

August 20, 2025

Premier David Eby,
Office of the Premier
PO BOX 9041 STN Prov. Govt.
Victoria, BC V8W 9E1
Sent via email: Premier@gov.bc.ca

Dear Premier Eby:

Re: Implications of International Court of Justice Opinion for BC

We, the undersigned organizations, refer you to the recent ground-breaking opinion of the International Court of Justice on the obligations of states in respect of climate change (ICJ).¹ We look forward to a response indicating how you will be implementing the guidance of the ICJ in a timely manner.

The ICJ Opinion is the latest in a series of court decisions around the world that have ruled that governments have a legal obligation – not merely a political option – to act rapidly and urgently to reduce greenhouse gas emissions and adapt to a warming world.² Further, the ICJ has special status as the highest global court. We, the undersigned organizations, trust that BC will live up to its obligations as defined by the ICJ.³

The stakes have never been higher. The Court of Justice confirmed:

The consequences of climate change are severe and far-reaching; they affect both natural ecosystems and human populations. Rising temperatures are causing the melting of ice sheets and glaciers, leading to sea level rise and threatening coastal communities with unprecedented flooding. Extreme weather events, such as hurricanes, droughts and heatwaves, are becoming more frequent and intense, devastating agriculture, displacing populations and exacerbating water shortages. ... These consequences underscore the urgent and existential threat posed by climate change.⁴

¹ ICJ Advisory Opinion on the Obligations of States in respect of Climate Change. (July 23, 2025) (“the ICJ Opinion”), available at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

² For example, International Tribunal for the Law of the Sea, Advisory Opinion on Climate Change and International Law (21 May 2024); InterAmerican Court of Human Rights, Advisory Opinion OC-32/25 (29 May 2025); Verein Klimaseniorinnen Schweiz and others v. Switzerland. European Court of Justice. Judgement in Application No. 53600/20 (9 April 2024).

³ Technically the ICJ Opinion as an advisory opinion does not make rulings on BC’s obligations and in any case the ICJ’s orders are directly binding on national governments, not subnational governments. However, as discussed further below, the ICJ’s Opinion is likely to be used by BC’s courts to define the Province’s obligations under human rights law and the common law, as well as an aid to interpretation in understanding BC’s laws.

⁴ The ICJ Opinion, note 1, para. 73.

Implications for BC of the ICJ Opinion

We will discuss the following implications for BC of the ICJ Opinion:

1. Setting BC's climate targets;
2. BC's due diligence obligations;
3. BC's obligations in relation to fossil fuels; and
4. Role of the Opinion in BC law.

1. Setting BC's Climate Targets

The ICJ Opinion is clear that the setting of climate targets is not merely a political target. Climate change represents an ongoing infringement of human rights, customary international law and the rights of other nations, and as such every country has a duty to work together to reduce greenhouse gas (GHG) emissions as rapidly as possible. Individually, this means that each government must establish climate targets (known as NDCs in the Paris Climate Agreement) that represent “its highest possible ambition.”⁵

Collectively, nations have a legal obligation to work to keep global temperature increases to below 1.5 degrees Celsius, but the precise speed of reductions depends on each jurisdiction's “historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question.”⁶

By this standard, BC's targets are ambitious only in the sense that decades of weak action (and in some cases counter-productive action) have made them difficult to achieve. A review of global emissions trends⁷ shows that Canada and BC, unlike other countries in the G7, significantly increased emissions after the signing of the United Nations Framework Convention on Climate Change in 1992. Since setting its first climate targets in 2007, BC has failed to meet any target and its emissions have returned to 2007 levels. BC needs to do more, not less, to meet the requirements of international law and to work towards a safe atmosphere.

2. BC's due diligence obligations

The ICJ Opinion also states that once climate targets are set, compliance with international law involves assessing:

whether the party exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors.⁸

⁵ Ibid., para. 246.

⁶ Ibid., para. 247.

⁷ BC Climate Emergency Campaign, 2024 Climate Action Progress Report, p. 6, available at <https://bcclimateemergency.ca/s/BCCEC-Progress-Report-2024.pdf>.

⁸ The ICJ Opinion, para. 252; see also para. 135.

The court notes that this due diligence effort is stringent due to the fact that each additional increment of greenhouse gases avoided reduces the impacts of climate change.⁹ The components of a system which might meet this due diligence requirement include:

[S]uch appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. These rules and measures must regulate the conduct of public and private operators within the States' jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.¹⁰

While BC has put in place some measures intended to move the province toward its climate targets, we will miss our 2025 target and are not on track to achieve the 2030 target, or, we would submit, subsequent targets. Many of the commitments made in the Roadmap to 2030 are delayed, and some abandoned, while the Province has expanded highways, authorized LNG projects and taken on other work that move us away from achieving the province's climate targets.

Overall, we question whether BC is exercising due diligence in achieving its climate targets.

3. BC's obligations in relation to fossil fuels

BC has viewed its climate obligations as being limited to regulating end-use, known as tail-pipe or smoke-stack, emissions only. It consequently has made no effort to rein in the production of fossil fuels in the province, and, in fact, has expanded oil and gas development and infrastructure, most dramatically through the approval of LNG projects.

On paper, the Province does acknowledge that LNG and other facilities may generate their own smoke-stack emissions,¹¹ but it takes no responsibility for the climate impacts of the oil, gas and coal extracted in BC, but shipped to other provinces or countries. The ICJ Opinion expressly rejects this approach, holding that:

Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through **fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies** — may constitute an internationally wrongful act which is attributable to that State. [Emphasis added]¹²

⁹ Ibid. para. 254.

¹⁰ Ibid., para. 282. See also paras. 136 and 253.

¹¹ The province has insisted that these emissions will “fit within” the climate plan. The reality is that emissions from LNG are a major factor in BC failing to meet its 2025 target and potentially its 2030 target, and that the sectoral emissions target for the oil and gas sector is weaker than for other industrial sectors so as not to constrain expansion.

¹² The ICJ Opinion, note 1, para. 427.

In other words, each government has obligations to address the climate impacts of fossil fuels at *all stages* – not merely at the point of combustion.

This has far-reaching implications for BC energy policy. BC must, in our view, begin to plan for the phase out of the sale of its oil, gas and coal reserves for combusive purposes.¹³ The Province must stop approving, and subsidizing, oil, gas and coal projects, and must ensure that the costs of producing fossil fuels in BC reflect the full social and economic costs of burning those products.

4. Role of the Opinion in BC law

The above discussion concerns a ruling of the International Court of Justice on the obligations of nations, and not sub-national governments such as provinces. Moreover, it is an advisory opinion, in that it does not contain any specific ruling on whether Canada, let alone BC, is out of compliance with international law.

However, BC must still pay attention to the ICJ Opinion, which has legal implications for the province. BC courts are likely to look to the ICJ Opinion in evaluating BC's obligations under federal and provincial human rights law and under the common law, as well as in other contexts.

The ICJ Opinion is quite clear that the obligations it discusses are not the result of international climate treaties alone, but a host of international agreements and rules.

The judges examine in detail the impact of climate change on human rights, noting that:

[T]he adverse effects of climate change, including, *inter alia*, the impact on the health and livelihoods of individuals through events such as sea level rise, drought, desertification and natural disasters, may significantly impair the enjoyment of certain human rights.¹⁴

The court then goes on to rule that climate change will harm many of the human rights that are binding on BC under domestic law, such as the rights to life¹⁵ and equality¹⁶ guaranteed by the Canadian Charter of Rights and Freedoms, as well as the rights of Indigenous peoples under the *Constitution Act, 1982*.¹⁷ Young Canadians have brought litigation against the federal government and the government of Ontario regarding inaction on climate change claiming violations of these rights.¹⁸ These cases are pending before the courts, and the ICJ Opinion is likely to be referenced by the courts in future decisions in those cases.

¹³ Washington State, Quebec and other jurisdictions have joined the Beyond Oil and Gas Alliance, pledging to phase out oil and gas production: www.beyondoilandgas.org. We noted that the use of oil for plastics, and especially disposable, single use plastics, creates its own problems, but there may be oil products that could be part of a sustainable, climate-safe economy.

¹⁴ The ICJ Opinion, para. 376.

¹⁵ Canadian Charter of Rights and Freedoms, s. 7: the Right to Life, Liberty and Security of the Person. See the ICJ Opinion, paras. 377-381.

¹⁶ Charter, s. 15, Equality Rights, and also s. 8 of the BC Human Rights Code, R.S.B.C. 1996, c. 210. See the ICJ Opinion, paras. 382-384.

¹⁷ *Constitution Act*, 1982, s. 35. See the ICJ Opinion, paras. 382, 384.

¹⁸ *La Rose v. Canada*, 2023 FCA 241; *Mathur v. Ontario*, 2024 ONCA 762.

The ICJ Opinion also concludes that there is a human right, under international law, to a clean, healthy and sustainable environment, since:

a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing.¹⁹

The ICJ Opinion is not technically binding on BC courts or tribunals as they interpret our human rights laws, but typically international law plays a major role in interpreting and understanding human rights.²⁰

In addition, the ICJ Opinion concluded that the obligations to reduce greenhouse gases and fight climate change are part of customary international law, the accepted set of standards by which states are expected to treat one another: “[T]he customary duty to prevent significant harm to the environment also applies with respect to the climate system and other parts of the environment.”²¹

Unlike other types of international law that need to be implemented into Canadian law through legislation, customary international law automatically forms part of the Canadian Common Law. As the Supreme Court of Canada has put it:

[C]ustomary international law is also the law of Canada. In the words of Professor Rosalyn Higgins, former President of the International Court of Justice: “In short, there is not ‘international law’ and the common law. International law is part of that which comprises the common law on any given subject.” ... The fact that customary international law is part of our common law means that it must be treated with the same respect as any other law.²²

In other words, while the ICJ Opinion is an advisory opinion, the court’s pronouncements on the obligations of governments under customary international law are likely to be accepted by the Canadian courts as part of the Canadian common law.

Consequently, BC should abide by the International Court of Justice’s Advisory Opinion and begin implementing the measures discussed above.

Conclusion

The International Court of Justice, along with a growing number of courts around the world, has ruled that governments have a legal obligation – not merely a political option – to act rapidly and urgently to reduce greenhouse gas emissions and adapt to a warming world, so as to avoid the worst impacts of climate change.

¹⁹ ICJ Opinion, para. 393.

²⁰ *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 (CanLII), [2020] 3 SCR 426, para. 31; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, para. 51.

²¹ ICJ Opinion, para. 134.

²² *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, para. 95.

We expect the BC government to live up to its obligations to do more to fight climate change under international and Canadian law. If you have any doubts as to the legal implications of the ICJ Opinion for BC's climate policy, we urge you to exercise your power to refer those questions to the BC Court of Appeal for an answer.

We recognize that BC is currently conducting a review of the CleanBC climate plan, and many of us have provided comments to the Review Panel. However, the ICJ Opinion was released after the deadline for comments by non-profit organizations, and this letter finalized after its final deadline. In any event, the Opinion has broader implications for BC's approach to climate change. Consequently, we are addressing this letter to you, but will also provide a copy to the Review Panel.

The historic ICJ decision gives your government a rare opportunity to reset climate policy commensurate with the goal of doing our part to protect the lives and safety of present and future generations, at home in BC and globally.

Sincerely,

Alberni Valley Transition Town Society

BC Hydro Ratepayers Association

BCTF Divest Now

Be the Change Mission

Building Resilience in Mission (BRIM)

Canadian Association of Nurses for the Environment (CANE)

Canadian Association of Physicians for the Environment (CAPE)

Canadian Centre for Policy Alternatives

Climate Emergency Unit

Climate Justice Victoria

Cowichan Climate Hub

David Suzuki Foundation

Dogwood

First Things First Okanagan

Force of Nature Alliance

Georgia Strait Alliance

My Sea to Sky

One Cowichan Community Education Society

Say No To LNG

Shake Up The Establishment

Shift Action

Sierra Club BC

South Fraser Unitarian Congregation

Stand.earth

Sunshine Coast Conservation Association

Teachers for Future Turtle Island

Vancouver Ecosocialists

Watershed Sentinel

West Coast Climate Action Network (WE-CAN)

West Coast Environmental Law

West Kootenay Climate Hub

White Rock South Surrey Climate Corps

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