

Meeting climate commitments to open new avenues of litigation

ECO JUSTICE

BY HELEN BURNETT-NICHOLS

Following a decision last month in the first court case relating to the government's Kyoto Protocol obligations, further climate-change litigation could be on the way, lawyers warn.

Last fall and earlier this year, environmental group Friends of the Earth filed three separate applications, alleging that the federal Minister of the Environment failed to prepare an initial climate-change plan that fulfilled Canada's obligations under the Kyoto protocol, publish proposed regulations in the *Canada Gazette*, and make, amend or repeal regulations to ensure Canada meets its obligations under the Kyoto Protocol.

However, in an October decision, the Federal Court of Canada dismissed the suit, ruling that it has no role to play "reviewing the reasonableness of the government's response to Canada's Kyoto commitments within the four corners of the [Kyoto Protocol Implementation Act]."

Justice Robert Barnes concluded that any mandatory order against the government "would be so devoid of meaningful content and the nature of the response to it so legally intangible that the exercise would be meaningless in practical terms."

The court noted "the Government of Canada has no present intention to meet its Kyoto Protocol commitments."

The government's initial climate-change plan sets out emission-reduction targets for 2008 to 2012 that are 34% higher than Canada's Kyoto commitments.

Eco-justice lawyer Hugh Wilkins, who represented Friends of the Earth along with law firm Paliare Roland, said the organization wanted

a declaration from the court that the government did not meet its obligations under the KPIA.

It also wanted the court to order the government to take the necessary actions to make sure it meets the act's requirements.

The decision is consistent with several U.S. court rulings

that found climate-change matters were not subject to litigation, says Toronto environmental lawyer Dianne Saxe. "What the court said, in this case, is there's some things we can't do, and this is one of them."

While Friends of the Earth did not succeed in this case, Ms. Saxe predicted there are

many areas of climate change that will be susceptible to litigation going forward.

"Although this particular case was lost, I put that down mostly to the wording of the legislation and I'm not too concerned. There's going to be lots more opportunities for litigation to push things along and to impose liability for governments and other actors that fail to act. And the more the science improves, in terms of predicting those who are at risk, the easier it will be for the legal system to come to grips with it," she said.

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