,400,000 tonnes, which averages 14,700,000 tonnes per year for 2025 and 2026, and represents a further average annual reduction; and
>
> d) The GHG Cap for the three-year period 2027–2029 is 35,000,000 tonnes, which averages 11,666,667 tonnes per year and a further average annual reduction.
>
> [116] Based on the flawed factual foundation pleaded for this aspect of the *Charter* claim, I consider it to be manifestly incapable of being proven and do not accept it as true that the *MRGHG Regulations* allowed SaskPower to increase, instead of decrease, its GHG emissions in 2020–2024.

[78] The appellants say that the Chambers judge misunderstood the Claim. They were not pleading that the *Regulations* were increasing the allowable amount of GHG emissions each year. Instead, they were pleading that the emissions caps would not result in a reduction of GHG emissions within the first two compliance periods (2018–2019 and 2020–2024). The appellants assert that *actual* emissions could be increased in those two periods because the *historic* amounts from SaskPower were much lower than the caps set out in the *Regulations*. They equate this to limiting a smoker to smoking four packages of cigarettes per day when they currently smoke one or two packages per day. The appellants additionally argue that the average emissions in the third compliance period (2025–2026) are permitted to be greater than the average actual emissions from 2012–2017. Overall, their argument is that the fact that the *Regulations* allowed GHG emissions to increase instead of decrease from historical levels is sufficient to ground a claim that their *Charter* rights were violated.

[79] As a starting point, there is no error in the Chambers judge's findings that the GHG emissions limits set by the *Regulations* lead to a decrease over time. To the extent that the Claim can be seen as making assertions to the contrary, there is no room to interfere with the *Chambers Decision*. Because the appellants are not asserting that the respondents have failed to meet the GHG emissions targets set in the *Regulations*, they cannot ground the Claim in a failure to meet the legislated targets or limits. This factor distinguishes the case at hand from *La Rose FCA* and *Mathur CA*, where specific provisions of, respectively, the *Net Zero Act* and the *CTCA* anchored the claims. However, this does not address the appellants' argument regarding the alleged requirement that the *Regulations* must immediately mandate lower emissions from SaskPower's historic levels in order to be *Charter* compliant.

[80] The gist of this aspect of the Claim is that the permitted levels of emissions are insufficient in that they are set above the historical levels of GHG output by SaskPower. In their view, the limits in the *Regulations* are meaningless because the levels do not decrease from historical output that was already too high. The appellants argue that they have sufficiently alleged that the levels of GHG emissions are not being reduced to an acceptable amount in two ways: (a) under the *Charter* and (b) through a failure to comply with *The Management and Reduction of Greenhouse Gases Act*, SS 2010, c M-2.01 [*MRGHG Act*], which requires that a GHG emissions reduction program be put in place. They assert that a program that requires an actual and immediate reduction from historic GHG emissions is mandated by the *Charter* and the *MRGHG Act*, whereas the *Regulations* permit an *increase* in GHG emissions for the first three compliance periods.

[81] The respondents offer similar arguments in opposition to this portion of the Claim as they did with respect to the UFFGAs.

[82] I will not repeat the justiciability analysis set out above in the section regarding the UFFGAs. The law of justiciability applies in the same manner to the aspects of the Claim that reference the *MRGHG Act* and the *Regulations*, with the nuance that an actual specific legislative enactment is asserted to be the anchor to which the claim is attached. However, this does not change the outcome. I come to this conclusion for the following reasons.

[83] The appellants are unable to point to any portion of the *MRGHG Act* or any other binding authority that requires an immediate reduction from the historic overall levels of GHG emissions by SaskPower, that mandates Net Zero electricity generation in the manner claimed, or that compels the Government of Saskatchewan to legislate emissions limits as a portion of Saskatchewan's share of GHG reductions to limit global warming to well below 2°C. There is no law which constrains the Government of Saskatchewan in setting the limits that it did in the *Regulations*. There is no legal standard against which to measure the emission levels set by the *Regulations.*

[84] While the appellants point to the *Paris Agreement*, the Advisory Opinion, and the assessments done by the Intergovernmental Panel on Climate Change, none of those could be found to be binding on the respondents. The appellants repeatedly submit that the Government of Saskatchewan must legislate in compliance with international standards but do not reference any

such standards to which the Government of Saskatchewan is bound. The reasons in the *Chambers Decision* are apt regarding this aspect of the Claim (repeated here for reference):

> [117] Third, in the Claim, the Applicants question the wisdom of the Government's approach to climate change because they have not legislated a commitment to combat climate change to achieve Net-Zero emissions by any date nor legislated the emissions standards set out in the *Paris Agreement*. Similar to *Jeunesse* [*CA*], they seek to invoke the authority of the Court to direct the legislature to act. For example, and as indicated above, they ask the Court to step into the shoes of the legislative branch and force it to legislate requirements on the Respondents to deliver Net Zero electricity by the end of 2035 or 2040 at the latest. Moreover, they seek an order directing the Government to set the GHG Caps in the *MRGHG Regulations* for SaskPower to be consistent with our province's share of the minimum level of GHG reductions necessary to limit global warming to well below 2 degrees Celsius (which they plead is the upper range contemplated in the *Paris Agreement*). Like the circumstances in *Jeunesse* [*CA*], there is no Saskatchewan legislation adopting the *Paris Agreement* standards in our province in order to ground this aspect of the Claim.

[85] A decision by the Government of Saskatchewan regarding what emission levels are achievable over a period of time and what ceilings should be set in the legislation is a complex policy decision to be arrived at after the consideration and balancing of a multitude of social, environmental, scientific, economic, fiscal capacity, and political factors. While the appellants submit that the Court of King's Bench should establish a constitutional minimum with respect to mitigating GHG emissions, there is an insufficient legal component and no manageable legal standard that would support the contention that this aspect of the Claim is justiciable. The courts are ill equipped to make such determinations and, given the constitutional separation of powers, could not do so legitimately. A matter commenced by originating application alleging *Charter* breaches cannot devolve into a proceeding akin to a public inquiry empowered to bind the policy-making hands of a duly elected government. That is not a court-like function. In effect, the Claim seeks to replace the executive and legislative branches with the judicial branch and have the judicial branch make policy decisions and legislate GHG emission reductions in the manner propounded by the appellants. That is not a role the courts can or should ever take. That responsibility is constitutionally reserved to the executive and legislative branches of government, which are ultimately answerable to the electorate for the choices they make. This portion of the Claim is not justiciable.

### E. Conclusion regarding the justiciability of the Claim

[86] The Chambers judge did not err in finding that the Claim was not justiciable and was correct in striking it in its entirety.

### F. Further amendments

[87] As one of its grounds of appeal, the appellants assert that the Chambers judge erred by striking the Claim without providing leave to make further amendments. I agree that, in appropriate circumstances, it is proper to give such leave. However, in the matter at hand, the Chambers judge did not err by declining to give the appellants a further chance to amend their faulty pleadings.

[88] Here, it must be remembered that the appellants applied to make further amendments after the respondents had applied to strike the Claim and had filed their briefs of law, cataloguing the Claim's alleged deficiencies. As such, the appellants, ably represented by multiple counsel, have already had an opportunity to address any shortcomings in their pleadings and have taken full advantage of that opening. I observe that the appellants' factum did not propose, even in a broad manner, what further amendments they would make if the Chambers judge had given them leave to do so.

[89] When pressed on this issue during oral argument, the appellants submitted that amendments of the following nature might be contemplated: (a) listing of the principles of fundamental justice, (b) claiming additional remedies, and (c) setting out additional facts regarding SaskPower's historical GHG emissions. However, they then backed away from these submissions and argued that no further amendments were needed, beyond what had already been rejected by the Chambers judge. If no additional amendments are proposed, after having the benefit of the *Chambers Decision* and the submissions of the respondents, it is difficult to conceive how the Chambers judge could have erred in her discretionary decision not to give leave for further, unidentified amendments. Even taking account of the potential amendments that were, perhaps, withdrawn in this Court, the Claim would still not rise to the level of being justiciable. This ground of appeal has no merit.

## VI. CONCLUSION

[90] The appeal should be dismissed. None of the respondents sought costs of the appeal, so there shall be no costs ordered.

"Tholl J.A."
Tholl J.A.

I concur. "Caldwell J.A."
Caldwell J.A.

## Drennan J.A. (dissenting in part)

## I. INTRODUCTION

[91] I have read the reasons of my colleague and agree that the Chambers judge committed no error in striking the aspects of the portions of the appellants' originating notice [Claim] challenging the constitutionality of the unabated fossil fuel-based electrical generation assets [UFFGAs].

[92] However, it is my view that the Chambers judge erred in striking the portion of the Claim in which the appellants assert that *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations*, RRS c M-2.01 Reg 1 [*MRGHG Regulations*], and emissions reductions obligations set out therein violate their ss. 7 and 15 *Charter* rights and that the Government of Saskatchewan has failed to comply with its statutory obligation pursuant to s. 5 of *The Management and Reduction of Greenhouse Gases Act*, SS 2010, c M-2.01 [*MRGHG Act*], to set emissions reduction targets. This constitutional question identifies both a legal component and an objective legal standard, making it a justiciable issue. It also discloses a reasonable cause of action, thereby meeting the low bar required to survive the strike applications brought by the Government of Saskatchewan, Crown Investments Corporation of Saskatchewan, and SaskPower [collectively, the respondents].

## II. ***CHAMBERS DECISION***

[93] After determining that the Claim's *Charter* challenge to the UFFGAs was not justiciable and raised no reasonable cause of action, the Chambers judge turned to whether the *Charter* challenge to the *MRGHG Regulations* was justiciable and disclosed a reasonable cause of action: *Dykstra v Saskatchewan Power Corporation*, 2025 SKKB 175 [*Chambers Decision*]. She gave these reasons for why the Claim's challenge to "unreasonably inadequate government action" (at para 111), relating to greenhouse gas [GHG] emissions caps for SaskPower as fixed in the *MRGHG Regulations*, was also not justiciable:

(a) the Claim differs from that in *Mathur v Ontario*, 2023 ONSC 2316 [*Mathur OSCJ #2*], rev'd 2024 ONCA 762 [*Mathur CA*], leave to appeal to SCC refused 2025 CanLII 38373 (with an application to reopen the appeal for reconsideration dismissed, 2026 ONCA 561), and *La Rose v Canada*, 2023 FCA 241 [*La Rose FCA*], vary'g 2020 FC 1008 [*La Rose FC*], and *Misdzi Yikh v Canada*, 2020 FC 1059 [*Misdzi Yikh*], in that it does "not assert the Respondents have failed to comply with a statutory obligation to address climate change or have otherwise breached any statutory or legal standards, such as the GHG Caps, in violation of their *Charter* rights" (*Chambers Decision* at para 112);

(b) in contrast to *Mathur CA*, the applicants "<u>do</u> request an order for specific GHG emissions limits and <u>are</u> challenging the inadequacy of the GHG Caps in the *MRGHG Regulations*" (emphasis in original, at para 112);

(c) "the portion of the Claim that pleads the *MRGHG Regulations* permitted SaskPower to increase GHG emissions in the five-year (2020–2024) compliance period, rather than decrease them, is inaccurate. This is apparent on a plain reading of the *MRGHG Regulations*" (at para 113);

(d) there was a "flawed factual foundation" in the Claim's emissions calculations from 2018 to 2029, which meant that the Claim respecting the *MRGHG Regulations* was "manifestly incapable of being proven". Further, the Chambers judge "[did] not accept it as true that the *MRGHG Regulations* allowed SaskPower to increase, instead of decrease, its GHG emissions in 2020–2024" (at para 116);

(e) the Claim "question[ed] the wisdom of the Government's approach to climate change" and sought "an order directing the Government to set GHG Caps in the *MRGHG Regulations* for SaskPower to be consistent with our Province's share of the minimum level of GHG reductions necessary to limit global warming to well below 2 degrees Celsius" (at para 117); and

(f) the case was similar to that in *Environnement Jeunesse c Procureur général du Canada*, 2021 QCCA 1871 (English translation by SOQUIJ), leave to appeal to SCC refused 2022 CanLII 67615 [*Jeunesse CA*], in that "there is no Saskatchewan legislation adopting the *Paris Agreement* standard … in order to ground this aspect of the Claim" (*Chambers Decision* at para 117).

[94] After articulating the above, the Chambers judge concluded that the "issues in the Claim are not properly advanced for constitutional adjudication", and that the appellants sought through the Claim for the Court to direct the "enactment of new laws and engage in ongoing policy oversight, which is in essence court-directed legislative reform" (at para 118). She also found that adjudicating the Claim would "require the Court to disregard the time-honoured separation of powers in our constitutional democracy in a manner that exceeds its institutional capacity" (at para 118). Further, the Chambers judge found that "there is no judicially discoverable and manageable standard, sufficient legal component, or legal anchor" for assessing the *Charter* claims respecting both the UFFGAs and the emissions caps in the *MRGHG Regulations* (at para 119). Because she had concluded that this aspect of the Claim was not justiciable, the Chambers judge also determined that it disclosed no reasonable cause of action and no reasonable chance of success (at para 119).

## III. ANALYSIS

[95] At paragraph 15 of the Claim, the appellants identify the *Charter* challenge and associated remedies sought with respect to the *MRGHG Regulations* as follows:

> 15. The Applicants seek the following remedies pursuant to s. 52(1) of the *Constitution Act, 1982*:

> (a) An order declaring that specific provisions of *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations* (the "*MRGHG Regulations*") that allow cumulative emissions from SaskPower of 77,000,000 tonnes in the 2020-2024 compliance period and 64,500,000 tonnes in the 2025-2029 compliance period to be in breach of the Applicants' s. 7 and 15 *Charter* rights;
>
> (b) An order directing the Respondent government of Saskatchewan to prepare a generation and asset management plan that will provide and deliver Net Zero electricity to the residents and businesses of Saskatchewan in aggregate by the end of year 2035 or in the alternative by end of year 2040 at the latest ("SK NZ Electricity Plan");
>
> (c) An order directing the Respondent Saskatchewan government to set emissions reduction targets in the *MRGHG Regulations* for SaskPower that are consistent with Saskatchewan's share of the minimum level of GHG reductions necessary to limit global warming to well below 2°C (i.e. the upper range of the *Paris Agreement* temperature standard) thereby reasonably protecting the environment and the *Charter* rights of the Applicants and the public; and
>
> (d) In the alternative, the same declaratory relief sought above in this paragraph pursuant to s. 24(1) of the *Charter* or this Court's inherent jurisdiction.

[96] I begin by acknowledging that the Chambers judge was correct to conclude that the orders sought in paragraphs 15(b) and (c) of the Claim were beyond the institutional capacity of the court to adjudicate. In this regard, the Chambers judge correctly observed that the Government of Saskatchewan has not adopted international standards into law such as the *Paris Agreement*, 12 December 2015, 3156 UNTS 54113, unlike Canada and Ontario.

[97] However, I am of the view that the Chambers judge erred in concluding that the matters identified at paragraphs 15(a) and (d) of the Claim were not justiciable when read within the whole of the Claim and alongside paragraphs 44 and 45 (as numbered in the proposed amended claim), which I will discuss further. Specifically, she erred by

(a) concluding that the appellants' *Charter* challenge to the *MRGHG Regulations* did not assert a breach by the respondents of a statutory obligation, and by distinguishing it from the claim considered in the *Mathur* cases;

(b) determining that the Claim lacked a legal component and legal standard;

(c) focusing on the viability of certain remedies sought in the Claim, to the exclusion of others; and

(d) allowing the policy implications of the Claim to cloud the legal component and legal standard aspects of the justiciability test.

[98] Because the Chambers judge's determination on justiciability pervaded her conclusion that the Claim's *Charter* challenge to the *MRGHG Regulations* disclosed no reasonable cause of action, that second conclusion was also reached in error.

### A. The Claim asserts a breach of a statutory obligation by the Government of Saskatchewan and a violation of the *Charter*, similar to the *Mathur* cases

[99] The Chambers judge concluded that the Claim, unlike those considered in *La Rose FCA*, *Mathur OSCJ #2*, and *Mathur CA*, did not assert a breach by the respondents of a statutory obligation or legal standard, such as the GHG emissions.

[100] However, the Claim *does* argue that the Government of Saskatchewan has not complied with a statutory obligation in the context of its *Charter* challenge to the *MRGHG Regulations*. Specifically, paragraphs 15(a), 15(d), 44 and 45 of the Claim, taken together, allege that the "Emission reduction obligations" set in s. 16(2) of the *MRGHG Regulations* violate the appellant's ss. 7 and 15 *Charter* rights <u>and</u> that they are not true *reduction targets* as required by s. 5 of the *MRGHG Act*. For ease of reference, s. 5 of the *MRGHG Act* provides for the following:

> **Greenhouse gas emission reduction target**
> **5** The Lieutenant Governor in Council *shall establish in the regulations a greenhouse gas emission reduction target* for Saskatchewan for a year or years selected by the Lieutenant Governor in Council.
>
> (Emphasis added)

[101] Section 16 of the *MRGHG Regulations* and the corresponding emissions reductions obligations it references in Part 4, Table 1, are set out below:

> **Emission reduction obligations**
> **16**(1) In this section, **"Table"** means a Table in Part 4 of the Appendix.
>
> (2) A regulated emitter *shall reduce* its greenhouse gas emissions within a compliance period as set out in Column 2 of Table 1 so that the emissions from its fleet do not exceed the cumulative emissions cap set out in Column 3 of Table 1 for that compliance period.
>
> …

**PART 4**
**Emission Reduction Obligations**
**TABLE 1**
**[Subsection 16(2)]**

| Column 1<br>**Compliance Period** | Column 2<br>**Compliance Period – Years** | Column 3<br>**CO2e Cumulative Emissions Cap for All Facilities in Saskatchewan** |
|---|---|---|
| 1 | 2018–2019 | 33 500 000 tonnes |
| 2 | 2020–2024 | 77 000 000 tonnes |
| 3 | 2025–2026 | 29 400 000 tonnes |
| 4 | 2027–2029 | 35 000 000 tonnes |

(Emphasis added)

[102] The Claim goes on to assert that a comparison of actual emissions by SaskPower in certain years versus the emissions reduction obligations set for certain compliance periods in the *MRGHG Regulations* allows for an increase, rather than decrease, in emissions:

> [43] The Respondent Government of Saskatchewan has obligations under *The Management and Reduction of Greenhouse Gases Act* (the "*MRGHG Act*") to establish a GHG reduction target for Saskatchewan. The *MRGHG Act* compels prescribed regulated emitters to reduce GHG emissions as prescribed by *The Management and Reduction of Greenhouse Gases (General and Electricity Producer) Regulations* (the "*MRGHG Regulations*"). SaskPower is a "prescribed regulated emitter" and s. 16 of the *MRGHG Regulations* limits SaskPower to 77,000,000 tonnes of cumulative emissions for the 2020–2024 compliance period and 64,500,000 tonnes for the 2025–2029 compliance period.
>
> [44] The Applicants submit that the "Emission Reduction Obligations" prescribed in the *MRGHG Regulations* are not, in fact, targets to reduce emissions with respect to the 2020–2024 compliance period. The average annual emissions of SaskPower, as disclosed in its annual reports over the past three years (2019–2021) are 14.5 MT/yr. The *MRGHG Regulations* target of limiting cumulative emissions for SaskPower from 2020–2024 equate to an average annual emission of 15.4 MT/yr. Therefore, the effect of the *MRGHG Regulations* is to allow SaskPower to increase emissions in the short term.

[103] Because the Chambers judge failed to recognize the *MRGHG Regulations*'s connection to the Government of Saskatchewan's statutory duty in the context of the Claim's *Charter* challenge, she also erroneously distinguished it from the claim considered in *Mathur v Ontario*, 2020 ONSC 6918, leave to appeal to ONSC refused 2021 ONSC 4331 [*Mathur OSCJ #1*], *Mathur OSCJ #2*, and *Mathur CA* – a claim which survived similar applications to strike by Ontario. Some comment on what happened in that matter is helpful to explain my conclusions.

[104] In the *Mathur* cases, Ontario's *Cap and Trade Cancellation Act, 2018*, SO 2018, c 13 [*CTCA*], required the Ontario government to establish "targets for the reduction of greenhouse gas emissions" (at s. 3) and "a climate change plan" (at s. 4). The *CTCA* itself did not prescribe emissions reduction targets but required Ontario to do so (*Mathur CA* at para 17). It was the "Made-in-Ontario Environmental Plan", enacted pursuant to s. 4, which articulated those targets. The plan further committed to reduce emissions by certain percentages to align Ontario with Canada's 2030 target under the *Paris Agreement*. The applicants challenged both the targets and the plan arising from the *CTCA*, arguing that they violated their ss. 7 and 15 *Charter* rights, and sought orders that Ontario set science-based emissions reduction targets and revise its climate change plan to accord with international standards.

[105] Ontario unsuccessfully applied to strike the claim on the basis that it disclosed no reasonable cause of action and was not justiciable (*Mathur OSCJ #1*). Ontario took the position that the targets and the plan were not law, binding, or reviewable by the courts. In dismissing Ontario's application, the judge found that the target and the plan constituted governmental action, subject to review for compliance with the *Charter* (at para 62), with the plan and the target having "the force of law" (at para 68). The judge also distinguished the case from *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410 [*Tanudjaja Trial*], aff'd 2014 ONCA 852 [*Tanudjaja CA*], leave to appeal to SCC refused 2015 CanLII 36780, and *La Rose FC*, as the claim challenged specific legislation and governmental conduct, being the plan and the target (at paras 139-140). He declined to strike the claim on the basis that some relief may be outside of the court's institutional capacity, deferring that decision to the judge hearing the application.

[106] The application judge hearing the matter on its merits revisited the justiciability of the claim again (see *Mathur OSCJ #2*). Following *Chaoulli v Québec (Attorney General)*, 2005 SCC 35 [*Chaoulli*], and *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [*PHS*], she determined that the court had institutional capacity to address the claim's ss. 7 and 15 *Charter* challenges to specific state action and legislation (being the target and sections of the *CTCA*) and to issue declarations of unconstitutionality and to grant declaratory relief (at paras 106-108). She also determined that the *CTCA* and the plan and targets were subject to the *Charter* (at para 106; see also *Mathur CA* at para 36). She did, however, find that the relief sought respecting the determination of Ontario's "fair share" of the carbon budget was beyond the court's

institutional capacity – a conclusion rejected by *Mathur CA*, which held that the applicants were not seeking an order for a particular target but rather to set a "science-based" target that could be fashioned with reference to international standards (at paras 70, 71).

[107] The takeaway from all of this is that the Claim's challenge to the *MRGHG Regulations* and the claim in the *Mathur* cases both argue that the government is not meeting a statutorily assumed obligation and that government measures taken pursuant to statutory schemes respecting climate change are not constitutionally compliant (see *Mathur CA* at para 41). The Claim (specifically at paragraphs 15(a), 15(d), 44 and 45) asks the Court to assess whether the Government of Saskatchewan is executing its statutory obligation under s. 5 of the *MRGHG Act* to set emissions reduction targets through the associated *MRGHG Regulations*'s emissions reduction obligations and whether such is *Charter* compliant. The claim in the *Mathur* cases similarly argued that the targets fixed by Ontario pursuant to its statutory obligations under the *CTCA* and the plan violated the applicants' *Charter* rights and did not fulfill Ontario's commitment to combat climate change. The Claim here also seeks declaratory relief including declarations of unconstitutionality, which were found in the *Mathur* cases to be within the institutional capacity of the court to adjudicate.

[108] To be clear (and contrary to the Chambers judge's conclusion at paragraph 112 of the *Chambers Decision*), the jurisprudence does not require that a *Charter* claim assert or demonstrate a government's breach of statutory obligation or legal standard in order to be justiciable. But in this case, that argument is made in the Claim and entwined in the *Charter* issues. Specifically, the Claim's constitutional challenge is to the *MRGHG Regulations*, as connected to the Government of Saskatchewan's statutory obligation under the *MRGHG Act*. By failing to recognize this, and the Claim's similarities to the *Mathur* cases, the Chambers judge fell into error when considering whether the Claim contained the necessary legal component and legal standard, which I will address next.

### B. The Claim's *Charter* challenge to the *MRGHG Regulations* has a legal component and a legal standard

[109] In concluding that "there is no judicially discoverable or manageable standard, sufficient legal component, or legal anchor" for assessing the *Charter* claim respecting both the UFFGAs and the GHG emissions caps in the *MRGHG Regulations* (*Chambers Decision* at para 119), the

Chambers judge discussed the concepts of an "objective legal standard" and a "legal component" interchangeably, without highlighting how they differ in the justiciability context (see *La Rose FCA* at para 36; see also *Tanudjaja CA* at paras 27, 33 and *K.O. v British Columbia (Ministry of Health)*, 2023 BCCA 289 [*K.O.*]). While these concepts are related and often overlap, I find that the Claim satisfies both requirements. I will turn to each below.

### 1. The legal component or legal anchor

[110] A justiciable claim must have an adequate legal component or legal anchor in order for the court to engage with the issues raised in it. The legal component requirement ensures that a challenge is not directed solely at policy (a matter for determination by the legislative or executive branches) and instead engages a "sufficient legal component" warranting the intervention of the court (*Reference Re Canada Assistance Plan (B.C.)*, 1991 CanLII 74, [1991] 2 SCR 525 at p 545 (SCC)). Purely political actions do not have sufficient legal components for judicial intervention (see *Mathur OSCJ #2* at para 99, citing *Reference Re Canada*). In this way, the legal component consideration accounts for the separation of powers and whether an issue is within the court's decision-making capacity (*Tanudjaja CA* at para 27; *La Rose FCA* at para 45).

[111] The *Charter* justiciability jurisprudence bears out that generalized attacks or complaints respecting government policy or inaction have not sufficed the required legal component. For example, in *Tanudjaja CA*, a claim seeking declarations that Ontario's failure to address homelessness violated ss. 7 and 15 *Charter* rights failed as there was no law or application of law being challenged. The claim in that case therefore lacked the legal component required for adjudication and was found not to be justiciable (at paras 19, 27, 35-56; see also *La Rose FCA* at para 37). A similar situation presented in *Jeunesse CA*, where the applicants asserted that Canada's inaction on climate change, with respect to the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, at s 186, violated the *Charter*. Because the claim did not take issue with a specific provision of that legislation, the Québec Court of Appeal found that it lacked the required legal component and, in essence, was asking the Court to "interfere in the legislative sphere in complex decisions regarding social and economic policy" (at para 41).

[112] As noted above, in contrast to *Tanudjaja CA* and *Jeunesse CA*, the *Mathur* cases found a claim challenging specific legislation directing emissions targets and associated climate plans fixed pursuant to legislation to be justiciable (see also L. Sossin & G. Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Thomson Reuters, 2024) at p 418-19). The ss. 7 and 15 challenges had a sufficient legal component to warrant judicial intervention and there were well established legal tests. Further, the Ontario courts had the institutional capacity to find a breach and grant declaratory relief (*Mathur OSCJ #2* at paras 106-108). Importantly, it was the claim's challenge to the *CTCA* (specifically, the plan and target arising from the *CTCA*) and to the "constitutional compliance of the government measures taken under the scheme" of the *CTCA* (*Mathur CA* at paras 36, 41) that made the *Charter* question justiciable – not the fact that Ontario aligned its targets with the *Paris Agreement*. I observe that *Mathur CA* also suggested that a challenge to the adequacy of Ontario's targets, versus the targets' *Charter* compliance in the face of Ontario's obligations under the *CTCA* may not have crossed the justiciability threshold (at para 41).

[113] In *La Rose FCA*, a claim challenging Canada's response to climate change and pleading breaches of ss. 7 and 15 *Charter* rights connected to the *Paris Agreement*, certain Orders in Council, and the *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22 [*Net Zero Act*], had been struck by the Federal Court. The Federal Court of Appeal allowed the appeal in part and found that the s. 7 aspect of the claim was justiciable and had a sufficient legal component, granting leave to amend the claim to identify the specific provisions subject to constitutional adjudication.

[114] What can be taken from the above cases is that in order for a *Charter* challenge to be justiciable, it must identify and impugn the constitutionality of a specific law or state action pursuant to law (see *Mathur OSCJ #2* at para 102; *Tanudjaja CA* at para 27; see also *Chaoulli* at paras 2, 185; *Misdzi Yikh*; and *PHS*). Claims that challenge the constitutionality of laws and state action in this way have been found to raise the necessary legal component for a court's adjudication, as "the Constitution requires that courts review legislation and state action for *Charter* compliance when citizens challenge them, even when the issues are complex, contentious and laden with social values" (*Mathur OSCJ #2* at para 106; *Mathur CA* at para 36; see also *Chaoulli* at paras 107-108). Put somewhat differently, if a court is asked to decide "whether any particular act of the executive violates the rights of the citizens, then it is not only appropriate that

[the court] answer the question; it is [its] obligation under the *Charter* to do so" (*Operation Dismantle v Canada*, 1985 CanLII 74 at para 64, [1985] 1 SCR 441 (CanLII) (SCC) [*Operation Dismantle*]; see also para 62). It follows that *Charter* cases alleging a failure of the government to comply with certain statutory obligations differ from those outside the *Charter* context (for example, judicial reviews involving alleged breaches of government duties; see, on this point, *Friends of the Earth v Canada (Governor in Council)*, 2008 FC 1183, aff'd 2009 FCA, leave to appeal refused 2010 CanLII 14720).

[115] Returning to the present case with all of this in mind, the Chambers judge erred in distinguishing the *Mathur* cases and in concluding that the Claim did not assert a breach of a statutory obligation by the respondents in the context of its constitutional challenge to the *MRGHG Regulations*. Because the Chambers judge failed to consider the full scope of the Claim's *Charter* challenge – being a constitutional challenge to the *MRGHG Regulations*, as connected to the Government of Saskatchewan's statutory duty under the *MRGHG Act* through the *MRGHG Regulations* – she erred in concluding that the Claim did not have a legal component. Looking to that aspect of the Claim, I conclude that it does.

[116] As it was found in the *Mathur* cases, I determine that the *Charter* applies to the *MRGHG Act* and the emissions reduction obligations fixed by the *MRGHG Regulations*. The Claim identifies as its legal component an assertion that the *MRGHG Regulations* and the emissions reduction obligations set therein violate the appellant's ss. 7 and 15 *Charter* rights. It also argues that they are not true emissions reduction targets as required by s. 5 of the *MRGHG Act.* This aspect of the Claim is similar to that in the *Mathur* cases, being a challenge to emissions targets fixed pursuant to legislation (i.e., the *CTCA*), and an argument that the execution of the Government of Saskatchewan's "voluntarily imposed statutory obligation" pursuant to the *MRGHG Act* is not "constitutionally compliant" (*Mathur CA* at paras 38, 41). As previously identified, the court has the institutional capacity to grant declaratory relief, including declarations of unconstitutionality, which the Claim seeks at paragraphs 15(a) and (d). The Claim has therefore identified a constitutional question linked to a specific law and a state action directed by that law, comparable to the *Mathur* cases and *La Rose FCA*.

[117] For these reasons, the Chambers judge erred in determining that there was no sufficient legal component to the ss. 7 and 15 *Charter* challenge to the *MRGHG Regulations*.

### 2. The objective, manageable or discoverable legal standard

[118] As I mentioned above, the concepts of a legal component and a legal standard are related yet treated distinctly in the justiciability jurisprudence. An "objective legal standard" is one required for the court to "adjudicate the issues against" (*La Rose FCA* at paras 36, 45). Other language used to describe this standard includes the following: "explicit or generally accepted legal standards" (*El Batnigi v Canada (Attorney General)*, 2026 ONSC 2513 at para 23); a "judicially discoverable and manageable standard" (*Tanudjaja CA* at para 33); a "judicially manageable legal standard" (*La Rose FC* at para 22); and a "legally defined, objective standard" (*La Rose FCA* at para 38).

[119] An example of the inquiry into the manageable legal standard can be found in *Tanudjaja CA*, where the Ontario Court of Appeal found that a "diffuse and broad" ss. 7 and 15 *Charter* claim challenging the Government of Ontario's response to homelessness did not identify a legal anchor (at para 32). The Court also concluded that there was "no judicially discoverable and manageable standard for assessing in general whether [the Government's] housing policy is adequate or whether insufficient priority has been given in general to the needs of the homeless" (at para 33).

[120] *Tanudjaja CA* was followed in *K.O.*, which addressed an appeal from a dismissal of a plaintiffs' application to certify a class action against British Columbia's Ministry of Health, alleging the proposed class had received substandard medical care due to their mental health issues. The British Columbia Court of Appeal held that the claim did not identify a legal component or a specific government act, legislative or otherwise, that infringed the *Charter* (at para 59). It also disclosed "no judicially discoverable and manageable standard for assessing, in general, whether the government's response to mental health stigma is adequate, or whether insufficient priority has been given in general to the needs of those diagnosed with mental illness" (at para 59).

[121] In *La Rose FCA*, while the claim did not challenge the constitutionality of a specific piece of legislation, the Federal Court of Appeal found that it did have legally defined objective standards against which the *Charter* claims could be assessed in light of the *Paris Agreement*, ratified by Canada in s. 7 of the *Net Zero Act*. The Court went on to grant the appellants leave to amend the claim to identify a specific s. 7 breach of the *Charter*.

[122] International legal standards were also discussed in relation to a remedy in *Mathur CA*. After upholding an application judge's conclusion that the *Charter* applied to the emissions target and the *CTCA*, the *Charter* issues raised by the applicants were found to be justiciable (at para 36, citing *Mathur OSCJ #2* at para 106). The Ontario Court of Appeal noted that international standards would become relevant to fixing "science-based" targets, "if a breach of the appellants' *Charter* rights is declared" (*Mathur CA* at paras 70, 71).

[123] I have already concluded that the Claim here has a sufficient legal component for the Court to engage with the constitutional question raised in relation to the *MRGHG Regulations*. That *Charter* question is therefore an appropriate one for a court to decide (see *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 32-33). As I will now discuss, the Claim also identifies a sufficient objective legal standard. More to that point, and contrary to the Chambers judge's reasoning, the fact that the Government of Saskatchewan has not legislated international emissions standards does not bar a court's ability to adjudicate the question of whether the *MRGHG Regulations* fulfill the Government of Saskatchewan's obligation under s. 5 of the *MRGHG Act* and are constitutionally compliant.

[124] While the Government of Saskatchewan has not adopted the *Paris Agreement* as part of its approach to climate change, it has committed in s. 5 of the *MRGHG Act* to "establish in the regulations a greenhouse gas emission *reduction target* for Saskatchewan for a year or years" (emphasis added) formalized in s. 16(2) of the *MRGHG Regulations*. It is also common ground that the reduction of GHG emissions is necessary to address climate change, which poses a threat to humanity's future (see *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 2 [*Greenhouse Gas*]).

[125] The Claim argues that the emissions reduction obligations set in the *MRGHG Regulations* are not reduction targets as required by s. 5 of the *MRGHG Act* and that they violate the appellants' ss. 7 and 15 *Charter* rights. Thus, this aspect of the Claim does not seek to measure the emissions reduction obligations against international standards but, rather, asserts that the Government of Saskatchewan is not meeting its own standards set in the *MRGHG Act*. This, together with the holding in *Greenhouse Gas*, is a sufficient objective and judicially discoverable legal standard against which to measure the alleged *Charter* breaches.

[126] I pause here to comment on the Chambers judge's finding that the appellants' argument on emissions reductions was without merit. She determined, based on her reading of the *MRGHG Regulations* and the emissions reductions obligations, that the appellants' mathematical calculations did not support the argument that the emissions fixed in the *MRGHG Regulations* compliance periods are not reductions. However, I am of the view that the Chambers judge improperly waded into the merits of the Claim to conclude this and, in doing so, misapprehended the appellants' emissions reduction argument and the Claim itself.

[127] To begin, the Chambers judge did not need to be satisfied of the success of the Claim – including the arithmetic surrounding the emissions reduction argument. She only had to be satisfied that the Claim was justiciable and disclosed a reasonable cause of action. Even where there are "serious doubts" as to whether an applicant will be able to prove a *Charter* breach, it is not the role of the court to "prejudge that question" at the justiciability stage (*Operation Dismantle* at para 79; see also, in the general context of strike applications, *Harpold v Saskatchewan (Corrections and Policing)*, 2023 SKCA 98).

[128] Further, there are different ways of looking at the Claim's emissions reduction argument, including the relevant points in time for that consideration, and the relevant facts pleaded in the Claim – such as the Claim's reference to actual and historic emissions produced by SaskPower versus those targets set in s. 16(2) of the *MRGHG Regulations*.

[129] In the Claim, the appellants refer to emissions reduction obligation compliance periods in the *MRGHG Regulations* for 2019–2021, 2020–2024, and 2025–2029. They say that such targets allow for an increase in emissions in the short term, when compared to the actual emissions disclosed by SaskPower for 2019–2021 (see the Claim at paras 44, 45). In their written argument on appeal, the appellants suggest that since the first compliance period listed in the *MRGHG Regulations* is 2018–2019, the calculation of what constitutes an emissions reduction should be based on Saskatchewan's annual emissions rate in 2017, which was the highest ever on record (15.28Mt).

[130] While the submission made on appeal has a slightly different twist as to the relevant time frames for consideration of historical emissions, that is of no moment to the crux of the Claim's emissions reduction argument. Whether one uses the annual emissions rate of 2017 or the average

annual emissions rate between 2019–2021, it appears that the following emissions reduction obligation compliance periods set in the *MRGHG Regulations* amount to higher rates than what was actually emitted in the previous years. This makes the appellants' submission at least arguable that if the Government of Saskatchewan is fixing a high level of emissions reduction targets in the first compliance period in the *MRGHG Regulations*, it may permit the Government and SaskPower to show purported emissions "reductions" in subsequent years.

[131] The Chambers judge looked only to the emissions reductions obligations outlined in the compliance periods in the *MRGHG Regulations*, which do reduce from compliance period to compliance period (see the *Chambers Decision* at paras 114-116). However, the Chambers judge did not consider any period of <u>actual</u> emissions rates compared to the targets set preceding those in the *MRGHG Regulations* (which is derived from the Claim's reference to the actual emissions of SaskPower in 2019–2021). Accordingly, it may be that the Chambers judge misunderstood the scope of the argument raised in the Claim. In saying this, the evolution of the appellants' submission, versus the Claim, could require clarification via an amendment.

[132] Despite any confusion over or difference in the Chambers judge's and the appellants' approach to the emissions reduction argument (including in how an emissions "reduction target" is defined, which may involve a question of statutory interpretation), all of this demonstrates that the argument under the umbrella of the broader *Charter* challenge to the *MRGHG Regulations* is not "bereft of any possibility of success" (*JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, 2013 FCA 250 at para 47, citing *David Bull Laboratories (Canada) Inc. v Pharmacia Inc.*, 1994 CanLII 3529, [1995] 1 FC 588 at p 600 (FCA)). It also does not negate the existence of an objective legal standard that a *Charter* breach could be measured against – being the Government of Saskatchewan's commitment in s. 5 of the *MRGHG Act* to set emissions reduction targets in the *MRGHG Regulations*.

[133] Therefore, I conclude the Chambers judge erred in determining that there was no objective or discoverable legal standard presented by the Claim and in finding that the emissions reduction argument involving the *MRGHG Regulations* was without merit.

### C. Certain remedies sought in the Claim do not render the *Charter* question not justiciable

[134] In determining that the *Charter* challenge to the *MRGHG Regulations* was not justiciable, the Chambers judge focused on certain remedies sought in the Claim, including the Claim's request for an order directing the Government of Saskatchewan to set emissions targets consistent with the *Paris Agreement* and its request for an order directing the Government to set a net-zero energy plan. However, she did not explicitly consider the bare request for an order declaring the impugned portions of the *MRGHG Regulations* to be of no force and effect pursuant to s. 52(1) of the *Constitution Act, 1982*, and for the alternative relief sought in the Claim, being declaratory relief pursuant to s. 24(1) of the *Charter*.

[135] Some consideration of remedies is appropriate in the justiciability analysis to the extent that remedies must be effective and capable of enforcement (see *La Rose FCA* at para 48). In that regard, I have already acknowledged, as did the Chambers judge, that some of the remedies the Claim seeks, namely orders directing the Government of Saskatchewan to set certain GHG emissions caps, are not within the court's institutional capacity to adjudicate. This sets the Claim apart from the circumstances in the *Mathur* cases and *La Rose FCA*, given the distinctions in the Government of Saskatchewan's approach to climate change from that of Ontario (which adopted the *Paris Agreement* standards) and Canada (which adopted the *Paris Agreement* standards into s. 7 of the *Net Zero Act*).

[136] However, remedies cannot be wholly determinative of the justiciability question at the outset of litigation, as such can be tailored later in the event a breach is proven (*La Rose FCA* at paras 48, 51; *Mathur CA* at paras 51, 74). It is important not to foreclose what a court hearing the matter may order in this regard (*Mathur CA* at para 74, citing *Canada (Prime Minister) v Khadr*, 2010 SCC 3, and *Chaoulli*). For example, aside from the above orders that the Chambers judge considered, a judge hearing the application could theoretically make an order finding a *Charter* breach and then grant the alternative declaratory relief sought by the appellants pursuant to s. 24(1) of the *Charter* (at para 15(d) of the Claim). That kind of relief could be ordered without a judge necessarily directing the Government of Saskatchewan to fix certain emissions caps. Instead, that judge could direct that emissions targets simply comply with the *Charter* (see *Mathur CA* at para 20). Said somewhat differently, it is within the discretion of a court to grant declaratory relief

and, being "'respectful of the responsibilities of the executive and the courts, … provide the legal framework for the executive to exercise its functions and to consider what actions to take … in conformity with the *Charter*'" (*Mathur CA* at para 69, quoting *Khadr* at para 47; see, on this point, the discussion in *La Rose FCA* at paras 47-52).

[137] In the end, none of the remedies sought here undermined the existence of a sufficient legal component and standard identified in the Claim's *Charter* challenge to the *MRGHG Regulations*.

### D. The policy implications of the Claim's challenge to the *MRGHG Regulations* do not undermine its justiciability

[138] The Chambers judge's analysis of the Claim as a whole appears to have been coloured by a view that the appellants solely took issue with the Government of Saskatchewan's policy on climate change: a matter best left for the Legislature. However, a justiciable claim can have policy implications as all government action has some policy aspect (*La Rose FCA* at paras 33, 36; see also *Chaoulli* at para 183). Once a policy is crystallized into legislation, such is not immune from *Charter* scrutiny (*Chaoulli* at para 107). Further, "where policies developed by the legislature infringe rights that are protected by the *Charter*, 'the courts cannot shy away from considering them'" (*Mathur OSCJ #2* at para 100, quoting *Chaoulli* at para 89).

[139] To that end, the Federal Court of Appeal in *La Rose FCA* (at para 33) observed that complex, policy-ridden *Charter* claims outside the climate change context have been found to have a sufficient legal component, including the following: challenges to legislation reducing access to private medical treatment (*Chaoulli*); a claim asserting that wait times for surgery infringed s. 7 (*Cambie Surgeries Corporation v British Columbia (Attorney General)*, 2022 BCCA 245; access to abortion (*R v Morgentaler*, 1988 CanLII 90, [1988] 1 SCR 30 (SCC); the availability of supervised injection sites to improve the safety of drug use (*PHS*); and the effects of prohibitions on physician-assisted dying (*Carter v Canada (Attorney General)*, 2015 SCC 5).

[140] While the Chambers judge was correct to identify the policy issues associated with the Claim, she erred in concluding that the mere presence of those issues undermined the justiciability of the *Charter* challenge to the *MRGHG Regulations*.

## IV. CONCLUSION

[141] I would therefore allow the appellants' appeal to the extent that the *Charter* challenge to the *MRGHG Regulations* (articulated at paras 15(a), 15(d), 44 and 45 of the Claim), on the basis that such infringe ss. 7 and 15 *Charter* rights, is justiciable and also discloses a reasonable cause of action. To the extent a further amendment to the Claim may be required to clarify the specific regulations at issue and provide clarity around the emissions reduction argument, referenced above, much as was the case in *La Rose FCA*, I would grant leave to the appellants to do so.

"Drennan J.A."

Drennan J.A.