



MEDIA BACKGROUNDER

Kyoto Protocol Implementation Act Lawsuit

The Application for Judicial Review

- The Application for Judicial Review was filed in Federal Court by Ecojustice (formerly Sierra Legal) and lawyer Chris Paliare on behalf of Friends of the Earth Canada in the Fall of 2007
- The application seeks a declaration that the Government of Canada is not complying with its legal obligation under Sections 5, 7, 8 and 9 of the *Kyoto Protocol Implementation Act* because the Minister of Environment has failed to prepare a Climate Change Plan that provides a description of measures to be taken to ensure that Canada meets its obligations under Article 3.1 of the Kyoto Protocol to enact binding regulations to reduce emissions, among other things.
- It also seeks a court order (i.e. mandamus order) requiring the Minister to comply with the Act.
- October 2008, the Federal Court Trial Division ruled that the KPIA legislation itself is not justiciable – meaning it is not an issue the Courts can resolve. In October 2009, the Federal Court of Appeal heard FOE’s appeal and sided with the decision of the lower court.
- December 15, 2009 Friends of the Earth seeks leave to appeal the case in the Supreme Court of Canada. FOE will ask the court to set aside this ruling and acknowledge that the federal government is obligated to enact legally binding regulations to combat climate change as specified in the KPIA.

The Kyoto Protocol Implementation Act

- Originally presented as Bill C-288 by Liberal MP Pablo Rodriguez, the *Kyoto Protocol Implementation Act* was passed by the Senate and given Royal Assent on June 22, 2007.
- The purpose of the Act is “to ensure that Canada takes effective and timely action to meet its obligations under the Kyoto Protocol and help address the problem of global climate change.”
- Section 5 of the Act requires that within 60 days of the Act coming into force, the Minister of Environment is to prepare a Climate Change Plan and release the Plan publicly.
- The Act sets out a specific list of measures to be described in the Plan to be taken to ensure that Canada meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol.
- Section 7 of the Act requires that within 180 days of the Act coming into force (by December 19, 2007), the Governor in Council "shall ensure that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act."



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- Section 8 of the Act requires that at least 60 days before making a regulation, the Governor in Council must publish the proposed regulation(s) for consultation purposes with statements (a) setting out the greenhouse gas emission reductions that are reasonably expected to result from the regulation for every year it will be in force, up to and including 2012; and (b) indicating that persons may submit comments to the Minister within 30 days of the publication of the regulation.
- Section 9 of the Act requires that within 120 days after the Act coming into force (by October 20, 2007), the Minister must prepare a statement setting out the greenhouse gas emission reductions that are reasonably expected to result for each year up to and including 2012 from each regulation made or to be made to ensure that Canada fully meets its Kyoto Protocol obligations pursuant to s.7, and that within a further 10 days the Minister must publish the statement and table it in each House of Parliament.

Canadian Kyoto Chronology

- 1994: The United Nations Framework Convention on Climate Change (UNFCCC) came into force (now ratified by 190 countries and the European Economic Community)
- 2005: The Kyoto Protocol to the UNFCCC entered into force, committing Canada to allowable emissions of 2,815 Megatonnes of greenhouse gases for the years 2008-2012.
- May 17, 2006: *Kyoto Protocol Implementation Act* (Bill C-288) tabled and receives first reading at House of Commons.
- October 19, 2006: The proposed *Clean Air Act* (Bill C-30) introduced in Parliament.
- December 4, 2006: *Clean Air Act* referred to Legislative Committee for amendments.
- February 15, 2007: *Kyoto Protocol Implementation Act* (Bill C-288) receives first reading at Senate.
- March 30, 2007: Legislative Committee Report on the *Clean Air Act* released.
- April 26, 2007: The Government releases its Regulatory Framework for Air Emissions, "Turning the Corner".
- May 29, 2007: On behalf of Friends of the Earth Canada, Ecojustice launches lawsuit in Federal Court against the Government of Canada for abandoning its international commitments under the Kyoto Protocol. The lawsuit alleged that the federal government was violating Section 166 of the Canadian Environmental Protection Act.
- June 22, 2007: The *Kyoto Protocol Implementation Act* was passed by the Senate and given Royal Assent.
- August 9, 2007: In anticipation of the Government's new Climate Change Plan, FOE and Ministers of Environment and Health are granted a stay by the Federal Court regarding the May 2007 lawsuit.
- August 21, 2007: The Minister of Environment releases his Climate Change Plan. The Plan fails to comply with the requirements of the KPIA.



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- September 14, 2007: The Governor General, at the request of the Prime Minister, prorogues Parliament thereby eliminating any chance of Bill C-30, the Amended Clean Air Act, returning for approval by Parliament.
 - September 20, 2007: On behalf of FOE, Ecojustice and lawyer Chris Paliare launch a lawsuit in Federal Court against the Government of Canada for failing to comply with the Kyoto Protocol Implementation Act.
 - October 20, 2008: The Federal Court decides that the KPIA is not justiciable, i.e., it is not a matter for the courts.
 - October 15, 2009: The Federal Court of Appeal dismisses FOE's appeal on the October 20, 2008 court decision.
 - December 15, 2009: FOE, represented by Ecojustice and Paliare Roland Barristers seeks leave to appeal to the Supreme Court of Canada.

The groups

- Friends of the Earth Canada is a voice for the environment, working nationally and internationally to inspire the renewal of communities and the Earth through research, education and advocacy. It is the Canadian member of the 77 country strong Friends of the Earth International (www.foecanada.org).
- Ecojustice (formerly Sierra Legal) is Canada's largest non-profit environmental law organization, dedicated to defending the right of Canadians to a healthy environment (www.ecojustice.ca).
- Paliare Roland is a litigation law firm located in downtown Toronto, practicing in all areas of administrative, corporate, civil, commercial, employment, labour and appellate advocacy law. (www.paliareroland.com)