



Toronto

## Federal climate law crucial to Indigenous constitutional rights, court told

Saskatchewan lawyer claims it's no coincidence law only applies to provinces with Conservative governments

The Canadian Press · Posted: Apr 17, 2019 7:00 AM ET | Last Updated: April 18



Lawyer Amir Attaran, who is representing the Athabasca Chipewyan First Nation, says climate change will disrupt their way of life. (CBC)

---

[comments](#)



The federal government has to tackle climate change given the catastrophic impact unchecked global warming will have on Canada's Indigenous people, Ontario's top court heard on Wednesday.

As such, a lawyer for the northern Athabasca Chipewyan First Nation said, Ottawa's carbon-price law helps defend First Nations' constitutional rights to hunt and fish on which their very survival depends.

Scientists predict temperatures in the Far North could rise by as much as seven degrees in a single generation, Amir Attaran told the Ontario Court of Appeal.

"A seven-degree change is monumental," Attaran said. "Those changes endanger their aboriginal and treaty rights."

- [Read more from Day 2 as feds defend national measure to fight climate change](#)
- [Read more from Day 1 of the carbon tax court fight](#)

The crux of the constitutional challenge is whether the federal government has the right to impose the carbon tax on a province. Supporters of Ontario's position say pollution pricing is unfair to taxpayers, while those who agree with the federal government say pollution is a national concern.

The federal Greenhouse Gas Pollution Pricing Act, which levies a charge on gasoline, other fossil fuels, as well as on industrial polluters, kicked in on April 1 in Ontario, Saskatchewan, Manitoba and New Brunswick — provinces whose climate-change plans Ottawa says aren't up to national standards.

## National response critical, First Nations say

Attaran called the federal law a legitimate attempt to deal with an issue of national concern. Failure to curb global warming pollutants, he said, would infringe on Indigenous rights given the impact of climate change on them.

"You can have a local catastrophe that is a national emergency," Attaran said. "That deserves consideration."

The Assembly of First Nations, another of the 14 interveners in the Appeal Court hearing, agreed a national response to pollution was critical given the vulnerability of First Nations to climate change.

While Ontario maintains it has its own plan to fight emissions, assembly lawyer Stuart Wuttke said the province failed to consult aboriginal peoples despite a constitutional obligation.

- [Ontario's top court allowing rare live stream of legal fight against carbon tax](#)
- [Federal government could tell you when to drive if carbon price law stands, court told](#)

Ottawa calls the new levy — currently four cents a litre on gasoline — a regulatory charge designed to change behaviour.

Ontario, however, calls it an illegal tax that stomps on provincial jurisdiction. It has asked the Court of Appeal to declare it unconstitutional.

Mitch McAdam, a lawyer for Saskatchewan, which is awaiting its own Appeal Court decision in a similar recent challenge, said he agreed with Ontario.

"Consumers are simply told to do one thing: Pay more tax," he told the five-judge panel.

## Ottawa acting like 'Big Brother'

McAdam said the Liberal government under Prime Minister Justin Trudeau was forcing its will on the four Conservative provinces for political reasons: It doesn't like what the provinces are doing to fight climate change.

"This Big-Brother-Ottawa-knows-best is inimical to federalism," McAdam said on Day 3 of the four-day hearing. "You need to slam the door on that Pandora's box forever."

Canada, the lawyer said, is a federal state in which Ottawa and provinces have their own areas of jurisdiction. Ottawa, he argued, was using a "big stick" on provinces to adopt certain policies despite their objections.

"You don't need to throw out the Constitution in this case in order to save the planet," said McAdam.

Earlier, court heard that Canada, with about 0.5 per cent of the global population, produces two per cent of greenhouse gas emissions.

A lawyer for British Columbia, which sides with Ottawa, said Canadians want the federal government to address climate change. Federal action, he said, doesn't preclude provincial innovation — such as B.C.'s carbon-pricing scheme implemented in 2008. Drivers in the province pay an extra nine cents a litre, court heard.

Also Wednesday, Ontario's Progressive Conservative government released a radio ad that says the federal law will cost the average family up to \$648 more a year by 2022. The ad ignores the fact that Ottawa is giving the money collected back to the people in the province where it was collected via the climate action incentive.

Alberta premier-designate Jason Kenny has promised to kill Alberta's homegrown carbon tax and fight the federal law in court.

---

*With files from CBC News*

©2019 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca